

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM

AND

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.144 of 2018

P.Madivannan
S/o.Pachamuthu

... Appellant

Vs

The State by
The Inspector of Police,
B-13 Pothanur Police Station,
Coimbatore District.
Crime No.349/2013

... Respondent

Criminal Appeal filed u/s.374(2) Cr.P.C. against the judgment of learned IV Additional District and Sessions Judge, Coimbatore, passed in S.C.No.168 of 2014 on 30.10.2017.

For Appellant : Mr.N.Manokaran

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

JUDGMENT

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

This appeal arises against judgment of learned IV Additional District and Sessions Judge, Coimbatore, passed in S.C.No.168 of 2014 on 30.10.2017.

2. Case of the prosecution is that accused and PW-2 were residents of Gudalur. Accused was working in a Private TV channel and his work spot was opposite the house of PW-2. Both of them developed friendship and shared family problems. On request of PW-2, accused arranged a job for her at Coimbatore. Both of them went to Coimbatore, where they jointly lived in a rented house as husband and wife. PW-2 introduced deceased, who was her co-employee, to accused. PW-2 suspected that accused was having a relationship with another woman working with him, owing to which they separated and accused went to his native place while PW-2 continued to reside at Coimbatore. On 21.03.2013, accused called PW-2 over phone and asked her to join him and she refused stating that she had married the deceased. PW-2 asked accused not to disturb her. Angered, accused, with intent to do away with the deceased, called him. Deceased informed accused that he would meet him on 23.03.2013 as he was in Palakad towards attending a temple festival. Deceased met accused on 23.03.2013 at Gandhipuram. Accused, informing that PW-2 was into an illicit relationship with one Manoj and under the pretext of searching for him, took the deceased to a

secluded place, sprayed chilli powder on his face and stabbed him with a knife. When deceased attempted to escape, accused indiscriminately stabbed him and caused his death. On the complaint of PW-1, a case was registered in Crime No.349 of 2013 on the file of respondent for offence u/s.302 IPC. On completion of investigation and filing of charge sheet, the case, on committal, was tried in S.C.No.168 of 2014 on the file of learned IV Additional District and Sessions Judge, Coimbatore.

3. Before trial Court, prosecution examined 25 witnesses and marked 33 exhibits and 25 material objects. None were examined on the side of defence nor were any exhibits marked.

3.1. PW-1 deposed to being a retired Postman presently working as Watchman in Orison Academy School and that the land adjacent to the School belonged to the owner of School. On 24.03.2013 while he was proceeding to the School, he had seen a crowd at the vacant site and on enquiry, he came to know that the deceased had been done to death. Immediately, he informed his employer and on instructions, preferred Ex.P1, complaint at about 09.30 a.m. On his return from police station, he came to know that the deceased belonged to Coimbatore. PW-1 also deposed to the presence of the parents and wife of deceased at the scene.

3.2. PW-2 spoke to being the mother of two and to the earlier relationship with the accused as informed in the prosecution case. She deposed that on the accused trying to speak to her at a public place, the deceased, had asked him not to harass her and that thereafter, the accused did not contact her. She had thereafter been away at Gudalur towards attending her daughter studies. Having heard the news of deceased death on 24.03.2013 she had started for Coimbatore, when, at about 05.45 a.m., accused contacted her informing that he had done away with the deceased. She went to the Government Hospital, Coimbatore, where the body of deceased was kept. She then informed police about the involvement of the accused and giving them his photographs as also phone number.

3.3. PW-3, wife of deceased, spoke to his having been away at Palakad on 21.03.2013 towards attending a temple festival and of his returning home two days later but that he left again with his relative towards picking up his motorcycle and had not returned. On enquiry over phone, her relatives informed that the deceased had left their company. On hearing of the occurrence from the police she rushed to the scene and identified the body of deceased. She also deposed to seizure of motorcycle at the scene.

