

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.871 of 2016

and

CrI.M.P.No.14148 of 2016

1. Siranjeevi (A1)
2. Vijayakanth (A2)
3. Kaliyappan (A3)
4. Prakash (A5) .. Appellants/Accused

- Vs -

State rep by the Inspector of Police,
T-7, Aavadi Tank Factory Police Station,
Avadi, Chennai.
(Cr.No.119 of 2011) .. Respondent/Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned II Additional Sessions Judge, Thiruvallur at Poonamallee in S.C.No.75 of 2014 dated 06.10.2014.

For Appellants : Mr.R.C.Paul Kanagaraj
For Respondent : Mr.P.Govindaraj
Additional Public Prosecutor

J U D G M E N T

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

The appellants are accused 1, 2, 3 and 5 in S.C.No.75 of 2014 on the file of the learned II Additional Sessions Judge, Thiruvallur at Poonamallee. The 4th accused was one Mr.Jayaganesh. The trial Court framed charges under Section 302 r/w 34 I.P.C. against the accused 1 to 3 and 5 and under Section 302 r/w 109 I.P.C. against the 4th accused. By judgment dated 06.10.2014, the trial Court acquitted the 4th accused, however convicted these appellants under Section 302 r/w 34 I.P.C. and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for six months. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

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

2.1. The deceased in this case was one Mr.Baskaran. He was the nephew of the 4th accused. For quite some time, he was an auto driver by profession. Later on, he started doing fish business. He used to go to the house of the 4th accused and demand money for his personal expenses. The wife of the 4th accused is the sister of the deceased. The 4th accused and his wife were not happy with the accused. This is stated to be the motive for the entire occurrence. There were frequent quarrels between the 4th accused and the deceased. Because of the same, it is alleged that the 4th accused instigated accused 1 to 3 and 5 / the appellants herein, to do away with the deceased.

2.2. It is the further case of the prosecution that on 28.04.2011 around 07.30 p.m., the deceased left his house in his motorcycle. P.W.2 his wife was under the impression that he was going out in connection with his fish business. It is further alleged that when he was passing through a temple at Vallivelavan Nagar, these appellants were already standing there. They talked to the deceased for some time. Then, the deceased left his motorcycle there and went along with these appellants in an auto and thereafter, he did not return. The dead body of the deceased was found in the graveyard at Puthur village on 29.04.2011 around 10.00 a.m. It is alleged that these appellants killed him and threw his dead body in the graveyard. The occurrence was not witnessed by anyone.

2.3. P.W.1 the maternal uncle of the deceased after having seen the dead body of the deceased went to the police station and made a complaint on 29.04.2011 at 01.30 p.m. P.W.15, the Inspector of Police, registered a case in Crime No.119 of 2011 under Section 302 I.P.C. against these appellants. Ex.P1 is the complaint and Ex.P24 is the F.I.R. He forwarded both the documents to Court which was received by the learned Magistrate at 07.00 p.m. on 29.04.2011.

2.4. Taking the case for investigation, P.W.15 went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of witnesses. He recovered bloodstained earth and sample earth from the place of occurrence. He held inquest on the body of the deceased and forwarded the same for postmortem.

2.5. P.W.14 Dr.Harry Santha Seelan conducted autopsy on the body of the deceased on 30.04.2011 at 12.40 a.m. He found the following injuries"

"Injuries: (1) 10cm x 2 cm abrasion over left side of face. (2) 13 cm x 2 cm abrasion over left lower chest. (3) 11 cm x 4.3 cm abrasion over left groin. (4) 10 cm x 4 cm contusion over right cheek. (5) 3 x 4 cm contusion over right forehead. (6) 8 x

2 cm contusion over right groin. (7) 10 x 4.2 x muscle deep laceration over right lower neck horizontally placed. (8) 3 x 2.1 x muscle deep laceration over left cheek horizontally. (9) 6x2 cm x muscle deep laceration below the injury No.8. (10) Lacerated injury of dimension 5cm x 2 cm x bone deep over left parietal area. (11) Lacerated injury of dimension 5 ½ x 2 cm x bone deep over left temporal region behind the left ear. (12) Puncture wound over left upper chest 1 cm x ½ cm x muscle deep.

On dissection of head extensive sub scalp haematoma depressed comminuted fracture of parietal temporal bones with torn membranes and subdural sub arachnoid hemorrhage next to right temporal parietal lobe is contused. Hyoid bone is intact. Larynx and trachea intact. Heart is normal in size. C/s fluid blood in all chambers. Stomach is empty. Liver spleen and both kidneys normal in size c/s pale. Intestines contains brownish chyme. Bladder is empty. Spine and pelvis intact and normal."

Ex.P22 is the postmortem certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage due to multiple injuries found on the body of the deceased.

