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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.10.2017

Pronounced on: 07.11.2017

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA**

CrI.A.[MD].No.257 of 2016

S.Rayappan

..Appellant/Sole accused

Vs.

State rep. by the
Inspector of Police,
Thenkarai,
Periyakulam.
(Crime No.185 of 2012)

..Respondent/Complaint

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment, dated 14.03.2016, made in S.C.No.96 of 2013, by the learned Additional District and Sessions Judge, Periyakulam, Theni District.

For appellant : Mr.R.Ramasamy

For respondent : Mr.C.Ramesh,
Additional Public Prosecutor

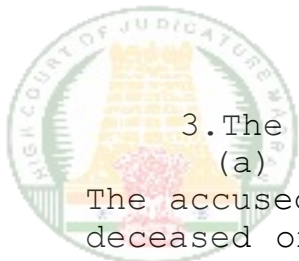
JUDGMENT

[Judgment of the Court was made by R.SUBBIAH, J.]

This appeal has been filed by the appellant / sole accused as against the conviction and sentence, dated 14.03.2016, made in S.C.No.96 of 2013 by the learned Additional District and Sessions Judge, Periyakulam, Theni District.

2.The appellant stood convicted and sentenced to undergo imprisonment as detailed hereunder:

Conviction U/s.	Sentence	Fine amount
302 IPC	To undergo imprisonment for life.	To pay a fine of Rs.1,000/-, in default to undergo six months rigorous imprisonment.



3. The case of the prosecution is consciously narrated below:

(a) The deceased Mariappan is the PW19's sister's husband. The accused, along with his family, was residing in the house of the deceased on lease. The accused vacated the house three months prior to the occurrence. On the request made by the wife of the accused viz., Tamil Selvi, stating that if the lease amount is handed over to her husband, he will spend the amount only for consuming liquor. Hence, the deceased had handed over the lease amount to the wife of the accused after getting back the lease document. Since the deceased had given money to the wife of the accused, the accused developed enmity with the deceased and whenever the accused happened to see the deceased, he used to abuse him in filthy language and used to threaten that at any time his life will end only at his hands. But, the deceased had not taken the same seriously.

(b) While so, on 14.05.2012, at 7.30 a.m. the deceased came to bus-stand and picked up PW19 to take her to his house and while they were moving at Kannimangalam Street entrance gate, the accused, who was following behind them, suddenly took an aruval and attacked on the right side head of the deceased shouting that "with this you die". On receiving the said attack, the deceased fell down. Since PW19 and others raised alarm, the accused ran away with aruval. PW17 and PW18, who were present at the place of occurrence, also saw the incident. Thereafter, PW19 informed the occurrence to the family of the deceased and thereafter, they took the deceased in an auto to the Government Hospital at Periyakulam. After giving first aid treatment, they took the deceased to the Government Hospital, Theni for further treatment in an ambulance and thereafter, they shifted the deceased to the Meenakshi Mission Hospital, Madurai. While so, on 15.05.2012, PW19 came to the Thenkarai Police Station and gave a complaint.

(c) On receipt of the said complaint, PW20 - the then Sub Inspector of Police registered a case in Crime No.185 of 2012 under Section 307 IPC. Then, he forwarded the complaint (Ex.P8) and the FIR (Ex.P9) to the learned Judicial Magistrate, Periyakulam and forwarded the copies to the other officials.

(d) PW21 - the Inspector of Police, took up the investigation, came to the place of occurrence, prepared an observation mahazar (Ex.P1) and rough sketch (Ex.P10) in the presence of PW4 and PW15. Then, he examined PW19, PW1, PW2, PW17, PW3, PW12 and others and recorded their statement. On receipt of an intimation (Ex.P11) about the death of the deceased on 16.05.2012 at 01.00 a.m. from PW19, PW21 has altered the case into one under Section 302 IPC and forwarded the alteration report - Ex.P12 to the Court. Thereafter, PW21 conducted inquest on the body of the deceased and recovered bloodstained earth and sample earth, shirt and bloodstained dhoti. Then, he forwarded the body to the hospital for postmortem through PW11 - Constable.



(e) PW8- Dr.Arunkumar, on 16.05.2012 at 10.40 a.m. conducted postmortem on the body of the deceased. He found the following injuries on the body of the deceased:

"1) A cut injury seen on right temporo-parital area of scalp, measuring 12 cms x 5 cms x bone deep.

