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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal(MD)No.361 of 2015

1.Dhanapal
2.Anandan @ Muruganandan ... Appellants/Accused Nos.1 & 2

Vs.

State Represented by
Inspector of Police,
Vangal Police Station,
Karur District.
(Crime No.160 of 2013)
.. Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C to set aside the judgment passed by the Principal Sessions Judge, Karur in S.C.No.38 of 2014 dated 01.12.2015 and acquit all the appellants herein.

For Appellants : Mr.P.Andiraj
for Mr.T.Senthil Kumar

For Respondent : Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by M.V.MURALIDARAN, J.)

The appellants are the 1st and 2nd accused in S.C.No.38/2014 on the file of the Principal Sessions Judge, Karur. The trial court framed charges under Section 120(b) and 302 of I.P.C against this Appellants/Accused.

2.The Trial Court by Judgment dated 1.12.2015 convicted the appellants under Section 120 (b) of I.P.C to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.10,000/- in default further undergo rigorous imprisonment for 18 months and convicted and sentenced the accused 1 & 2 for the offence under Section 302 of I.P.C to undergo life imprisonment and to pay a



fine of Rs.50,000/- each in default further undergo rigorous imprisonment for 2 years. Both the sentences shall run concurrently. The set off was allowed under Section 428 of Cr.P.C. Challenging the said conviction and sentence passed against them, the present appeal has been filed by the appellants/accused 1 & 2.

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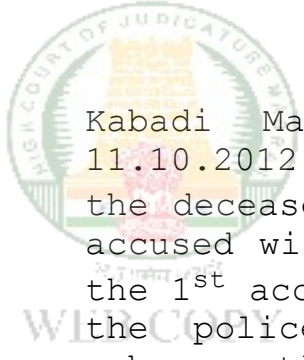
3.The case of the prosecution is that on 6.7.2013 at about 8 A.M, the brother of the deceased namely Natarajan lodged a complaint before the Vangal Police Station stated that he has one sister and one brother namely Revathy and Sathishkumar respectively. His sister already married one Krishnamoorthy, PW-2. His brother was unmarried and he was doing a Centering work. On 11.10.2012, during the Bagavathiamman temple festival, a Kabadi Match was conducted near Valluvar Street, in which his brother Sathishkumar and the accused 1 and 2 participated and that since there was a quarrel between the accused 1 and 2 on one and his brother deceased Sathishkumar on the other, the deceased Sathishkumar attacked the 1st accused Dhanapal with an aruval on his hand resulting in lodging of complaint with the police by the said Dhanapal and consequently the deceased Sathishkumar was arrested. Subsequently, the deceased was enlarged on bail. According to PW-1 Kamaraj, who is the father of the deceased, there was a prior enmity between 1st accused and the deceased Sathishkumar. While the facts are being so, on 6.7.2013 at about 8 P.M, when the deceased Sathishkumar was at home, he received a call in his cell phone and the deceased went outside his home speaking on his cell phone. The defacto complainant, his father PW-1 and his son-in-law Krishnamoorthy PW-2 followed the deceased. They saw the 1st and 2nd accused with aruval in their hands near the board of "Thiruvalluvar Narpani Mandram" near Bagavathiamman Temple. Dhanapal (A1) attacked Sathishkumar on his head with M.O.1 Aruval. When the 1st accused Dhanapal again attempted to attack the deceased Sathishkumar with Aruval M.O.1, the deceased prevented him which resulted in injuries on his wrist, fingers and hands. The 2nd accused Anandan attacked the deceased with another Aruval M.O.2 on his left cheek and shoulders. The 1st accused Dhanapal attacked the deceased repeatedly and the deceased fell down. Then, Anandan severed the head of the deceased and kept the head over the name board "Thiruvalluvar Narpani Mandram". Thereafter, the accused 1 and 2 made good their escape from the scene of occurrence in a two wheeler. PW-1 Kamaraj and PW-2 Krishnamoorthy and Natarajan called the ambulance and took the body of the deceased to the Government Hospital, Karur. The brother of the deceased Natarajan (since deceased) lodged a complaint Ex-P1 with the Sub Inspector of Police, Vangal Police Station on the same day. The respondent police has registered FIR in Crime No. 160/13 and the accused has been charged for the offence under sections 147,148,120(B) r/w 302, 149 r/w 302 of I.P.C.



