

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 11.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Crl.A.No.703 of 2016 &

Crl.M.P.No.9972 of 2016

Senthil Kumar ... Appellant/Sole Accused

-vs-

State represented by
Inspector of Police,
Vadavalli Police Station,
Coimbatore. ... Respondent
(Crima No.335 of 2012)

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the conviction and sentence imposed on the appellant by the judgment dated 05.08.2016 passed in S.C.No.107 of 2013, on the file of the learned I Additional District and Sessions Judge, Coimbatore.

For Appellant : Mr.C.M.Gunasekaran
for Mr.V.Purushothaman
For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

WEB COPY
J U D G M E N T

[Judgment of the Court was delivered by N.AUTHINATHAN, J.]

The appellant is the sole accused.

2.This appeal is directed against the conviction and sentence imposed in S.C.No.107 of 2013 dated 05.08.2016 on the

file of the learned I Additional District and Sessions Judge, Coimbatore, ordering the accused to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for three months for the offence under Section 392 I.P.C. and also to undergo life imprisonment and to pay a fine of Rs.5,000/- for the offence under Section 302 I.P.C.

3.The accused stood charged on the allegations that at 9.05p.m. on 15.08.2012, at a Channel called Raja Vaikkal, Nagarajapuram, Vedappaty Villllage, he with the intention of committing robbery of jewellery and motorcycle of the deceased, Sasikumar, stabbed the deceased on his neck and stomach with knife, resulting in his death and taken away the jewellery and motorcycle and thereby committed the offence punishable under Sections 392 and 302 I.P.C.

4.Prasannakumari (P.W.3) is the wife of the deceased. Sasikumar, who worked as Manager at R.K.Extrusion at Saravampatty, Coimbatore, run by Balaraman (P.W.4). Govindan Nambiar (P.W.2) is the father of P.W.1. V.S.Rajan (P.W.7) worked as Purchase Manager in the said factory run by P.W.4.

5.On 15.08.2012, at about 7.00p.m., the deceased left his home on his motorcycle bearing Registration No.TN 38 R 4524. V.S.Rajan (P.W.7) visited Perur Pattiswarar Temple with his family for worship. He met the deceased near the Temple. The deceased told him that he came with his friend. The accused and the deceased left that place on the bike. The deceased was then in possession of a mobile phone. His Phone Number was 94433 03057. As the deceased did not return home during night, P.W.3 (wife) phoned to the said number of the deceased but the deceased did not answer the phone. She informed her father P.W.2. P.W.2 came to her house at 6.30a.m. on the next morning.

6.P.W.1, the then Village Administrative Officer of Vedappatty Village and Rajendran (P.W.5), the Village Assistant worked under P.W.1. on 16.08.2012, at about 6.30a.m., received information that a body of a male was lying at Raja Vaikkal at Nagarajapuram, Vedappaty Village. P.W.1 and P.W.5 visited the place of occurrence where the body was lying at about 7.00a.m. P.W.1 then rushed to Vadavalli police station and lodged complaint Ex.P.1.

7.Periyasamy (P.W.15), the then Sub-Inspector of Police attached to Vadavalli Police Station received the complaint and registered a case in Crime No.335 of 2012 for the offences punishable under Section 302 I.P.C. Ex.P.14 is the First Information Report. He sent the First Information Report to the

Judicial Magistrate No.VI, Coimbatore, through Chitra, Grade I, P.C. (P.W.12). He sent the copies to Higher Officials.

8.Baskar, Inspector of Police (P.W.16) took up the case for investigation. He visited the place of occurrence at 9.00a.m. He found a visiting card near the body. Office address of the deceased and the phone number were printed on the visiting card. P.W.16 contacted P.W.4 using the particulars contained in the visiting card. P.W.4 took P.W.1 and P.W.3 to the place of occurrence and they identified the dead body as that of Sasikumar.

9.The Investigating Officer prepared an observation mahazar and a rough sketch in the presence of Nagarajan and Rajendran. He also seized the visiting card (M.O.4); blood stained earth (M.O.11) and sample earth (M.O.12) under the Mahazar Ex.P.4 from the place of occurrence and forwarded the same to the Magistrate Court. He caused photographs of the scene of occurrence to be taken in different dimensions with the help of Photographer (P.W.9). He held inquest over the dead body of the deceased and prepared an inquest report (Ex.P.21). He forwarded the dead body for post mortem.

