



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2019

CORAM :

The HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE
AND

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.A.(MD) No.412 of 2017

and

Cr1 MP(MD)No.9443 of 2017

Sangili

... Appellant/Accused No.1

Vs.

State, rep.by the Inspector of Police,
Sedapatti Police Station,
Sedapatti, Madurai District.
(Crime No.74 of 2012)

... Respondent /Complainant

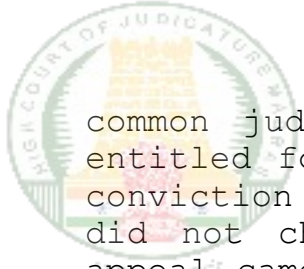
PRAYER: Appeal filed under Section 374 of the Criminal Procedure Code, to call for the judgment dated 27.02.2017 passed in S.C No.198 of 2013 on the file of the First Additional District and Sessions Judge, Madurai in Crime No.74 of 2012 on the file of the respondent police convicting the appellant under Section 302 and sentenced to undergo life imprisonment and to pay a fine of Rs.25,000/- in default to undergo rigorous imprisonment for one year and set aside the same.

For Appellant : Mr.G.Karuppasamy Pandian
for Mr.P.Mahendran
For Respondent : Mr.S.Chandrasekar,
Additional Public Prosecutor.

JUDGMENT

(Judgment of the Court was delivered by G.R.SWAMINATHAN, J.)

The appellant/accused no.1 has preferred this criminal appeal against the judgment dated 27.02.2017 in S.C No.198 of 2013 passed by the I Additional District and Sessions Judge, Madurai. There were totally three accused. The learned Trial Judge convicted the appellant for the offence under Section 302 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.25,000/- in default to undergo one year rigorous imprisonment. The second accused was found guilty of the offence under Section 302 r/w. 34 IPC. The third accused was found guilty of the offence under Section 302 r/w 109 IPC. The second and third accused were also likewise sentenced to undergo life imprisonment and to pay a fine of Rs.25,000/- in default to undergo rigorous imprisonment for one year. The second and third accused filed Criminal Appeal Nos.138 and 139 of 2017 before the Division Bench of this Court and by a



common judgment dated 12.07.2017, this Court held that they are entitled for acquittal and allowed their appeals and set aside the conviction and sentenced imposed on them. The present appellant did not challenge the impugned judgment in time. In fact, this appeal came to be filed after the appeals filed by A2 and A3 were allowed.

2.The prosecution case briefly stated is as under :

(i) The deceased Muthu was the husband of P.W.1 A1 is the younger brother of the deceased. A2 is the wife of A1. A3 is the daughter-in-law of P.W.1 and the deceased. All of the them including the deceased Muthu resided at Andipatti. The deceased Muthu had another brother by name Muthukannan and one sister Chellammal. Muthukannan suffered from mental retardation. P.W 3 Chellammal was taking care of him. Therefore, when there was a partition of the family properties, the deceased Muthu ensured that Muthukannan's share was allotted to Chellammal. This caused friction between the deceased and A1. There was also an election motive. A3 who was the estranged daughter-in-law of P.W 1 and the deceased contested the local body election in which P.W 1 and the deceased did not extend their support. A3 lost in the election. There was also a petty altercation between the son of A1's brother in law and the son of P.W.3 a few days prior to the occurrence.

(ii) On 13.06.2012, at about 07.30 P.M, the deceased Muthu, the defacto complainant Nagammal and P.W.2 Kattaripandi were chatting under the streetlight near Andipatti drama stage. At that time, all the three accused suddenly appeared on the scene. The third accused instigated the first accused to kill Muthu by uttering certain words. The second accused stood behind Muthu and caught hold the deceased while the first accused took out M.O.1 knife and stabbed on the left side of his neck, due to which he died on the spot.

3.P.W.1 lodged Ex.P1 complaint leading to registration of Ex.P6 F.I.R in Crime No.74 of 2012 on the file of the Inspector of Police, Sedapatti Police Station, Madurai District. P.W.11 Sub Inspector of Police received the complaint and registered the FIR under Sections 302 and 109 IPC and forwarded the same to court through P.W 10, Head Constable Vasan. P.W.16, the Inspector of Police took up the case for investigation and reached the spot of occurrence at 21.30 hours and had the dead body sent to the Government Hospital. He prepared Observation Mahazar/Ex.P16 and rough sketch Ex.P17 and also seized blood stained earth and ordinary earth under Ex.P.18. He then conducted inquest over the dead body in the hospital in the presence of witnesses and panchayatdars and prepared inquest report/Ex.P19. At about 05.30 a.m, he arrested all the three accused and recorded their confession. The admissible portion of confession of A1 is marked as Ex.P20 and pursuant to the same, he seized M.O.1 knife under Ex.P21 seizure mahazar and forwarded the same to the court. He examined the witnesses and recorded their statements on 27.06.2012 and forwarded all the material objects to the court for chemical examination.

