

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.09.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.A.No.609 of 2017
and
Crl.M.P.No.1143 of 2018

Manoharan,
S/o.Govindaraj.
Accused

... Appellant/Single

-vs-

State rep. by
the Inspector of Police,
Mangalam Police Station,
Tiruppur District.
[Crime No.631 of 2015].

... Respondent/Complainant

PRAYER: Criminal Appeal Petition is filed under Section 374 (2) of the Code of Criminal Procedure against the Judgment and Order of conviction passed in S.C.No.15 of 2016 by order dated 14.09.2017, on the file of the I Additional District and Sessions Court, Tiruppur and the appellant prays the same may be set aside.

For Appellant :: Mr.S.N.Arun Kumar

For Respondent :: Mr.R.Prathapkumar,
Additional Public Prosecutor

J U D G M E N T

[Judgment of the Court was made by M.NIRMAL KUMAR, J.]

The appellant, sole accused in S.C.No.15 of 2016, has filed this appeal against Judgment of the I Additional District and Sessions Judge, Tiruppur dated 14.09.2017. Appellant was found guilty under Section 302 of the Indian Penal Code and sentenced to life imprisonment and a fine of Rs.5000/-, in default, six months Simple Imprisonment. He was acquitted of charge under Section 201 of the Indian Penal Code.

2.Appellant was originally charged under Sections 302 and 201 of the Indian Penal Code in that on 23.08.2015 at about 7.00 pm, due to dispute between him and his younger brother, deceased Madhankumar, over house property of their mother Manonmani. On 23.08.2015 at about 7.00 pm, appellant abused and slapped the deceased on his cheek, pushed him down and with intention to murder took a wooden log and dealt several blows to the head due to which Madhankumar died. To screen the offence, the body of the deceased Madhankumar was buried in the burial ground without informing the police.

3.The prosecution, to prove the case had examined PW.1 to PW.16 and marked Ex.P1 to Ex.P19 and M.O.1, material object. No witnesses were examined on the side of the appellant.

4.PW1-Selvarani was the Village Administrative Officer of Mangalam Village, where the accused and deceased resided. She preferred a complaint on 26.08.2015, on coming to know of the suspicious death of the said Madhankumar on 23.08.2015 and for not informing the police about the same.

5.PW2-Manonmani is the mother of the appellant as well as the deceased. Ex.P.2, the signature of PW.2 in her 164 Cr.P.C. statement has been marked. Since she had not supported the prosecution case she was treated hostile.

6.PW3-Kumar is the brother of PW.2 and maternal uncle of appellant and accused. He has spoken to the burial of the deceased and the inquest by R.D.O., PW11.

7.PW4-Karthikeyan, a neighbour of the appellant, spoke to the marriage between deceased and PW.10 which had taken place six months before the occurrence and to a dispute with regard to the usage of the bathroom. He further deposed that the deceased was in a drunken state. He also spoke to being present during the inquest on 01.09.2015 and to the arrest of the appellant, his confession and recovery on 05.09.2015. Ex.P3 to Ex.P5 and M.O.1 had been marked through him.

8.PW5-Dr.Jaisingh had conducted the Post-mortem on 01.09.2015 on the body of the deceased and through him the request for the Post-mortem certificate and request to exhume the body and Ex.P6 to Ex.P8, and Ex.P13 and Ex.P14, the Forensic report and the final opinion have been marked. He had found the following injuries:

"Laceration 4 x 3 cm x bone deep
noted over left occipital region.

On dissection of Scalp, skull and
Dura: Sub scalp contusion bluish in colour

10 x 6 cm noted over left occipital region and 6 x 4 cm noted over both frontal region. Blood tinged seen over surface of the meninges. Brain found decomposed with 100 grams of blood clots noted on the right temporo parietal region.

OTHER FINDINGS:

Pleural and peritoneal cavities: empty.

Larynx and Trachea: cut section decomposed.

Hyoid bone - intact.

Heart: Flabby, Cut section decomposed.

Stomach contains about 10 ml. Of decomposed fluid with smell of decomposition, mucosa decomposed.

Small intestine contains about 10 ml of decomposed fluid with smell of decomposition, mucosa decomposed.

Liver, Spleen, Kidneys and Lungs cut section decomposed.

Urinary bladder - empty.

Mud from above, below and sides of the dead body.

Viscera preserved for chemical analysis.

OPINION: The deceased would appear to have died of HEAD INJURY.

Further, it is seen from the forensic report which is as follows:

1. Stomach and its contents.

Detected Two hundred and sixty seven (267) mg of ethyl alcohol but not other poison.

