



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2016

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CORAM:

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

Cr1.A.[MD].No.385 of 2016

Muruganandham @ Murugan .. Appellant/ Accused No.1
Vs.

The State rep. by
the Inspector of Police,
Jeeyapuram Police Station,
Trichy District. .. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment, dated 29.10.2012, made in S.C.No.59 of 2012, by the Principal Sessions Judge, Tiruchirappalli.

For appellant :Mr.D.Venkatesh
For respondent : Mr.C.Mayilvahana Rajendran,
Additional Public Prosecutor

JUDGMENT

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

The appellant is the first accused in S.C.No.59 of 2012 on the file of the learned Principal Sessions Judge, Tiruchirappalli. The second accused in this case was one Mr.Vinoth. Even before the trial, the second accused died. Thus, the appellant/first accused alone faced the trial. The trial Court framed as many as three charges against the appellant/A1 under Sections 302, 397 and 201 IPC respectively. By judgment dated 29.10.2012, the trial Court convicted him under Sections 302 and 398 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 302 IPC and to undergo rigorous imprisonment for seven years for the offence under Section 398 IPC. He was



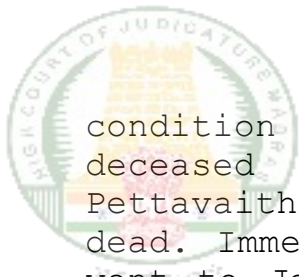
acquitted from the charge under Section 201 IPC. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

(a) PW1, an engineering graduate, was married to one Mr. Ramesh in the year 2006. They have female child born out of their wedlock. Mr. Ramesh (hereinafter referred to as "the deceased") was employed as a Medical Officer in the Army Recruitment Office at Visakapattinam. Thus, PW1 and the deceased along with their child was residing in Visakapattinam. During the last week of January 2010, PW1 and the deceased, along with the child, had come down to Tirunelveli. The deceased attended an official duty in Tirunelveli. Thereafter, they had come down to Tiruchirapalli and stayed in a hotel known as Annamalai Hotel. PW3 - Mr. Danish is also a doctor by profession and a colleague of the deceased. He had come to Tiruchirapalli and stayed in the same lodge in the next room with his wife and child. PW2 - Mr. Rajagopal is the father of PW1. PW2, a resident of Coimbatore, had come down to Tiruchirapalli to meet PW1 and the deceased.

(b) On 04.02.2010 at 2.00 p.m. PWs. 1 to 3, the wife of PW3, the deceased, the child of PW1 and the child of PW3 proceeded in a Maruthi 800 Car to Mukkombu, which is a picnic spot situated around 40 k.ms. away from Tiruchirapalli Town. There is a children park in the said picnic spot. After visiting various places in the picnic spot, at last, they came to children's park. PW1 was sitting in a swing (Oonjal). The deceased was sitting at a distance with his child. PW2 was sitting in a different direction at a distance of about 20 feet from the place where PW1 was playing. PW3 and his wife were also there somewhere near the place of occurrence.

(c) Around 6.30 p.m., on the same day, two persons aged 25 to 30 years came to the children's park and near PW1. Out of the two persons, one was wearing a black colour T-shirt printed with a picture of a human skull. On reaching PW1, the man wearing black colour T-shirt, (later on, identified as the first accused / appellant herein) took out a knife and brandished the same against PW1. The other one (later on identified as Vinoth - since died) was standing by his side. The appellant/A1 forced her to part away with her gold jewels weighing around 10 sovereigns. PW1 raised alarm and called her husband. On hearing the said alarm, the deceased rushed towards PW1 and caught hold the appellant/A1. But, the appellant/A1 with the same knife, which he was already holding, suddenly stabbed the deceased. Even then, the deceased did not lose hold over the T-shirt. Leaving the T-shirt in the hands of the deceased, the appellant/A1 got relieved and ran away with the other accused viz., Vinoth. The deceased, holding the black colour T-shirt of the appellant/A1, fell down in a pool of blood. It was witnessed by PW2 and PW3 also. They found the



condition of the deceased serious. PW1 and others took the deceased to a private hospital known as Elango Hospital at Pettavaithalai. On examining him, the Doctor declared the deceased dead. Immediately thereafter, PW1 with the help of PW2 and others went to Jeeyarpuram Police Station and made a complaint at 11.00 p.m.

(d) PW20, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No.20 of 2010 under Section 302 IPC. Ex.P1 is the complaint. Ex.P18 is the FIR. In Ex.P1, PW1 stated that the two persons involved in the crime were not previously known to her. But they were aged about 20 to 25 years. She also mentioned about the other identifying features of the assailants. PW20 forwarded both the documents to the learned Magistrate and the same received by the learned Magistrate at 5.45 a.m. on 05.02.2010.