On dissection of Scalp, Skull & Dura:

Contusion scalp 28 cms x 13 cms noted on the right frontal, temporal, parital area of scalp. Cut injury of length 14 cms x 6 cms x brain deep seen on the right temporo-parital bone. Cut injury seen on right temporal and parital lobe of brain measuring 11 cms x 5 cms x 4 cms. Subarachnoid haemorrhage noted over right temporal and parital lobe region of brain.

2) A cut injury seen on outer aspect front of right arm, measuring 3 cms x 2 cms x muscle deep, 6 cms below right shoulder joint.

3) A cut injury seen on right side of neck, measuring 3 cms x 1 cms x muscle deep."

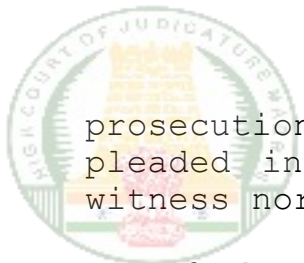
Ex.P6 is the postmortem certificate. He opined that the deceased would appear to have died of cut injury to head.

(f) PW21, during the course of investigation, on 16.05.2012 at 1.00 p.m. arrested the accused at Periyakulam- Sothupparai Dam Road near Theerthathotti, in the presence of PW5 and PW6. On such arrest, the accused gave a voluntary confession, in which he disclosed the place where he had hidden the aruval and shirt. The admitted portion in the confession statement is marked as Ex.P14. In pursuance of the said disclosure statement, he took the Police and witnesses to the place of hide out and produced bloodstained aruval (M.O.1) and bloodstained shirt (MO.2). PW21 recovered the same under a mahazar. On returning to the Police Station, he forwarded the accused to the Court for judicial remand and handed over the material objects under Form 95 to the Court. At his request, the material objects were sent for chemical examinations through Court. The forensic report (Ex.P7) disclosed that there were human blood on MO.1 - aruval, MO.2 - shirt and MO.3 - shirt.

(g) PW21, due to his transfer, handed over the investigation to his successor PW22. PW22, during the course of investigation, collected the medical records and examined medical witnesses and few more witnesses, and recorded their statements. After completion of investigation, he laid charge sheet against the accused.

4. Based on the above materials, the trial Court framed a charge under Section 302 IPC against the accused. The accused denied the same. In order to prove the charges, on the side of the prosecution, PW1 to PW22 were examined and Exs.P1 to P15 and MOs.1 to 4 were marked.

5. When the accused was questioned under Section 313 of Cr.P.C. with reference to the incriminating materials adduced by the



prosecution, the accused denied his complicity in the crime and pleaded innocence. However, he did neither choose to examine any witness nor to mark any document on his side.

6. The trial Court, after considering the oral and documentary evidence, has found the accused guilty and accordingly, convicted and sentenced the accused, as stated supra. Challenging the said conviction and sentence, the appellant/accused has come up with this appeal.

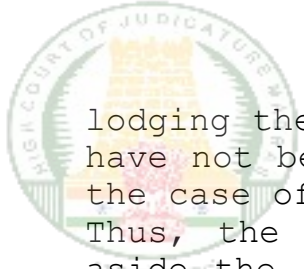
7. The learned counsel appearing for the appellant mainly contended that there are lot of contradictions in the evidences of the prosecution witnesses and those contradictions are affecting the root of the case. In this regard, the learned counsel for the appellant took this Court through the evidences and documents and submitted as follows:

(a) In this case, PW1 to PW6 turned hostile and the trial Court has passed the conviction only based on the evidences of PW17 to PW19. It is the case of the prosecution, immediately after the occurrence, the deceased was taken in an auto by PW19, who is the sister-in-law of the deceased to the Government Hospital, Periyakulam. But, in the Accident Register issued by PW7, there is no reference about the presence of PW19. It was mentioned that the deceased was brought by the daughter-in-law and not by sister-in-law. Hence, the presence of PW19 at the time of occurrence is doubtful

(b) Further, as per the evidence of PW7, who gave first aid treatment to the deceased, there was only one cut injury on the right side of the head. But, as per the postmortem certificate - Ex.P6 shows that there are three cut injuries viz., one is on the right side of the head; the second is on the outer aspect of front of the right arm and the third one is on the right side of the neck. Thus, the prosecution has failed to give any explanation to the other injuries.

