

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.07.2019  
Pronounced on : 14.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.M.SUNDRESH  
and  
THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.A.No.713 of 2017 and  
Crl.M.P.No.16720 of 2017

1.Suraj Pakena  
S/o.Manu Pakena.

2.Karan Pakena  
S/o.Manpulseth

... Appellants/Accused

-Vs-

State by,  
Inspector of Police,  
Palladam Police Station,  
Thiruppur District.  
(Crime No.646 of 2016).

... Respondent

PRAYER : Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to call for the records and set-aside the conviction and sentence imposed against the appellants on 21.03.2017 in S.C.No.157 of 2016 on the file of the 2<sup>nd</sup> Additional Sessions Court, Thiruppur District and acquit the appellants.

For Appellants : Mr.S.N.Arun Kumar  
For Respondent : Mr.R.Prathap Kumar  
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by M.NIRMAL KUMAR, J.]

This appeal arises out of the conviction and sentence imposed by the learned 2<sup>nd</sup> Additional Sessions Judge, Thiruppur in S.C.No.157 of 2016 dated 21.03.2017, wherein the appellants were tried for the offence punishable under Sections 449, 302, 201 and 380 of IPC. The learned trial Judge has convicted the appellants for offence under Section 449 of IPC and sentenced them to undergo 10 years imprisonment and to pay a sum of Rs.1,000/- in default to undergo RI for one year and for offence

under Section 302 of IPC sentenced them to undergo life imprisonment and to pay a sum of Rs.1,000/- in default to undergo RI for one year and for offence under Section 201 of IPC sentenced them to undergo seven years imprisonment and to pay a sum of Rs.500/- in default to undergo six months RI.

2.The background facts, as projected by the prosecution are as follows:

2.1.PW1-Palanisamy was running business in the name of M/s.Valarmathi Sizing Factory at Palladam, Thiruppur along with his son PW9. PW1 & PW9 used to engage workers from other states and give accommodation in their factory premises. The deceased D1-Ramkumar and D2-Chandrasekar were working in PW1's factory and stayed in factory premises. On 11.06.2016, both the deceased after completing their work received the salary and went to their room. The appellants, who had returned from their native Orissa joined duty on 10.06.2016 without money and they asked money from the deceased D1 and D2, for which both the deceased asked the appellants to provide ladies from their families for their enjoyment and they would give money, which provoked the accused. Hence, the 2<sup>nd</sup> accused fought with D2, he slapped and dropped stone on his foot, thereby A2 sustained injuries. Thereafter, there was some wordy altercation between them, which was seen by PW10/Co-worker. Thereafter the appellants and the deceased/D1 & D2 went to their respective rooms. Unable to tolerate the provocative words of D1 and D2, the appellants decided to do away both the deceased. When the deceased were sleeping in their room, the appellants entered into the room, dropped stone [M01] on the face of the deceased/D1 & D2 and caused their death. To conceal the same, they covered the both the body of the deceased with paper and clothes and set fire on it and escaped from the scene of occurrence and proceeded to their native place Orissa.

2.2.The next day morning on 12.06.2016, PW10 found the bodies of the deceased in a burned stage and informed to PW1, who had lodged a complaint [Ex.P1] to PW20/the Sub-Inspector of Police. Pursuant to the complaint [Ex.P1], PW20 registered an F.I.R in Crime No.646 of 2016 [Ex.P22] and informed PW21 the Investigating Officer. On receipt of Ex.P22, PW21 visited the scene of occurrence, prepared Observation Mahazar [Ex.P15], Rough Sketch [Ex.P23] and conducted inquest on the bodies of the deceased. On enquiry he came to know about the fight between the appellants and the deceased on the previous day. On getting information the appellants proceeded to Orissa, PW21 got the mobile numbers of the appellants through PW9 and went to Orissa along with PW9 and others by following the tower movements of the mobile numbers of the appellants and found them at Sambalpur, Orissa. On 15.06.2016, PW21 arrested the appellants and produced them before the learned Chief Judicial Magistrate,

Sambalpur. By obtaining the transit warrant [Ex.C1], PW21 brought the appellants to the scene of occurrence, recovered the material objects, conducted inquest and sent the bodies of the deceased to Postmortem and obtained viscera report. After collecting mobile details, postmortem report and forensic reports, the appellants were remanded to Judicial Custody, charge sheet was filed in Crime No.646 of 2016.

3.Before trial Court, prosecution examined 23 witnesses and marked 31 exhibits and collected 20 material objects. None were examined on the side of defence nor were any exhibits marked. Two exhibits were marked as Court side exhibits.

