

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM

AND

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Crl.A.No.772 of 2017

P.Sekar @ Krishnamurthy .. Appellant

Vs.

The State represented by its
The Inspector of Police,
Bumgalowpudur Police Station,
Erode District. ... Respondent

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment passed against the appellant/first accused on 23.09.2016 in S.C.No.73 of 2014 on the file of the I Additional District and Sessions Judge, Erode and acquit the appellant/first accused from all the alleged charges.

For Appellant : Mr.P.G.Perumal Pandian

For Respondent : Mrs.R.Prabhavathy
Additional Public Prosecutor

JUDGMENT

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

Appellant is the first accused in the case tried in SC.No.73/2014 on the file of the I Additional District and Sessions Judge, Erode for offence u/s.302 IPC. The Trial Court, under impugned Judgment dated 23.09.2016, found him guilty of offence u/s.302 IPC and sentenced him for life 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:-

Deceased Srinivasan and accused 1 and 2 are co-brothers, married to the sisters. P.W.3 is the wife of the deceased. On 18.06.2013, P.W.3 and her husband, namely the deceased along with their family participated in the marriage of P.W.3's niece at Kananpalayam Sengunthar Marriage Hall. From the marriage hall, both the accused and deceased went in a motor cycle. However, P.W.3 stayed in the marriage hall. The next day, A2 alone came to the marriage hall. When P.W.3 enquired about her husband, he shown his ignorance and when P.W.3 enquired about A1, A2 told that A1 is not well and he is in his house.

3. P.W.3 on hearing about a dead body lying in the canal, near a place called Arakkankottai canal, she rushed to the spot and found her husband lying dead with head injuries. P.W.1, the Village Administrative Officer, on hearing a dead body lying near the Sabarish garden, went to the spot and after seeing the place of occurrence, he lodged Ex.P.1, report with P.W.11, Special Sub Inspector of Police.

4. P.W.11 on receipt of the Ex.P.1 report, registered a case in Crime No.176 of 2013 under section 302 of IPC under Ex.P.10 printed First Information Report and forwarded the same to the Court and to the superior officers.

5. In the meanwhile, on 18.06.2013, P.W.2, while proceeding in his motor cycle along with Rajini Sundaram, he saw the accused and the deceased quarrelling with each other at about 7.30 p.m. and he has also seen bike bearing No.TN49 T6279. Thereafter, at 9.30 to 10 p.m., he saw both the accused alone returning in a bike. On the next day morning, when P.W.1 visited the place of occurrence, P.W.2 also went there and identified the dead body as that of the deceased. Thereafter, the police came and in his presence, Observation Mahazar, Ex.P.2 has been prepared and blood stained earth and ordinary earth also seized in his presence under Ex.P.3 Mahazar. P.W.4, a resident of Irangattur, while going in a motor cycle at about 8 p.m., near the place of occurrence, the accused and the deceased were quarrelling with each other. After some time, only both the accused left in a motor cycle.

6. P.W.12, incharge Investigating Officer, took up the case for investigation and went to the place of occurrence and prepared Observation Mahazar Ex.P.2 and Rough Sketch Ex.P.11 and also took photographs of the dead body and also sought the help of the sniffer dog team. Thereafter, he seized blood stained earth and ordinary earth, conducted inquest over the dead body and prepared Inquest Report, Ex.P.12 and sent the dead body for autopsy to the Government Hospital.

7. P.W.6, the Medical Officer attached to the Government Hospital, conducted autopsy and found the following injuries :

External Injuries :

(1) Crush injury present over right side face and scalp with # of skull Rt. Side head with brain matter exposed.

(2) Aut bite marks present in left lower limbs.

3. Abrasion over both upper limbs and right mid eye brow to lower end of occipital region measuring 30cm x 10 cms x 0.5cm. Eye lids closed. Nose, ears, mouth - dried blood stains present. Tongue - inside teeth 8\8 8/8. Fracture of Rt. Side mandible present.

Internal examination

Thorax # of 6 and 7 ribs over left side anteriorly present. Head # extending from Rt frontal, temporal; parietal to occipital bone present exposing the brain matter brain 750 gms, crushed with approximately half of brain mater missing. and issued postmortem certificate Ex.P.9 and opined that the deceased died of head injury 6 to 24 house prior to the postmortem.

8. P.W.8, collected blood stained sand and also ordinary sand found in the place of occurrence. P.W.9, Head Constable seized the dresses on the body of the deceased handed over the same to the Inspector of Police.

