

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.11.2017

PRONOUNCED ON : 13.12.2017

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Crl.A.No.63 of 2013

S.Ramasamy

... Appellant

Vs.

The State rep. by
Inspector of Police
Kottucherry Police Station
Karaikal, Puducherry.

... Respondent

Criminal Appeal filed under Section 374 (2) of Cr.P.C. against the judgment of convicting the appellant under Section 304(ii) IPC and sentenced them to undergo rigorous imprisonment for the period of three years and pay a fine of Rs.2,000/- in default to undergo simple imprisonment for the period of one month passed in S.C.No.92 of 2012 dated 05.01.2013 on the file of the learned Additional Sessions Judge at Karaikal.

For Appellant : Mr.B.Sundara Pandiyan
for Mr.P.A.Chithramani
For Respondent : Mr.Bharatha Chakravarthy
Additional Public Prosecutor
Puducherry.

J U D G M E N T

This appeal has been filed against the judgment dated 05.01.2013 passed in

S.C.No.92 of 2012 by the learned Additional Sessions Judge at Karaikal.

2. It is the case of the prosecution that the deceased and the accused were as thick as thieves and were glass-mates. They hail from the same fishing community in Puducherry and on the day, they do not go for fishing, they will invariably be found in the arrack shop at Poovam Nandalar, drinking to their heart's content. It is alleged by the prosecution that on 18.10.2011, the duo got drunk in the said arrack shop and quarrelled. In the course of the quarrel, it is alleged that the accused attacked the deceased with a liquor bottle on his face, hit him with a stone on the back side of his head and throttled him, resulting in his death. Kuttiyandi [P.W.1], the son of the deceased, saw his father leaving with the accused on 18.10.2011 around 6.00 p.m. to the arrack shop and thereafter, his father did not return home; on 19.10.2011, he enquired with the accused and did not get any proper reply; however, he received information that his father was lying near the auto stand in Poovam Nandalar and when he went there, he saw his father's body lying with some bruises.

3. On the complaint [Ex.P.1] given by Kuttiyandi [P.W.1], Purushothaman [P.W.15], Sub-Inspector of Police, registered a case in Cr.No.98 of 2011 under Section 174 Cr.P.C., vide FIR [Ex.P.18] on 19.10.2011 at 8.30 hours and took over the investigation of the case. He went to the place where the body was found with Murugesan [P.W.14] the police photographer and took photographs which were marked as Ex.P.11 series. In the presence of R.Natarajan [P.W.7], he prepared an Observation Mahazar [Ex.P.5] and a Rough Sketch [Ex.P.4]. Near the

dead body, he noticed two ten rupee notes and broken bottle pieces [M.O.6], which were seized under the cover of mahazar [Ex.P.6]. He conducted inquest over the body of the deceased from 10.15 a.m. to 1.45 p.m and sent the body to the General Hospital, Karaikal for post-mortem, where Dr.Narasimhamoorthy, [P.W.12] conducted autopsy and in his evidence as well in the Post-mortem Certificate [Ex.P.10], he has opined as follows:

"Death is due to asphyxia as a result of throttling."

4. It may be necessary to state that both in the Viscera Report [Ex.P.9] and the Post-mortem Certificate [Ex.P.10], the presence of alcohol in the stomach of the deceased has been alluded to. V.Purushothaman [P.W.15] arrested the accused on suspicion on 21.10.2011 at 18.20 hrs and in the presence of Gunasekaran [P.W.8], the Revenue Inspector, he recorded the confession statement of the accused, which is of course inadmissible in evidence in view of Section 25 of the Evidence Act. However, V.Purushothaman [P.W.15] gave an Alteration Report [Ex.P.16] altering the case from one under Section 174 Cr.P.C. to Section 304(ii) IPC. On the disclosure part of the confession statement, he recovered a stone [M.O.7] from the place of occurrence under Form 95 [Ex.P.19]. The accused was produced before the jurisdictional Magistrate for remand on 22.10.2011 at 3.00 p.m. The Investigating Officer recorded the statement of some witnesses including the Doctor who conducted post-mortem and filed a Final Report before the Judicial Magistrate No.II, Karaikal in PRC No.5 of 2012 under Section 304(ii) IPC against the accused.

5. On the appearance of the accused, he was furnished with the relied upon documents under Section 207 Cr.P.C. and the case was committed to the Court of Sessions in S.C.No.92 of 2012 and was made over to the Additional Sessions Court at Karaikal for trial, where a charge under Section 304 IPC was framed against the accused. When the accused was questioned, he pleaded not guilty. To prove the case of the prosecution, 15 witnesses were examined, 19 exhibits and 7 material objects were marked. The accused was questioned about the incriminating circumstances appearing against him under Section 313 Cr.P.C., which he denied.

