

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

Criminal Appeal No.281 of 2018

Selvam @ Selvaraj
S/o.Kandasamy

... Appellant/Accused

Vs

The State represented by
The Inspector of Police,
Tirupur Central Police Station,
Tiruppur District.
Crime No.351 of 2013

... Respondent/Complainant

Criminal Appeal filed u/s.374(2) Cr.P.C. against the judgment of learned Principal District and Sessions Judge, Tiruppur, passed in S.C.No.128 of 2013 on 04.04.2018.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.K.Prabhakar
Additional Public Prosecutor

JUDGMENT

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

This appeal arises against the judgment of learned Principal District and Sessions Judge, Tiruppur, passed in S.C.No.128 of 2013 on 04.04.2018, convicting appellant/accused for offence u/s.302 IPC and sentencing him to life imprisonment and fine of Rs.5,000/- i/d 3 months R.I.

2. Case of the prosecution is that deceased and PW-1, his wife, were tenants of property belonging to accused. Accused's

father died 2 months prior to the occurrence. Informing that he needed the premises in order to accommodate their relatives, accused insisted that deceased vacate the same. Deceased sought time. Accused frequently quarrelled with deceased on this score. On 07.03.2013 at about 03.45 p.m., accused quarrelled with deceased and insisted that he vacate the premises immediately. PW-1 informed the incident to PW-2, the son of the deceased, who immediately came and assured accused that his parents were in search of a house and would vacate as soon as possible. Thereafter, PW-2 went out of the house. Not being convinced, accused, using a wooden log, assaulted the deceased indiscriminately resulting in his death. Upon hearing the screams of his father, PW-2 rushed to the house where he saw the deceased lying in a pool of blood and PW-1 crying. Accused also threatened of doing away with PWs.1, 2 and 4, who attempted to rescue the deceased. On the complaint of PW-1, a case was registered in Crime No.351 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.128 of 2013 on the file of learned Principal District and Sessions Judge, Tiruppur.

3. Before trial Court, prosecution examined 15 witnesses and marked 20 exhibits and 9 material objects. None were examined on behalf of defence nor were any exhibits marked.

3.1. PW-1, wife of deceased, spoke to having resided in the house of accused on monthly rent of Rs.2,000/- for a period of 1½ years, of accused's father having died 2 months prior to the occurrence and of accused frequently quarrelling with them insisting on their vacating the premises. On 07.03.2013 at about 02.00 p.m., accused quarrelled with them and threatened to do away with them if they failed to vacate immediately. PW-1 informed PW-2, her son, who came there and assured the accused that they would vacate the premises as soon as possible and thereafter, PW-2 went out. Accused then entered the house and assaulted the deceased indiscriminately using a wooden log and on hearing his screams, PW-2 rushed to the house. When they tried to rescue the deceased, accused threatened them. On arrival of others, accused ran away. PW-1 deposed that she had handled the deceased owing to which her saree was blood stained. PW-1 also spoke to preference of Ex.P1, complaint. PW-1 has been treated hostile by the prosecution. The evidence of PW-1, wife of deceased, in cross, is ambivalent. In cross, PW-1 had deposed that after the accused demanded that the house be vacated she had called her son over phone who arrived within ten minutes and the accused had left by then. However, she has further deposed that upon being assured by PW-2, her son, of their vacating the house, the accused had agreed and gone away. She further deposed to PW-7 calling for the police over phone and of police having

arrived immediately thereupon. Her further deposition runs thus: The blood stains and foot prints were photographed by the police. A sniffer dog was brought. Police had recorded her statement and obtained her signature at the scene itself. It was she, who had taken the body of her husband from the cot and placed it down. Ambulance personnel examined her husband. Police have not examined her after having done so at her house. Her husband earlier had been given to drink and that he was possessed of the habit at the time of occurrence, she went to the scene and saw her husband only after being informed that he had been attacked, the wooden log seized had been shown to her when she was examined and she had identified the same. She had not witnessed the accused attacking the deceased. It was true that the prosecution case had been fabricated only after the arrival of PW-4, the hotel owner and PW-2, her son. She had not gone to the police station and preferred the complaint. At such stage, prosecution has treated her hostile. In cross-examination by the prosecution, she had admitted to a dispute between her husband and accused on the date of occurrence and of an occurrence involving her and the accused the previous day. She admitted to the accused being at her house by 02.00 p.m. on the occurrence day and threatening them of death if they did not vacate and to her immediately calling her son over telephone, who also arrived. She admitted to having witnessed the accused attacking the deceased on the head, forehead and shoulder with a wooden log. She further deposed that on hearing noise, her son ran shouting to the accused not to beat the deceased and that accused threatened that he would kill him if he made a noise. She stated that PW-14 and one Sekar had then come running. To the prosecution suggestion of her having seen the occurrence and having preferred the complaint at the police station, she stated that the complaint was given at the scene itself. To the prosecution suggestion of her having deposed falsely in cross she responded that it was only in cross that she had deposed correctly and she had informed the police wrongly. Given such ambivalent answers, trial Court questioned PW-1. She informed of having studied upto 10th standard and that both in chief and cross she had understood the questions and answered them. To the Court's query of why she had deposed in contradictory fashion in chief and cross, she had stated that she had done so owing to suffering from poor state of mind.