(c) It is stated by PW19 that immediately after the occurrence, she took the deceased to the Government Hospital at Periyakulam and as per the advise of the Doctor, the deceased was taken to the Government Hospital, Theni and thereafter, the deceased was taken to Meenakshi Mission Hospital, Madurai. But, the Doctors, who gave treatment to the deceased at the Government Hospital, Theni and at Meenakshi Mission Hospital have not been examined. Thus, it is doubtful where the deceased sustained other two injuries except the one mentioned in Ex.P5.

(d) According to the prosecution, the occurrence took place on 14.05.2012 at about 7.30 p.m. PW19 lodged a complaint only at 10.00 a.m. on 15.05.2012. Therefore, there was inordinate delay in lodging the complaint. Further, the FIR reached the Court only on 16.05.2012 at 10.30 a.m., though the distance between the Police Station and the Court is just one kilometer. Thus, the delay in



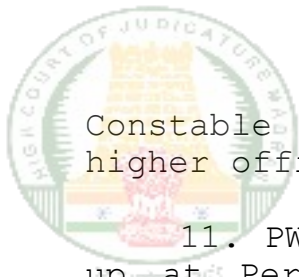
lodging the complaint and the delay in reaching the FIR to the Court have not been explained by the prosecution and the same is fatal to the case of the prosecution.

Thus, the learned counsel for the appellant/accused prayed to set aside the conviction and sentence passed by the trial Court and to acquit the accused.

8. Per contra, the learned Additional Public Prosecutor submitted that the prosecution has clearly proved the case of the prosecution by examining eyewitnesses PW17 to PW19 and the medical evidences. He would further submit that absolutely, there is no delay in lodging the complaint. In this regard, he has also submitted that according to PW19, the deceased was taken to the Government Hospital, Periyakulam and Theni and thereafter, Meenakshi Mission Hospital, Madurai and thereafter, lodged the complaint. Thus, the delay has been properly explained by the prosecution. Under such circumstances, no infirmity can be found on the conviction and sentence passed by the trial Court. Thus, he prayed for dismissal of the appeal.

9. We have given our anxious considerations to the rival submissions made on either side and perused the materials available on record.

10. It is a case of murder. In this case, PW1 to PW3 have turned hostile for the reasons best known to them. PW4 has stated about the preparation of Observation Mahazar by PW21. PW5 and PW6 have also turned hostile. PW7, who gave first aid treatment to the deceased at the Government Hospital, Periyakulam, has stated that on 14.05.2012 at 08.10 p.m. the deceased was brought to the hospital and they informed him that one known person attacked him with an aruval at 7.30 p.m. PW8 has stated about the postmortem conducted on the body of the deceased and he opined that the death of the deceased was due to cut injury on the head. PW9 - Forensic expert has stated that he found bloodstains on MOs.1 to 3 and the said stains were relating to blood group "A". PW10 has turned hostile. PW11 - Constable has stated about handing over the dead body to the hospital for postmortem. PW12, who is the daughter of the deceased, has stated that on getting information about the occurrence from PW19, she went to Meenakshi Mission Hospital, Madurai and the deceased was in serious condition and therefore, they brought the deceased to the house and that on 16.05.2012 at 1.00 a.m. the deceased died. PW13 to PW15, who are the sons of the deceased, have stated that the accused was residing in their house under lease and since the accused was frequently quarrelling with his wife under the influence of alcohol, the deceased asked him to vacate and accordingly, the accused vacated the house. But, on the request of the wife of the accused, the deceased had handed over the lease amount to her. Having grudge over the same, the accused was frequently quarrelling and threatening the deceased that at any time, his death will be in his hands. They came to know about the occurrence, only on receiving information from PW19. PW16 -



Constable has stated about handing over the express FIR to the higher officials.

11. PW19 has stated that on 14.05.2012 the deceased picked her up at Periyakulam Bus-stand and when they were proceeding near Kinnimangalam Street, at 7.30 p.m. the accused, who came in the backside, attacked the deceased with aruval on the right side head, right neck and right side shoulder stating that "with this die". She raised alarm. The nearby shop owner one Balakrishnan, PW1, PW17 and PW18 came there and then, they brought the deceased to the hospital. PW17 and PW18, who are independent witnesses, have corroborated the version of PW19. PW20 has stated about the registration of complaint on 15.05.2012 at 10.00 a.m. PW21 and PW22 have stated about the investigation done by them.

