

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.03.2018

CORAM

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

Criminal Appeal Nos.55 and 56 of 2018 &
Crl.M.P.Nos.1104 & 1189 of 2018

Ramakrishnan .. appellant/A2 in
Crl.A.No.55 of 2018

Gopal .. appellant/A1 in
Crl.A.No.56 of 2018

vs

State represented by
The Inspector of Police,
Denganikottai Police Station,
Krishnagiri District
Cr.No.13 of 2012

.. Respondent in
both Crl.As

Common Prayer in both the Criminal appeals:- These Criminal appeal have been filed under Section 374(2) Cr.P.C., against conviction and sentence passed by the learned Additional District and Sessions Judge, Hosur, Krishnagiri District in S.C.No.128 of 2015 dated 09.01.2018 and to set aside the conviction against the appellants.

For appellants :Mr.K.Elangovan
- Crl.A.No.55 of 2018

:Mr.V.Rajamohan
- Crl.A.No.56 of 2018

For Respondent :Mrs.M.Prabhavathi
Additional Public Prosecutor
in both the Criminal appeals

COMMON JUDGMENT

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

The appellants/accused were convicted for the offence u/s.302 IPC and were sentenced to undergo life imprisonment

along with a fine of Rs.2000/- in default to undergo one year rigorous imprisonment in SC.No.128/2015 on the file of the learned Additional District and Sessions Judge, Hosur, Krishnagiri under judgment dated 09.01.2018. Aggrieved over the said conviction, the present appeals came to be filed by A1 in Crl.A.No.56 of 2018 and A2 in Crl.A.No.56 of 2018.

2. For the sake of convenience, the appellants are referred to as per the rank of the accused.

3. Brief facts of the prosecution case is as follows:-

The deceased is the husband of PW.1 and father of P.W.5. The deceased is the son of one Chinnasamy born through his first wife. The said Chinnasamy married one Lakshmakka. Through her, he had three daughters namely Jayamma, Baiamma and Sakthileela. A1 is the husband of Jayammal, one of the daughter of Chinnasamy. A2 is the neighbouring land owner. There were civil dispute over the share of the property of Chinnasamy between the deceased on one side and Jayammal and her sisters on the other side. On 14.01.2012 at about 11 a.m., the deceased and P.W.1, her son P.W.5 went together to the land to collect beans cultivated in the land. At about 12.30 p.m. A1 came there and questioned the deceased as to from whose land, he is collecting beans and A2 also came there. A1 beat the deceased on the head with a stone, M.O.1 and also with stick. A2 removed M.O.2 rope from the cattle and strangled the deceased. P.W.1 and P.W.5 out of fear went to road. Thereafter, the accused fled away from the place of occurrence. Thereafter, P.W.1 along with her son P.W.5 went to the police station and lodged Ex.P.1 complaint.

3. P.W.2, daughter of P.W.1, on hearing the occurrence, rushed to the place of occurrence and found her father lying dead. P.W.9, Sub Inspector also at the relevant point of time received written complaint from P.W.1 and registered a crime in Crime No.13 of 2012 under section 302 of IPC at 12. p.m. under Ex.P.7 printed First Information Report and sent the same to the Court and a copy to the investigating officer.

4. P.W.12, Investigating Officer, took up the investigation and went to the place of occurrence at 14.45 hours and prepared Observation Mahazar Ex.P.2 and also drawn rough Sketch Ex.P.11 in the presence of P.W.7 Village Administrative Officer and one Ashok and also collected blood stained earth and ordinary earth from the place of occurrence. Thereafter, he conducted inquest over the dead body and prepared Inquest Report Ex.P.12 and forwarded the requisition for postmortem of the dead body to the hospital through P.W.11 Head Constable.