4. After filing the charge sheet before the Learned Judicial Magistrate No.II, Karur in P.R.C.No.8/2014, the case was committed to the Learned Principal Sessions Judge, Karur and the same was numbered as S.C.No.38/2014. In this case, 20 witnesses were examined as prosecution side witnesses and 38 Exhibits were marked on the side of prosecution and there are 20 material objects produced before the trial court. But there was no witness and exhibits on the side of the accused.

5. In this case, PW-1 Kamaraj who is the father of the deceased deposed that on 11.10.2012, during the Bagavathiamman temple festival, a Kabadi Match was conducted near Valluvar Street, in which his son Sathishkumar and the accused 1 and 2 participated and that since there was a quarrel between the accused 1 and 2 on one side and his son deceased Sathishkumar on the other side, the deceased Sathishkumar attacked the 1st accused Dhanapal with an aruval on his hand resulting in lodging of complaint with the police by the said Dhanapal and consequently the deceased Sathishkumar was arrested. Subsequently, the deceased was enlarged on bail. According to PW-1, there was a prior enmity between 1st accused and the deceased Sathishkumar. While so, on 6.7.2013 at about 8 P.M, when the deceased Sathishkumar was at home, he received a call in his cell phone and the deceased went outside of his home speaking on his cell phone. P.W-1, his son Natarajan (Since deceased) and his son-in-law Krishnamoorthy PW-2 followed the deceased. They saw the 1st and 2nd accused with aruval in their hands near the board of "Thiruvalluvar Narpani Mandram" Bagavathiamman temple. Dhanapal (A1) attacked Sathishkumar on his head with M.O.1 Aruval. When the 1st accused Dhanapal again attempted to attack the deceased Sathishkumar with Aruval M.O.1, the deceased prevented him which resulted in injuries on his wrist, fingers and hands. The 2nd accused Anandan attacked the deceased with another Aruval M.O.2 on his left cheek and shoulders. The 1st accused Dhanapal attacked the deceased repeatedly and the deceased fell down. Then, Anandan severed the head of the deceased and kept the head over the name board "Thiruvalluvar Narpani Mandram". Thereafter, the accused 1 and 2 made good their escape from the scene of occurrence in a two wheeler. PW-1 Kamaraj and PW-2 Krishnamoorthy and Natarajan called the ambulance and took the body of the deceased to the Government Hospital, Karur. The brother of the deceased namely Natarajan lodged a complaint Ex-P1 with the Sub Inspector of Police, Vangal Police Station on the same day.

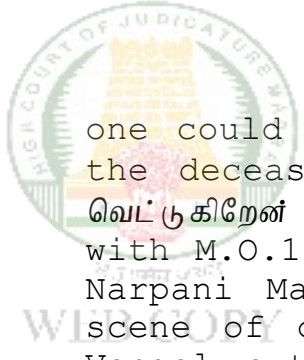
6. The PW-2 Krishnamoorthy who is the son-in-law of the PW-1 deposed that he went to his father-in-law's house along with his wife on 6.7.2013. He further stated that the deceased Sathishkumar and the accused 1 and 2 and some other persons participated in a



