

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Cr1.A.No.279/2017

Kannan

..Appellant / Sole Accused

Vs.

State rep. by,
The Inspector of Police
B-12 Ukkadam Police Station [L&O]
Coimbatore District.

..Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment of the learned III Additional District and Sessions Judge, Coimbatore in SC.No.84/2012 dated 31.07.2012..

For Appellant : Mr.S.Panneerselvam
For Respondent : Mr.V.Arul, APP

JUDGMENT

[Judgment of the Court was delivered by N.SATHISH KUMAR, J.,]

Appellant is arrayed as the sole accused, in the case tried in SC.No.84/2012 on the file of the Court of III Additional District and Sessions Judge, Coimbatore, for offences u/s.302 IPC. The Trial Court, under impugned Judgment dated 31.07.2012, found the appellant / accused guilty of the above said offence and sentenced him to undergo imprisonment for life and a fine of Rs.1000/- with a default sentence of 6 months rigorous imprisonment. Aggrieved over the said conviction and sentence, the present appeal came to be filed by the appellant/accused.

2 The brief facts of the prosecution case, are as follows:-

[a] The deceased Murugan is a Cook by profession and friend of the appellant / accused. The appellant / accused is a rag picker, besides pasting wall posters and he used to be engaged by P.W.9-Giri. On 13.05.2011 at about 11.00 p.m., the

appellant / accused demanded money from the deceased Murugan who was under influence of alcohol. When the deceased declined to pay the money and abused the appellant / accused, the appellant / accused picked up a big granite

stone [M.O.4] and thrashed the head of the deceased. As a result, the deceased succumbed to injuries and the appellant / accused fled away from the place of crime.

[b] P.W.1-Mani, was the Village Administrative Officer of Anuparpalayam, and on 14.05.2011 at about 3.00 p.m., when he and his Menial were walking along the railway station, he heard about the lying of a dead body near the railway track and he went to the said place along with his Menial and found the dead body of the deceased. Immediately, he went to Ukkadam Police Station and lodged the first information under Ex.P.1 to P.W.14-Manickavasagam, Sub Inspector of Police. He also identified M.O.1-a pair of chappals ; M.O.2-Shirt ; and M.O.3-Lungi worn by the deceased at the time of inquest.

[c] P.W.2-Raja, a resident of Majith Colony near Railway Gate deposited that on 13.05.2011 at about 11.00 p.m., on hearing the noise/cry, he came out of his house and he saw the appellant/accused running from the railway track to the railway station. He further stated on the next day, i.e., on 14.05.2011, at about 3.00 p.m., he saw a crowd near the railway track and when he went there, he saw the dead body of the deceased on the railway track. P.W.2 also identified the appellant / accused in the Test Identification Parade conducted by P.W.10- Judicial Magistrate No.V, Coimbatore, on 16.08.2011.

[d] P.W.3-Magesh, deposited that on 13.05.2011 at about 11.15 p.m., while he was standing in Platform No.1, along with his friend, he saw the appellant/accused came running towards him and when P.W.3 enquired him, the appellant/accused did not answer P.W.3 and he fled away from the railway station.

[e] P.W.4-Gopal deposited that on 13.05.2011 at about 11.15 p.m., he saw the appellant / accused proceeding from the railway over-bridge towards Gandhi Road in a panic manner. When P.W.4 asked him as to why he is going in a hurried manner, the appellant / accused did not reply and left the place.

[f] P.W.5-Mani, a Cook, had seen the appellant / accused and the deceased quarreling with each other on 13.05.2011 at about 10.00 p.m. P.W.5 and one Nausath separated them and thereafter, P.W.5 saw both the deceased and the appellant / accused proceeding towards the railway track.

[g] P.W.14-Manickavasagam, Sub Inspector of Police attached to Ukkadam Police Station at the relevant point of

time, received Ex.P.1 from P.W.1 and registered the crime in Cr.No.578/2011 for the offence u/s.302 IPC. Ex.P.22 is the First Information Report. He despatched the originals of Ex.P.1 and Ex.P.2 to the jurisdictional Court and copies to the higher officials.

