

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2018

CORAM

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

Cr1.A.No.622/2017

C.Baskar

..

Appellant/Sole Accused

Vs.

State rep. by,
The Inspector of Police
Kavarapettai Police Station
Tiruvallur.

..

Respondent

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code challenging the judgment passed in SC.No.32/2014 by the learned IV Additional District Sessions Judge, Ponneri dated 22.09.2017.

For Appellant : Mr.T.S.Rajamohan

For Respondent : Mr.V.Arul, APP

JUDGMENT

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

Appellant is the sole accused in the case tried in SC.No.32/2014 on the file of the Court of IV Additional District and Sessions Judge, Ponneri, for offence u/s.302 IPC. The Trial Court, under impugned Judgment dated 22.09.2017, found him guilty of offence u/s.302 IPC and sentenced him imprisonment for life and a fine of Rs.1,000/-, with a default sentence of 3 months simple 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] Deceased Appadurai is the husband of P.W.1-Nesamani. P.W.2-Sasikala is the daughter of P.W.1 and deceased and wife of the appellant/accused. P.W.3-Balan and P.W.4-Geetha are son and daughter of P.W.1 and deceased Appadurai. All were the residents of Thidir Nagar.

[b] P.W.2-Sasikala was given in marriage to the appellant/accused ten years back. Marital relationship between the spouses was not cordial and the appellant/accused used to harass P.W.2 in connection with dowry. Therefore, P.W.2 frequently left her matrimonial home and went to her parental home. One month prior to 18.06.2012, P.W.2 left her matrimonial home and came to her parental home. On 18.06.2012, between 8.30 p.m. and 9.30 p.m., the appellant/accused came to P.W.1's house in a drunken mood and abused P.W.1 in vituperative language. However, the deceased pacified his son-in-law. Thereafter, the appellant/accused left the place. Deceased Appadurai followed him for some distance. P.Ws.1 to 4 also followed the deceased. The accused picked up a stone [M.O.1] when nearing the shop of one Prakasam and pelted at the deceased on the forehead. As a result, the deceased sustained injuries on the left eyebrow and fell down. The appellant/accused ran away from the spot immediately. P.Ws.1 to 4 lifted the deceased and brought him to the house and thereafter, took him to the nearby hospital, where the doctor declared his death. Thereafter, P.W.1 went to Kavarapettai Police Station and lodged the First Information-Ex.P.1 .

[c] P.W.5-Rajendiran, is the resident of the same place. He has also seen the deceased falling down in front of the shop of Prakash. P.W.11-Dillibabu, Sub Inspector of Police attached to Kavarapettai Police Station at the relevant point of time, received Ex.P.1 and registered the crime in Cr.No.286/2012 for an offence u/s.302 IPC. Ex.P.8 is the FIR. He forwarded Exs.P.1 and P.8 to the jurisdictional Court and copies, to the Superior Officials.

[d] P.W.12-Ashok Metha, Circle Inspector of Gummidipoondi Circle, on receipt of the Case Diary as regards Cr.No.286/2012 from P.W.11, took up the case for investigation on 19.08.2012 ; went to the scene of crime at 6.00 a.m. and prepared the Observation Mahazar [Ex.P.2] and Rough Sketch [Ex.P.9] in the presence of P.W.6-Prabhu and one Kumar. He held inquest on the dead body of the deceased in the presence of the Panchayatdars and prepared Ex.P.10-Inquest Report. Thereafter, he sent the dead body for autopsy.

[e] P.W.9-Dr.Premalatha, Medical Officer attached to Ponneri Government Hospital, conducted autopsy on the dead body of the deceased on 19.06.2012 at 12.30 p.m. and found the

following injuries:-

"External Examination:-

1 A contusion about 3.5cmx1.0mx0.25cm above lateral half of left eyebrow, middle of which 1cm cut injury present.

2 0.5x0.5x0.25 cm contusion below 6 cm from left end of left eyebrow, near left cheek.

3 0.5x0.25x0.25 cms [2 nos] 4 cms below left ear.

4 4cmx2cmx0.25cm abrasion left shoulder. Hyoid bone intact. Chest:-Ribs-intact. Long bones-intact. External genitalia-intact.

