

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2018

CORAM

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

CrI.A.No.580 of 2017

Settu ..Appellant /Accused No.1

Vs.

State rep. by,
The Inspector of Police
K.V.Kuppam Police Station
Vellore District.
[Cr.No.213/2012]

..Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code calling for the entire records in connection with S.C.No.118 of 2013 on the file of the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Vellore District set aside the Judgment dated 30.08.2017.

For Appellant : Mr.V. Parthiban for
M/s.E.Kannadasan

For Respondent : Mr.V.Arul,
Additional Public Prosecutor

JUDGMENT

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

The criminal appeal has been filed by the appellant / accused challenging the Judgment, dated 30.08.2017, passed in S.C.No.118 of 2013, by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Vellore, convicting the accused under section 302 I.P.C. and sentenced to undergo life imprisonment and to pay fine of Rs.5,000/- in default to undergo simple imprisonment for two months. The learned Trial Court Judge found not guilty of the accused under Section 506 (ii) I.P.C. and acquitted him under Section 235(1) of Cr.P.C.

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

[a] Deceased Manjula is resident of K.V.Kuppam. The accused/appellant and one Selvam(since deceased) are the cousins of the Manjula. On 3.5.2012 the deceased conducted house warming ceremony in her house. At that time the appellant and one selvem (deceased) came and demanded money from Manjula for purchase of Lorry. When the same was declined, the accused threatened her that if the money is not paid she will be killed. On 4.5.2012, accused and Selvam armed with sickle came to the house of the deceased and asked whether she could pay the money or not and Selvam held her tuft and dragged to nearby railway track. When A-2 tightly caught hold of her tuft at that time appellant slit her throat with sickle and thrown out the body on the railway track and ran away from the scene of occurrence. Thereafter, P.W.1, daughter of the deceased went to the police station and gave complaint Ex.P.1. Above occurrence was witnessed by P.W.1 and her husband P.W.3. P.W.4 also the brother of P.W.1 seen the occurrence. P.W.5 after hearing the noise at about 10.30 p.m., he saw P.W.1 was crying and saying that her uncles were cut her mother. P.W.8, Kavanoor Railway Station Master at about 10.25 p.m. On 04.05.2012, on noting that a dead by was lying on the railway track, immediately informed the same to the police station and the police also reached the occurrence place. In the meanwhile he also diverted the trains in different tracks. Railway police also came to the place of occurrence at 11.40 p.m. and the dead body was removed from the track at about 12.20 a.m. P.W.5 Points Man working in the railway station, was also in the occurrence place at the relevant point of time.

[b] P.W.14 Inspector of Police on 05.05.2012 at 00.30 hours received the complaint from P.W.1 in the police station and registered the same in Cr.No.213 of 2012 under Section 302 I.P.C. under Ex.P.15 and took up the investigation and removed the dead body from the place of occurrence and sent to the hospital. Thereafter, on 5.5.2012 at about 6.15 a.m. He has seen the place of occurrence and prepared Observation Mahazar Ex.P.5 and Rough Sketch Ex.P.6 in the presence of P.W.7 and one Gajendran and also seized the bloodstained earth and ordinary earth under Ex.P.6 Mahazar. Thereafter, he conducted Inquest over the dead body in the hospital and forwarded the requisition to the Medical Officer to conduct autopsy.

[c] P.W.2 Medical Officer attached to Gudiyatham Government Hospital, conducted the autopsy over the dead body and found the following:

"whole neck upto esophagus from left to right side deepest on left to right side deepest on left side and with tails off to the right about suprascapular region passing obliquely downwards across the larynx which is badly damaged major vessel cut.

Trachea cut off totally in the esophagus cut off.

A small laceration over left side of the fore head."

She issued Ex.P.3 Post Mortem Certificate and forwarded her final opinion Ex.P.4, stating that the deceased died due to blood loss leading to shock and trachea cut off totally leading to asphyxia and death.

