

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2016

CORAM

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU
AND
THE HONOURABLE DR. JUSTICE P. DEVADASS

Criminal Appeal No. 830 of 2012

1.Jagadish

2.Purushothaman

... Appellants/Accused Nos.1 & 2

Vs.

State rep. by

The Inspector of Police,
Mathigiri Police Station,
Cr.No. 100 of 2011

... Respondent/Complainant

Prayer: Criminal Appeal as against the judgment dated 25.09.2012 in S.C. No. 10 of 2012 on the file of the learned Principal Sessions Judge, Krishnagiri.

For Appellants : Mr.V. Rajamohan

For Respondent : Mr.M. Maharaja,
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S. NAGAMUTHU,J.)

The appellants are accused Nos. 1 & 2 in S.C. No. 10 of 2012 on the file of learned Principal Sessions Judge, Krishnagiri. They stood charged for the offences under Sections 302 & 380 I.P.C.. By judgment dated 25.11.2012, the Trial Court convicted the accused under both the charges and sentenced each one of them to undergo imprisonment for life, to pay a fine of Rs.5000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 302 I.P.C. and to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.2000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 380 I.P.C. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows:

(i) P.W.4, Vijayakumar was running a Company, namely, "Kavin Packaged Drinking Water Company" at Belakondapalli Village. P.W.s 1 to 3 were all employees in the said Company. The deceased, in this case, was one Mohanbabu. He was a Supervisor in the said Company. It is alleged that these two accused, who were also employees of the said Company, on 19.03.2011, at about 6 p.m., in a drunken state, picked up a quarrel with P.W.2, Manjunath, and assaulted him. When P.W.1 questioned them, the accused promised not to behave in such a disorderly manner thereafter. However, on the same day, at 11p.m., when P.W.1, who was working as a Driver in the Company, returned from Hosur along with P.W.3, these two accused wanted P.W.3 to come and sleep with them so as to enable them to have unnatural sex with him. P.W.1 reprimanded them and also informed the Supervisor, namely, the deceased, about the same. The deceased, in turn, contacted the owner of the Company (P.W.4) and informed him about the incident. This, again, resulted in a quarrel between the deceased and the accused. These two accused took exception to the deceased having informed the above matter to the owner of the Company. They also challenged that they would do away with the deceased. After the above incident, all of them dispersed.

(ii) It is further alleged that, on 21.03.2011, early in the morning, when P.W.1 came to the Company for attending duty, he found that there were blood stains in the place where the deceased was sleeping on the previous night. There were also other symptoms near the place of occurrence, such as blood stains on the mat, blanket, etc. Suspecting some foul play, P.W.1 went in search of the deceased and he found the dead body of the deceased in the nearby well. Immediately, he went to Mathigiri Police Station and lodged a complaint at 12 noon on 21.03.2011.

(iii) P.W.9 was the then Sub Inspector of Police at Mathigiri Police Station. On receiving the complaint from P.W.1, he registered a case in Crime No. 100/2011 under Sections 302 and 380 I.P.C.. Ex-P1 is the complaint and Ex-P16 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the case diary to the Inspector of Police for investigation. Exs-P1 and P16 reached the hands of the learned Magistrate at 6.40p.m. on 21.03.2011.

(iv) P.W.11, Inspector of Police, Mathigiri Police Station, took up the case for investigation. He proceeded to the place of occurrence at 12.45p.m. and prepared an Observation Mahazar (Ex-P9) and drew a rough sketch (Ex-P18) in the presence

of P.W.8, the then Village Administrative Officer and another witness. He recovered a blood stained tile, M.O.7 and a sample tile, M.O.8 under a mahazar. In the presence of the same witnesses, at about 1.30p.m., he recovered blood stained mat and blood stained blanket under a mahazar. He also prepared an Observation Mahazar (Ex-P12) and a rough sketch at the place where the dead body was found. Then he conducted inquest on the dead body in the presence of Panchayatdars and other witnesses between 2.15 p.m. and 3.30p.m. Ex-P20 is the inquest report. Thereafter, he sent the dead body to the Government Hospital, Hosur, for postmortem.

(v) P.W.7, a Civil Assistant Surgeon, attached to Government Hospital, Hosur, conducted autopsy on the dead body of the deceased on 21.03.2011 at 4p.m. She found the following injuries:

"External Injuries:-

- 1) A stab wound over right forehead 9 cm x 3 cm x bone depth exposing underlyng bone
- 2) A stab wound over left maxilla 3 x 2 x 4 cms
- 3) A stab wound over left side maxilla near left side of nose 3 cm x 2 cm x 4 cms
- 4) A stab wound over right side of neck 3 x 2 x 3 cm
- 5) A stab wound over right side of the clavicular joint 3 x 2 x 3 cm
- 6) Laceration over right pinna 2 x 2 x 1 cm
- 7) A stab wound over back side of right side of neck 2 x 2 x 2 cm
- 8) Dislocation of left elbow joint
- 9) Contusion over right occipital area 8 x 8 cm
- 10) Punctured incised wound over left side of chest 3 x 4 x 6 cms

Internal Examination

Hyoid bone-intact, Ribs- right side intact, left side 3 to 4

Heart - 220 g both chambers empty, c/s pale, Lungs- Right 400 g, left-380 g,

Perforating injury with entry wound under and exit wound narrow and small + in left clobe c/s pale.

