

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.12.2018

Delivered on: 03.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Criminal Appeal No.666 of 2018

and

Crl.M.P.No.14328 of 2018

Ramesh

... Appellant/Accused

vs.

State, rep.by

The inspector of Police

Gudiyatham Taluk Police Station,

Vellore District

Crime No. 65/2016

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment dated 27.08.2018 made in S.C.No.47 of 2017, by the Additional District and Sessions Judge (Fast Track Court), Vellore.

For appellant : Mr.S.Silambuselvan

For Respondent : Mrs.V.Saradha Devi
Government Advocate (Crl.Side)

JUDGMENT

The appellant herein is the sole accused in Sessions Case No.47 of 2017, on the file of the Additional District and Sessions Judge (Fast Track Court), Vellore. He stood charged for the offence under Section 302 of the Indian Penal Code for allegedly murdering his father, on 13.02.2016. After trial, by judgment dated 27.08.2018, the trial Court acquitted the appellant for the offence under Section 302 of IPC; however, convicted him for the offence under Section 320(8) of IPC punishable under Section 326 of the Indian Penal Code and sentenced him to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.1,000/-, in default, to undergo Rigorous Imprisonment for one month. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2.The case of the prosecution in brief is as follows:

(i)On 13.02.2016, the date of occurrence, the deceased Perumal, had visited his daughter for having breakfast and lunch. On the same night at about 7.30 p.m., the grand daughter of the deceased Perumal had gone to the deceased place for providing dinner. She found that the door was locked out side, however, she managed to keep the dinner on the top of the gas stove and she did not notice the deceased Perumal at that time. Thereafter, she informed the same to her mother and both of them went in search of Perumal and they could not trace him and finally they returned to the house of perumal, the deceased and found him lying in a pool of blood with head injury.

(ii) On seeing her father lying dead with injuries on his forehead and other parts of the body, the daughter of the deceased (P.W.1) immediately lodged a complaint, which is marked as Ex.P1. In the complaint, she had stated that her brother Ramesh could have been responsible for the attack on the deceased due to property dispute. On the basis of the complaint made by PW1, an FIR was registered and further investigation was conducted. The investigating officer conducted a detailed enquiry, including preparation of observation mahazar and rough sketch, in the presence of witnesses and recorded their statements on the same night on 13.02.2016. On the following day i.e., on 14.02.2016, he conducted inquest on the dead body of the deceased, in the presence of Panchayatars and prepared inquest report and thereafter, he handed over the dead body to the Grade-I Head Constable, with a requisition for conducting postmortem at Government Hospital, Gudiyatham. After final report was filed, the trial was set in motion by the Session Court.

3.On behalf of the prosecution, 11 witnesses were examined as P.Ws.1 to 11 and 21 documents have been marked as Exs.P1 to P21. Three Material Objects have been marked as M.Os.1 to 3. On behalf of the defence side, no witness was examined nor any exhibits marked.

4.The main witness in support of the prosecution case is the daughter of the deceased Perumal, viz., Bama, who was examined as P.W.1 and who had lodged a complaint to the police. She has given a detailed evidence stating that her brother Ramesh, who is the appellant/accused, could have committed the crime, since he was upset that a piece of property has been given to her by their father and probably the accused had developed a grudge against his father in respect of the property allocation. According to PW1, the motive for crime was the property dispute and PW1 would depose that the accused would often enter into arguments with their father in regard to property dispute. PW1 would also in the Cross-examination confirmed that in view of the property dispute between the accused and the deceased, the crime could have taken place. She

would also depose that the accused, on an earlier occasion threatened to kill their father-the deceased Perumal, if the property is not settled in his favour. However, she would depose that there was no complaint given against the accused for his holding out threat against their deceased father.

5.PW2, Saravanan, is the brother of PW1 and also the brother of the accused. He would depose that according to his sister PW1, his brother, the accused, used to quarrel with their father often in regard to the property dispute. He did not independently say anything about the attitude of the accused towards his father. PW3 is a relative of PW1. He would only depose that the deceased has suffered injuries and he was informed of the incident. PW4 is one of the Villagers, who has given evidence in regard to the dispute the accused was having with his deceased father; however he turned hostile and did not support the case of the prosecution. PW5 had also turned hostile and did not support the case of the prosecution. PW5 is a known person to the family of PW1 and the accused.

6.PW6 is also one of the known persons of the family of the accused and PW1. He had also turned hostile and he would submit that he had no idea of the incident at all, as in the case of PW5. P.Ws.4 to 6 have completely turned hostile and despite the same, the prosecution could not elicit any answers in support of their case. P.W.7 is a Doctor, who had certified the wounds and injuries suffered by the deceased. P.W.8 is the Village Administrative Officer, who was a witness to the confession statements given by the accused, admitting the crime and also helping the police to recover the weapon used for committing the crime. P.W.9 is the doctor, who had conducted inquest on the body of the deceased Perumal. PW10 is the Inspector of Police, who had succeeded one Subbiah, who was originally the Investigating Officer. The original Investigating Officer-Subbiah died during trial. PW10 having succeeded Subbiah, has given evidence on the basis of records. In his evidence he has stated that since he has not conducted the investigation, he has no idea about the details of the investigation done by his predecessor at all. P.W.11 is the Scientific Officer, he has given his opinion on the Material Objects seized by the police.

