

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Criminal Appeal No.110 of 2017

Saravanan ... Appellant/Accused

- Vs -

State rep by Inspector of Police,
Uthukuli Police Station,
Tiruppur District.
(Cr.No.313 of 2013)
Respondent/Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned II Additional District and Sessions Judge, Tiruppur in S.C.No.142 of 2014 dated 04.12.2015.

For Appellant : Ms.Jayasri Baskar

For Respondent : Mr.P.Govindaraj
Additional Public Prosecutor

J U D G M E N T

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

Challenging the conviction and sentence imposed by the learned II Additional District and Sessions Judge, Tiruppur in S.C.No.142 of 2014 dated 04.12.2015 for the offences under Sections 302, 307 and 394 r/w 379 I.P.C. the appellant has come up before this Court with this appeal. He has been sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months for the offence under Section 302 I.P.C., to undergo rigorous imprisonment for ten years and to pay a fine of Rs.500/- in default to undergo simple imprisonment for three months for offence under Section 307 I.P.C. and to undergo rigorous

imprisonment for seven years and pay a fine of Rs.500/- in default to undergo simple imprisonment for three months for the offence under Section 394 r/w 397 I.P.C.

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

2.1. The deceased in this case was on Mr.Krishnamoorthy. He was employed in a private concern known as 'Srinivasa Printing Company' at A.Periyapalayam village. The accused and one Mr.Sethu @ Sethupathi (P.W.7) were also employed in the same concern. All of them were staying in the workers quarters belonging to the company in the same village.

2.2. On the night intervening 21.12.2013 and 22.12.2013 the accused, the deceased and P.W.3 were staying in the quarters. Around 03.45 a.m. on 22.12.2013, the accused decided to do away with the deceased and rob him of Rs.5,000/- which was in his possession. Out of the said intention, the accused lifted a hallow block stone and dropped the same on the head of the deceased who was sleeping. It was witnessed by P.W.7. When he tried to rescue, the accused attacked him with another hollow block stone. P.W.7 also sustained injuries. The accused then took away Rs.5,000/- from the deceased and Rs.150/- from P.W.7 and ran away from the scene of occurrence.

2.3. P.W.7 fell unconscious. Thus, he was laying inside the company premises. The dead body of the deceased was also laying inside. One Mr.Chelladurai (P.W.2) who was the Village Assistant, came to know about the same. Immediately, he informed P.W.1 the Village Administrative Officer about the above facts. Thereafter, P.W.1 went to the company premises and found P.W.7 laying with injuries and the deceased laying dead. Thereafter, P.W.1 went to Uthukuli Police Station and made a complaint at 10.30 a.m. on 22.03.2013. In the said complaint, since the assailants were not known, he so mentioned that the assailants were unknown. On the said complaint, the Sub Inspector of Police (P.W.12) registered a case in Crime No.313 of 2013 under Sections 302 and 307 I.P.C. Ex.P1 is the complaint and Ex.P12 is the F.I.R. the learned Judicial Magistrate, Palladam who was in charge of the Judicial Magistrate court at Avanashi received the F.I.R. and the complaint on 22.03.2013 at 06.35 p.m.

2.4. The case was taken up for investigation by P.W.13. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of witnesses. He recovered bloodstained earth and sample earth from the place of occurrence. He conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.5. P.W.7 was taken to the Tiruppur Government Hospital. He was examined by P.W.9 Dr.Saravana Prakash at 09.30 a.m. on 23.12.2013. Then, he was unconscious. He was brought by P.W.3 Sankar. P.W.9 admitted him as inpatient. P.W.9 was informed by P.W.3 that some unknown person had attacked P.W.7. He found extensive lacerated injuries on the head. He also found fracture of skull and lower jaw. He opined that the injuries sustained by P.W.7 were grievous in nature. Ex.P10 is the accident register.

2.6. One Dr.Jayasingh conducted autopsy on the body of the deceased on 24.12.2013 and found as many as four injuries on the body of the deceased. He further opined that the said injuries could have been caused by a hallow block stone by dropping on the head.

