

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 02.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Crl.A.No.485 of 2016
and
Crl.M.P.No.7041 of 2016

Kandasamy ... Appellant/Sole Accused

vs.

State, through
The Inspector of Police,
Avinasipalayam Police Station,
Tiruppur District
(Cr.No.117/2012) ... Respondent/Complainant

Criminal appeal preferred under Section 374 Cr.P.C., against the judgement dated 27.01.2015 passed by the I Additional District and Sessions Judge, Tiruppur, in S.C.No.14 of 2013.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

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

The appellant is the sole accused in S.C.No.483 of 2016, on the file of the learned I Additional District and Sessions Judge, Tiruppur. He stood charged for offence under Section 302 IPC. By judgement dated 27.1.2015, the trial Court convicted him under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5000/-, in default, to undergo rigorous imprisonment for one year. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

(a) The deceased in this was one Mr.Ganesan. He was a thief by profession. It is alleged that the accused was also a co-

thief with the deceased. On 25.10.2011, according to the case of the prosecution, the deceased and the accused travelled in a bus, in which, the deceased had stolen a cell-phone instrument from a passenger. The passengers caught him red-handed. Then they got down from the bus. The accused scolded him as to why he was so careless while stealing the cellphone, which had landed him in the hands of the passengers. This resulted in a quarrel between them. The deceased told him that he would do away with the accused. This is stated to be the motive for the occurrence.

(b) After getting down from the bus, the accused went near a compound wall of a school and started passing urine. When he was in sitting posture, the deceased came from his behind with an iron rod in his hands and attacked him. The accused did not expect the said assault made by the deceased. Suddenly by way of retaliation, it is alleged that the accused took out an 'aruval', which he was allegedly possessing and cut the deceased and ran away from the scene of occurrence. The entire occurrence was witnessed by P.Ws.2 and 3. But, they did not know the identity of the deceased or the accused. The deceased died on the spot. P.W.2 thereafter informed the then Village Administrative Officer about the occurrence. The Village Administrative Officer visited the place of occurrence immediately and verified the facts. But, even during his enquiry, the identity of the deceased and the accused could not be ascertained. On the same day at 9.00 a.m., he made a complaint to the police. On the said complaint, a case was registered in Crime No.704 of 2011, under Section 302 IPC. Since, as we already mentioned, neither the identity of the accused nor the identity of the deceased was known to P.W.1, he mentioned that the deceased was aged about 40 years and his identity could not be ascertained.

(c) The case was taken up for investigation by P.W.13. He visited the place of occurrence, prepared an observation mahazar and a rough sketch. He examined P.W.1, the Village Administrative Officer, P.Ws.2 and 3 and few more witnesses. He recovered the blood stained earth and sample earth from the place of occurrence.

After holding inquest on the body of the deceased, he forwarded the body for post-mortem. P.W.6, Dr.Priyavisvasam, conducted autopsy on the body of the deceased, on 26.10.2011. She found the following injuries.

"External Injuries: (1) Well defined cut injury on middle of (R) cheek at 5x2x0.5 cm (2) well defined cut injury extending from (R) side of neck about 5 cm below the angle of mandible

into the middle of thyroid cartilage 5 x 2 x 1 cm with medial end of the injury tearing a depth of 3 cm. In the middle end of injury cut wound of blood vessels seen with darkish red clots seen at the injury (3) Well defined cut injury 6 x 2 x 4 cm extending from (R) side above injury No.(2) extending across the midline with the medial end of injury a depth of 5 cm, exposing blood vessels cut end and the trachea partially seen (4) Well defined cut injury 4 x 2 x 5 cm from 8 cm below (L) ear upto middle of neck with the lateral end of the wound 6 cm deep exposing into tissue and muscles and cut end of blood vessels (5) Well defined laceration 3 x 2 x 4 cm extending from (L) lateral angle of mouth to middle of (L) cheek (6) cut injury 4 cm in front of (L) ear (7) Cured well defined cut 6 x 2 x 1 cm below and lateral to wound NO.(6). (8) Cut injury 4 x 2 x 1 cm the lower occipital region (9) Well defined cut injury 3 x 2 cm posterior of (L) (10) Laceration 2 x 3 cm on middle of tongue. All injuries are ante-mortem in nature."

According to her opinion, the deceased would have died due to shock and haemorrhage due to multiple injuries found on the body of the deceased. She further opined that the said injuries on the body of the deceased could have been caused by a sharp edged weapon like 'aruval'.

