



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Reserved on : 13.12.2017

Pronounced on : 05 -01-2018

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CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH

and

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Criminal Appeal (MD) No. 287 of 2016

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Pandiyarajan

.. Appellant/Accused

Versus

State represented by its
Inspector of Police
Cantonment Police Station
Trichy City
(Crime No.893/2014)

.. Respondent/Complainants

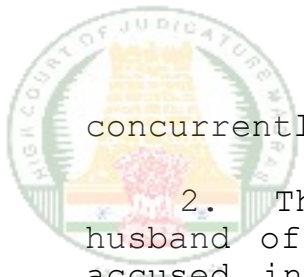
Appeal filed under Section 374 (2) of Code of Criminal Procedure against the Judgment dated 08.06.2016 passed in S.C. No. 150 of 2015 on the file of Principal Sessions Judge, Tiruchirapalli

For Appellant : Mr. N. Anandakumar
For Respondent : Mr. C. Ramesh
Additional Public Prosecutor

JUDGMENT

R. SUBBIAH, J

The appellant herein was the first accused in S.C. No. 150 of 2015 on the file of the Principal Sessions Judge, Tiruchirapalli. During the course of trial, the second accused in S.C. No. 150 of 2015 namely Vanthakkai Bala @ Balamurugan was reported absconding and therefore, the trial court proceeded with the trial as against the first accused/appellant herein and the trial against the second accused was split-up. The trial court, on completion of trial against the first accused/ appellant has convicted him for the offence punishable under Sections 120 (B) and sentenced to undergo life imprisonment with fine of Rs.1,000/-, in default to undergo rigorous imprisonment for a period of six months. The first accused/appellant was also convicted under Section 302 of IPC and sentenced him to undergo imprisonment for life together with fine of RS.1,000/-, failing which to undergo rigorous imprisonment for a period of six months. However, the sentences were ordered to run



concurrently.

2. The deceased in this case is Balasubramani, who is the husband of PW1. The prosecution came to be launched against the accused in this case on the basis of the complaint, Ex.P1 dated 26.09.2014 given by PW1 on 26.09.2014. According to PW1, the deceased was employed as a Security Guard in a company called Vishwas Security Services and he was deputed as a Security Guard in the site where construction was going on at Door No.15-C, Railway Junction Institute Road, near Trichy Junction. On the night of 25.09.2014, the deceased left for his work from his home as usual. While so on 26.09.2014 at 5.00 am, PW1 was informed by Sathish Kumar, PW4 that the deceased sustained head injuries and was lying unconscious in the building site. Immediately, PW1 rushed to the place of occurrence - the building site, where she saw the deceased dead in a sitting position in a plastic chair with his left hand hanging precariously. PW1 also noticed cut injuries on the left forehead of the deceased with profuse bleeding. Immediately, PW1 has given a complaint, Ex.P1 to PW14, Sub-Inspector of Police, Cantonment Police, who, on receipt of the same, registered a case in Crime No. 893 of 2014 under Section 302 of IPC. Ex.P12 is the First Information Report. PW14 forwarded the First Information Report to the jurisdictional Magistrate and copies were forwarded to higher authorities. On receipt of a copy of Ex.P12, PW16, Inspector of Police, proceeded to the scene of occurrence at 6.30 am and prepared an Observation Mahazar, Ex.P10 and also a rough sketch, Ex.P13 in the presence of witnesses Mr. Arul (PW11) and Arputharaj. Thereafter, PW16 conducted an inquest over the dead body of the deceased in the presence of Panchayatars and the above said witnesses. Ex.P14 is the Inquest Report. PW16 also collected blood stained earth (MO5) and sample earth (MO6) smeared on the black topped road in the place of occurrence under a Mahazar, Ex.P11 and they were forwarded to the Court by preparing Form No.95, Ex.P15. Later, PW16 sent the dead body of the deceased for postmortem through Thirunavukkarasu, Head Constable, PW12 and accordingly, the dead body was sent for postmortem. Dr. Saravanan (PW8), Assistant Professor, Department of Forensic Science, K.A.P.V.G. Medical College Hospital, Tiruchirapalli conducted postmortem and issued Ex.P2, Postmortem Certificate, wherein, it was stated as follows:-

