

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.02.2019

Pronounced on : 28.02.2019

CORAM:

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

Crl.A.No.786 of 2017

Raghu Prakash,
S/o.Jayapal Naveen Chandran. ... Appellant/Single Accused

-Vs-

State Rep. by the Inspector of Police,
B6, Peelamedu Police Station,
Crime No.147 of 2007,
Coimbatore City. ... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the conviction and sentence imposed in Judgment dated 21.07.2017 made in S.C.No.213 of 2013 on the file of the learned Sessions Judge for trial of Bomb Blast Cases, Coimbatore by allowing this Criminal appeal.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.R.Prathap Kumar,
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in this case. He was charged under Section 392, 392 r/w 397 and under Section 302 of the Indian Penal Code, the Lower Court had convicted the accused under Section 302 of the Indian Penal Code and sentenced him to undergo Life Imprisonment and to pay a fine of Rs.1,000/- (Rupees one thousand only) in default to undergo three months Simple Imprisonment; sentenced him to undergo ten years of Rigorous Imprisonment for the offence under Section 392 of the Indian Penal Code and to pay a fine of Rs.1,000/- (Rupees one thousand only), in default to undergo three months Simple Imprisonment.

2.The case of the prosecution is that the deceased Kandasamy, was employed as a night watch man in M/s.Arun Rekha Bakery Machinery Private Limited company at Annamalai Industries Estate, Kalapatty Road, Coimbatore. On 10.02.2007, after 11.30 p.m., he was murdered by using a "Aruval" and his gold ring, Rs.500/-, cell phone and his TVS 50 bearing Registration NO.TN38 AJ 0738 was robbed from him. The respondent police had conducted investigation and filed charge sheet before the Judicial Magistrate No.VI, Coimbatore, thereafter the case was committed to the Court of Sessions in S.C.No.213 of 2013.

3.Further, the case is that the accused, who was employed as a Security Guard in Fisher Motors Company had friendship with the deceased and they used to consume alcohol. On several occasions the deceased had fell in debt trap and knowing that the deceased was having cash, wearing gold jewels, on 10.02.2007, after 11.30 p.m. the accused using M.O.13 "Aruval" had done away him and had taken away his T.V.S.50 moped bearing Registration No.TN38 AJ 0738-M.O.1, gold ring-M.O.2, and cell phone-M.O.3.

4.The prosecution case is that on 11.02.2007, at about 7.30 a.m. PW2 came to the company and found that the deceased was lying dead in a pool of blood, immediately, he informed the same to PW1 owner of the company, who came to the scene of and gave a complaint at 9.00 a.m. On the same day, PW15, Sub-Inspector of Police received the complaint. Ex.P1, registered the First Information Report Ex.P18, in Crime No.147 of 2007 under Section 302 of the Indian Penal Code.

5.PW18, the Investigating Officer took up the investigation reached the scene of occurrence at 10.00 a.m., prepared observation mahazar-Ex.P5, rough sketch-Ex.P24, seized the articles from the scene of occurrence, examined the witnesses. Thereafter, sent the body for postmortem through Head Constable-PW12. On 16.02.2007, at about 8.45 p.m., PW5 reached the Police Station handedover the cell phone-M.O.3 the same was recovered through Ex.P3-Form 95. On 18.02.2007 at about 3.00 p.m., PW18, the Inspector of Police arrested the accused, who confessed and admitted the offence. The admissible portion of the confession is marked as Ex.P14. Based on his confession the respondent police recovered M.O.13 "Aruval" vide Ex.P15 observation mahazar; M.O.2-gold ring was seized through Ex.P16; and M.O.1 T.V.S. Moped was recovered from PW9 through Ex.P17.

6.PW1, the employer of the deceased found the deceased lying in the pool of blood with cut injuries. On reaching the scene of occurrence from the information given by PW2, went to the Police Station, lodged a complaint, ExP1. Further, he had informed the same to the family members of the deceased.

7.PW2 informed PW1 about the death of the deceased with cut injuries in the forehead.

8.PW3, wife of the deceased, she came to know that her husband was done to death and about the robbery of the TVS 50 bearing Registration No.TN38 AJ 0738, cash of Rs.500/-, gold ring and his cell phone. This witness identifies M.O.1 to M.O.9.