(d) P.W.13, during the course of investigation, recovered the blood stained clothes from the body of the deceased and forwarded the same to the Court. He arrested the accused on the same day. While in custody, the accused made voluntary confession, in which, he disclosed the place where he had hidden the aruval. Pursuant to the confession made, he took the police and the witnesses to the place of hide-out and produced the aruval. P.W.13 recovered the same. On returning to the police Station, he forwarded the accused to the Court for judicial remand and handed over the material objects also to the Court.

(e) The investigation was thereafter continued by P.W.14, his successor and at his request, the material objects were sent for chemical examination, which revealed that there were human blood on all the material objects, except the aruval. On completing the investigation, he laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed a lone charge against the accused. The accused denied the same as false. In order to prove the case, on the side of the

prosecution, as many as 14 witnesses were examined, 13 documents and 10 material objects were marked. Out of the said witnesses, P.W.1, the Village Administrative Officer, has stated that on getting intimation from P.W.2, he went to the place of occurrence and after seeing the dead body, he went to the police station and made a complaint to the police. P.W.2 has stated that he knew the accused already. He has stated that at the time of occurrence, while the accused was passing urine near the compound wall of a school, the deceased came from his behind with an iron rod in his hand and attacked the deceased. In retaliation, the accused took out an aruval and cut the deceased. The deceased fell down in a pool of blood. The accused ran away from the scene of occurrence. Then he informed P.W.1 about the same. P.W.3 has stated that he was with P.W.2 at the time of occurrence. He has stated that two persons were near the school compound wall and they were engaged in a chatting at that time. He heard that there were people attacking each other. Since he did not say anything more against the accused incriminating, he was treated as hostile. P.W.4 has spoken about the arrest of the accused, the confession made and the recovery of material objects from his possession. P.W.5 is the mother of the deceased. She has stated that she heard about the occurrence and came to the hospital. P.W.6 has spoken about the post-mortem conducted and her final opinion. P.W.7, a Constable, has stated that he handed over the FIR to the learned Magistrate. P.W.8, a Police Constable, has stated that he handed over the material objects to the Forensic Science department, as directed by the investigating officer. P.W.9, Dr.Jaisingh, has stated that he examined the hyoid bone taken from the dead body and found that there was no fracture. P.W.10, a Constable, has stated that he handed over the dead body for post-mortem. P.W.11 has stated that he was also present at the time of occurrence. He has further stated that one person was passing urine, the other one attacked him with iron rod. Immediately, the person, who was passing urine, took out an 'aruval' and cut the other person. This witness has not stated anything incriminating against the accused. Therefore, he was treated as hostile. P.W.12, the Sub Inspector of Police, has spoken about the registration of the case. P.W.13 has spoken about the initial investigation done by him and P.W.14 has spoken about the investigation done and the final report filed by him.

4. When the above materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness on his side. His defence was a total denial. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgement. That is how he is before this Court.

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

6. As we have already narrated, P.W.1, the Village Administrative Officer, has stated that he received intimation from P.W.2 that a dead body of an unidentified person was lying near the compound wall of a school. Immediately he went to the place of occurrence. Though he made extensive enquiry in that locality, neither the identity of the deceased nor the identity of the assailant could be ascertained. Therefore, he made complaint to the police. Thus, until the complaint was made, the identity of the assailant was not known. But, P.W.2 has stated that he knew the accused already. When that be so, he would not have omitted to mention the identity or the name of the accused to P.W.1. But he did not do so. Instead, during investigation, he has stated that a person with certain features, as he mentioned, alone was the one who attacked the deceased. He did not say that it was this accused, who cut the deceased. He has been duly contradicted by his earlier statement in respect of these facts. But curiously, he has stated during evidence that he knew the accused. Had it been true that he knew the accused already, he would not have omitted to mention about the accused to P.W.1. If it is the case that he did not know the accused already, in the absence of Test Identification Parade, it is not possible to give any weight for the identity made for the first time in the Court. There is no other evidence connecting the accused with the crime. For a moment, we are not prepared to say that the evidence of a solitary witness cannot be the foundation for convicting the accused. It is the law that the evidence of a solitary witness, if inspires the fullest confidence of the Court, that by itself can be the sole foundation for conviction, even in the absence of corroboration from any other independent source.

7. In this regard, we may refer to the judgement of the Honourable Supreme Court in Vadivelu Thevar vs. State of Madras (AIR 1957 SC 614), wherein, the Honourable Supreme Court has held that if a witness is wholly believable, there cannot be any difficulty for the Court to act upon the solitary evidence of the said witness and if a witness is fully unbelievable, then undoubtedly, his evidence deserves to be rejected at the outset. According to the Supreme Court, difficulty arises for the Court only in respect of the witness, who is partly believable and partly unbelievable. The Hon'ble Supreme Court has held that if the evidence of the solitary witness is partly believable and partly unbelievable, then as a rule of prudence, the Court should look for corroboration from other independent sources in material particulars and in the absence of any such

corroboration in material particulars, it would not be safe to rely on the witness who could only be partly believed.