"Following Ante-mortem injuries were present:-

1. Irregular reddish brown abrasion 3 x 2 cm on upper part of left side of neck 2 cm, below left ear. There was underlying dark red contusion 14 x 11 x 2.5 cm on left cheek and adjoining left side of chin and upper part of left side of neck; Irregular complete multiple fractured fragments on underlying left side of lower jaw bone with surrounding dark of contusion and extravasation of blood.

2. Obliquely horizontal, lacerated injury 6.6 x 0.5 x 0.5 cm on outer aspect of left side of forehead extending upto the upper part of left temple; its lower end was on forehead and upper end was on left temple.



There was surrounding reddish brown abrasion 5 x 2 cm on the anterior part of laceration. On dissection of head, dark red contusion 8.6 x 2.5 x 0.5 cm on left fronto temporal region of scalp; Dark red contusion of upper part of left temporalis muscle; Skull bones and Dura mater were intact; Diffuse dark red subdural and subarachnoid hemorrhages on right side of brain;

No other external or internal ante-mortem injuries anywhere on the body.

Heart; normal in size; c/s; all chambers empty; valves; intact; coronaries; patent; multiple raised atheromatous plaques on inner surface of root of aorta;

Lungs; normal in size; c/s; pale

Larynx and trachea; empty;

Hyoid bone; intact;

Stomach contained thick brown coloured fluid 65 ml with no definite smell; c/s; mucosa; pale; liver, spleen and kidneys; normal in size; c/2; pale;

Bladder ; empty;

Pelvis and spinal column; intact;

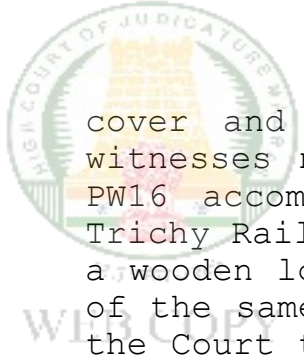
Tissue bit from brain sent for histopathological examination.

Opinion as to the cause of death;

Reserved pending report of chemical analysis of viscera and histopathological examination of tissues:-

3. After receipt of Viscera and Histopathological examination report, Ex.P3, PW8 has given his final report, Ex.P4 wherein he has opined that *the deceased would appear to have died due to head and face injuries..*

4. In continuation of his investigation, PW16 examined Vijaya (PW1), Ganesa Moorthy (PW3), Sathish Kumar (PW4), Selvakumar, Kumarasamy (PW5), Baskar (PW6), Murugan (PW7), Palaniappan (PW15), Viswanathan, Ganesh, Sivabushanam, Arul (PW11) and Arputharaj and recorded their statement. On 27.09.2014, PW16 examined the witnesses Pandi (PW2), Saleem and Santhanam and recorded their statement. On 29.09.2014, on receipt of a tip-off, PW16 rushed to the Tasmac Wine Shop near Senthoor Lodge where he arrested both the accused in this case in the presence of Rajesh Kumar, Village Administrative Officer (PW9) and Village Assistant Mr. Ravi. On such arrest, the first accused as well as the second accused have given voluntary confession statement and it was recorded in the presence of the same witnesses. Thereafter, PW16 accompanied the first accused to a place near the Church situated near Railway Junction and in the midst of thorny bushes adjacent to the Church, first accused handed over an iron rod and a Cell Phone without back