12. By the examination of PW12 to PW15 and PW17 to PW19, along with the evidences of medical witnesses and other documents, the prosecution has clearly proved the motive for the occurrence and the overtacts of the accused.

13. The first and foremost submission of the learned counsel for the appellant is that in the accident register, the name of PW19 has not been mentioned and therefore, the presence of PW19 at the time of occurrence is doubtful. As stated by the appellant/accused, in Ex.P5, it is stated that the deceased was brought by the daughter-in-law. But, the name of PW19 - Parimala Devi has also been mentioned in bracket nearby the word "daughter-in-law" in the accident register. Thus, it can be reasonably conclude that instead of mentioning sister-in-law, it has been wrongly mentioned as daughter-in-law. Since PW19 would have referred the deceased as uncle ("uncle") in the local language, the doctor would have taken note of the same as daughter-in-law, instead of sister-in-law. But, the presence of PW19 is confirmed by mentioning her name in the accident register.

14. Yet another submission of the learned counsel for the appellant is that in the accident register, PW7 has noted down only one cut injury, but in the postmortem certificate, PW8 has noted down three cut injuries and there is no explanation for the two cut injuries on the side of the prosecution.

15. Before analysing the above submission, this Court is inclined to refer to the decision of the Hon'ble Supreme Court in Satish Narayan Sawant Vs. State of Goa reported in (2011) 2 SCC (Cri) 110, wherein the Hon'ble Supreme Court has held in paragraph No.33 as follows:

"33. On being cross-examined, PW7 categorically stated that death due to stab injury was in consequence of injury 1 and all other injuries were superficial in nature. There is no doubt that four injuries are indicated in the postmortem report shown to have been received by the deceased but the fact

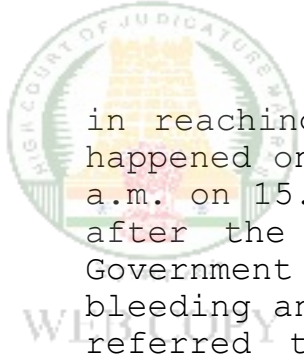


that the deceased was given stab injuries by the appellant with the help of a knife brought by him from inside the house is clearly established from the ocular evidence. There is therefore one particular injury, being injury 1, caused because of stabbing and the rest being superficial in nature could be caused during scuffle. Therefore, the alleged discrepancy cannot be said to be very vital as it has been held by this Court in several decisions that ocular evidence cannot be brushed aside only because, to some extent, it is not in consonance with the medical evidence. Reference in this regard may be made to the decisions of this Court in State of U.P. v. Krishna Gopal [1998 SCC (Cri) 928], Anwar v. State of Haryana [1997 SCC (Cri) 762], Ravi Kumar v. State of Punjab [(2005) 9 SCC 315] and Munivel v. State of T.N. [(2006) 9 SCC 394]."

16. Here, in this case, the eyewitnesses PW17 to PW19 have categorically stated in their evidences that the accused had cut the deceased with aruval on his right side head, right side neck and right side shoulder. Those cut injuries tallied with the postmortem certificate. PW8 - Dr.Arunkumar, who conducted postmortem, has opined that the deceased would appear to have died of cut injury to the head. But, in the accident register, only one cut injury viz., the vital injury on the head, has been mentioned by PW7. Further, PW7 in his evidence has categorically stated that due to profuse bleeding, he referred the deceased to the Government Hospital, Theni. It may be the reason, he could not have noted down the other two injuries. Therefore, the alleged discrepancy cannot be stated to be very vital. Further, as it has been held by the Hon'ble Supreme Court in the decision cited supra, the ocular evidence cannot be brushed aside only because, to some extent, it is not in consonance with the medical evidence. Therefore, this contention is rejected.

