

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2016

CORAM

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

CRL.A.No.163 of 2013

Mani @ Subramani ... Appellant/Sole Accused

Versus

State rep by
The Inspector of Police
C5, Oragadam Police Station
Sriperumbudur Taluk
Kancheepuram District. ... Respondent/Complainant

Appeal filed under section 374 [2] Cr.P.C., against the Judgment passed in SC.No.21 of 2012 dated 31.08.2011 by the learned Sessions Judge, Sessions Court No.2, Kancheepuram and to set aside the same.

For Appellant : Mr.G.Udayashankar for
M/s.S.Shanthakumari

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

The sole accused in SC.No.21/2011 on the file of the Sessions Court No.2, Kancheepuram is the appellant herein and aggrieved by the conviction under section 302 IPC and imposition of sentence of rigorous imprisonment for life and to pay a fine of Rs.5000/- with a default sentence of one year rigorous imprisonment, he has filed the present appeal.

2 The facts leading to this appeal, briefly narrated, are as follows:-

[A] P.W.1-Malar, is the wife of Shankar, the deceased. He was eking out his livelihood by doing "Centering Work". The appellant/accused belongs to Panaiyur village and under the influence of alcohol, used to tease women. About three years

prior to 2009, appellant/accused teased one Panjalai, wife of Tirumalai, who in turn informed Shankar [deceased] to castigate him about the said incident and accordingly, Shankar went and met the appellant/accused and questioned him about the act of teasing Tmt.Panjalai and as a consequence, the appellant/accused developed animosity against Shankar. The appellant/accused called Shankar to part with some money for the purpose of purchasing alcoholic drinks and it was refused by him. He told the same to his wife [P.W.1]. P.W.1 warned her husband Shankar not to have any acquaintance with the appellant/accused.

[B] On 08.05.2009, at about 20.30 hours, P.W.1 [wife of Shankar] along with her sister-in-law Banumathi [P.W.3] and the neighbour Jayanthi, was having conversation. At that time, they heard an alarm. Immediately, Malar [P.W.1] and Banumathi [P.W.3] went to the house of the appellant/accused and saw the appellant/accused attacking Shankar, husband of P.W.1 [Malar] with a spade and on seeing them, he came out of the house and ran away towards Northern side with the weapon. P.Ws.1 and 3 [Malar and Banumathi] went inside the house and saw that Shankar [husband of P.W.1] was unconscious, and blood was oozing out. Immediately, Malar [P.W.1] went to Oragadam Police Station and gave an oral complaint and it was reduced into writing, marked as Ex.P.1.

[C] P.W.9, Subhan, was the Sub Inspector of Police attached to Oragadam Police Station at the relevant point of time. On receipt of Ex.P.1 [complaint] from Tmt.Malar [P.W.1/wife of the deceased], registered a case in Cr.No.93/2009 on 08.05.2009 at about 22.30 hours for the offence u/s.302 IPC. Printed FIR is marked as Ex.P.8. He despatched the original complaint [Ex.P.1] and the printed FIR [Ex.P.8] to the Court of the Judicial Magistrate No.2, Sriperumbudur and forwarded the copies to the higher officials.

[D] P.W.10. Varadarajan, who was the Inspector of Police, Law and Order, attached to Oragadam Police Station, on receipt of the FIR, commenced investigation. He went to the scene of crime at about 23.30 hours on 08.05.2009 and in the presence of P.W.7 [Velmurugan] and one Rajangam, prepared the Observation Mahazar, marked as Ex.P.4 and a Rough Sketch marked as Ex.P.9. He also recovered blood-stained earth [M.O.2] and sample earth [M.O.3] under the cover of Mahazar, Ex.P.5. P.W.10 also conducted inquest on the dead body of the deceased on 09.05.2009 at about 08.00 hours in the presence of the Panchayatdars and prepared the Inquest Report [Ex.P.10]. Through P.W.8, he made a requisition for conducting postmortem on the body of the deceased, after having obtained necessary permission from the jurisdictional Magistrate.

[E] P.W.6-Dr.Kamesh Balaji, who was the Assistant Surgeon attached to the Government Hospital, Sriperumbudur, at the relevant point of time, on receipt of the body of the deceased viz., Shankar has commenced the postmortem at about 12.15 hours on 09.05.2009 and noted the following features:-

"Identification and Caste marks:-

[1]A black mole over left chest.

[2]A black mole over right shoulder.

The body was first seen by the undersigned at 12.05 p.m., on 09.05.2009. Its condition then was rigor mortis present in all four limbs. Postmortem commenced at 12.15 p.m., on 09.05.2009.

Appearance found at the postmortem:- body of a moderately built adult male lying on its back about 30 years of age.

External Examination:-

[1] Incised wound over right frontal-parietal scalp measuring 7cmx2cmx1cm in size.

[2] Laceration across right temporal scalp extending over ear lobe right measuring 9cmx2cmx1cm.

[3] Laceration measuring 4cmx1cmx0.5cm over posterior part of occipital scalp.

[4] Incised wound over right side of neck extending over to back of neck measuring 12cmx2cmx1cm.