5. P.W.10, Medical Officer attached to the Government Hospital conducted autopsy over the dead body of the deceased on 15.01.2012 and found the following injuries :

1. Abrasion over Right fore head 2. Right Zygoma in fact abrasion 3. Loosening of right second premolar, Lower incisor Left upper incisor 4. Abrasion over dorsal aspect of left hand and left upper arm 5. Ligature mark extending from right and left angle of mouth extending towards neck. 6. Abrasion over right Loins 7. Laceration of right knee and right leg and left leg.

Internal examination :

Skull and meninges shows # over inner table of right and left parietal bone of skull 9. Brain Hematoma over right and left hemisphere of brain.

and issued Ex.P.9 Postmortem Certificate and gave final opinion that the deceased died due to injuries sustained to vital organ - brain within 24 hours of the postmortem.

6. P.W.12, in continuation of his investigation examined other witnesses and recorded their statements. On 15.01.2012, the accused appeared before the Village Administrative Officer in his office and gave an extra judicial confession and P.W.7, Village Administrative Officer immediately handed over the accused to the Inspector of Police with his report Ex.P.4. P.W.8 is also present while the accused admitted the crime.

7. P.W.12, in continuation of the investigation, arrested the accused and recorded their confession and on the basis of the admissible portion of the confession of A1, Ex.P.13 and A2 Ex.P.14, seized M.O.1 stone weighing 2 kg from the bush at the instance of A1 and also seized rope M.O.2 at the instance A2 under Ex.P.5 and Ex.P.6 Mahazar and sent the accused for judicial custody. Thereafter, on completion of investigation, he filed final report against the accused under section 302 read with 34 of IPC.

8. The prosecution examined P.W.1 to P.W.12 and marked Ex.P.1 to Ex.P.14 and M.O.1 to M.O.7 were marked.

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

10. The Trial Court on consideration and appreciation of the oral and documentary evidences and other materials, has

found that the prosecution has established the guilt of the accused and convicted the accused for the aforesaid offence. Aggrieved over the same, the present appeals came to be filed.

11. Since the appeals arise out of the same judgment in the same crime number, we propose to dispose of all the the appeals in a common judgment.

12. The learned counsel for the appellants submitted that the eye witnesses version is highly unreliable. Their conduct itself shows that they are not present at the alleged time of occurrence. The dead body of the deceased was originally found lying in the field with rope tied around his body. This has been suppressed by the witnesses and the Village Administrative Officer has reached the spot immediately. But, whereas, P.W.1 and P.W.5 never whispered anything about the role played by the accused. Whereas, the other witnesses evidence clearly establish the fact that the Village Administrative Officer has given his first complaint to the Inspector of Police. The police also reached the spot immediately. The above complaint has not seen the light of the day. Whereas, in this case the First Information Report has been registered at 2.00 p.m. The delay itself creates serious doubt about the prosecution version. The evidence of P.W.11, Head Constable clearly show that P.W.1 and P.W.5 would not have been witnessed the occurrence and they have been shown as eye witnesses at later point of time to suit the convenience of the prosecution. Hence, submitted that their evidence is unreliable and that benefit of doubt has to be given to the accused.

13. The learned Additional Public Prosecution submitted that evidence of P.W.1 and P.W.5 is quite natural and does not suffer from any infirmity and medical evidence also corroborated their version and hence, submitted that the judgment of the trial Court does not require any interference.

14. In the light of the above submissions, now it has to be decided whether the prosecution has proved the guilt of the accused beyond all reasonable doubt.

15. Though the prosecution has examined as many as 12 witnesses, only P.W.1 and P.W.5 were examined as eye witnesses to the occurrence. P.W.1 is the wife of the deceased and P.W.5 is the son of the deceased. No doubt, the evidence of relative witnesses cannot be discarded on the ground that they are interested witnesses. Before accepting their version, their evidence has to be scanned and assessed properly to find out whether they really witnessed the occurrence. It is the version of P.W.1 and P.W.5 that on 14.01.2012 at about 11 a.m., the

deceased and P.W.1 and P.W.5 went to the land to collect beans cultivated in the land. At that time, A1 questioned the deceased and caused head injury with M.O.1 stone. A1 neighbouring land owner also came there and using a rope, used for tying the cow, strangled the deceased. However, P.W.1 and P.W.5, out of fear, went to road. Thereafter, they raised alarm and the accused fled away from the place of occurrence.

