

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM

AND

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CrI.A.No.625/2017 & CrI.MP.No.123/2016

Srinivasan

..

Appellant / A1

Vs.

State rep. by,

The Inspector of Police

Veppannapalli Police Station

Krishnagiri District.

..

Respondent

Criminal Appeal filed under Section 374[2] of the Criminal Procedure Code against the judgment dated 07.08.2017 made in SC.No.234/2016 by the learned Principal District and Sessions Judge, Krishnagiri.

For Appellant

: Mr.V.Rajamohan

For Respondent

: Mr.V.Arul, APP

JUDGMENT

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

Appellant is arrayed as A1 out of 2 accused in the case in

<http://www.judis.nic.in> SC.No.234/2016 on the file of the Court of the Principal District and

Sessions Judge, Krishnagiri. Originally, A1 to A3 stood charged and tried for the offence u/s.302 read with 34 IPC. The Trial Court, under judgment 07.08.2017, having found that the prosecution has not proved the guilt of A2 and A3 and acquitted them, awarding benefit of doubt. However, it found A1 guilty of the offence u/s.302 IPC and convicted him for the said offence and sentenced him to undergo imprisonment for life and to pay a fine of Rs.50,000/- with a default sentence of two years rigorous imprisonment. Aggrieved over the said conviction and sentence, the present appeal came to be filed by the appellant/A1.

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

[a] P.W.1-Saravanan is the brother of the deceased Munusamy. P.W.1 signed Ex.P.1-Complaint. On 08.08.2015, there was a festival in the village and there was cultural programme including light music. The same got over by 00.00 hours. After such event, P.Ws.2, 7, 8, one Munusamy, Muthusamy, Sammaiah, Manju went to sleep on the terrace of the house of one Kamala Naidu @ Thimmaiah. While they were sleeping, on hearing the noise, when P.W.2 woke up, he saw A-2 and A-3 facilitating A-1 to go in a two-wheeler. Thereafter, P.W.2 found Munusamy lying dead. He also found a big stone beside

Munusamy. P.W.7 who was also sleeping along with P.W.2, also seen A-1 going in the bike. P.W.7-Narasimhan has stated in his evidence that A-1 had come there to finish him of and on mistaken identity, A-1 killed the deceased Munusamy.

[b] P.W.8-Venkatesh, at about 1.15 a.m., on 09.08.2015, hearing the noise, woke up from sleep and saw A-1 running from the terrace.

[c] P.W.16-Amudha, Sub Inspector of Police attached to the respondent police at the relevant time, after the receipt of the complaint from P.W.1 under Ex.P.1 on 09.08.2015 at about 4.00 a.m., registered the crime in Cr.No.274/2015 u/s.302 IPC. Ex.P.14 is the First Information Report. He despatched the originals of Ex.P.1 and Ex.P.14 to the jurisdictional Court and copies to the higher officials.

[d] P.W.17-Rajendran, Inspector of Police attached to the respondent police station, at the relevant point of time, on receipt of FIR in Cr.No.274/2015 on 09.08.2015 at about 4.45 a.m., went to the place of occurrence at 5.00 a.m., and prepared the Observation Mahazar [Ex.P.2] and Rough Sketch [Ex.P.15] in the presence of P.W.4 and P.W.5. He also recovered blood stained stone [M.O.2] ; blood

stained earth [M.O.3] and sample earth [M.O.4] in the presence of the same witnesses under Mahazar. On the same day, between 7.00 a.m., and 9.00 a.m., he held inquest on the dead body of the deceased in the presence of Panchayatdars and witnesses and prepared Ex.P.16-Inquest Report. He enquired the witnesses and recorded their statements. The Investigating Officer sent the dead body to hospital for postmortem.

[e] P.W.9-Dr.Rajasekar, Medical Officer at the Government Hospital at Krishnagiri, at the relevant point of time, received the requisition under Ex.P.7 and commenced the postmortem on 09.08.2015 at 3.50 p.m., and found the following injuries:-

“External Injuries:-

Laceration 4x1xbone depth on the left mastoid behind ear, edges irregular.