3.4. PW-4, relative of deceased, spoke to the deceased having left his company by 08.00 p.m. on 23.03.2013 and to having knowledge of the occurrence through the father of the deceased and of thereafter identifying the body.

3.5. PW-5 spoke to having picked up the accused on his motorcycle near the scene on 23.03.2013 at about 09.30 p.m. and of accused asking him to ride fast since two persons were chasing. PW-5 informed that he had dropped the accused at Kurumapalayam bus stand at 10.15 p.m. and of learning of the occurrence through newspaper on 24.03.2013. He deposed to hearing of the recovery of the purse of the deceased from the roof of his neighbour's house and that he had informed police of his interaction with the deceased on 23.03.2013. He also spoke to having identifying the accused in the Test Identification Parade held on 05.04.2013 at 02.30 p.m.

3.6. PWs.6 and 8 have deposed in keeping with the prosecution case of their having near the scene and seeing the accused on the night of occurrence and on going away in a motorcycle and their identifying him in the Test Identification Parade.

3.7. PW-7, friend of deceased, spoke to knowing the accused and to the accused having shared a live-in relationship with PW-2, of their having quarrelled

and of the deceased having entered upon marriage with PW-2 and their taking up residence together. He further deposed to coming to know of the death through newspaper reports, seeing the body of the deceased at Government Hospital, Coimbatore. The presence of deceased's parents there and of police issuing a photograph and of his identifying the accused and PW-2.

3.8. PW-9 spoke to knowing the accused and deceased, of frequent acquaintance with the deceased, of the deceased leaving in the company of the accused on the night of occurrence and of informing police upon hearing of the death. He also spoke to Test Identification Parade.

3.9. PW-10 spoke to police arresting the accused on 25.03.2013 at Mettupalayam, of PW-16 and himself being witnesses to accused tendering confession and to their attesting confession and seizure mahazars. PW-16 concurred.

3.10. PW-11, friend of deceased, spoke to knowing the accused, of visiting the Government Hospital, Coimbatore to see the body of deceased, of police showing a photograph and enquiring him, of identifying the accused and PW-2 in the photograph, of accused frequently visiting his shop, of having knowledge of frequent quarrels between accused and PW-2 and of marriage of deceased and

PW-2.

3.11. PW-12, a resident of Kurumapalayam, spoke to police visiting his house along with accused towards effecting seizure of articles.

3.12. PW-13, Ward Member of Madhukarai, spoke to visiting the crime scene on seeing a crowd, of seeing the body of deceased, of police enquiring him and to his attesting mahazars.

3.13. PW-14, owner of Orison School, spoke to having been informed by PW-1 that a person was done to death in the adjacent vacant land, of instructing him to prefer a complaint, of coming to know of the entire occurrence through newspapers and of police enquiring him.

3.14. PW-15, photographer, spoke to having taken photographs at the scene of crime and handing over the same to the investigation officer.

3.15. PW-17, Junior Scientist, spoke to submitting Ex.P16, report, informing detection of blood on each of the six items received and of forwarding them to serology department to ascertain the blood group.

3.16. PW-18, Special Sub Judge (Forest), spoke to recording the Section 164 Cr.P.C. statement of PW-2 and of forwarding the same to Court.

3.17. PW-19, Judicial Magistrate, Udthagamandalam, spoke to having functioned as Judicial Magistrate V, Coimbatore and of conducting Test Identification Parade on 05.04.2013, duly following the procedures prescribed therefor.

3.18. PW-20, Doctor, who conducted postmortem, noted the following injuries:

Ante mortem injuries:

- (1) Vertical oblique cut wound 2.5 x 0.5 cm x bone deep noted over left side chin. The lower is 1.5 cm left o middle of chin and the upper end is 2 cm below to left angle of mouth.
- (2) Vertical oblique stab wound 2 x 0.5 cm x oral cavity deep noted over upper part of right side neck just below the angle of mandible. Outer sharp end is 1 cm below to the angle of mandible, the inner blunt end is 8cm outer to middle of chin. The wound passes inwards and upwards and piercing the neck muscles enters into OROPHARYNX.
- (3) Vertical Oblique stab wound 2.5 x 1 cm x oral cavity deep noted over right side neck. Outer sharp end is 4 cm below to right side angle of mandible; lower blunt end is 0.5 cm outer to lower end of wound 2. The wound passes inwards and upwards and piercing

the neck muscles enters into OROPHARYNX.

