

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.19 of 2018Thangaraj
S/o.Ezhumalai

... Appellant

Vs

State represented by
The Inspector of Police,
Periyapalayam Police Station,
Thiruvallur District.
Crime No.377 of 2011

... Respondent

Criminal Appeal filed u/s.374(2) Cr.P.C. against the judgment of learned Principal District and Sessions Judge, Thiruvallur, in S.C.No.236 of 2012 on 19.09.2017.

For Appellant : Mr.John Sathyan
for Mr.C.Prabakaran

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 Principal District and

2. Case of prosecution is that on 14.06.2011 at about 20.30 hours, when the deceased was standing in a market, appellant/accused, due to previous enmity, assaulted and hit him on his head with a wooden log and caused his death. PW-1, wife of deceased, preferred Ex.P1, complaint to PW-8, Inspector of Police and a case was registered in Crime No.377 of 2011 on the file of respondent for offence u/s.302 IPC. On completion of investigation, a charge sheet was filed informing commission of offence u/s.302 IPC and on committal, the case was tried in S.C.No.236 of 2012 on the file of learned Principal District and Sessions Judge, Thiruvallur.

3. Before trial Court, prosecution examined 9 witnesses and marked 16 exhibits and 5 material objects. None were examined on the side of defence nor were any exhibits marked.

3.1. PW-1, wife of deceased, spoke to mother of accused preferring a complaint against her husband, he having obtained bail and of his having gone to police station towards compliance of bail condition requiring him to report. PW-1 also spoke to PW-5 informing her over phone that her husband was beaten by accused at the market and was lying on the road and that she immediately rushed to the scene of occurrence and then went to the police station and preferred Ex.P1 complaint.

3.2. PW-2, a resident at Periyapalayam, spoke to having witnessed the occurrence while he was standing at the bus stand and of accused escaping from the scene. PW-2 also spoke to informing PW-1 about the death of deceased and of identifying MO-1, wooden log.

3.3. PW-3 spoke to having witnessed the occurrence while he was standing at the bus stand along with PW-5 and of PW-5 informing PW-1 about the death of deceased, who after arrival at the scene, preferred Ex.P1 complaint. PW-3 also spoke to attesting Ex.P2, observation mahazar and Ex.P4, seizure mahazar (MO-4 blood stained earth and MO -5 sample earth). PW-5 has also spoken on the same lines.

3.4. PW-4, resident of Vadamadurai, spoke to attesting Ex.P5, admissible portion of confession statement of accused, as also Ex.P6, seizure mahazar (MO-1).

3.5. PW-6, Special Assistant, spoke to handing over the body of deceased to Doctor towards conduct of postmortem and on completion thereof, handing over the same to his relatives.

3.6. PW-7, Doctor, who conducted postmortem, has stated that deceased would appear to have died of shock and haemorrhage due to injuries sustained.

3.7. PW-8, Inspector of Police, who conducted initial investigation in the case, spoke to registration of First Information Report, visiting the scene of occurrence, preparation of mahazars, examining witnesses, conducting inquest, seizure of material objects, arrest of accused and recording his confession, arrest of accused, obtaining various reports and on his attaining superannuation, handing over investigation to PW-9, Inspector of Police, who on completion of investigation, filed a 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 19.09.2017, convicted appellant for offence u/s.302 IPC and sentenced him to life imprisonment. Hence, the present appeal.

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

6. PW-1, wife of the deceased, is informed to be the *de facto* complainant. On her complaint, Ex.P1, a case in Crime No.377 of 2011 on the file of respondent for offence u/s.302 IPC has been registered on 14.06.2011. Ex.P9, First Information Report, informs the time of registration of the case as 10.00 p.m. on 14.06.2011. Ex.P1, complaint and Ex.P9, FIR, have reached the Magistrate only at 03.00 p.m. on 15.06.2011. There is no explanation for delay in the same reaching the Magistrate. PW-1, in chief, has deposed that she received information of the

deceased having been done to death by appellant/accused from PW-5 and of proceeding to the scene at 08.00 p.m. She informed of the body of her husband having been taken for postmortem and of her proceeding to the police station at 10.00 p.m. In cross, she has informed that her brother-in-law by name Joseph took her to the scene by motorcycle informing her that he had received information over phone of her husband having been done to death. She informed presence of about 100 persons as also 4 to 5 police personnel when she arrived at the scene. PWs.2, 3 and 5 have been examined as eye witnesses. They too have spoken to the presence of several persons as also 4 to 5 police personnel at the scene. While PWs.2 and 5 spoke to the presence of about 50 people PW-3 spoke to the presence of about 100 at the time of occurrence. The evidence of PW-1 and alleged eye witnesses is clearly suggestive of the body of the deceased having been moved to hospital prior to registration of the case. PW-6, the Body Constable, has deposed to handing over the body of deceased at hospital between 07.00 and 07.30 p.m. on 14.06.2011. PW-7, Doctor, who conducted postmortem, who has spoken to maintenance of records in the mortuary, in cross, initially has admitted to the body of deceased having been brought to hospital by 09.00 p.m. on 14.06.2011 but thereafter retracted. PW-2 has admitted that he, PW-3 as also PW-5 were relatives of the deceased. They are all from Vadamadurai colony, which, according to the admission of PW-3, could be reached by motorcycle in 10 minutes. PW-8, Investigation Officer, would state that Vadamadurai could be reached from the scene by motorcycle in 20 minutes. Inquest on the body of deceased has allegedly been conducted between 11.45 p.m. on 14.06.2011 and 02.00 a.m. on 15.06.2011.