[h] P.W.16-Thirumeni, Inspector of Police attached to the respondent police station, on receipt of FIR in Cr.No.578/2011 on 14.05.2011, took up the case for investigation and at about 16.15 hours, he summoned the services of Forensic Expert, Photographer and Sniffer dog and Finger Print Expert. At about 16.30 hours on 14.05.2011, he went to the place of occurrence and prepared the Observation Mahazar [Ex.P.2] and Rough Sketch [Ex.P.23] in the presence of P.W.6 and one Sikkandar. The photographs taken by the Photographer was marked as M.O.12 series [10 Nos.]. He also recovered M.O.1-a pair of chappals ; M.O.2-Shirt ; M.O.3-Lungi ; M.O.4-Blood stained Granite stones [3 Nos] ; M.O.5-Blood stained earth ; M.O.6-sample earth and M.O.9-Polythene cover under the cover of Mahazars in the presence of P.W.6 and Sikkandar. He sent the material objects to the Court and the dead body to the hospital.

[i] P.W.16, on 15.05.2011, at about 08.00 a.m., went to Coimbatore CMC Hospital and held inquest on the dead body of the deceased in the presence of Panchayatdars and witnesses and prepared Ex.P.24-Inquest Report. Thereafter, he sent the dead body for postmortem along with a requisition.

[j] P.W.11, Dr.Meena, Assistant Professor in Casualty attached to the Government Hospital, Coimbatore, at the relevant point of time, received the requisition sent by P.W.16 to preserve the dead body of the deceased in Mortuary. She issued Ex.P.16-Accident Register in that regard.

[k] P.W.2-Dr.Jeyasingh, Medical Officer attached to the Government Hospital, Coimbatore, on receipt of requisition, commenced the postmortem on 15.05.2011 at 15.15 hours and found the following injuries:-

"Antemortem Injuries:-

[1] Abrasion 1x1cm, 0.5x.5cm and 1x1cm noted over back of right wrist.

[2] Both orbit and nose found deformed.

[3] Transverse laceration 15x5cmxcranial cavity deep noted on outer aspect of right eye to the outer aspect of left eye across the nasal bone. On dissection the underlying both side eyeballs found completely crushed. Depressed fracture noted on of both side orbital bones and nasal bones. Crack fracture 5cm in length seen over anterior aspect of right maxilla. Vertical oblique crack fracture 3 cm in length noted over

anterior end of left maxilla. Laceration 3x0.5cmxentire lip thickness seen over the middle of upper lip and 2x1cmxentire lip thickness seen over the left side of lower lip. Ala of nose found depressed with abrasion 3x3cm and 2x2cm. On dissection of scalp, skull and dura:Sub scalp contusion 10x3 to 4 cm noted over both frontal region. Middle of mandible found fractured with surrounding tissue contusion. Diffuse sub dural and sub arachnoid hemorrhages noted over the entire brain. Skull bone found fractured into multiple pieces and separation of the lamboid suture. Brain found pasty. Multiple skull base fractures noted over both anterior cranial fossa, left middle cranial fossa and both posterior cranial fossa".

Ex.P.18 is the Postmortem Certificate issued by him and the Viscera was preserved for Chemical Analysis. Ex.P.19 is the Viscera Report, wherein it was observed that there was no detection of poison and that P.W.13 had opined that "the deceased would appear to have died of head and facial injuries sustained by him and would have occurred 2 to 3 days prior to autopsy."

[l] P.W.13, Police Constable speaks about the seizure of material objects from the body of the deceased after the postmortem and handing over of the same to P.W.16 under Special Report-Ex.P.21.

[m] When the matter stood thus, on 14.07.2011 at about 9.00 p.m., the appellant/accused appeared before P.W.9-Giri, with whom the appellant/accused was working and confessed his killing of the deceased Murugan on 13.05.2011 and another person by name Nagaraj on 22.05.2011. The same was reduced into writing under Ex.P.12. P.W.9 handed over the appellant/accused and Ex.P.12 to the Inspector of Police, R.S.Puram Police Station.

[n] P.W.15-Mageswaran, Inspector of Police attached to R.S.Puram Police Station at the relevant point of time, received Ex.P.12 from P.W.9 and registered the crime in Cr.No.840/2011 for offence u/s.302 IPC for the death of Nagaraj and took up the case for investigation. P.W.15 arrested the appellant / accused and recorded his statement. The appellant/accused came forward to give a voluntary confession statement in which he admitted his guilt of murdering Murugan [deceased in the present case] on 13.05.2011 and one Nagaraj on 22.05.2011. The appellant/accused was sent for judicial remand and P.W.15 forwarded the copies of the case diary pertaining to Cr.No.840/2011 to P.W.16-Inspector of Police, B-12 Ukkadam Police Station for further investigation.