9.PW4, another employee of PW1 on 10.02.2007, along with Supervisor Sundar, Peter, Rajith have worked in the factory from 10.00 p.m. to 10.30 p.m., had left the factory asking the deceased to lock the factory and came to know on 11.02.2007, about the Security man being done away. He had visited the scene of occurrence at 9.30 a.m.

10.PW5, Vegetable Vendor, knows the accused, on 11.02.2007, when he was in the Wine shop the accused approached and asked him Rs.500/- stating that his close relative has passed away, which was initially refused by him and thereafter, the accused handedover the cell phone as security and thereafter, PW5 handedover Rs.300/- to the accused. The accused promised to return back the amount of Rs.300/- in two days, thereafter, he had not seen the accused. After four days from the above said incident, on 16.02.2007, the respondent police had called him over the cell phone M.O.3 and asked him to come to the Police Station and thereafter, PW5 was informed that the cell phone belongs to the deceased. PW5 handedover the cell phone to the respondent police, who recovered the same through Form 95-Ex.P3.

11.PW6, local resident, who stood as witness for preparation of observation mahazar-Ex.P5 and seizure of articles from the scene of occurrence through seizure mahazar-Ex.P6 this witness identifies M.O.4 to M.O.7, M.O.10 to M.O.12.

12.PW10, a goldsmith employed in Sri Vignesh Jewellery, states that on 11.08.2006, the deceased had purchased 1 ½ soverigns of gold ring M.O.2, in which the rising sun symbol and initial of D.K. was inscribed, the deceased had made the payment of Rs.13,920/- and purchased the gold ring.

13.PW7, is the Cable T.V. Operator, on 10.02.2007, at about 8.00 p.m. to 8.30 p.m., he got a call from a person stating that his cable T.V. wire has snapped and he reached the spot, found that there was no such snap as stated by the person. While he was standing at Kalapatty road, one known person informed that the cable wire snapped off near M/s.Arun Rekha Bakery Machinery Private Limited. At about 10.30 p.m., he rectified the same, at about 11.30 p.m. He went to M/s. Arun Rekha Bakery Machinery Private Limited company to meet the deceased Kandasamy, who is

the uncle of PW7. He had met the deceased between 11.30 to 11.45 p.m. had a chat with him for sometime. While PW7 was proceeding back to his house, he saw the accused. When he enquired the accused, the accused stated that he is going to meet the deceased.

14.PW8, another Cable T.V. Operator. On 10.02.2007, at about 10.45 p.m., he saw the accused passing by near the scene of occurrence.

15.PW9, was running a mess. The accused used to visit his mess and that he knows the accused. On 11.02.2007, at about 8.45 a.m. the accused approached PW9, informed that his grand mother has passed away in his native and the accused is the only grand son and requested Rs.10,000/- from him, PW9 informed that he does not have that amount and thereafter, the accused handedover the TVS 50 moped to him as security and taken Rs.5,000/- from him and the said vehicle was parked in his shop. On 18.02.2007, at about 5.45 p.m., the accused accompanied by police had come to his shop and the respondent police seized the vehicle-M.O.1.

16.PW12, Head Constable, who was in-charge of the dead body identified produced the same for postmortem.

17.PW11, Head Clerk, attached to the Judicial Magistrate Court No.VI, had forwarded the requisition letter for biological analysis, chemical analysis and serological report from the Forensic Department.

18.PW15, Sub-Inspector of Police, who received the complaint, Ex.P1 from PW1, registered the FIR, Ex.P18.

19.PW13, relative of the deceased, in whose presence the accused was arrested. The arrest and confession of the accused is Ex.P14 given to the respondent police on 18.02.2007. Based on his confession, M.O.13 "Aruval" was seized vide seizure mahazar, Ex.P15, further, he is witness to seizure of gold ring vide the seizure mahazar is Ex.P16, and M.O.1 TVS 50 moped was recovered through seizure mahazar, Ex.P17.

20.PW14, neighbour of the deceased. He stated that the accused would be found in the company of the deceased most of the time. On 11.02.2007, the accused informed PW14 that somebody have murdered the deceased and there is a general talk that these type of murder can be done by the persons hailing from Madurai and this accused, who hails from near by place of Madurai was skeptical that he would be implicated in this case.

21.PW17, Doctor attached to the Government College and Hospital, Coimbatore, conducted autopsy on the body of the deceased on 11.02.2007 between 02.45 p.m. and 03.45 p.m., given post mortem certificate, Ex.P21. The final opinion is Ex.P23, PW17 has opined that the deceased hail died due to the injury on his head and it is possible that injury could have been caused by M.O.13 "Aruval".