6. After considering the evidence on record and hearing either side, the trial Court, by the impugned judgment dated 05.01.2013, convicted the accused under Section 304(ii) IPC and sentenced him to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo Simple Imprisonment for a month.

7. Heard Mr.B.Sundara Pandiyan, learned counsel representing Mr.P.A.Chithramani, learned counsel on record for the appellant and Mr.Bharatha Chakravarthy, learned Additional Public Prosecutor (Puducherry) for the respondent.

8. The entire case is based on circumstantial evidence as there are no eyewitnesses to the occurrence. Kuttiyandi [P.W.1], the son of the deceased and

Rajavalli [P.W.5], the wife of the deceased, stated in their evidence that the deceased and the accused went to the arrack shop at 6.00 p.m. on 18.10.2011 and thereafter, the dead body of the deceased was seen by Kuttiyandi [P.W.1], the next day only. The evidence of Navaneetham [P.W.9], who turned hostile to the prosecution case is to the effect that, the duo came to the arrack shop on 18.10.2011 and consumed liquor and thereafter, they left the arrack shop at 10.30 p.m..

9. Learned Additional Public Prosecutor (Puducherry) submitted that, when there is so much overwhelming evidence to prove the last seen theory, then, the burden shifts on the accused to show as to what had happened after 10.30 p.m.

10. Though, at the first blush, this argument of the learned Additional Public Prosecutor looks attractive, yet, on a closer scrutiny of the evidence on record, all the witnesses, including the close relatives of the deceased, viz., Kuttiyandi [P.W.1] his son, Chinnan [P.W.2], his brother and widow Rajavalli [P.W.5] have stated that both the deceased and the accused were good friends and they had no enmity. The concept of last seen theory can be usefully pressed into service for fastening criminal liability in a case of abduction and murder. Of course, even in a case when a person 'A' takes a person 'B' with him and later, if person 'B' is found to have died in mysterious circumstances as in this case, criminal liability can be fastened on 'A', if motive is established.

11. As stated above, in this case, all the prosecution witnesses have stated that both the accused and the deceased were good friends and compulsive drunkards. The evidence of Chandrasekar [P.W.10] is very much relevant. Chandrasekar [P.W.10] has stated in his evidence that the deceased had taken advance wages from him for coming out with him for fishing and therefore, on 19.10.2011, he came to the house of the deceased around 4.00 a.m. to take him into the sea for fishing and at that time, the deceased was not there and his wife Rajavalli [P.W.5] told him that he had not returned home after having gone out the previous night. Thereafter, Chandrasekar [P.W.10] went to the house of the accused and had met him at 6.30 a.m. At that time, the accused was still in stupor and was not coherently answering. This shows that the accused was available in his house in the morning of 19.10.2011 and had not absconded. He, perhaps, suffered a heavy hangover. Chandrasekar [P.W.10] has further stated that when he asked him about the deceased, the accused told him "Kd;g[,UtUk; te;Jtpl;ljhfrhd;dhh;". Thus, it is not known as to what exactly transpired to the deceased after he parted company with the accused.

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12. That apart, Navaneetham [P.W.9], the Salesman in the arrack shop, has stated in his chief-examination that the duo purchased arrack for Rs.100/- and consumed it in the arrack shop itself; they were talking till 10.30 p.m. and since it was time for the closure of the shop, they were asked to move out and accordingly, they moved out. There is no evidence to show that they were

quarrelling in the arrack shop nor is there evidence to show that the accused left the arrack shop with any bottle with him. The Post-Mortem report [Ex.P.10] shows that the deceased has been attacked with a broken bottle and he was throttled to death. The deceased was about 58 years of age and is of moderate built. It looks little improbable for the accused who himself was fully drunk to have throttled his friend to death without any motive. In such view of the matter, this Court is of the view that based on the 'last seen theory' alone, criminal liability cannot be fastened on the accused.

In the result, this appeal is allowed. The conviction and sentence imposed by the trial Court in S.C.No.92 of 2012 by the learned Additional Sessions Judge at Karaikal, are set aside.

13.12.2017

To

- 1.The Inspector of Police, Kottucherry Police Station, Karaikal, Puducherry.
- 2.The Additional Sessions Judge at Karaikal.
- 3.The Public Prosecutor, High Court, Madras.

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P.N.PRAKASH, J.

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Pre-delivery judgment in
CrL.A.No.63 of 2013

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