9. P.W.12, in continuation of the investigation, examined the witnesses and recorded their statements and on 19.06.2013 during vehicle check, arrested the accused and recorded their confession statement. Based on the admissible portion of the confession of A1 Ex.P.13, he had seized two wheeler under mahazar and also seized blood stained shirt from A2 based on Ex.P.14, admissible portion of the confession of A2. Thereafter, he has also seized the blood stained shirt from A1 from his house and sent the material objects to the court. After that, he handed over the case file to his successor P.W.13.

10. P.W.13 continued the investigation, and took steps to send the material objects to Forensic Department and after completion of investigation, laid final report against the accused under section 302 of IPC.

11. The prosecution examined P.W.1 to P.W.13 and marked Ex.P.1 to Ex.P.24 and M.O.1 to M.O.14 were marked.

12. 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. On side of defence. D.W.1 was examined and Ex.D.1 to D3 were marked.

13. The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, has convicted and sentenced him imprisonment for life as against which, the present appeal came to be filed.

14. The learned counsel appearing for the appellant has submitted that the entire case is based on circumstantial evidence and the circumstances relied upon by the prosecution have not been proved beyond reasonable doubt. The motive aspect has also not been established. Only on the basis of the evidence of P.W.2, P.W.3 and P.W.4, the trial Court has relied on the entire case of the prosecution. It is the contention of the learned counsel that the evidence of P.W.2 and P.W.4 is highly unreliable and they are planted witnesses. The evidence of P.W.3 does not show any motive against the accused. Further, the evidence of P.W.3 also clearly show that the place of occurrence is a busy main road. Therefore, possibility of the deceased sustaining head injury in an accident cannot be ruled out. Hence, the prosecution has failed to prove all the circumstances and prayed for allowing the appeal.

15. The learned Additional Public Prosecutor submitted that the accused and the deceased were seen together on 18.03.2013 and P.W.2 and P.W.3 have spoken about the same and in fact, in the place of occurrence, they were seen together as per the evidence of P.W.2, P.W.4 and P.W.5 and there is no explanation by the accused in that regard. Hence, submitted that the judgment of the trial Court does not require any interference.

16. In the light of the above submissions, now it has to be seen whether the prosecution is able to bring home the guilt of the accused by proving all the circumstances relied upon by them.

17. The prosecution has mainly relied upon the following circumstances

1. Motive
2. Last seen theory
3. Arrest of the accused and recovery of the material objects

18. The motive projected by the prosecution that one Prabhu, a cousin of the deceased used to contact A1's wife frequently in a cell phone. Therefore, A1 decided to warn the said Prabhu. Accordingly, on 18.06.2013, when the accused and the deceased assembled in the marriage, the accused requested

the deceased to show the house of Prabhu. Having agreed to show the house, the deceased after travel in a two wheeler, refused to show the house of Prabhu. Therefore, both the accused kicked the deceased and when he fell down near the canal, both the accused lifted stones and slashed the head of the deceased.

19. It is the specific charge of the prosecution that while leaving the marriage hall, both the accused and the deceased went to Kallipalli and took liquor and proceeded in a two wheeler. Though the wife of the deceased was examined as P.W.3, she has not spoken anything about the alleged motive projected by the prosecution. Her evidence clearly indicate that infact the accused and the deceased were moving smoothly. Further, though the postmortem doctor's evidence establish that the deceased died of head injuries, his evidence does not show that the deceased consumed alcohol. Viscera has also not been preserved and sent for examination. Therefore, when the prosecution has failed to establish the fact that the deceased and the accused have consumed alcohol at the relevant point of time and when there is no evidence to show that both of them left only to go to one Prabhu's house, we are of the view that the motive as projected by the prosecution has not been established.

20. Now, when the other circumstances relied upon by the prosecution carefully seen, it is the case of P.W.3, wife of the deceased, from the marriage hall, the accused and the deceased went together in a motor cycle. On the next day morning, A2 came to the marriage hall and when she enquired A2 about others, A2 told that A1 is not well and therefore, he did not come to the marriage. Her evidence though shows that both the accused and the deceased left together, her evidence does not show the time of their leaving the marriage hall. It is to be noted that the accused and the deceased are co-brothers. Therefore, their leaving together is quite normal. The dead body of the deceased was found on the next day at 7.30 a.m. The last seen theory comes into play when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible.

