

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.131 of 2018

1. S.Dhanapal
S/o.Arumugam

2. Somasundaran @ Sundaram
S/o.Thiyagaraj

... Appellants

- Vs -

The State rep. by its
The Inspector of Police,
Komarapalayam Police Station,
Namakkal District.
(Crime No.297/2015)

... Respondent

Criminal Appeals filed u/s.374(2) Cr.P.C. against the
judgment of learned Additional District and Sessions Judge,
Namakkal (Full Additional Charge), passed in S.C.No.61 of 2016
on 13.02.2018.

For Appellants : Mr.S.Ananthanarayanan
Senior Counsel
for Mr.E.C.Ramesh

For Respondent : Mr.R.Pratap Kumar,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by C.T.SELVAM, J]

This appeal arises against the judgment of learned
Additional District and Sessions Judge, Namakkal (full
additional incharge) passed in S.C.No. 16 of 2016 on 13.02.2018.

2. Case of prosecution is that both appellants/A1 and 2
were given to drinking and drugs. On 02.08.2015 at about 11 p.m
the deceased aged 60 years was in drunken state and abused
passers by. He abused appellants who ignored him. However,

deceased followed and kept abusing them. In a fit of anger the appellants/ A1 and 2 bet and kicked the deceased who fell down. Both set upon him with heavy stones. A1 causing injury to the head and A2 to the ear as a result of which the deceased died. P.W.1/son of the deceased was informed by his friend P.W.6 that his father was lying dead in front of the bamboo shop of P.W.7. On complaint of P.W.1 case in Crime No. 297/2015 on the file of the respondent was registered for offence u/s. 302 IPC.

3. On completion of investigation and filing of charge sheet before learned Judicial Magistrate, Tiruchengode, the case on committal, was tried in S.C.No. 16 of 2016 on the file of learned Additional District and Sessions Judge, Namakkal.

4. Before the Trial court, prosecution examined 12 witnesses, marked 15 exhibits and 10 Material Objects. None were examined on the side of the defence nor were any exhibits marked.

5.1 P.W.1 son of the deceased spoke to his father not returning home on the night of 02.08.2015. Upon hearing that his father was lying in a pool of blood near the bamboo shop of P.W.7, P.W.1 went and found that his father had died having suffered injuries to his head. P.W.1 preferred Ex.P.1 complaint where upon a case in Crime No.297 of 2015 on the file of the respondent was registered for offence u/s.302 IPC.

5.2 P.W.2 daughter of the deceased, had upon hearing of his death, gone and seen his body. She spoke to having heard of P.W.5 having seen her father alive at 10.30 p.m on the day of occurrence.

5.3 P.Ws.3 and 4 spoke to having witnessed a quarrel between an aged person and two others on 02.08.2015 at about 11.00 p.m and that they saw the body of the deceased at such place the next day. They identified the appellants/A1 and 2 as the persons who have been quarrelling with the deceased on the previous night.

5.4 P.W.5 had spoken to seeing the deceased alive at about 10.30 p.m on 02.08.2015.

5.5 P.W.6 spoke to seeing the body of the deceased at about 06.00 a.m on 03.08.2015 and informing his friend P.W.1/son of the deceased.

5.6 P.W.7, owner of a bamboo shop, spoke to seeing the body of the deceased lying at the front of his shop and of later coming to know the name of the deceased.

5.7. P.W.8- VAO spoke to being informed over telephone, going over to the scene and then learning the name of the deceased. P.W.8 and his assistant attested Observation Mahazar Ex.P.2. Police collected blood stained earth and sample earth under Mahazar Ex.P.3, again under attestation of P.W.8 and his assistant, P.W.8 and his assistant were again called by the Inspector of Police on 04.08.2015 at 9.30 a.m and in their presence the accused tendered confession statements and stones used by the accused were recovered.

5.8 P.W.9 was the body constable entrusted with the duty of handing over the body for post mortem and to the relatives of the deceased thereafter. MO's 5 to 8 were the clothes found on the body of the deceased.

5.9. P.W.10 Forensic Expert, on examination of the Viscera, did not find any alcohol or poison.

5.10 Doctor - P.W.11 conducted post mortem. The post mortem report Ex.P.10 reads as follows:

" A body of male lying on its back and eye lids closed, ENT bleed , Rt ear nasal bleed, mouth bleeding. External injuries: 1. contusion over the Rt 4 lt eye bais and Lt cheek reddish black in colour, this contusion extends upto lt cheek. 2. Laceration 10X2 cm, 6X5 cm brain depth sigmoid shape in Rt Temporo occipital region just behind Rt ear lobe margin- irregular, bone depressed in the wound, reddish black in colour. 3. Laceration 1X.5cmX.5cm in Rt ear lobe blackish red in colour 4. Laceration 3X2 bone depth in occipital region, blackish red in colour contusion around the lacerated margin 5. Abrasion injury over rt side shoulder near scapular region. Internal injuries: 1. Ribs 2.heart 3.lungs congressed 4.hyoid bone intact 5.stomach and its contents- semi solid liquid 100 ml 6. liver, 7 spleen 8.kidney, 9.intestine-gas 10. bladder - empty, 11. Skull- base of skull and lt temperal bone, brain - ED, brain laceration over the rt temperal occipital region. Viscera preserved: 1. Stomach and its contents, 2. Intestine and its contents, 3. Liver, 4. kidney, 5. sample of preservative 6. blood."