Kabadi Match that was held near Bahavathiamman temple on 11.10.2012. There was a quarrel between the accused 1 and 2 and the deceased during the kabadi match and the deceased attacked 1st accused with an aruval which resulted in injuries in the hands of the 1st accused. Therefore, the 1st accused lodged a complaint with the police and the deceased was arrested and remanded and subsequently enlarged on bail. On 6.7.2013, the deceased Sathishkumar came over to his house and took his children to his home. PW-2 went to his father-in-law's house on 6.7.2013 at about 6.30 P.M along with his wife. PW-2's brother-in-law deceased Sathishkumar received a phone call in his mobile phone and went out shouting at someone over the mobile phone. Thereafter PW-2 heard a loud noise from the deceased and PW-1, PW-2 and Natarajan (since deceased) went out of the house and saw both the accused 1 & 2 abusing the deceased with filthy language and attacked the deceased Sathishkumar with an aruval on his head. The 2nd accused attacked the deceased with an Aruval repeatedly on the neck of the deceased. The 1st accused attacked the deceased with an aruval on his right hand, left hand ankle and left leg. Subsequently the 1st accused severed the head of the deceased and kept the head on the board. Both the accused 1st and 2nd accused fled away from the scene of occurrence in a splendor motorcycle. PW-2 then sent the body of his brother-in-law to the Government Hospital, Karur in an ambulance. He also gave a statement Ex-P3.

7.The PW-3 Meenakshi Sundaram is also an eye-witness to the occurrence. He corroborated the version of PW-1 and PW-2. The PW-7 Madhan deposed that he is a resident of E.V.R Street, Vangal. On 11.10.2012, in a Kabadi match, there was a quarrel between the deceased and the 1st accused and the deceased attacked the 1st accused with aruval and caused injuries. Therefore the 1st accused gave a complaint to the police and Sathishkumar was arrested and sent to jail. After release of Sathishkumar from the jail, one day, PW-7 went to a river for taking bath. At that time, he saw the 1st accused and his brother the 2nd accused speaking to each other that the deceased Sathishkumar is often nicking up quarrel with them and that if they leave it like this, the deceased Sathishkumar would kill them and that therefore they should kill Sathishkumar before Sathishkumar does anything to them and after that he came back home. He did not whisper anything about this to anyone. On 6.7.2013, between 7.15 P.M and 8 P.M, he was standing with his friends near Valluvar board and saw sathishkumar speaking to his friends on the opposite side of the road. He heard someone shouting that "சதீஸ் வந்துவிட்டான், வாங்கடா, வாங்கடா". Then he saw the 1st and 2nd accused attacking the deceased Sathishkumar with

result of which, Sathishkumar fell down. The 2nd accused threatened the people who were present there that he would attack them with aruval if anyone comes near him. Therefore, no

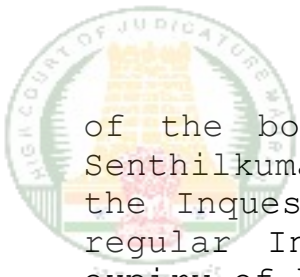


one could go near the scene of offence. The 1st accused attacked the deceased uttering the words, "என்னை நீ வெட்டினாய், உன்னை நான் வெட்டுகிறேன் பார்" and severed the head of the deceased Sathishkumar with M.O.1 Aruval and kept his head over the Board "Thiruvalluvar Narpani Mandram". Then the accused 1 and 2 fled away from the scene of occurrence in a vehicle brought by someone. PW-7 left Vangal out of fear and came after a day. He then went to the police station and informed about the conspiracy hatched by the accused 1 and 2.

8.The PW-10, the Village Assistant Officer, Kuppuchipalayam deposed that on 10.7.2013 at about 6 A.M, while he was in office along with his assistant Manimaran, he received a message over phone from the PW-19 who requested them to go over to Thirumukkudalur Bagavathiamman Temple and the PW-10 went there along with his assistant Manimaran at about 6.15 A.M. At that time, the accused 1 to 4 were examined by the Inspector of Police and they gave confessional statements which were recorded by the police in their laptop. On the basis of the confession statement, the PW-20 seized M.O.9- a Hero Honda Splendor motorcycle, M.O.1- Sword under a Cover Mahazar Ex-P20 and the 3rd accused namely Manmadharaja has handed over a knife M.O.10 which he had concealed on his waist to PW-20, the Inspector of Police and the same was seized under Ex-P21 a Cover Mahazar. Thereafter PW-20 recovered a Two Wheeler Platinum Motor Cycle M.O.11 under a cover of Mahazar Ex-P22. Thereafter M.O.2 Aruval, M.O.12-a shirt, M.O.14- Lungi, M.O.15 and M.O.15 Banian were also recovered by PW-20 behind a bush near the temple under a Cover Mahazar Ex-P23. In all that confessional statements, the PW-10 and his assistant put their signatures as witnesses.