3.2. PW-2, son of deceased, spoke on lines similar to PW-1. PW-2 also spoke to having accompanied PW-1 to police station.

3.3. PW-3 spoke to knowing the deceased and of having heard that he was done to death.

3.4. PW-4 spoke to running a Hotel by name 'Sridevi Hotel', of deceased working as the Master Cook therein, of deceased asking him of availability of house on rent since accused was

insisting on his vacating, of returning home on 07.03.2013 at about 03.30 p.m. and on hearing a noise, going to the house of deceased where PW-2 was assuring accused that they would vacate the premises as soon as possible. PW-4 spoke to witnessing accused assaulting deceased using a wooden log, of accused threatening them and of accused running away with the wooden log on arrival of others. PW-4 also spoke to preference of complaint by PW-1.

3.5. PW-5, Village Administrative Officer, spoke to having been informed by Police on 07.03.2013 at about 06.15 p.m. that a person had been done to death, of having reached the scene of crime along with his assistant and of attesting Exs.P2, P3, P4 and P5, seizure mahazars for MOs.2 to 6.

3.6. PW-6 spoke to having seen police enquiring accused near Natarajan theatre, of accused tendering a voluntary confession and of attesting Ex.P7, seizure mahazar for MO-1. PW-6 also spoke to seizure of MO-7, shirt.

3.7. PW-7, a neighbour of the deceased, spoke to his having been informed by his wife that PW-1 was crying, of having enquired PW-2, who informed that the deceased was done to death by accused, of calling the 108 ambulance service and that on arrival and examination of deceased he was found dead. PW-7 also spoke to preference of complaint by PW-1.

3.8. PW-8, photographer, spoke to having taken photographs at the scene of crime. Exs.P8 to P12 are photographs and MO-8 - CD.

3.9. PW-9, Head Constable, spoke to submitting First Information Report to Court.

3.10. PW-10, Doctor, who conducted postmortem, has stated that deceased appeared to have died due to shock and hemorrhage due to injury to vital organs, brain and neck.

3.11. PW-11, Assistant Director, Forensic Sciences Department, spoke to finding human blood on the objects sent to him, of forwarding the blood samples to Serology Department towards ascertaining the blood group and of submitting Ex.P15, report.

3.12. PW-12, Inspector, Kumbakonam West Police Station, spoke to registration of case in Crime No.351 of 2013 on the file of respondent for offence u/s.302 IPC on the complaint of PW-1 and of forwarding the same to Court and higher officials. Ex.P17 is the First Information Report.

3.13. PW-13, Constable [Grade II], spoke to having handed

over the body of deceased to Doctor towards conduct of postmortem and on completion thereof, handing over the same to the relatives. PW-13 also spoke to having handed over MO-9, dhoti of deceased, to the investigation officer under Ex.P18 and of forwarding the viscera for chemical analysis.

3.14. PW-14, a co-employee of deceased, spoke to having gone to the house of deceased with another on hearing his screams, of having witnessed accused assaulting deceased, of accused running away with the wooden log and of deceased having been declared dead on examination by persons in the 108 ambulance.

3.15. PW-15, who conducted investigation in the case, spoke to 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 offences u/s.302 and 506(ii) 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 04.04.2018, while acquitting appellant/accused of offence u/s.506(ii) IPC convicted him for offence u/s.302 IPC and sentenced him to life imprisonment and fine of Rs.5,000/- i/d 3 months R.I. Hence, the present appeal.