cover and they were recovered in the presence of the aforesaid witnesses namely PW9 and Mr. Ravi, Village Assistant. Thereafter, PW16 accompanied the second accused to the Bus Stop behind the Trichy Railway Junction Two Wheeler Stand from where, he handed over a wooden log and a Sim Card and they were recovered in the presence of the same witnesses. The recovered material objects were sent to the Court through a Mahazar, Ex.P7. Thereafter, PW16 sent both the accused to the jurisdictional Court for remand. Thereafter, on the same day namely 29.09.2014, PW16 recorded the statement of Thirunavukkarasu (PW12), Head Constable and recorded his statement. He also recorded the statement of Dr. Saravanan (PW8) who conducted the Postmortem on the body of the deceased, Selvam (PW13,) Special Sub Inspector of Police, Sathish Kumar (PW4), Murugaiyan, Assistant Engineer, Divisional Engineer/ General, Southern Railway who has issued Ex.P17, Certificate stating that all the street lights available at Trichy Railway Institute Junction road side were glowing from 18.00 hours on 25.09.2014 to 06.00 hours on 26.09.2014. Thereafter, on 22.11.2014, PW16 examined Loganayagi, Head Clerk working in the Court of Judicial Magistrate No.2, Trichy and recorded her statement. PW16 also recorded the statement of Alagammal (PW14), Sub Inspector of Police and recorded her statement. Thereafter, PW16, prepared an altered First Information Report, Ex.P22 altering the offences from Section 302 of IPC into one under Section 120 (B) read with Section 302 of IPC and sent the altered report to the court. Ex.P.22 is the altered report. After completing all the procedural formalities, PW16 has filed the charge sheet in this case as against the accused.

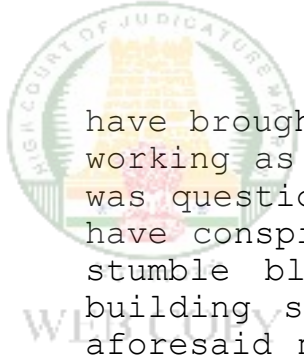
5. Before the trial Court, in order to prove the guilt of the accused, prosecution has examined as many as 16 witnesses as Pws 1 to 16 and marked Exs. P1 to P22 besides producing Mos 1 to 6. When the first accused/appellat was questioned with respect to the incriminating materials made available against him, he pleaded not guilty. Therafter, the trial Court, on appreciation of oral and documentary evidence, convicted the first accused for the offence punishable under Section 120 (B) read with Section 302 of IPC and sentenced him to undergo imprisonment for life with fine of Rs.2,000/-

6. The learned counsel appearing for the first accused/appellant submitted that the trial court failed to consider that the prosecution did not prove the guilt as against the first accused/appellant beyond reasonable doubt. The learned counsel for the first accused/appellant would contend that PW2 was projected as an eye witness in this case. PW2 was a beggar who used to seek alms for his livelihood. Even though PW2 said to have witnessed the occurrence, he did not raise any alarm for help or attempted to save the deceased from being attacked. Further, even though PW2 deposed that he witnessed the occurrence along with two others namely Saleem and Santhanam, they were not examined as a witness before the trial Court. Furthermore, PW2 was addicted to alcoholic drinks and he had admitted in his cross-examination that he used to consume liquor on