22.PW18, Investigating Officer, who on receipt of the FIR, visited the scene of occurrence, prepared observation mahazar, rough sketch seized blood stained bed sheets, shawl, blood stained earth, specimen earth, slippers and other blood stained articles from the scene of occurrence, which M.O.4 to M.O.7 and M.O.10 to M.O.12. Thereafter, conducted inquest, Ex.P25, examined the witnesses, recorded their statements, altered the case from Section 302 of the Indian Penal Code to Section 302 and 392 of the Indian Penal Code. The said alteration report is Ex.P26 thereafter, the seized articles were sent to the Court under Form 95 he examined the postmortem Doctor. Thereafter, on 16.02.2007, after examining PW5, he came to know about the appellant's involvement in the case and on getting secret information about the accused movement, arrested the appellant/accused on 18.02.2007. The accused admitted his involvement in the case, on his confession, M.O.1-TVS 50 moped, M.O.2-gold ring, M.O.13-Aruval were seized.

23.PW3, wife of the accused identified M.O.1 to M.O.3 as that of her husband. Thereafter, the accused was produced before the Judicial Magistrate and he was remanded to judicial custody. On 29.05.2007, after getting final opinion from PW17, charge sheet was filed in this case.

24.The prosecution examined PW1 to PW18, marked Ex.P1 to P27 and M.O.1 to M.O.13. The appellant/accused was questioned under Section 313 (1) (b) of the Code of Criminal Procedure with regard to the incriminating circumstances and he denied it false. No defence witness was let in.

25.The contention of the learned counsel appearing for the appellant/accused is that the case is of circumstantial evidence, there is no cogent evidence to prove that the appellant had motive to commit murder of the deceased, no body has seen the accused and the deceased together. There is no evidence to prove last seen theory. A feeble attempt has been made by the prosecution to show that PW7 and PW8 are the witnesses, who have seen the accused and deceased together for proving the last seen theory.

26.From their evidences, it is seen that both the witnesses have not seen the accused and the deceased together. Though PW7 and PW8 had come to know about the death of the deceased

Kandasamy on 11.02.2007, attended the funeral, they failed to inform the police. During the investigation police was present on 11.02.2007, they had not informed the police that they have seen the accused till 12.02.2007. Their statements reached the Court only on 09.06.2007. Further, these witnesses have not stated that they have spoken and seen the accused on 10.02.2007, at the relevant point of time, which the Investigating Officer admits.

27.Further, M.O.3 cell phone was produced by PW5 only on 16.02.2007. PW5 categorically states that the cell phone, which was in his possession was never switched off till such time the police had called him on 16.02.2007, no body had called him. He came to know that M.O.3-cell phone belongs to the deceased only after the Investigating Officer informed the same on 15.02.2007. The statement of PW5 witness has reached the Court only on 09.06.2007.

28.Further, M.O.1-TVS 50 of the deceased was shown as recovery after the arrest of the accused from PW9. PW9 admits that on 11.02.2007, at about 9.00 a.m. the appellant/accused handedover the TVS 50 moped to him and received the cash of Rs.5,000/- further he was aware about the occurrence and at 9.00 a.m. on 11.02.2007, the police persons were present in the scene of occurrence and he was also aware that the deceased was Kandasamy, who was done to death. Further, he admits that on 18.02.2007, when the vehicle, M.O.1 was handedover by him no signature was obtained for seizure of the vehicle. The statement of this witness had reached the Court only on 09.06.2007.

29.PW10, who identified M.O.2, gold ring, which was made on order placed by the deceased, admits that the manufacturing mark found in the ring does not tally with the mark of Sri Vignesh Jewellers. The statement of this witness has reached the Court only on 09.06.2007.

30.PW13, is none other than the relative of the deceased and no independent witnesses have been examined. Further, the statement of PW14, Ponnusamy also reached the Court on 09.06.2007 and hence the arrest and recovery of articles are highly doubtful, which are falsified by records and remain unnatural as it could be seen from the evidence of the witnesses. It was also submitted that there is no mention about the M.O.2 and M.O.1 in the complaint, Ex.P1.

