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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.11.2017

Pronounced on : 21.12.2017

CORAM:

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

Cr1.A.[MD].No.357 of 2016

Natarajan .. Appellant/Sole accused
Vs.
State rep. by the
Inspector of Police,
Kalakkadu Police Station,
Kalakkadu,
Tirunelveli District. .. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment, dated 25.02.2016, made in S.C.No.125 of 2014, by the learned Principal Sessions Judge, Tirunelveli.

For appellant : Mr.V.Angusamy
For respondent : Mr.C.Mayilvahana Rajendran,
Additional Public Prosecutor

JUDGMENT

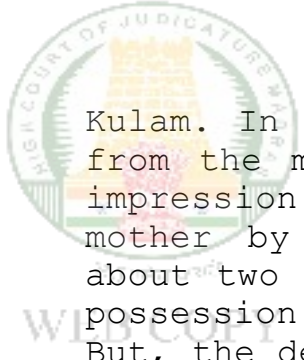
[Judgment of the Court was made by R.SUBBIAH, J.]

This appeal has been filed by the appellant / sole accused as against the conviction and sentence, dated 25.02.2016, made in S.C.No.125 of 2014 by the learned Principal Sessions Judge, Tirunelveli 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.5,000/-, in default to undergo rigorous imprisonment for one year

3. The case of the prosecution is consciously narrated below:
(a) PW1 is the son the deceased by name Lakshmana Pillai. The deceased, PW1 and the accused were the residents of Melakaruvelan



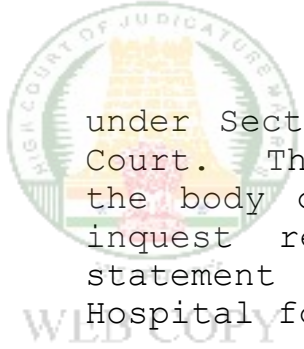
Kulam. In the year 1981, the deceased had purchased a vacant land from the mother of the accused. Since the accused was under the impression that the deceased had purchased the land from his mother by deceiving her, he was threatening the deceased, for about two years prior to the date of occurrence, to hand over the possession of the property or otherwise, he would murder him. But, the deceased did not take that threat seriously.

(b) While so, on 19.03.2012, at 5.30 p.m. PW1, PW1's mother (PW2) and the deceased were waiting at Kuruvelankulam Bus-stop near one Paul Manickam's fertilizer shop, to go to Kalakkadu. At that time, the accused came there with aruval and cut the deceased indiscriminately stating that "you had purchased the land by deceiving my mother and in-spite of my request for several times, you did not hand over the land and if you are allowed to live, we will not get back the land". After raising a hue and cry, the deceased fell down. Thereafter, PW1 and PW2 (wife of the deceased) found that there were cut injuries on the head, on the left cheek, left shoulder and left hip. PW1 and PW2 raised an alarm. On hearing the alarm raised by PW1 and PW2, the elder brother of the deceased - PW3 and their relative - PW4, who were taking tea in the tea shop of PW5, rushed to the spot and on seeing them, the accused ran away from the place of occurrence with aruval. Thereafter, PW1 took the deceased to the Palayamkottai High-ground Hospital, through 108 ambulance.

(c) PW14 - Dr.Siyam Sundar Singh, who was on duty at the Tirunelveli Government Hospital, gave treatment to the deceased at 6.50 p.m. At the time of admission, PW2, who accompanied the deceased, informed PW14 that the deceased was attacked by a known person. He found cut injuries on the body of the deceased. Ex.P29 is the Accident Register. Thereafter, PW14 gave an intimation to the Police.

(d) On receipt of intimation from the hospital, PW12 came to the hospital and recorded the statement of PW1, since the deceased was unconscious and on returning to the Police Station, based on the complaint of PW1, PW12 registered a case in Crime No.87 of 2012 under Section 307 IPC and forwarded the express FIR (Ex.P22) and the complaint (Ex.P1) to the learned Judicial Magistrate, Nanguneri and also to the in-charge Inspector of Police - PW13.