16. It is to be noted that P.W.1 in her evidence has stated that the occurrence took place at about 12.30 p.m. Whereas, P.W.5 in his evidence has stated that the occurrence took place at about 11.45 a.m. Though minor discrepancy does not matter, on a careful perusal of their evidence, particularly their conduct in remaining silent and not making any effort to prevent the accused from attacking the deceased who allegedly carried one stone and rope, creates serious doubt about their version. Admittedly, it is the version of the prosecution that the accused has not carried any deadly weapons so as to cause fear among the eye witnesses. P.W.1 is aged about 35 years and P.W.5 is an adult. Infact they have not even made any attempt to save the deceased from both the accused and their conduct is definitely against normal human conduct and makes serious doubt about their version of witnessing the occurrence. This doubt is further fortified by the following facts :

17. The evidence of P.W.1 and P.W.5 in their cross examination show that immediately after the occurrence, P.W.7, Village Administrative Officer visited the place of occurrence. P.W.2, daughter of P.W.1 asserts same in her evidence and P.W.7, Village Administrative Officer also in his evidence admitted that at 12.30 p.m., he went to the place of occurrence and saw the dead body. His evidence also shows that within half an hour from the occurrence, he had reached the place of occurrence. P.W.1 was very much present there and she did not inform him about the occurrence. P.W.1 and P.W.5 also in their evidence have deposed that despite presence of the Village Administrative Officer, they have not informed him about the role played by the accused. This version of P.W.1 and P.W.5 is against normal conduct of human being. If really, P.W.1 and P.W.5 are very much present and witnessed the occurrence, their minimum reaction on the visit of the Village Administrative Officer would be to inform the occurrence to him. But they have not done so. This aspect also makes their evidence unbelievable.

18. P.W.1 and P.W.5 in their evidence have not stated anything about the dead body was tied with a rope. However, P.W.1, in her cross examination has admitted that the police seized rope from the place of occurrence. Though, P.W.7, the Village Administrative Officer in his evidence has stated that P.W.1 has not informed about the occurrence, P.W.8, husband of the Village Panchayat President, in his cross examination has

categorically admitted that on 14.01.2012, immediately, after the occurrence, the Village Administrative Officer has come to the spot and P.W.1 has informed him about the occurrence and the Village Administrative Officer has written the complaint and forwarded the same to the police and the police also came to the spot within 20 to 25 minutes. It is his further admission that the body was found tied with a rope and the police removed the rope and took it from the place of occurrence.

19. The narration of P.W.8 is also supported by P.W.11 Head Constable, who visited the place of occurrence with the Inspector of Police. P.W.11 in his evidence has stated that the Sub Inspector already visited the place of occurrence at 12.30 p.m. and he was waiting in the place of occurrence for arrival of P.W.11. P.W.11 and P.W.12 reached the place of occurrence at 12 p.m. and the body was lying tied and the rope was removed by the Sub Inspector of Police and thereafter, the body was taken to the hospital. P.W.11, in fact, visited the place of occurrence along with P.W.12, Investigating Officer. His evidence also clearly shows that the Sub Inspector of Police was already in the place of occurrence and he was waiting in the place of occurrence and thereafter, the Investigating Officer came to the place of occurrence. This fact probabilise the defence theory that there was a previous complaint, which was suppressed by the prosecution. P.W.8 evidence clearly show that the complaint was given by the Village Administrative Officer at the earliest point of time.

