

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

Criminal Appeal No.77 of 2018
and
Crl.M.P.No.1801 of 2018

Murugan
S/o.Rajendiran
Accused

... Appellant/Sole

Vs

State represented by
The Inspector of Police,
Mettupalayam Police Station,
Puducherry.
(Crime No.174 of 2008)

... Respondent/Complainant

Criminal Appeal filed u/s.374(2) Cr.P.C. against the judgment
of learned Principal Sessions Judge, Puducherry, passed in
S.C.No.65 of 2011 on 25.07.2014.

For Appellant : Mr.K.Gandhi Kumar

For Respondent : Mr.D.Bharatha Chakravarthy
Public Prosecutor (Pondicherry)

JUDGMENT

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

This appeal arises against the judgment of learned
Principal Sessions Judge, Puducherry, passed in S.C.No.65 of
2011 on 25.07.2014, convicting appellant/accused for offence
u/s.302 IPC and sentencing him to life imprisonment and fine of
Rs.1,000/- i/d 3 months S.I.

2. Case of prosecution is that appellant/accused, angered over an illicit relationship shared by deceased with the appellant's mother, caused the death of the deceased using a wooden log and bricks, an argument having broken out when the appellant and the deceased were taking a drink together on 01.09.2008 at about 12.30 hours at Agathiar Kottam, Dharmapuri. P.W.1, sister of the deceased, preferred Ex.P.1-complaint and the same was registered in Crime No.174 of 2008 on 01.09.2008 at about 4.00 p.m. for offence u/s.302 IPC. P.W.14 took up investigation and upon transfer of P.W.14, P.W.15 continued the same and eventually, Charge Sheet came to be filed by P.W.16 informing commission of offence under Section 302 IPC. The case was tried in S.C.No.65 of 2011 on the file of learned Principal Sessions Judge, Puducherry.

3. Before trial Court, prosecution examined 16 witnesses and marked 16 exhibits and produced 13 material objects. None were examined on the side of defence nor were any exhibits marked.

3.1. PW-1, sister of deceased, spoke to deceased suffering an accident, of not going to work owing thereto, his wife having left him long back, deceased living with his children, developing illicit relationship with accused's mother, while on her way to work, seeing accused, his mother-in-law and deceased on 01.09.2008 at about 10.00 a.m. drinking liquor in a building under construction, again seeing accused and deceased drinking at the same place at about 12.00 p.m., accused's mother informing that both were drinking for a long time and asking her to take the deceased but she having gone away to work and at about 03.00 p.m. having been informed by her son that deceased was lying with injuries, of rushing to the scene, scolding accused's mother that because of her illegal relationship with the deceased he was done to death, of accused's mother having absconded and of preference of Ex.P1, complaint.

3.2. PW-2, mason, spoke to being engaged in construction work on 01.09.2008, of seeing accused drinking along with two persons, going inside the building on hearing a noise at about 01.30 p.m. and witnessing accused assaulting deceased using a wooden log and strangulating him, accused running away with the wooden log, police visiting the scene and having heard of illicit relationship between accused's mother and deceased.

3.3. PW-3, A/c Mechanic, spoke to being engaged in construction work, witnessing accused strangulating deceased, accused, on seeing them taking a brick and attempting to assault him and PW-2, of their having left the place, seeing two women (approximately aged 45) forcibly taking the accused from the place, seeing deceased lying with injuries at about 03.00 p.m. and informing Rabeek, Engineer, over phone about the incident,

police obtaining their names and addresses and police enquiring them on the next day.

3.4. PW-4, cashier, spoke to accused and deceased purchasing 3 bottles of liquor on 01.09.2008, proceeding towards the rear of the liquor shop and having knowledge of the death of deceased through newspapers the next day.

3.5. PW-5, Assistant Veterinary Doctor, spoke to constructing a new house at 'Agathiyar Thottam', of having been informed over phone that a person was done to death in the building, visiting the scene, seeing the deceased and police enquiring him.

3.6. PW-6, Building Contractor, spoke to knowing the deceased, seeing the deceased lying with injuries and attesting Ex.P14, Inquest Report.

3.7. PW-7, a retired Pharmacist, spoke to knowing accused and deceased, relationship between accused's mother and deceased, hearing of quarrel between accused and deceased on 01.09.2008 at about 01.00 p.m. and that both accused and deceased were in an inebriated state, hearing of accused causing the death of deceased at about 05.30 p.m., visiting the scene, seeing the deceased and being questioned by police.

3.8. PW-8, daily labourer, spoke to attesting Ex.P2, seizure mahazar for MOs.2 to 5 [half bricks 2 in nos., empty arrack bottles 3 in nos., blood stained cement floor and control cement floor and Ex.P3, Observation Mahazar.

3.9. PW-9, Warden, Government Hospital, Puducherry, spoke to attesting Exs.P4 and P5, seizure mahazar for MOs.6 to 9 and 10 [lungi, inner wear, banian, t-shirt and blood soaked filter paper].

