

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

Criminal Appeal No.229 of 2017

C.Shanmugam

... Appellant / Accused

Vs.

State by
The Inspector of Police
T-11, Thirunindravur Police Station
Thirunindravur 602024
Crime No.239/2011.

... Respondent

Appeal filed under section 374[2] of Code of Criminal Procedure, against the Judgment passed by the learned Principal District and Sessions Judge, Thiruvallur, dated 28.03.2017 in SC.No.90/2013.

For Appellant : Mr.M.H.Abdur Rahman
For Respondent : Mr.R.Ravichandran, GA[Crl.Side]

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

The appellant is the sole accused in SC.No.90/2013 on the file of the learned Principal District and Sessions Judge, Tiruvallur and he stood charged and tried for the commission of the offence under section 302 IPC. The Trial Court, vide impugned Judgment dated 28.03.2017, convicted him for the commission of the offence under section 302 IPC and awarded him the sentence of rigorous imprisonment for life and also imposed a fine of Rs.1,500/- and in default, to undergo six months rigorous imprisonment. The Trial Court has also granted set-off under section 428 Cr.P.C., for the period of incarceration undergone by the appellant/accused during investigation/trial.

2 The sole accused/appellant, aggrieved by the conviction and sentence awarded by the Trial Court, vide impugned Judgment dated 28.03.2017, has preferred the present criminal appeal.

3 The facts leading to the filing of this Criminal Appeal, briefly narrated, are as follows:-

3.1 The deceased, viz., Rajkamal, is the son of P.Ws.2 and 2 and elder brother of P.W.3. The appellant / accused is the paternal uncle of the deceased - elder brother of P.W.2 - father of the deceased.

3.2 The motive for the commission of the offence, projected by the prosecution is that about ten years prior to the commission of the offence, the son of the appellant / accused, viz., Sudhakar, had attacked the deceased, viz., Rajkamal, and on account of which, the deceased had lost his eyesight in one of his eyes.

3.3 The appellant / accused also owned two houses in Tirunindravur and let out one of the houses and kept the other house as a vacant house. The deceased had love affair with P.W.5 - Deepa and P.W.5 came to the house of the deceased [Rajkamal] and later on, he was asked to occupy one of the houses of the appellant / accused along with P.W.5 and it enraged the appellant / accused. The appellant / accused, at about 09.00 a.m. on 07.06.2011, asked P.W.1 as to how P.W.5 along with the deceased, can reside in his house and threatened that he will finish off Rajkamal [deceased] and was there for some time. Rajkamal, son of P.Ws.1 and 2 - deceased, went to work on the morning hours on 07.06.2011 and was returning at about 5.30 p.m. along with his two friends,

viz., P.W.4 [Vijayaraj] and Ebi. The appellant / accused, on seeing Rajkamal, approached him with a knife [M.O.1] and P.Ws.1 to 3, on seeing the appellant / accused, ran behind him. The appellant / accused stabbed Rajkamal on the left side of the chest and on the right side of the back with M.O.1-knife and thereafter, ran away from the scene of crime.

3.4 The injured Rajkamal was taken to the Government Headquarters Hospital, Tiruvallur, by P.Ws.1 to 3 and the doctors who attended him informed P.Ws.1 to 3 that Rajkamal has already breathed his last.

3.5 P.W.1 - mother of the deceased proceeded to Tirunindravur Police Station and lodged a complaint under Ex.P.1. P.W.11 - Thiru.Vishnu, was the Station House Officer of Tirunindravur Police Station at the relevant point of time and

at about 21 00 hours on 07.06.2011, on receipt of the complaint under Ex.P.1 given by P.W.1, he had registered a case in Cr.No.239/2011 for the commission of the offence u/s.302 IPC and despatched the original complaint as well as the printed FIR [Ex.P.9] to the jurisdictional Magistrate.