a regular basis. In any event, if PW2 had witnessed the occurrence along with two others, as alleged, he might have either informed the investigation agency or others regarding the assault caused by the first accused/appellant along with the other accused. Therefore, according to the learned counsel for the first accused/appellant, the presence of PW2 at the place of occurrence is very much doubtful. Further, PW5 was projected by the prosecution to prove the alleged conspiracy between A-1 and A-2 to commit the murder of the deceased. However, during the chief-examination, PW5 has categorically stated that he did not know the name of the accused and he, along with Pws 6 and 7 heard the accused 1 and 2 conversing at the Tasmac Wine shop while consuming liquor just prior to the occurrence that they will eliminate a person who is confronting with them. Further, PW5 has admitted that it was not known as to whom the accused 1 and 2 have decided to kill on that date. In such event, according to the learned counsel for the first accused/appellant, the prosecution ought to have conducted Test Identification Parade to ascertain the identity of the accused, but the same was not done in this case. Further, based on the alleged confession statement of A-1, the investigation officer is said to have recovered the mobile phone of the deceased, however, PW1, wife of the deceased, categorically stated that it was not the mobile phone used by her husband. Similarly, the investigation officer has merely recovered a sim card pursuant to the confession statement of A-2, however, it was not proved that the simcard number pertains to the deceased. The service provider of the mobile sim card was also not examined to prove that it is the first accused who has committed the murder of the deceased. Further, the number of the sim card was not scientifically proved by the prosecution and therefore, the alleged recovery will not in any manner assist the prosecution to prove the case against the first accused/appellant. In effect, according to the learned counsel for the first accused/appellant, there was no eye witness to the occurrence and the prosecution relied on circumstantial evidence to prove the guilt of the first accused/appellant. The chain of circumstantial evidence was not complete to point out the guilt of the first accused/appellant beyond reasonable doubt. Therefore, the learned counsel appearing for the first accused/appellant prayed for setting aside the Judgment of the trial court and to allow this appeal.

7. On the other hand, the learned Additional Public Prosecutor would contend that PW2, who has witnessed the occurrence, was examined before the trial Court. In fact, PW2 has categorically stated that soon after committing the crime, the accused have taken away the mobile phone of the deceased from his shirt pocket and it was that mobile phone which was recovered by the investigation officer on the basis of the confession statement of the first accused. Similarly, the prosecution has also examined Pws 5, 6 and 7 who have heard the conversation of the accused on the date of occurrence to commit a crime, though PW7 turned hostile. Further, the prosecution has clearly established the motive for the accused to commit the crime. It was clearly brought out that the accused



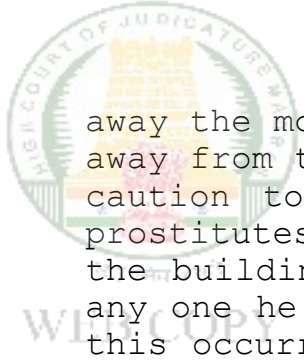
have brought prostitutes to the building site where the deceased was working as a Security Guard and also consumed liquor there and this was questioned and opposed by the deceased. Therefore, the accused have conspired together to eliminate the deceased who remained as a stumble block for them to commit the illicit activities in the building site in question. The trial court, by considering the aforesaid material evidence, has rightly come to a conclusion that the prosecution has proved the case against the first accused/appellant beyond reasonable doubt and therefore, the learned Additional Public Prosecutor prayed for dismissal of the appeal.

8. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent. We have gone through the material records placed, including the Judgment of the trial Court.

9. The case of the prosecution is that the deceased was working as a Security Guard with a company called Vishwas Security Services and he was deputed as a Security Guard in their newly constructed building site at Door No.15-C Railway Institute Road, near Trichy Junction. While so on 26.09.2014 at 5.00 am, PW1, wife of the deceased, was informed by Sathish Kumar, PW4 that the deceased had sustained head injuries and was lying unconscious at the building site. Immediately, PW1 rushed to the place of occurrence and saw the deceased lying dead. PW1 has thereafter given a complaint, Ex.P1 based on which the case in Crime No. 893 of 2014 was registered as against unknown persons for the offence punishable under Section 302 of IPC.

10. In order to prove that it was the accused who have committed the murder of the deceased, prosecution has examined 16 witnesses. Out of those witnesses, PW1, is the wife of the deceased. Admittedly, PW1 did not witness the occurrence and she was only informed by PW4 that the deceased was lying unconscious in the building site and on receipt of such information, she came to the occurrence spot.