21. Admittedly, the time gap between the deceased and the accused left the marriage hall and the time when the dead body is found is more than 12 hours and the place of occurrence is just abetting the main road where many vehicles normally fly as per the evidence of P.W.3. Therefore, from the evidence of P.W.3, we are not persuaded to accept the last seen theory projected by the prosecution.

22. The further evidence relied upon by the prosecution is

the evidence of P.W.2 and P.W.4. P.W.2, in his evidence has stated that while he was travelling in a bike bearing registration No. TN36 J 5380 along with one Rajini Sundaram, they saw the accused and the deceased quarelling with each other near the place of occurrence with a bike. Thereafter, at about 9.30 p.m., both the accused alone left in a motor bike. Whereas, in the entire cross examination, he has stated as if he has seen the accused and the deceased only in a brandy shop, which is more than half a kilometre from the place of occurrence and he had seen the accused taking brandy at about 8 p.m. He has also admitted that he has not informed the same to his family members, who were very much present nearby. His evidence is also doubtful for the simple reason that he has given two versions about seeing the accused and the deceased together.

23. Similarly, a person known as Rajini Sundaran said to have travelled along with him has not been examined by the prosecution. Further, his evidence, the cross examination shows that he only brought P.W.3, wife of the deceased, from the marriage hall to the place of occurrence early morning at 7.30 a.m. But P.W.3 has never whispered about P.W.2 informing her about the occurrence. If really, P.W.2 has seen P.W.3 in the early morning at 7.30 hours, his normal conduct would have been otherwise, to inform the alleged factum of seeing the accused and the deceased together in the previous night to P.W.3, who is the wife of the deceased. But he has not whispered anything to P.W.3. These facts also create serious doubt about his version.

24. It is further to be noted that his evidence also shows that even before P.W.1, Village Administrative Officer reached the place of occurrence, the police also reached the spot and started enquiring the people. If really, P.W.1 has seen the accused and the deceased together in the previous night, he would have informed the same to the police at the earliest point of time. That also not been done by him. These facts also create serious doubt about his seeing the accused. Further, the person, who allegedly travelled with him at the relevant point of time in the two wheeler has not been examined by the prosecution. In fact, P.W.2 in his cross examination is not in a position to say the address of the person who is said to have travelled with him at the relevant point of time. The conduct of P.W.2 in not informing the alleged factum of seeing the accused and the deceased on 18.06.2013 at about 8 p.m., near the place of occurrence in a two wheeler to the wife of the deceased, makes his evidence unreliable.

25. P.W.4 is another witness examined by the prosecution to show that on 18.06.2013, at about 8 p.m., near the place of occurrence, the accused and the deceased were quarrelling with each other. After some time, only two of the accused left the

place in a motor cycle. It is to be noted that his evidence is also highly doubtful. His cross examination proves the fact that he never seen either the deceased or the accused prior to such occurrence. He did not know their address and he did not know the number of the vehicle. The prosecution also has not conducted any test identification parade. P.W.4 is a resident of some other place. Therefore, his evidence about identifying the accused before the Court is also doubtful. His cross examination shows that he has never given the identity of the accused before the police. Further, he has stated that he has given a statement to the police to the effect that the persons are not identifiable. Therefore, his evidence, identifying the accused in the Court is also very doubtful.

26. Though the evidence of P.W.3 show some suspicion against the accused, that itself is not sufficient to come to the conclusion that only these accused committed the offence. A2 was very much present in the marriage hall as per the evidence of P.W.3 and he has also said that A1 is unwell. His evidence also create serious doubt about the prosecution case. Therefore, we are of the view that the evidence of P.W.2 and P.W.3 is shadowed with serious doubt and the same cannot be given much importance.

27. The evidence of the investigating officer also shows that the people residing nearby the place of occurrence has not been examined. Though the Finger Print Expert came to the place of occurrence, the report of the Finger Print Expert has not been filed before this Court. The Investigating Officer, P.W.13, in his cross examination has admitted that the place of occurrence is just abetting the state High Ways and the possibility of the injuries by an unknown vehicle also cannot be ruled out. The Medical Officer in his evidence has stated that the head injuries are also possible by road accident.

28. Another circumstance relied upon by the prosecution is the arrest and recovery of material objects. Though the Investigating Officer in his evidence has spoken about the arrest of the accused on 19.06.2013 and recording of their confession and seizure of blood stained dresses, the serology report though found human blood, the dresses seized from the accused did not contain blood, whereas, the blood stained shirt, lungi and jetty seized from the body of the deceased, the blood group is found to be 'O' group. Therefore, merely on the basis of such recovery, when the grouping test is also not conclusive, it cannot be concluded that the prosecution has proved the guilt of the accused, when the other circumstance has not been proved and established beyond reasonable doubt.

