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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM

and

THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

Cr1.A.(MD)No.173 of 2016

Mohammed Rustham

... Appellant/Accused

Vs.

State Rep.by Inspector of Police,

Srirangam Police Station,

Tiruchirappalli District. (Crime No.8 of 2014)

... Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of Cr.P.C, to set aside the conviction and sentence imposed in S.C.No.101 of 2014, dated 25.04.2016 passed by the III Additional District and Sessions Judge, Tiruchirappalli.

For Petitioner : Ms.P.Krishnaveni (Amicus Curiae)

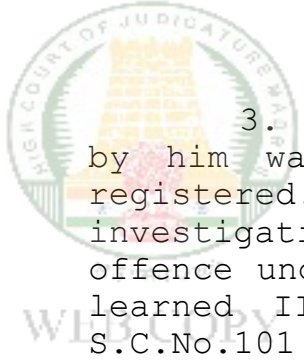
For Respondent : Mr.R.Anandaraj,
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by C.T.SELVAM, J.)

This appeal arises against the Judgment of learned III Additional District and Sessions Judge, Tiruchirappalli, passed in S.C.No.101 of 2014, on 25.04.2016, convicting the appellant / accused for an offence under Section 302 IPC, sentencing him to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, 1 year R.I.

2. The prosecution case is that accused, deceased, RWs.1, 4 & 5, who belong to Bihar, and PW.2 were construction workers at a site in Kallanai Road, Trichy District. The others worked under the deceased. Finding a sum of Rs.20,000/- missing from his suitcase on 31.12.2013, the deceased questioned the appellant / accused and accused him of doing away with the money. Angered thereby, the appellant / accused called the deceased over cell phone to the Cauvery river bed, which was close to their work site, informing that he would return the money and indiscriminately cut him with an Aruval causing his death. A case was registered on the complaint of RW.1 in Crime No.8 of 2014 on the file of the respondent Police for offence under Section 302 IPC on 06.01.2014 at 4.15 hours.



3. PW.1, having no knowledge of Tamil information passed on by him was translated by one Apoorva and the FIR came to be registered. The case was registered by P.W.I3, who on completion of investigation preferred a final report, informing commission of offence under Section 302 IPC. The case, on committal, was tried by learned III Additional District and Sessions Judge, Trichy in S.C.No.101 of 2014.

4. Before the trial Court, prosecution examined P.Ws.1 to 13 and marked Exs.P1 to PI 9 and M.Os.1 to 9 were marked. None were examined on behalf of the defence nor were any exhibits marked. On questioning under Section 313 Cr.P.C, the appellant / accused denied charges. Trial Court found appellant is guilty of offence under Section 302 IPC and sentenced him to life imprisonment. There against, the Criminal Appeal is preferred.

5. Learned counsel appearing for the appellant / accused would submit that the complaint was given at the early hours i.e 4.15 a.m., on 06.01.2014. One Apurva, who translated the complaint of P.W.I, was not examined, He is a vital witness. Inquest was done on 07.01.2014 after 24 hours of registration of FIR. Ex.P11, Observation Mahazar states that it was prepared at 6.30 a.m., on 06.01.2014 exactly after two hours of registration of FIR. Further, the said Observation Mahazar does not mention the presence of the dead body at the scene. Learned counsel would further submit that P.W.6, Doctor was not shown M.O.4, Aruval, when he was in the witness box to give his opinion on whether the injuries on the body of the deceased could have been caused by using the said weapon.

6. Learned Additional Public Prosecutor appearing for the State would submit that the prosecution has proved its case against the accused beyond reasonable doubt then there is no scope of interfering with the judgment and order of conviction and sentence passed by the trial Court. He further submitted that some minor contradictions here or there should not make any difference because such type of minor contradictions are bound to be there in almost all cases. He submitted that no undue importance should be attached to such minor contradictions and therefore, prayed for dismissal of the appeal. 7.The prosecution case fails for the following reasons:

(i) Apoorva at whose instance the information allegedly provided by PW.1 had been translated into Tamil and case has been registered in Crime No.08 of 2014 has not been examined. Such person would be a material witness and there is no explanation as to why he has not been examined or why it was not possible to do so.