2.7. P.W.13 arrested the accused on 24.12.2013 in the presence of witnesses. While in custody, he disclosed the place where he had hidden the hallow block stone and he also informed that Rs.5,150/- was in his house. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced M.O.6 bloodstained hallow block stone. Then, he took the police to his house and produced Rs.5,150/-. P.W.13 recovered the same under Ex.P7 mahazar. He also produced a covering chain M.O.7. P.W.13 recovered the same under Ex.P8 mahazar. On returning to the police station he forwarded the accused to the Court and forwarded the material objects also to Court. At his request, the material objects were sent for chemical examination and it revealed that there were bloodstains on the material objects. On completing the investigation he laid chargesheet against the accused.

2.8. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined, 18 documents and 13 material objects were marked.

2.9. Out of the said witnesses, P.W.1 the Village Administrative Officer and P.W.2 the Village Assistant have stated that they found the dead body of the deceased laying dead in the company premises and P.W.7 was laying unconscious. P.W.1 has also spoken about the complaint made. P.W.3 Mr.Sankar was an employee of the same company. He left the company at 07.00 p.m. on 22.12.2013 and on the next day morning, when he came to the company, he found the deceased laying dead and P.W.7 with injuries. Then, he took P.W.7 to the hospital. P.W.4 is yet another employee of the same company. He has also stated that he came to know about the occurrence. P.W.5 is yet another

employee, who has stated that when he came to the company on 23.12.2013, he came to know about the occurrence. P.W.6 the Panchayat Board President has spoken about the recovery of the material objects.

2.10. P.W.7 is an injured witness. According to him, on 22.12.2013 around 07.30 p.m. P.W.3 left the company premises. The deceased, P.W.7 and the accused alone were there in the company. He has further stated that after sometime, the accused went out and returned to the company with four bottles of liquor. P.W.7 invited the deceased to consume liquor. But the deceased did not join and he went asleep. Then, P.W.7 and the accused consumed liquor. Thereafter both of them went asleep. Around 10.45 p.m. the accused came and touched the neck of P.W.7 searching for some jewels. Then he removed the same. P.W.7 went into deep sleep. Around 11.45 p.m. he heard the alarm raised by someone. Immediately he rushed towards the printing section of the company. At that time, according to him, the accused was found dropping a huge stone on the head of the deceased. Again the accused lifted another stone and threw it on P.W.7. P.W.7 sustained injuries. Then he fell unconscious.

2.11. P.W.8 has spoken about the arrest of the accused, confession made and consequential recoveries. P.W.9 has spoken about the treatment given to P.W.7. P.W.10 the Head Constable has stated that he took the dead body from the place of occurrence and handed over the same to the doctor for postmortem. P.W.11 was the head of the sniffer dog squad, as requested by P.W.13 he brought the sniffer dog to the place of occurrence on 23.12.2013 but no clue could be obtained out of the same. P.W.12 has spoken about the registration of the case. P.W.13 has spoken about the investigation done and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine anyone nor mark any documents. Having considered all the above, the trial Court convicted him as detailed in the first paragraph of this judgment and that is how the appellant is before this Court with this appeal.

4. Before the trial Court, Dr.T.Jeyasingh who conducted autopsy was not examined. On an application made before this Court under Section 391 Cr.P.C. he was summoned and examined as P.W.14. He has spoken about the injuries found on the body of the deceased and his final opinion regarding the cause of death. The accused was thereafter questioned under Section 313 Cr.P.C. on 27.04.2017 before this Court in respect of the said additional evidence recorded. He denied the same.

