

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM:

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

Criminal Appeal No.846 of 2016

Kumar

.. Appellant

Vs

The State rep. By its
The Inspector of Police,
Cholatharam Police Station,
Srimusnam Taluk,
Cuddalore District.

..

Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
against the conviction and sentence passed in S.C.No.23 of
2015 dated 04.02.2016 by the Hon'ble II District Additional
and Sessions Judge, Chidambaram.

For Appellant : Mr.G.Ganapathy
for Mr.M.Senthilkumar
For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGEMENT

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

The appellant is the sole accused in S.C.No.23 of 2015 on
the file of the learned Ii Additional District & Sessions
Judge, Chidambaram. He stood charged for offence under Section
302 I.P.C. By judgment dated 04.02.2016, the trial Court
convicted and sentenced him to undergo imprisonment for life
and to pay a fine of Rs.1,000/- in default to under go simple
imprisonment for three months for the offence under Section
302 I.P.C. Challenging the said conviction and sentence, the
appellant/accused is before this Court with this Criminal
Appeal.

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

The deceased in this case was one Mr.Krishnamurthy. He
was residing at Keezhpatti Village, Palayamkottai. The accused

and his family members were also residing in the same village. The accused has got a brother by name Mr. Ravishankar and he is a drunkard. He had taken the movable properties from the house of the accused and sold the same to the deceased. One week before the occurrence, in the same fashion, Mr. Ravishankar had sold the Television and iron pipes belonging to the family of the accused to the deceased. The accused questioned the authority of the deceased to purchase the same from his drunkard brother. This resulted in a quarrel. This is stated to be the motive for the occurrence. It is further alleged that on 09.06.2014, at 10.00 pm, the accused had gone to the house of the deceased. The deceased alone was there. The accused questioned the deceased as to why he had purchased the movable properties from his brother. In the said quarrel, it is stated that the accused took out a knife and stabbed the deceased on various parts of the body and caused his death. The occurrence was not witnessed by any one.

3.P.W.1, the son of the deceased came to know that the dead body of the deceased was lying in the house around 4.30 am on 10.06.2014. He had suspicion that the deceased would have been killed only by the accused. Therefore, he went to Shozhatharam Police Station and made a complaint at 6.00 am on 10.06.2014. In the complaint, he mentioned the name of the accused as the 'suspected assailant'. Based on the same, a case was registered in Crime No.129/2014 for offence under Section 302 I.P.C. Ex.P.1 is the complaint and Ex.P.12 is the F.I.R. The Sub Inspector of Police - P.W.17 who registered the case forwarded Exs.P.1 and P.12 to Court, which were received by the learned Judicial Magistrate at 11.30 am on 10.06.2014.

4.The case was taken up for investigation by P.W.18, the then Inspector of Police. He went to the place of occurrence; prepared an observation mahazar; a rough sketch in the presence of witnesses and he also recovered the blood stained earth and the sample earth from the place of occurrence. Then, he conducted inquest on the body of the deceased and sent the same for post mortem.

5.P.W.14-Dr.Lakshmi, conducted autopsy on the body of the deceased and found the following injuries:-

- "1.Cut injury behind right ear
12x2x2cm;
- 2.Cut injury below the 1st injury
9x1.5cm exposure of blood vessels seened
and
- 3.Cut injury of lower lip 4cm x 2cm
clotted blood present inside the mouth."

Ex.P.11 is the post mortem certificate. She gave opinion that the injuries found on the dead body could have been caused by a weapon like knife (M.O.4). She further opined that the death

of the deceased was due to shock and hemorrhage due to the multiple injuries found on the dead body and the death would have occurred around 12 to 18 hours prior to the post mortem.

6.P.W.18 during the course of investigation, arrested the accused at Keezhpathi Sandaithopu at 11.30 am on 10.06.2014, in the presence of witnesses. On such arrest, the accused gave a voluntary confession in which, he disclosed the place where he had hidden the knife (M.O.4). P.W.18 recovered the same under a mahazar. On returning to the police Station, he handed over the material objects to Court and remanded the accused to Court for judicial remand. At his request, the material objects were sent for chemical examination. The report revealed that there were human blood stains on all the material objects including the knife (M.O.4). On completing investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed a lone charge for offence under Section 302 I.P.C., against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 18 witnesses were examined and 15 documents were exhibited, besides 4 Material Objects.