(ii) It is the version of PW.1 - brother of deceased that on hearing his brother, the deceased informing over cell phone that he had been set up on by the deceased who was causing him cut injuries, he P.Ws.2,4 and 5 rushed to the scene where they witnessed, the appellant / accused chasing and causing cut injuries to the deceased. A reading of the evidence of P.W.I would indicate that the



occurrence took place at about 9.30 p.m. In cross he would admit that between 12.00 and 1.00 a.m. a police man from the nearby check post had advised him to prefer a complaint with the respondent. He has admitted that the body of the deceased had been removed from the scene 5 1/2 kms from the Police station at 4.30 a.m. This makes absolutely doubtful the registration of FIR at 4.15 a.m. on 06.01.2013. There is absolutely no explanation by the prosecution on how the body reached the mortuary where inquest was conducted on 07.01.2014 at 9.00 a.m.

(iii) According to the prosecution, the accused was arrested on 07.01.2014 at 12.00 p.m., and pursuant to recording of his confession, recoveries, both of his clothes, murder weapon as also other articles, was effected. The arrest and recovery are falsified by the admission of P.W.8 that he has seen the accused at the police station on 06.01.2014 itself.

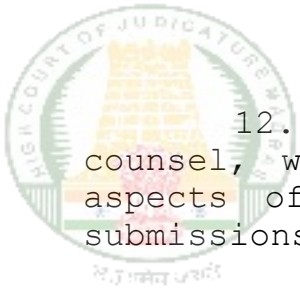
(iv) It is a prosecution case that the immediate knowledge of the occurrence was through the deceased interacting with P.W1 over cellphone. As many as 12 cell phones have been recovered from the witnesses, as per the evidence of P.W.I. P.W.I3 Investigating Officer, has made no enquiry whatsoever towards ascertaining the cell phone number of the deceased and obtaining the call records of P.W.1 towards establishment of the fact that the deceased indeed had called him over the cell phone.

(v) In cross P.W. 1 has admitted to be being distantly related to the appellant / accused and of there being a dispute between their families over property. Therefore, there is a every possibility of RW.1 falsely implicating the accused.

9. On consideration of the attendant facts and circumstances, the present appears to be a case of the police finding the body either in live or dead state moving the same to hospital. Subsequently, the body has been placed in the mortuary. Absolutely no hospital records are available to inform when and in what state, the body reached the hospital.

10. The case is one where prosecution has sought to piece together the case making it appear that PW.1 had preferred the complaint. In its attempt the prosecution totally has failed. This impression only gains mileage from the fact that Apoorva, the person who allegedly translated the complaint preferred by PW.1 at the police station, has not been examined.

11. In the result, the Criminal Appeal succeeds and accordingly, the conviction and sentence imposed in S.C.No.101 of 2014, dated 25.04.2016 by the III Additional District and Sessions Judge, Tiruchirappalli, are set aside and the accused / appellant, is acquitted of the charges.



12. We appreciate the efforts of Mrs.Krishnaveni learned counsel, who as amicus curiae has impressed upon us the various aspects of the case making both oral as also detailed written submissions.

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13. The legal service committee in keeping with the order of this Court, dated 14.02.2018, shall effect payment of requisite fee in keeping with the Rules.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS-I)

To

1. The III Additional District and Sessions Judge, Tiruchirappalli.
- 2.-do thro-The Principal District Judge,Tiruchirappalli.
- 3.The Judicial Magistrate No.III,Tiruchirappalli.
- 4.-do-Thro The Chief Judicial Magistrate,Tiruchirappalli.
- 5.The District Collector,Tiruchirappalli.
- 6.The Director General of Police, Mylapore,Chennai.
- 7.The Superintendent of Central Prison,Tiruchirappalli.
- 8.The Inspector of Police,Srirangam Police Station,
Tiruchirappalli.
- 9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1cc to Ms.P.Krishnaveni, Advocate, SR.No. 61213

CrI.A. (MD) No.173 of 2016
12.04.2018

NBJ

KK/SKN/SAR-1/01.10.2018/4P-13C

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