(e) The case was taken up for investigation by PW23. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of PW13 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. He recovered the black colour T-shirt of the assailant which was in the hands of the deceased. On 05.02.2010, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(f) PW5 - Dr.A.Karthikeyan, conducted autopsy on the body of the deceased on 05.02.2010 at 10.15 a.m. He found the following injuries:

"A transverse stab wound, 9 cm x 3 cm, entering into the chest cavity, on the left side of neck, the inner end of the wound is 2 cm away from the midline on the front of neck and 1 cm above the left collar bone. O/E the edges are clean cut. The inner end of the wound is curved and the outer end is pointed. O/D through the through punctured wound of wind pipe and food pipe present. Soft tissues, muscles, blood vessels and nerves of neck are clean cut. The pleura is clean cut. An oblique stab wound, 2 cm x 1 cm, through and through on the upper lobe of left lung present. Through and through punctured wound of ascending part of aorta present. On further dissection, a transverse stab wound, on the inner aspect of lower lobe of right lung, 3 cm x 2 cm x 1 cm. Both lungs collapsed and on c/s pale. Chest cavity contains fluid blood. The wound is directed down wards, inner wards, back wards and from left to right."



Ex.P9 is the postmortem certificate. He gave opinion that the death of the deceased was due to shock and haemorrhage due to the injuries sustained by him. He further opined that the said injuries could have been caused by a weapon like MO.2 knife.

(g) PW23, during the course of investigation, recovered bloodstained clothes from the body of the deceased. He examined all the eyewitnesses and few more witnesses who had seen the accused somewhere near the place of occurrence. On 26.02.2010 at Ayyalamman Kovil Mandabam PW23 found the first accused and arrested him in the presence of witnesses. While in custody, the first accused / appellant herein gave a voluntary confession, in which he disclosed the place where he had hidden a bloodstained baniyan T-shirt and a knife. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the said material objects and on returning to the Police Station, he forwarded the accused to the Court for judicial remand and handed over all the material objects to the Court.

(h) On the same day, at the request of PW23, the learned Judicial Magistrate - PW4 conducted test identification parade for the first accused, during which PWs.1, 2, 10 and 11 and another witness identified the first accused. Since the appellant/A1 was in a mood to give voluntary confession, he was produced before PW21, the then learned Judicial Magistrate No.I, Trichy. He gave a voluntary confession in which he admitted his guilt. The material objects were sent for chemical examination, which revealed that there was human blood on all the material objects including in the knife recovered from the accused. The investigation was, thereafter, continued by PW25. PW25 examined few more witnesses and finally, laid charge sheet against the accused.

(i) Based on the above materials, the trial Court framed the charges, as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the charges, on the side of the prosecution as many as 24 witnesses were examined, 39 documents and 10 material objects were marked.

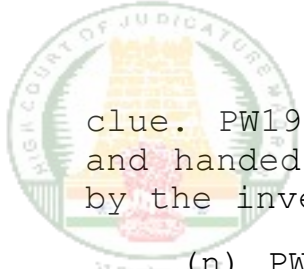
(j) Out of the said witnesses, PWs.1 and 2 have spoken about the entire occurrence as eyewitnesses. PW3, the friend of the deceased, has stated that around 6.30 p.m. in the children park at Mukkombu picnic spot, he had gone to the toilet taking his child. When he was near the toilet, he heard the cry of his wife. When he rushed to the place of occurrence, he found the deceased lying in a pool of blood. A black colour T-shirt was in his hands. PW1 told him about the occurrence. Since he did not fully support the case of the prosecution, he was treated as hostile. PW4, the then Judicial Magistrate No.IV, Tiruchirapalli, has spoken about the test identification parade held by her on 11.03.2010, during which PWs.1 and 2, 10 and 11 identified the appellant/A1 correctly. PW5 - Dr.Karthikeyan has spoken about the postmortem conducted and his opinion regarding the cause of death.



(k) PW6 - Dr.Kannan has stated that he was running a private hospital known as Elango Hospital at Pettavaithalai. According to him, around 07.30 p.m. on 04.02.2010, the deceased was brought to the hospital with injuries. On examining him, he declared to the wife that the deceased was no more. PW7, a Scientific Assistant, has stated that he examined the internal organs of the deceased and found that there was no poison or alcohol. PW8 is a Conductor in a private bus. According to him, on the date of the occurrence, the appellant/A1 along with another person travelled in the bus from Chathiram Bus-stand and got down at Kambarasanpettai Village. PW9, a Conductor in TNSTC Bus, has stated that on the same day, the appellant/A1 and another person boarded in the bus at Kambarasanpettai and got down at Mukkombu. PW10 has stated that on 04.02.2010 around 06.15 p.m. he was in the children's park at Mukkombu and at that time, two persons at about 6.25 p.m. roaming around and as out of the two persons, one was wearing a black colour T-shirt printed with a picture of human skull, they were attracted. PW10, thus, identified the said person as an accused during trial.

