

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2017

CORAM

THE HONOURABLE Mr. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

Crl.A.No.813 of 2016

G.P.Babu

... Appellant/Accused

Vs.

State by Inspector of Police,
Valasarawakkam Police Station,
Valasarawakkam
Chennai.

(Crime No.615 of 2013)

Respondent

Prayer : Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the records in S.C.No.114 of 2014 on the file of the learned III Additional District and Sessions Judge, Tiruvallur at Poonamallee and set aside the order dated 01.09.2016.

For Appellant :Mr.R.Karthikeyan
for Mr.M.Arun Kumar

For Respondent :Mr.P.Govindarajan
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court delivered by N.SESHASAYEE, J)

Appellant, who has been convicted for an offence under Sec. 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- and in default to undergo rigorous imprisonment for two months challenged in S.C.No.114 of 2014 by the learned III Additional Sessions Judge, Thiruvallur, challenges both conviction and sentence imposed on him in this appeal.

2. It is a case of patricide. The case of the prosecution is that certain Paramasivam who was slain in the occurrence involved in this case, was married twice. Accused is born to him through his second wife. Through his first wife he had six

children, of who P.W.1 Anbazhagan is one. There were some dispute between the appellant and his father over some property issue and the former used to quarrel with the latter. While so, on 17-05-2013, close to midnight at about 11.45 p.m., P.W.1 had gone to visit his father along with one Pattu (D.W.1), as he would routinely do. He saw the appellant quarelling with his father. P.W.1 would then intervene but the appellant pushed him aside. Thereafter, appellant held his father's neck and smashed him on a a raised verandah, as a result of which, Paramasivam suffered blood injury to his chin. The appellant again held the shirt of his father and smashed his head repeatedly on the said verandah. Now, Paramasivam became unconscious. There was blood all over. P.W.1 rushed his father to a nearby M/s Rakshitha Hospital, but they referred the patient to Ramachandra Hospital, Porur. On the way Paramasivam died. Subsequently, P.W.1 went to police station and preferred Ex.P-1 complaint based on which Ext.P-2 FIR was registered. Following this P.W.17, the Inspector of Police, who was in charge of the police station that day, took up the investigation, visited the scene of occurrence, prepared Ext.P-3 observation mahazar in the presence of P.W.7 and one Thangaraj and also prepared Ex.P15 rough sketch. He also collected blood stained sand and sample sand under Ext.P4 mahazar. Thereafter, he conducted inquest on the slain body and prepared Ext.P16 inquest report and then forwarded the body through P.W.13 for postmortem. After the postmortem, P.W.13 entrusted M.O.3 to M.O.5, all of which were dress materials that was removed from the dead body which the later seized under Ext.P.17, Form-95. Later in the day, at about 3.20 p.m. in the afternoon on 18.5.2013, P.W.17 arrested the appellant and in the course of interrogation he also seized M.O.7, a blood stained jeans pant that the accused had handed over to him Vide Ext.P.19. During postmortem P.W.8 had collected viscera which was forwarded for chemical analysis. P.W.10, Scientific Officer Vide Ext.P-8 found no poison in the visceral parts, consequent to which P.W.8 doctor has given his final opinion that Paramasivam had died due to the injuries he suffered. Concluding the investigation, P.W.18 laid his final report.

3. On committal the Sessions Court framed charges under Section 302 IPC against the appellant. During trial the prosecution had examined 18 witnesses and produced 19 exhibits and 7 material objects. On assessment of evidence before it, the learned Sessions Judge found the appellant guilty of the offence charged with and sentenced him as above.

4. It is a case where no weapon was used and the prosecution relies solely on P.W.1, the sole eye witness to the occurrence. The evidence of P.W.1 was consistent on all material aspects to

the case that the prosecution has projected. Here the learned counsel has raised the following arguments to prick holes on the reliability/believability of the evidence that prosecution has provided. He argued :

- There is a contradiction between the nature of injuries which P.W.17 had noted in Ext.P16 inquest report and the one found by P.W.8 doctor. In Ext.P16, P.W.17 has noted a bloody injury on the back of the head of the victim besides other injuries, whereas P.W.8 had noted that the victim had died due to an injury of the dimensions 13x11 cms on the middle of his head. Neither the sole eye witness P.W.1 nor P.W.17 referred to this specific injury which P.W.8 has considered as fatal.
- P.W.8 has noted four injuries of which, some are abrasions. P.W.8 has deposed that all these injuries could not be inflicted simultaneously. This would imply there should be more than one person who might have involved in the occurrence.
- P.W.1 is admittedly the son of Paramasivam's first wife, prosecution did not attempt to examine any independent witness to occurrence especially when the occurrence had taken place in an open place and abutting the public road.
- According to P.W.17, Sub Inspector of Police, the police station is roughly about one and a half kilometers from scene of occurrence, whereas P.W.1 has preferred the complaint only at 4.00 am on the next day morning. This must be read along with the admission of P.W.1 when he says that he went to prefer a complaint the accused was already in the police station. This belies the theory that P.W.17 has put forward about the time and place of arrest of the appellant.
- According to P.W.1, he has gone to see his father along with one Pattu and has also candidly testified that when he intervened to pacify the appellant shortly prior to the occurrence, the appellant had pushed him aside and it was this Pattu who had helped him to get on to his feet. Pattu, therefore is the only independent witness to the alleged occurrence, but he was not examined by the prosecution. He however was examined as defence witness as D.W.1. and denied as having accompanied P.W.1 on the fateful night.
- According to P.W.1, soon after occurrence he had taken his father to one Rakshitha Hospital. If only it were true,

