

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2018

CORAM:

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

Criminal Appeal No.596 of 2017,
Criminal Appeal Nos.101 & 195 of 2018
and
CRL.M.P.Nos.11762 of 2017, 6012 of 2018 & 4762 of 2018

Soundararasu
S/o.P.Samundi

... Appellants/A1 in
Crl.A.No.596/2017

Vinoth
S/o.Krishnan (Late)

... Appellants/A2 in
Crl.A.No.101/2018

Perumal @ Beedi Perumal
S/o.Late.Subramani

... Appellants/A3 in
Crl.A.No.195/2018

Vs

State Rep. by
Inspector of Police,
Pallapatty Police Station,
Salem District.
Crime No.502 of 2014

... Respondent/Complainant

Criminal Appeals filed u/s.374(2) Cr.P.C. against the
judgment of learned I Additional District and Sessions Judge,
Salem, passed in S.C.No.272 of 2015 on 19.08.2017.

Appearance

Appellants : Mr.K.V.Sridharan [Cr1.A.596/2017]
Mr.V.Paarthiban for Mr.P.Jagadeesan
[Cr1.A.101/2018]
Mr.S.Sivakumar [Cr1.A.195/2018]

Respondent/State :Mr.K.Prabhakar, Additional Public Prosecutor

COMMON JUDGMENT

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

These appeals arise against judgment of learned I Additional District and Sessions Judge, Salem, passed in S.C.No.272 of 2015 on 19.08.2017.

2. Appellants faced trial in S.C.No.272 of 2015 on the file of learned I Additional District and Sessions Judge, Salem, for offences u/s.449, 302, 201 r/w 302 IPC (A1), 449, 302 r/w 34, 201 r/w 302 IPC (A2 & A3). Case of the prosecution is that the deceased was working as a watchman in the Marble Company of PW-1. Accused are friends. A2 and A3 were working as load men and A1 was a Tempo Owner driver. The parking of Tempo by A1 inside the compound of the Marble Company was objected by the deceased and due thereto, there was an enmity between accused and deceased. On 05.10.2014 at 9.30 p.m., accused picked up a quarrel with the deceased. A2 and A3 caught hold of the hands and legs of the deceased and A1 attacked the deceased with MO-1 [sledge hammer]. They made it appear that a robbery had taken place and went away carrying MOs.1 and 9 [sledge hammer and industrial scissors]. On 06.11.2014 at about 9.30.a.m., A2 went to the office of PW-13, Village Administrative Officer and tendered an extra judicial confession. PW-13 produced A2 before the police station with a special report. Based on the information A1 & A3 were arrested and MOs-1 and 9 were recovered. On the complaint of PW-1, a case was registered in Crime No.502 of 2014 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.272 of 2015 on the file of learned I Additional District and Sessions Judge, Salem.

3. Before trial Court, prosecution examined 22 witnesses and marked 29 exhibits and 11 material objects. On behalf of defence, 1 witness was examined, no exhibits were marked.

3.1. PW-1 - Complainant deposed that the night watchman Anwar Basha was working for the past two years. On 06.10.2014

at about 6.30.a.m, PW-1 received a phone call from his Manager informing that the night watchman had not picked up the phone. He asked for PW-1's presence at office. PW-1 saw the watchman lying near his desk, having suffered a wound on his head. PW-1 preferred Ex.P1, written complaint, to the Pallapatty Police Station. Police enquired of him and came to the Company the next day when he complained about the loss of MO-1, sledge hammer.

3.2. PW-2, Manager of the Marble Company, has deposed that the deceased was working as watchman and when he went into the Company, he noticed the watchman bleeding and then a complaint was given by PW-1.

3.3. PW-3 is a driver in a Travel Company and son of the deceased who was informed about the death of his father on 06.10.2014 at about 6.00.a.m. by the owner of the Marble Company.

3.4. PW-4 has deposed to being a relative of the deceased and deceased's employment. He spoke of the happenings of 06.10.2014.

3.5. PW-5, a person residing in Karuppur Panagadu, was one of the employees in the Marble Company. He deposed that he knew the deceased and to the incident of 06.10.2014. He attested Exs.P2 and P3, observation mahazar and rough sketch.