- (4) Horizontally oblique stab wound 2 x 0.5 cm x 5 cm deep noted over front of right lower neck, outer sharp end is 6 cm outer to midline of neck, inner blunt end is 4 cm outer to midline. The wound passes inwards piercing the lower neck muscles and cutting the external jugular vein and piercing the thyroid cartilage and entered in to laryngeal cavity deep.
- (5) Horizontally oblique stab wound 1.5 cm x muscle deep noted over 0.75 cm below to the wound 4.
- (6) Vertical oblique stab wound 2 x 0.5 cm liver deep noted over front of right lower chest at level of 8th inter costal space. Upper sharp end is 8 cm below and lateral to xiphi sternum. Lower blunt end is 13 cm noted over below and medial to right nipple. The wound passes inwards and medially piercing the 8th sterno costal junction and inwards and downwards piercing through diaphragm and entered into the left lobe of liver measuring 1 x 0.25 x 0.25 cm.
- (7) Horizontally oblique stab wound 2 x 0.5 x 3 cm muscle deep noted over epigastric region. Medial end is sharp at midline. Outer blunt end is 7 cm medial to wound 6. the wound passes inwards obliquely along the muscle plane.
- (8) Horizontally oblique stab 2 x 0.5 x 3 cm noted over front of left side upper abdomen. Medial sharp end is 15 cm below and lateral to xiphi sternum. Outer end is burnt 12 cm above and lateral to umbilicus. The wound passes inwards and entered into peritoneal cavity and piercing the spleen measuring 1 x 0.5 x 0.5 cm.
- (9) Horizontally oblique cut wound 2.5 x 0.5 cm x muscle deep noted over inner aspect lateral 3rd of right forearm, lateral end is 7 cm

above wrist, medial end is 4 cm above to wrist.

- (10) Cut wound 8 x 0.5 cm x muscle deep noted middle 3rd of left forearm. Both ends are sharp. Lateral end is 15cm above to wrist; medial end is 16cm above to wrist.
- (11) Cut wound 3 x 2.5cm x muscle deep noted over upper part of left forearm. Both ends are sharp. Lateral end is 16cm below to wrist. Medial end is 5cm to Olecleron process.
- (12) Stab wound 8 x 0.5cm x 4cm (muscle deep) noted over back of neck. Inner sharp end is 1cm outer to midline of neck. Outer blunt end is 9cm below to left ear lobe.
- (13) Stab wound 3 x 0.5cm x 1.5cm (muscle deep) noted over back of neck. The wound is 0.5cm below to the wound no.12.
- (14) Stab wound 2.5 x 0.5cm x 2.5cm (muscle deep) noted over right neck. Inner sharp end is 0.5 outer to wound no.13. Outer blunt end is 6 cm below to mastoid.
- (15) Cut wound 0.5 x 0.5 x 0.5cm muscle deep back of neck. Both ends are sharp.
- (16) Stab wound 2 x 0.5cm x 2cm (muscle deep) noted over lower part of right side neck. Inner sharp end is 4cm below to wound no.14 outer blunt end is 3cm below to wound no.14.
- (17) Cut wound 0.5 x 0.5 x 0.5cm (muscle deep) lower part of right side neck. Both ends are sharp. Inner end is 7 cm above to right scapula; outer end is 6cm inner to right shoulder.
- (18) Vertical oblique stab wound 3 x 0.5cm x lung deep noted over back of right side chest. Lower sharp end is 4 cm outer to midline at level of T5, upper blunt end is 4cm outer to midline at the level of T4. The wound passes inwards, piercing the muscles, cutting 4th rib and enter into pleural cavity, piercing the upper

lobe of right lung.