9.The PW-18 Sub Inspector of Police, Vangal Police Station, received the complaint Ex-P1 from Natarajan brother of the deceased on 6.7.2013 at about 9 P.M and registered the FIR in Cr.No.160/2013 for the offence under section 302 of IPC and placed the entire records before the Inspector of Police, Vangal Police Station for investigation.

10.The PW-19 Mukesh Jayakumar who was the then Inspector of Police, in-charge of Vangal Police Station deposed that after registration of FIR, he took up the investigation in Cr.No.160/2013 and went to the place of occurrence at about 22.15 hours along with a photographer and a forensic science expert. He prepared an Observation Mahazar (Ex-P4) and a Rough Sketch (Ex-P7) in the presence of witnesses Dhandapani and Vasanth (PW-5). He seized M.O.3 a Blood Stained Earth and M.O.4 Ordinary Earth from the place of occurrence in the presence of the same witnesses under a cover of mahazar (Ex-P5). He conducted inquest



of the body of the deceased in the presence of the witnesses Senthilkumar, Mathivanan, Kandasamy, Palanisamy and Palanivel and the Inquest Report is Ex-P38 and he handed over the file to the regular Inspector of Police, Vangal Police Station due to the expiry of his leave period.

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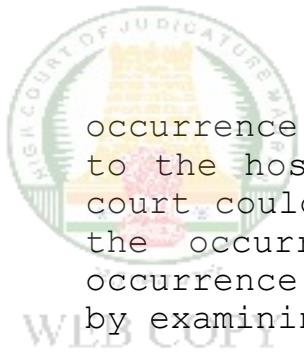
11. On the evidence taken by the trial court namely Learned Principal Sessions Judge, Karur came to the conclusion that the charges laid against the accused were proved by the direct eye witnesses led by the prosecution.

12. In the above said circumstances, there is direct eye witness, the learned Trial Judge convicted the accused for the offences under section 302 of I.P.C. Against the said conviction the present appeal has been filed.

13. We have heard Mr. P. Andiraj, learned counsel for Mr. T. Senthil Kumar, learned counsel for the appellants and Mr. C. Mayilvahan Rajendran, learned Assistant Public Prosecutor for the respondent and we have also perused the records carefully.

14. In this case, going through the evidences and documents produced by the prosecution, first we have to see the evidence of PW-1 and in his Chief examination stated that he is a direct eye witness. When his deceased son Sathishkumar talking with phone and went from his home and the PW-1, his son Natarajan and his son-in-law Krishnamoorthy, PW-3 were followed the deceased Sathishkumar. But in his cross he stated that he was not aware of the conversation of his deceased son Sathishkumar. According to PW-1, the accused 1 & 2 were having "Aruval" with their hands and according to PW-2 the weapon used by the 1st accused Dhanapal was "Sword". He has stated in his cross that the dead body of his son deceased Sathishkumar was taken by PW-2 Krishnamoorthy in an Ambulance to the Government Hospital, Karur. But during his cross, PW-1 stated that the dead body of the deceased Sathishkumar was taken to the Hospital by the Police. According to PW-2, Krishnamoorthy, police came to the hospital only and enquired them. Therefore, there is lot of discrepancies over the evidence of PW-1 and PW-2 with regard to their presence in the place of occurrence and the weapon used by the accused 1 & 2. That apart, PWs 1 & 2 are interested witnesses and therefore, their evidence can't be the basis for conviction of the accused 1 & 2.