Internal Injuries:-

Thorax-Ribs – normal. Thoracic cavity-empty. Heart-59gm clotted with blood. Lungs-normal. Hyoid Bone-intact. Stomach-empty swallowed. Liver-normal. Spleen-Normal. Kidney-normal. Bladder-empty.

Opening of Head:- Skull-left side base of skull extending from temporal to occipital region. Left side temporal clotted blood on membrane.”

Ex.P.6 is the Postmortem Certificate issued by him. Ex.P.11 is the Viscera Report wherein it was stated that no poison was detected. The Medical Officer has opined that *"the deceased died due to shock and hemorrhage due to injuries to vital organ-brain."*

[f] P.W.10-Jagannathan, Assistant Director attached to Forensic Lab, Dharmapuri, examined the Viscera and issued Ex.P.11-Viscera Report. P.W.11-Manickam, Scientific Officer attached to Forensic Lab, Salem Circle examined the material objects and issued Exs.P.12 and 13-Biological Report and Serology Report.

[g] P.W.17-Investigating Officer, in continuation of his investigation, arrested the accused on 09.08.2015 at about 12.00 Noon near Idippalli Bus Stop in the presence of P.w.6-Muthuraman and one Kathiresan. A1 voluntarily came forward to give a confession statement pursuant to which M.O.1-Black Colour Pulsar Bike was recovered under the cover of a Mahazar. Accused were sent for judicial remand and the material objects were sent to Court under Form 95. he enquired P.W.9, the doctor who conducted autopsy on the dead body of the deceased ; received the medical reports and on completion of investigation, filed the Final Report on 12.12.2015 against the accused u/s.120[b], 448 and

302 IPC before the learned Judicial Magistrate No.2, Krishnagiri, who took it on file in PRC.No.23/2015 and issued summons to the accused and on their appearance, furnished them 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, Tiruvannamalai, u/s.209 Cr.P.C., who took it on file in SC.No.234/2016 and on appearance of the accused, had framed the charges u/s.302 read with 34 IPC and questioned them. The accused pleaded not guilty to the charge framed against them.

[h] The prosecution examined P.Ws.1 to 17 and marked Exs.P.1 to 6 besides marking M.O.1 to M.O.5.

[i] A1 to A3 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 evidence was let in on the side of the defence nor any documents were marked.

[j] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, had acquitted

A2 and A3 and convicted and sentenced the appellant/A1 as above stated and hence, this appeal.

3 The learned counsel for the appellant submitted that absolutely there is no evidence as against the appellant/A-1 and the eyewitnesses have not identified the appellant/A-1. In the absence of any evidence, though the Trial Court had acquitted A-2 and A3, merely based on inference, the Trial Court found the appellant/A-1 guilty and hence, prayed for acquittal and allowing of the appeal.

4 Heard Mr.V.Arul, learned Additional Public Prosecutor appearing for the State on the submissions made by the learned counsel for the appellant.

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

6 In the light of the above submissions, now it has to be analysed whether the prosecution has brought home, the guilt of the appellants / A-1 beyond all reasonable doubt?

7 The specific charge of the prosecution is that as P.W.7 was instrumental for spoiling the marriage of the appellant/A-1 with one Nethra, daughter of Meenammal, in order to do away him, A-1 along with A-2 and A-3 hatched a plan and on 08.08.2015 midnight, while P.W.7 and others were sleeping on the terrace of the house of one Kamala Naidu @ Thimmaiah, under the impression that only P.W.7 was sleeping, A-1 along with A-2 and A-3 went there and A-1 crushed the head of the deceased Munusamy by throwing a stone [M.O.2] and as a result, one Munusamy died.