3.1.PW1, the owner of Valarmathi Sizing Factory, Tirupur lodged the complaint [Ex.P1] to PW20. PW2, PW3 and PW4 the Forensic Department officials through whom Ex.P2 to P8 were marked and examined the material objects MO1 to MO8. PW5 and PW6, the relatives of D1 and D2 received their bodies after Postmortem. PW7 and PW8 the Nodal Officers of Tata Docomo and Vodaphone through whom Ex.P9 and Ex.P10, the call detail records were marked. PW17 is the dealer of Tata Dococmo Simcard.

3.2.PW9 the son of PW1, in whose presence the confessions [Ex.P11] and [Ex.P13] of A1 and A2 were recorded and Observation Mahazar [Ex.12] was prepared. PW9 provided the identity particulars of the appellants to PW21.

3.3.PW10 and PW11 the Co-workers were working in the factory. PW10 had seen the fight between the appellant and the deceased on the previous day of occurrence. PW11 had seen the appellants in an agitated mood immediately after the occurrence. PW15 the neighbour has seen the appellants moving around on the dark at the late hours on the day of occurrence.

3.4.PW12 the Auto Driver who dropped appellants in the railway station has heard the conversation of the appellants about the occurrence and their plan to go to their native Orissa.

3.5.PW14 the relative of PW9, in whose presence the Observation Mahazar [Ex.P15] was prepared and the material objects were seized in the scene of occurrence Mahazar under Seizure Mahazar [Ex.P16].

3.6.PW16 the Co-worker of the deceased in whose presence the accused has produced their dresses worn at the time of occurrence and the same was seized under Ex.P17. PW18 and PW19 the Head Constables, produced the bodies of the deceased/D1 and D2 for postmortem and produced the material objects by Special report [Ex.P20] and form 95 Ex.21 to PW21. PW21 received the complaint and [Ex.P1] and registered an F.I.R [Ex.P22].

3.7.PW22 the Doctor conducted Autopsy on the body of D1 and issued postmortem certificate under Ex.P26 and Ex.P28. PW23, the Doctor conducted Autopsy on the body of D2 and issued certificates under Ex.P29 and Ex.P31.

3.8.PW21 the Investigating Officer on receipt of F.I.R in Crime No.646 of 2016 from PW20, reached the scene of occurrence prepared observation mahazar [Ex.P15] and Seizure Mahazars [Exs.P16 & P17] in the presence of PW14. PW21 along with PW9 and others rushed to Sambalpur in Orissa, wherein A1 and A2 were identified by PW9. PW21 arrested them and they admitted about their involvement in the crime. Thereafter, the appellants were brought to the scene of occurrence and they gave confession [Ex.P13]. Pursuant to which, materials objects were recovered through Seizure Mahazars [Exs.P12, 16 & 17] and sent to Forensic study and on completion of investigation, charge sheet was filed.

4.On conclusion of trial, the learned trial Judge put the incriminating materials to the appellants under Section 313 Cr.P.C., and the appellants denied the same. Upon appreciating the evidence let-in by the prosecution, the trial Court convicted the appellants as stated supra. As against the conviction and sentence, this appeal has been filed.

5.The learned counsel for the appellants would submit that the entire case rests on circumstantial evidence. Wherein motive, last seen theory and the recovery, all these chains of circumstances has to be proved by the double test, leading to interference connecting the accused to the murder and the appellants alone have committed the murder. In this case, the chains of circumstances are broken and there is no motive and enmity of the accused with the deceased. It is the case of the prosecution that the appellants had joined PW1's factory on 10.06.2016 and the alleged occurrence is said to have taken place on 11.06.2016. Admittedly, there was a fight between the appellants and the deceased prior to the occurrence, PW10/Co-worker joined the factory recently, hence PW10 has not worked with the appellants and without knowing them, PW10 could not have interfered with the fight between them.

6.The learned counsel for the appellants would further submit that PW12-Auto Driver, through whom the Investigating Officer got information about the appellants speaking in Hindi about the murder and escaping to Orissa is highly artificial. Likewise, PW15 has seen the appellants on the fateful day is highly doubtful in the absence of any identification in this case. The call details of the appellants collected through PW7 and PW8 would show that the Sim Cards were not in the name of the appellants. PW7 has categorically stated that the mobile

number 7200339379 has not been purchased by A1. Further, there was no evidence against the appellants to have committed murder. The appellants and the deceased are the native of Orissa. Other than this there is nothing common between them. Hence, the chains of event are broken and incomplete and the appellants have been wrongly convicted by the trial Court merely on the basis of surmises and conjunctures and there is no evidence on the basis of which, the said conviction can be sustained.