10.P.W.10, Dr.Saravanapriya, attached to Government Medical College, Coimbatore, conducted autopsy on the body of the deceased at 3.55p.m. on 16.08.2012 and she found the following injuries:-

"1) Stab wound 5x1x5 cm noted over right side neck. The medical sharp end is started from midline, 3cm below the chin. The lateral blunt end is 5 cm below and medial to angle of mandible. The wound passes inwards, backwards, piercing the underlying muscles and piercing at the level of thyro-hyoid membrane and entered into the hyphopharynx.

2) Cut wound 8x1 cm x muscle deep noted over front and left side of neck, 2 cm below the previous wound no.1. On dissection the wound cutting the underlying muscles, vessels and nerves.

3) Cut wound 2x0.5x0.5 cm noted over front and left side of neck, 0.5 cm above the wound no.2. On dissection the wound cutting the underlying muscles, vessels and nerves.

4) Incised wound 3x0.5x1 cm noted over right side of neck. The lateral end is 6 cm below

and medial to the right side ear lobe and medial end is 7 cm right to the midline. On dissection the wound cutting the underlying muscles, vessels and nerves.

5) Stab wound 3x0.5 cm x vessel deep noted over just 1 cm above to right collar bone. The medial sharp end is 1 cm above the suprasternal notch and the lateral blunt end is at the level of medial end of right clavicle. On dissection the wound passes, downwards, medially and piercing the subclavian vein with blood effusion with clot noted over surrounding right lower half of the muscle plane.

6) Stab wound 2x0.5 cm noted over just left to umbilicus. The wound passes, inwards, obliquely and passed up to 3 cm in length.

7) Stab wound 1x0.5x1 cm muscle deep noted over right side of abdomen, the medial end is 3 cm lateral to the midline and the lateral end is 7 cm above the umbilicus.

8) Stab wound 2x0.5x1 cm muscle deep noted over 1 cm just above and medial to the previous wound no 7

9) Stab wound 3x0.5x2 cm noted over left side of the neck. The medial sharp end is 2 cm below and lateral to the left ear lobe and lateral blunt end is 3.5 cm below to the mastoid tip. The wound cutting the underlying muscles and vessels.

10) Abrasion 5x0.5 cm noted over right side of neck."

11. Ex.P.10 is the Post-mortem Certificate. Ex.P.11 is the Viscera Report. Ex.P.12 is the final opinion of the Doctor. Ex.P.13 is the requisition letter given by the learned Judicial Magistrate No.VI, Coimbatore, for chemical examination of the articles seized in the case. Ex.P.17 is the Biological Report. Ex.P.18 is the blood grouping report. Ex.P.19 is the Chemical Report. Ex.P.20 is the Serological report.

12. P.W.10 opined that the deceased would appear to have died of shock and haemorrhage due to stab injury on neck and associated with all other injuries. P.W.10 also opined that the

external injuries would have been caused by stabbing the deceased with knife (M.O.13).

13.The Investigating Officer (P.W.16) examined the witnesses, Sankar, Prasannakumari, Govindan, Balaraman, Rameshbabu, Devaraj, Rajendran and recorded the statement on 18.08.2012. Prasannakumari (P.W.3) the wife of the deceased informed him that the accused on the date of occurrence had worn gold chain, rings and they were missing from the body. Therefore, the Investigating Officer altered the case under Section 302 I.P.C. into one under Sections 302 and 379 I.P.C. and sent a report under Ex.P.16.