8 It is the case of the prosecution that there was transfer of malice on the part of the accused. In stead of P.W.7, the deceased Munusamy was done to death. **P.W.1-Saravanan**, brother of the deceased has not supported the case of the prosecution and turned hostile. The factual aspect found in Ex.P.1 is not spoken by him. He had just signed Ex.P.1. Therefore, his evidence is not useful to the case of the prosecution. **P.W.2-Santhosh**, in his evidence has stated that after the cultural program was over in their village, he along with one Harish, Sammaiah, Munusamy [deceased], Muthusamy, Venkatesh [P.W.8] ; P.W.7-Narasimman and Manju went to sleep on the open terrace of the house belonging to one Kamala Naidu @ Thimmaraj. At about 2.30 a.m. on 09.08.2015, P.W.2 heard a noise and found that a

stone was lying near Munusamy. Hence, he came down from the terrace and at that time, he saw the appellant/A-1 going in a bike and A-2 and A-3 were facilitating him to flee away from the scene. It is the version of P.W.2 that on 09.08.2015 at about 2.30 a.m., he heard the noise from the terrace. Nowhere in his evidence, he has stated that A1 to A3 also slept with them at the relevant time. **P.W.3-Devaraj**, yet another brother of the deceased Munusamy, also not supported the case of the prosecution. The evidence of **P.Ws.4 and 5** are also not useful for any purpose except to show that they have signed the Mahazars.

9

P.W.7-Narasimhan, in his evidence has stated that on 09.08.2015 at about 2.15 a.m., P.W.2 and one Harish heard a sound and got up. They saw a stone beside the deceased and also saw A-1 going in a bike. Thereafter, when they came up, they saw the deceased dead. They raised alarm and on hearing the said noise, P.W.7 and others woke up and P.W.2 told him about the occurrence and only thereafter, P.W.7 came to know about A-1 fleeing away from the scene in a Pulsar Bike. P.W.7, in his evidence, has also admitted that he has not witnessed the occurrence directly and he has also not seen the accused in the vicinity.

10 P.W.8-Venkatesh, in his evidence, has stated that on 09.08.2015 at about 1.15 a.m., he heard the alarm raised by P.W.2-Santhosh and thereafter, he woke up and saw A-1 running downstairs from the terrace. The evidence of P.W.8 that A-1 ran away from the terrace, has not been supported by P.Ws.7 and 2, who are said to have slept on the terrace along with P.W.8. No doubt, medical evidence in the form of Ex.P.6-Postmortem Certificate and the evidence of the Medical officer [P.W.9] clearly prove the homicidal death of the deceased. But, except the evidence of P.W.8 as regards A-1 coming down from the terrace, there was no material available on record to connect the accused. The evidence of P.W.8 further shows that the accused did not sleep on the terrace on that day. Further, there is no evidence available on record to show as to what was the source of light available at the relevant point of time. It is further to be noted tht it is the specific evidence of P.W.2 that the occurrence took place at about 2.30 a.m. on 09.08.2015 and P.W.7 had stated that he had heard the noise at 2.15 a.m. on 09.08.2015 ; whereas, P.W.8 had stated in his evidence that the he heard the noise at 1.15 a.m. on 09.08.2015. Hence, there is inconsistency in the evidence of P.Ws.2, 7 and 8 with regard to time of occurrence. In the absence of any plausible explanation with regard to source of light, how the accused came there

and who has brought M.O.2-Stone to the terrace and how such a huge stone weighing about 24 Kgs has been thrown on the deceased by A-1 alone, without causing injuries to others who were said to have been sleeping on the terrace along with the deceased and in the absence of proof of the same, a serious doubt is raised with regard to the entire prosecution case as against the accused.

11 The evidence adduced by the prosecution is not connecting the circumstances against the accused, especially with regard to the appellant/A-1 as the eyewitness version is also doubtful and except P.W.8, the other persons have not seen the accused. Merely because A1 to A3 proceeded in a motorcycle at the relevant point of time in the village, we cannot presume that they are only the culprits. Admittedly, there was a cultural programme and festival in the village and the light music programme was over only during midnight on 08.08.2015. Therefore, it is normal for movement of the people at the relevant time in two wheelers. Therefore, because A1 to A3 were found in the vicinity of the place of occurrence, that itself cannot be a ground to come to the conclusion that it was only these persons who had committed the murder of the deceased. Therefore, we have no other option except to hold that the prosecution has not established the guilt of the accused. Further, the Trial Court, on the basis of the very

same materials available on record, had acquitted A2 and A3 but convicted A1. Hence, we are of the view that the appellant/A-1 is also entitled for benefit of doubt and the judgment of the Trial Court warrants interference.