2. Intestine and its contents.

Detected eighty seven (87) mg of ethyl alcohol but not other poison.

3. Liver & Kidney.

Detected one hundred and forty seven (147) mg of ethyl alcohol but not other poison.

4. Mud from Top of the body.

Did not detect ethyl alcohol or other poison.

5. Mud from Right side of the body.

Did not detect ethyl alcohol or other poison.

6. Mud from left side of the body.

Did not detect ethyl alcohol or other poison.

7. Mud from Bottom of the body.

Did not detect ethyl alcohol or other poison.

8. Preservative.

Did not detect ethyl alcohol or other poison.

The presence of ethyl alcohol has been confirmed."

9.PW6-Mohamed Kasim, a neighbour deposed to a cordial relationship between appellant and deceased and to the deceased often being in inebriated state.

10.PW7-Abdul Kader, another neighbour was witness to Observation Mahazar, marked as Ex.P.9.

11.PW8-Karthikeyan, a resident of the neighbourhood spoke to his dispute with one Veerappan over the use of the bathroom to appellant having pacified him and to appellant being followed by the deceased.

12.PW9-Rangasamy alias Kattan spoke to exhumation of the body of the deceased.

13.PW10-Abitha, wife of the deceased deposed to her marriage with the deceased on 03.04.2015, that they lived in one portion of the house of the deceased's mother and that in the other portion, the appellant's, family were residing. Further, she deposed to the assault of her husband on 23.08.2015 by the appellant and to PW2, mother of the deceased asking her not to

reveal the reason for the death of her husband. She further deposed to the complaint given by PW1 on 26.08.2015 and about the exhumation of her husband's body on 01.09.2015. Ex.P10 is the 164 Cr.P.C. statement of PW10.

14.PW11, Revenue Divisional Officer of Tirupur South, deposed to the exhumation in his presence on 01.09.2015 and to examining PW2, PW3, PW10 and the Post-mortem conducted by PW5. His report is Ex.P11.

15.PW12, Police Constable, spoke to the exhumation and to receiving and handing over the viscera to the forensic laboratory.

16.PW13-Tamil Selvan another police constable/computer operator spoke to typing the statement of witnesses using a computer.

17.PW14-Noorul Ameen, neighbour of the accused examined to speak to the fact about the appellant assaulting the deceased had not supported the case of the prosecution and was treated hostile.

18.PW15-Kulandaivelu, the Special Sub-inspector attached to the Mangalam Police Station, Tirupur spoke to receiving the complaint Ex.P1 from PW1 and registration of FIR Ex.P15.

19.PW16-Kaliappan, Investigating Officer, spoke to preparing Ex.P16 rough sketch of the scene of occurrence, Ex.P17 Section alteration report dated 04.09.2015 and Ex.P18, the rough sketch of the burial ground and Ex.P19, the investigation report. He further deposed about the receipt of FIR in Crime No.631 of 2015 under Section 174 of the Code of Criminal Procedure and thereafter, taking up investigation on 26.08.2015, visiting the scene of occurrence, preparing Mahazar, requesting exhumation and altering the case from Section 174 of the Code of Criminal Procedure to 302 of the Indian Penal Code. On completion of investigation he had filed the charge sheet against the accused under Sections 302 and 201 of the Indian Penal Code.

20.Counsel for the appellant contended that it is an admitted fact that the deceased was in a drunken state and to often being in inebriated state, which has been spoken to by PW2, Mother of the deceased, PW3 maternal uncle, PW4, PW6, PW7 the neighbours and PW10, the wife of the deceased. The forensic report Ex.P13 informs the presence of alcohol in the stomach,

intestine, liver and kidney of the deceased and as per Ex.P14, the final opinion, it is stated that the deceased had consumed alcohol prior to the death and he could have been under influence of alcohol. Further, the evidence of the mother of the deceased confirms that the deceased's in a drunken state had slipped, suffered an accidental fall and sustained head injury, which fact finds mention in Ex.P1, complaint given by PW1, Village Administrative Officer. PW1, Village Administrative Officer had given a complaint giving the reason for the death of the deceased as due to an accidental fall and sustaining of head injury. From the exhumation report Ex.P7, wherein the injuries sustained by the deceased find mention and the opinion of PW5 Jaisingh, the post-mortem doctor, it is conclusively seen that the deceased had sustained fatal injury of the occipital region, which conforms to the version of the witnesses. The further contention of the learned counsel is that PW10, the wife of the deceased is the only witness who later exaggerated and gave a different version as though, the appellant assaulted the deceased with a wooden plank. M.O.1 has been recovered on the basis of Ex.P4 confession. Signature of the accused is not to be found therein. Counsel submits that no confession was given by appellant. Evidence of PW10 is full of embellishment and contradictions. Thus, the evidence of PW10 is motivated and cannot be relied upon.