[d] P.W.14 in continuation of his investigation, arrested the accused Selvam on 5.5.2012 at 15.00 hours and recorded his confession statement in the presence of witnesses P.W.7 and Gajendran and sent him to judicial custody and also recorded the statement of witnesses. He also sent material objects to the Court with a requisition Ex.P.17. Thereafter on 15.10.2012 he has arrested the appellant in the presence of P.W.7 and Gajendran and recorded his confession. In pursuant to the admitted portion of the confession Ex.P.18, he recovered M.O.1 and sent the same to the Court and also sent the accused to the judicial custody. P.W.13 Professor, Government Medical College Hospital and examined Hyoid bone and gave report Ex.P.14. P.W.11 Scientific Officer examined the preservatives and issued Toxicology Report Ex.P.11 stating that no poison was detected.

[e] P.W.14, the Investigating Officer, in continuation of his investigation, examined the witnesses; recorded their statements; collected various documents relating to the case including the Medical Reports and on completion of investigation, filed the Final Report u/s.302 and 506[ii] IPC against the appellant/accused and A2 Selvam, before the Trial Court.

[f] The Trial court issued summons to the appellant/accused and accused Selvam and their appearance, furnished them the copies of the documents u/s.207 Cr.P.C. and framed the charges as stated above and questioned them. Both the accused pleaded not guilty to the charge framed against them. The prosecution examined P.Ws.1 to 15 and marked Exs.P.1 to 21. While the case was pending trial, accused Selvam was died and hence the charge against him was abated.

[g] The appellant/accused was questioned under section 313 [1] [b] Cr.P.C., with regard to the incriminating circumstances against him in the evidence rendered by the prosecution and he denied it as false. On the side of the defence, no witness was examined and no document was marked.

[h] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, has acquitted the appellant/accused of the offence under Section 506[ii] IPC and convicted and sentenced the

appellant/accused for the offence u/s.302 I.P.C.and imposed punishment as stated above.

3 Mr.V. Parthiban, learned counsel appearing for the appellant would submit that the evidence of P.Ws.1,3 and 4 is highly unreliable. They could not be an eye witnesses. The F.I.R. registered in this case is an after thought and came to be filed after police commenced the investigation. Therefore, entire prosecution is highly doubtful in the case. He would further submit that P.W.7 and P.W.8 Station Master and Points Man found the dead body at about 10.25 p.m. They never seen any of the eye witnesses in the place of occurrence. These facts clearly make the evidence of P.Ws.1, 3 and 4 unreliable. Hence the learned counsel for the appellant submitted that the prosecution case is highly doubtful and the F.I.R. is an after thought and hit by Section 162 of Cr.P.C. Therefore, the judgment of the learned trial Court is not based on proper appreciation of evidence. Hence he prayed for allowing the appeal.

4. Mr.V. Arul, learned Additional Public Prosecutor, has fairly conceded that there is a delay in filing the F.I.R. and the F.I.R. has been registered after police reached the spot. However, he submitted that the relatives of the deceased have spoken about the occurrence, and hence, left the matter for appreciation by Court.

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

6 In the light of the above submissions, we have to analyse whether the prosecution was able to bring home the guilt of the appellant/accused beyond all reasonable doubt.

7 The law was set in motion on the basis of Ex.P.1 F.I.R. said to have been given by P.W.1, daughter of the deceased Manjula at 00.30 hours on 05.05.2012. In this regard, it is the evidence of P.W.1 and 14 that Ex.P.1 was lodged at Police Station at 00.30 hours on 5.5.2012. The version of P.W.1 and P.W.14 when considered, from the other materials and other evidences particularly the evidence of P.W.7 and P.W.8, we are of the view that Ex.P.1 cannot be a first information at all.

8 P.W.8 Station Master on 04.05.2012 at about 10.25 p.m. on hearing that a dead body was lying on the railway track, immediately rushed to the spot along with P.W.9 Points man and immediately he has passed an information to the police and the police also reached the place of occurrence at 10.50 p.m. Thereafter, railway police also reached the place of occurrence at 11.40 p.m. and the dead body was removed at 12.20 p.m. from the track. His cross examination also would clearly show that till he reached the place of occurrence he never heard about any noise or cry of the people. Further his

evidence also shows that 30 minutes prior to 10.25 p.m. one express train also gone in the above track. P.W.8, is the station master. There is no reason for him to give any false version before the Court of law. Therefore, we are of the view that his evidence appears to be natural and does not suffer from any infirmity. P.W.9 also supported the version of P.W.8.