[o] P.W.16, in continuation of investigation, arrested the appellant/accused formally in connection with the case in Cr.No.578/2011. Since the identification of the deceased was not known, P.W.16 took steps to publish the photograph of the deceased in all Newspapers and circulated the photographs to all Police Stations in Coimbatore District. He examined the witnesses and the Medical Officers and recorded their statements ; received Medical Reports under Ex.P.19. P.W.16 also sent requisition to the jurisdictional Magistrate Court for conducting Test Identification Parade.

[p] P.W.10-G.Nagarajan, Judicial Magistrate No.6, Coimbatore, on receipt of requisition from P.W.16, conducted the Test Identification Parade, where P.W.2 had identified the appellant/accused.

[q] Despite best efforts taken by P.W.16 to identify the deceased, he could not do so. However, based on the bill seized from the pocket of the deceased, he identified the deceased and after completion of investigation, filed the Final Report u/s.302 IPC against the accused on 22.08.2011 before the learned Judicial Magistrate No.6, Coimmbatore, who took it on file in PRC.No.24/2011 and issued summons to the accused and on his appearance, furnished him copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of the Principal District and Sessions Judge, Coimbatore, u/s.209 Cr.P.C., who in turn had made over the case to the learned III Additional District and Sessions Judge, Coimbatore, who took it on file in SC.No.84/2012 and on appearance of the appellant / accused, had framed the charges u/s.302 IPC and questioned him. The appellant / accused pleaded not guilty to the charge framed against him.

[r] The prosecution examined P.Ws.1 to 16 and marked Exs.P.1 to 25 besides marking M.O.1 to M.O.12.

[s] The appellant/accused was questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against him in the evidence rendered by the prosecution and he denied it as false. No witness was examined and no documentary evidence was marked on the side of the appellant/accused.

[t] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, has convicted and sentenced the appellant/accused as above stated and hence, this appeal.

appellant has vehemently contended that the evidence of P.Ws.2 to 5 cannot be given any credence as they have been examined by the police after a period of two months from the date of the alleged occurrence. The evidence of the Investigating Officer clearly show that he has promptly taken steps to identify the deceased by publishing the photographs of the deceased in the newspapers. Despite seeing the photographs, P.Ws.2 to 5, have never whispered anything about seeing the appellant/accused in the vicinity to anyone till they were enquired by the police. Therefore, their evidence cannot be given much weightage. It is the further contention of the learned counsel that the extra-judicial confession said to have been allegedly given by the appellant/accused to P.W.9-Giri, also loses its significance due to passage of time. Further, the said extra-judicial confession is also highly doubtful. Hence, the version of prosecution in this regard is not believable. Merely because a homicidal violence has been established on the dead body of one so-called Murugan, the guilt cannot be inferred as against the appellant/accused and hence, prayed for setting aside the conviction and sentence imposed on the appellant/accused and allowing of the appeal.

4 Per contra, Mr.V.Arul, learned Additional Public Prosecutor appearing for the State submitted that P.Ws.2 to 5, in their evidence, have clearly stated that they had seen the appellant/accused running from the railway track at the relevant point of time in a panic condition. Merely because they have not been examined immediately by the police, that itself cannot be a ground to disbelieve their evidence. It is the normal tendency of the witnesses, not to entangle themselves in a police case and unless the police approach them, the witnesses would not volunteer themselves to give statements. In the instant case, the involvement of the accused in a murder, came to be known only after P.W.9 handed over the appellant/accused to P.W.15-Inspector of Police, R.S.Puram Police Station. Only after the extra-judicial confession given by the appellant/accused before P.W.9, the involvement of the appellant/accused in the crime came to light. Thereafter, the police made a thorough enquiry about the said witnesses and recorded their statements and hence, the mere delay in examining the witness cannot be a ground to discard their evidence and the same is not fatal to the prosecution case. It is his further submission that P.W.9 is not a stranger to the appellant/accused. In fact, P.W.9 used to engage the appellant/accused in pasting the wall posters on many occasions. Therefore, there was no reason whatsoever for P.W.9 to falsely implicate the appellant/accused in a grave crime. The evidence of P.W.9 clearly show that his evidence is natural and does not suffer from any infirmity and hence, submitted that the extra-judicial confession is true and genuine and that itself is sufficient to bring home the guilt of the accused. Learned

Additional Public prosecutor, therefore submitted that the impugned judgment of the Trial Court warrants no interference at the hands of this Court and prayed for dismissal of the appeal.