11. PW2 was projected by the prosecution as an eye witness. PW2 is a beggar and he seeks alms for his livelihood. PW2 in his evidence has stated that he knew the deceased as he used to give him food often and he used to sleep near the Water Tank situated adjacent to Platform No.1 of Trichy Railway Station along with one Saleem and Santhanam, who are also beggars. According to PW2, on 25.09.2014, he had consumed liquor and was proceeding towards the nearby Water Tank to sleep. At that time, he saw a girl being brought by the accused to the site, where the deceased was working as Watchman. However, the deceased restrained them from entering into the building site. At that time, the first accused had delivered a fatal blow on the head of the deceased with an iron rod which was followed by a blow given by the second accused with a wooden log on the right cheek of the deceased. On receipt of such blows, the deceased fell down. Thereafter, the accused have taken

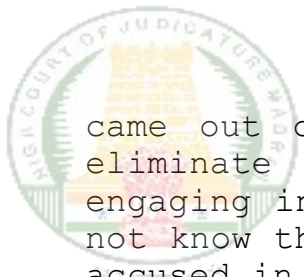


away the mobile phone of the deceased from his shirt pocket and fled away from the place of occurrence. At that time, A-2 left a word of caution to PW2 that since the deceased objected to his bringing prostitutes and also prevented him from taking alcoholic drinks in the building site, they have murdered him and if he disclose it to any one he will also be murdered. Admittedly, PW2 did not disclose this occurrence to any one. However, in his cross-examination, PW2 has stated that he knows the accused who used to clean the train coaches in the night for their livelihood. PW2 further deposed that he used to consume alcohol and on the date of occurrence also he consumed alcohol. PW2 further deposed that he along with Saleem and Santhanam, who are also beggars, went to the occurrence spot only on hearing the alarm raised by the deceased and he saw the accused 1 and 2 running away from the scene of occurrence. PW2 further stated that he never disclosed the incident to any one and two days after the death of the deceased, on 27.09.2014, he was interrogated by the investigation officer in this case. PW2 also deposed that he will be taken to the police station often and warned not to indulge in begging. PW2 has further deposed that he used to consume narcotic drugs and also alcoholic drinks and he used to be in an inebriated condition on most of the days without which he could not be normal. He further deposed that he used to take narcotic drugs as well as liquor both in the morning and in the evening. On appreciation of the aforesaid deposition of PW2, we are of the view that it will be unsafe to convict the accused on the basis of such weak testimony of PW2. It is also evident that even though PW2 is said to have witnessed the occurrence along with one Santhanam and Saleem, the prosecution has not chosen to examine the duo. In such circumstances, we are of the view that the testimony of PW2 is not credible to show that he had witnessed the occurrence to connect the first accused to the crime. The testimony of PW2 is not sufficient to base a conviction as against the first accused/appellant for the alleged commission of offence.

12. On behalf of prosecution, PW3, who was employed in Southern Railway, was examined and he was treated as a hostile witness inasmuch as he has deposed before the trial court that he did not know the deceased as well as the accused at all.

13. PW4 is the employer of the deceased who is running Viswas Security Service Agency to provide Security related services. PW4 in his deposition would state that on 26.09.2014 at about 4.00 am he went to the building site where the deceased was deployed as a Security guard and at that time he saw the deceased in a sitting position with injuries on his head. Immediately, PW4 has given intimation to PW1, wife of the deceased. Thus, PW4 also did not witness the occurrence and he is also not sure as to who has committed the offence.

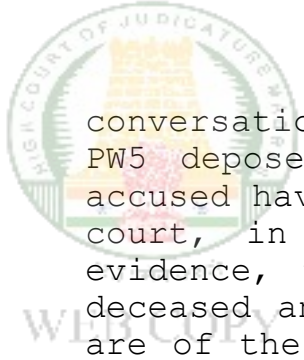
14. The prosecution has examined Pws 5, 6 and 7 who are working as suppliers in Tasmac Liquor Shop near Senthoor Lodge. PW5 has deposed that when he along with PW6 and 7 closed the liquor shop and