20. It is further to be noted that P.W.4, a relative of the deceased in his cross examination admitted that he had received information about the death of the deceased at 12 noon and the Village Administrative Officer also in his evidence stated that he received the information at about 12.30p.m. It is the specific version of the Village Administrative Officer that he had reached the spot at 1 p.m. and the body was removed from the place of occurrence at about 2.30 p.m. itself and P.W3 has seen the dead body in the hospital at 3.30 p.m. P.W.2 in her evidence has also stated that she reached the place of occurrence at about 1.30 and that the dead body was removed at 2 pm. itself. All these facts clearly establish that the death would have been occurred much earlier and not as alleged by P.W.1 and P.W.5. The above facts further suggest that the First Information Report is an after thought and registered with due deliberation only at 2.00 p.m. When the witnesses version proves the fact that the dead body itself was removed at 2 p.m. from the place of occurrence, the Investigating Officer version that he went to the place of occurrence at about 2.15 pm. and conducted inquest is also doubtful.

21. It is further to be noted that the Investigating Officer in his evidence has stated that there is no rope found on the dead body and rope also not at all available in the place of occurrence. This evidence in fact contradictory to the admission of P.W.1, P.W.8, P.W.11 and P.W.12. All these facts creates serious doubt about the prosecution version. The Investigating Officer evidence also clearly show that he never found any beans in the place of occurrence. Rough sketch drawn by the Investigating Officer does not show that A2, neighbouring land owner. The motive alleged by the defence that there were civil dispute in respect of the property and the civil suit is also pending has also not been established by the prosecution. No materials have been filed in this regard.

22. In view of the above discrepancies, it is highly unsafe to rely upon the evidence of P.W.1 and P.W.5 and their evidence is doubtful as to the witnessing the occurrence. Though the prosecution has relied upon the evidence of P.W.7 and P.W.8 to show that the accused appeared before the Village Administrative Officer and gave extra judicial confession at 10 a.m., we are not in a position to accept the so called extra judicial confession. Though accused said to have appeared before the Village Administrative Officer in his office and confessed about the crime and nothing prevented the Village Administrative officer from recording the statement of the accused. Whereas, he has not done so. He has only given his report Ex.P.4, in an ordinary white paper, normally available in the police station. Further P.W.8, who is said to have been present while the accused confessed the crime in Village Administrative Officer's office, has given a different version about the confession, as if the deceased has cut one of the accused and therefore, he was tied by the accused. It is the further version of P.W.8 that the second accused has sustained injury and he has seen the injury. His evidence is totally contradictory to the evidence of P.W.7 and the prosecution is silent about these aspects.

23. Though homicidal death has been established by the prosecution, in view of the delay in lodging the complaint by PW.1, which has not been properly explained and owing to their conduct in not informing the occurrence to the official, Village Administrative Officer, who came to the place of occurrence, we are unable to believe their evidence as eye witness. Hence, we are of the view that the prosecution has failed to establish the guilt of the accused beyond reasonable doubt and the accused are entitled for benefit of doubt.

25. In the result, the Criminal Appeals are allowed and the conviction and sentence imposed on the appellants for offence under Section 302 I.P.C. Additional District and Sessions Judge, Hosur, Krishnagiri District in S.C.No.128 of

2015 dated 19.01.2018 are set aside and the appellants/accused are acquitted of the charge. The accused shall be released forthwith from the prison, if they are no longer require in connection with any other case. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

vrc

To

1.The Additional District and Sessions Judge,
Hosur, Krishnagiri District

2. Do Through
The District and Sessions Judge,
Krishnagiri District,
Krishnagiri.

3. The Inspector of Police,
Denganikottai Police Station,
Krishnagiri District.

4.The Superintendent,
Central Prison,
Vellore.

5.The District Collector,
Krishnagiri District,
Krishnagiri.

6.The Superintendent of Police,
Krishnagiri.

7.The Director General of Police,
Mylapore,
Chennai-4.

8.The Public Prosecutor
High Court, Chennai.

+ 1 cc to Mr.K.Elangovan Advocate,SR.22260

+ 1 cc to M/s.N.Mohideen Basha, Advocate,SR.22594

Cr1.A.Nos.55 & 56 of 2018

pvs (co)

nr 12/04/2018