7.Per Contra, the Additional Public Prosecutor appearing on behalf of State would submit that PW1 and PW9 are the owners of M/s.Valarmathy Sizing Factory at Palladam. They had clearly stated that the appellants contacted them through phone to rejoin duty on 08.06.2016 and reached the said factory on 10.06.2016. The appellants joined duty by submitting their identity credentials and submitted their phone numbers, which are currently used by them. Since the appellants travelled such a long distance, they sought time to join duty on 12.06.2016. PW1 allotted room No.4 to the appellants. Further PW1 and PW9 have categorically stated about North Indians were being employed in their factory, in which eight females and seven males worked. The appellants were occupying room No.4 and the two deceased were staying in room No.2, PW10-Pachiyammal was occupying another room and room No.3 was vacant.

8.The Additional Public Prosecutor would further submit that on 10.06.2016 at about 08.00 p.m., D1 and D2 had received the salary and gone to their room. PW10 has stated that she had seen the fight between the appellants and the deceased at about 11 p.m on 10.06.2016 for which, PW10 shouted them to get back to their room. On next day i.e., 11.06.2016, PW10 found the persons who are quarrelling with the deceased were not in their room and their belongings were missing. When PW10 opened the room No.2 of the deceased, she found the dead bodies of the deceased in a burned state. PW10 rushed to PW1 shouting and screaming to inform the same. On seeing PW10 in that state, PW1 had enquired and came to the scene of occurrence along with PW9, by the time PW11 son of PW10 had also joined them. PW11 stated that while he was returning back from work on 11.06.2016 at about 01.30 a.m, he saw the appellants in an agitated mood and they asked him to give some water.

9.Further the appellants act of murdering the deceased/D1 and D2 and setting fire by using papers and clothes nearby, on the deceased clearly prove the intention of the appellants in committing and concealing the murder.

10.He further submitted that PW1 had lodged a complaint [Ex.P1] to PW20, who registered the F.I.R in Crime No.646 of 2016 [Ex.P22]. PW21, the investigating officer, had taken up

investigation, reached the scene of occurrence, prepared observation mahazar [Ex.P15] and Seizure Mahazars [Exs.P16 & P17] in the presence of PW14. PW12, Auto driver has stated that the appellants were travelling in his auto and got down in the Railway Station. During Journey they had conversed in Hindi about the murder and escaping to Orissa.

11.By getting the mobile numbers used by the appellants from PW9 and made request to the Nodal Officers of TATA Docomo/PW7 and Vodafone/PW8 through the Superintendent of Police and tracking the tower movements of the mobile numbers of the appellants, PW21 along with PW9 and others rushed to Sambalpur in Orissa, wherein A1 and A2 were identified by PW9 and PW21 arrested them and they admitted about their involvement in the crime. Thereafter, the appellants were brought to the scene of occurrence gave confession [Ex.P13]. Pursuant to which, materials objects were recovered through Seizure Mahazars [Exs.P12, 16 & 17] and sent to Forensic study.

12.In the meanwhile, PW5 and PW6 the relatives of the deceased/D1 & D2 had been summoned. In their presence inquest was conducted and bodies were sent for Postmortem. PW22 the Doctor, who conducted Autopsy on the body of D1 issued postmortem certificate under Ex.P26 and Ex.P28. PW23, the Doctor, who conducted Autopsy on the body of D2 issued certificates under Ex.P29 and Ex.P31.

13.The learned Additional Public Prosecutor further contended that from the evidences of PW1, PW9, PW10 and PW11, it is proved that the appellants were employed along with the deceased/D1 & D2 in PW1's factory and were residing in room No.2 and room No.4 respectively and there was fight between them. PW11 saw the appellants in an agitated mood soon after the occurrence. PW15 has also seen the appellants moving around on the dark at the late hours on the day of occurrence. PW12 dropped the appellants in the railway station and PW21 by tracking the mobile numbers, arrested them in Sambalpur at Orissa and produced them before the learned Chief Judicial Magistrate, Sambalpur, obtained transit Warrant [Ex.C1], brought them to the scene of occurrence, recovered material objects and other incriminating articles on their confession [Ex.P11]. Further the forensic reports [Ex.P27 & Ex.P30] and the postmortem report [Ex.P28 & Ex.P31] of PW22 and PW23 are in conformity with the prosecution case.

14.Thus, the prosecution has proved its case beyond all reasonable doubt and hence, the finding of conviction requires no interference.

15.Considering the submissions made by the learned Counsel on either side and perused the materials available on record.

16.It is seen that PW1 and PW9 have stated that the appellants contacting them over phone on 08.06.2016 and reached the said factory on 10.06.2016 seeking employment. Since the appellants travelled long distance, they sought time to join duty on 12.06.2016.