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

6. There is no dispute in the case that on the night intervening 22.12.2013 and 23.12.2013 the deceased and P.W.7 were staying in the company. P.W.7 has stated that the accused also stayed in the company. According to P.W.7, the occurrence had taken place around 11.45 p.m. on 22.12.2013. Of course, due to the injuries sustained by P.W.7 he fell unconscious. On the next day morning, according to P.W.13 it was the accused who informed P.W.3 that the deceased was found dead and P.W.7 was laying unconscious with injuries. P.W.3 has stated that around 07.15 a.m. on 23.12.2013, the accused came to his house and informed him about the same. Thus, the accused did not abscond. He was very much available and he was the one who had informed P.W.3 about the occurrence. The F.I.R. in this case was registered allegedly at 10.30 a.m. on 23.12.2013. The dead body was found at 07.30 a.m. itself. When that is so, why the complaint was not immediately made to the police was not explained. The F.I.R. reached the hands of the learned Magistrate only at 06.35 p.m. on 23.12.2013. Had it been true that the F.I.R. was registered at 10.30 a.m., it would not have taken so much of time to reach the learned Magistrate at 06.35 p.m. This inordinate delay creates doubt in the case of the prosecution. Though P.W.3 has not stated that the accused stayed back in the quarters in the company, of course P.W.7 has stated so. Had it been true that the accused stayed in the company on that crucial night, P.W.3 would have certainly made a mention of the same. The very fact that he has not mentioned so would create doubt as to whether the accused had really stayed along with the deceased in the company on that crucial date.

7. Then comes the evidence of P.W.7, he has stated that he was unconscious for two days. Therefore, he was unable to disclose the occurrence to anyone. But unfortunately the medical records pertaining to the treatment given to him has not been produced. Had these documents been produced, this Court would have been in a better position to know as to whether P.W.7 was really unconscious for such a long time or he had regained consciousness in a day or two after the occurrence. As a matter of fact, he was treated in the Government hospital at Coimbatore for a long time on a reference made by the Government hospital at Tiruppur. Neither the doctor who treated P.W.7 at the Government Hospital at Coimbatore nor the treatment details have been produced in evidence. This creates enormous doubts. The occurrence had taken place during midnight. The deceased was sleeping, P.W.7 was also sleeping, stone was dropped on the head of the deceased, which resulted in his death. Similarly stone

was dropped on the head of P.W.7 which made him unconscious. At the time when the stone was dropped on P.W.7, he would have also been sleeping. Thus, P.W.7 would not have noticed the assailants at all. Had he really seen the assailants, he would have disclosed the same soon after he regained consciousness. When he regained consciousness is not known. Neither the medical records have been produced nor the doctor who treated P.W.7 was examined. Even P.W.13 has not stated as to when he examined P.W.7, during which P.W.7 disclosed about the occurrence. Thus, in our considered view, it is difficult to believe P.W.7. If the evidence of P.W.7 is rejected, we find no other evidence against the accused. Above all, the conduct of the accused in going over to the house of P.W.3 and informing him that the deceased was laying dead and P.W.7 was laying with injuries is consistent with the innocence pleaded by him. Thus, we hold that the prosecution has failed to prove the case beyond reasonable doubt. Thus, the appellant is entitled for acquittal.

8. In the result, the appeal is allowed, the conviction and sentence imposed on the appellant by the learned II Additional District and Sessions Judge, Tiruppur in S.C.No.142 of 2014 dated 04.12.2015 is set aside and the appellant is acquitted; the fine amount, if any paid, shall be refunded to him; since the appellant is in jail, he is directed to be set at liberty forthwith, unless his detention is required in connection with any other case.

9. This is the last criminal appeal dealt with by this Division Bench as one of us, Justice S.Nagamuthu is demitting office shortly. At the end of the day, we have the fullest satisfaction that we have delivered justice at the door steps of the poor including the appellant. The Bar was kind enough to assist us in our endeavour to make nil pendency of Division Bench Criminal Appeals. We have succeeded in our endeavour as there are only around 50 appeals left.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional District and Sessions Judge,
Tiruppur.
2. Do-Thro-The Principal District Judge,
Tiruppur.
3. The Inspector of Police,
Uthukuli Police Station,
Tiruppur District.
4. The Public Prosecutor,
Madras High Court.
5. The Superintendent,
Central Prison,
Coimbatore.
6. The Judicial Magistrate,
Avinashi.
7. Do-Thro-The Chief Judicial Magistrate,
Coimbatore.
8. The District Collector,
Coimbatore.
9. The Director General of Police,
Mylapore, Chennai.
10. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Ms.Jayasri Baskar, Advocate, S.R.No.26269

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AK(CO)
CS/20/06/17