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

6. Learned counsel for appellant submitted that PW-1/de facto complainant, who is the wife of deceased, had not supported the prosecution case and had been treated hostile. PWs.2, 5 and 7 admitted to the fact that the investigation officer sought the assistance of the sniffer dog squad. This is a reflection of the prosecution being in the dark as to who the assailant was and therefore, the mentioning of the name of accused in the complaint itself, makes the same suspect. PW-7 has admitted that PWs.1 and 2 were at the scene only after the ambulance had arrived. Although the attack on the deceased by appellant/accused admittedly was informed only through use of a wooden log neither of the witnesses allegedly present viz., PWs.1, 2, 4 and 14 had made any attempt to rescue the accused. This is against normal human conduct and makes their presence doubtful. PW-4 admitted to the accused having been taken to the

police station on 07.03.2013. What flows from this is that the prosecution tale of appellant/accused having been arrested on 08.03.2013 and recoveries made pursuant to his confession were untrue. PW-6, witness to the recovery, has admitted to being a friend of PW-2 and this only rendered the recovery more suspect. PW-15, Investigation Officer, had admitted that PWs.1 and 2 had not informed him of the accused having dealt a blow to the head of deceased. PW-4's 161(3) Cr.P.C. statement has been sent to Court after 3 months. As were the statements of PWs.5, and 8 to 13. The distance between the Court and police station is only 2 kms but Ex.P17, First Information Report, has reached the Court only after 2½ hours. In the circumstances, the forwarding of the First Information Report to Court must be seen as delayed and such delay has not been explained. The Serology Report also does not in any manner aid the case of the prosecution.

7. In response to the above submissions, learned Additional Public Prosecutor submitted that PW-1, wife of deceased, had been examined in chief on 03.06.2014 and had then spoken in keeping with the prosecution case. However, she was cross-examined only on 24.11.2015 when she had turned hostile. On being questioned by the trial Court on the inconsistent manner in which she had tendered evidence, she had informed her poor state of mind as the cause therefor. Meeting submission of learned counsel for appellant on the prosecution having sought services of the sniffer dog squad, learned Additional Public Prosecutor stated that there had been no cross-examination on this aspect as would have afforded the investigation officer an opportunity to explain the position. Sniffer dog was pressed into service towards ruling out the involvement of any other than the accused. PW-5 has spoken to preparation of mahazar by 08.00 p.m. by which time the First Information Report had reached the Court. Therefore, there was hardly any possibility of wrongfully fixing the accused within such a short time. It was the case of prosecution that the saree of PW-1 and the shirt of PW-2 had been seized and they contained blood stains. This would reflect the natural position that immediately after the occurrence, PW-1, who was none other than the wife of the deceased and PW-2, his son, would have handled the body of deceased. Ex.P4, seizure mahazar, for recovery of such articles had reached the Court on 08.03.2013 itself. PW-4 had spoken to the arrival of PW-14, Sekar and others on hearing a noise and that the accused then had run away. PW-4 also deposed to the attack by appellant/accused on the deceased and of appellant running away. PW-4 has merely made a mistake of informing arrest of accused on 07.03.2013 since none of the other witnesses have spoken thereto. Both PWs.1 and 2 have spoken to the injury to the forehead of the deceased. PW-6 has spoken to arrest and recovery made pursuant to the accused's confession. Submitting that the time lag between the registration of First Information

Report at 5.30 p.m. and it reaching the Magistrate at 8.00 p.m. is minimal and cannot be informed to have been delayed, learned Additional Public Prosecutor submitted that in any event, the Court working hours end between 5.00 to 5.30 p.m. and the convenience of Magistrate in receiving the First Information Report cannot be ignored. Although the result of grouping test was inconclusive, the articles recovered including the wooden log used by the accused revealed the presence of human blood. PWs.1, 2, 4 and 14 were witnesses to the occurrence. PW-7, a neighbour, had called for the services of the ambulance. The occurrence had taken place between 3.30 and 4.00 p.m. and the First Information Report had been registered as early as 5.30 p.m. Towards impressing the genuineness of the First Information Report, learned Additional Public Prosecutor submitted that a correction relating to the period of residence of the complainant at the house belonging to the accused informed in the complaint i.e. 1¼ months to 1¼ years, did not find reflection in the First Information Report.

