

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.815 of 2008

Aattu Kannan @ Chinnasamy

..Appellant/Accus

Vs

State rep. By
Inspector of Police,
Komaralingam Police Station,
Coimbatore District.

..Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to allow the appeal and set aside the conviction and sentence imposed by the judgment dated 12.06.2008 in S.C.No.103 of 2007 passed by the I Additional District and Sessions Court, Coimbatore.

For Appellant : Mr.B.Vijayakumar

For Respondent : Mrs.M.F.Shabana,

Gov. Adv. (Crl. Side)

JUDGEMENT

The sole accused, in S.C.No.103 of 2007 on the file of the I Additional District and Sessions Court, Coimbatore, is the appellant herein. He stood charged for an offence under Section 302 IPC. By judgment dated 12.06.2008, the trial court convicted the accused under Section 304(ii) IPC and sentenced him to undergo rigorous imprisonment for 5 years. Challenging the above 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, one Subash Bose, is the son of P.W.1. On 04.12.2006, at about 7.00 a.m., one Krishnan, brother-in-law of the accused, took the deceased from his house for some menial work. Subsequently, at about 8.00 p.m., P.w.1 was waiting in the bus-stop at Kolumam. At that time, he saw the deceased standing near the bus-stop and the accused demanded money from the deceased and there was a quarrel between them. When the deceased refused to give

money to the accused, he attacked the deceased with knife on his left thigh. Then, the deceased started running, but the accused chased him. P.W.1 and P.W.2 also followed them to save the deceased, but the deceased fell down. Immediately, both P.Ws.1 and 2 along with, one Palanivelu, took the deceased to the Government hospital, Udumalaipettai, where he was declared 'brought dead'. Then, P.W.1 went to the police station and lodged a complaint.

3. P.W.7, Sub-Inspector of Police, attached to the respondent police, on receipt of the complaint, registered a case in Crime no.140 of 2006 for an offence under Section 302 IPC and prepared First Information Report, Ex.P.10 and he sent the same to the jurisdiction Magistrate and also to his higher officials.

4. P.W.8, Inspector of Police, on receipt of the first Information Report, commenced investigation and proceeded to the scene of occurrence, on 05.12.2006, at about 1.30 a.m., since it was dark, he returned to the police station and at about 6.00 a.m., once again, he visited the scene of occurrence, where he prepared an Observation Mahazar, Ex.P.4 and drew a Rough Sketch, Ex.P.11, in the presence of the witnesses. He also seized the bloodstained soil (M.O.2) and sample soil (M.O.3) from the scene of occurrence. Then, he went to the Government Hospital, Udumalpet, where he conducted inquest on the dead body of the deceased in the presence of Panchayathars and prepared Inquest Report, Ex.P.12. Thereafter, he sent a memo for conducting post-mortem/autopsy and recorded the statements of the other witnesses.

5. In the meantime, on 08.12.2006, at about 12.30 p.m., the accused appeared before P.W.6 and voluntarily, gave an extra-judicial confession, Ex.P.6 and P.W.6, produced the accused before P.W.8, along with his Report, Ex.P.7.

6. P.W.8, arrested the accused and on such arrest, the accused voluntarily gave a confession and based on his disclosure statement, he recovered a lungi (M.O.4), brief (M.O.5), worn by the accused and a knife (M.O.1).

7. P.W.5, Doctor, working in the Government Hospital, Udumalpet, on 05.12.2006, at about 12.45 p.m., conducted postmortem/autopsy on the dead body of the deceased, and found the following injuries:-

" External injuries:- 1) A horizontal linear cut in the anterior surface of left thigh 10 cm below the anterior iliac spine of length 5 cm base 3mm wide incised wound. On dissecting, one wound crack proceeds above and medially, vastus and adductor muscles with cut. A large blood clot weighings 750 gms about present in one wound. feodal artery, veins,

nerves and pujunda... artery found cut . The depth of the wound is 15 cms. The wound end in one bone. Bone intact. Abrasion front of neck.
"

Ex.P.3 is the Postmortem certificate. He was of the opinion that the deceased appeared to have died of due to shock and hemorrhage. P.W.8, recorded the statements of the witnesses and after completing investigation, he laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed a lone charge under Section 302 IPC and the accused denied the same. In order to prove its case , on the side of the prosecution, as many as 8 witnesses were examined and 15 documents were exhibited, besides 6 material objects.

9. Out of the witness examined, P.W.1, is the father of the deceased and he is also an eye-witness to the occurrence. According to him, on the date of occurrence, at about 7.00 a.m., the brother-in-law of the accused, took the deceased for some menial work. Thereafter, at 8.00 p.m., when he was waiting in the bus-stop at Kolumam village, he saw the deceased standing there. At that time, the accused demanded money from him and when he refused , the accused attacked him with knife on his left thigh and the deceased was trying to escape and started running, and the accused chased him. P.W.1, along with P.W.2, also followed the deceased and raising alarm. Then, the accused ran away and the deceased fell down at some distance. Thereafter, they took the deceased to the Government Hospital, Udumalaipet, where he was 'declared dead'.

