

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No.723 of 2011

Rajendiran

... Appellant/Accused

Versus

State rep. by
Inspector of Police,
Vazhapadi Police Station,
Salem District

... Respondent/Complainant

Criminal Appeal filed under Sections 374 of the Code of Criminal Procedure, to set aside the judgment dated 23.09.2011 made in S.C.No.18 of 2011 on the file of Additional District Sessions Judge, (Fast Track Court No.1) Salem.

For Appellant : Mr.K.Selvakumaraswami
For Respondent : Ms. T.P.Saritha
Government Advocate (Crl.Side)

JUDGMENT

The appellant herein is the sole accused in S.C.No.18 of 2011 on the file of the Additional District and Sessions Judge (Fast Track Court No.1) Salem. He stood charged for the offences under Section 302 of IPC. By Judgment dated 23.09.2011, the trial Court convicted him for the offence under Section 304(1) of IPC and sentenced him to undergo rigorous imprisonment for a period of ten years together with a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for one year. Challenging the said conviction and sentence the appellant is before this Court.

2. The case of the prosecution in brief as follows:-

The appellant and the deceased Selvam were friends and they were doing the job of climbing arecanut trees for harvesting nuts. The deceased Selvam frequently visited the house of the appellant and in due course he developed illicit intimacy with the wife of accused namely Deivanai and knowing about their illicit intimacy, about 20 days prior to date of occurrence, the appellant threatened the deceased that he would kill him if he again meet Deivanai. On the fateful day of

23.11.2011, when the appellant and his wife were sleeping in the thatched portion of their house at about 12.00 'O' clock in the mid night, the deceased Selvam entered into the thatched house of the appellant thinking that Deivanai was staying alone there. On seeing the deceased, the accused/appellant switched on the light and due to the previous enmity, with an intention to kill the deceased Selvam, the accused stabbed him by using the knife on his abdomen near umbilicus. After sustaining injury, the deceased went to the his house and when it was questioned by PW1 as to how he sustained injuries in his abdomen, he replied that he went to the house of rajendran to see his wife and at that time, the accused Rajendran stabbed him. Thereafter, PW1 called P.Ws.2 and 3, younger and elder brother of the deceased respectively and took the deceased to Government Hospital Salem through Ambulance which was witnessed by P.W.5, 7 and 8. Due the assault made by the accused, the deceased died in the hospital on 03.01.2011 in the hospital.

3. On the same day, when the deceased was admitted in the Hospital, P.W.1 given a complaint to the Valapadi outpost Police Station and the same was received by PW15, Tmt.Elavarasi, the Sub-Inspector of Police. Thereafter a case has been registered in Crime No. 4 of 2011 under Section 307 of IPC. Ex.P.19 is the first information report. After registering the case, the case records were handed over to the Inspector of Police, PW16 Thiru.Muralidaran for investigation. After receiving the case records, he proceeded to the scene of occurrence and prepared Ex.P6 Observation Mahazar and Ex.P20 Rough Sketch in the presence of P.W.10 Nachiappan, and his Assistant Koothan. Further, in the presence of the same witnesses, he recovered the blood stained soil, sample soil under the cover of Mahazar (Ex.P7.). Then he examined witnesses and recorded the statements. In the mean while, after receipt of death intimation he altered the section of law from Section 307 to 302 IPC the alteration report is Ex.P.18. Thereafter, he conducted inquest and prepared Ex.P.21 Inquest Report, he sent the dead body through P.W14 Head Constable Kandasamy for conducting postmortem.

4. As per the direction, P.W.14 handed over the deadbody to the Doctor with requisition given by the investigation officer. After the completion of postmortem, he collected the dress worn by the deceased and handed it over to the Inspector through Special Report. Consequently, all the material objects collected in this case are send to the Court with requisition for sending to same for chemical examination.

5. PW9, Dr.Panneerselvam, Professor of Forensic Medicine at Government Mohan Kumaramangalam Medical College Hospital, Salem. On 04.11.2011 received a requisition from the Inspector of Police Valapadi Police Station and conducted the Postmortem over the dead body of the deceased Selvam. He commenced the

Postmortem at 05.10 p.m. He found following Rigor Mortis injuries all over the body.