Internal Examination:-

Cranium: Ventral Portion of scalp corresponding to the contusion above left eyebrow, dark discolouration noted. No bone injury. No evidence of extra-dural haemorrhage or intracranial haemorrhage. Hyoid bone intact. Ribs intact. Lungs congested. Heart-congested.

Abdomen:-Stomach congested and contained digestive fluid. Small intestine congested and contained digestive fluid. Spleen, Kidney-congested. Liver congested."

Ex.P.5 is the Postmortem Certificate, wherein he had opined that "the deceased would have died of pain and shock due to the injuries sustained by him about 10 hours prior to postmortem."

[f] P.W.10-Vimali Thiagarajan, Scientific Officer in Forensic Department, has examined the material objects and issued Ex.P.6-Serology Report and Ex.P.7-Biological Report.

[g] P.W.12, in continuation of his investigation, examined the witnesses and recorded their statements. He arrested the appellant/accused on 19.06.2012 at about 12.15 p.m. in the presence of P.W.7-Natarajan and P.W.8-Nagaraj and recorded his voluntary confession statement, admissible portion of which is marked as Ex.P.3. In pursuant to the same, he seized M.O.1-Stone under Ex.P.4 and forwarded the same to the Court under Form-95. On completion of investigation, filed the Final Report against the appellant/accused u/s.302 IPC before the learned Judicial Magistrate No.1, Ponneri, who took it on file in PRC.No.26/2012 and issued summons to the accused and on his

appearance, furnished him the 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, Tiruvallur, u/s.209 Cr.P.C., who in turn had made over the case to the learned IV Additional District and Sessions Judge, Ponneri, who took it on file in SC.No.32/2014 and on appearance of the appellant / accused, had framed the charge u/s.302 IPC and questioned him. The appellant / accused pleaded not guilty to the charge framed against him.

[h] The prosecution examined P.Ws.1 to 12 and marked Exs.P.1 to 10 besides marking M.O.1.

[i] 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.

[j] 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.

3 Mr.T.S.Rajamohan, learned counsel appearing for the appellant would submit that the evidence of P.Ws.1 to 4, family members of the deceased Appadurai, is highly unnatural and unbelievable. Their conduct in remaining silent even after the alleged occurrence without complaining the same to anyone, creates a serious doubt about the genesis of the occurrence. The alleged occurrence took place in between 7.00 to 9.00 p.m. on 18.06.2012 ; whereas the FIR was lodged only on the next day morning at 5.00 a.m. The delay in lodging the First Information has not been properly explained by the prosecution. This delay creates a doubt about the very origin of the occurrence itself. P.W.5, an independent eyewitness, has given a different version about the occurrence. His evidence clearly proves the fact that the deceased had accidentally fell down on the floor and sustained head injury and the theory projected by the prosecution is unreliable and P.Ws.1 to 4 are enmically disposed towards the appellant/accused in view of the strained matrimonial relationship between P.W.2 and her husband-appellant/accused and they have falsely implicated the appellant/accused. Hence, learned counsel for the appellant/accused submitted that the appellant/accused is entitled for acquittal.

4 Countering the arguments of the learned counsel for

the appellant, Mr.V.Arul, learned Additional Public Prosecutor submits that though there is a delay in lodging the first information by P.W.1, the same cannot be fatal to the prosecution. Admittedly, the appellant/accused is the son-in-law of the deceased and because of that reason, the complaint could not be given immediately to the police. Further, the deceased was taken to the hospital by the relatives. Therefore, delay in going to the police station is normal and cannot be said to be an inordinate delay. It is his further contention that all the family members including the wife of the deceased have spoken about the occurrence. Hence, the prosecution has proved the guilt of the appellant/accused beyond all reasonable doubt and there is no infirmity in the findings of the Trial 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, we have to analyse whether the prosecution was able to bring home the guilt of the appellant/accused beyond all reasonable doubt.

7 The deceased is one Appadurai. He is the father-in-law of the appellant/accused. This fact is not in dispute. It is also not in dispute that the deceased died of the injury sustained. Evidence of P.W.9-Medical Officer and Ex.P.5-Postmortem Certificate would clearly establish the fact that the deceased died of injuries sustained on the left eyebrow and his death was due to pain and shock due to the injuries cited above. Though the prosecution has established the death of Appadurai, this Court has to analyse whether the above injury was caused by way of violence or the death was accidental. If the homicidal violence is established, whether or not, the appellant/accused was the reason for the same?