8. In response, learned counsel for appellant submitted that the prosecution case started with the evidence of PW-7 to the effect that while he had returned from work and was taking rest he heard a noise by about 3.00 p.m., went to the neighbouring house and found the deceased lying in a pool of blood and he immediately called for the 108 ambulance service. On arrival thereof, he informed that he had made the call, and was asked to sign, which he did. He specifically had deposed that at such time, none of the relatives of the deceased were present in the deceased's house. The police had arrived within 15 minutes thereafter. There were hand and foot prints at the spot where the deceased lay but no investigation has been done there regards. PW-7 specifically had informed that PWs.1 and 2, wife and son of deceased, arrived only after the ambulance had. Explaining the delay in cross-examination of the witnesses, learned counsel submits that the counsel initially engaged had not examined any of the prosecution witnesses. It was only after change of counsel that all the witnesses came to be cross-examined after moving applications therefor. Therefore, there need be no suspicion that in the interregnum the prosecution witnesses had been tutored. While the First Information Report informs that a written complaint was given, it is the evidence of PW-1 that her statement was recorded at the scene itself. Quite contrarily, PW-2 has spoken to his having been examined and of his having gone over to the police station and preferring the complaint as informed by his mother under a written complaint. PW-4 allegedly had been examined on 07.03.2013 but his 161(3) Cr.P.C. statement had been sent to Court only on 21.06.2013 along with the final report. PWs.1, 2, 5 and 7 has admitted to the presence of a sniffer dog at the scene. Given such direct evidence of prosecution witnesses it would only be

poor counsel, who would question the Investigation Officer on such aspect. PW-14 was the employer of PW-4 and deceased. One Sekar who was said to be present has not been examined. The presence of PW-14 and the said Sekar was informed in the First Information Report but no mention was made therein regards the presence of PW-4. The presence of blood stains on the clothes recovered from PWs.1 and 2 cannot be read in favour of prosecution since it is natural for immediate relatives to handle the body of deceased. Admittedly, PW-4 has spoken to the accused having been taken into custody on 07.03.2013. All the records have been fabricated to suit the prosecution case. The entire

prosecution case was a fabricated one and delay in registration of First Information Report was to be considered on the facts of the particular case.

9. Learned Additional Public Prosecutor explains that as it was PW-1 who had been asked by accused to vacate and that she had informed PW-2, it is only proper that the First Information Report be registered in her name. On PW-1 having been found PW-7 had gone and questioned her and she had informed that the appellant/accused had done her husband to death. PW-10, Doctor, who conducted postmortem, deposed that the time of death would be 20 to 22 hours before conduct thereof which also was in keeping with the prosecution case vis-a-vis., the time of death.

10. We have considered the rival submissions.

11. While we would unhesitatingly appreciate the efforts of learned Additional Public Prosecutor to justify the conviction and inform the propriety of the investigation, we are unable to uphold the finding of the trial Court. PW-1, wife of deceased has not supported the prosecution case. It belies normal human conduct that the wife of deceased, if really she had witnessed the occurrence, would deny having done so and thereby enable the actual assailant of her husband to go free. The submission of learned Additional Public Prosecutor that the services of the sniffer dog would have been called for towards ruling out the possibility of involvement of any other is a knife which cuts both ways. It specifically is informed in the complaint that the appellant/accused was the sole assailant and he had dealt blows to the deceased on his head using a wooden log. Given such fact, the calling for the sniffer dog really would not be necessary. That it has been done only points to doubt regards who was involved in the occurrence leading to death. This in turn raises a doubt about the veracity of the complaint which informs the sole involvement of appellant/accused. PW-4 has admitted to the arrest of appellant/accused on 07.03.2013 itself. Consequently, the recovery made pursuant to his alleged confession also falls.

Both PW-1 as also PW-2 have, in chief, deposed to PW-14 as also one Sekar arriving at the scene upon hearing the noise. The said Sekar whose presence at the inquest is admitted to by PW-15, investigation officer and who would be a material witness has not been examined. From the ambivalent nature of PW-1's evidence, it could not be presumed that she has chosen to speak falsely in cross. The exact opposite equally is possible. Even if we are to totally disregard the evidence of PW-1, we are still left with the other discrepancies noted herein above, which lead to the impression that the prosecution has failed to prove its case beyond reasonable doubt. The question of whether there has been a delay in the complaint reaching the Court is a matter to be decided on the facts of the particular case and in this case, we would consider the same to be the case.

The Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Principal District and Sessions Judge, Tiruppur, passed in S.C.No.128 of 2013 on 04.04.2018, are set aside and appellant is acquitted of all charges. Fine amount, if any, paid shall be refunded to him. Bail bond(s), if any, executed by him shall stand cancelled. Appellant is directed to be released forthwith, if his detention is not required in any other case.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gm

To

1.The Principal District and Sessions Judge,
Tiruppur.

2.The Inspector of Police,
Tirupur Central Police Station,
Tiruppur District.

3.The Public Prosecutor,
High Court, Madras.

Copy to

The Section Officer,
Criminal Section High Court,
madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.86586

Criminal Appeal No.281 of 2018

AD(CO)

GSP(08/02/2019)