31.Further, PW16's contention is that on 10.02.2007, at about 11.00 p.m. the accused was present in the TASMAC shop. The Investigating Officer admits that the accused cannot be present at that point of time because the closure of the TASMAC shop is 10.30 p.m. Further, it is seen that from

11.02.2007 to 16.02.2007, there have been no investigation. Further looking the case at any angle, the prosecution has not proved its case. The statements and exhibits have reached the Court belatedly and no explanation has been given for the inordinate delay. The accused has been falsely implicated in this case.

32.The learned counsel for the appellant/accused relied upon the citation in the case of Kavitha and others Vs. State of Inspector of Police, Perumanallur Police Station, Coimbatore District reported in 2012 (3) MLJ (Criminal) 414 : 2012 (2) MadWN (Cri) 563 : 2014 (10) R.C.R. (Criminal) 479 and the relevant paragraph Nos.80 and 81 are extracted hereunder:

"80.Presumption of one's innocence is his basic human right. (see Kailash Gour and others V. State of Assam (2012) 2 SCC 34: LNIND 2011 SC 2249: (2012) 1 MLJ (Crl) 807. As a necessary corollary prosecution must prove the guilt alleged against a person beyond all reasonable doubts. Suspicion, however strong may not take the place of legal proof.

81.In this connection, it is apposite here to notice the following observations of the Hon'ble Supreme Court made in Ashish Batham V. State of M.P. AIR 2002 SC 3206: (2002) 7 SCC 317: (2002) SCC (Cri) 1718: LNIND 2002 SC 556.

"Realities or truth apart, the fundamental and basic presumption in the administration of criminal law and justice delivery system is the innocence of the alleged accused and till the charges are proved beyond reasonable doubt on the basis of clear, cogent, credible or unimpeachable evidence, the question of indicting or punishing an accused does not arise, merely carried away by the heinous nature of the crime or the gruesome manner in which it was found to have been committed. Mere suspicion, however strong or probable it may be is no effective substitute for the legal proof required to substantiate the charge of commission of a crime and graver the charge is, greater should be the standard of proof required. Courts dealing with criminal cases at least should constantly remember that there is a long mental distance between 'may be true' and 'must be true' and this basic and golden rule only helps to maintain the vital distinction between 'conjectures' and 'sure conclusions' to be arrived at on the touchstone of a dispassionate judicial scrutiny based upon

a complete and comprehensive appreciation of all features of the case as well as quality and credibility of the evidence brought on record”.

33.The learned Additional Public Prosecutor would submit that PW1 had lodged the complaint, PW4, employee of PW1 saw the deceased at 10.30 p.m. and he was speaking with him. The evidence of PW1 and PW2 are corroborated with each other. PW7 and PW8 had spoken with the deceased and with the accused on the fateful day, they had seen the accused in that area, PW16 had also seen the accused in that areas, PW16 had also seen the accused. PW5 had handedover the M.O.3 cell phone of the deceased and informed that M.O.3 was handedover to him by the appellant/accused. All the witnesses have deposed as per the statement recorded and have supported the case of the prosecution. There might be some minor contradiction, which would not affect the prosecution case. The lower Court on proper appreciated and analysis of the evidence and the material produced had rightly convicted the accused and the conviction to be sustained.

34.Considering the rival submissions and on perusal of the materials, it is seen that each and every link to the circumstances is to be proved, which should lend to the assurance that the accused had alone committed the offence. It is seen that the last seen theory is projected by the evidences of PW7 and PW8. PW7 is the relative of the deceased, they have not seen the accused and the deceased together at any point of time and there is no material in this case to show that the accused was in the company of the deceased prior to the occurrence. Hence, the last seen theory is not proved. It is seen that PW5 admits that the cell phone of the deceased was with him from 11.02.2007 till 16.02.2007, when it was handedover by accused during this period except the call received from the respondent police, he has not received any other phone calls. PW1, PW3 and PW18, Investigating Officer would state that calls to the said number did not materialize, no evidence have been produced to show that phone calls have been made no Call Detail Records (CDR) of M.O.2 has been produced.

35.As regards M.O.1-TVS 50 moped of the deceased, till 18.02.2007, the vehicle was not produced to the Investigating Officer. When PW9 admits that he was aware about the murder of the deceased on 11.02.2007 and the police were present at the time when the accused had handed over M.O.1 and there are no investigation or materials produced by the police to show that M.O.1 belongs to the deceased, as also with regard to the gold ring-M.O.2 when the arrest and recovery becomes doubtful and on admission of PW10 that there is no proof that it was ordered and

purchased by the deceased. Further in Ex.P1-complaint, there is no mention about the ring and the TVS 50 moped. On the contrary, PW1 categorically states that he informed the family members of the deceased and they were present at the scene of occurrence before he made the complaint, Ex.P1. Further, there are vital materials contradiction in the evidence of the witnesses, which is admitted by the Investigating Officer.

