

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.03.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MRS. Dr.JUSTICE ANITA SUMANTH

CRL.A.No.462 of 2016

Maragatha Malar

.. Appellant

Vs

1. Karthikeyan @ Karthik

2. The State rep by

The Inspector of Police,
Erode North Police Station
Erode District
Cr.No.436 of 2014

... Respondents

Appeal filed u/s.372 Cr.P.C., seeking to set aside the judgment of acquittal passed on 22.01.2016 by the II Additional District and Sessions Court, Erode made in S.C.No.54 of 2015

For Appellant : Mr.N. Manokaran
for Mr.Guruprasad

For 1st respondent: Mr.V. Parthiban for
Natham Assocaites

For 2nd Respondent: Mr.P. Govindarajan
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

This is an appeal against acquittal filed by the wife of the deceased. The first respondent was the sole accused before the II Additional District Sessions Court, Erode in S.C.No.54 of 2015. He stood charged for the offence under Section 302 IPC. By Judgment dated 22.01.2016, the trial Court acquitted the accused from the charge. Challenging the said acquittal, the appellant, who is the wife of the deceased and the defacto-complainant in this case, examined as P.W.1, has come up with this appeal.

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

(a) The deceased in this case was one Shanmugam. The accused and the deceased were friends for a long time. It is alleged that when the accused was working in a private concern, belonging to a close relative of P.W.2 Suresh, the accused allegedly committed misappropriation and therefore, he was dropped from service. It is further alleged that on 03.09.2014 evening there was a quarrel between the accused and the deceased. In that quarrel, it is alleged that the accused challenged that he would not spare the deceased alive.

(b) On 04.09.2014 around 1.30 p.m, according to the prosecution, the deceased was standing in front of a hotel viz., Kuppanna Hotel, Perundurai Road, Erode. P.Ws.2 and 3 were also standing there. At that time, the accused came to the said place in a motorcycle bearing Registration No.TN33 AU 9272 and parked his vehicle by the side of the hotel. The accused went to the deceased and questioned him as to why he had given his mobile number to various persons saying that the said mobile number belonged to a Pimp. The deceased told the accused that he did not give his mobile number at all. This resulted in a quarrel. It is alleged that the accused suddenly took out a knife and stabbed the deceased. P.Ws.2 and 3 tried to rescue the deceased. Despite that, it is alleged that the accused repeatedly stabbed the deceased. Then, the accused fled away from the scene of occurrence with the knife.

© P.Ws.2 and 3, according to the prosecution, immediately took the deceased to the Government Hospital at Erode, where the doctor declared him dead. Thereafter, P.W.5 informed about the occurrence to P.W.1, the wife of the deceased. P.W.1 then made a complaint at 2.30 p.m, upon which, the present case was registered. Ex.P.1 is the complaint made by P.W.1 and Ex.P.30 is the First information report. Both the documents were sent to Court, which were received by the learned Magistrate at 4.00 p.m.

(d) Thereafter, Inspector of Police took up the case for investigation. He went to the place of occurrence; prepared an observation Mahazar and a Rough Sketch in the presence of P.W.8 and another witness. He recovered blood stained earth and sample earth from the place of occurrence. He conducted inquest on the dead body of the deceased and forwarded the same for post mortem.

(e) Dr.Kannan, (P.W.18), attached to Government Hospital at Erode, conducted autopsy on the body of the deceased on 05.09.2014 at 11.05 a.m and found the following injuries:

"External Injuries:

1. A stab injury of size 4 x 7cm, lies about 10cm above the umbilicus on the right side with intestine seen protruding through the injury. (ii) A cut wound of size 1x7cm over the left hand is seen (iii) A cut wound of size 3x2cm is seen in the left Hip. (iv) A cut wound of size 1x4cm over the right thumb.

Internal Injuries:

Brain on c/s pale (ii) skull intact (iii) ribs intact Hyoid bone intact. Heart on c/s pale 320gm, (?) lungs on c/s pale Right 480 gms. Left 400 gms lines pale on c/s 1300gms (?) both kidneys on c/s pale about 110gms each? Spleen on c/s pale about 180gms (?) stomach about 200ml undigested food present/? Bladder-empty? Intestines-seen cut? Injured? Branch? Of Aorta? Damaged? About more than ½ a litre of blood seen inside the rib cage? Blood sample sent for forensic and chemical analysis.