15. On going through the evidence of PW-3 disclose that the family members of the deceased Sathishkumar came to the place of occurrence only after the accused 1 & 2 run away from the scene of



occurrence. The PW-3 further stated that the dead body was taken to the hospital in an Ambulance. From the evidence of PW-3, this court could easily come to the conclusion that PW-1 & PW-2 are not the occurrence witnesses and their presence in the place of occurrence is doubtful. The prosecution failed to prove the same by examining any other independent witness.

16. Apart from that PW-3 stated that there are about 4 or 5 criminal cases against the deceased Sathishkumar. In this case, the trial court has convicted the accused 1 & 2, apart from the evidence of PWs 1 & 2, mainly based on the evidence of PW-7. According to PW-7, one month prior to the date of occurrence, he went to a river for taking bath. At that time, he saw the 1st accused and his brother the 2nd accused speaking to each other that the deceased Sathishkumar is often nicking up quarrel with them and that if they leave it like this, the deceased Sathishkumar would kill them and that therefore they should kill Sathishkumar before Sathishkumar does anything to them and after that he came back home. He did not whisper anything about this to anyone. And his further evidence is that on 6.7.2013, between 7.15 P.M and 8 P.M, he was standing with his friends near Valluvar board and saw sathishkumar speaking to his friends on the opposite side of the road. Therefore, there is no corroboration between the version of PW-1, PW-2 and PW-7. According to PWs 1 & 2, the deceased was at the home before the occurrence. But according to PW-7, the deceased was speaking with his friends before the occurrence. Further, if really, PW-7 heard the news about the plan of the accused 1 & 2 that they are going to murder the deceased Sathishkumar, he should have informed the same to the police or to the family members of the deceased Sathishkumar. Therefore the evidence of PW-7 that he was present in the place of occurrence is doubtful and therefore the conviction by the learned trial judge based upon his evidence is not proper.

17. Further, the investigation officer PW-19 admitted during his cross that he has not given any separate letter for super imposition test. The prosecution has not conducted super imposition test as well as DNA test. The non-explanation for not conducting super imposition test as well as DNA test by the prosecution is fatal to their case. The prosecution has not recovered the mobile phone used by the deceased Sathishkumar. When it is the uniform case of PWs 1 & 2 that the deceased Sathishkumar left the house on receiving a phone call, then it is for the prosecution to prove the case by recovering the mobile phone of the deceased. The non-recovery of the mobile phone of the deceased Sathishkumar is a fatal to the case of the prosecution. In this case, the investigation conducted by the prosecution is not proper. The prosecution failed to establish the case beyond reasonable doubt. Hence the conviction by the trial court on the



basis of the evidence of PWs 1, 2, 3 and 7 must go. Therefore the benefit of doubt is given to accused and the appellants / accused 1 & 2 are acquitted from all the charges.

18. In the result, the criminal appeal is allowed and conviction and sentence imposed on the appellants are hereby set aside and the appellants are acquitted and they are directed to be set at liberty forthwith unless their presence is required in connection with any other case. Fine amount paid if any by the appellants shall be refunded to them.

Sd/-

Assistant Registrar (C)

/True Copy/

Sub Assistant Registrar

vsa/skn

To

1. The Principal Sessions Judge, Karur.

2. Do-Thro' The Principal District Judge, Karur.

3 The Judicial Magistrate No.II, Karur.

4 Do-Thro' The Chief Judicial Magistrate, Karur.

5 The District Collector, Karur.

6 The Superintendent, Central Prison, Trichy.

7 The Director General of Police, Chennai.

8. The Inspector of Police,
Vangal Police Station, Karur District.

9 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.T.Senthilkumar, Advocate Sr.No.69636

GJM/MR/SAR-I-23.02.2017-8p-11C

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