



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.09.2016

CORAM:

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

Criminal Appeal(MD)No.11 of 2016 and
Crl.MP(MD)No.257 of 2016

1.Shanmugam
2.Balu @ Balasubramanian
3.Jothivel

... Appellants/Accused Nos.1 to 3

Vs.

The State Represented through
the Inspector of Police,
Lalpet Police Station,
Karur District.
(Crime No.40 of 2013)

... Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374 of Cr.P.C to call for the records and set aside the sentence and conviction imposed by the Sessions Judge, Fast Track, Mahila Court, Karur in S.C.No.08 of 2014, dated 11.12.2015 and pass appropriate order.

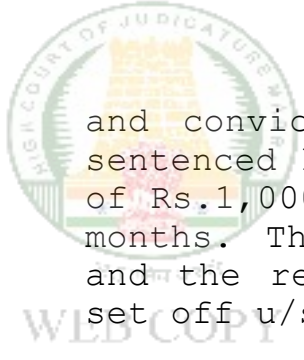
For Appellants	: Mr.S.M.A.Jinnah
For Respondent	: Mr.C.Ramesh
	Additional Public Prosecutor

JUDGMENT

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

The appellants are the accused 1 to 3 in S.C.No.08/2014 on the file of Sessions Judge, Fast Track Mahila Court, Karur. The trial court framed charges under Sections 323, 294(b), 324, 302 r/w 34 and 302 of I.P.C against this Appellants/Accused 1 to 3.

2.The Trial Court by Judgment dated 11.12.2015 convicted the appellants /accused 1 and 3 under Section 342 of IPC and sentenced them to undergo simple imprisonment for one year, convicted the appellants /accused 2 under Section 302 r/w 34 of IPC and sentenced them to undergo life imprisonment and imposed fine a sum of Rs.1,000/- each, in default to undergo simple imprisonment for three months

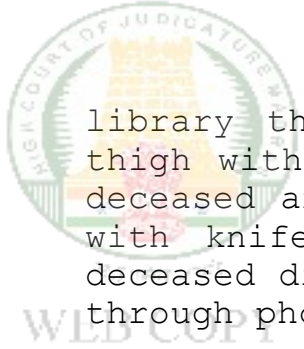


and convicted the appellant No.2 under Section 302 of IPC and sentenced him to undergo life imprisonment and imposed fine a sum of Rs.1,000/-, in default to undergo simple imprisonment for three months. The substantive sentence is ordered to run concurrently and the remand period undergone by the accused is ordered to be set off u/s 428 of Cr.P.C.

3.The case of the prosecution is that there is an enmity between the defacto complainant's husband/deceased Rajasekar and the appellant No.1 regarding the money transaction. In these circumstances on 23.03.2013 at night time while the defacto complainant's husband Rajasekar walking near the Mahalakshmi Rice Mill which is situated at Metumahadhanapuram, at that time the appellants unlawfully detained and assaulted him, further the appellants tear the said Rajasekar's shirt. After then immediately he rushed to his house and convey the issue to his wife/defacto complainant who is PW1 and his parents. They convinced him that we solve the problem after crack of dawn, while so, on the same day at about 8.pm the deceased went to the occurrence place to pick up his mobile, it was missed at the time of earlier assault and he came to near library the appellant No.1 abused and assaulted the deceased on his right thigh with the backside of aruval, and the appellant No.3 caught hold the left hand of the deceased with stating to the appellant No.2 to kill him and at that time the appellant No.1 caught hold the right hand of the deceased and the appellant No.2 stabbed the deceased heart. Due to the said attack the said Rajasekar died on the spot. Hence the PW17 registered a case in Crime No. 40 of 2013 for the offences under Sections 323, 341, 294(b), 324, and 302 r/w 34 of IPC.

4.After filing the charge sheet before the learned Judicial Magistrate No.1, Kulithalai in P.R.C.No. 16 of 2013, the case was committed to the learned Session Judge, Fast Track, Mahila Court, Karur and taken on file in S.C.No. 08 of 2014. In this case, 17 witnesses were examined as prosecution side witnesses and 32 exhibits were marked on the side of prosecution and 9 material objects were produced before the Trial Court. There was one witness examined and 1 exhibit marked on the side of the accused.

