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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2017

CORAM

THE HONOURABLE MR. JUSTICE **A.SELVAM**
and
THE HONOURABLE MR. JUSTICE **N.AUTHINATHAN**

Cr1.A.(MD)No.474 of 2016

Kesavan

.. Appellant/sole accused

Vs.

State rep.by
The Inspector of Police,
Koppampatti Police Station,
Thoothukudi District,
Crime No.216 of 2014.

.. Respondent/Complainant

Criminal appeal filed under Section 374 of Cr.P.C. against the conviction and sentence dated 03.12.2016 passed in Sessions Case No.285 of 2015 by the Second Additional District and Sessions Court, Thoothukudi, to undergo life imprisonment and imposed fine of Rs.1000/- in default undergo 1 year simple imprisonment for the offence.

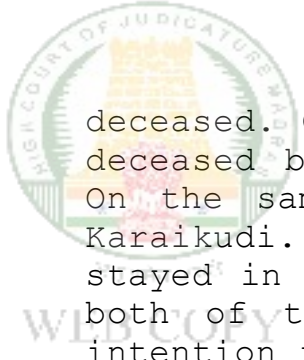
For Appellant : Mr.S.Ramasamy
For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by **A.SELVAM, J.**)

The convictions and sentences dated 03.12.2016 passed in Sessions Case No.285 of 2015 by the Second Additional District and Sessions Court, Thoothukudi are being challenged in this Criminal Appeal.

2.The sum and substance of the case of the prosecution is that both the deceased and accused are friends and both of them have served as employees in Vessels Sithar Ltd., Tiruchirapalli. The accused has used to send workers to foreign countries. The deceased has collected some amounts from various persons for the purpose of sending them to foreign countries and given the same to the accused. But the accused has failed to obtain visa. Under the said circumstances, a tussle has arisen betwixt the accused and



deceased. On 24.10.2014, the accused has come to the house of the deceased by using his car bearing Registration No.TN-69-AU-4163. On the same day at about 08.30 am, both of them have went to Karaikudi. On 25.10.2014 at about 07.00 pm, both of them have stayed in the house of the accused at Kovilpatti. On 26.10.2014, both of them have left the house of the accused and with an intention to murder the deceased, the accused has kept an iron rod in his car. On the same day, both of them have taken liquor and made a tussle with each other and the same has been questioned by one Durairaj. The accused has taken the deceased to an isolated place by way of saying that he is having house plots in Survey No.367/4 and subsequently attacked the deceased and due to his overtacts, the deceased has passed away. On 31.10.2014, the Village Administrative Officer (defacto complainant) has given a complaint and the same has been registered in Crime No.216 of 2014 under Sections 302 and 201 of the Indian Penal Code. The complaint alleged to have been given by the defacto complainant has been marked as Ex.P1.

3.On receipt of Ex.P1, the Investigating Officer viz., PW26 has taken up investigation, examined connected witnesses and also made arrangements for conducting necropsy and accordingly, Dr.Manoharan (PW8) has conducted autopsy and he found the following internal and external injuries:

"Superficial burns seen over the face, chest, abdomen, arms and front of lower limbs."

1.A split laceration of size 10 cms x 3 cms x bone deep seen extending from right frontal to right parietal region.

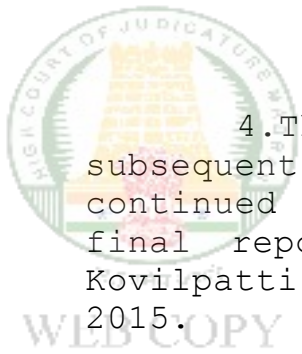
2.A split laceration of size 8 cms x 3 cms x bone deep seen 1 cm below injury No.1.

3.A split laceration of size 7 cms x 5 cms x oral cavity deep seen in the chin.

Lower jaw bone found fractured.