5 We have perused the entire materials and evidence on record.

6 In the light of the above submissions, the point that arises for consideration is whether the prosecution was able to prove the charges against appellant/accused beyond all reasonable doubt?

7 The charge framed against the appellant/accused is that on 13.05.2011 at about 11.00 p.m., the appellant/accused thrashed the deceased with a big granite stone [M.O.4] and caused his death. The death of the deceased is not in dispute. The evidence of the Medical Officer-P.W.12 and the Postmortem Certificate-Ex.P.18 proves the homicidal death of the deceased. It is also not in disputed that the dead body was found in the railway track near the Coimbatore Railway Station. P.Ws.1 and 2 also deposed as to the presence of the dead body in the said place and the occurrence in fact took place near the bushes in the railway track. This fact is also not disputed as the evidence of the Investigating Officer coupled with the Observation Mahazar and Rough Sketch also proves the fact of the presence of the dead body near the bushes in front of Signal Box in the track bearing No.L18. P.W.1 found the dead body on 14.05.2011 at about 3.00 p.m., and immediately, the body was sent to the hospital. The evidence of P.W.12-Medical Officer and the Postmortem Report-Ex.P.18 also shows that the death had occurred 2 to 3 days prior to autopsy, which clearly proves and tallies with the case / version of the prosecution that the death had occurred on 13.05.2011 in the night hours.

8 It is the evidence of P.W.2 that he is residing in the Majith Colony, near the Railway Gate and on 13.05.2011 at about 11.0 p.m., he heard a cry of a person and when he came out of his house, he saw the appellant/accused walking swiftly towards Railway Station. In fact, P.W.2 has further deposed to the factum of identification of the appellant/accused in the Test Identification Parade conducted by P.W.10. P.W.2 also identified the appellant/accused in the Court. The evidence of P.W.2 that soon after the occurrence, he heard the sound of a human being, assumes significance and becomes relevant under section 6 of the Indian Evidence Act and also under section 8 of the said Act. The conduct of the appellant/accused walking swiftly from the place of occurrence at the relevant point of time in an unusual manner, becomes relevant in appreciating the entire evidence.

9 P.W.3 has also stated that on 13.05.2011 at about

11.15 p.m. saw the appellant/accused running in Platform No.1, When he questioned him as to why he was running, the appellant/accused did not reply and left the place. P.W.4 also stated about the appellant/accused coming in a panic manner towards railway station and refused to answer P.W.4 question. P.W.5, in fact, had seen the appellant/accused and the deceased Murugan quarreling with each other at 10.00 p.m. on 13.05.2011. Thereafter, they proceeded towards the place of occurrence together. Thus, the evidence of P.Ws.2 to 5 reveal the presence of the appellant/accused in the vicinity in the place of occurrence. In fact, both the appellant/accused and the deceased were last seen together at the relevant point of time by P.W.5 and thereafter, the appellant/accused ran away from the place of crime, as per the evidence of P.Ws.2 to 4. The dead body was found on the next day by P.W.1. The conduct of the appellant/accused leaving the place in a hurried manner and the symptom of panic is also relevant u/s.8 of the Indian Evidence Act, 1872 and such conduct is also admissible as against the appellant/accused.