17. In view of the categorical evidences of the eyewitnesses viz., PW17 to PW19 that the accused had cut the deceased with aruval on his right side head, right side neck and right side shoulder and those cut injuries tallied with the postmortem certificate, this Court is of the view that the non-examination of the Doctors, who treated the deceased at the Government Hospital, Theni and at the Meenakshi Mission Hospital, in order to speak about the injuries, is not fatal to the case of the prosecution. More over, the deceased was not admitted in any of the hospitals as an inpatient. In Fact, PW19 had categorically stated that when they finally reached the Meenakshi Mission Hospital, the condition of the deceased was very critical and therefore, they brought back the deceased to his house. Thus, it is clear that no continuous treatment was given to the deceased by admitting him as an inpatient and therefore, the doctors attached to those hospitals were not examined.

18. The next submission of the learned counsel for the appellant is that there was delay in lodging the complaint and also

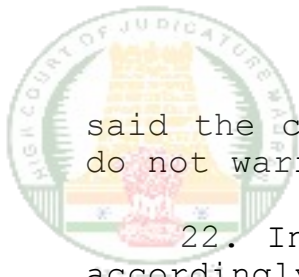


in reaching the FIR to the Court. The occurrence was said to have happened on 14.05.2012 at 7.30 p.m. The complaint was given at 10.00 a.m. on 15.05.2012. PW19 has stated in her evidence that immediately after the occurrence, she took the deceased in an auto to the Government Hospital at Periyakulam and since there was profused bleeding and the deceased was in serious condition, initially he was referred to the Government Hospital, Theni and thereafter, the deceased was taken to the Meenakshi Mission Hospital and finally, they brought the deceased to his house and thereafter, on 15.05.2012 she gave the complaint. It is mentioned in Ex.P5 - Accident Register that the deceased was given treatment at 8.10 p.m. on 14.05.2012. PW20 - Sub Inspector of Police has stated in his cross examination that the intimation from the Government Hospital at Periyakulam was received at 10.00 p.m. on 14.05.2012 and after that, when he went to the Government Hospital, Periyakulam, it was informed that the deceased was referred to the Government Hospital, Theni.

19. From the above evidences, it is clear that in order to save the life of the deceased, the defacto complainant - PW19 has been moving one hospital to another situated at various places and finally, after reaching the house of the deceased, she came to the Police Station and gave the complaint. Thus, the prosecution has clearly explained about the delay in lodging the complaint. Hence, the said contention is rejected.

20. So far as the delay in reaching the FIR to the Court is concerned, it is seen that the Ex.P9 - FIR reached the Court only on 16.05.2012 at 9.30 a.m. and after receiving the death intimation on 16.05.2012, the alteration report has reached the Court at 10.30 a.m. on 16.05.2012. Though PW16 has been examined to speak about handing over the FIR to the Court, the defence has failed to put any question, with regard to the delay in reaching FIR, to PW16. In the absence of any question, with regard to the delay in sending FIR to the Court, during the course of examination of PW16 - Investigating Officer, there is no obligation on the part of the prosecution to explain about the said delay. In this regard, this Court is of the view that it would be appropriate to refer to the decision of the Hon'ble Supreme Court in State of Rajasthan Vs. Daud Khan reported in (2016) 2 SCC 607, wherein the Hon'ble Supreme Court has held that in the absence of any question having been asked to the officer, who could have given an answer, namely, the officer-in-charge of the Police Station, no adverse inference can be drawn against the prosecution in this regard, nor can it be held that the delay in receipt of the special report by the Magistrate is fatal to the case of the prosecution. The above decision of the Hon'ble Supreme Court is squarely applicable to the facts of this case. Based on the same, this contention can be eschewed.

21. In view of the foregoing discussions, we hold that the prosecution has clearly established the charge against the accused. The trial Court has also rightly convicted the accused under the



said the charge and imposed the quantum of punishment and the same do not warrant any interference of this Court.

22. In the result, this criminal appeal fails and the same is, accordingly, dismissed and the conviction and sentence passed by the trial Court in S.C.No.96 of 2013 is confirmed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar.

To

1.The Additional District and Sessions Judge,
Periyakulam, Theni District.

2.The Inspector of Police,
Thenkarai,
Periyakulam.

3. The Superintendent, Central Prison,
Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.R.Ramasamy, Advocate, SR.No. 85653

Judgment made in
Cr1.A.[MD].No.257 of 2016
Dated:07.11.2017

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AM/SKN RSK/SAR 4/21.11.2017/9P/7C