5.The PW1 Kowsalya who is the wife of the deceased Rajasekar deposed that her husband and the 1st appellant are friends. On the date of occurrence, the deceased rushed to his home without wearing the shirt and the same was enquired by PW1, for which he stated that the appellants assaulted him by demanding money. Further, the deceased went to the occurrence place to pick up his mobile phone and motorcycle which were missed at the time of earlier assault and the PW1, her mother-in-law and brother-in-law also rushed behind the deceased Rajasekar. When he reached near



library the Appellant No.1 assaulted the deceased on his right thigh with back side of aruval, the appellant No.2 pull down the deceased and the appellant No.3 stabbed the deceased on his heart with knife. Due to the said assault made by the accused, the deceased died on the spot. Then PW1 informed the respondent police through phone and then he given statement (Ex-P1) to them.

6.The PW2 Saratha who is the mother of the deceased deposed that her son and the 1st appellant are friends. They have enmity regarding the money transaction. On the date of occurrence, the deceased rushed to his home without wearing the shirt and the same was enquired by PW2 and the house members, for which he stated that the appellants assaulted him. Further the deceased went to the occurrence place to pick up his mobile phone, motorcycle and Tiffin box which were missed at the time of earlier assault and the PW2, her husband, elder son and sister-in-law also rushed behind the deceased Rajasekar. At that time the appellant No.1 caught hold the left hand of the deceased, the appellant No.2 caught hold the right hand of the deceased and the appellant No.3 stabbed on the deceased heart with the knife. Due to the said assault made by the accused, the deceased died on the spot. The wife of the deceased (PW-1) has given the complaint with the respondent police.

7.The PW5 who is the PW-1's sister husband deposed that he received the information of death of the deceased and rushed to the place of occurrence at about 9.30 pm. At that time the respondent police obtained his signature as witness. Further he deposed that he don't know the appellants/accused.

8.The PW6 is the villager, PW7 is working as VAO, PW8 is the assistant of VAO, PW12 and PW13 are villagers, all are mahazar witnesses and they were examined by the police.

9.The PW9 Doctor M. Raja deposed that on 24.02.2013 he had seen the dead body of Rajasekar brought to the hospital by the Sub-Inspector of Police with the requisition letter for autopsy. He conducted autopsy on the dead body of Rajasekar and found 2.5x0.5 cm punctured wound present between 6th and 7th rib left side, close to the left sternal border with clear cut margin. Obliquely placed with inner end lower than outer end. Width of 0.5cm present in the centre.

10.The PW-10 V.Arunagiri Scientific Officer of the Forensic Science Department, Government of Tamil Nadu deposed that the five articles Stomach, Intestine, Liver, Kidney and Preservative of the

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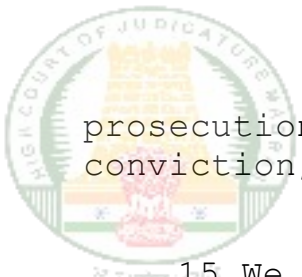
deceased were examined but poison was not detected in any of them.

11. The PW-11 A.Chandra Sekara Rajulu, Scientific Officer of the Forensic Sciences Department, Government of Tamil Nadu deposed that he cannot able to find out and given the conclusive remarks regarding the item No. 1, 5 to 8 which are sent for the Chemical Examine.

