

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2017

CORAM

THE HONOURABLE Mr. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

Crl.A.No.2 of 2017

Suresh
Vs
Appellant/Accused

State Rep by Inspector of Police,
Wellington Police Station,
Nilgiris.
Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the judgment dated 29.01.2016 and made in S.C.No.9 of 2015 on the file of Neelagiri District Sessions Court, Udagamandalam.

For Appellant : Mr.N.A.Nissar Ahmed

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court delivered by N.SESHASAYEE, J)

The appellant who has suffered a conviction for an offence under Section 302 IPC and a sentence to undergo imprisonment for life has preferred this appeal.

2.1 The prelude facts relevant to appreciate the prosecution case are: One Bablu alias Pithur Navba is a migrant worker from West Bengal, and is one among the sixty odd workers working under P.W.6 Murugan. P.W.6 is a contractor. P.W.9, Mohanavel is a supervisor working under P.W.6. Murugan has undertaken a contract work for constructing few buildings in Dramla Estate at Coonoor. The aforesaid Bablu was murdered and the appellant who was said to be staying along with Bablu in a tin shed located within the premises of P.W.4 was accused of the crime.

2.2 The prosecution case unfolds as follows : P.W.1 is the brother-in-law of P.W.6. On 10-11-2013, at about 9.30 a.m. he went to the shed where Bablu was staying, to get some water, but he found Bablu with stab injury in his face, neck and all over the body. He was bleeding. P.W.1 asked Bablu as to what had happened to which Bablu had informed him that the appellant had stabbed him with knife and assaulted him with a log. P.W.2,

Rajesh Khanna had also accompanied P.W.1 then. P.W.2 however, had stayed outside the shed and only P.W.1 had went inside the shed to make the enquiry. P.W.1 immediately informed P.W.6, the employer of Bablu, who in turn had informed his supervisor P.W.9. A short while thereafter, P.W.6 had also arrived at the scene of occurrence (hereinafter would be referred to as SOC). They then removed Bablu in a car belonging to P.W.6 to the Government Hospital, Coonoor. An Accident Register in Ext.P.16 was issued by the Coonor Hospital, but no more than the first aid to the injured was appeared to have been administered to Bablu there. He was referred to Coimbatore Medical College Hospital, Coimbatore (hereinafter referred to as CMCH). While Babulu was still at Coonoor hospital, P.W.1 accompanied by P.W.6 had gone to the respondent police and preferred Ext.P.1 complaint based on which Ext.P-7 FIR was registered under Sec.307 IPC. As advised Bablu was taken to CMCH, but at 8.00 pm. on the same day (10-11-2013) he succumbed to his injuries.

3. Following the registration of FIR, P.W.16 the Inspector of Police, had visited the SOC at 3.00 pm and prepared Ext.P-2 observation magazar in the presence of P.W.8 and one Chelladurai. He has also collected M.O.1 to M.O.3 which respectively are the sample sand, blood stained sand and a blood stained log seized from the SOC. P.W.16 has also posted a constable at CMCH. On the same day at about 4.30 p.m., he arrested the appellant at Vandicholai bus stand and during interrogation the appellant provided information that led to the recovery of M.O.4 wooden reeper and M.O.5 knife. As mentioned earlier at about 8.00 pm. victim died and upon his death the constable who had been posted at CMCH intimated P.W.16 about the same wherein after he prepared an alteration report converting the case from one under Sec.307 IPC to Sec.302 IPC. On the following day (11.11.2013), P.W.16 conducted an inquest on the body of the dead and prepared his Ext.P.17 inquest report. He then forwarded the body for postmortem and Dr. Jayasingh, P.W.15, conducted autopsy on the body of the dead and provided Ext.P.9 postmortem report and Ext.P10, final report. P.W.11, constable who was entrusted with the body for postmortem had recovered the dress material on the body and entrusted the same with P.W.16, who had seized the same under Form-95. All the material objects collected by the investigating officer were forwarded to Forensic Science Laboratory. P.W17, the Scientific Officer, has made available Ext.P19, biological report wherein it was indicated that blood stain found in some of the material object was human blood. On further serological analysis, it was found that the blood in the wooden log (M.O.3) seized from the Soc and the lungi (M.O.7) that was recovered from the body of the dead belonged to 'O' group and as to the rest, which included the wooden reeper and knife the alleged weapons of crime, the serological analysis was inconclusive. On completion of investigation, P.W.17, who succeeded P.W.16 laid his final report.