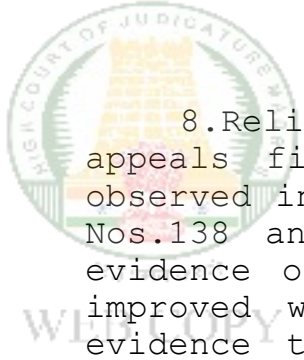


4. After conducting further investigation and examination of other witnesses, he laid the final report against all the accused. The learned Judicial Magistrate No.2, Usilampatti took cognizance of the offences in PRC No.6/2013 and since the case was exclusively triable by the court of sessions, it was committed to the learned Principal District Judge, Madurai under Section 209 of Cr.PC. Thereafter, the case was made over to the I Additional District and Sessions Judge, Madurai in S.C No.198 of 2013.

5. Charges were framed against the first accused for the offence under Section 302 IPC, against the second accused under Section 302 r/w.34 & 341 IPC and the accused no.3 was charged under Section 302 r/w 114 r/w 34 IPC. On being questioned on the charges, the accused pleaded not guilty and claimed to be tried. In order to prove the charges, the prosecution examined P.W 1 to P.W.17 and marked Exs.P1 to P25. M.O.1 to M.O.4 were also marked. After questioning the accused under Section 313 of Cr.PC and after hearing the arguments on either side, the learned Trial Judge found the accused guilty as mentioned above and sentenced them accordingly. Aggrieved by the conviction and sentence, the first accused has preferred this criminal appeal.

6. We heard Shri.G.Karuppasamy Pandian for Shri.P.Mahendran, the learned counsel for the appellant and Shri.S.Chandrasekar, the learned Additional Public Prosecutor for the State. The foremost contention of the learned counsel appearing for the appellant is that in view of the allowing of the appeals filed by the co-accused vide judgment dated 12.07.2017 in CrI.A(MD)Nos.138 and 139 of 2017, this appeal also will have to be allowed. He would further contend that the prosecution has not proved its case beyond reasonable doubt. Almost all the prosecution witnesses except the official witnesses are close relatives of the deceased. The investigating officer has not chosen to examine any independent witnesses. The motive ascribed by the prosecution is too flimsy. This is because the family partition had taken place almost 10 years prior to the occurrence. He further contended that the actual place of occurrence has not at all been established. There was also delay in reporting the occurrence to the police. The FIR reached the jurisdictional magistrate after much delay and the prosecution has not come out with any explanation for the delay. The very presence of P.W1 and 2 is highly doubtful. The learned counsel for the appellant also placed reliance on the decision of the Hon'ble Supreme Court reported in 1992 Supp (2) SCC 455 (Haridial Singh vs. State of Punjab).

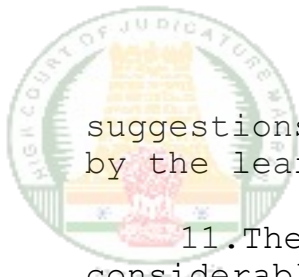
7. We carefully considered the rival submissions, facts and circumstances, the judgment passed by the court below and the evidence on record. After carefully considering the matter for the reasons set out below, we are of the opinion that the appeal filed by first accused deserves to be dismissed.



8. Reliance placed by the appellant on the outcome of the appeals filed by A2 and A3 is wholly misplaced. It has been observed in the common judgment dated 12.07.2017 in CrI Appeal (MD) Nos.138 and 139 of 2017 that a careful scrutiny of the entire evidence of P.W.1 to P.W.3 would go to show that they have been improved with regard to A2 and A3. P.W.1 had claimed in her evidence that after the stab injury was caused by A1, all the accused removed the knife from the body of the deceased and left. After a detailed analysis of the evidence, the Division Bench came to the conclusion that the evidence of P.W.1 to P.W.3 as regards the A2 and A3 was highly unbelievable. The prosecution had not established any pre-arranged plan between A2 and A3 to do away the deceased.