29. The evidence of P.W.2 and P.W.4 is highly doubtful. If really P.W.2 has seen the accused and the deceased together on the previous night, he only brought P.W.3 to the place of occurrence the very next day at 7.30 a.m., he would have informed the same to P.W.3. Whereas, he remained silent. His conduct is against normal human conduct and even he has not gone to the police station to lodge the complaint. Whereas, P.W.1, Village Administrative Officer has lodged Ex.P.1 report. Whereas, the evidence of P.W.2 shows that before P.W.1 reached the place of occurrence, police already reached the place of occurrence. These facts clearly show that the First Information Report came into picture after much deliberation and possibility of concoction cannot be ruled out. In view of the above facts, we are of the view that all the circumstances relied upon by the prosecution has not been established beyond reasonable doubt. Hence, the finding recorded by the trial Court is liable to be set aside.

30. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant for offence under Section 302 I.P.C. by the learned I Additional District and Sessions Judge, Erode in S.C.No.73 of 2014 on 23.09.2016 is set aside and the appellant accused is acquitted of the charge. The accused shall be released forthwith from the prison, if he is no longer require in connection with any other case.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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TO

1. THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE,
ERODE.

2. THE PRINCIPAL DISTRICT JUDGE, ERODE.

3. THE JUDICIAL MAGISTRATE NO.1,
GOBICHETTIPALAYAM.

4. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
ERODE.

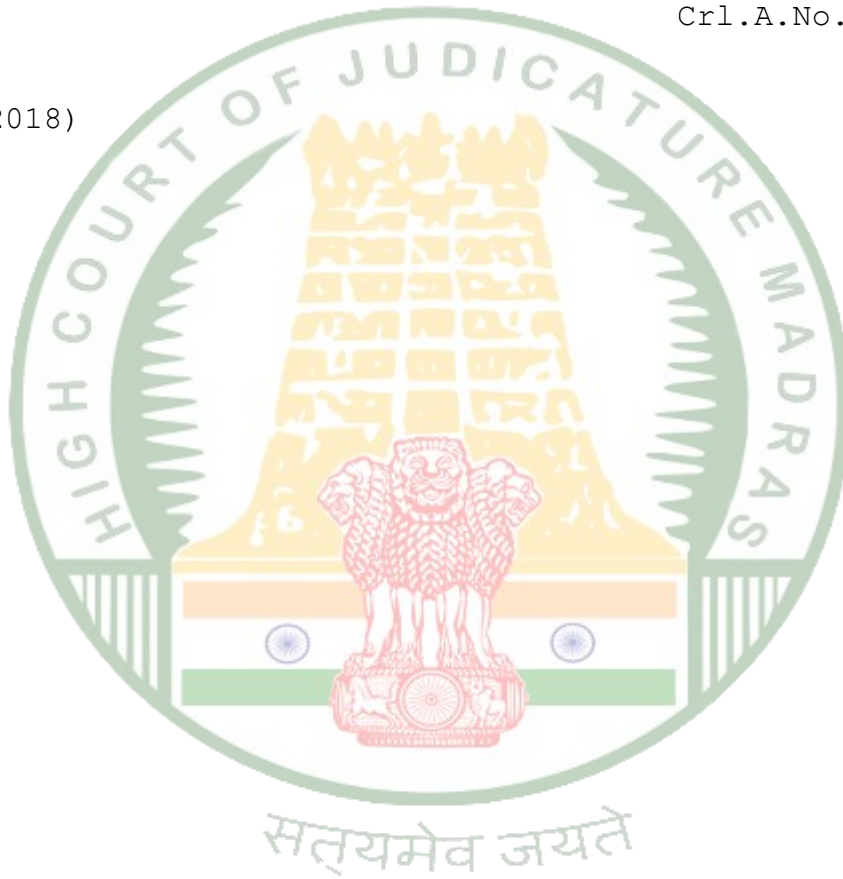
5. THE DISTRICT COLLECTOR/DISTRICT MAGISTRATE,
ERODE DISTRICT

6. THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

7. THE INSPECTOR OF POLICE,
BUMGALAWPUDUR POLICE STATION,
ERODE DISTRICT.

Crl.A.No.772 of 2017

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