4. On committal, the Sessions Court framed Charge under Sec.302 IPC against the appellant to which the latter pleaded not guilty.

Accordingly, the case was tried and during trial prosecution examined P.W.1 to P.W.17 and produced Ext.A1 to Ext.A22 besides M.O.1 to M.O.7.

5. None had seen the crime and prosecution line of the sequence opens as below: On 09-10-2013, Saturday, at about 8.00 p.m in the night, P.W.3 and P.W.10 have spotted the victim and the appellant together. Both the appellant as well as his alleged victim were fully drunk and were spotted in quarrelsome mode. P.W.10 is an auto driver and he would say that the appellant along with another wanted to take them to their place in his auto rickshaw, but he declined the request as both his potential passengers were drunk to the brim at that time. In the context of the case, P.W.10 has only identified the appellant and not the one who had accompanied him. To state it differently, he has not identified Bablu. This was followed by P.W.4, Dr. Sridhar. He would say at about 10.30 p.m he saw Suresh (appellant) wobbling and he did not properly answer his queries. Significantly, he did not say where exactly he saw the appellant nor did he depose that he had spotted appellant along with Bablu. Then comes P.W.5. According to him, at about 10.00 p.m. on 09-11-2013, the appellant had contacted him over cell-phone and then had visited him at 2.00 a.m (which falls on the next day i.e. on 10.11.2013, a couple of hours after midnight) in the night, and had confessed to the crime. P.W.5 however, did not entertain the appellant to stay with him that night. The next in the sequence is the victim himself making an oral dying declaration to P.W.1 about the cause of injuries that were to consume his life later. If the evidence of any of the witnesses other than P.W.5 is considered, none of them had seen both appellant and his alleged victim together at the scene of occurrence on the night in which Bablu had suffered fatal injuries.

6. If rest of the evidence as available on record is closely analysed, it emerges that the fulcrum on which the prosecution seeks to rest its proof of the charge are the dying declaration given by Bablu to P.W.1, and the extra judicial confession made by the appellant to P.W.5.

7. First to the alleged extra judicial confession of the appellant. According to P.W.5 this confession statement was made by the appellant about two hours after midnight on the fateful night. If this is tested for its credibility, first P.W.5 had not disclosed the information he had to anybody other than the investigating agency and this conduct is unnatural and irreconcilable with the ordinary course of human conduct for which the reasonable man of law is known for. Principally, an extra judicial confession is too unsafe to constitute a conclusive proof of the fact alleged to have been so confessed unless the same is adequately corroborated. Here, P.W.5 speaks about a cell-phonetic conversation he had with the appellant at 10.00 p.m. but the details of the conversation were not made available in evidence. The only other attempt made by the investigating officer was to have the blood stain found in M.O.4

and M.O.5 viz., the reeper and knife matched with the blood group of the victim but it has not helped the prosecution as the serological report on it was inconclusive. Therefore, the evidence of P.W.5 remains as a stand-alone evidence and it is a dangerous course if a conviction could be founded on it.

