

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2018

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Criminal Appeal No.37 of 2018

and

CRL.M.P.No.624 of 2018

1.Rajkumar @ Kumar

2.Bala @ Balakrishnan

3.Venkatesan

... Appellants/Accused

-Vs-

State represented by
Inspector of Police,
D-1 Triplicane Police Station,
Chennai-600 002
Crime No.1004/2011

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment of learned IV Additional Sessions Judge, Chennai, passed in S.C.No.75 of 2013 on 12.01.2018.

For Appellants : Mr.R.C.Paul Kanakaraj

For Respondent : Mr.V.Arul

Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by C.T.SELVAM, J.)

This appeal arises against judgment of learned IV Additional Sessions Judge, Chennai, passed in S.C.No.75 of 2013 on 12.01.2018, convicting appellants/accused for offence u/s.302 r/w 34 IPC and sentencing each of them to life imprisonment and fine of Rs.10,000/- i/d 2 months S.I.

2. Prosecution case is that A1, A3 and the deceased Murthy were engaged in coal loading by Lorry at the Harbour and A2 was running a shop in the Harbour. As the accused suffered loss in business, there was previous enmity between the deceased and accused. Accused, with intent to commit the murder of deceased, took him to the lodge where A3 was staying by an auto on 19.08.2011 at about 03.00 a.m and all of them consumed liquor. At about 04.30 a.m, there was an argument between

accused and deceased owing to which the deceased assaulted A1. Angered thereby, accused indiscriminately assaulted the deceased resulting in his death. The accusation against accused 2 and 3 is that they caught hold of deceased and A1, using a blade, cut his neck. A case was registered in Crime No.1004 of 2011 on the file of respondent for offence u/s.302 IPC. Upon completion of investigation, a charge sheet was filed informing commission offences u/s.302 r/w 34 IPC before learned XIII Metropolitan Magistrate, Egmore, Chennai. On committal, the case was tried in S.C.No.75 of 2013 on the file of learned learned IV Additional Sessions Judge, Chennai. Before trial Court, prosecution examined 20 witnesses and marked 42 exhibits and 14 material objects. None were examined on behalf of defence nor were any exhibits marked.

3.1. PW-1, Manager in Achari Pudur Lucky Manson Lodge, No.43, Arunachalam Road, Triplicane, deposed to preference of Ex.P1, complaint with D1, Triplicane Police Station, narrating the occurrence, of handing over Ex.P2, bill receipt and Ex.P3, hotel register, to police and of identifying A1 in the Test Identification Parade and A3 at the police station.

3.2. PW-2, who was working as a room boy at the lodge, deposed that on seeing two persons running out of the lodge and on hearing A3 shouting 'murder, murder', he and PW-1 went to the room and saw the deceased. PW-2 also deposed that he identified A1 in the Test Identification Parade and A3 at the police station.

3.3. PW-3, wife of deceased, spoke to previous enmity between first accused and deceased, of deceased assaulting first accused on many occasions, of accused taking deceased in an auto and of coming to know of the death of deceased at about 05.45 a.m. on 19.08.2011. PW-4, sister of the deceased, has also spoken on the same lines.

3.4. PW-5, who was staying in the lodge and working as a tea master in Lucky Tea Stall, has spoken to seeing accused 1 and 2 running outside from the lodge. PW-5 also saw A3 running outside shouting 'murder, murder'. PW-5 has also deposed that he went to the room and saw the deceased in a pool of blood. PW-5 also identified the accused.

3.5. PW-6 has spoken to himself and another attesting Ex.P4, observation mahazar.

3.6. PW-7, who was also an attesting witness, had turned hostile.

3.7. PW-8, Head Constable at Triplicane Police Station, Law and Order Wing, has spoken to forwarding the body of deceased for post-mortem and on completion thereof, handing over

the same to PW-3, wife of deceased.

3.8. PW-9, Head Constable and Writer, deposed that he, on the instructions of Inspector, took photographs of the body of deceased, Ex.P11 series.