2.6. P.W.15 during the course of investigation, he collected the clothes from the body of the deceased. He arrested the accused 1 to 3 on 03.05.2011. On such arrest, all the three accused gave independent voluntarily confession one after the other. In pursuance of the said disclosure statements, the first accused took the police and the witnesses to the place of hideout and produced a broken brandy bottle (M.O.7). The third accused, in pursuance of the disclosure statement produced a broken brandy bottle (M.O.8) from the place of hideout. The second accused in pursuance of his disclosure statement produced bloodstained stones (M.O.9), P.W.15 recovered the same.

2.7. On returning to the police station, he forwarded all the accused to the Court for judicial remand. On 04.05.2011, he arrested the 4th accused in the presence of witnesses and forwarded him to Court for judicial remand. The 5th accused surrendered before the Court. On 17.05.2011, he took him into police custody on the orders of the learned Magistrate. On 18.05.2011 at 08.00 a.m. in the presence of witnesses, he made a voluntary confession, in which, he disclosed the place where he had hidden an auto bearing registration No.TN-02-AM-9749 (M.O.11). He recovered the same. Then, he forwarded the 5th accused to Court for judicial remand. At his request, material objects were sent for chemical examination, which

revealed that there were human bloodstains on the clothes recovered from the body of the deceased. On completing the investigation, he filed chargesheet against the accused.

2.8. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined, 39 documents and 11 material objects were marked.

2.9. Out of the said witnesses, P.W.1 the maternal uncle of the deceased has stated that on 28.04.2011 around 07.00 p.m. when he was standing near a temple in Vallivelavan Nagar, the deceased came in his motorcycle. These appellants were also standing there. They talked to the deceased and then all of them went in an auto. The motorcycle was left behind by the deceased near the temple. On the next day, i.e., on 29.04.2011 at 10.00 a.m. the dead body of the deceased was found, he has stated. P.W.2 the wife of the deceased has stated that around 07.30 p.m. on 28.04.2011, her husband (deceased) went out of the house in his motorcycle. She was under the impression that he was going out in connection with his fish business. Thereafter, he did not return. On 29.04.2011, according to her, at 08.30 a.m. the dead body of the deceased was found in the graveyard.

2.10. P.W.3 is the mother of the deceased. She has not stated anything incriminating against the accused. She has stated that P.W.1 told her that these four appellants went along with the deceased in an auto. P.W.4 is a close relative of the deceased. The deceased was the brother-in-law of P.W.2. He has also stated that around 07.30 p.m. on 28.04.2011, when he was standing near the temple, he found the deceased going along with these appellants in an auto. P.W.5 has also stated that he witnessed the deceased going along with these appellants.

2.11. P.Ws.6 to 12 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.13 a constable has stated that he took the dead body of the deceased from the place of occurrence and handed over the same to the doctor for postmortem as directed by P.W.15. P.W.14 the doctor who conducted autopsy on the body of the deceased has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.15 has spoken about the registration of the case, investigation done and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However they did not choose to examine anyone nor mark any documents. Having considered all the above the trial Court convicted these appellants alone as detailed in the first paragraph of this judgment and that is how the appellants are before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellants, the learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

5. It is a case based on circumstantial evidence. The only circumstance relied on by the prosecution is that the deceased went along with these appellants in an auto around 07.30 p.m. on 28.04.2011. This has been spoken by P.Ws.1, 4 and 5. The learned counsel for the appellants would submit that these witnesses cannot be believed. We find some force in the said argument. They are not strangers. They were all closely related to the deceased. Had it been true that they had seen the deceased going along with these accused, complaint in this case should have been made without any delay. It is the positive case of the prosecution that the dead body of the deceased was found at 08.30 a.m. on 29.04.2011. But the complaint came to be registered only at 01.30 p.m. and the F.I.R. reached the hands of the learned Magistrate at 07.00 p.m. Had it been true that P.Ws.1, 4 and 5 had seen the deceased going along with these accused, the complaint would have been made immediately to the police. The distance between the police station and the place of occurrence is hardly 12 kilometers. Absolutely there is no explanation for this delay.

6. The learned counsel for the appellants would further submit that the F.I.R. would not have been registered at 01.30 p.m. as it is projected by the prosecution. In this argument also we find force. Had it been true that the case was registered at 01.30 p.m., the same would not be taken so much of time for the F.I.R. reaching the hands of the learned Magistrate. As we have already pointed out, the F.I.R. reached the learned Magistrate only at 07.00 p.m. absolutely, there is no explanation for this delay also. Thus, the delay in preferring the complaint and the delay in forwarding the F.I.R. to the Court which remains unexplained would create enormous doubt in the veracity of P.Ws.1, 4 and 5. Assuming that some credit could be given to the evidences of P.Ws.1, 4 and 5, that by itself would not go to conclusively prove that these accused were the perpetrators of the crime. The dead body of the deceased was not found anywhere near the place where the deceased was found in the company of these accused. The dead body was found in a graveyard at a far of place, that to, on the next day. Therefore, solely based on the above only circumstance it would not be safe to convict these accused more particularly when there is enormous doubt in the F.I.R.

