

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 05.09.2017
C O R A M
THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.623 of 2014

Christopher Leo,
S/o.Pushparaj

... Appellant/Accused

-Vs-

State of Tamil Nadu,
rep. by Inspector of Police,
G-1, Uthagamandalam Police Station,
Nilgiris District.

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgment of learned Sessions Judge of Nilgiris, Uthagamandalam, passed in S.C.No.43 of 2011 on 14.07.2014 and set aside the same.

For Appellant : Mr.K.V.Sridharan for M.Shankar

For Respondent : Mr.V.Arul
Additional Public Prosecutor

J U D G M E N T

This appeal arises against judgement of learned Sessions Judge of Nilgiris, Uthagamandalam, passed in S.C.No.43 of 2011 on 14.07.2014, convicting appellant/Accused for offence u/s.304(i) IPC and sentencing him to undergo 10 years R.I. and fine of Rs.5,000/- i/d 6 months R.I.

2. The case of the prosecution is that on 21.04.2010 at about 7.30.p.m., the appellant caused the death of his brother by stabbing him on the stomach with a knife. Appellant was tried for offence under Section 302 IPC in S.C.No.43 of 2011 on the file of learned Sessions Judge of Nilgiris, Uthagamandalam.

3. PW-1, mother of the deceased, preferred Ex.P1, complaint, on 22.04.2010 at 4.00.a.m. PW-17, Inspector of Police, Ooty(West) Police Station, registered a case in Crime No.98 of 2010 on the file of respondent u/s.174 Cr.P.C. The Printed First Information Report is Ex.P21. PW-17, Inspector of Police, took up investigation on 22.04.2010, visited the place of occurrence, prepared Ex.P2 - Observation Mahazar and Ex.P22 - Rough Sketch in the presence of witnesses. He seized M.O.2

broken pieces of Mirror, M.O.3 blood stained banian, M.O.4 blood stained mud and M.O.5 unstained mud in the presence of witnesses under Seizure Mahazar Ex.P.3. He conducted inquest over the body of deceased in the presence of Panchayatars and PWs-1 to 5 and prepared Ex.P23, Inquest Report and sent the body to Government Headquarters Hospital, Uthagamandalam through PW-16 Head Constable for post-mortem. The Post-mortem Report is Ex.P7. He examined PWs.1 to 5 and recorded their statements. PW-13 V.A.O., handed over the accused and his confession statement (Ex.P13) to PW-17, Inspector of Police, Uthagamandalam Police Station, vide letter under Ex.P14. PW-17 enquired the accused and arrested him. The accused handed over the M.O.1 to PW-17 Inspector of Police. He sent the accused to judicial custody on 23.04.2010. On 25.04.2010, he examined PW-4 and others and recorded their statements. He sent a requisition to conduct chemical analysis of Material Objects. On 05.05.2010, he examined PW-9 and recorded his statement. He obtained post-mortem report, examined the medical officers and recorded their statements. On 08.05.2010, he examined PW-16 and recorded his statement. On 30.06.2010, he obtained chemical analysis report, examined PWs-11 and 15 and recorded their statements. He examined PW-8 and recorded his statement. Upon completion of investigation, on 03.07.2010 he filed a charge sheet informing commission of offence u/s.302 IPC. The case was tried in S.C.No.43 of 2011 on the file of learned Sessions Judge of Nilgiris, Uthagamandalam.

4. Before the trial Court, prosecution examined PWs.1 to 17 and marked Exs.P1 to P24 and 9 Material Objects. None were examined on behalf of the defence nor were any exhibits marked. Section 164 Cr.P.C., statements of PWs-1, 2 and 5 were marked as Ex.C1. On questioning u/s.313 Cr.P.C., the accused denied charges. Learned trial Judge, on appreciation of evidence, under judgment dated 14.07.2014, convicted him u/s.304 (i) IPC and sentenced him to 10 years R.I. and fine of Rs.5,000/- i/d 6 months R.I. There against, the present appeal.