3.6 P.W.11, proceeded to the scene of crime and in the presence of P.W.6 and another, he prepared the Observation Mahazar [Ex.P.2] as well as the Rough Sketch [Ex.P.10]. P.W.11 in the presence of the said witnesses, recovered M.O.2-blood-stained earth and M.O.3-sample earth at about 22 15 hours under the cover of the Mahazar-Ex.P.2. He examined P.Ws.1 to 10 and recorded their statements under section 161[3] Cr.P.C., and continued with the investigation and searched for the accused and on receipt of secret information, effected arrest of the appellant/accused at about 3.00 a.m. on 08.06.2011 near Cantonment, Karayanchavadi. The accused voluntarily came forward to give a confession statement and it was recorded in the presence of P.W.6 and as per the admissible portion of the confession statement, marked as Ex.P.7, the cloth worn by him [M.Os.4 and 5] and M.O.1-knife were recovered under the cover of Mahazar - Ex.P.8. P.W.11 went to the Government Headquarters Hospital at Tiruvallur and held inquest on the dead body of the deceased in the presence of panchayatdhars and also arranged for taking photographs of the dead body. The photographs numbering 10 and the Compact Disc are marked as M.O.6 series. Thereafter, the body was sent for postmortem through P.W.9 - Head Constable attached to the respondent police station.

3.7 P.W.8 - Dr.Prabhushankar, was the Assistant Surgeon attached to the Government Headquarters Hospital, Tiruvallur and he received the requisition along with the body for postmortem through P.W.9 and noted that "the condition then was then Rigor Mortis present in all four limbs". He commenced the postmortem at about 23 45 hours on 08.06.2011 and noted the following features:-

"Appearance found at the postmortem:-

Body of a male aged about 24 years is found lying supine with all 4 limbs extended with H/o being murdered by one known person. Both eyes appeared partially opened. Both nostrils and ears appears normally. Mouth appears closed and tongue is found inside mouth. Left eye ball is dummy. Neck appears normal. Scalp normal.

External injuries:-

1 Stab wound of size 3x1x1.5cm depth is found over left VI and VII ribs along midclavicular line level, clotted blood is seen over wounded.

2 Another stab wound of size 3x1x1.5cm depth is found on posterior part of upper torso midway on medial border of right scapula. No other external injuries.

Internal Examination:-

Thorax:First stab wound cuts through VI rib at MC line, then pericardium and finally passes through left ventricle. Cut wound of 1.5cm x 0.5 cm well depth is seen in left ventricle pericardium and diaphragm is filled with clotted blood. Chambers empty. Long pancreas [?] appears normal. Liver appears normal. Stomach contains 300 ml of undigested food. Kidney appears normal. Viscera sent for analysis.

Time since death 12.20 hours prior to autopsy."

P.W.8 issued Ex.P.5 - Postmortem Certificate wherein, he had opined that "the deceased would appear to have died of stab injury to heart causing death" and also indicated that as per the Chemical Analysis Report, no poison was detected in any of the sample.

3.8 P.W.11 produced the appellant / accused before the Court of Judicial Magistrate No.1, Tiruvallur, for remand at 10.00 a.m. on 08.06.2011 and the appellant / accused was remanded to judicial custody. P.W.11 sent the cloth worn by the deceased as well as the accused for chemical analysis after obtaining necessary orders and received the same under Exs.P.12 to 14 [Chemical Analysis Report and Serology Report respectively].

3.9 P.W.11 proceeded on transfer and handed over the investigation to P.W.12 - Thiru Sathyan, the then Inspector of Police of the respondent Police Station, took up the further investigation and examined P.W.8, the doctor who conducted the autopsy and the other witnesses and on receipt of Exs.P.12 to 14 and after obtaining legal opinion, has filed the Charge Sheet / Final Report, charging the accused for the commission of the offence under section 302 IPC to the Court of Judicial Magistrate No.2, Tiruvallur, who on receipt of the same, took it on file in PRC.No.1/2012.

3.10 The Committal Court has issued summons to the appellant / accused and on his appearance, furnished him with the copies of documents u/s.207 Cr.P.C., and having found that the case is to be exclusively tried by the Court of Sessions, committed the same u/s.209[a] Cr.P.C., to the Court of Principal District and Sessions Judge, Tiruvallur, who took it on file in SC.No.90/2013.

3.11 The Trial Court, on appearance of the appellant / accused, has framed the charge u/s.302 IPC and questioned him and to pleaded not guilty to the charge framed against him.