14.P.W.6 is the Village Assistant of Vedapatty Village. P.W.6 and his Village Administrative Officer happened to meet the Investigating Officer on 22.08.2012 near Iyyappan Temple on Vadavalli - Maruthamalai road. The Investigating Officer was then engaged in routine vehicle check. The accused was then proceeding on his motorcycle bearing Registration No.TN 66 D 8191. He was intercepted by the Investigating Officer in the presence of P.W.6 and his Village Administrative Officer. The accused behaved in a suspicious manner and gave contradictory statements. When further interrogated, the accused voluntarily gave a statement to the effect if taken he would produce knife and jewellery. He has also stated that he would point out the place where the motorcycle of the deceased was parked. In pursuance of his statement, he took the Investigating Officer and P.W.6 and the Village Administrative Officer to a place near a bridge at Raja Vaikkal and produced knife (M.O.13) which was kept in M.O.14 cover. It was seized the Investigating Officer under a mahazar. Thereafter, the accused took them to his house and produced 3 rings (M.Os.6 to 8) and one chain (M.O.5) and one blood stained shirt (M.O.16). Ex.P.5 is the admissible portion of his statement. Then, the accused took them to Ward No.2 at C.M.C.Hospital and pointed out the place where the motorcycle belonging to the deceased was parked. The Investigating Officer seized the motorcycle under Ex.P.7. The Investigating Officer sent the accused and the articles for remand. The articles seized in this case were subjected to scientific analysis. After completing the investigation, he laid charge sheet against the accused.

15.The prosecution, in support of its case, examined 16 witnesses, marked 21 documents and have also produced 29 Material Objects.

16.The trial Court has accepted the case of the prosecution and come to convict and sentence the accused / appellant as aforesaid. Aggrieved by the order of conviction and sentence, the appellant has come up with this Appeal.

17.The learned counsel for the appellant would submit that there is no evidence to show that the deceased and the accused were friends, that in the First Information Report there was no mention of jewellery, that, the prosecution witnesses are not reliable witnesses and that, there is no independent witness to prove the case of the prosecution. According to him, the trial Court convicted the accused on the basis of insufficient evidence.

18.The learned Additional Public Prosecutor would submit that the deceased was last seen in the company of the accused and that, recovery of the material objects pursuant to his statement of the accused would go to show that the accused had committed the crime.

19.P.W.3 is the wife of the deceased. P.W.2 is the father of P.W.3. P.W.4 was the employer of the deceased. They have identified the dead body of Sasikumar. The dead body was lying at Raja Vaikkal and it was found by Village Administrative Officer (P.W.1) and his assistant P.W.6 at about 7.00a.m. on 16.08.2012. It is seen from the evidence of P.W.3 that the deceased left their home at about 7pm on 15.08.2012 on his bike bearing Registration No.TN 38 R 4524 (M.O.9). It is not in dispute that the deceased was subjected to homicidal violence.

20.P.W.10 conducted the post mortem and gave the final opinion (Ex.P.12). She opined that the deceased would appear to have died of shock and haemorrhage due to stab injury on neck and associated with all other injuries and the death would have occurred 12 to 24 hours prior to autopsy.

21.It is to be seen whether the accused has been responsible in causing the injuries found on the dead body of Sasikumar. It is also to be seen whether he has robbed the jewellery and the motorcycle of the deceased. There is no eye witness account of the occurrence. The prosecution relies on circumstantial evidence to bring home the guilt of the accused.

22.It is the evidence of P.W.4 that the deceased was his employee at his factory during the relevant time. P.W.7 was also an employee of the said factory. P.W.7 and the deceased were colleagues. The evidence of P.W.7 would show that he met the accused at about 8.30 p.m. on 15.08.2012 near Perur Pattiswarar Temple. P.W.7 visited the temple with his family for worship. He would assert that he had an interaction with the deceased. The deceased informed him that he came there along with his friend. It is the definite evidence of P.W.7 that he saw the accused and the deceased leaving from that place on the motorcycle.

23.The learned counsel for the accused would submit that the accused was not known to P.W.7 and no identification parade was conducted and that, therefore, the identification of the accused by P.W.7 for the first time in Court cannot be relied on to connect the accused with the crime. It is true that no identification parade was conducted. However, a close reading of the entire evidence of P.W.7 would reveal that he had an opportunity to see the features of the accused, as he has interacted with the deceased. He has obviously no axe to grind against the accused. There is no ostensible reason as to why he should speak to a thing involving the accused which is untrue. We have therefore no hesitation in accepting the evidence of P.W.7. His evidence would clearly prove that the deceased was last seen in the company of the accused. The criticism of the appellant cannot therefore be countenanced.