17.It is also seen that most of the employees working in PW1's factory are only North Indians and PW1 provided accommodation to them in his factory premises. PW1 allotted room No.4 to the appellants and the deceased/D1 & D2 stayed in room No.2, PW10-Pachiyammal was occupying another room and room No.3 was vacant. The deceased/D1 & D2 had received salary on 11.06.2019 at about 08.00 p.m after their duty. The appellants had asked for some money from the deceased, for which the deceased had provoked the appellants by asking the accused to provide females of their family members and thereafter money would be given. The 2<sup>nd</sup> appellant being the sister's son of A1 got provoked and had fought with D2 and dropped a stone on his foot. Thereafter fight aroused between them and the same was witnessed by PW10 at the late hours.

18.PW10 shouted at the deceased and asked the appellants to get back to their rooms. On next day i.e., on 12.06.2016, PW10 did not find the appellants who fought previous day night. PW10 saw the room No.4 occupied by the appellants was vacated and their belongings were taken away.

19.When PW10 opened the door of room No.2, she saw the bodies of the deceased in burnt stage. PW10 rushed to PW1 and informed the same. PW1 and PW9 had reached the scene of occurrence along with PW11, who saw the appellants at about 01.30 a.m in an agitated mood and they asked some water. Further PW12, the Auto driver dropped the accused in the railway station and over heard the conversation of the accused speaking in Hindi about the occurrence and escaping to their native Orissa. PW15 saw both the accused at late hours on the day of occurrence moving around in the scene of occurrence.

20.PW20 registered a case and informed the said occurrence to the Investigating Officer/PW21, who by the time collected the phone numbers of the accused from PW9 and by tracking the tower movement of the numbers proceeded towards Orissa.

21.PW21 and PW9 reached Orissa found the appellant at Sambalpur in their native house. Both the accused were arrested and they gave confession admitting the offence committed by them. Thereafter they were produced before the learned Chief

Judicial Magistrate, Sambalpur and after obtaining transit warrant [Ex.C1] they were brought to the scene of occurrence. In the scene of occurrence based on the confession of the appellants, identified MO1 used to smash the head of both the deceased and after incriminating articles were recovered.

22.PW21 stated about the burnt articles seized from the scene of occurrence through seizure mahazars and sent the same to forensic study. PW2 to PW4 are the forensic experts, who have given reports Ex.P2 to Ex.P8 in which it is found that blood stain in the articles were proved and the fire is not out of usage of kerosene or diesel and the papers and clothes were used to set fire.

23.The Nodal Officers/PW7 and PW8 of Vodafone and TATA Docomo were examined and they produced the call detail particulars [Ex.P9 & Ex.10]. PW17 the dealer of TATA Docomo, who sold the simcard to A1 was also been examined by the prosecution. PW5 and PW6 the relatives of the deceased/D1 & D2, who had come from Orissa has taken the bodies for funeral ceremony.

24.PW13, the Doctor examined the 2<sup>nd</sup> appellant and stated that he was assaulted by one known person using stone at about late hours during the relevant period. The injuries on the appellants were marked under Ex.C2, the Accident Register Certificate of District Head Quarters Hospital, Orissa.

25.PW22 the Doctor, who conducted Autopsy on the body of D1 issued postmortem certificate under Ex.P26 and Ex.P28. PW23, the Doctor, who conducted Autopsy on the body of D2 issued certificates under Ex.P29 and Ex.P31, from which it is seen that the bodies are in burnt stage and the death occurred due to dropping of MO1 on the head of the deceased/D1 & D2. The material objects were recovered on the arrest and confession of the appellants.

26.In view of the above discussions, the present is a case of circumstantial evidence and each links in the chain of circumstances are well connected that they form a complete chain, which clearly proves the guilt of the accused persons. Thus leading to irressitable conclusion that the offences have been committed by the accused, the trial Court has rightly convicted the appellants which needs no interference.

27.In view of the same, this Court finds that there is no reason to interfere with the Judgment passed by the learned 2<sup>nd</sup> Additional Sessions Judge, Thiruppur in S.C.No.157 of 2016 dated 21.03.2017.

28.Hence, the finding of the trial Court is confirmed. In the result, this Criminal Appeal stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

29.The Investigating officer/PW22 in this case has shown his alacrity and has done a commendable job in tracing the appellants.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The 2<sup>nd</sup> Additional Sessions Judge,  
Thiruppur.

2.The Inspector of Police,  
Palladam Police Station,  
Thiruppur District.

3.The Superintendent,  
Central Prison, Coimbatore.

4.The Public Prosecutor,  
High Court, Madras.

Copy To: The Section Officer, Criminal Section,  
High Court of Madras

+1 cc to M/s.S.N.Arun Kumar, Advocate Sr.No. 69820

AKM/23.09.19/9P- 7C /

सत्यमेव जयते

Judgment  
in CrI.A.No.713 of 2017

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