(l) PW11 is a native of Kambarasanpettai Village. According to him, he went to the park at Mukkombu on 04.02.2010 and at 6.15 p.m. he found two persons roaming around the park and out of the two, one was wearing a black colour T-Shirt printed with a picture of human skull. He noticed him. He identified him as the assailant during trial. PW12, a resident of Keelappacheri Village, has stated that on 04.02.2010 when he was at Mukkombu, around 3.45 p.m., he found the first accused / appellant and another one alighting from the bus. As one of them was wearing a black colour T-shirt printed with a picture of human skull, he noticed him. He identified the appellant herein as the said person whom he saw. PW13 is an auto driver at Chathiram Bus-stand. He has stated that on the same day, at 8.00 p.m. he went to Amma Mandabam from the Chathiram Bus stand and stopped the vehicle nearby Amma Mandabam and that the appellant was already known to him. He was wearing a baniyan and there was bloodstain on the same. He had a knife in which also there was blood. When he enquired him, he told that he stabbed a person at Mukkombu.

(m) PW14 is a watchman at Mukkombu. He has stated about the preparation of the observation mahazar and rough sketch. PW15 has spoken about the arrest of the first accused on 26.02.2010 and the confession made by him and consequent upon which a knife, MO-2 was recovered. PW16 has turned hostile and he has not supported the case of the prosecution in any manner. PW17 has stated that during the month of January 2010, he found the appellant along with another person at Kambarasan Pettai Bazaar. PW18, the Head of the Sniffer Dog Squad, has submitted that he brought the Police Sniffer Dog to the place of occurrence, but it did not give any



clue. PW19 has stated that he took the dead body to the hospital and handed over the same to the Doctor for postmortem as directed by the investigating officer.

(n) PW20 has spoken about the registration of the case on the complaint made by PW1. PW21 has spoken about the judicial confession made by the first accused to him. He has stated that he followed the mandatory requirements enumerated under Section 164 of the Code of Criminal Procedure. He has further stated that only after fully satisfying his judicial conscience and recording the wiliness of the accused to give voluntary confession, he recorded the confession as required under Section 164 Cr.P.C. PW22, a Scientific Assistant, has stated that he examined all the material objects and found that there was human blood on all the material objects, including in the knife recovered from the accused. PW23 has spoken about the investigation done.

(o) When the above incriminating materials were put to the first accused under Section 313 of Cr.P.C., the first accused denied the same as false. On his side, he examined three witnesses as DW1 to DW3. DW1 is the Village Administrative Officer of Ariyalur South Village. Though the defence had chosen to examine him to speak to the fact that there was no such person in the name of Vinoth in the said address as projected by the prosecution in the charge sheet, DW1 has not stated anything in favour of the accused. DW2, the Village Assistant, who was examined for the same purpose, also did not state anything in favour of the accused. DW3 - the Inspector of Police, Jeeyarpuram Police Station, has stated that he produced a certificate issued by the then Village Administrative Officer by name Pitchaipillai, certifying that the second accused - Mr.Vinoth was no more and he has also stated that the same was produced before the Court by the the Sub Inspector of Police Mr.Selvaraj. Ex.D2 is the said report. According to the accused, these two certificates have been fabricated only for the purpose of making out a case as though the second accused exists and later on he died. The defence of the accused was a total denial. Having considered all the above, the trial Court has convicted the appellant/first accused as detailed in the first paragraph of this judgment. That is how he is before this Court with this appeal.

3.We have heard the learned counsel appearing for the appellant/ first accused and the learned Additional Public Prosecutor appearing for the respondent. We have also perused the records carefully.

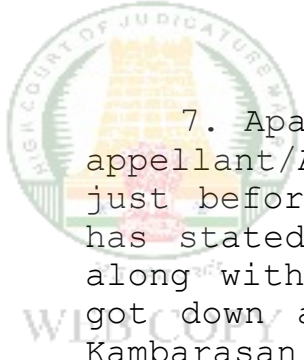
4. In this case, neither the appellant/A1 nor the second accused were previously known to PWs.1 to 3, the wife of PW3 and the deceased who had gone to Mukkombu picnic spot to enjoy the holiday. PWs.1 and 2 have stated that when PW1 was playing on the swing (Oonjal), two persons came and out of whom one was the appellant/A1 herein. He was having a knife in his hand. He was



wearing a T-shirt printed with a picture of human skull. He brandished the knife against her and wanted her to part away with her gold jewels. When he raised alarm, the deceased rushed to the place of occurrence. He caught hold the appellant. He relieved himself by leaving T-shirt in the hands of the deceased and stabbed him and ran away. PWs.1 and 2 have identified the appellant/A1 during test identification parade, which was conducted at the earliest point of time. We do not find any reason to doubt the credibility of PWs.1 and 2.