Other findings:

Peritoneal cavity - normal. Pleural cavity - normal. Pericardium - contains 10 ml of straw colour fluid. Heart - flabby. Larynx and Trachea - decomposed. Hyoid bone - intact. Lungs, liver, spleen and kidneys - decomposed. Stomach - empty with smell of decomposition mucosa decomposed. Small intestine - empty with smell of decomposition, mucosa decomposed. Bladder - empty. Head - colored blood clots seen inside the cranial cavity, brain liquefied. External genitals - decomposed.



4.The post-mortem report has been marked as Ex.P5. The subsequent Investigating Officers viz., PWs.27 and 28 have continued investigation and after completing the same, laid a final report on the file of the Judicial Magistrate, No.II, Kovilpatti and the same has been taken on file in PRC No.47 of 2015.

5.The Judicial Magistrate No.II, Kovilpatti after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Thoothukudi Division and taken on file in Sessions Case No.285 of 2015 and subsequently made over to the trial Court.

6.The trial Court after hearing arguments of both sides and upon perusing relevant records has framed first charge against the accused under Section 302 and second charge against him under Section 201 of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

7.On the side of the prosecution, PWs.1 to 28 have been examined and Exs.P1 to P24 and M.Os.1 to 13 have been marked.

8.When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

9.The trial Court after hearing arguments of both sides and after perpending the evidence available on record, has found the accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.1,000/- with usual default clause. The accused has also been found guilty under Section 201 of the Indian Penal Code and sentenced to undergo two years rigorous imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. Against the convictions and sentences passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

10.The consistent case put forth on the side of the prosecution is that both the accused and deceased are friends. The accused has used to send employees to foreign countries. Under the said circumstances, the deceased has collected some amounts from various persons and given the same to the accused. But the accused has not obtained visa and due to that a despair has been in ~~between them~~ between them. On 24.10.2014, the accused has taken the deceased from his house and subsequently both of them have gone to Karaikudi. On 25.10.2014, both of them have stayed in the house of



the accused in Kovilpatti. On 26.10.2014, both of them have left the house of the accused and taken liquor and subsequently the accused has taken the deceased to an isolated place and attacked him by using an iron rod and due to his overtacts, the deceased has passed away. It is an admitted fact that the entire case of the prosecution hinges upon circumstantial evidence.

11.The prosecution has set the law in motion only on the basis of Ex.P1, the complaint alleged to have been given by PW1 (defacto complainant), wherein it has been simply stated that a dead body is found place in the place of occurrence. On the basis of the averments made in Ex.P1, a case has been registered under Sections 302 and 201 of the Indian Penal Code.

12.As adverted to earlier, the entire case of the prosecution is based upon circumstantial evidence and therefore, a primordial duty is cast upon the prosecution to prove the chain of occurrence so as to point out the guilt of the accused.

13.On the side of the prosecution, the wife of the deceased by name Sathya has been examined as PW3 and her specific evidence is that on 24.10.2014 both the accused and deceased have left the house. Apart from the evidence of PW3, the prosecution has utilised service of PWs.24 and 25.

14.The specific case of the prosecution is that both PWs.24 and 25 have seen both the accused and deceased together.

15.The learned counsel appearing for the appellant/accused has contended to the effect that even in the evidence given by PWs.24 and 25, a vital contradiction is available. Since a vital contradiction is available in the evidence of PWs.24 and 25, the Court cannot come to a conclusion that both of them are last seen witnesses and the trial Court has failed to look into the same.

16.Per contra, the learned Additional Public Prosecutor appearing for the respondent has contended to the effect that PW3, being the wife of the deceased has given clinching evidence to the effect that on 24.10.2014, both the accused and deceased have left her house and apart from her evidence, for the purpose of encrusting the case of the prosecution, PWs.24 and 25 have been examined and their specific evidence is that both of them have seen the accused and deceased together and the trial Court after considering the evidence given by PWs.3, 24 and 25, has rightly invited convictions and sentences under Sections 302 and 201 of the Indian Penal Code and therefore, the convictions and sentences passed by the trial Court need not be interfered with.