(19) Vertical oblique stab wound 3 x 0.5cm x lung deep noted over back of right side chest. Lower sharp end is 4cm below to lower end of scapula, upper blunt end is 2cm lower end of scapula. The wound passes inwards, piercing the muscles, cutting 7th rib and enter into pleural cavity, piercing the middle lobe of right lung.

Other findings:-

- Peritoneal cavity contains 1000ml of fluid blood and right Pleural cavity 300ml of fluid blood.
- Hyoid bond - intact.
- Heart: all chambers contains above few cc of fluid blood.
- Stomach contains about 150 grams of partially digested food particles with 30 ml of mucous fluid without any smell, mucosa pale.
- Small intestine contains about 10 ml of bile stained fluid, with without any smell, mucosa pale.
- Liver, Lungs, Spleen, Kidneys and Brain : cut section pale.
- Urinary bladder - empty.
- Viscera preserved and sent for chemical analysis.
- Blood preserved for analysis.

PW-20 deposed that deceased appeared to have died of shock and haemorrhage due to multiple cut injuries of head and corresponding internal injuries and that deceased would have died 12 to 24 hours prior to autopsy.

3.19. PW-21, Junior Scientist, spoke to submitting Ex.P28, Forensic Report, informing the blood group of Item Nos.2, 3, 4 and 6 (shirt, banian, knife and shirt)

to be 'B' and that grouping of Item Nos.1 and 5 was inconclusive. PW-21 also spoke to submitting Ex.P29, Forensic Report, informing the blood group of deceased to be 'B'.

3.20. PW-22, Inspector of Police, spoke to registering a case in Crime No.349 of 2013 on the file of respondent for offence u/s.302 IPC on the complaint of PW-1 and forwarding the same to Court and higher officials. PW-22 also spoke to sending Constables to the scene of crime and of having assisted the Investigation Officer.

3.21. PW-23, Sub-Inspector of Police (Law and Order), deposed that upon receiving information from his higher official that a motorcycle and a body of male aged about 30 was found, he informed PW-3, wife of deceased and asked her to go to the scene of crime.

3.22. PW-24, Doctor, spoke to forwarding the body of deceased towards conduct of postmortem and of issuing Ex.P31, Accident Register.

3.23. PW-25, Inspector of Police, who conducted investigation in the case, spoke to visiting the scene of crime, preparation of mahazars, conducting inquest in the presence of panchayatdhars and witnesses, forwarding the body of deceased

towards conduct of postmortem, seizure of material objects, examining witnesses, arrest of accused, recording of confession of accused, forwarding the accused to judicial custody, obtaining various reports, forwarding material objects to Court under Form 91 and on completion of investigation, filing of charge sheet informing commission of offence u/s.302 IPC.

4. On questioning u/s.313 Cr.P.C., appellant/accused denied charges. On appreciation of evidence, oral and documentary, trial Court, under judgment dated 30.10.2017, convicted appellant for offence u/s.302 IPC and sentenced him to R.I. for life and fine of Rs.10,000/- i/d 2 months S.I. Hence, the present appeal.

5. Heard learned counsel for appellant and learned Additional Public Prosecutor for respondent. Perused the materials on record.