The final opinion of Doctor P.W.11 informing the cause of death to be shock and haemorrhage has been marked as Ex.P.11.

5.11 P.W.12 - Inspector of Police received complaint from P.W.1 on 03.08.2015 at about 07.30 a.m, registered case in Crime No.297 of 2015 u/s. 302 IPC under Ex.P.12. P.W.12 went to the scene of occurrence prepared Observation Mahazar and Rough sketch in Ex.P.13 examined witnesses and recorded their statements. He secured the accused on 04.08.2015 who on examination tendered confessions admitting to guilt. After effecting recovery of stones used by the accused in presence of P.W.8 VAO and his assistant and upon completion of investigation P.W.12 filed a charge sheet against the accused informing offence u/s. 302 r/w. 34 IPC.

6. On questioning u/s.313 Cr.P.C., appellant/accused denied charges. On appreciation of evidence, oral and documentary, trial Court, under judgment dated 13.02.2018, convicted both accused and sentenced them to life imprisonment and fine of Rs.1000/- each i/d 6 months R.I. Hence, this appeal.

7. Heard learned counsel for appellants and learned Additional Public Prosecutor for State. Perused the materials on record.

8. This appeal succeeds for the following reasons:

(i) The murder of the deceased has been attributed to these appellants/accused pursuant to registration of a case in Crime No.300 of 2015 for offence u/s. 392 IPC. The complainant in Crime No.300 of 2015 is one Ramesh who had accompanied the Inspector of Police and pointed out these appellants/accused as the persons involved in such case. Prosecution would have it that pursuant to confession made in the course of investigation in Crime No.300 of 2015, the involvement of the appellants, in the present case, came to knowledge. Neither the complainant in Crime No.300 of 2015 has been examined nor has the FIR in such case been produced. From the evidence of Doctor-P.W.11 and the post mortem report Ex.P.10, it is evident that the deceased had met a violent death. However, to inform the involvement of these accused, we have nothing more than the say so of P.Ws.3 and 4 that they witnessed a quarrel between the deceased and these appellants on the night of 02.08.2015 and that thereafter they had gone away. P.W.5 has admitted to being the uncle of a friend of P.W.1 and has spoken only to seeing the deceased, though not at the place where the body was found. There is nothing in evidence to indicate that P.Ws 3 ,4 or 5 earlier knew the appellants. In such circumstance, their identifying the appellants at the trial without the conduct of any identification parade would not merit acceptance. Both P.W.1 and P.W.2, the complainant/son of the deceased and his daughter have

not had any personal knowledge of the occurrence. Arrest and recovery allegedly have been made in the presence of P.W.8- VAO, the ever present and most obliging witness turned to by the Police in every other case. Even in a case where the confession is reliable the same by itself would be a very weak piece of evidence. In the totality of the circumstances afore stated, we would ignore the alleged confession by the accused.

(ii). While the prosecution case is that the deceased was given to much misbehaviour on the date of occurrence owing to having been in drunken state the evidence of P.W.10 Forensic Expert and her report in Ex.P.8 informing that she did not find any alcohol or poison, particularly alcohol, in the viscera of the deceased puts paid to the prosecution case. If the deceased had not been drunk, there is no occasion for him to have caused disturbances and picked up quarrels owing to being in drunken state and in turn there is no occasion for the accused, being angered by the conduct of the deceased and doing him to death.

9. The Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Additional District and Sessions Judge, Namakkal, in S.C.No.61 of 2016 on 13.02.2018, are set aside and appellants are acquitted of all charges. Appellants are directed to be released forthwith unless their presence is required in connection with any other case. Fine amount, if any, paid shall be refunded. Bail bond(s), if any, executed shall stand cancelled.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

kmi

To

- 1.The Inspector of Police,
Komarapalayam Police Station,
Namakkal District.
- 2.The Public Prosecutor,
High Court, Madras.
3. The Additional District and Sessions Judge, Namakkal.
4. -do- thorough'The Principal Sessions Judge, Namakkal.
5. The Superintendent, Central Jail, Coimbatore.

6. The District Collector, Coimbatore.
7. The Director General of police, Chennai.
8. The Superintendent of Police, Namakkal District.
9. The Judicial Magistrate, Thiruchangode.

Copy To

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

+1cc to Mr.E.C.Ramesh, Advocate SR.No.71719

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PA (CO)
GMY (27/02/2019)



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