3.9. PW-10 has spoken to attesting Exs.P6 to P10, confession of accused and seizure mahazar. PW-10 has been treated hostile.

3.10. PW-11, XV Metropolitan Magistrate, Chennai, has spoken to conducting Test Identification Parade on 04.11.2011 at Puzhal Prison, Chennai. PW-11 has also spoken to accused 1 and 3 being identified by PW-3.

3.11. PW-12 has spoken to attesting Exs.P16 to P20, confession of accused and seizure mahazar. PW-12 has been treated hostile.

3.12. PW-13 has deposed that while he was on duty as XXII Metropolitan Magistrate, George Town, Chennai, he received Ex.P21, request letter towards conduct of test identification parade, instructed Superintendent, Central Prison, Puzhal, to make arrangements, issued Exs.P22 and P23, summons to PWs.1 and 2 to appear on 07.12.2011 and conducted test identification parade. PW-13 has also deposed that PWs.1 and 2 have identified first accused. PW-13 also forwarded Ex.P24, identification parade proceedings.

3.13. PW-14, Assistant Director, Forensic Science Department, deposed that she received the viscera of deceased, conducted chemical analysis and submitted Ex.P25, report, informing that the viscera did not contain alcohol or poisonous substance.

3.14. PW-15, Doctor, Forensic Science Expert, deposed that blood stains found in the inner vest was human blood, that the blood group was inconclusive and that the blood samples collected from the body of deceased was found to be 'O'7.

3.15. PW-16, Doctor, deposed that he examined the body of deceased and recorded Ex.P28, Accident Register.

3.16. PW-17, Forensic Science Expert, deposed that some of the material objects did not contain blood stains and blood stains and saliva were found in a cigarette piece and the same was sent to lab. PW-17 also submitted Ex.P29, report.

3.17. PW-18, Doctor, who conducted post-mortem on the body of deceased, has opined that deceased would appear to have died due to shock and haemorrhage due to cut injuries to the

both carotid arteries.

3.18.PW-19, an attesting witness, has been treated hostile.

3.19. PW-20, Inspector of Police, who conducted investigation in the case, spoke to visiting the place of occurrence, preparation of mahazars, examination of witnesses, arrest of accused and of obtaining various reports. PW-20 also deposed that on completion of investigation, he filed a charge sheet informing commission of offence u/s.302 IPC.

4. On appreciation of materials before it, trial Court, under judgment dated 12.01.2018, convicted appellants/accused for offences u/s.302 r/w 34 IPC and sentenced them to life imprisonment and fine of Rs.10,000/- i/d 2 months S.I. Against such finding, the present appeal has been filed.

5. Heard learned counsel for appellants and learned Additional Public Prosecutor for respondent.

6. Learned counsel for appellants submitted that PW-1, Manager of the lodge, wherein the occurrence took place has admitted to not informing the names of the accused in the complaint preferred by him. Learned counsel, hence, contended that from the fact the names of accused find mention in Ex.P1, the genuiness of the complaint is to be doubted. Learned counsel next contended that PW-1 has admitted to not having seen A3 after having collected the lodge rent from A3 on 16.08.2011. He has further deposed to not having seen A1 and A2 any time prior. Both PWs-1 and 2 have admitted to having seen the accused at the police station on 19.08.2011. PW-3, sister of the deceased also has admitted to having seen the accused at the police station and thereat having questioned A3 as to why they committed the murder of her brother. Learned counsel would submit that the above evidence would point to a case of the Investigation Officer having decided upon who committed the offence and then seeking to fix them. Learned counsel submitted that this would be the irresistible conclusion given the position the inquest report informs the motive and nature of occurrence despite the absence of any family members of the deceased thereat and despite the admitted position that all panchayatars at the inquest were persons unknown to either the deceased or his family members. Learned counsel also referred to Exs.P2 and P3 to submit that a perusal of the same would reveal that hotel register entries, had been effected towards finding support for a false prosecution case. Learned counsel also submitted that the chain of circumstances sought to be established by the prosecution through examination of PW-7, who was to speak to the accused as also the deceased having stopped at his shop to purchase a knife as also cigarettes was broken with PW-7 having turned hostile. In the circumstances, learned

counsel would submit that the prosecution has failed to prove its case by establishing a chain of circumstances as would definitely point to the guilt of the accused and in such circumstance, the appellants ought to have been acquitted.