21.Learned Counsel submitted that PW16, the Investigating Officer is silent about any enquiry on 25.08.2015 in the Police Station. The Investigating Officer has not given any reason for rejecting PW10's categorical assertion that her husband was assaulted by one Veerappan Karuppasamy and Alagesan. Further, it is to be noted that after the fall of the deceased at about 7.00 pm on 23.08.2015, the deceased was taken inside the house, and had gone to sleep. At midnight, the deceased is said to have complained of breathlessness and appellant had called upon the emergency ambulance service and the deceased was taken to the Government Hospital, Tirupur by ambulance. He was advised to be taken to the Government Hospital, Coimbatore. On the way, the deceased was taken to Deepam Nursing Home, where he was declared dead. Strangely, none of the Doctors of the Government Hospital, Tirupur and Deepam Hospital, Tirupur have been examined. PW2 had not stated about the alleged assault by the appellant to any of these doctors and any person till 01.09.2015, the day of exhumation and enquiry by Revenue Divisional Officer. PW10 has not made any complaint about the appellant. Thus, the assault by the appellant was an after-thought of PW10, and the same finds no support or corroboration through witnesses or medical records.

22.The learned Additional Public Prosecutor had contended that the prosecution had carried out a diligent investigation

and the witnesses have been examined and the Exhibits and M.O's. have been marked. PW10, the wife of the deceased had deposed about the assault carried out by the appellant against her husband/deceased MadhanKumar. Further, PW.11, the Revenue Divisional Officer had conducted an enquiry and had filed a report Ex.P11. The post-mortem doctor had issued the post-mortem certificate Ex.P6; Ex.P.7, the exhumation report in which the injuries found on the deceased are detailed. Further, from the opinion, it is seen that the deceased would appear to have died owing to head injury. Hence, the Trial Court on the basis of these materials had rightly rendered a judgment of conviction which needs no interference.

23.The Investigating Officer admits that statements and documents in the above case have been prepared using a laptop and no printer was taken along with him to all the places and hence, printout of the statements and documents have been taken at a later point of time. In this case, the alleged occurrence is said to have taken place on 23.08.2015 and the complaint was given by the Village Administrative Officer on 26.08.2015, but the complaint Ex.P1 and the FIR Ex.P15 had reached the Court only on 04.09.2015. No reason for the enormous delay in forwarding the complaint to the Court has been given. Further, all the statements and documents had reached the Court belatedly, which creates a strong doubt over the case of the prosecution. Further, PW.10 states that the police came to her residence on 24.08.2015 and thereafter, she was called for enquiry on 25.08.2015. This is corroborated by PW2, the mother of the deceased. Thus, these witnesses, though have appeared before the police have not whispered anything about the appellant assaulting the deceased. After the alteration report dated 04.09.2015, the case has been given a twist and the appellant had been arrayed as an accused. The two eye-witnesses in this case PW2 and PW10 are said to have been present during the assault and attack by the appellant on the deceased. There is much divergence in their versions. Further, other witnesses who had rushed to the place of occurrence, did not support the statement of PW10. There has been delay in recording the statements, which gives rise to serious doubt over the truthfulness thereof.

24.In the above circumstances, we are not in a position to sustain the conviction and we are bound to give the benefit of doubt to the accused. Thus, we hold that the prosecution has miserably failed to prove the case against the accused beyond all reasonable doubt and he is entitled to acquittal.

25.In the result, the appeal is allowed. The conviction and the sentence imposed on the appellant/accused by the Trial Court are hereby set aside and he is acquitted from the charges.

Fine amount already paid, if any, shall be refunded to him. His bail bond shall stand cancelled. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CO)

//True copy//

Sub Assistant Registrar

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To

1. Judicial Magistrate No.II, Tiruppur
 2. - do- Through The Chief Judicial Magistrate, Tiruppur
 3. The I Additional District and Sessions Judge, Tiruppur.
 4. - do- Through The Principal Sessions Judge, Tiruppur
 5. The District Collector, Tiruppur
 6. The Director General of police, Mylapore, Chennai -
 7. The Superintendent, Central Prison, Coimbatore.
 8. The Inspector of Police, Mangalam Police Station, Tiruppur District.
[Crime No.631 of 2015].
 9. The Public Prosecutor, High Court, Madras.
 10. The Section Officer, Criminal Section, High Court, Madras.
- +1cc to Mr.C.Ramkumar, Advocate SR.No.61327

Cr1.A.No.609 of 2017

GMV (08/10/2018)