3.12 The prosecution in order to sustain their case, examined P.Ws.1 to 12; filed Exs.P.1 to 14 and also marked M.Os.1 to 5.

3.13 The appellant / accused was questioned u/s.313[1] [b] Cr.P.C., with regard to the incriminating circumstances made out against him in the evidence rendered by the prosecution and he denied the same as false and also submitted that while he was staying in the house, on account of previous enmity, a false case was foisted against him. On behalf of the accused, neither any witness was examined nor any documents were marked.

3.14 The Trial Court, taking into consideration the oral and documentary evidences and also the materials, has found that the appellant / accused is guilty u/s.302 IPC and convicted and sentenced the accused as stated above and hence, this appeal.

4 Mr.M.H.Abdur Rahmaan, learned counsel appearing for the appellant / accused made the following submissions:-

[a] The motive projected by the prosecution is flimsy and cannot be believed for the reason that admittedly, as per the version of P.Ws.1 to 3, the son of the appellant / accused, viz., Sudhakar, had attacked the deceased, on account of which, the deceased had lost his eyesight in one of his eyes and even as per their version, they have forgotten the enmity and also did not lodge any police complaint and a compromise was also reached and the only motive projected by the prosecution is the staying of the deceased along with his lover, P.W.5 in one of the houses owned by the appellant / accused and it was questioned by the appellant / accused on the morning hours on the date of occurrence, i.e., on 07.06.2011 and the offence was said to have committed on the evening hours on the same day.

[b] It is the case of the prosecution that on sustainment of injuries by Rajkamal [deceased], he was taken to the Government Headquarters Hospital at Tiruvallur by P.Ws.1 to 3 in an Auto and as per the Discharge Summary issued by P.W.7 under Ex.P.4, the injured was brought by one Venkatesan and he was not

examined by the prosecution even during investigation and as such, the presence of P.Ws.1 to 3 in the scene of crime, is highly doubtful.

[c] P.W.4 who was also cited as an eyewitness, deposed in favour of the prosecution for the reason that he was the close friend of the deceased and as such, his testimony cannot be believable.

[d] The testimonies of the alleged eyewitnesses, viz., P.Ws.1 to 4 cannot be believed for the reason that P.Ws.1 to 3 are the parents and younger brother of the deceased and P.W.4 is the close friend of the deceased and further that their testimonies did not corroborate with each other on material particulars.

5 Alternately, it is pleaded by the learned counsel for the appellant / accused that on account of the attack made by the son of the appellant / accused on the deceased about ten years back, in which the deceased had lost his eyesight in one of his eyes, P.Ws.1 to 3 had a grouse against him and as such, they have falsely implicated the appellant / accused and on the date of occurrence, admittedly, without the permission of the appellant / accused, the deceased and his lover, viz., P.W.5, were asked to stay in his house, which enraged the appellant / accused and as such, the offence was committed by him in a fit of rage and hence, prays for alteration of the conviction to one u/s.304 [Part I] IPC and reduction of sentence.

6 Per contra, Mr.R.Ravichandran, learned Government Advocate [Crl.Side] appearing for the State would submit that the attack made by the son of the appellant / accused on the deceased took place about 10 years back and a compromise was also reached and admittedly, no police complaint was lodged and as such, P.Ws.1 to 3 have no enmity against the appellant / accused prior to the commission of the offence and on the date of occurrence, i.e., on 07.06.2011, having come to know that without his permission, the deceased was asked to stay in his house along with P.W.5, he got enraged and came on the morning hours on 07.06.2011 and questioned the sme and on the same day evening, the appellant / accused chased the deceased and attacked him repeatedly with M.O.1 - knife and the said occurrence was witnessed by P.Ws.1 to 3 - parents and younger brother of the deceased as well as by P.W.4-close friend of the deceased, who came along with the deceased and the testimonies of the said witnesses corroborate with each other on material