9 The evidence of P.W.8 when carefully seen, theory of the prosecution that F.I.R. came to be filed at 00.30 hours on 05.05.2012 is highly doubtful. As per the evidence of P.W.8, the police reached the spot at 10.50 p.m., the railway police reached the spot at 11.40 p.m. and the dead body was removed at 12.20 a.m. Therefore, P.W.1 reached the police station after the occurrence directly and lodged the complaint Ex.P.1 at a later point of time is highly doubtful. Ex.P.1 is clearly hit by Section 162 Cr.P.C. since the F.I.R. came to be registered after the commencement of investigation.

10 It is the version of P.W.1, daughter of the deceased and her husband P.W.3 and her brother P.W.4 that on 3.4.2012 the deceased conducted house warming ceremony. Thereafter, on the next day, she also conducted Ganapathy Homam. On 03.04.2012, the accused demanded money for purchase of lorry and the same was refused by the deceased. Hence they threatened her with dire consequences and proclaimed that they would do away with her. Again on 4.5.2012 both the accused came to the house in the night hours and accused Selvam caught hold of her hair and dragged her to the nearby railway track and the appellant slit her throat with M.O.1. In the cross examination, it is the version of P.W.1 that both the accused came to her house from southern entrance and fought with her mother. There were quarrels between the deceased and the accused for more than one hour. Thereafter, the accused dragged the deceased to the nearby railway track and P.W.1 and P.W.3 followed them. Further, the appellant cut the throat of the deceased while other accused caught hold of the deceased. Thereafter, she gave a complaint. It is the specific evidence of P.W.1 that at the relevant point of time, she, her husband and children alone were present. Though P.W.3 also spoken as if he has seen the occurrence, his entire evidence is highly inconsistent with the evidence of P.W.1. His evidence is to the effect that only after hearing the sound when he came out from the house, the accused at the distance of 150 feet, cut the deceased and ran away from the place of occurrence. It is the version of P.W.3 that he went to the police station on the next day. Even before he reaches the place of occurrence, railway police came to the occurrence place. His evidence is also highly unbelievable for the simple reason that if he really witnessed the occurrence, possibility of railway police reaching the place of occurrence even before P.W.3 reaches the occurrence place is very remote. Therefore, his evidence that he witnessed the occurrence is doubtful. P.W.3 went to the police station next day morning. Before that, his wife P.W.1

was in the police station. If he really P.W.3 present along with his wife when the occurrence took place, his normal conduct would have been to accompany P.W.1 to the police station. But he has gone to the police station next day morning as per his evidence. This aspect creates serious doubt about his version. It is further to be noted that P.W.1 and P.W.3 never whispered anything about P.W.4 in the place of occurrence. It is the definite evidence of P.Ws.1 and 3 that only P.W.1 and P.W.3 and their children were alone present at the time of occurrence. Whereas P.W.4, brother of the deceased has spoken as if he had seen the occurrence, his presence was never spoken by P.Ws.1 and 3. Therefore, his evidence also cannot be given much importance.