OPINION: The Deceased would appear to have died about 18 to 24 hours prior to autopsy and the final cause is pending for forensic and chemical analysis.

Ex.P.18 is the final Opinion regarding the cause of death. He opined that the deceased would appear to have died of shock and hemorrhage due to multiple injuries on the body. He further opined that the injuries could have been caused by a weapon like M.O.1 knife.

(f) During the course of investigation, P.W.18 recovered blood stained clothes from the body of the deceased and forwarded the same to Court. However, he could not examine P.W.3 on the same day as he had gone to Chennai due to some urgent work. On his return to Erode, P.W.18 examined him on 06.09.2014 and recorded the statement. The accused surrendered before the learned Judicial Magistrate No.I, Thanjavur on 11.09.2014. P.W.18 took the police custody of the accused. While in custody, the accused gave a voluntary confession, in which, he disclosed the place where he had hidden the blood stained shirt and the motorcycle. In pursuance of the same, he took the police and witnesses to the place of hide out and produced the material objects. P.W.18 recovered the same. On returning to the police station he forwarded the accused to Court for judicial remand and handed over the material objects to Court. At his request,

the material objects were sent for chemical examination. The report revealed that there were human blood stains on all material objects except cord piece and the knife, allegedly recovered from the accused. On completing investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed a lone charge under Secs.302 and 326 IPC. In order to prove the case, on the side of the prosecution, as many as 18 witnesses were examined and 39 documents and 11 material objects were also marked.

4. Out of the said witnesses, P.W.1, the wife of the deceased has stated that when she was at her work spot, P.W.5 informed her about the occurrence. Immediately, P.W.1 went to hospital. Thereafter, she went to police station and made a complaint at 2.30 p.m. P.W.2 turned hostile and he has not supported the case of the prosecution. P.W.3 has spoken about the entire occurrence. He has stated about the overt act of the accused also. He has further stated that after the occurrence was over, he went to Chennai due to some urgent work. On 06.09.2014, as soon as he returned to Erode, he was examined by P.W.18. P.W.4 has stated that he was plying a taxi. He used to park his taxi in Kuppanna hotel Taxi Stand. He has stated that on 03.09.2014, when he was standing at the taxi stand, he found that there was a quarrel between the accused and the deceased. On 04.05.2015, around 2.00 p.m, the accused called P.W.4 over phone and wanted money for his expenses. As requested by the accused, P.W.4 went to Nasianur Road and met the accused near Amma Mess. At that time, the accused was found in his motorcycle bearing Registration No.TN 33 AU 9272. The accused was wearing blue colour shirt (M.O.2). M.O.3 is the motorcycle. The accused wanted Rs.500/- and P.W.4 gave the same to him. At that time, there was mud on the face of the accused. When enquired, the accused told P.W.4 that he stabbed the deceased with knife. Then the accused went away in his motorcycle. P.W.5 has turned hostile and he has not supported the case of the prosecution. P.W.6, the owner of the Kuppanna Hotel has stated that when he was sitting in the hotel, around 1.30 p.m on 04.09.2014 he heard the noise from the lane near the hotel. He immediately rushed to the place and found that the deceased lying under a Neem Tree with injuries and he was struggling for life. The accused was standing with a knife at a distance of 20 feet. He also found P.W.2 and P.W.3 at the said place. According to P.W.6, P.W.2 and P.W.3 took the deceased in an Auto to the hospital. The accused fled away from the scene of occurrence with the knife. P.W.7 has spoken about the confession made by the accused and the consequential recoveries of knife, motorcycle and blood stained shirt from his possession. P.W.8 has spoken about the