12. The PW-17 Baskaran deposed that he is the investigation officer of Cr.No. 40 of 2013. After taking investigation of the above said crime, he visited the place of occurrence on 24.02.2013 at about 5.am and prepared observation mahazar Ex-P21 and Rough Sketch Ex-P22 in the presence of witnesses. He also collected blood stained and ordinary mud from the place of occurrence under Ex-P23. Blood stained mud is M.O. 4 and ordinary mud is M.O.5. Further he deposed that he conducted the inquest over the dead body of the deceased Rajasekar and prepared Inquest report Ex-P24 from 1.30 pm to 3.30p.m and send the dead body to the Government Hospital, Kulithalai for autopsy and received the post-mortem Certificate Ex-P11. He has also sent the material objects for forensic examination and received reports Ex-P12 and Ex-P13 from the Forensic Department. After coming to know about the real fact of the occurrence, on the basis of the secret information on 25.02.2013 at about 9.00 am he rushed to Mahathanapuram Bus Stop and arrested the accused No.1 and recorded the confession statement of 1st accused in front of PW-7 and 8. Further he recovered the blood stained shirt M.O.1 and aruval M.O.3 and prepared the seizure mahazar EX-P27. After that when they reached the old Jeyankondam bus stop at about 11.00am on the basis of identification of 1st accused, he arrested the 3rd accused and obtained his confession statement in front of the witnesses and seized the M.O.6 and prepared the seizure mahazar EX.P29. After he was coming to know about the surrender of 2nd accused before the Judicial Magistrate No.6, he took custody and examined him on 05.03.2013 and obtained his confession statement in front of PW-7 and 8. Further he seized the M.O. 2 and 7 and prepared the seizure mahazar under Ex.P.31. Thereafter he filed the charge sheet on 16.08.2013 under sections 294(b), 324, 342, and 302 r/w 34 of IPC.

13. On the evidence taken, the Trial Court namely Session Judge, Fast Track, Mahila Court, Karur came to the conclusion that the charges laid against the accused were proved by the Eye witnesses led by the prosecution.

<https://hcservices.ecourts.gov.in/hcservices/> 14. In the above circumstances that there are direct eye witnesses, the learned Trial Judge convicted the accused for the offences under Sections 342 and 302 r/w 34 of IPC holding that the



prosecution case was proved on the eye witnesses. Against the conviction, the present appeal has been filed.

15. We have heard Mr. S. M. A. Jinnah, learned counsel for the appellants and Mr. C. Ramesh, learned Assistant Public Prosecutor for the respondent and we have also perused the record carefully.

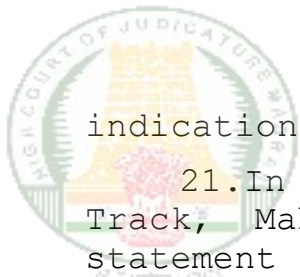
16. In this case, according to learned counsel for the appellants, the conviction of the appellants cannot be based on the evidence of eye witnesses PW-1 to 4 whose very presence at the time of occurrence was doubtful and further stated that they are wife, father, brother and relative of the deceased Rajasekar and therefore they are the interested witness.

17. The learned counsel for the appellants contended that after the occurrence, the PW1 to PW4 were took the deceased on their lap and blood of the deceased were stained their dress. But the blood stained cloths of PW1 to PW4 never recovered by the prosecution. It is clearly disclosed that the eye witnesses are never present at the time of occurrence. If they were present at the time of occurrence definitely the blood stained on their dresses.

18. Further the learned counsel for the appellants submits that the prosecution totally suppressed the injury of the 1st appellant sustained due to the assault made by the deceased, hence it is clearly disclosed that the prosecution is highly doubtful on the ground of non explanation of accused injury. Moreover the prosecution miserably failed to prove the manner, the place, time and by whom the complaint was given, hence it is clearly disclosed that the prosecution case is highly doubtful.

19. The counsel for appellants contend that the PW1 deposed that the respondent police obtained her signature in blank paper, hence it is clearly disclosed that PW1 never seen the alleged occurrence, the prosecution developed the case after the death of deceased and falsely implicated the appellants in the alleged offences. Further, the PW1 and PW2 in their evidence they deposed that prior to the arrest of A1 to A3 they were seen in the police station, hence the arrest and confession is inadmissible.

20. The learned counsel for appellant submits that there is a contradiction between the evidence of eye witnesses and the medical evidence since the PW1 to PW4 stated that the deceased sustained injuries on his forehead and mouth, but the same was denied by the PW9 post mortem doctor. Further there is no



indication in EX.P11 regarding the injuries of the deceased.