5. Heard learned counsel for appellant and learned Additional Public Prosecutor for respondent. Perused the records.

6. Learned counsel for appellant submitted that PWs-1, 2 and 3 Mother, Father and brother of the appellant and deceased and PWs-4 and 5 neighbors, who are cited as eye-witness to the occurrence, have turned hostile. Ex.P1 complaint informs that the deceased had used a kitchen knife to stab himself. PW-8 Doctor who had conducted post-mortem had admitted to the possibility of the injuries on the stomach suffered by the deceased being self-inflicted. The trial Court had disbelieved Ex.C1 extra judicial confession allegedly tendered by appellant to PW-13 V.A.O., for the reason that though the same was allegedly made on 22.04.2010 at 3.00.p.m, it was the evidence of

PWs-1, 3 4 and 5 that the appellant, as also all of them, were taken to the police station at 10.30.p.m.

7. Learned counsel for appellant submitted that the prosecution case rested on its sole testimony of PW-17 Investigation Officer, but the same has not been put to the appellant/accused in the course of his enquiry under Section 313 Cr.P.C. While PW-17's version is of the true state of affairs i.e., of the appellant, having caused death of the deceased, having been informed to him by PW-1, even such position had not been put to the appellant/accused under Section 313 Cr.P.C. Learned counsel referred to decision of Supreme Court in Vikramjit Singh Alias Vicky Vs. State of Punjab [2007 (1) SCC (Crl.) 732];

"23. It is now a well-settled principle of law that the circumstances which according to the prosecution lead to proof of the guilt against the accused must be put to him in his examination under Section 313 of the Code of Criminal Procedure. It was not done.

24. In Tara Singh V. State the law is stated in the following terms: (SCR 741-42)

"The High Court also bases its conclusion on the circumstantial evidence arising from the production of the kripa and the recovery of the shirt from the appellant. Those articles are said to be stained with human blood. The appellant was not asked to give any explanation about this. The serologist's report had not been received when the appellant was questioned by the Committing Magistrate. Therefore, he could not be asked to explain the presence of human bloodstains on the kripa. All he was asked was whether the bloodstained kripa was recovered at his instance. That is not enough. He should also have been asked whether he could explain the presence of bloodstains on it. The two are not the same. Then, in the Sessions Court there was the additional evidence of the imperial serologist showing that the kripa had stains of human blood on it. That was an additional and very vital piece of evidence which the appellant should have been afforded an opportunity of explaining."

8. Heard learned Additional Public Prosecutor on the above submissions.

9. In a case where the very complaint Ex.P1 informs that the injury, which resulted in death, was a self-inflicted one and the mother of the deceased is the complainant therein, it would be easy for an Investigation Officer to fall prey to the temptation of not causing any further investigation in the case. However, this Court must not fall prey to the temptation of taking the view that the Investigation Officer would not have gone about further investigation and tendered a final report informing commission of offence under Section 302 IPC, without any basis.

10. Prosecution case finds no support from the alleged eye-witnesses PWs-1 to 5. Ex.P1 complaint informs that the deceased stabbed himself. PW-8 Post-mortem Doctor does not rule out the possibility of the injury being self-inflicted. Trial Court has found sufficient reasons to reject the extra-Judicial confession of the appellant in Ex.C1. In the course of his questioning under Section 313 Cr.P.C., the appellant has informed that his brother, the deceased, met death owing to stabbing himself in the stomach. The benefit of doubt must flow to the accused.

11. The Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Sessions Judge of Nilgiris, Uthagamandalam, passed in S.C.No.43 of 2011 on 14.07.2014, are set aside and appellant is acquitted of all charges. Fine amount, if any, paid shall be refunded. Bail bond (s), if any, executed shall stand cancelled.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

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To

1.The Sessions Judge,
Nilgiris, Uthagamandalam.

2.The Judicial Magistrate
Uthagamandalam

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3.The Inspector of Police,
G-1, Uthagamandalam Police Station,
Nilgiris District.

4.The Public Prosecutor,
High Court, Chennai.

+1 cc to Mr.K.V.Sridharan Advocate sr 64305

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