preparation of observation mahazar, rough sketch and recovery of material objects. P.W.9 has spoken about the photographs taken at the place of occurrence, as requested by P.W.18. P.W.10 Doctor attached to Erode Government Hospital, has stated that on 04.09.2014 at 1.45 p.m, the deceased was brought to the said hospital and on examination, she found that he was not alive. She made entry in the Accident Register (Ex.P.15). She forwarded the death intimation to the police under Ex.P.14. P.W.11 Doctor, attached to Government Hospital, Erode has spoken about the post mortem conducted and final opinion regarding cause of death. P.W.12 Judicial Magistrate has spoken about the statements of P.Ws.2,3 and 4 recorded under Sec.164 of Criminal Procedure Code. P.W.13 a Head Constable has stated that he took the dead body and forwarded the same to post mortem, as directed by P.W.18. P.W.14 Scientific Officer of Regional Forensic Lab has spoken about the examination of material objects and found that there was human blood stain on all the material objects except the knife and the cord. P.W.15 Sub Inspector of Police has spoken about the registration of the case on the complaint made by P.W.1. P.W.16 the Head Clerk of Judicial Magistrate Court has stated that he forwarded the material objects to Forensic Lab for chemical examination, as directed by the learned Magistrate at the request of P.W.18. P.W.17 Constable Grade-I has stated that he forwarded the First Information Report to the learned Judicial Magistrate at 4.00 p.m. P.W.18 Inspector of Police has spoken about the investigation done and the final report filed.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness nor mark any document on his side. Having considered all the above, the Trial Court acquitted the accused. Aggrieved over the same, P.W.1/defacto-complainant, who is the wife of the deceased, has come up with this appeal against the acquittal.

6. We have heard the learned Counsel for the appellant/defacto-complainant, learned Additional Public Prosecutor appearing for the State and the learned counsel appearing for the accused and we have also perused the records carefully.

7. A perusal of the judgment of the trial Court would go to show that the trial Court has disbelieved the evidence of P.W.3 - the eyewitness to the occurrence, mainly on the ground that he was examined only on 06.09.2014 by the police. The learned counsel for the appellant would submit that the reasonings given by the trial Court are not correct in view of the fact that P.W.1 has explained that after the occurrence was

over, P.W.3 had gone to Chennai as planned already and returned to Erode only on 06.09.2014. The learned counsel would further submit that even in Ex.P.1 complaint, the presence of P.W.3 at the time of occurrence, has been clearly mentioned.

8. The learned counsel for the accused would submit that though it contained information about the presence of P.W.3 at the time of occurrence, the first information report itself is a doubtful document and therefore it cannot carry any significance,. He would further submit that the explanation offered by P.W.3 that his failure to disclose about the occurrence after three days is highly artificial. But, we are not persuaded by the said argument made by the learned counsel for the accused. The alleged occurrence in this case took place at 1.30 p.m, whereas the complaint was registered at 2.30 p.m. First Information Report had reached the hands of the learned Magistrate at 4.00 p.m itself. P.W.1 is not an eyewitness to the occurrence. She was informed by P.W.5 and only thereafter, she went to the hospital and afterwards made a complaint. Therefore, there was some delay in making the complaint.

9. The learned counsel for the accused would submit that P.W.1 has stated that when she went to the hospital, some police men were present and police only took her to mortuary to whom she identified the deceased and thereafter only she went to the police station. According to the learned counsel for the accused, the information which had brought the police to the hospital has been suppressed. This argument, though attractive, does not persuade us at all. P.W.1 has not stated that the policemen present in the hospital were from the respondent police station. It may be that some policemen would have been available in the hospital who took her to mortuary. But it cannot be said that there was some information available to the police before hand. P.W.1 has categorically stated that after having seen the body, she went to police station and made a complaint. Thus, we hold that Ex.P.1 was the earliest information and there is no doubt in respect of the same. Therefore, the contrary view taken by the trial court is not correct.

10. In Ex.P.1 itself, the presence of P.W.3 at the place of occurrence is mentioned. Apart from that P.W.6, the owner of the Kuppanna Hotel has also stated that when heard the noise, he rushed to the place and found the deceased lying near a neem tree, struggling for life and at that time, he found P.Ws.2 and 3 present at the place of occurrence. They were making arrangements to shift the deceased in an auto to the hospital. Thereafter, they took the deceased to the hospital. The presence of P.W.3, has been spoken by P.W.6 also. Thus, in our considered

view the presence of P.W.3 at the place of occurrence cannot be doubted. He has categorically stated that it was this accused who stabbed the deceased. The evidence of P.W.3 is duly corroborated by the evidence of P.W.6.