Liver -1400 gm, c.s pale. Stomach - contains digested food particulars about 100 ml, kidneys 140 g each, c/s pale, Spleen - wt 160 gm c/s pale. Bladder empty.

Scalp - lacerated skull - Right frontal x right temporal, left paretal bone.

Membranes - Lacerated and Haematoma all, Brain - 1350 g. Right to be lacerated, Haematoma + in both lobes.

Base of skull intact. PM concluded at 5.20 p.m. on 21.03.2011.

Ex-P8 is the postmortem report. According to her, injuries

on the dead body would have been caused by stabbing with the sharp edge of a crowbar. She further opined that death would have been caused due to the injuries to vital organs, such as brain and lungs leading to torrential bleeding and shock.

(vi) While investigation was in progress, it is alleged that on 24.03.2011, both the accused appeared before P.W.8, who was the Village Administrative Officer, incharge of Belakondapalli Village, at the relevant point of time, at 8 a.m., in his office, and made a voluntary confession to him orally. But, P.W.8 did not reduce the same to writing. The accused were said to have produced cash of Rs.5400/-, two mobile phones, a Pulsar Motor Cycle and a watch before him. P.W.8 took both the accused to Mathigiri Police Station and produced them before the Inspector of Police along with his report Ex-P13.

(vii) P.W.11 arrested the accused and recovered the material objects, marked as M.Os 1 to 4 and M.O.10. While in custody, the first accused made a voluntary confession in the presence of P.W.8 and another witness at 9a.m. In the said confession statement, he disclosed the place where he had hidden the crowbar, the wrench, and bloodstained clothes. In pursuance of the same, he took the Police and the witnesses to the land belonging to one Subbaraya Reddy at Belakondapalli and produced blood stained crowbar- M.O.11, bloodstained wrench - M.O.12, bloodstained clothes - M.O.s 13 to 16 and a Titan Sonata Watch - M.O.9. P.W.11 recovered the same under Ex-P15 mahazar. On returning to the Police Station, he forwarded the material objects to the Court under Form -95 and sent the accused for judicial remand. P.W.11, then, made a requisition to the fingerprint expert to examine the material objects recovered on the confession of the first accused. He examined further witnesses and recorded their statements.

(viii) P.W.10 is the fingerprint expert, who examined the material objects. He found that there was a fingerprint on M.O.9, wrist watch and the chance prints tallied with the fingerprint of the first accused.

(ix) On 01.04.2011, P.W.11 gave a requisition to the Court to send the case properties for chemical examination and accordingly, they were sent. He also gave a requisition, Ex-P27, to the Court to send the hyoid bone, viscera and neck muscle tissues recovered from the dead body for chemical analysis. Thereafter, P.W.11, on being transferred, handed over the investigation to his successor, who, after recording the statement of Chemical Examiner and on receipt of Chemical Examiner's Reports, filed the charge sheet against the accused under Sections 302 and 380 I.P.C. on 28.08.2011.

(x) Based on the above materials, the Trial Court framed charges, which the accused denied as false.

(xi) In order to prove the case, on the side of the prosecution, P.W.s 1 to 11 were examined, Exs-P1 to P32 were marked and M.O.s 1 to 19 were marked. Out of the said witnesses, P.W.s 1 to 3 have spoken about the previous occurrence, in which the accused had called P.W.3 to have homosex and also about the fact that the deceased informed P.W.4 about the incident. They have also stated that at that time, both the accused scolded the deceased for having informed P.W.4 and further that, they swore that they would not allow the deceased to live. P.W.4 has also corroborated the same. It is the further evidence of P.W.s 1 to 3 that on the morning of 21.03.2011, the deceased was not found in the place where he was sleeping inside the company and the dead body of the deceased was found in the nearby well. P.W.1 has also spoken about the complaint made to the Police at 12 noon. P.W.5 is the sister of the deceased, who has spoken to the fact that the deceased was working in a Packaged Drinking Water Company. P.W.6 has spoken about the photographs taken at the scene of occurrence at the request of the Investigating Officer. P.W.7 has spoken about the postmortem conducted and her report regarding the cause of death. P.W.8 has spoken about the preparation of Observation Mahazars and recovery of material objects from the scene of occurrence. He has also stated that on 24.03.2011, at 8a.m., both the accused appeared before him, when he was in his office, and made an oral confession about the occurrence and that they also produced M.O.s 1 to 4 and M.O.10. He has further stated that he produced them before the Inspector of Police. P.W.9 has spoken about the registration of the case and forwarding the copies of First Information Report to the Court and to the Investigating Officer. P.W.10 has spoken about the fact that the chance fingerprint found on M.O.9 tallied with that of the first accused. P.W.11 has spoken about the investigation done and the filing of the final report as against the accused by his successor.