7.The trial court, after analysing the evidence of all the Prosecution Witnesses and also the Exhibits marked on behalf of the prosecution, had come to the conclusion that the case under Section 302 of IPC was not made out, however found that a case under Section 320(8) punishable under Section 326 of the Indian Penal Code is established as against the appellant/accused and hence, convicted and sentenced him to undergo rigorous imprisonment for a period of five years, as mentioned above.

8.The trial court was principally guided on the basis of two crucial factors, which according to the trial court was sufficient enough to find the accused guilty of offence under section 320(8) punishable under Section 326 of IPC. According to the trial court, based on the confession given by the appellant/accused, which is marked as Ex.P.15, dated 15.02.2016, M.O.1, viz., the Axe, was recovered, which was secreted by the accused, after committing the crime. According to the prosecution, the wounds suffered by the deceased were inflicted by M.O.1, which was used by the accused and concealed. Since MO1 was recovered on the basis of confession made by the accused, there is circumstantial evidence to connect the accused with the crime. This theory is further strengthened by the fact that the accused was found missing from his residence, immediately after the deceased was found dead on 13.02.2016, and he was apprehended only on 15.02.2016 at Sengundram Bus Stop. According to the prosecution, the arrest of the accused was also witnessed by the Village Administrative Officer (PW8). Both the above circumstances would point out the guilt of the accused, though not under Section 302 of IPC, but under Sections 320(8) punishable under Section 326 of IPC. Only on the basis of circumstantial evidence, the trial court has come to a conclusion and convicted the appellant/accused.

9.The learned counsel appearing for the appellant/accused would submit that this is a case where conviction is solely based on questionable circumstantial evidence. Although, the trial court has acquitted the accused for the offence under Section 302 of IPC, however, strangely the same reason for acquittal has been adopted by the trial court for convicting the appellant under Section 320(8) punishable under Section 326 of IPC. He would submit that not even an iota of evidence, by way of corroboration is available, either oral or documentary, in order to remotely connect the accused with the crime. Except a vague assertion on the part of PW1 that the accused used to often quarrel with the deceased father on property issue, there was no other motive alleged against the accused for committing such a heinous crime.

10.The learned counsel appearing for the appellant would also submit that the confession statement by the accused cannot be relied on as an acceptable piece of evidence and the recovery of MO1 on the basis of confession statement given by the accused cannot conclusively establish that the accused was involved in the crime. Mere fact that the accused was not available at the scene of occurrence cannot be held against him and on that basis there cannot be any reasonable conclusion of guilt arrived at against the accused. The trial court has observed that there was no proper explanation forthcoming from the accused as to why he was absconding for two days immediately after the date of occurrence. That alone, according to the learned counsel for the appellant, cannot be conclusively held

against the accused for coming to the conclusion that the accused was guilty of the offence. He would submit that the prosecution has only relied on the circumstantial evidence. He would further submit that without any corroborative material or evidence, a weak circumstantial evidence has been relied on by the trial court and on that basis convicted the appellant though not under Section 302 of the Indian Penal Code, but under Sections 320(8) & 326 of IPC.

11. On the other hand, the learned Government Advocate appearing for the respondent would submit that the prosecution has established the case against the accused on the basis of two crucial factors, viz., (i) the recovery of M.O.1-Axe and the certificates of Doctors and the scientific opinion in regard to the injury inflicted on the deceased by using M.O.1-Axe and (ii) there was no explanation at all forthcoming from the accused as to why and what necessitated him to abscond immediately after his father was found dead on 13.02.2016, until he was apprehended, after two days, on 15.02.2016, by the police. Although his confession to police cannot be relied upon by the trial court, at the same time, the circumstantial evidence would point to the fact of the involvement of the accused in the crime. PW1 was clear in her deposition that the accused had motive for committing the crime. Since the conclusion of the trial court is only on the basis of circumstantial evidence, the trial court had fairly found that the appellant/accused not guilty under Section 302 of IPC, but however, found guilty for the offence under Sections 320(8) & 326 of IPC. She would therefore submit that the Judgment of the trial court does not call for any interference at the hands of this court.

12. Heard, learned counsel appearing for the appellant and the learned Government Advocate appearing for the respondent.

13. As contended by the learned counsel appearing for the appellant/accused, the entire conclusion reached by the trial court is only on the basis of the circumstantial evidence, as admittedly there was no eye witness to the crime. Therefore, this court has to necessarily see as to whether the circumstantial evidence, as made available from the deposition of witnesses and the materials marked, is sufficient enough to hold the appellant/accused guilty for the offence under Sections 320(8) punishable under Section 326 of IPC.