particulars and nothing useful was elicited in the cross-examination of these eyewitnesses to sustain the defence. It is the further submission of the learned Government Advocate [Cri.Side] that the complaint came to be lodged to P.W.11 by P.W.1 without any loss of time and the material documents, viz, Ex.P.1 as well as the Printed FIR [Ex.P.9] also reached the jurisdictional Court on time. The witnesses were also examined within a few days from the date of commission of the offence and as such, it cannot be said that the prosecution has foisted a false case on the appellant / accused. Learned Government Advocate [Crl. Side] would submit that the medical evidence in the form of Ex.P.5 - Postmortem Certificate issued by P.W.8 and the Chemical Analysis Report and Serology Report marked as Exs.P. 12 to 14, also establish the fact that by use of M.O.1 - knife only, the death of Rajkamal had occurred and thus, the prosecution was able to prove that it was the appellant / accused alone committed the heinous crime of murder and the Trial Court, on a proper consideration and thorough appreciation of oral and documentary evidence and other materials, had rightly reached the conclusion to convict and sentence the appellant / accused and prays for dismissal of the appeal.

7 This court paid its best attention to the rival submissions and also perused the materials placed before it including the impugned judgment dated 28.03.2017.

8 The following questions arise for consideration:-
[1] Whether the testimonies of P.Ws.1 to 4 coupled with the scientific evidence, had proved that the appellant / accused has committed the murder of Rajkamal? and
[2] Whether the reasons assigned by the Trial Court for convicting and sentencing the appellant / accused are sustainable?

Question No.1:-

9 The deceased Rajkamal is the son of P.Ws.1 and 2 ; elder brother of P.W.3 and lover of P.W.5. The motive for the commission of the offence projected by the prosecution is that the appellant / accused owned two houses in Tirunindravur and without his consent and permission, P.Ws.1 and 2 asked the deceased Rajkamal to stay in one of the houses along with P.W.5- his lover and on coming to know of the same, the appellant / accused came to the house of P.W.1 at about 5.30 a.m. on 07.06.2011 and questioned about the same and also wielded threat that he will finish off her son, viz., Rajkamal and as a sequel to the said incident, he came to the spot at about 5.30 p.m. on the same day and on seeing the deceased Rajkamal, he started chasing him with a knife [M.O.1] and confronted him and repeatedly attacked him on the chest and on his back with M.O.1-

knife and on sustainment of injuries, the deceased fell down and the appellant / accused escaped from the scene of occurrence. P.Ws.1 to 4 on seeing the chase, followed the appellant / accused and P.Ws.1 to 3 took the deceased to the Government Headquarters Hospital, Tiruvallur and he was examined by P.W.7, who pronounced him dead on arrival.

10 P.W.1 proceeded to Tirunindravur Police Station and lodged a complaint under Ex.P.1, based on which, FIR under Ex.P.9 was registered by P.W.11, who took up the investigation. A perusal of the testimonies of P.Ws.1 to 3 would disclose that as regards the motive, i.e., accommodation of the deceased along with his lover, P.W.5 in one of the houses owned by the appellant / accused ; chasing of the appellant / accused on the evening hours on the date of occurrence, i.e., 07.06.2011 and the stabbing of the deceased repeatedly by the has been cogently spoken to by them using M.O.1-knife, has been cogently spoken to by them.

11 The primordial submission made by the learned counsel for the appellant / accused is that P.Ws.1 to 3 are the blood relatives of the deceased, being his parents and younger brother and P.W.4 is the close friend and as such, their testimonies are tainted and it cannot be taken into consideration. In the considered opinion of the Court, the relationship of the eyewitnesses cannot be a factor to brush aside their testimonies.

12 The learned Government Advocate [Crl. Side] had relied upon the decision of the Hon'ble Supreme Court of India reported in 2013 [2] SCC 89 [Mookkiah and another V. State rep. by the Inspector of Police, Tamil Nadu], wherein, it has been held in paragraph No.20 that, "...merely because a witness is related, his evidence cannot be eschewed. On the other hand, it is the duty of the Court to analyze his evidence cautiously and scrutinise the same with other corroborative evidence. The High Court has rightly relied on his evidence and we fully agree with the course adopted by the High Court in relying upon his evidence."