[5] Incised wound below the above wound measuring about 13cmx2cmx1cm.

[6] Incised looking laceration over right side of neck below the above mentioned wound 12cmx2cmx1cm.

[7] Incised looking wound over right side of jaw measuring 8cmx2cmx1cm in size.

[8] Laceration over lower part of front of neck with edges of skin measuring 8cmx1cmx1cm.

[9] Laceration with similar wound below the above mentioned wound measuring 10cmx2cmx1cm.

[10] Laceration over upper part of front of chest 12cmx2cmx1cm.

[11] Bruising over anterior part of left side of chest.

Head and Face:- Linear depressed fracture over right temporal region 6cmx1cmx1cm in size. Both cerebral lobes contused. Presence of infra-cranial bleed.

Ribs intact over both sides. Heart and Lungs intact. Stomach empty. Kidney, spleen intact."

On completion of postmortem, P.W.6 opined that the time of death was between 14.00 and 18.00 hours prior to autopsy and the cause of death was due to "shock and haemorrhage due to severe head injury and soft tissue injury caused by assault with both sharp and semi-sharp weapons." The Postmortem Certificate given by P.W.6 was marked as Ex.P.3.

[F] P.W.10, the Inspector of Police, continuing the investigation, effected arrest of the appellant/accused at about 12.00 noon on 09.05.2009 near the Bus Stand, Panruti and in the presence of P.W.7 [Velmurugan] and Rajangam, the appellant/accused voluntarily came forward to give a confession statement between 12.15 hours and 13.45 hours, the admissible portion of which is marked as Ex.P.11. In pursuance of the same, M.Os.1, 4 and 5 to 7 were recovered under the cover of Mahazar [Ex.P.7]. P.W.10 sent the appellant/accused for judicial custody and he examined P.Ws.1 to 4, Rajangam, P.W.7 [Velmurugan] and Kumar [P.W.8] and through Form-95, he despatched the material objects to the jurisdictional Magistrate Court. P.W.10 also recorded the statement of the doctor [P.W.6] who conducted autopsy and subsequently, the investigation was done by P.W.11 [S.Murugusubramaniam], the then Inspector of Police attached to Oragadam Police Station at the relevant point of time. He examined P.W.6 who has given Ex.P.2 - Biology Report, recorded the statements and having found that the statements of the witnesses were already recorded, filed the final report on 22.08.2009, charging the appellant/accused for the commission of the offence u/s.302 IPC to the Court of the Judicial Magistrate, Sriperumbudur.

[G] On receipt of the final report, the learned Judicial Magistrate, Sriperumbudur, took it on file in PRC No.25/2009. The Committal Court, on the appearance of the appellant/accused, furnished copies of the documents under section 207 Cr.P.C., and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of the learned Sessions Judge No.2, Kancheepuram, who took it on file in SC.No.21/2011. The Trial Court, on appearance of the appellant/accused, framed charge u/s.302 IPC and questioned the appellant/accused, who pleaded not guilty to the charge framed against him.

[H] The prosecution, in order to sustain their case, has examined P.Ws.1 to 11 and marked Exs.P.1 to 11 and also marked M.Os.1 to 11. The appellant/accused was questioned u/s.313 Cr.P.C., with regard to the incriminating circumstances made out against him in the evidence rendered by the

prosecution. He denied it as false. He further stated that he is not guilty of the offence. On behalf of the appellant/accused, no oral or documentary evidence was let in.

3. The Trial Court on consideration of the oral and documentary evidence and other materials placed before it, has convicted the appellant/accused for the offence u/s.302 IPC and sentenced him as mentioned above. Challenging the legality of the said conviction and sentence, the appellant/accused is before this Court with this appeal.

4. Learned Counsel appearing for the appellant/accused made the following submissions:-

[i] Motive for commission of the offence appears to be flimsy and unbelievable.

[ii] P.Ws.1 to 4 are related and interested witnesses and therefore, their testimonies cannot be relied upon. Even otherwise, there are material inconsistencies / discrepancies between their testimonies.

[ii] P.W.7, the witness to the recovery from the scene of crime and arrest, confession and recovery is an official and normally he would support the prosecution side and therefore, his evidence cannot be relied upon to prove the arrest, confession and recovery.

[iv] As per the medical evidence and the testimony of P.W.6, saw was used and some of the injuries could be caused by the use of saw and admittedly, the said weapon has not been recovered and the medical evidence did not support the case of the prosecution.

In the light of the infirmities pointed out in the case of the prosecution, it is the submission of the learned counsel appearing for the appellant/accused that in any event the Trial Court ought to have awarded benefit of doubt and acquitted the appellant/accused and prays for setting aside of the conviction and sentence and for the honourable acquittal of the appellant/accused.