(e) PW13, on 20.03.2012 at 02.30 a.m. took up the investigation, rushed to the place of occurrence, prepared an observation mahazar (Ex.P2) and rough sketch (Ex.P23) in the presence of PW7 and one Kuthalingam. Thereafter, he recovered bloodstained earth, sample earth and bloodstained spectacle from the place of occurrence. He examined PW1 and PW2 and recorded the statements of PW1 and PW2. On the same day, PW13 received an intimation that the deceased succumbed to the injuries at 01.55 p.m. On receipt of the said intimation, PW13 altered the offence into one



under Section 302 IPC and forwarded the alteration report to the Court. Then, PW13 went to the hospital and conducted inquest on the body of the deceased in the presence of panchayathars. The inquest report is marked as Ex.P26. Then, he recorded the statement of witnesses and forwarded the dead bodies to the Hospital for postmortem.

(f) PW-8 - Dr.Sudalaimuthu, on the same day, at 4.00 p.m. conducted postmortem on the dead body of the deceased. He found the following injuries on the body of the deceased:

"1) 13 cm long horizontal sutured wound seen on the left cheek and left side of upper part of neck. It extends from 2 cm below and outer to the left angle of mouth to 1 cm below left ear lobule. On removal, it was mandible bone deep heavy cut injury. Underlying muscles, major vessels of upper part of neck, nerves and mandible bone found cut at site. 5 cm long trailing mark seen on the back angle of the wound.

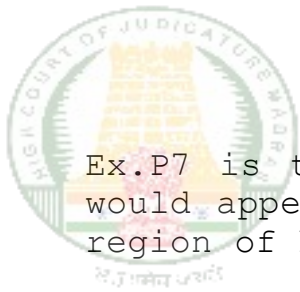
2) 9 cm oblique sutured wound seen on the left cheek and left ear lobule. It extends from angle of mandible to outer aspect middle third of left ear lobule. On removal, it was muscle deep and full thickness of left ear lobule found cut. Margins are regular.

3) 7 cm long U shaped sutured wound seen on the back of top of left shoulder. On removal, it was muscle deep. Margins are regular. It was flapping cut injury. 4) 10 cm horizontal sutured wound with trailing mark of 5 cm in its front seen on the back of left shoulder 1 cm below the injury No.3. On removal it was muscle deep cut injury. Edges are regular.

5) 2 cm long horizontal sutured wound seen on the outer aspect of back of left lower abdomen. On removal it was muscle deep cut injury.

6) Abrasion of size 5 x 1 cm seen over back of left side of upper chest.

7) 8 cm long oblique sutured wound seen on the left parietal region. It is 6 cm above left ear. On removal of sutures, it was skull bone deep. Margins are regular. Underlying skull bone shows clean cut of length 8 cm. Scalpel contusion of size 10 x 10 cm seen over left parietal and occipital region. Rectangular bone piece of size 6 x 4 cm found separately above the cut fracture in parietal bone. On removal of bone piece extradural haemorrhage of about 20gms noted. Underlying meninges found cut in a length 2 cm and underlying parietal lobe of brain found cut measuring 1.5 x 0.5 x 1 cm surrounding brain tissue found edematous."



Ex.P7 is the postmortem certificate. He opined that the deceased would appear to have died of complications of cut injuries to the region of head and neck.

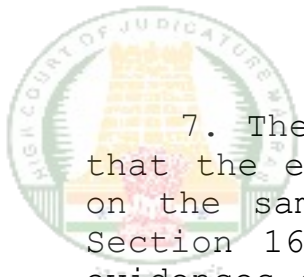
(g) During the course of investigation, on 21.03.2012 at 3.00 p.m. PW13 arrested the accused at Moonradaippu Bus stop in the presence of PW7 and one Perumal. On such arrest, the accused gave a voluntary confession in the presence of PW7, in which he disclosed the place where he had hidden the aruval. In pursuance of the said disclosure statement, he took the Police and witnesses to the place of hide out and produced aruval (M.O.1). PW13 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 chemical examination reports (Exs.P13 to P15) and serological report (Ex.P16) disclosed that there are human blood group of "B" on most of the material objects, including on the billhook of aruval.