10. P.W.2, is another eye-witness to the occurrence and he is maternal uncle of the deceased. According to him, at the time of occurrence, he went to Kolumam for purchase some materials. At that time, he saw the deceased standing there in the bus-stand and the accused demanded money from the deceased, when the deceased refused, the accused quarreled with him and attacked the deceased with knife on his left thigh and then, P.W.2, along with another person, took him to the hospital. P.W.3 is a person running a shop at Karadikottam village. According to P.W.3, on 04.12.2006, at about 7.30 am, the accused enquired him about the whereabouts of the deceased. P.W.4 is the brother of the deceased. According to him, his mother told him that the accused brother-in-law took the deceased from his house, subsequently, the accused attacked the deceased with knife. P.W.5, Doctor, conducted postmortem on the dead body of the deceased and gave a postmortem report. P.W.6, Village Administrative Officer, is a witness to the arrest and recovery and also a witness to the observation mahazar. P.W.7, Sub-Inspector of Police, has spoken about the registration of the case. P.W.8, Inspector of Police,

conducted investigation, arrested the accused, recorded the statements of the witnesses. After completion of investigation, he laid charge sheet.

11. 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 or mark any documents.

12. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court with this Criminal Appeal.

13. We have heard Mr. B. Vijayakumar, learned counsel appearing for the appellant and Mrs. M. F. Shabona, learned Gov. Adv. (Crl. Side) appearing for the State and also perused the records carefully.

14. There are two eye-witnesses to the occurrence, viz., P.Ws. 1 and 2. P.W. 1 is the father and P.W. 2 is the maternal uncle of the deceased. P.W. 1 was residing at Krishnapuram village in Palani Taluk. P.W. 2 was residing at Karadikottam Village in Palani Taluk. The occurrence took place at Kolumam village. According to P.W. 1, on the date of occurrence, at about 8.00 p.m., he was waiting in the bus-stop at Kolumam village to go to his village and at that time, the deceased was standing near the bus-stop and the accused demanded money from him and when, the deceased refused, the accused attacked him with knife on his left thigh. After seeing the occurrence, he shouted and the deceased started running, the accused chased him. After seeing them, the accused ran away and the deceased fell down, then, he along with P.W. 2 and others, took the deceased to the hospital, where he was declared brought dead. Then, he lodged a complaint.

15. P.W. 2 is the maternal uncle of the deceased. He is residing at Karadikuttam village. According to him, on the date of occurrence, at about 8.45 p.m., after finishing his purchase, he was standing near the bus-stand at Kolumam. At that time, there was a quarrel between the accused and the deceased and the accused demanded money from the deceased. When the deceased refused to pay the money, the accused attacked him with knife on the left thigh and the accused started running to escape from him, and the accused chased him, at that time, P.W. 1 also came there, after seeing them, the accused ran away and thereafter, they took the deceased to the hospital.

16. Except P.W. 1 and P.W. 2, no other witnesses were examined by the prosecution to prove the occurrence. P.Ws. 1 and 2 are the father and maternal uncle of the deceased and

they are interested witnesses. There is no bar for accepting their evidence provided their evidence is trustworthy and reliable. In this case, both P.Ws.1 and 2 belong Krishnapuram and Karadikottam village and the occurrence took place in another village, namely, Kolumam and their presence in the scene of occurrence is doubtful.

17. Apart from that even according to P.Ws.1 and 2 there are two other persons accompanied them to the hospital. But the prosecution did not examine both the persons. Admittedly the occurrence took place near a bus-stop and as such, none of the independent witnesses available in the scene of occurrence had not been examined by the prosecution. The prosecution also did not examine the Doctor, who received the body of the deceased, and the accident register was also not marked to establish who had brought the deceased to the hospital.

18. In the above circumstances, it is highly unsafe to convict the appellant/accused based on the doubtful interested witnesses of P.Ws.1 and 2. Hence, I am of the considered opinion that the prosecution has failed to establish the guilt of the accused beyond any reasonable doubt.

19. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant in S.C.No.103 of 2007 dated 12.06.2008, are set aside and the accused is acquitted from the charge under Section 304(ii) IPC. Bail bond, if any, executed by the accused, shall stand cancelled.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mrp
To

1. The I Additional District and Sessions Judge, Coimbatore.
 2. -do- thro The Principal Sessions Judge, Coimbatore.
 3. The Judicial Magistrate No.I, Udumalpet.
 4. The Superintendent, Central Prison, Coimbatore.
 5. The Public Prosecutor, High Court, Madras.
- + 1 cc to Mr. B. Vijayakumar, Advocate Sr.6724

Cr1.A.No.815 of 2008

NMI (CO)
EU (21/11/2017)

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