8 The law was set in motion on the basis of Ex.P.1-first information said to have been given by P.W.1-wife of the deceased on 19.06.2012 at 5.00 a.m., for the alleged occurrence that took place around 7.00 to 9.00 p.m. on the previous night. The evidence of P.W.1, when carefully scanned, would disclose that due to matrimonial discord between P.W.2 and the appellant/accused, P.W.2 used to leave her matrimonial home frequently and would come to her parental home. Likewise, P.W.2 came to the house of P.W.1 one month prior to the date of occurrence. On 18.06.2012, the appellant/accused came to the house of P.W.1 at 7.00 p.m. in drunken state and abused the family members including the deceased in a vituperative language. However, the deceased pacified him. Thereafter, the appellant/accused left the place. The deceased followed him for a certain distance. At that time, the appellant/accused pelted

stone-M.O.1 on the forehead of the deceased. As a result, he sustained injury on the eyebrow. P.W.1 in her evidence, has categorically stated that the occurrence took place at about 7.00 p.m. Whereas, P.W.2-wife of the appellant/accused, in her evidence had stated that the appellant/accused came to her parental home at about 9.00 p.m. and took up a quarrel with the deceased. Thereafter, he left. When her father followed the appellant/accused, the appellant/accused beat her father with stone. Immediately, they took the deceased to their house. It is to be noted that the evidence of P.W.1 and P.W.2 is not consistent with regard to the time of occurrence and there are serious infirmities. Similarly, P.W.1 would depose that it was only the appellant/accused only thrown the stone on her husband/deceased. Whereas, P.W.2 would depose that it was her husband - appellant/accused who had beat her father with stone. This serious inconsistency in their evidence creates doubt about the alleged occurrence as projected by the prosecution. This doubt is further fortified by the conduct of P.Ws.1 to 4. They in one voice have stated that the deceased sustained injury and immediately died. They have also took the deceased to the hospital where the doctor declared him dead. Immediately, they brought the dead body of the deceased to their house. It is to be noted that having known that the deceased died due to the alleged attack by the appellant/accused, P.Ws.1 to 4 had not made any attempt, either to call the police or lodge the report immediately. Whereas Ex.P.1 was lodged for the first time at 5.00 a.m. on 19.06.2012. The delay in lodging the First Information Report is not at all explained by the prosecution. Of course, the delay in lodging the first information cannot be fatal in every case. But when the delay gives certain doubt about the genesis and origin of the occurrence, that delay in lodging the first information, cannot be ignored altogether.

9 P.W.3 is said to be the son of P.W.1 and deceased. According to him, at about 830 p.m. on 18.06.2012, the appellant/accused came to their house and had a quarrel with them and while he was leaving, his father-deceased followed him. The appellant/accused had thrown the stone on his father. Similarly, P.W.4, daughter of the deceased, also supported the version of P.W.3 and other witnesses with regard to the occurrence. P.Ws.3 and 4 are son and daughter of the deceased. They had also not made any attempts even to resolve the alleged quarrel between the deceased and the appellant/accused. Further, there was no reason for the deceased to follow the appellant/accused after the quarrel was over in front of their house and when the appellant/accused was leaving from that place. This aspect creates serious doubt about the version of the eyewitnesses. That apart, the prosecution has not even made any attempt to examine the doctor who had attended/seen the deceased at the first instance. The Accident Register copy

whatsoever, has not been obtained by the Investigating Officer. This fact also goes to the root of the genesis/origin of the case. It is relevant to note that the occurrence allegedly took place in front of the shop of one Prakash, as per the version of P.Ws.1 to 4 and the prosecution. The said Prakash has not been examined before the Court as a witness and the reason for his non examination is also not adduced by the prosecution. It is further to be noted that P.W.5, an independent eyewitness, is the friend of the deceased. His house is situate near the scene of crime. In his evidence, he has stated that at about 7.00 p.m., on 18.06.2012, while he was sitting in his house, the deceased was smoking near the shop of Prakash and was conversing with Prakash and he suddenly fainted and fell on the floor and sustained injuries. Immediately, he was lifted and taken by his family members. There was no reason for the independent witness to give a minute details. In cross, P.W.5 had stated that the entire villagers gave a Memorandum to the District Collector as well as to the Superintendent of Police, stating that the accused is in no way connected with the alleged occurrence. His evidence is not challenged by the prosecution and he has not been declared as a hostile witness. It is evident from P.W.5's evidence that the deceased fell down on the stone only at 7.00 p.m. on 18.06.2012 and even the evidence of P.W.1 would reveal that the deceased sustained injury at 7.00 p.m. on 18.06.2012. Therefore, considering the entire evidence of the prosecution coupled with the inordinate delay in filing the first information, a doubt is entertained about the origin of the occurrence itself.