5. Per contra, the learned Additional Public Prosecutor would contend that the motive aspect has been clearly spoken to by P.W.1, the wife of the deceased and apart from that, P.W.3 had also seen the commission of the offence and their testimonies corroborates with each other on material particulars and it cannot be disbelieved. Insofar as the recovery of cloth worn by the deceased and the weapon used, the evidence of P.W.7-Village Assistant, Panaiyur Village, though subjected to cross-examination, nothing useful was elicited in favour of the appellant/accused and as per the admissible portion of the confession, the cloth and the weapon used by the

appellant/accused were recovered and under Ex.P.2-Biology Report coupled with the evidence of P.W.5, blood was found in item Nos.1 and 3 to 9 which includes the weapon marked as M.O.1 and thus, the prosecution has proved its case beyond any reasonable doubt and therefore, the Trial Court was right in convicting and sentencing the appellant/accused and prays for dismissal of this appeal.

6. This Court paid its best attention to the rival submissions and also perused the material objects placed before it.

7. The question arises for consideration is whether the conviction recorded by the trial court against the appellant/accused for the commission of the offence u/s.302 IPC and sentencing him to undergo imprisonment for life and fine of Rs.5000/- with the default sentence of one year rigorous imprisonment, is sustainable.

8. P.W.1 [Malar] is the wife of the deceased Shankar and she has spoken about the motive aspect in clear terms and according to her, the appellant/accused under the influence of alcohol, used to tease women and on one such occasion, he teased one Panjalai, wife of Tirumalai and the said Tirumalai asked Shankar/husband of P.W.1 to administer warning to the appellant/accused and accordingly, it was done so by her husband and as a consequence, the appellant/accused developed animosity. P.W.1 would also depose that on a particular day, the appellant/accused asked Shankar [deceased] for money to buy alcoholic drinks and it was refused. P.W.1 has also advised her husband not to have acquaintance with the appellant/accused and on 08.05.2009, at about 20.30 hours, she along with P.W.3-Banumathi [P.W.1's sister-in-law] and her neighbour Jayanthi were having conversation and on hearing the alarm, they rushed to the house of the accused and saw the appellant/accused repeatedly attacking the deceased Shankar with a spade. Thereafter, P.W.1 went to the Police Station and on dictation, Ex.P.1-complaint was prepared and the case came to be registered. In the cross-examination, P.W.1 would depose that she is an illiterate and on hearing the alarm raised by her husband, she rushed to the house of the accused and saw the accused repeatedly attacking her husband with a spade. The said testimony of P.W.1 was amply corroborated by P.W.3, her sister-in-law and in the cross-examination, in more than three places, P.W.3 was very categorical that it was the appellant/accused alone who attacked the husband of P.W.1 with a spade and caused injuries.

9. P.W.4 is the brother-in-law of the deceased and on finishing his work, he was returning to home and at about 20.30 hours, he heard the alarm of P.Ws.1 and 3 and at that juncture, he saw the appellant/accused running with a spade tainted with blood. Therefore, the prosecution, through the testimonies of P.Ws.1 and 3-eyewitnesses, had amply proved that it was the appellant/accused alone who has committed the heinous offence. The testimony of P.W.4 would also reveal that after committing the offence, the appellant/accused ran away from the scene of crime with the weapon. The appellant/accused was arrested on 09.05.2009 in the presence of P.W.7 and Rajangam and he voluntarily came forward to give a confession statement and as per the admissible portion [Ex.P.11], M.Os.4 to 7 were recovered and as per Ex.P.2 [Biology Report] coupled with the evidence of P.W.5, the said material objects were blood stained. The Postmortem Certificate given by P.W.6 also confirms the fact that the deceased died on account of homicidal violence. Ex.P.8, the printed FIR which was registered at 20.30 hours on 08.05.2009 has also reached the jurisdictional Magistrate Court on 09.05.2009 at 11.00 hours without any loss of time. Though the learned counsel appearing for the appellant/accused would contend that a saw was used for the commission of the offence ; P.Ws.1 and 3 had spoken only about M.O.1. In the considered opinion of the Court, the said infirmity pointed out, does not affect the core of the prosecution case for the reason that as per Ex.P.3 [Postmortem Certificate], the deceased died due to severe head injury. Thus, the prosecution has proved its case beyond any doubt. The Trial Court, on a proper appreciation of the oral and documentary evidence and other materials, has rightly reached the conclusion and found the appellant/accused guilty of the offence u/s.302 IPC and sentenced him accordingly.

10. This Court, on an independent application of mind to the materials placed before it, is of the view that there is no error apparent or illegality in the findings reached by the Trial Court and this Court finds no merit in the appeal.

11. In fine, the criminal appeal is dismissed and the conviction and sentence imposed on the appellant/accused for the offence u/s.302 IPC vide Judgment dated 31.08.2012 made in SC.No.21/2011 by the learned Sessions Judge, No.2, Kancheepuram, are hereby confirmed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Sessions Judge, No.2
Kancheepuram.
2. The Principal District and Sessions Judge,
Kancheepuram District at
Chengalpattu.
3. The Judicial Magistrate
Sriperumbudur.
4. -Do- Through The Chief Judicial Magistrate,
Kancheepuram District at
Chengalpattu.
5. The Inspector of Police
Oragadam Police Station
Sriperumbudur Taluk
Kancheepuram District.
6. The Public Prosecutor
High Court, Madras.
7. The Superintendent,
Central Prison,
Vellore.

Crl.A.No.163 of 2013

NM(CO)
CA(15/03/2016)

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