(xii) When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness nor mark any document. In their defence, they stated that they were taken into custody on 23.03.2011 itself from their house and they were detained in the Police Station. They would also state that they did not produce any material object either to the Village Administrative Officer or to the Investigating Officer. They would further state that they did not make any confession at all to the Village Administrative Officer.

(xiii) Having considered all the above, the Trial Court convicted the accused as stated in the first paragraph of the judgment. That is how, the accused/appellants are before this Court with this appeal.

3. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

4. There is no denial of the fact that the deceased was the Supervisor in the Company run by P.W.4. There is also no denial of the fact that the deceased slept inside the company premises on the night intervening 20.03.2011 and 21.03.2011. P.W.s 1 to 3 have stated that on 21.03.2011, early in the morning, when they did not find the deceased in his usual place, they went in search of him and they found his dead body in a nearby well. Thus, it is crystal clear that the deceased was done to death between 9.30p.m on 20.03.2011 and 6 a.m. on 21.03.2011. The prosecution has succeeded in proving that the death was due to homicide.

5. Now, the question is who were the perpetrators of the crime. To prove that the deceased was done to death by these accused only, the prosecution relies on the evidence of P.W.8, the then Village Administrative Officer of Kommaranappalli Village, who was also incharge of Belakondapalli Village. He has stated that on 24.03.2011, at 8 a.m., when he was in his office, both the accused appeared before him and gave a confession admitting their guilt and also produced M.O.s 1 to 4 and M.O.10. Unfortunately, even according to him, he did not reduce the so-called confession said to have been given by the accused to writing. Further, he has admitted in his cross-examination that for the first time, he saw the accused only at the time when they appeared before him. Therefore, it is crystal clear that the accused had no acquaintance with P.W.8 at all. Hence, as rightly submitted by the learned counsel for the appellants, it is difficult to believe that these two accused would have gone to a total stranger to make a confession. That apart, P.W.1 has admitted during cross-examination that the accused were arrested on 23.03.2011 itself and they were kept in the custody of the Police on 23.03.2011 and they were interrogated. There is no reason to reject the evidence of P.W.1. If this admission made by P.W.1 is accepted, then the so-called confession, said to have been orally made on 24.03.2011, before P.W.8, would not have been made by the accused as it is projected by the prosecution.

6. It is the further case of the prosecution that immediately thereafter, P.W.8 produced the two accused before P.W.11 and on being examined by P.W.11, the first accused gave a voluntary confession, pursuant to which some of the material objects were recovered. Since it is in evidence that both the accused were in Police custody from 23.03.2011 onwards, the so-called confession said to have been made by the first accused to P.W.11 and the consequential recovery of material objects cannot be believed. Once these two material pieces of evidence relied on by the prosecution are disbelieved, I find no other evidence at all against the accused to sustain their conviction. Of course, the prosecution has proved that there was some motive for these two accused against the deceased on account of the fact that the deceased had informed P.W.4 about the misbehaviour of the accused towards P.W.3 earlier. But, that by itself, would not, conclusively prove the guilt of the accused. At this juncture, we would like to say that in cases, based on circumstantial evidence, the circumstances projected by the prosecution should be proved beyond reasonable doubts and such proved circumstances should form a complete chain, without any break and the same should unerringly point to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused.

7. In the case on hand, as we have already observed, there is absolutely no evidence, to establish the circumstances, which would unerringly prove the guilt of the accused. Therefore, we hold that the prosecution has failed to prove the case against the accused beyond all reasonable doubts and hence, they are entitled for an acquittal.

8. In the result, the appeal is allowed and the conviction and sentence imposed on the appellants/accused by the Trial court are set aside and they are acquitted of all the charges. Fine amount, if any, paid, shall be refunded to the accused/appellants.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

nv

To

- 1.The Principal Sessions Judge,
Krishnagiri.
- 2.The Judicial Magistrate No.II,
Hosur.
- 3.Do Through The Chief Judicial Magistrate,
Krishnagiri.
- 4.The Superintendent,
Central Prison,
Vellore.
- 5.The Inspector of Police,
Mathigiri Police Station.
- 6.The District Collector,
Krishnagiri.
- 7.The Director General of Police,
Mylapore, Chennai - 04.
- 8.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Mohideen Basha, Advocate, S.R.No.8997

Cr1.A. No. 830 of 2012

KSJ(CO)
CA(01/03/2016)

सत्यमेव जयते

WEB COPY