21. In our considered opinion, the learned Session Judge, Fast Track, Mahila Court, Karur miserably placed reliance on the statement of the eye witnesses PW1 to PW4 while convicting the accused/appellant for the offences under Sections 342, 302 r/w 34 of IPC because of the following reasons:-

(i) That in this case, the incident took place on 23.02.2013 at about 8.00pm and EX.P-1 complaint statement obtained from PW-1 Kowsalya who is wife of the deceased. In her complaint statement she stated that the A2 stabbed the deceased at his heart, but in her deposition she deposed that A3 stabbed her husband at his heart. Similarly PW3 deposed that A2 stabbed his son at his heart.

(ii) In the present case, the PW1 and 2 deposed that after the earlier occurrence the deceased rushed to the house with injury and without wearing the shirt, PW3 deposed that the deceased rushed to the house with blood injury, PW4 deposed that the deceased rushed with torn shirt. The eyewitnesses PW1 to PW4 deposed the contrary evidence. Further PW1 to PW4 deposed that the deceased sustained injury in the earlier occurrence, but PW9 who conducted the autopsy deposed that there is no other injury except the stabbed at the heart of the deceased. Hence the implication of the eyewitnesses by prosecution is doubtful.

(iii) PW1 to PW4 deposed that after the occurrence they took the deceased on their lap and blood of the deceased were stained their dress. But the blood stained cloths not recovered by the prosecution. Further PW1 to PW4 deposed that the deceased rushed to the earlier place of occurrence to pick up his mobile phone, two wheeler and the Tiffin box which were leave by him at earlier occurrence and the same also not recovered by the prosecution.

(iv) PW1 and PW2 deposed that prior to the arrest of A1 and A3, they were seen in the police Station, while so, PW17 deposed that he arrested the accused 1 and 3 in various place. Hence the arrest of the prosecution is doubtful.

22. Furthermore, as per the deposition of PW14, despite the First Information Report prepared at about 11.00pm on 23.02.2013, the next day i.e., on 24.02.2013 only the same was forwarded to the learned Judicial Magistrate No.1, Kulithalai. Further the distance between the respondent Police and Judicial Magistrate No.1, Kulithalai is 11 Kilometers.

23. In the present case, on perusal of EX.D1 and deposition of DW1, he deposed that the A1 sustained a small cut injury 1 x 0.5 cm at left forearm, but the prosecution nowhere disclosed regarding the injury sustained by A1. The learned counsel for appellants relied the judgment of Hon'ble Supreme Court in Lakshmi Singh and others etc., -Vs- State of Bihar (AIR 1976 SC 2263). In



which our Hon'ble Supreme Court observed that,

" In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(i) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(ii) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(iii) that in case there is a defense version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

24. In our considered opinion, the prosecution case is having doubtful regarding the evidence of eye witnesses, presence of eyewitnesses at the place of occurrence and the place and time of occurrence, time of receiving the complaint statement from the PW1. Further, since because of the uncorroborated evidence of eye witnesses, the genesis of the prosecution case is doubtful.

25. For the reasons stated above, all the contentions raised by the learned counsel for the accused 1 to 3/appellants herein stand accepted and interference is called for with the findings of guilt and conviction recorded by the learned Session Judge, Fast Track, Mahila Court, Karur through impugned Judgment dated 11.12.2015 against the accused/appellants for the offences under Sections 342 and 302 r/w 34 of IPC and this appeal deserves to be allowed.

26. 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. Consequently, connected MP is closed.

Sd/-

Assistant Registrar (CS-I)



To

1. The Sessions Judge,
Fast Track, Mahila Court, Karur.
 2. The Judicial Magistrate No.I, Kulithalai.
 3. -do- thro' The Chief Judicial Magistrate,
Karur.
 4. The District Collector, Karur.
 5. The Inspector of Police,
Lalpet Police Station,
Karur District.
 6. The Superintendent,
Central Prison, Trichy.
(in duplicate for communicate to detenu)
 7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- + 1 CC TO Mr.S.M.A.JINNAH, ADVOCATE IN SR No. 51555

VSA/SKN

TE/JM/SAR-III : 23/02/2017 : 8P/10C

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Cr1.MP (MD) No.257 of 2016
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