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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.53 of 2013

Selvaraj .. Appellant/Sole Accused

Vs

State: Represented by
The Inspector of Police,
Kolathur Police Station,
Crime No.175 of 2010
Salem District.

.. Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
against the judgment dated 19.11.2012 in S.C.No.221 of 2011 on
the file of the learned Principal Sessions Judge, Salem.

For Appellant : Mr.R.John Sathyan

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

JUDGEMENT

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

The appellant is the sole accused in S.C.No.221 of 2011 on the file of the learned Sessions Judge, Salem. He stood charged for offence under Section 302 I.P.C. By judgment dated 19.11.2012, the trial Court convicted and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- (no default condition was imposed by the trial Court). Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The deceased in this case was one Mr.Kupusamy. P.Ws.1 to 3 are the wife, sister and mother respectively of the deceased.



The ancestral property belonging to the father of the deceased and his uncles were partitioned long before. The accused is one of the sons of the paternal uncle of the deceased. The deceased raised some dispute in respect of the said partition. He filed a Civil Suit before the learned District Munsif, Mettur in O.S.No.111 of 2008, for partition on 31.03.2010. The Civil Court granted a preliminary decree for partition. The accused was aggrieved over the same. This developed into a strong motive between the accused and the deceased.

3. On 09.05.2010 at about 11.30 pm, the deceased was sleeping on a cot in his house. P.W.1 was sleeping by his side in a different cot with her child. At that time, she was also pregnant and it is alleged that the accused came to the house of the deceased with a hammer. On reaching the deceased who was sleeping, he hit the deceased twice on his head with the hammer. Awakened by the same, P.W.1 cried for help. The accused intimidated her. Out of fear, she ran out of the house along with the child and cried for help. The neighbours were awakened by the said distress call. They rushed towards the house of the deceased. On seeing them, the accused fled away from the scene of occurrence with the hammer. The deceased was struggling for life. P.W.1 and others with the help of 108 Ambulance, took the deceased to Mettur Government Hospital. P.W.13, Dr. Jayandran, examined him and found the following injuries:-

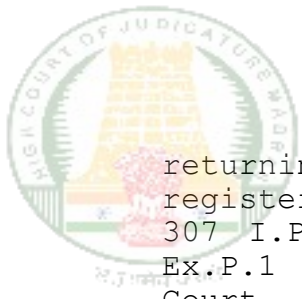
"1. 3 x 4 cm lacerating one torned hue injury exposing muscle, bone, brain, under left side head.

2. 3 x 4 cm depressing one lacerated injury on the left side head bone. "

4. The deceased was brought to Government Hospital, Mettur, by one Mr. Gonvidaraj. The deceased was unconscious. Mr. Govindaraj informed the Doctor (P.W.13) that the deceased was attacked by a known person at 11.30 pm on 09.05.2010 at the house of the deceased. Ex.P.6 is the Accident Register and Ex.P.7 is the Case Sheet. Since the condition of the deceased was critical, P.W.13, forwarded the deceased to the Salem Government Mohan Kumaramangalam College & Hospital, Salem.

5. P.W.14-Dr. Chitra, examined him at Salem Government Mohan Kumaramangalam College & Hospital, Salem, at 3.00 am on 10.05.2010. She admitted him as inpatient. She sent an intimation to the Police also.

6. P.W.18, the then Inspector of Police, Kolathur Police Station, on receiving the said intimation from the hospital, rushed to the hospital. Since, the deceased was unconscious, he recorded the statement of P.W.1 at 1.30 am on 10.05.2010 and on



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returning to the Police Station at 3.00 am, on the same day, he registered a case in Crime No.175/2010 for offence under Section 307 I.P.C., against the accused. Ex.P.10 is the F.I.R., and Ex.P.1 is the complaint. He forwarded both the documents to Court, which were received by the learned jurisdictional Magistrate at 10.10 am on 10.05.2010.

7.Taking up the case for investigation, P.W.18 proceeded to the place of occurrence and prepared an observation mahazar (Ex.P.2) and a rough sketch (Ex.P.11) at the place of occurrence in the presence of P.W.11 and another witness. He recovered blood stained earth, the sample earth and few more blood stained Material Objects, in the place of occurrence, under a mahazar, in the presence of same witnesses. He examined P.Ws.1 to 3 and the neighbours. He arrested the accused on the same day at 9.30 pm at Aanaikoundanur, Karaikadu Village, in the presence of P.W.12 and another witness. On such arrest, the accused gave a voluntary confession, in which, he disclosed the place where he had hidden the hammer. In pursuance of the said disclosure statement, he took the Police and witness to the place of hide out and produced M.O.1 hammer. P.W.18 recovered the same under a mahazar. On returning to the Police Station, he forwarded the accused to Court for judicial remand and also handed over the Material Objects to the Court.