8.1 Turning to the dying declaration given by the victim to P.W.1 is concerned, first, it is not known when exactly the occurrence had happened and how long Bablu was bleeding. P.W.3 who had accompanied P.W.1 would say that Bablu was not in a position to speak. P.W.15 the doctor who conducted autopsy had noted an injury as the 6th injury describes the same as :

"Stab like laceration 3 x 1 cm x muscle deep noted over right side chin, the wound passes upwards, medially passing through the outer border of mandible, oral cavity and pierces the central and right lateral upper incisor alveolar margins and piercing the hard palate and entire into the nasal cavity."

The nature of the above injury suggests that there is a piercing stab injury from about the chin up to the oral cavity and beyond right into the nasal cavity. Would a person with such a serious injury in his oral cavity be in a position to speak? According to prosecution P.W.2 and PW.3 had accompanied P.W.1 up to the shed where Bablu was staying and was found injured, but neither of them had actually heard Bablu speaking to the cause of his impending death to P.W.1. P.W.3 in particular would depose that Bablu's condition was such that he could even not speak. There, therefore, arises an element of doubt if Bablu could at all have made a dying declaration to P.W.1. However, prosecution had ample opportunities to provide corroboration to the testimony of P.W.1 on this aspect. The consistent case of the prosecution here is P.W.1 to P.W.3 along with P.W.6 had taken the injured Bablu to Govt. Hospital, Coonoor. Ext.P-16 is the Accident Register, and critically there is no reference in it regarding the condition of the patient, and given the context and the significance associated with it there is no recording about Bablu's condition to speak. Crowning this omission, the prosecution too has opted not to examine Dr.Karthikeyan who had issued Ext.Pl6. The next possible corroborative evidence could be the production of Accident Register issued by CMCH, but the investigating officer did not consider it necessary to collect this material piece of evidence. The failure to corroborate the testimony of P.W.1 about Bablu's physical condition to speak and to give a dying declaration has been consistent.

9. There are in essence a few random facts which the prosecution had collected and has attempted to prove, but they have fallen short of the standard required to prove a charge in a criminal trial. It has been said innumerable number of times before and it is repeated yet again that in a case founded on circumstantial evidence there must be an unbreakable sequence of proven facts

that drives home the guilt of the accused with an unfailing accuracy. Here, what have been made available are a few truncated pieces of evidence of doubtful character. And, what discredits their credibility further is the fact the statements of all the independent witnesses (PW1 to PW3, PW5, PW6 & PW10) that were mentioned to have been recorded either on 12-11-2013 or on 14-11-2013 or on both the dates, were dispatched to the Court only alongwith the final report 09-02-2015. That the statements recorded under Sec.161 Cr.P.C should be dispatched to the Court without any delay is a principle that has been developed and ingrained in investigative procedure to vouchsafe the credibility of the investigation. The respondent, however, appears to be blissfully unaware of this and has neglected it grossly. A cumulative assessment of the material leads this court to draw the only possible inference: That the prosecution has not been able to establish the guilt of the accused beyond all reasonable doubts.

10. To conclude, this appeal is allowed and the judgement dated 29.01.2016 convicting and sentencing the appellant in S.C No.9 of 2015 by the Neelagiri District Sessions Court, Udagamandalam, is hereby set aside and the appellant is held not guilty of the charge he faced and is acquitted.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

ds

To:

1. The Neelagiri District Sessions Court,
Udagamandalam.
2. The Principal Sessions Judge, Udhagamandalam
3. The Judicial Magistrate, Coonoor.
4. Thro, The Chief Judicial Magistrate, Udhagamandalam
5. The Superintendent, Central Prison, Coimbatore
(in duplicate for communication to the detainee)
6. The Inspector of Police,
Wellington Police Station,
Nilgiris.

7. The District Collector, Coimbatore

8. The Director General of Police
Mylapore, Chennai

9. The Public Prosecutor,
High Court, Madras.

10. The Section Officer
Criminal Section
High Court, Madras

+1 CC to Ms. N.A. Nissan Ahmed, Advocate sr 9867

Cr1.A.No.2 of 2017

SAI (CO)
sp(18/07/2017)



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