came out of the shop, he saw the accused 1 and 2 conversing to eliminate a person on that night since the said person is often engaging in quarrel with them. However, PW5 has stated that he did not know the name of the first accused, but PW5 identified the first accused in the Court. In the cross-examination, PW5 has stated that already he was implicated in a case by the respondent police for having sold the liquor for higher rate in the open market and in that context, he paid fine in the Court twice. He has further stated that he did not know as to who is the person the accused 1 and 2 have decided to eliminate on that night. Even though PW5 has stated that he along with PW6 and 7 have heard the conversation between the accused, PW6 has stated that he could not remember as to whether the accused have come to the liquor shop in which he is working on the night of the occurrence and that he could not identify the accused. Therefore, PW6 was treated as a hostile witness by the prosecution. Similar was the deposition of PW7 who has stated that he could not exactly remember as to whether the accused have come to the liquor shop. Therefore, PW7 was also treated as hostile witness.

15. As regards the recovery of the mobile phone and the sim card from the accused, as rightly pointed out by the learned counsel for the first accused/ appellant, PW1, wife of the deceased has categorically stated that it was not the mobile phone used by her husband (deceased). Further, PW2, who was projected as an eye witness, also stated that he never used the mobile phone of the deceased to speak to any one. As regards the recovery of sim card, the subscription number of the SIM Card was also not proved by the prosecution by scientific means and it was not sure whether the sim card said to have been recovered at the instance of the second accused was the one corresponding to the mobile subscription number of the deceased. In the absence of any such proof, the recovery of SIM Card, in our opinion, does not help the prosecution to establish the guilt as against the first accused/appellant herein.

16. To summarise, the deposition of PW2, who is a beggar, that he saw the accused assaulting the deceased, cannot be believed and his testimony is very weak and it did not inspire the confidence of this Court. This is more so that PW2, who is said to have witnessed the accused assaulting the deceased, did not raise any alarm or informed any one about the incident, which in our view is unnatural and unacceptable. Furthermore, PW2 in his deposition has stated that the deceased used to call him and offer food to him very often. When that be so, the deposition of PW2 that he saw the accused attacking the deceased but he did not raise any alarm or inform any one about such attack cannot be accepted. In other words, the testimony of PW2 is grossly insufficient for us to hold that it was the first accused who had committed the murder of the deceased. Except PW2, the prosecution has not examined any other witnesses to speak about the overtact as against the first accused/appellant. The trial Court, on the basis of the testimony of PW5 and 6 has come to the conclusion that the accused have been engaged in a



conversation to eliminate the deceased. The fact remains that even PW5 deposed that he does not know as to who is the person the accused have decided to eliminate on that day. While so, the trial court, in our view, has jumped into a conclusion, without any evidence, to hold that the accused have decided to eliminate the deceased and it was heard by PW5. In such view of the matter, we are of the opinion that the conclusion of the trial court that the prosecution has proved the guilt as against the first accused/appellant cannot be accepted. Therefore, the Judgment of the trial Court passed against the first accused/appellant cannot be sustained and it is liable to be set aside.

17. In the result, the Judgment dated 08.06.2016 passed in S.C. No. 150 of 2015 on the file of Principal Sessions Judge, Tiruchirapalli is set aside. The Criminal Appeal is allowed. The first accused/appellant is hereby directed to be set at liberty, unless his conviction is required in connection with any other case. The bail bond, if any, executed by the first accused/appellant shall stand cancelled.

Sd/-

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

- 1.The Principal Sessions Judge
Tiruchirapalli
- 2.The Judicial Magistrate No.II,
Tiruchirappalli.
- 3.-Do- through
The Chief Judicial Magistrate,
Tiruchirappalli.
- 4.The District Collector, Tiruchirappalli.
- 5.The Director General of Police,
Mylapore, Chennai.
- 6.The Superintendent of Central Prison,
Tiruchirappalli.
- 7.The Inspector of Police,
Cantonment Police Station,
Trichy City.
- 8.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.

+1cc to Mr.N.ANANDA KUMAR,Advocate,SR. 41072

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