11 Yet another circumstance to disbelieve the evidence of P.W.1 and 3 is that P.W.8 and P.W.9 who heard that a dead body was at the railway track at 10.25 p.m., immediately they reached the place of occurrence and informed the police. They did not see P.W.1 or P.W.4 in the place of occurrence. Further P.W.8 evidence clearly shows that before the occurrence he never heard any cry or noise from the place of occurrence. Therefore, the evidence of P.Ws.1, 3 and 4 is highly doubtful. Further, the evidence of P.W.1 that one of the doors was opened in the southern side, both the accused entered in the southern door at 10.00 p.m. is also highly doubtful. As per their version, at about 10.00 p.m., the accused entered the house and there was quarrel for more than one hour in the house itself, then the question arises as to how the dead body was found at 10.25 p.m. in the railway track as noticed by P.W.8. It is further to be noted that just half-an-hour before the dead body was found in the track, express train passed through the above track as per the evidence of P.W.8. Therefore, the evidence of P.W.1 and P.W.3 that there was quarrel for more than one hour and thereafter both the accused dragged the deceased to the railway track and they caused the murder is highly unbelievable. Further, P.W.1's evidence that one of the accused caught hold of the deceased and the appellant slit the throat of the deceased is also highly doubtful. The medical evidence shows that the injury was found whole neck upto oesophagus from left to right side deepest on left side and with tails off to the right about supra scapular region passing through obliquely downwards across the larynx which is badly damaged major vessel cut. The nature of the injury found on the body of the deceased clearly suggests the fact that it is impossible to inflict such injuries when the other person caught hold the deceased's hair without any injury on the accused. At any event, though medical evidence establishes homicidal death, the entire prosecution is highly doubtful.

12 The F.I.R. came to be filed after the commencement of the investigation. When the F.I.R itself is doubtful and the evidence of so called eye witnesses attached with serious artificialities and improbabilities, it is highly unsafe to

rely upon those witnesses. The evidence of P.W.1 shows that there was serious enmity between the accused and P.W.1. Her evidence discloses the fact that in the year 2002 there was a marriage proposal for P.W.1 and appellant herein and the above proposal was completely stopped at the time of printing the marriage invitation. When the marriage itself has failed, there was serious dispute in their relationship is highly improbable to contend that the accused and another just demanded some money from the deceased for the purchase of lorry, when the same was refused by the deceased, therefore motive, as projected by the prosecution is also highly improbable. Admittedly, the appellant is a bus driver working in Karnataka State Road Transport Corporation, Bangalore. When he was already working in government service, the question of purchasing of lorry would not arise. Therefore, the motive projected by the prosecution in this case suffered from improbabilities. In any event, the evidence of P.Ws.1,3 and 4 allegedly witnessing the occurrence is highly doubtful and the F.I.R. also is an afterthought and it is further to be noted that Express F.I.R. Ex.P.15 reached the Court only at 11.40 a.m. on 5.5.2012 almost with a delay of more than 11 hours. The delay remains unexplained. In fact, such delay clearly suggests that the so called witnesses P.Ws.1 and 3 & 4 were not at all present in the place of occurrence. Hence we are of the view that the trial Court's finding is not based on proper appreciation of evidence. Hence, the conviction and sentence imposed on the appellant u/s 302 I.P.C. is liable to be interfered with and the appellant/accused has to be given benefit of doubt. Accordingly, the conviction and sentence imposed on the appellant/accused under Section 302 I.P.C. is hereby set aside. It is made clear that the recommendations made by trial court for compensation u/s 357(3) Cr.P.C. is not interfered with.

13 In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant/accused by the Trial Court vide impugned Judgment in SC.No.118/2017 dated 30.08.2017 are set aside and he is acquitted of all charges levelled against him. However, the recommendations made by trial court for compensation u/s 357(3) Cr.P.C. is not interfered with.

14. It is reported that the appellant/accused is in jail. Hence, he is directed to be released forthwith unless his presence/custody is required in connection with any other case/proceedings. The fine amount, if any, paid shall be refunded to the appellant/accused.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

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To

1. The District Collector, Vellore.
 2. The Director General of Police, Mylapore, Chennai.
 3. The Principal District Judge, Vellore.
 4. The Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Vellore, Vellore District.
 5. The Chief Judicial Magistrate, Vellore.
 6. The Superintendent of Police, Vellore.
 7. The Inspector of Police
K.V.Kuppam Police Station, Vellore District.
 8. The Superintendent
Central Prison, Vellore.
 9. The Public Prosecutor,
High Court, Madras.
- +1 cc to M/s. E. Kannadasan, Advocate Sr.12387

CNR(CO)
EU(26/03/2018)

CrI.A.No.580 of 2017

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