9. There was no evidence of any motive insofar as A2 was concerned. Likewise, the motive ascribed to A3 was also highly unbelievable. The Division Bench had further remarked that merely because the testimony of witnesses is disbelieved in certain aspects it need not be disbelieved in toto. This is because the doctrine of falsus in uno, falsus in omnibus cannot be applied to criminal trials in India. Thus, in the light of the observations and reasons contained in it, the Judgement dated 12.07.2017 cannot be invoked to buttress the case of the appellant herein. According to the prosecution, P.W.1 to P.W.3 witnessed the occurrence. P.W.1 is the wife of the deceased. P.W.2 is the son in law of the deceased. P.W.3 is the sister of the deceased. But on this count, their testimony cannot be rejected as that of interested witnesses. This is because, the first accused himself is none other than the brother of the deceased. P.W.1 had spoken clearly about the motive. Merely because the partition had taken place about 10 years prior to the occurrence that does not mean that the strain in the relationship had disappeared. In fact, even a few days prior to the occurrence, there was altercation between the family members. P.W.1 had clearly stated that the first accused inflicted the fatal injury on the left side neck of the deceased with M.O.1 knife. This has been fully corroborated by P.W.2 and P.W.3.

10. The learned counsel appearing for the appellant tried to undermine the prosecution case by relying on the answers given by the principal witnesses in their cross examination. But then, as rightly pointed out by the learned Additional Public Prosecutor, when P.W.1 to P.W.3 were cross examined originally, their evidence was not shaken. They were recalled for further cross examination almost one year later and only in the said subsequent cross examination, some answers favouring the accused were given by these witnesses. From this, this Court can come to the conclusion that the witnesses had been won over in the meanwhile. But, on this count, their earlier testimony cannot be discarded. Of course, their evidence will have to be carefully scrutinized. The learned Trial Judge came to the conclusion that the conduct of P.W.1 to P.W.3 after they were recalled in the second time after a year does not appear to be natural as they readily accepted all the



suggestions put forth by the defence. This conclusion arrived at by the learned Trial Judge is certainly sound and correct.

11. The medical evidence adduced by the prosecution has considerable significance. P.W.13, postmortem doctor identified the following injuries on the body of the deceased :

"There was a stab injury about 3.5 cm X 2 cm x 7.5 cm depth in the left side of neck extending 4 cm away and lateral to suprosternal notch. On dissection there was a punctured wound in the left carotid artery and trachea."

Ex.P11 is the postmortem certificate issued by him. The said doctor opined that the death of Muthu was due to injury to the vital organs. He has also stated that the death would have been occurred some 12.00 to 20.00 hrs prior to autopsy. The time of occurrence has not been challenged by the accused. P.W.13 stated that the injury could have been caused by a knife. The biological report and serological report have confirmed that the blood found in M.O.1 knife and the blood found in the cloths of the deceased are all human blood and are A type blood. Thus, the chemical report strengthens the prosecution case and is in consonance with the testimony of P.W.13.

12. There is no delay in the lodging of the complaint. The occurrence is said to have taken place on 13.06.2012 at about 08.00 P.M. Ex.P1 was lodged on the same day at about 08.30 P.M. We conclude that the prosecution has proved the motive for the occurrence and the place of occurrence. Merely because the other two accused in this case have been acquitted, the same cannot be a ground to throw out the prosecution case altogether. Involvement of the appellant herein/A1 and infliction of the fatal stab injury by him has been proved beyond reasonable doubt by the prosecution. It is the duty of any court to remove the chaff from the grain. The trial court was right in convicting the appellant/A1 for the offence under Section 302 IPC and sentencing him to undergo life imprisonment.

13. We find no ground to interfere. The appeal lacks merit. It stands dismissed. Consequently, connected miscellaneous petition also stands dismissed. The conviction and sentence imposed on the appellant/first accused by the learned 1st Additional District and Sessions Judge, Madurai in S.C.No.198 of 2013 dated 27.02.2017 stands confirmed.

Sd/-

Assistant Registrar (CS-III)

/ True Copy /



- 1.The Principal District Judge, Madurai.
- 2.The I Additional District and Sessions Judge, Madurai.
- 3.The Chief Judicial Magistrate, Madurai.
- 4.The Judicial Magistrate No.II, Usilampatti.
- 5.The District Collector, Madurai.
- 6.The Director General of Police,
Mylapore, Chennai.
- 7.The Superintendent, Central Prison, Madurai (2 Copies)
- 8.The Inspector of Police,
Sedapatti Police Station, Sedapatti,
Madurai District.
- 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)

+1 CC to M/s.P.MAHENDRAN, Advocate (SR-63129[F] dated 26/04/2019)

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and
Cr1 MP(MD)No.9443 of 2017
25.04.2019**

ES/12.07.2019/6P/14C