10 In the light of the above evidence of P.Ws.2 to 5, this Court analyses the evidence of P.W.9 with great care and scrutiny. P.W.9 is the Secretary of a Trade Union and he is running a Man Power Agency. The appellant/accused is known to P.W.9. The appellant/accused was also given job by P.W.9 on many occasions. On 14.07.2011, when P.W.9 was conversing with his friend Raja, the appellant/accused appeared before him in an unusual manner. When P.W.9 enquired him, the accused confessed that on 13.05.2011 at about 11.00 p.m., one of his friend who was a Cook by profession known as Murugan was under the intoxicated mood and at that time the accused demanded money and as the deceased abused and declined to part with the money, the accused took a big granite stone lying on the spot and thrown the same on the head of the deceased, causing his death. Similarly, he also confessed to the commission of crime/murder of one Nagaraj on 22/23.05.2011 at about 1.00 a.m. in a similar fashion and on similar motive of Nagaraj declining to parting with the amount demanded by the appellant/accused. The appellant/accused specifically requested P.W.9 that as the police is in search of him and fearing of being beaten by the police, he came to surrender and sought P.W.9's help. P.W.9, immediately handed over the appellant/accused to R.S.Puram Police Station and gave a report under Ex.P.12,. The entire narration spoken by P.W.9 has not been shattered in the cross-examination. The exact confession spoken by the appellant/accused to P.W.9, has been narrated by P.W.9. His evidence has not been disputed in the entire cross-examination except a suggestion to the effect that P.W.9 has been tortured by the police. On a careful scrutiny of the evidence of P.W.9, we are of the view that P.W.9 is a respectable person with whom the appellant/accused was working and hence, the

appellant/accused reposing confidence on P.W.9 and confessing the crime to him, cannot be doubted at all. When the extra-judicial confession is given to a person against whom the accused has some confidence and respect, such confession cannot be discarded and in the instant case, the alleged extra-judicial confession said to have been given by the accused to P.W.9 cannot be rejected merely on the ground that the accused herein had confessed the crime after two months of the alleged occurrence. The confession of the appellant/accused that he killed Murugan while the deceased was under the influence of alcohol, is also substantiated by the evidence of the Medical Officer-P.W.12 coupled with the Final Opinion-Ex.P.20, wherein P.W.12 had opined that "the deceased consumed ethyl alcohol prior to death and would have been under its influence."

11 It is well settled that an extra-judicial confession, if voluntary and true and made in a fit state of mind, the same can be relied upon by the Court. The confession will have to be proved like any other evidence. The value of the evidence as to the confession depends upon the veracity of the witness to whom it is made. It is not open to start with the presumption that the extra-judicial confession is a weak type of evidence. It would depend upon the nature of circumstances, time when the confession was made and the credibility of the witnesses who speak to such confession. In the instant case, there was no circumstances brought out by the defence in the cross-examination to doubt the evidence of P.W.9. The evidence of P.W.9 appears to be natural and if really P.W.9 is tutored, his normal conduct would be to hand over the appellant/accused to the respondent police, viz., Ukkadam Police Station. Whereas, P.W.9 took the accused to R.S.Puram Police Station and gave the report-Ex.P.12. Therefore, we have not reason to discard the evidence of P.W.9. Thus, we are of the view that the prosecution, through the evidence of P.Ws.2 to 5 and 9, had proved the guilt of the accused beyond all reasonable doubt. Therefore, we find no infirmity in the judgment of the Trial Court and the same warrants no interference.

12 In the result, the criminal appeal is dismissed and the conviction and sentence imposed on the appellant/accused by the learned III Additional District and Sessions Judge, Coimbatore, for the offence u/s.302 IPC in SC.No.84/2012 vide Judgment dated 31.07.2012, are hereby confirmed.

14 It is reported that the appellant / accused is in jail.

He is directed to undergo the remaining period of sentence. The period of sentence already undergone by him, shall be given set-off u/s.428 Cr.P.C.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

AP

To

- 1.The III Additional District and Sessions Judge
Coimbatore.
- 2.The Principal District and Sessions Judge
Coimbatore.
- 3.The Judicial Magistrate No.6,
Coimbatore.
- 4.The Chief Judicial Magistrate,
Coimbatore District.
- 5.The Inspector of Police
B12 Ukkadam Police Station {Law & Order}
Coimbatore District.
- 6.The District Collector
Coimbatore District.
- 7.The Director General of Police
Mylapore, Chennai-4.
- 8.The Superintendent of Prison
Central Prison, Coimbatore.
(He is required to serve copy of Judgment on the
appellant/Accused)
9. The Public Prosecutor,
High Court, Madras.

Cr1.A.No.279/2017

SJ(CO)
SP(27/02/2018)