Injuries:

1.A laprotomy surgical wound with 15 sutures M-22 Cms long seen at the classical site extend just above the level of epigastric region to below umbilicus, skin and tissues closed by layer.

2.A sutured wound over right side lower abdomen with 7 sutures with 5 cms long O/R sutures edges are clear cut with acute angle and it is situated 86 cms above right foot and 44 cms below mid clavicular region.

3.Peritoneal drainage tube fixed on both sides of flanks.

No other external injuries seen on the body.

Other Findings:

1.O/D Head:-Scalp-Normal Cranial Vault-intact. Dura Membrane-intact. Brain-Oedematous and pale. Base of Skull-intact.

2.O/D-NECK-All neck structures intact. Hyoid bone intact.

3.O/D THORAX: No ribs fracture. Heart-Normal in size in on c/s chambers empty. Valves and coronaries-normal lungs c/s pale.

4.O/D. ABDOMEN-Stomach contains 15 MI of brown colour mucus like fluid with no specific odour. Muscosa c/s pale. Liver, spleen c/s pale. Kidneys-right kidney. Inter capsular haetoma seen over the lower pole of right kidney. Surgical correction seen over the ilial region. Gut to Gut anastomosis. Surgical correction seen at the level of appendix pelvis and spinal column-intact. He preserved the viscera for chemicla analysis. The viscera Analysis Report shows that no poison or alcohol was detected in any of the items. Doctor is of opinion that the deceased died of the effects of the stab injury sustained at abdomen 12+2 hours prior to autopsy. The postmortem Report is Ex.P2 viscera Report is Ex.P3. Final opinion on the cause of death is Ex.P4. The requisition for conducting postmortem is Ex.P5.

6. Subsequently, in continuance of investigation, on 05.01.2011 at about 9.00 a.m the appellant appeared before the P.W.10, who is the Village Administrative Officer and gave a confession statement in which he admitted the guilt as alleged in this case.

7. After recording the confession statement given by the deceased, P.W.10 prepared a special report and handed over the accused to

P.W.16. On production of the accused P.W.16 made enquiry and recorded the confession statement in the presence of P.W.10 and one Koothan. In the confession statement, the appellant expressed his willingness to handed over the knife, which was used for the commission of the offence. The admitted portion of the said statement is Ex.P.10. Then the police proceeded along with witnesses to the house of the appellant where he took a blood stained knife from the roof and handed over to the Inspector of Police. The said knife was recovered under a cover of Mahazar Ex.P.11. Subsequent to that, the material objects recovered in this case were sent to the Regional Forensic Science Laboratory Department for chemical examination, P.W.11 the then Assistant Director in Regional Forensic Science Laboratory, Chennai, examined the samples received from the Court and issued a Viscera Report under Ex.P.3. After completion of examination, he found that there was no alcohol or poison in the dead body. He further found in the blood stained soil, blood stained shirt, Dhoti and knife contained human blood, for which he issued the report under Ex.P.12. In the examination, he found that the blood group of the deceased belonging to 'O' group and the blood found in the shirt and Dhothi belongs the same group. On the other hand, the blood grouping test for the blood stain found on the knife was inconclusive and the blood stain found on the earth got disintegrated and was not fit for analysis.

8. In continuation of the investigation P.W.17 recorded the further statement of witnesses and after receiving the final opinion from the doctor he filed a Final Report for the offence under Section 302 of IPC.

9. Based on the above materials, the trial Court framed the charges and accused denied the same. In order to prove the case, on the side of prosecution as many as 17 witnesses were examined as P.W.1 to P.W.17 and 21 documents were marked as Ex.P1 to P.21 besides five material objects were filed.

10. Out of the said witnesses, P.W.1 Annakodi is the wife of the deceased who has stated in her evidence about the illegal contact of the deceased with the wife of accused. She further stated about the complaint given to the police. P.W.2 Karuppannan is the brother of the deceased, who also stated about the illegal contact of the deceased with the wife of accused. P.W.3 to 6 are residing in the same village, who knows the occurrence through P.W.1 and 2. P.W.8 is residing in Valapadi, who know the deceased as well as the accused. He stated in the trial Court that deceased told to him that the accused had assaulted him. P.W.9 is the Doctor attached with

Salem Government Medical College Hospital who conducted autopsy over the dead body of the deceased. P.W.10 is the witnesses who attested the observation Mahazar prepared by the investigation officer. He also stood as witness for the recovery made by the investigation officer in the occurrence place. P.W.11 is the expert working in the Forensic Department who has stated in his evidence about the examination of material object in this case. The sub inspector of police altered the Section of law from 307 to 302 of IPC and send the report to the Magistrate. The remaining witnesses are all police officers who deposed evidence in respect of registration of the case and examination of the witness, relating to recovery of material object and laying of final report.