36.It is seen that all the statements and documents reached the Court belatedly and no explanation had been given. The chain of link has failed the double test is not complete lending assurance to come to a irresistible conclusion that the accused alone has committed the death of the deceased. In view of the above, this Court feels that the prosecution had failed to prove the case beyond all reasonable doubts that in all probabilities the appellant/accused committed the murder. Hence, the benefit of doubt is extended to the appellant/accused.

37.In view of the above, this Criminal Appeal is allowed. The conviction and sentence passed by the Sessions Judge for trial of Bomb Blast cases, Coimbatore in S.C.No.213 of 2013 is set aside. Appellant is acquitted of all charges levelled against him. Appellant is directed to be released forthwith, unless his presence/custody is required in connection with any other case/proceedings. Fine, if any, paid shall be refunded. The bail bond, if any, executed shall stands cancelled. No costs.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

1.The Sessions Judge for trial of
Bomb Blast Cases,
Coimbatore.

2.The Inspector of Police,
B6, Peelamedu Police Station,
Crime No.147 of 2007,
Coimbatore City.

3.The Public Prosecutor,
High Court, Madras.

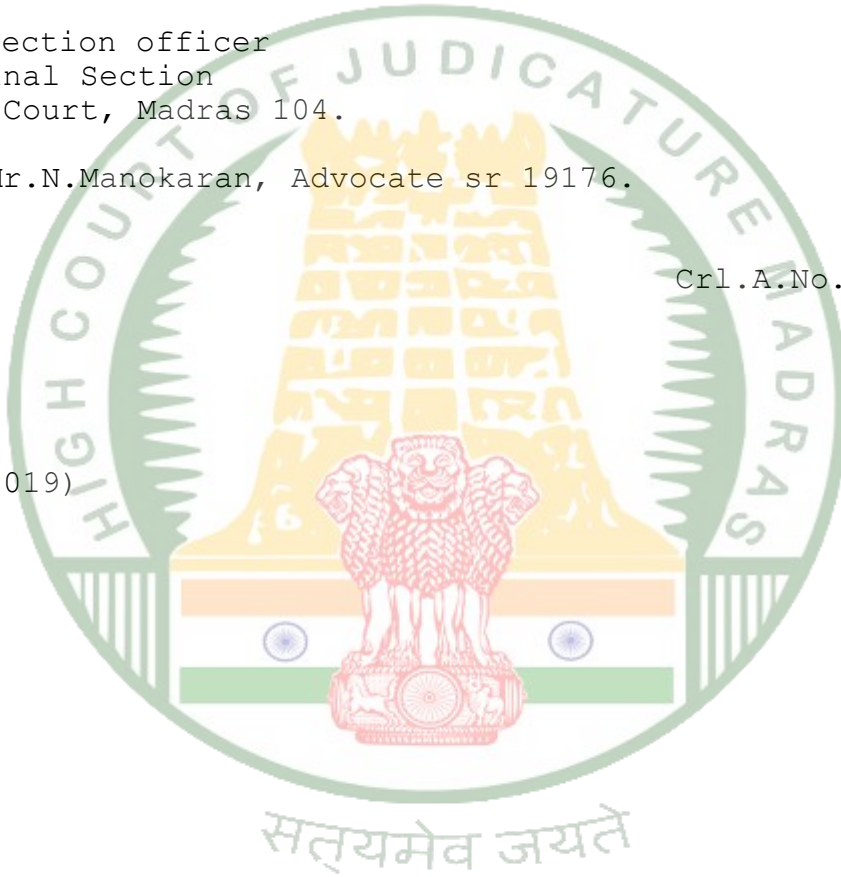
4. The Judicial Magistrate No.6
Coimbatore
5. The Superintendent
Central Prison, Coimbatore.
6. The District Collector
Coimbatore.
7. The Director General of Police
Mylapore, Chennai 4.

Copy to
The Section officer
Criminal Section
High Court, Madras 104.

+1 CC to Mr.N.Manokaran, Advocate sr 19176.

Crl.A.No.786 of 2017

VBA(CO)
SP(25/03/2019)



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