3.6. PW-6, wife of deceased, spoke to his being employed as night watchman in the Marble Company. She received information about the death of the deceased through phone and intimated her son PW-3. She deposed to investigation done by the police in the place of occurrence.

3.7. PW-7 is an employee of the Marble Company. He deposed to being given to drink as a daily habit and to seeing all three accused in the liquor shop but that they did not drink due to a temple function. He further deposed that all the three accused went to the Marble Company and he went home. Next morning at about 8.00.a.m Vinoth/A2 informed over phone that the watchman had died.

3.8. PW-8, another employee of the Marble Company, spoke to knowing the deceased and to identifying the sledge hammer.

3.9. PW-9 is the security guard who worked along with the deceased in alternate shifts. Towards taking over guard, he came to the Marble company and found the gate locked from inside. He joined a load man in calling for the deceased. As there was no response, he called the owner, who said that the Manager would come. On arrival of the Manager, they saw the body of the

deceased with injuries leading to the preference of complaint.

3.10. PW-10, owner of Block Gates Security Organization spoke to deceased was working under him and that he was assigned night watchman duty at the Marble Company.

3.11. PW-11 was a person doing contract work in the Marble Company and deposed to recovery of MO-9, Industrial Scissors.

3.12. PW-12, Assistant Professor, Government Mohan Kumaramangalam Medical College Hospital at Salem, conducted postmortem on the body of the deceased.

3.13. PW-13, Village Administrative Officer in Amani Ayyamperumampatti Village in Salem, deposed that Vinoth/A2 surrendered before him and confessed about the murder committed by three persons including him. He recorded the confession statement of A2 and produced him before the police.

3.14. PW-14, Assistant Director, working in forensic laboratory in Namakkal. Ex.P15, requisition for examination, Ex.P16, biology report and Ex.P17, chemical analysis report were marked through him.

3.15. PW-15, Village Administrative Officer of Kandhampatti Village, was required to appear before Pallapatty Police Station, when he saw Vinoth/A2 at the police station under arrest. A3 was arrested in his presence. His statement was obtained by the police.

3.16. PWs.16 and 19, Head Constables, spoke to registration of case in Crime No.502/2014 for offence u/s.302 IPC and to being examined by the Inspector of Police.

3.17. PW-17 was a Head Constable working in Sevvappettai Police Station. He spoke to the murder of the deceased while he was working in Pallapatty Police Station as Head Constable and to taking photographs of the body.

3.18. PW-18, Head Constable working in Kichipalayam Police station, deposed to preparing First Information Report and producing the same before the Magistrate and sending copies of the case records to the concerned officers.

3.19. PW-20, Sub-Inspector of Police, Suramangalam Police Station, spoke to working in Pallappatty Police Station at that time of occurrence and recording the complaint given by Vinoth/PW-1 and registering the case. He sent the case records to the concerned officers. The case records were handed over to the Inspector of Police of Pallapatty Police Station.

3.20. PW-21, Inspector of Police, working in Forensic Wing at Theevattipatti Police Station, Salem, conducted investigation on suspected cell phone numbers. He prepared Ex.P24 series report about his investigation and handed over the same to the Inspector of Police.

3.21. PW-22 was the Inspector of Police, Pallappatty Police Station. On receipt of First Information Report from the Sub Inspector of Police he went to place of occurrence and prepared Ex.P2, observation mahazar and Ex.P3, rough sketch. He conducted inquest over the body of the deceased and prepared Ex.P25 inquest report. After completing investigation, he filed final report.