24.P.W.3, the wife of the deceased identified the jewellery the deceased had worn at the time of occurrence. The learned counsel for the accused pointed out that there was no mention in the First Information Report of the jewellery. During the course of investigation, it has come to light that the jewellery were missing from the body. The prosecution case cannot be doubted merely because P.W.3 at the time of identification of body omitted to mention the jewellery. The first information was lodged by P.W.1. There is therefore, no substance in the contention of the learned counsel for the appellant.

25.The evidence of P.W.6 Village Assistant would prove that the accused when interrogated has given a voluntary statement and in pursuance of that statement the jewellery, the knife and the motorcycle were recovered. The evidence of the Investigating Officer (P.W.16) regarding the arrest and recovery was amply corroborated by the evidence of P.W.6.

26.The Investigating Officer has categorically stated that the accused had in pursuance of his confession statement taken him and other witnesses to a place near a bridge at Raja Vaikkal and produced knife (M.O.13). The Doctor (P.W.10) has given evidence that the injuries could have been caused by knife (M.O.13). It is important to note that the knife was subjected to chemical analysis. Blood was deducted on the knife.

27.It is also significant to note that in pursuance of the statement given by the accused, he took the Investigating Officer and witnesses to his house and pointed out the place where the jewellery and blood stained shirt were kept. They were recovered under Mahazar (Ex.P.6). Blood was deducted on the

shirt and the blood group matches with that of the deceased as per the Serologist Report (Ex.P.20). The Motorcycle of the deceased was also recovered in pursuance of the information furnished by the accused. The confession made by the accused leading to the discovery and recovery of the jewellery, knife and the motorcycle is a strong circumstance against the accused to show that he is directly involved in the offence.

28. In the light of the above findings, it can be concluded that the commission of murder and robbery in this case form part of one transaction. The stolen property have been recovered on being pointed out by the accused. It is not the case of the accused that the jewellery belonged exclusively to him. He has not been able to offer any explanation as to how he came into possession of them. The ornaments were recovered from his house. The evidence of P.W.3 would show that the ornaments belonged to the deceased. The above circumstances clearly indicate there could not have been any false implication of the accused in this case.

29. The learned counsel for the appellant has pointed out that P.Ws.2, 3, 4 and 7 are interested witnesses and no reliance can be placed on their testimonies. We have already pointed out that we have no hesitation in accepting the evidence of P.W.7. P.Ws.2 to 4 appear to be disinterested witnesses. It is most unlikely that P.Ws.2 to 4 have falsely deposed against the accused in this case. There is nothing on record which suggests that their evidence should be viewed with suspicion. The criticism of the appellant is not well founded.

30. As has already been pointed out that the deceased was seen in the company of accused. The ornaments of the deceased were recovered from the possession of the accused. The blood stained shirt was recovered from his house and the blood group matches with that of the deceased. The knife employed in the commission of offence was also recovered in pursuance of the statement of the accused. The medical evidence given by the Doctor also lends great support to the prosecution case. All these circumstances taken together and cumulatively go a long way to establish the guilt of the accused for the offences charged against him.

31. The trial Court analysed the case in its proper perspective and has not committed any error in coming to the said conclusion. We do not find any valid reason to hold that the trial Court was wrong in coming to the said conclusion. The judgment of the trial Court deserves to be upheld and it is accordingly, upheld.

32.In the result, the Criminal Appeal is dismissed and the conviction and sentence imposed on the appellant by the learned I Additional District and Sessions Judge, Coimbatore in S.C.No.107 of 2013, dated 05.08.2016, are confirmed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The First Additional District and Sessions Judge, Coimbatore.
- 2 do thro The Principal Sessions Judge, Coimbatore
- 3 The Judicial Magistrate No.VI, Coimbatore
- 4 -do thro the Chief Judicial Magistrate, Coimbatore
- 5 The Director General of Police, Mylapore, Chennai 4
- 6 The District Collector, Coimbatore
- 7 The Superintendent, Central Prison, Coimbatore
- 8 The Inspector of Police,
Government of Tamilnadu,
Vadavalli Police Station,
Coimbatore.
- 9 The Public Prosecutor,
High Court, Madras.
- 10 The Section Officer, Criminal Section,
High Court, Madras 104

+1cc to Mr.V. Punghoghaman, Advocate, S.R.No.2698

msm(CO)
md(22/03/2017)

WEB COPY

Cr1.A.No.703 of 2016