7. Further, motive for the occurrence also has not been established by the prosecution. The motive is between the deceased and the 4th accused. But the 4th accused has been acquitted. In the absence of any motive being proved, only based on the lone circumstance, that the deceased was found in

the company of these accused that too at a far of place from where the dead body was found, in our considered view, we cannot safely conclude that these accused had committed the crime. At any rate, we cannot afford to convict the accused on mere surmise or suspicion, but the trial Court had convicted the accused solely on the basis of the above circumstance, which cannot be sustained. In such view of the matter, we hold that the prosecution has not proved the case beyond reasonable doubt. Therefore, the appellants are entitled for acquittal.

8. In the result,

(i) the appeal is allowed and the conviction and sentence imposed on the appellants by the learned II Additional Sessions Judge, Thiruvallur at Poonamallee in S.C.No.75 of 2014 dated 06.10.2014 is set aside and the appellants are acquitted.

(ii) The fine amount, if any paid, shall be refunded to them.

(iii) Since the appellants / accused 1 to 3 and 5 are in jail, they are directed to be set at liberty forthwith, unless their detention is required in connection with any other case. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Sessions Judge,
Thiruvallur at Poonamallee.
2. -do- Through The Principal Sessions Judge,
Thiruvallur.
3. The Judicial Magistrate, Anbattur.
4. -do- Through Chief Judicial Magistrate,
Tiruvallaur.
5. The Superintendent Central Prison,
Puzhal, Chennai.

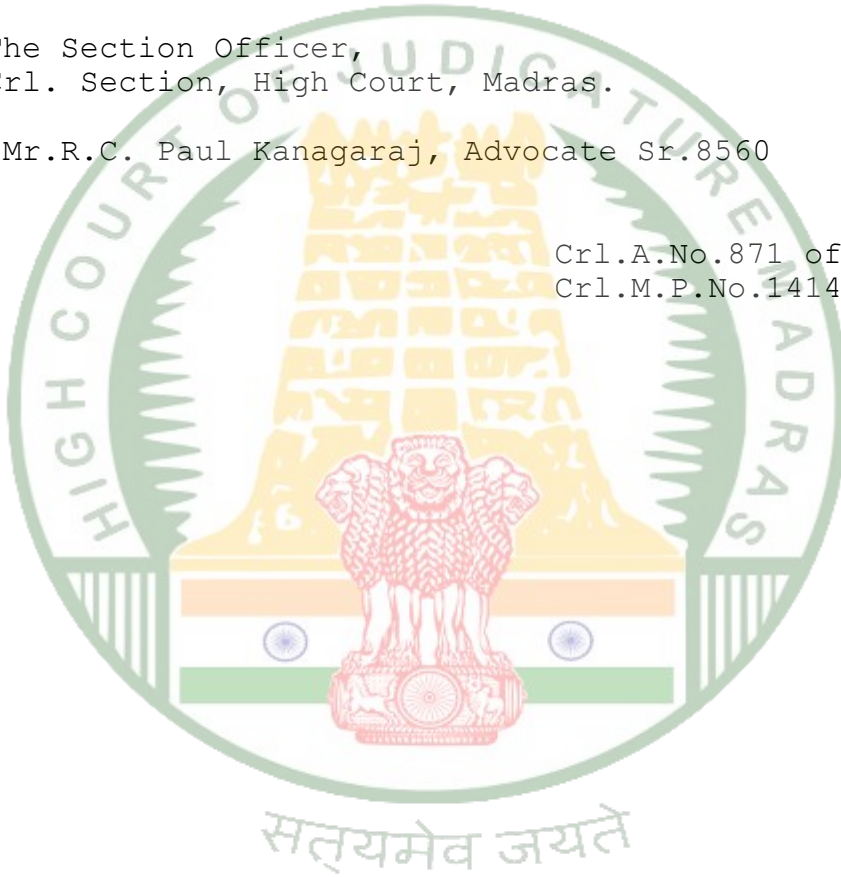
6. The District Collector, Tiruvallur.
7. The Director General of Police,
Mylapore, Chennai-4.
8. The Inspector of Police,
T-7, Aavadi Tank Factory Police Station,
Avadi, Chennai.
9. The Public Prosecutor,
Madras High Court.

Copy to: The Section Officer,
Crl. Section, High Court, Madras.

+ 1 cc to Mr.R.C. Paul Kanagaraj, Advocate Sr.8560

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Crl.M.P.No.14148 of 2016

RJ(CO)
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