8.On 10.05.2010 at 12.25 pm, while the was undergoing deceased treatment succumbed to the injuries. On receiving intimation, P.W.18 altered the case into one under Section 302 I.P.C. Ex.P.12 is the Alteration Report. Then, on going over to the hospital, he conducted inquest on the body of the deceased and forwarded the body for post mortem.

9.P.W.19-Dr.Meera, conducted autopsy on the body of the deceased on 10.05.2010 at 4.35 pm. She found the following injuries:-

"1.Sutured irregular lacerated wound seen over left parietal region extending to mid-frontal region - measuring 8 cms in length. Another sutured irregular lacerated wound seen extending from the proximal end of the above wound (frontal end) transversely to left frontal region of scalp - 6 cms in length. Margins of the wound - abraded and haemorrhagic.

2.Dar red subscalpal contusion seen over left fronto - temporo - parieto-occipital region of scalp 18 x 12x 0.5 cms. Comminuted fracture over an area of 12 x 10 cms seen



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over left fronto - temporal bone. Fissured fracture of occipital bone - 6 cms in length. Cominuted fracture base of skull.

3.Extra-dural. Sub-dural and sub-arachnoid haemorrhage seen over left cerebral hemisphere."

10.Ex.P.22 is the Post mortem certificate. She gave opinion that the death of the deceased was due to shock and hemorrhage due to head injuries. P.W.18 during the course of investigation, recovered the blood stained clothes from the dead body of the deceased. He made a request to the Court to forward the Material Objects for chemical examination. The report revealed that there were human blood on all the Material Objects including the hammer. On completing investigation, P.W.18 laid charge sheet against the accused.

11.Based on the above materials, the trial Court framed a lone charge under Section 302 I.P.C., against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 19 witnesses were examined and 22 documents were exhibited, besides 3 Material Objects.

12.Out of the said witnesses, P.W.1 is the wife of the deceased. She is an eye witness to the occurrence. She has vividly spoken about the entire occurrence. She has also stated that on hearing the alarm raised by her as soon as she rushed out of the house, P.Ws.5 to 8 & 10 who are the neighbours rushed to the house of the deceased and on seeing them, the accused fled away from the scene of occurrence with hammer. P.Ws.2 & 3 have spoken about the motive between the accused and the deceased. P.W.4 is the brother of P.W.3 and he has not stated anything incriminating against the accused. He has spoken only on the hearsay information. P.Ws.5 to 8 & 10 who are the neighbours of the deceased have stated that on hearing the alarm raised by P.W.1, they were awakened and when they rushed to the house of the deceased, they found the accused fleeing away from the scene of occurrence and they found the deceased inside the house lying with injuries. They have further stated that P.W.1 was crying for help therefore, they took the deceased in 108 Ambulance to the Government Hospital, Mettur. P.W.9 yet another neighbour has turned hostile and he has not supported the case of the prosecution in any manner. P.W.11 has spoken about the preparation of observation mahazar and the rough sketch in the place of occurrence. P.W.12, the then Village Administrative Officer has spoken about the arrest of the accused, the disclosure statement made by the accused and the consequential recovery of Material Objects, from the place of hide out. P.W.13 has spoken about the treatment given by him



to the deceased at Government Hospital, Mettur. P.W.14 has spoken about the treatment given by him to the deceased at Salem Government Mohan Kumaramangalam College & Hospital, Salem. P.W.15 has stated that at about 12.25 pm on 10.05.2010, the deceased died in the hospital and he gave death intimation to the Police. P.W.16 is the Head Constable who handed over the dead body of the deceased to his relatives. P.W.17 is the Head Clerk of the Court who forwarded the Material Objects for chemical examiner for analysis. P.W.18 has spoken about the investigation done and the final report filed in this case. P.W.19 has spoken about the autopsy conducted by him on the dead body of the deceased and his final opinion regarding the cause of death of the deceased.

13. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not chose to examine any witness nor did he mark any documents on his side. His defence was a total denial.

14. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

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

16. The learned counsel for the appellant would submit that P.W.1 has stated during cross examination that she made the complaint to the Police Station only at 4.00 pm on 10.05.2010, i.e., after the death of the deceased. Thus, according to the learned counsel, Ex.P.1 would not come into being at all at the time, as it is projected by the prosecution. This according to the learned counsel, creates enormous doubt, in the case of the prosecution. The learned counsel would further submit that though, it is claimed by P.W.1 that she witnessed the entire occurrence, there were no blood stains on the clothes of P.W.1. From this, according to the learned counsel, it becomes doubtful as to whether P.W.1 would have been present and witnessed the entire occurrence. He would further submit that P.W.1 has stated in her evidence that before the occurrence, the accused had food at the house of one Mr. Perumal. Whereas, according to the medical evidence, there was no food particles found in the stomach of the deceased. This according to the learned counsel also falsify the presence of P.W.1 at the time of occurrence.