11. The learned Trial judge on the basis of the incriminating materials available in the prosecution witness, questioned the accused under Section 313 Cr.P.C, for which he pleaded not guilty. However, he examined the Doctor who treated deceased as D.W.1 on his side. He marked the copy of the Accident Register related to the deceased as Ex.D1.

12. The first and foremost contention on the side of the appellant is in the trial Court the witnesses examined on the side of the prosecution did not say anything about the appellant in order to connect with the alleged crime. He further stated that the Extra Judicial confession statement was recorded by P.W.10 after the commencement the investigation thereby, the statement recorded by the P.W.10 cannot be relied upon. Accordingly, he prayed to allow the appeal.

13. In the trial Court, on behalf of the prosecution, the wife of the deceased was examined as P.W.1. Further the brothers of the deceased were examined as P.Ws.2 and 3 they have stated in their evidence that the deceased and the wife of the appellant were having illicit intimacy due to which the appellant assaulted the deceased by using the knife. On close scrutiny of their evidence it shows that only after the occurrence, particularly after returning from the house of the appellant, they saw the deceased. Therefore, their evidence not in a way to connect the appellant with the crime. However, in order to prove the occurrence P.W.4 and P.W.5, who are all the neighbors of the deceased, were examined. In fact P.Ws.4 and 5 did not support the case of prosecution and therefore, the learned public prosecutor treated them as a hostile witness. Even in the cross examination made by the Public Prosecutor, they have not supported the case of the prosecution. The remaining witnesses P.Ws. 3, 7 and 8 have stated in the evidence that they saw the accused with the knife after the commission of offence. Even though, their evidence is in the favour of the prosecution, they categorically stated in the cross examination that during the time of occurrence, they were sleeping in their

house, so according to their evidence in cross examination it appear that they are not withstanding the alleged occurrence.

14. In the said circumstances, P.W.10 is a crucial witness in this case. He is the Village Administrative Officer, who alone stood as a witnesses for the recovery of blood stained soil. Subsequently, he recorded the Extra Judicial confession statement given by the accused. Further he attested the recovery Mahazar prepared for the recovery of knife, which was used in the said occurrence. According to his evidence, the Extra Judicial Confession Statement was recorded on 05.01.2011. But as per the evidence of P.W.16 on 03.01.2011 itself investigation in this case commenced. In the said circumstances, reliance can be placed in the judgment reported in 2004(2) Law Weekly 830, Arumugam Versus State by Inspector of Police Namakkal Police Station reads as follows:-

" According to the submission of the learned senior counsel for the appellant, the same analogy is applicable to the statement recorded by the Village Administrative Officer also, Since Ex.P4 was recorded during the course of investigation. This view is to be taken, in order to prevent the investigating agency to circumvent the prohibition contained in Section 162 Cr.P.C. In this view, though Ex.P4 was not recorded by the police officer, since the extra judicial confession is said to have been recorded during the course of investigation, we are of the opinion, Ex.P4 is hit by Section 162 Cr.P.C. And in this view it is inadmissible in evidence which should follow, this Could not be strong piece of evidence to inflict a conviction or to sustain the same. "

15. As per the above verdict, if the extra Judicial Confessional Statement is recorded after commencement of the investigation, the said document attains no value so. Accordingly, the statement given before the P.W.10 has no value in accepting the case of the prosecution. Apart from above witnesses, the other witnesses examined on the side of the prosecution are the experts, who conducted the postmortem, Chemical examination, etc., and their evidence has nothing to supplement the evidence given by the P.Ws.1 to 7. However, as per their evidence the trial court came to the conclusion that the death had happened to the deceased due to the injury sustained in the abdomen. Apart from that their evidence is not in any way to connect the appellant with the alleged crime. Since evidence given by P.W.16 is based on the statement given by the other witnesses, this Court is not in a position to accept the case of the prosecution.