10 It is further to be noted that as per the evidence of P.W.11, till Ex.P.1 was received in the police station, no other information, in any other form, reached the police. This fact is also found to be false on a thorough scanning of the evidence of P.Ws.1 to 4. The cross-examination of P.W.1 would reveal that the police reached the spot / occurrence place immediately on receipt of telephonic information and this would clearly indicate that the police commenced the investigation during night time on 18.06.2012 itself. Therefore, Ex.P.1 cannot be considered as the first information, which assumes insignificance since it came to be recorded after the commencement of the investigation and it is a concocted one. Further, a glance of Ex.P.1 and the evidence of P.W.1, would clearly show that there are different version about the occurrence, one in Ex.P.1 and another in her evidence and there are improvements and omissions between Ex.P.1 and P.W.1's evidence. Therefore, we are of the view that the entire prosecution story is shrouded with serious doubts. Merely because the close relatives have spoken in one voice roping the appellant/accused in a grave crime, that by itself is not sufficient to prove the guilt of the accused. Admittedly, there

was a strained matrimonial relationship between P.W.2 and her

husband - appellant/accused. Therefore, the possibility of false implication of the appellant/accused by the family members of P.W.2, cannot be ruled out. The delay in filing the first information and the conduct of P.Ws.1 to 4 in not reporting the matter to the police till the next day, clearly suggest the fact that the origin of the occurrence is not true.

11 Further, the prosecution also not made any attempt to examine the doctor who had seen the deceased in the hospital at the first instance nor file the Accident Register copy. All these facts creates a serious doubt about the prosecution version. The nature of injury noted by the Medical Officer is also possible by a fall on the rough floor. The alleged seizure of stone [M.O.1] from the place of occurrence the next day, is also unnatural. According to the prosecution, the blood-stained stone was seized from the scene of crime. It is to be seen that the place of occurrence is an open place and a street. Therefore, the possibility of seizing the blood-stained stone from the open place, is highly doubtful. Further, the material object was not sent to the Court immediately. A perusal of Form-95 shows that the property was not produced before the Court. This also throws a considerable doubt on the seizure of the material object. One other circumstance noted by

this Court, on a perusal of the Inquest Report-Ex.P.10 prepared by the Investigating Officer [P.W.12], is that the entire prosecution case is nothing but an improved version. As per the Inquest Report, it is recorded by the Investigating Officer that as if the occurrence took place in front of the deceased house and while quarreling, the appellant/accused hit the deceased with stone. Whereas the version of the eyewitnesses, viz., P.Ws.1 to 4, projects a different story. For all these reasons, the story projected by the prosecution is highly doubtful and the evidence of P.Ws.1 to 4 is unnatural and their conduct is also against the normal human conduct. Hence, we have no other option except to hold that the version of the prosecution is highly doubtful in view of various infirmities and inconsistencies found in the entire materials produced by the prosecution and therefore, the appellant/accused is entitled to the benefit of doubt.

11 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 S.C.No.32/2014 dated 22.09.2017 are set aside and he is acquitted of all charges levelled against him.

12 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.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

AP

To

- 1.The IV Additional District and Sessions Judge
Ponneri.
- 2.The Principal District and Sessions Judge
Tiruvallur.
- 3.The Judicial Magistrate, No.1,
Ponneri.
- 4.The Chief Judicial Magistrate, Tiruvallur.
- 5.The Inspector of Police
Kavarapettai Police Station,
Tiruvallur District.
- 6.The Director General of Police, Mylapore, Chennai-4.
- 7.The District Collector, Chennai.
- 8.The Superintendent of Prison
Central Prison, Puzhal.
9. The Public Prosecutor,
High Court, Madras.

Copy To
The Section Officer,
Criminal Section, High Court, Madras.

+lcc to Mr.T.S.Rajamohan, Advocate SR.No.5086

Cr1.A.No.622/2017

GJII(CO)
GN(09/02/2018)