(h) PW13 handed over the investigation to regular Inspector of Police one Radhakrishnan. The said Inspector of Police, 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 had framed a charge under Section 302 IPC against the accused. 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. On the side of the accused, one Manickam - the Deputy Manager of TNSTC was examined as DW1. He has stated in his evidence that there is no bus-stop before the Fertilizer Shop of Paul Manickam. However, no document was marked on the side of the accused.

5. The trial Court, after considering the oral and documentary evidence, has found the accused guilty of the charge under Section 302 IPC 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.

6. The learned counsel for the appellant would submit that the motive suggested by the prosecution is that having grudge over the purchase of a land from the mother of the accused, the accused has committed the murder of the deceased. But, the said sale deed was executed by the mother of the accused way back in the year 1981 ie., 31 years back and therefore, the motive suggested by the prosecution cannot be believed.



7. The learned counsel for the appellant would further submit that the evidences of PW1 to PW4 are verbatim repetitions falling on the same line of FIR and the statements were recorded under Section 161(3) by the investigating officer and therefore, their evidences should be rejected in toto.

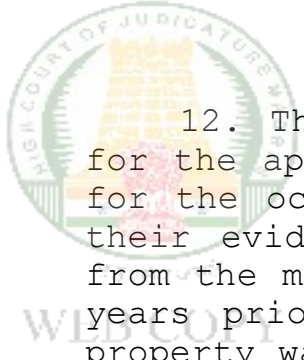
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8. The learned counsel for the appellant would further submit that except PW5, the other eyewitnesses viz., PW1 to PW4 are son, wife, brother and close relative respectively of the deceased and PW5 has categorically admitted in his cross examination that the occurrence was not watched by anybody and that during the occurrence, PW1 to PW4 and himself were not present. More over, the eyewitnesses PW1 and PW2, who are son and wife of the deceased and stated to be present at the scene of occurrence, had not resisted the accused from attacking the deceased. The said conduct further strengthened that they were not present in the scene of occurrence. In view of the categorical admission of PW5 and the conduct of PW1 to PW4, the presence of PW1 to PW5 at the place of occurrence is highly doubtful and their evidences cannot be believed.

9. The learned counsel for the appellant would further submit that though PW1 and PW2 have stated in their evidence that they saw the occurrence and after the occurrence, they took the deceased to the hospital, before the doctor - PW14, PW2 has stated that the accused probably attacked with aruval. If really, PW1 and PW2 were present in the scene of occurrence, they would have specifically stated about the weapon before the PW14 and therefore, their presence in the scene of occurrence is highly doubtful.

10. Per contra, the learned Additional Public Prosecutor submitted that PW1 to PW5 are eyewitnesses in this case and they have categorically stated that it was this accused, who caused the death of the deceased. PW1 to PW4 are stated to be the close relative of the deceased. But, their evidences cannot be rejected simply for the reason that they are closely related to the deceased and their evidences are verbatim repetitions. PW5 is an independent witness. He has categorically stated against the accused. Thus, through the evidences of the eyewitnesses viz., PWs.1 to 5, medical evidence and other documents, the prosecution has categorically proved the guilt of the accused beyond reasonable doubts. 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.

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



12. The first and foremost contention of the learned counsel for the appellant is that the motive projected by the prosecution for the occurrence is not believable. PW1 and PW2 have stated in their evidence that the deceased had purchased 48 cents of land from the mother of the accused in the year 1981 and for about two years prior to the occurrence, the accused was saying that the property was purchased by the deceased by deceiving his mother and the accused was threatening the deceased to hand over the property or otherwise he would kill him and in this regard, a complaint was lodged on 05.04.2010 in the Kalakkadu Police Station and the accused was warned by the Police in the said Police Station. PW1 and PW2 have further stated that even thereafter, the accused was threatening the deceased to hand over the property. As stated by the learned counsel for the appellant, it is true that the property had been purchased by the deceased about 31 years back. But, the subsequent events stated by the prosecution would go to show that there is motive for the accused to cause the death of the deceased. Therefore, the said submission cannot be accepted.