4. On questioning u/s.313 Cr.P.C., appellants/accused denied charges. On appreciation of evidence, oral and documentary, trial Court, under judgment dated 19.08.2017, convicted and sentenced them as follows:-

Accused	Offences u/s.	Sentence
A1	449, 302, 201 r/w 302 IPC	10 years R.I and fine of Rs.2,000/- i/d 6 months S.I for offence u/s 449 IPC, Life Imprisonment and fine of Rs.5,000/- i/d 6 months S.I for offence u/s 302 IPC and 6 months R.I and fine of Rs.1,000/- i/d 3 months S.I for offence u/s 201 r/w 302 IPC
A2	449, 302 r/w 34, 201 r/w 302 IPC	10 years R.I. and fine of Rs.2,000/- i/d 6 months S.I for offence u/s 449 IPC, Life Imprisonment and fine of Rs.5,000/- i/d 6 months S.I. for offence u/s.302 r/w 34 IPC and 6 months R.I and fine of Rs.1,000/- i/d 3 months S.I for offence u/s 201 r/w 302 IPC.
A3	449, 302 r/w 34, 201 r/w 302 IPC	10 years R.I. and fine of Rs.2,000/- i/d 6 months S.I for offence u/s 449 IPC, Life Imprisonment and fine of Rs.5,000/- i/d 6 months S.I. for offence u/s.302 r/w 34 IPC and 6 months R.I and fine of Rs.1,000/- i/d 3 months S.I for offence u/s 201 r/w 302 IPC.

Trial Court directed that sentences run concurrently. Hence, the present appeals.

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

6. The veracity or otherwise of the prosecution case rests on the evidence of PW-7, who claims to have been at a liquor shop as was his usual habit, when he saw the three accused thereat on the eve of the occurrence and recoveries of MO-1, sledge hammer and MO-9, industrial scissors, from the accused. Prosecution seeks to buttress its case with the usual extra judicial confession recorded by the Village Administrative Officer, which we will demonstrate to be false.

7. Trial Court has failed to see that the evidence of PW-7, in chief, does not go further than informing that he saw the three accused proceedings towards the marble shop i.e. the place of occurrence. Trial Court wrongly glosses over the fact that Section 161(3) Cr.P.C. statement of PW-7 allegedly recorded on 07.11.2014 has reached Court only on 22.02.2015, failing to see that such position renders doubtful the very presence of PW-7 near the scene on the eve of occurrence and points to fabrication of evidence by the investigation officer towards buttressing his case. As regards the extra judicial confession theory put forth, PW-13, Village Administrative Officer, has admitted to not recording the confession of A2 and that he simply handed over A2 to police with his report Ex.P12. Even in such report attestation of A2 has not been obtained. Therefore, prosecution is left with the fanciful tale projected through Ex.P12, Village Administrative Officer's report. PW-13 would state that A2 did not state that he was tendering a confession but that such accused only informed him he was surrendering. Therefore, in effect there is no confession. As regards the recoveries effected, it is the admission of the investigating officer, PW-22 that PW-11, who had spoken to tools, being available had not informed him (PW-22) that MO-9 - industrial scissors was missing. As regards MO-1, sledge hammer, it is the evidence of PW-3, son of the deceased, that the same was available at the scene and it, along with other articles, had been taken away by the police. The projected theory of recovery of murder weapons at the hands of the accused also fails. Prosecution has further marked telephone call details in Ex.P24. Whatever its purpose in doing so, neither has Section 65-B of the Indian Evidence Act been complied with nor is there any evidence that the calls related to the cellphone held by A1, which, is the case of the prosecution.

The Criminal Appeals are allowed. The conviction and sentence passed by learned I Additional District and Sessions Judge, Salem, passed in S.C.No.272 of 2015 on 19.08.2017, are set aside. Appellants are acquitted of all charges. Appellants are directed to be released forthwith if their detention is not required in connection with any other case. Fine, if any, paid

shall be refunded. Bail bonds, if any, executed shall stand cancelled. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmi/gm
To

1.The I Additional District and Sessions Judge,
Salem.

2.The Principal District Judge,
Salem.

3.The Judicial Magistrate-II,
Salem.

4.The Collector/District Magistrate,
Salem.

5.The director General of Police,
Mylapur, Chennai-4

6.The Inspector of Police,
Pallapatty Police Station,
Salem District.

7.The Superintendent,
Central Prison,
Coimbatore.

8.The Superintendent of Police,
Salem.

9.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Sivakumar, Advocate, S.R.No.80242

+1cc to Mr.K.V.Sridharan, Advocate, S.R.No.80722

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and Criminal Appeal Nos.101 and 195 of 2018

RR(CO)
GSP(25/02/2019)