<https://hcservices.ecourts.gov.in/hcservices> 17.As adverted earlier, the entire case of the prosecution is based upon the circumstances spoken by PWs.3, 24 and 25.



18.As rightly pointed out on the side of the appellant/accused, PW3 has simply adduced evidence to the effect that on 24.10.2014, both the accused and deceased have left her house.

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19.The specific evidence given by PW24 is that on 26.10.2014, he and PW25 have seen both the accused and deceased together near Manthithopu road, whereas, the specific evidence given by PW25 is that on 24.10.2014, he and PW24 have seen both the accused and deceased in a wine shop.

20.The trial Court has invited convictions and sentences against the appellant/accused only on the basis of the evidence given by PWs.3, 24 and 25. Except the mere evidence to the effect that on 24.10.2014, both the accused and deceased have left the house of PW3, she has not adduced anything more. Likewise, as taunted earlier, with regard to dates and place, vital contradictions are found place between the evidence of PWs.24 and 25.

21.The specific evidence of PW24 is that he has seen both the accused and deceased on 26.10.2014 near Manthithopu road, whereas, the specific evidence given by PW25 is that on 24.10.2014, he has seen both the accused and deceased in a wine shop. Since vital contradictions are available between the evidence of PWs.24 and 25, the Court cannot come to a conclusion that both of them have spoken about a reliable/believable circumstance.

22.At this juncture, the Court has to look into the specific evidence given by PW8. It is an admitted fact that PW8 has conducted necropsy and his specific opinion is that the death would have occurred, five days prior to postmortem.

23.Considering the medical evidence available on record and also considering the contradictory evidence given by PWs.24 and 25 and also considering the flimsy evidence given by PW3, this Court is of the considered view that absolutely there is no circumstantial evidence on the side of the prosecution. Further, PWs.24 and 25 have given only rickety type of evidence and the same cannot be a basis for coming to a conclusion that the accused has committed the offence punishable under Sections 302 and 201 of the Indian Penal Code.

24.As mentioned supra, the entire case of the prosecution is based upon circumstantial evidence. Therefore, the entire burden lies upon the prosecution to prove the relevant circumstances as to point out the guilt of the accused. In the instant case, even though PWs.3, 24 and 25 have been examined, their evidence cannot be a sole basis for coming to a conclusion



that the prosecution has proved the requisite circumstances.

25. The trial Court without considering the vital contradictions found in the evidence of PWs. 24 and 25 has erroneously found the appellant/accused guilty under Sections 302 and 201 of the Indian Penal code. In view of the foregoing enunciation of factual aspects, this Court has found considerable force in the contention put forth on the side of the appellant/accused and altogether the present Criminal Appeal is liable to be allowed.

26. In fine, this Criminal Appeal is allowed. The convictions and sentences passed against the appellant/accused in Sessions Case No. 285 of 2015 by the trial Court are set aside. The appellant/accused is acquitted. Fine amount if any paid by him is ordered to be refunded forthwith.

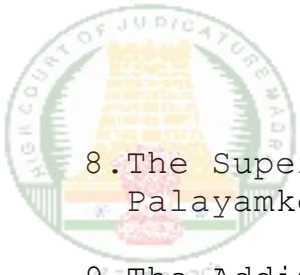
Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Second Additional District and Sessions Court,
Thoothukudi.
2. Through The Principal District Judge,
Thoothukudi.
3. The Judicial Magistrate,
Thoothukudi.
4. The Chief Judicial Magistrate,
Thoothukudi.
5. The Director General of Police,
Mylapore, Chennai.
6. The District Collector,
Thoothukudi.
7. The Inspector of Police,
Koppampatti Police Station,
Thoothukudi District.



8.The Superintendent of Central Prison,
Palayamkottai,Tirunelveli District.

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

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

+1cc to M/S.S.Ramasamy, Advocate SR.No.19198

Cr1.A.(MD)No.474 of 2016
04.04.2017

JM/MR/SAR 4/07.04.2017/7P/12C