7. Heard learned Additional Public Prosecutor on the above submissions.

8. We find merit in the submissions of learned counsel for appellants. We fail to see how the inquest report could have informed the motive as also manner of occurrence, when the family members of the deceased were not present at the time of inquest. Admittedly, all the panchayatars at the inquest were not known either to the deceased or his family members. The evidence of PWs-1 to 3 informing the presence of the accused at the police station on 23.08.2011 would point to the Investigation Officer having concluded who the accused are and then having gone about gathering evidence in support of his conclusion. Exs.P2 and P3, the bill book and hotel register leave much to be desired, in that Ex.P2-bill book is a loose sheet attached to the bill book. We have taken care to study the bill numbers in the bill in Ex.P2 as also the entire bill book and co-relate the same with Ex.P3-hotel register and our study reveals that the entries are not in seriatim or in such manner as would evoke confidence and reliance. Admittedly, even according to PW-1, he has not seen A3 after he registered into the hotel allegedly on 16.08.2011 and he has also admitted to not having seen A1 and A2. The bill book contains entries only up to the date 16.08.2011. In the present case, where the prosecution seeks to link the accused to the murder of the deceased, through circumstances, each and every link is to be firmly established. In this case, such requirement has not been met. The factum of A3 having stayed at the lodge could well have been established by the concerned court requiring A3 to give his specimen signature in keeping with Section 73 of The Indian Evidence Act and putting up both such specimen as also Ex.P3, hotel register, for examination by a handwriting expert. It might well be that having done so in the instant case would have worked to the advantage of the accused and that is why such a course has been avoided by the prosecution. There absolutely is no evidence to show that A3 has stayed in the hotel on the date of occurrence. PWs-1 and 2 have admitted that they identified the accused in the test identification parade only on the basis of identification of the accused in the police station. PW-1 has deposed to having seen the accused at the police station and thereafter, identifying him (A3) at the identification parade. PW-2 specifically has deposed that A1 and A2 were shown to him in the police station and only on the basis thereof, he identified them in the test identification parade. The identification of accused at test identification parade and consequential identification in Court is rendered unreliable. A perusal of Ex.P2 reveals that the occupant checked in on

12.08.2011 and that an entry of 16.08.2011 has been totally struck out and rendered illegible. Whether this has been done to avoid discovery of the occupant having left the hotel room on 16.08.2011 is anybody's guess.

9. For the aforesaid reasons, the Criminal Appeal shall stand allowed. The conviction and sentence passed by learned IV Additional Sessions Judge, Chennai, passed in S.C.No.75 of 2013 on 12.01.2018, are set aside and appellants are acquitted of all charges. Fine amount, if any, paid shall be refunded to them. Bail bond(s), if any, executed by them shall stand cancelled. Appellants are directed to be released forthwith, if their detention is not required in any other case. Connected CrI.MP. stands closed.

Sd/--

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kmi

To

1.The IV Additional Sessions Judge,
Chennai.

2.The Inspector of Police,
D-1 Triplicane Police Station,
Chennai-600 002.

3.The Public Prosecutor,
High Court, Chennai.

4.The Superintendent,
Central Prison, Puzhal, Chennai

5.The Director General of Polie,
Mylapore, Chennai

6.The District Collector,
Chennai

7.The IV Additional Sessions Jdge, Chennai

8.Thro The Principal Sessions Judge, Chennai

+1ccMr.R.C.Paul Kanagaraj, Advocate Sr.No.14856

SSV(CO)

sm:2.4.2018

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