13 The learned counsel for the appellant / accused also made a feign attempt by submitting that since no steps have been taken by P.Ws.1 to 4 to avert attack on the part of the appellant/accused, their presence in the scene of occurrence is highly doubtful. The Hon'ble Supreme Court of India in the decision reported in AIR 1988 SC 696 [Appabhai and Another V. State of Gujarat], has observed in paragraph No.11 that "every person who witnesses a murder, reacts in his own way. Some are stunned, become speechless and stand rooted to spot. Some become hysteric and start wailing. Some start shouting for help

Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter attacking the assailants. Everyone reacts in his own special way. There is no set rule of natural reaction. To discard the evidence of a witness on the ground that he did not react in a particular manner is to appreciate evidence in a wholly unrealistic and unimaginative way." In the case on hand, P.Ws.1 to 4 started following the appellant / accused on seeing him chasing the deceased with a knife and simply because they have not taken any steps to avert the attack, the same would not lead to the conclusion that they are not present in the scene of occurrence and as per the ratio laid down in the above cited decision, witnesses react in a particular manner on seeing the commission of the heinous offence and simply because they have not taken any steps to avert the attack or chase away the appellant / accused, it cannot be said that they have not been present in the scene of crime and therefore, the submission made in that regard by the learned counsel for the appellant/accused is liable to be rejected.

14 It is also the submission of the learned counsel for the appellant / accused that though it is the version of the prosecution that P.Ws.1 to 3 took the injured Rajkamal to the Government Headquarters Hospital, Tiruvallur, the testimony of P.W.7 coupled with the Discharge Summary [Ex.P.4] marked through him, would disclose that Rajkamal was admitted by one Venkatesan and admittedly, he was not examined by the prosecution during the course of investigation. In the decision reported in 1986 Mad LJ [Cri] 23 : 1985 Cr.L.J. 2012 [Pattipati Venkaiah V. State of Andhra Pradesh], the Hon'ble Supreme Court of India has observed as follows:-

"....

A doctor is not at all concerned as to who committed the offence or whether the person brought

to him is a criminal or an ordinary person. His primary effort is to save the life of the person brought to him and inform the police in medico-legal cases. It is well settled that doctors before whom dead bodies are produced or injured persons are brought, either themselves take the dying declaration or hold the postmortem immediately and if they start examining the informants they are likely to become witnesses of the occurrence which is not permissible."

As observed by the Hon'ble Apex Court, the primordial duty of

the Casualty Medical Officer is to save the injured and if they start examining the informants, they are likely to become witnesses of the occurrence, which is not permissible.

15 The cross-examination of P.W.7-Casualty Medical Officer would read that the injured Rajkamal was brought by one Venkatesan and he was residing nearby to the house of Rajkamal and he did not disclose as to the person who caused injury and how many persons had attacked. In the considered opinion of the Court, it is only a minor discrepancy and has not shaken the foundation laid by the prosecution against the appellant / accused.

16 The scientific evidence in the form of Postmortem Certificate marked as Ex.P.5 coupled with the testimony of P.W.8-the doctor who conducted postmortem, would clearly establish that the deceased had died on account of the homicidal violence on account of the stab injuries inflicted by the appellant / accused and the Chemical Analysis Report and Serology Report marked as Exs.P.12 to 14 would also substantiate the fact that M.O.1-knife was tainted with human blood [A-Group].

17 P.Ws.1 to 4 - eyewitnesses stood rigor of cross-examination and they were very categorical that it was the appellant / accused who had chased the deceased Rajkamal and inflicted two stab injuries by using M.O.1-knife and before the injured was taken to the Government Headquarters Hospital Tiruvallur, he died. The testimonies of the eyewitnesses coupled with the medical and scientific evidences had substantiated the case of the prosecution that it was the appellant / accused alone who had committed the heinous crime of murder.

18 The learned counsel for the appellant / accused also made an alternate plea that there was sustained provocation right from the morning hours on 07.06.2011 till the commission of the offence during evening hours on the same day for the reason that admittedly, without the permission of the appellant / accused, P.Ws.1 and 2 allowed their son Rajkamal [deceased] to stay along with his lover, viz., P.W.5 and out of enragement only, the offence of murder was committed. However, a perusal of the testimonies of the eyewitnesses would reveal that there was no provocation even prior to the commission of the offence of murder in the evening hours on 07.06.2011 and the sustained provocation cannot be extended from 5.30 a.m. on 07.06.2011 to 5.30 p.m. on the same day - time of the commission of the offence of murder and as such, exception [4] to section 300 IPC would not come to the aid of the appellant / accused.