8. In the instant case, as we have already stated, there are lot of improbabilities in the evidence of P.W.2 about which we have already discussed. There is no other corroboration coming forward from other independent sources in material particulars. Therefore, in our considered view, P.W.1, assuming that he could be believed, is only partly believable and since there is no corroboration from other independent sources in material particulars, it would not be safe to convict the accused solely on the basis of the evidence of P.W.2. The learned counsel for the appellant would submit that there is material contradiction between the eyewitness account of P.W.2 and the medical evidence also. As rightly pointed out by the learned counsel, P.W.2 has stated that the accused cut the deceased only two times with aruval, whereas, according to the medical evidence there were as many as nine injuries. This contradiction also has not been explained by the prosecution. Thus, we hold that the prosecution has failed to prove the case beyond reasonable doubts against the accused and therefore, the appellant is entitled for acquittal.

9. In the result, this criminal appeal is allowed; the conviction and sentence imposed as against the appellant are set aside. The appellant/accused is acquitted. Fine amount, if any, paid by him shall be refunded to him forthwith. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The I Additional District and
Sessions Judge, Tiruppur.

1.a.Through The Principal District Judge,
Tiruppur.

2.The Inspector of Police,
Avinasipalayam Police Station,
Tiruppur District.

3.The Judicial Magistrate,
Palladam.

4.The Director General of Police,
Mylapore.

5.The Superintendent of Police,
Tiruppur District.

6.The Superintendent,
Central Prison, Coimbatore.

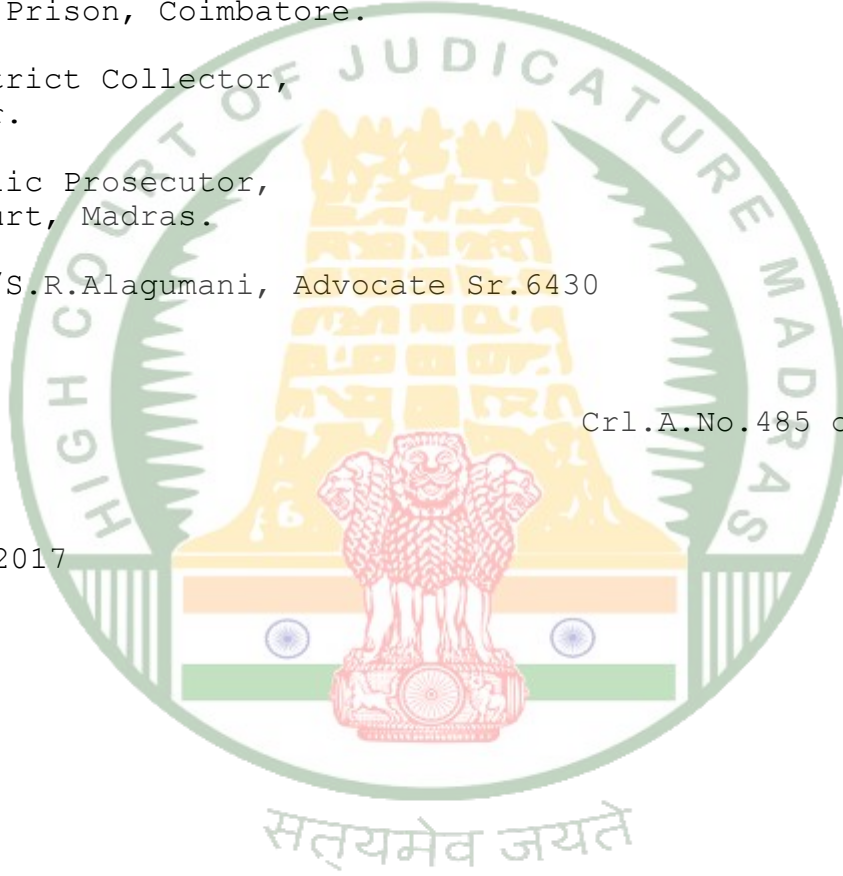
7.The District Collector,
Tiruppur.

8.The Public Prosecutor,
High Court, Madras.

+1cc to M/S.R.Alagumani, Advocate Sr.6430

Crl.A.No.485 of 2016

cp[col]
srg 28/2/2017



WEB COPY