3.10. PW-10, Village Administrative Officer, spoke to visiting the police station on 02.09.2008 at about 09.00 a.m. on the instructions of Tahsildar,

attesting the confession of accused, Exs.P6 and P8 - seizure mahazar for MOs.1, 11 and 12, wooden log, jeans and shirt.

3.11. PW-11, Doctor, spoke to conducting postmortem on the body of deceased and stating that the deceased appeared to have died of shock and haemorrhage due to injury to the neck.

3.12. PW-12, photographer, spoke to taking photographs of the body of deceased and the scene of crime and handing over the

same to investigation officer.

3.13. PW-13, Inspector of Police, spoke to registering a case in Crime No.174 of 2008 on the file of respondent for offence u/s.302 IPC and forwarding the same to Court and higher officials. PW-13 spoke to calling for sniffer dog, photographer and finger print expert, arresting accused and handing over investigation to PW-14, Inspector of Police.

3.14. PW-14, Investigation Officer, spoke to visiting the scene, preparation of mahazars, examining witnesses and recording their statements, conducting inquest in the presence of panchayatdars and witnesses, seizure of material objects, forwarding the body of deceased for postmortem, recording the confession of accused, forwarding the seized articles for examination, obtaining reports, forwarding articles to Court and on his transfer, handing over investigation to one Bairavasami (not examined), Inspector of Police.

3.15. PW-15, Inspector of Police, spoke to receiving case papers from Bairavasami, Inspector of Police, examining witnesses and recording their statements and on his transfer, handing over investigation to PW-16, Inspector of Police.

3.16. PW-16, Inspector of Police, spoke to examining PW-12, photographer and recording his statement 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 25.07.2014, convicted appellant for offence u/s.302 IPC and sentenced him to life imprisonment and fine of Rs.1,000/- i/d 3 months S.I. Hence, the present appeal.

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

6. This appeal succeeds for the following reasons:-

P.Ws.2 and 3 have been examined as eye witnesses to the occurrence. Their evidence becomes suspect since, as against the occurrence on 01.09.2008, they have been examined on 03.09.2008, after the arrest of the accused at 5.30 a.m. on 02.09.2008. That they had not been present at the inquest carried out over the body of the deceased, raises a doubt on their presence at the scene. According to the inquest report, it was the mother of the accused, who last had seen the deceased and the accused together but she has not been examined. P.W.1 is the sister of the deceased. She has spoken to being informed of the death of

her brother by her son. Son of P.W.1 has not been examined. Further, though P.W.2 and P.W.3 have spoken to having been present at the scene when the police arrived there, they had not informed what was to their knowledge then. It is the evidence of P.W.6 that others were also present when the police came to the scene and such persons have not been examined. The above circumstances indicate that the projection of the prosecution case of the accused having done to death, the deceased in the presence of P.Ws.2 and 3 is unbelievable.

7. Learned Public Prosecutor (Pondicherry), seeking to support the prosecution case, informed that dehors the evidence of PWs.1 and 2 the prosecution case must hold good since PW-4 has spoken to both deceased and accused having purchased liquor from a shop where he was the salesman and of having proceeded to 'Agathiyar Thottam', the scene of crime and empty liquor bottles had been seized therefrom. Learned Public Prosecutor calls for appreciation of the prosecution case as one resting on circumstantial evidence as against the prosecution projection of the case as of the occurrence having been witnessed by PWs.1 and 2. The contention of learned Public Prosecutor would have called for consideration had PW-4 spoken to the approximate time when liquor bottles were purchased by accused and deceased and had such bottles revealed their finger print impressions. Both requirements have not been met. The First Information Report was registered on 01.09.2008 at about 16.00 hours and it was sent to Court only on 02.09.2008 at about 12.30 p.m. i.e. after the arrest of the accused. The possibility of the First Information Report being the product of deliberation looms large.

The Criminal Appeal shall stand allowed and conviction and sentence imposed on the appellant by learned Principal Sessions Judge, Puducherry, in S.C.No.65 of 2011 dated 25.07.2014 are hereby set aside and appellant/accused is acquitted of all charges. Fine amount, if any, paid shall be refunded to him. Bail bond, if any, executed by him shall stand cancelled. Appellant/accused is directed to be released forthwith unless his presence/custody is required in connection with any other case/proceedings. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

jrl/gm

To

1.The Principal Sessions Judge,
Puducherry.

2.The Inspector of Police,
Mettupalayam Police Station,
Puducherry.

3.The Public Prosecutor,
Pondicherry.

4.The Superintendent,
Central Prison,
Kalapet, Puducherry.

5. The judicial Magistrate II, Puducherry.

6. The Chief Judicial Magistrate, Puducherry.

7. The Director General of Police, puducherry.

+1cc to Mr.K.Gandhikumar, Advocate SR.No.85331

Criminal Appeal No.77 of 2018

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