11. But the learned counsel appearing for the accused would submit that the presence of P.W.6 cannot be believed. The trial court also has disbelieved his presence. The learned counsel for the appellant would submit that the presence of P.W.6 at the place of occurrence is highly probable and therefore, the same cannot be rejected. The learned counsel for the accused would submit that P.W.6 was not examined on the same day and he was examined only on the next day, for which, there is no explanation. This argument also does not persuade us. The presence of P.W.6 cannot be doubted because the occurrence had taken place just near the hotel. It may be true, that P.W.6 was not examined on the same day. For the failure of the Investigating Officer, we cannot doubt P.W.6 and brand him as a liar. His presence is probable and his credibility cannot be doubted. At any rate, there is no motive at all for P.W.6 to depose falsely against the accused. Therefore, we give full credence to the evidence of P.W.6. His evidence duly corroborates to the eyewitness account of P.W.3. He found the deceased lying under the neem tree with bleeding injuries. The accused was standing at the distance of 20 feet with blood stained knife.

12. Now, again reverting back to the evidence of P.W.3, it is true that he was examined only on 06.09.2014. He has got an explanation to offer that he went to Chennai as already planned and he returned to Erode only on 06.09.2015. Since his presence cannot be doubted which is fortified by Ex.P.1 as well as the evidence of P.W.6, the delay in examination of P.W.6 by the police cannot be a ground to reject his evidence. Apart from that, P.W.2's evidence to the extent that the occurrence was between 1.30 p.m and 1.45 p.m on 04.09.2014 at the place of occurrence can be believed. Though he has turned hostile, he has stated that the occurrence had taken place between 1.30 p.m and 1.45 p.m and he only took the deceased to the hospital.

13. Now, turning to the evidence of P.W.4, he has stated that on the date of occurrence, the accused called him over phone and wanted money. Therefore, he went to Nasianur Road. The accused came in his motorcycle Registration No.TN33 AU 9272. He wanted money from P.W.4. and he gave Rs.500/-. At that time, P.W.4 noticed that there was mud on the face of the accused. When he enquired about the same the accused told him that he had stabbed the deceased with knife. The learned counsel for the appellant would submit that this part of the evidence of P.W.4

would go to prove the extra judicial confession made by the accused to P.W.4, but the learned counsel for the accused would submit that it is highly unbelievable and the trial Court has not even considered the evidence of P.W.4. We find no reason as to why the trial Court omitted to discuss about P.W.4. P.W.4 is a friend of the accused. P.W.4 after talking to accused over phone, went to Nasianur and gave Rs.500/- to the accused and at that time, the accused was found with the motorcycle. From this, it is clear that the accused who fled away from the scene of occurrence in a motorcycle, since he did not have money, had wanted help from P.W.4. At that time, when he enquired the accused, he told that he stabbed the deceased. This part of evidence, though a weak piece of evidence, would certainly corroborate the evidences of P.W.3 and P.W.6. This also further strengthens the case of the prosecution.

14. Then comes the recovery of knife, blue shirt and motorcycle from the custody of the accused in pursuance of the disclosure statement. This piece of evidence has added further strength to the case of the prosecution. From these evidences, in our considered view, the prosecution has clearly established that it was this accused who stabbed the deceased, which resulted in the death of the deceased. Therefore, the contrary view taken by the trial court is not at all sustainable.

15. At this juncture we need to state that we are conscious of the legal position that the initial presumption of innocence of the accused gets doubled by the acquittal recorded by the trial court. Unless the appellant is able to show perversity in the judgment of the trial court acquitting the accused and unless appellant is able to rebut such presumption by making out a very strong case, it is not possible to interfere with the acquittal of the accused. In other words, if there are two views which are equally possible, the view taken by the trial court cannot be disturbed so as to convict the accused by taking into account the other view, which is also equally possible. In this case, in our considered view, there can be only one view that could be taken that on appreciation of evidence, i.e., it was the accused who stabbed the deceased and caused the death. The contrary view taken by the trial Court is not based on any sound reason and hence the view taken by the trial court is not at all sustainable. Similarly, the appellant has made out a very strong case in this appeal to rebut the presumption of innocence. On re-appreciation of the entire evidence, we find that the prosecution has clearly established that it was this accused who caused the death of the deceased.