14. In regard to the oral evidence is concerned, except the evidence of PW1, there is no other evidence by any other witnesses examined, apart from the Expert witnesses, that the accused had any motive for committing such heinous crime against his own father. Although PW1 asserted that the accused used to often quarrel with his deceased father over property issue, no specific instances were brought out in the trial and the prosecution has also miserably failed to establish the proximity of imminent motive and the date of crime in order to establish

the fact that there was a strong motive, on the part of the accused for committing such heinous crime on his own father. In fact, PW2, who is none other than the brother of the accused, himself had not stated anything on his own about the accused that he would quarrel with his father over property issue, frequently. He would only depose that his sister PW1 used to say that the accused would often quarrel with their father over property issue. Therefore, the evidence of PW1 alone cannot be relied on for the purpose of coming to the conclusion, in the absence of any corroboration to such evidence. If only the motive, as attributed by PW1, is true, certainly that would have been within the knowledge of PW2, as he was also one of the family members and he would have been in the know of things about the accused grudging a grievance against their father over property dispute. The other non Expert witnesses have all turned hostile and the prosecution failed to bring in any fact, during the cross examination of those witnesses, namely PW4 to PW6. PW3, one of the close relatives of the family, was only an hearsay witness and he did not depose any particulars in favour of the prosecution.

15.Although, in the medical examination it was established that the deceased suffered injuries inflicted by M01, however, who inflicted those injuries is of the more crucial point to be decided. As regard the confession of the accused is concerned, the same is not a safe material to be relied on, particularly in view of certain contradictions in the evidence given by the Village Administrative Officer, who was examined as PW8. The contradiction is in regard to the piece of obtaining confession statements from the accused and also the availability of PW8-the Village Administrative Officer near the Bus stop at the time arrest of the accused, was also not cogent and clear. Such contradictions would throw definite doubts on the correctness of the confession statements obtained from the accused by the police. This is more crucial to this case, since the recovery of M.O.1 is one of the two circumstantial evidences, which ultimately weighed with the trial court, for convicting the accused. Therefore, this Court is of the considered view that the mere recovery of M.O.1 alone will not establish the complicity of the accused in the crime.

16.As regards the fact of the accused absconding immediately after the date of occurrence on 13.02.2016 and his arrest on 15.02.2016 is concerned, from the records, though there was no explanation for his absence from the scene of occurrence nor any evidence let in on behalf of the defence to explain the absence of the accused on the crucial dates, the same by itself cannot be the basis for coming to a conclusion about the guilt of the accused. In fact, the prosecution has failed to bring home the fact as to the whereabouts of the accused during those crucial dates till his so called arrest on 15.02.2016 near Sengundram Bus Stop.

17.As rightly contended by the learned counsel appearing for the appellant the circumstantial evidence, which ultimately found to be the basis for convicting the accused, is questionable and unacceptable, particularly when the same trial court has found the said circumstantial evidence not sufficient enough to convict the accused under Section 302 of the Indian Penal Code. On the whole, this court is of the view that the so called circumstantial evidence, which weighed with the trial court for convicting the accused, is grossly insufficient to convict a person even for offence under Sections 320(8) punishable under Section 326 of the Indian Penal Code. Except the evidence of PW1 regarding the motive factor on the part of the accused, there is absolutely no evidence to establish any strong grudge on the part of the accused, for committing such a heinous crime on his own father. Even the evidence of PW1 appears to be unspecific and vague on the said aspect. In the total absence of any corroborative material evidence, merely on the basis of suspicion, a person cannot be held guilty of such serious offence under Section 320(8) punishable under Section 326 of IPC. Although, the trial court was fair in not convicting the appellant/accused under Section 302 of IPC., however, had faulted in convicting the accused on the other Sections viz., Section 320(8) and 326 of the Indian Penal Code.

18.For the above said reasons, this court of the view that this is the case of almost no evidence as against the appellant/accused and therefore, the Judgment of the trial court is liable to be set aside.

In the result, this criminal appeal is allowed; the conviction and sentence imposed on the appellant by the trial Court are set aside and the appellant/accused is acquitted. Bail bond, if any, executed by him shall stand cancelled. Fine amount, if any, paid by him is ordered to be refunded forthwith. The appellant/accused is ordered to be released forthwith by the prison authorities. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msk

To :

1.The Additional District and Sessions Judge
(Fast Track Court), Vellore

- 2.The Principal District Judge,
Vellore.
- 3.The Judicial Magistrate,
Gudiyatham.
- 4.The Chief Judicial Magistrate,
Gudiyatham.
- 5.The District Collector,
Vellore.
- 6.The Director General of Police,
Mylapore, Chennai - 600 004.
- 7.The Superintendent of Prison,
Central Prison,
Vellore.
- 8.The Inspector of Police,
Gudiyatham Taluk Police Station,
Vellore.
- 9.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Silambuselvan, Advocate, S.R.No.775

Crl.A.No.666 of 2018

JP(CO)

rrs 08/01/2019