6. We will presume the prosecution case of a relationship between PW-2 and the accused and of the deceased having objected to the accused interacting with PW-2, as a result of which the accused harboured ill-feeling towards the deceased. The prosecution seeks to prove its case by relying on the accused having been seen in the company of the deceased through PW-9 speaking to the deceased leaving on a motorcycle in the company of the accused on the night of occurrence. The prosecution would than have it that PW-5 picked up the accused from the

scene of crime on the night thereof and further that PW-6 saw the accused on a motorcycle near the scene. Prosecution further seeks to bolster its case by relying on recoveries effected. While PW-9 spoke to knowing the accused but has been subjected to Test Identification Parade PWs.5, 6 and 8 have deposed to identifying him in the Test Identification Parade. Prosecution further seeks to bolster its case relying upon recoveries effected under Exs.P4, P5 to P7. In the first place, PW-9 ought not to have been subjected to Test Identification Parade if indeed he knew the accused earlier. A perusal of the evidence of PW-9 reveals that his contention of knowing the accused earlier is hollow. It is quite likely that he was subjected to Test Identification Parade because he earlier did not know the accused. Even otherwise his evidence to the effect that despite coming to know of the death on 24.03.2013, he had not informed anybody of having seen the deceased on the night of 23.03.2013 till he was examined by police on 28.03.2013, belies normal human conduct. PW-9 has claimed a close business relationship with the deceased but despite the same informs of having made no attempt to contact the family members despite knowledge of the deceased last having left in the company of the accused. PW-9 is seen to be a most unreliable witness. The others subjected to Test Identification Parade have admitted to becoming aware of the identify of the accused through seeing his photographs before their being subjected thereto. Their identifying the accused at the Test Identification Parade carries the prosecution case nowhere. As regards PW-5's deposition that he had afforded a lift

to a person (the accused) in an agitated state on the night of occurrence but had not informed thereabout to anybody, though examined twice by police and despite knowledge of the accused being the murderer does not ring true. Ex.P4 is the admissible portion of the confession statement of the accused. Ex.P5 is the recovery mahazar for 100 rupee notes. While Exs.P5, P6, P7, P9 and P10 are recovery mahazars, Ex.P8 is the observation mahazar. Even to the naked eye all these exhibits are seen to be in one and the same hand. MOs.1 to 7 [Rs.200/-, Purse, ATM Card, Voter I.D., ICICI Bank I.D., Bank Chalan and Pen Drive] have been recovered from the scene while MOs.8 to 11 [Black Colour Bag, Knife, Pant and Shirt] have been recovered from a cleft in a rock, upon the confession of the accused. It is the evidence of PW-10 that Exs.P4 to P7 were recorded by two different persons. While PWs.10 and 16 have laboured hard to speak in keeping with the prosecution story of all recoveries having been made at the instance of the accused, they are unable to deny being strangers to the place of recovery. Local residents of the two places of recovery have been avoided. Ex.P6 informs recovery of the purse of the deceased and contents, on the roof, of a house at Gurumapalayam, Coimbatore, belonging to one Velliangiri S/o.Ayyasami. Even such Velliangiri has not been examined. The evidence of PWs.10 and 16, co-employees, who admittedly had no occasion to be at the scene of recovery save for their making certain cash collections at Goundampalayam, the uniform writing of Exs.P5 to P10 as against the evidence of witnesses that the said exhibits were

written in two different hands and the failure to effect recovery in the presence of local residents who would be natural witnesses would deter this Court from placing reliance on the alleged recoveries. None have witnessed the occurrence and the circumstantial evidence sought to be projected by the prosecution does not point to the involvement of the accused. The Criminal Appeal succeeds.

The Criminal Appeal is allowed. The conviction and sentence passed by learned IV Additional District and Sessions Judge, Coimbatore, passed in S.C.No.168 of 2014 dated 30.10.2017, are set aside. Appellant/accused is acquitted of all charges. Appellant is directed to be released forthwith unless his presence is required in connection with any other case. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

सत्यमेव जयते

[C.T.S., J]

[M.N.K., J]

05.10.2018

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Index:yes/no

Internet:yes

gm

To

- 1.The IV Additional District and Sessions Judge,
Coimbatore.
- 2.The Inspector of Police,
B-13 Pothanur Police Station,
Coimbatore District.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Superintendent,
Central Prison,
Coimbatore.



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C.T.SELVAM, J

and

M.NIRMAL KUMAR, J

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