5. Though PW3 was cited as an eyewitness. He has stated that he did not actually witnessed the occurrence, but he has stated that when he rushed to the place of occurrence, on hearing the alarm raised, he found the deceased lying and PWs.1 and 2 were present and PW1 informed about the occurrence. PW1 has also spoken so. The evidence of PW3, thus, corroborated the evidence of PW1. From the identification made by PWs.1 and 2, during trial which is duly corroborated by the identification parade would go to clinchingly prove that it was this accused who stabbed the deceased and caused the death. On the arrest of the first accused, the knife was recovered on the disclosure statement, which contained human blood. This is also duly corroborate the evidence of PW1. She identified the said knife as the one which was used to stab the deceased.

6. Above all, the judicial confession made by the first accused to PW21 by itself is a substantive piece of evidence against him. The first accused / appellant was produced before PW21 on 04.03.2010. PW21 had given all the statutory warnings and gave him 24 hours time to think over it. On 05.03.2010 when he was again produced, the learned Magistrate had once again given statutory warning. Despite the said warnings, the appellant/A1 wanted to confess. Having satisfied his judicial conscience, the learned Magistrate allowed him to confess. In the said confession, the appellant has narrated the entire events. He has stated that it was he who stabbed the deceased. He has also spoken about the involvement of the second accused Mr.Vinoth. We find no reason at all to reject this judicial confession made by the accused. Though the learned counsel for the appellant/A1 attempted to assail this confession, we are not persuaded by the said argument at all. A perusal of the entire evidence of PWs.1 and 2 would go to show that the learned Magistrate had followed the procedure established in a strict sense and he has satisfied that the accused made the confession voluntarily. Thus, in our considered view, the said judicial confession which is substantive in nature, by itself is sufficient to convict the accused even in the absence of any corroboration from any other independent source. But, in the instant case, apart from this judicial confession, the prosecution has got the benefit of the direct eyewitnesses account of PWs.1 and 2 also.



7. Apart from that, there is enough evidence to prove that the appellant/A1 was in the children park during the relevant time just before the occurrence. PW8 - a conductor in a private bus, has stated that on the date of the occurrence, the appellant/A1 along with another person travelled from Chathiram Bus-stand and got down at Kambarasan Pettai Bazaar. He was seen by PW17 at Kambarasan Pettai Bazaar. Thereafter, PW9, yet another conductor, had seen the accused travelling in the bus from Kamabarasan Pettai Bazaar to Mukkombu. At Mukkombu bus stop, PW12 had seen the accused. Thereafter, the accused was seen along with the second accused, in the children's park by PW10 and PW11. Though it is stated that there is no test identification parade held for these witnesses, on that score, there evidences cannot be outright rejected. If it is a case where the prosecution is left with the evidences of these witnesses alone, then it may be difficult to act upon their evidences. Here, in this case, the evidence of these witnesses only lend more assurance to the case of the prosecution. Therefore, we find that these evidences are also in favour of the prosecution. From these evidences, the prosecution has clinchingly proved beyond any reasonable doubt that it was this accused who robbed the jewels from PW1 and when the deceased intervene, it was this accused who caused death of the deceased by stabbing him with knife viz., MO.2 and the trial Court was right in convicting the accused for the offences under Sections 302 and 398 IPC.

8. Now turning to the quantum of punishment, the trial Court has imposed only a minimum punishment under the penal provisions of Sections 302 and 398 IPC. Thus, the sentence imposed does not require any interference at the hands of this Court. In view of the above, we do not find any merit at all in this appeal.

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

Sd/-

Deputy Registrar

/True copy/

Sub Assistant Registrar

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To

1.The Principal Sessions Judge, Tiruchirappalli.

2.The Inspector of Police, Jeeyarpuram Police Station,
Trichy District.

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



4.The Record Keeper, Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

5. The Superintendent, Central Prison, Trichy,

+1CC to Mr.D.venkatesh, Advocate Sr.No.69709

GJM/SKN/SAR-2-6.1.17-9p-7C

Judgement made in
Crl.A.[MD].No.385 of 2016
Dated: 15.11.2016