8. Out of the said witnesses, P.W.1 is the son of the deceased. He has stated about the motive and he has further stated that he found the dead body of the deceased at 4.30 am on 10.06.2014 and then, he made the present complaint to the Police. P.Ws.2 to 7 have turned hostile and they have not supported the case of the prosecution in any manner. P.Ws.8 & 9 (wives of the deceased) have stated that they found the dead body of the deceased and they have not stated anything incriminating against the accused. P.W.10, the then Village Administrative Officer has stated about the preparation of observation mahazar; rough sketch; arrest of the accused and the consequential recovery of M.O.4 on the basis of the confession given by the accused. P.W.11 has stated that he heard about the occurrence. P.W.12 has turned hostile and he has not supported the case the prosecution in any manner. P.W.13 is the landlord of the house of the deceased. But, he has not spoken anything about the accused. P.W.14 has spoken about the post mortem conducted by her on the dead body of the deceased and her final opinion regarding the cause of death. P.W.15, a Constable has stated that he handed over the dead body of the deceased to the Doctor for the purpose of conducting post mortem. P.W.16, a Forensic Expert, has stated that he examined the internal organs of the deceased and found that there was no alcohol or poison. P.W.17 has spoken about the registration of the case and P.W.18 has spoken about the investigation done and the final report filed.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor did he mark any document on his side. His defence was a total

denial.

10. Having considered all the above, the trial Court found the accused guilty under section 302 I.P.C., and sentenced him to undergo imprisonment for life. Aggrieved over the same, the appellant is before this Court with this appeal.

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

12. As we have already narrated, this is a case of no evidence against the accused. There is no eye witness to the occurrence. There is no circumstance against the accused except, proving the motive and the recovery of M.O.4 (knife). The recovery of M.O.4 - knife is not incriminating because, the connection between the 'knife' and the 'crime' has not been proved by the prosecution. It needs to be stated that it is not every fact that is discovered out of the disclosure statement of the accused that makes the statement admissible in evidence, as provided under Section 27 of the Indian Evidence Act. In law, it is only the discovery of a relevant fact which makes disclosure statement admissible. The said relevance is to be therefore, proved by the prosecution. In this case, the nexus between M.O.4 (Knife) and the crime has not been established and therefore, recovery of M.O.4 (knife) from the accused is of no consequence.

13. Apart from that, there is no other evidence against the accused. But, the trial Court has convicted the accused only on mere surmise. The trial Court has even gone to the extent of relying upon the observations made in the inquest report. It is needles to point out that the averments mentioned in the inquest report are not admissible in evidence as they are only the inferences of the Investigating Officer and the Panchayatdars.

14. In view of the foregoing discussions, we hold that the prosecution has failed to prove the case beyond reasonable doubts. As it has been guaranteed under Article 21 of the Constitution of India, life and liberty of an individual cannot be deprived of without following the procedure established by law. The Court's of law, cannot convict an accused on mere surmises and conjectures. Suspicion, however strong it may be, cannot take the place of proof. In this case, the prosecution has not even able to succeed in creating a very strong suspicion against the accused/appellant. For these reasons, we hold that the conviction and sentence imposed on the appellant are not sustainable and hence, the same are liable to be set aside.

15. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned II Additional District & Sessions Judge,

Chidambaram in S.C.No.23 of 2015, dated 04.02.2016, are set aside and the appellant/accused is acquitted. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the appellant/accused, shall stand discharged.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

- 1.The II Additional District and Sessions Judge, Chidambaram.
 - 2.The Principal Sessions Judge, Cuddalore.
 - 3.do thro'The Chief Judicial Magistrate, Chidambaram, Cuddalore.
 - 4.The District Munsif cum Judicial Magistrate, Kattumannarkoil.
 - 5.The District Collector, Cuddalore.
 - 6.The Director general of Police, Mylapore, Chennai.
 - 7.The Superintendent, Central Prison, Trichy.
 - 8.The Inspector of Police, Cholatharam Police Station, Srimmsnam Taluk, Cuddalore.
 - 9.The Public Prosecutor, High Court, Madras.
- +1 cc to Mr.M.Senthilkumar, advocate, sr.7066.

ss(co)
krd 22/3

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