Question No.2:-

19 In the considered opinion of the Court, the reason assigned by the Trial Court for convicting and sentencing the appellant / accused for the commission of the offence under section 302 IPC are sustainable and no error or infirmity is noted in the impugned judgment.

20 In the result, the criminal appeal is dismissed and the conviction and sentence awarded by the learned Principal District and Sessions Judge, Tiruvallur, in SC.No.90/2013, vide impugned judgment dated 28.03.2017, are hereby confirmed.

21 It is made clear that the period of incarceration undergone by the appellant / accused during the course of investigation / trial is ordered to be set-off under section 428 Cr.P.C.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

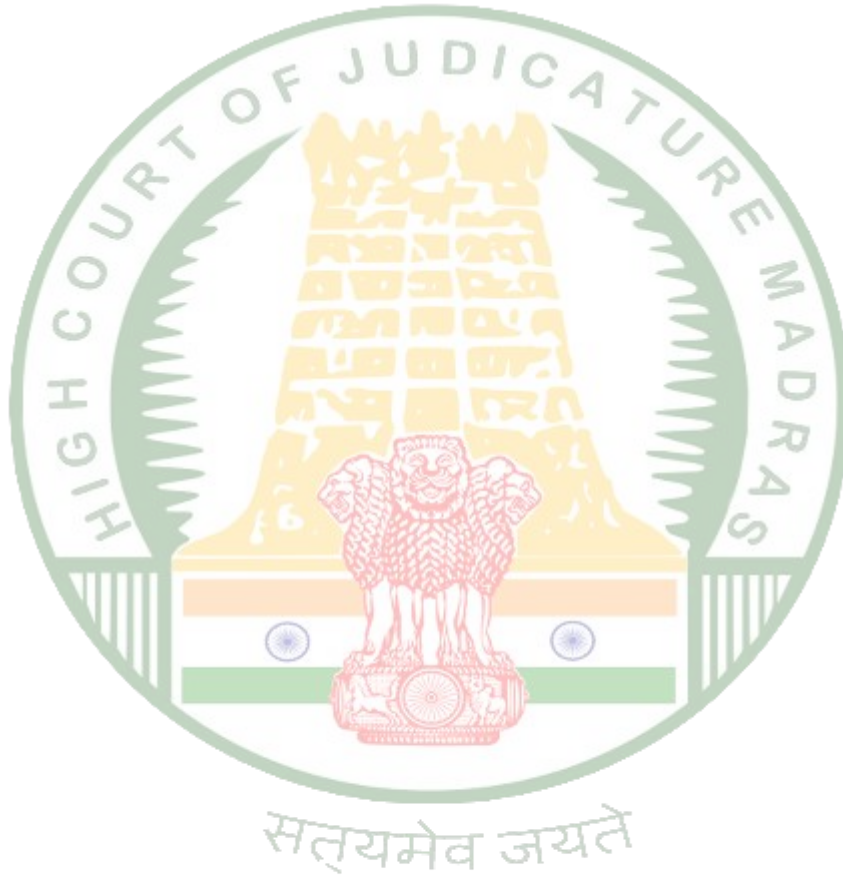
- 1.The Principal District and Sessions Judge
Tiruvallur.
- 2.The Judicial Magistrate No.2
Tiruvallur.
- 3.The Chief Judicial Magistrate
Tiruvallur.
- 4.The Superintendent,
Central Prison, Puzhal, Chennai.
- 5.The Inspector of Police
T-11, Thirunindravur Police Station
Thirunindravur 602024.
- 6.The Director General of Police
Mylapore, Chennai-4.

7.The District Collector,
Tiruvallur District.

8.The Public Prosecutor
High Court, Madras.

Cr1.A.No.229/2017

KGK (CO)
TR(23/11/2017)



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