13. The next submission of the learned counsel for the appellant is that the evidences of PW1 to PW4 are verbatim repetitions falling on the same line of FIR and 161 statements, and therefore, their evidences should be rejected in toto. We have carefully perused the evidences of PW1 to PW4, FIR and 161 statements of PW1 to PW4. It cannot be said that the evidences of PW1 to PW4 are verbatim repetitions. More over, merely because the evidences of PW1 to PW4 are verbatim repetitions of FIR and 161 statements, the evidences of PW1 to PW4 cannot be rejected. It is for the defence to bring out the statement in their favour through cross examination. But, the defence has also failed to bring out anything in their favour. Therefore, this contention is rejected.

14. The next submission of the learned counsel for the appellant is that PW5 has categorically admitted in his cross examination that the occurrence was not seen by anybody and that during the occurrence, PW1 to PW4 and himself were not present. It is seen that PW1 and PW2 have categorically stated in their evidences that it was this accused who had committed the offence. PW3 to PW5 have also corroborated the same. However, during the cross examination, in the right or wrong question raised by the defence that "if it is stated that on the fateful day, no one including yourself did not see the attack on the deceased", PW5 has stated that it is correct. Except that, there is nothing brought out by the defence in the evidence of PW5. Even in the further cross examination, PW5 has stated that it is incorrect to say that "you did not see the occurrence". We are of the view that the said admission of PW5 would not totally falsify the evidence of PW1 to PW5 and their presence. Therefore, this contention cannot be taken serious note of.



15. It is also submitted by the learned counsel for the appellant that PW1 and PW2 did not resist the attack on the deceased and therefore, their presence is doubtful. PW1 and PW2 have categorically stated in their evidences that the accused suddenly appeared before the deceased and attacked him indiscriminately by saying that "you should not be alive since you got the property by deceiving my mother". PW1 and PW2 have further stated that as it was a sudden attack on the deceased, they were frightened and therefore, they raised an alarm. Considering the said statements of PW1 and PW2, their conduct and presence cannot be doubted.

16. The last submission of the learned counsel for the appellant is that it is stated in the accident register that the deceased was probably attacked with an aruval which would go to show that they were not present at the time of occurrence. In the accident register itself, it is recorded that the incident had occurred at 5.30 p.m. and the time of admission was at 6.50 p.m. It would go to show that within 1 hour and 30 minutes, the deceased was admitted in the hospital. PW8 - the doctor, who conducted postmortem, has stated in his evidence that the injuries on the deceased could have been caused by a weapon like MO.1 - aruval. As there are variety of aruval, PW2 would have stated so in a tense situation. Merely because the doctor - PW14 has recorded the word "probably", it cannot be presumed that PW1 and PW2 would not have seen the occurrence. Moreover, the Hon'ble Supreme Court in the case in Umesh Sing Vs. State of Bihar, reported in (2013) 4 SCC 360 has held that if the medical and ocular evidence are inconsistent, then reliable ocular evidence must prevail. Here, in this case, PW1 to PW5 have categorically stated that the accused had attacked the deceased with aruval. Therefore, the last contention of the appellant is also rejected.

17. As stated earlier, the prosecution has clinchingly proved the guilt of the accused through the evidences of the eyewitnesses - PW1 to PW5 and the medical evidences Ex.P7 - Postmortem report, Exs.P13 to 15 - Chemical analysis report and Exs.P8 and P16 - Serological report. The trial Court has also rightly convicted the accused and imposed the quantum of punishment and the same do not warrant any interference at the hands of this Court.

18. In the result, this criminal appeal fails and the same is, accordingly, dismissed and the conviction and sentence passed by the learned Principal Sessions Judge, Tirunelveli in S.C.No.125 of 2014 against the accused are confirmed.

Sd/-

Assistant Registrar(Crl side)



To

1.The Principal Sessions Judge,
Tirunelveli.

2.The Inspector of Police,
Kalakkadu Police Station,
Kalakkadu,
Tirunelveli District.

3.The Superintendent,
Central Prison,
Palayamkottai.

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

5.The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.V.Angusamy, Advocate SR.No. 94620

Judgment made in
Crl.A.[MD].No.357 of 2016
Dated : 21.12.2017

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JM/SKN RSK/SAR 2/09.01.2018/8P/8C