16. Thus, having come to the said conclusion, now we have to examine as to what was the offence that was committed by the

accused by causing the death of the deceased.

17. In this regard, we may refer to the evidence of P.W.3. He has stated that he went to Kupanna Hotel around 1.30 p.m. He found the deceased standing there. The accused came there. He questioned the deceased as to why he had given his mobile to various persons as though it belonged to a Pimp. This resulted in a quarrel. This quarrel went for some time, In the meanwhile, P.W.4 had gone into hotel to have food. When he came out from hotel, the quarrel was going on . At the end of the quarrel, the accused questioned the deceased why he has given his mobile number to various persons. This is the aggravated situation. It was in that quarrel, provoked by the words of the deceased, the accused taken out a knife and caused the death of the deceased. Though the act of the deceased would fall within the third limb of Section 300 IPC, in our considered view, the same would fall within the Exception I to Section 300 IPC. Therefore, the accused is liable to be punished for the offence under Sec.304 Part I IPC.

18. As directed by us, the accused was present today. We questioned the accused in respect of the quantum of punishment that could be imposed on him. We explained to the accused about our conclusion that he had committed the offence punishable under Sec.304 Part II IPC. The accused maintained that he was innocent. The accused also told us that he is aged about 35 years and is a graduate. He has got his old mother to be taken care of. He is working in a lathe company, owned by private individual and take care of the family. He has got no other criminal case against him. He also submitted that in fact he made a complaint to the Inspector of Police about the deceased giving his mobile number to several persons as though the number belonged to a Pimp. He would further state that he received frequent phone calls from various unknown persons calling him as a Pimp. He would further state that no action was taken by the police. In our considered view, had the police taken action on the complaint made by the accused, this occurrence would not have been happened at all and the life of the deceased would not have been gone and the accused also would not have lost his liberty. We are able to realise the pain of the accused that his mobile number was made public by the deceased as though it belonged to a pimp.

19. The learned counsel for the appellant would submit that since the accused had snatched away a life of an young man, aged 33 years, maximum punishment may be imposed on the accused. The learned Additional Public Prosecutor would support the same.

20. Having considered these extraordinary mitigating

circumstances we are inclined to impose a minimum sentence on the accused. The accused is offered to pay a sum of Rs.1,00,000/- as compensation to P.W.1. Having regard to all the above, we are inclined to take an extreme lenient view because of the extraordinary mitigating circumstances and thus we are inclined to impose a sentence of rigorous imprisonment for three years and to pay a fine of Rs.1,00,000/-, in default, to undergo rigorous imprisonment for six months. The entire fine amount shall be paid to P.W.1, as compensation.

21. In the result,

(i) the appeal is allowed and the conviction and sentence imposed by the learned II Additional District and Sessions Court, Erode in S.C.No.54 of 2015 are set aside and instead, the accused is convicted for the offence punishable under Sec.304 Part I IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,00,000/- (Rupees one lakh only), in default, to undergo rigorous imprisonment for six months.

(ii) the entire fine amount shall be paid to P.W.1 as compensation by the trial Court.

(iii) Four weeks time is granted to accused to surrender before the trial Court. If the accused fails to surrender within four weeks, the trial court shall take steps to secure the accused and commit him in prison to undergo the remaining period of sentence.

(iv) It is further directed that the period of sentence already undergone by the accused shall be set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr

To

1. The Inspector of Police,
Erode North Police Station
Erode District
2. The II Additional District Sessions Court, Erode
3. The Chief Judicial Magistrate,
Erode.
4. -do- Thro'The Principal Sessions Judge, Erode.
5. The Public Prosecutor, High Court, Chennai

+1cc to Ms.Nathan and Associates, S.R.No.14452

+1cc to Mr.Guruprasad, Advocate, S.R.No.14407

Crl.Appeal No.462 of 2016

VSN(CO)
RS(07/04/2017)



WEB COPY