12 In the result, the criminal appeal is **allowed**. The **conviction and sentence** imposed on the appellant/A-1 for the offence **u/s.302 IPC** by the learned Principal District and Sessions Judge, Krishnagiri, in SC.No.234/2016 vide Judgment dated 07.08.2017, are hereby **set aside**. The appellant/A-1 is acquitted of all charges levelled against him. Fine amount if any paid, shall be refunded to him.

13 It is reported that the appellant / A-1 is in jail. He is directed to be released forthwith unless his presence/custody is required in connection with any other case / proceedings.

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[CTSJ] [NSKJ]
27.02.2018

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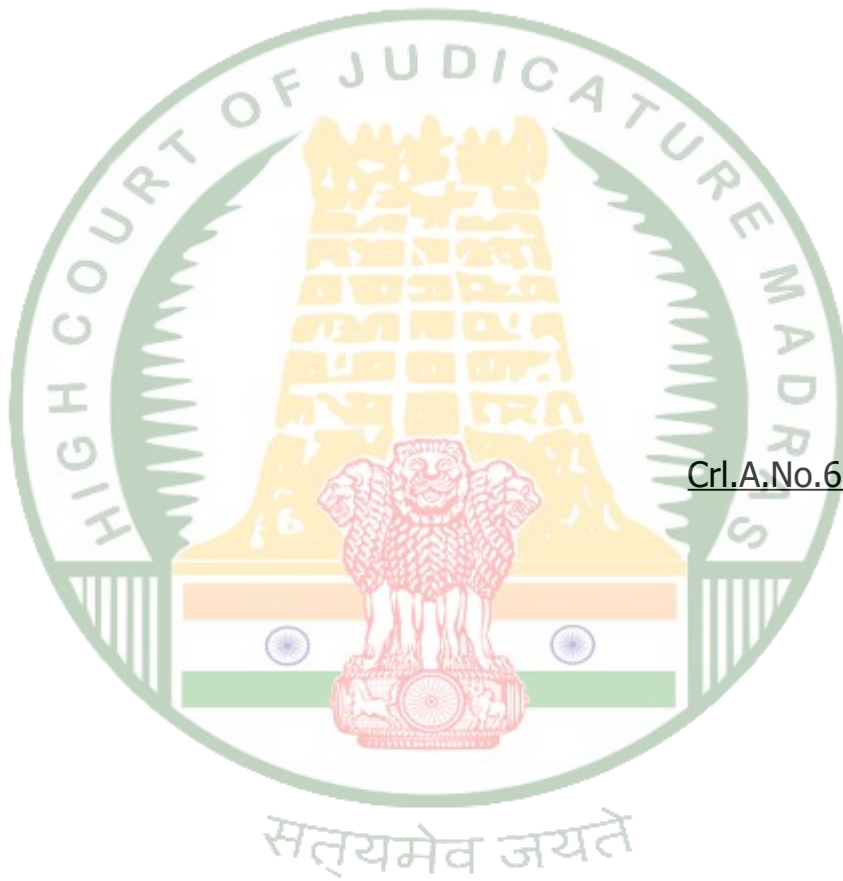
To

- 1.The Principal District and Sessions Judge
Krishnagiri District.
- 2.The Judicial Magistrate No.2,
Krishnagiri.
- 3.The Chief Judicial Magistrate,
Krishnagiri District.
- 4.The Inspector of Police
Veppanapalli Police Station
Krishnagiri District.
- 5.The District Collector
Krishnagiri District.
- 6.The Director General of Police
Mylapore, Chennai-4.
- 7.The Superintendent of Prison
Central Prison, Vellore.
8. The Public Prosecutor,
High Court, Madras.

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C.T.SELVAM, J.,
AND
N.SATHISH KUMAR, J.,

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