that would have been recorded by the CCTV camera of the hospital but this was not seized by the investigation agency and produced.

5. A combined reading of the argument advanced by the appellant may prima facie indicate that there exists some inconsistency in the evidence made available by the prosecution to prove the charge against the appellant. However, how material are the points so raised and how efficacious are they to taint the evidence on record with suspicion, is now required to be considered:

- First the defence takes exception to the non-examination of independent witness Pattu. It is true P.W.1 had referred to this Pattu as having accompanied him when he chose to visit his father at about the time when the occurrence took place both in his Ext.P.1 complaint as well as in the evidence he adduced during trial. It is also true that the prosecution did not examine this Pattu. If P.W.1's evidence is taken as a stand-alone evidence in this case there is a possibility for the defence to consider him as a motivated as he is a consanguine brother of the appellant and consequently non-examination of Pattu might have become material to its cause. But what might have been an advantage accrued in aid of the defence in not examining Pattu was lost to it when it directed its strategy towards examining Pattu as D.W.1. He now chose to remain neutral. Merely because Pattu opted to say that he did not accompany P.W.1, it cannot be held that P.W.1 himself has not gone to see his father shortly prior to the time of occurrence.
- As to the number of injuries which P.W.8 had noted on the dead body and the alleged inconsistency it said to bear to the fatal injury omitted to be mentioned in the inquest report is concerned, a doctor's evidence is a better evidence and a omission to note an injury by the investigating officer during inquest cannot be termed material. In the same token it may be said that the testimony of P.W.8 that both the injuries in the head and the abrasions in the leg could not be caused simultaneously too does not necessarily imply that more than one person might have attacked Paramasivam simultaneously. The doctor's testimony can also mean that the abrasions might have been caused even successively but in the course of the same transaction.
- As to the non-examination of any independent witness is concerned it was not even suggested to P.W.1 during his cross-examination if there were any other person available

on the road and at about the scene of occurrence when the occurrence took place. On the contrary P.W.1 has explained during the cross examination that there were shops around the scene of occurrence but they would all be closed by about 8.00 pm. It should not be forgotten that the occurrence had taken place at about midnight.

- As to non-production of CCTV footage of Rakshitha Hospital is concerned, the point is whether its absence leads to any suspicion as to the veracity of the testimony of P.W.1. At the best, in the context of the case, CCTV footage can only be a corroborative piece of evidence and no more.

6. A complete reading of the entire evidence and material records made available by the prosecution categorically points towards the involvement of the appellant in the crime. However, it does not appear to this Court as a case of premeditated murder. Apparently there existed some difference of opinion between the victim of the crime and the perpetrator of the crime. The manner in which the prosecution has projected the case and attempted to prove the charge indicates that there was a grave and sudden provocation in the appellant that had driven him to his madness and induced him to commit a crime that he did commit. This Court, therefore finds the offence falls under Sec. 304(ii) IPC.

7. In the result, the criminal appeal is partly allowed and the judgment convicting the appellant and the sentence imposed on him under Section 302 IPC is set aside and instead, he is convicted under Section 304(ii) IPC and the appellant is directed to undergo rigorous imprisonment for five years with a fine of Rs.1,000/-, in default to undergo a rigorous imprisonment for a further period of one month. The period of sentence already undergone by appellant/accused shall be set off under Section 428 Cr.P.C.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

1. The III Additional district and Sessions Judge,
Tiruvallur at Poonamallee.
2. Do Thro The Principal Sessions Judge,
Poonamallee.
3. The Judicial Magistrate No.I,
Poonamallee.
4. The Chief Judicial Magistrate,
Poonamallee.
5. The Inspector of Police,
Valasarawakkam Police Station,
Valasarawakkam, Chennai.
6. The Superintendent,
Central Prison,
Puzhal, Chennai.
(In duplicate for Communication to Detenu)
7. The Director General of Police,
Mylapore, Chennai.
8. The District collector,
Chennai.
9. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.M.Arunkumar, Advocate, S.R.No.9542

SAI (Co)
CS/24/05/17

Cr1.A.No.813 of 2016

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