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17.The learned counsel for the appellant would further submit that so far as P.Ws.5 to 8 & 10 are concerned, they have spoken in a partial manner and therefore, their evidences are liable to be omitted. The motive for the occurrence has also been not established. This according to the learned counsel, the accused is entitled for acquittal.

18.The learned Additional Public Prosecutor would vehemently oppose this criminal appeal. He would submit that the presence of P.W.1 at the house of the deceased is quite natural. He would further submit that the absence of blood stains on the clothes of P.W.1 is also quite natural because, she was sleeping at a distance in a different cot. He would further submit that the evidence of P.W.1 duly corroborates with the medical evidence. He would further submit that the evidences of P.Ws.5 to 8 & 10 would also duly corroborate the evidence of P.W.1. So far as the motive is concerned, the same has been spoken by P.Ws.1 to 3. From these evidences, according to the learned Additional Public Prosecutor, the prosecution has proved the guilt of the accused beyond reasonable doubts.

19.We have considered the above submissions.

20.Admittedly, the dead body of the deceased was lying with injuries inside the house of the deceased. There were blood stains on the pillow, cot and other materials found at the place of occurrence. It is the evidence of P.W.1 since, the occurrence was during night hours, it is quite natural that P.W.1 being the wife of the deceased would have been in the house of the deceased. According to her evidence, she was sleeping by the side of the deceased, in a different cot along with her child. She has further stated that she was awakened by the cry of the deceased. She found the accused standing by the side of the deceased and attacking him with hammer. When she tried to prevent the accused, he intimidated her and therefore, she ran out of the house and cried for help. P.Ws.5 to 8 & 10, neighbours of the house of the deceased have stated that they were awakened by the distress call made by P.W.1. That is how they rushed to the place of occurrence. At that time, they found the accused fleeing from the scene of occurrence with the hammer. P.Ws.5 to 8 & 10 are independent witnesses and they have no axe to grind against the accused. Therefore, we find no reason to doubt the veracity of the evidences of P.Ws.5 to 8 & 10.

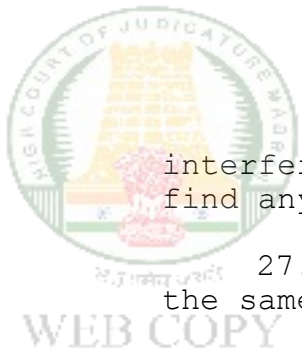
21.The contention of the learned counsel for the appellant that the absence of blood stains on P.W.1 creates doubt in the case of the prosecution cannot be accepted for the simple reason that it is not at all the case of P.W.1 that she either lifted the body of the deceased or she slept near to the deceased.



22. The learned counsel contended that P.W.1 has admitted during cross examination that she made complaint to Police only at 4.00 pm that too after the death occurred. Thus, according to him, Ex.P.1 would not have come into being at 1.30 am. We find no force in this argument at all. After all, P.W.1 is an illiterate woman, we cannot expect time sense with exactitude. The time stated by her cannot be compared to the time shown by a clock. It needs to be noted that Ex.P.1 had reached the hands of the learned Judicial Magistrate at 10.10.am on 10.05.2010 itself which means Ex.P.1 had come into being much before 10.10 am. Therefore, the contention of the learned counsel that the F.I.R., would have come into being only at 4.00 pm on 10.05.2010 cannot be accepted.

24.As we have already pointed out, the evidence of P.W.1 duly corroborates the medical evidence as well as the evidence of P.Ws.5 to 8 & 10. From these evidences, we hold that the prosecution has clearly proved that it was this accused who caused the death of the deceased.

26. Now, turning to the quantum of punishment, the trial Court has imposed minimum punishment on the appellant/accused, which according to us, is just and reasonable, requiring no



interference at the hands of this Court. In effect, we do not find any merit at all in this appeal.

27. In the result, the Criminal Appeal fails and accordingly, the same is dismissed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

jbm

To

1. The Principal Sessions Judge,
Salem.
2. The Judicial Magistrate No-I,
Mettur.
3. -Do- Thro The Chief Judicial Magistrate,
Salem.
4. The Inspector of Police,
Kolathur Police Station,
Salem.
5. The Superintendent,
Central Prison,
Salem.
6. The Public Prosecutor,
High Court, Madras.
7. The Section Officer,
Criminal Section,
High Court, Madras.

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