A perusal of Ex.P11, inquest report, thereof again informs of the pachayatdhars being persons belonging to Vadamadurai. Although the alleged eye witnesses have spoken to presence of several persons at the scene, the same being a busy place viz.,market, no independent witness has been examined. There is no explanation for the delay in the First Information Report reaching the Magistrate. PW-1 is discrepant on the manner in which she came to know of the occurrence. The presence of police at the scene when she arrived, a fact also spoken to by other witnesses and the admission of PW-6, Body Constable, that the body of deceased had been moved to hospital between 07.00 and 07.30 p.m. on 14.06.2011 all point to the commencement of investigation prior to registration of Ex.P1, complaint. The genesis of the occurrence is unclear and persons examined as eye witnesses are related to the deceased and belong to his village as also do the Panchayatdhars of alleged inquest. This raises a grave doubt regards the veracity of the prosecution case. Ex.P2 - Observation Mahazar, Ex.P3 - Recovery Mahazar and the Section 161(3) Cr.P.C. statements of PW-1, PW-3 as also PW-5 uniformly inform the recovery of a cellphone besides the body of the deceased. In all of these is a clearly visible uniform insertion of the same being 'blood stained'. Ex.P15, Forensic Report, vis-a-vis blood stains on the mobile cell phone recovered merely states 'disintegrated'. This is one more reflection of the not so fertile imagination of the prosecution.

The Criminal Appeal is allowed and the conviction and sentence imposed on the appellant by learned Principal District and Sessions Judge, Thiruvallur, in S.C.No.236 of 2012 dated 19.09.2017 are hereby set aside. Appellant is acquitted

of all charges. Appellant is directed to be released forthwith unless his presence/custody is required in connection with any other case/proceedings.

[C.T.S., J] [M.N.K., J]

09.10.2018

Index:yes/no

Internet:yes

gm

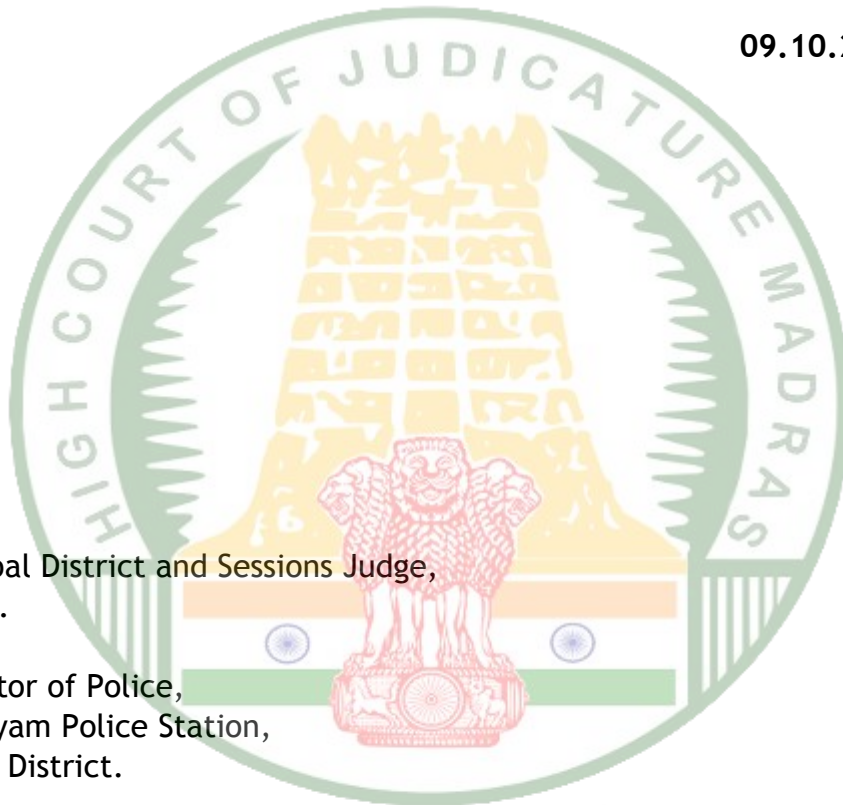
To

1.The Principal District and Sessions Judge,
Thiruvallur.

2.The Inspector of Police,
Periyapalayam Police Station,
Thiruvallur District.

3.The Public Prosecutor,
High Court, Madras.

4.The Superintendent,
Central Prison,
Puzhal, Chennai.



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C.T.SELVAM, J

and

M.NIRMAL KUMAR, J

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