16. Finally I had gone through the evidence given by the D.W.1. She clearly stated that he only admitted the injured person/deceased in Government Mohan Kumaramangalam Medical College Hospital. She further stated that at the time of admission, the deceased told to her that as he fell on the Aruvamanai (vegetable cutter), he sustained injury. Further the copy of Accident Register relates to the admission of the deceased in the hospital is marked as Ex.D.1. In fact Ex.D1 is the earliest document which was prepared at the time of admitting the deceased in the hospital. Now, the said document disclose a separate story with regard to the prosecution case.

17. Therefore, in the light of the above discussion, I hold that the prosecution has not let in proper evidence to connect the appellant with the crime alleged. Moreover, the extra Judicial confession statement recorded by the P.W.10 is not having any value. These aspects are not discussed by the learned District and Session Judge in the impugned judgment. Hence interference is necessary. The appeal is allowed and the conviction and sentence imposed on the appellant is set aside accordingly.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

vsg1

To

1.The Additional District and
Sessions Judge,
Fast Track Court No.1,
Salem.

2.The Inspector of Police,
Vazhapadi Police Station,
Salem District.

3. The Public Prosecutor,
High Court, Madras.

4. The Chief Judicial magistrate
Salem

5. The Judicial Magistrate No.VI, Salem

6. The Superintendent, Central Prison, Coimbatore.

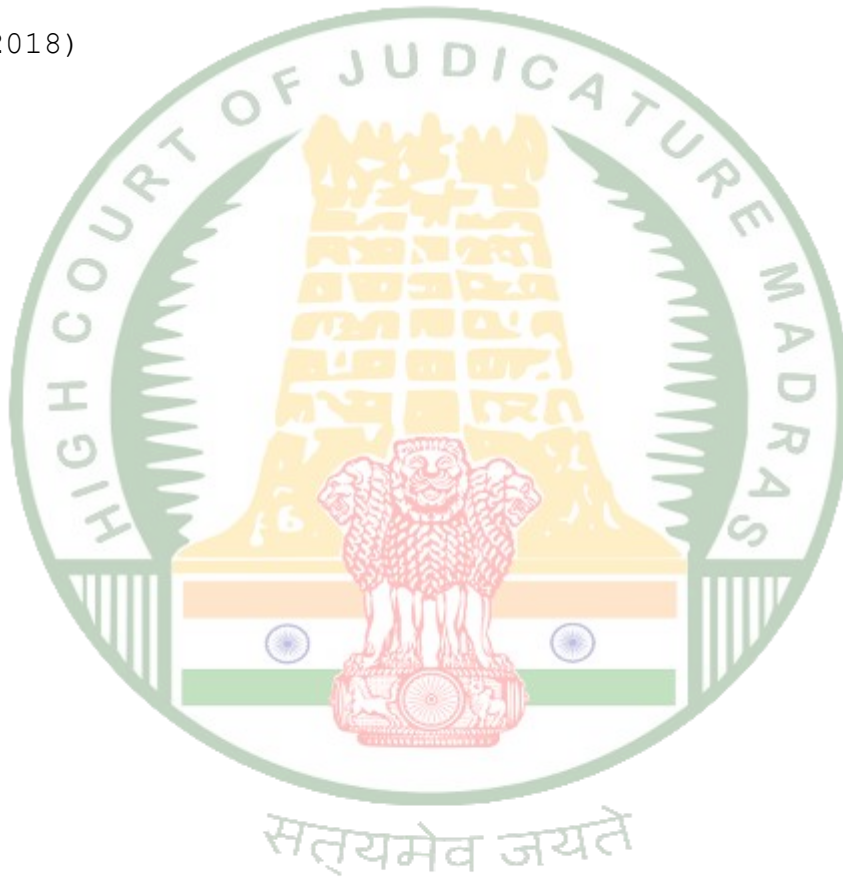
Copy to

The Section officer

Criminal Section, High Court, Madras 104.

Crl.A.No.723 of 2011

SSV(CO)
SP(29/08/2018)



WEB COPY