



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 12-02-2020

Judgment pronounced on: 04-06-2020

CORAM :

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No. 172 of 2018

Anbarasan @ Chinnamani @ Mani .. Appellant/Accused

Versus

State of Tamil Nadu
Represented by the Inspector of Police
B-6, Peelamedu Police Station
Coimbatore District

.. Respondent/Complainant

Appeal filed under Section 374 (2) of the Code of Criminal Procedure praying to set aside the Judgment dated 25.11.2013 passed in S.C. No. 33 of 2013 on the file of the Principal Sessions Judge, Coimbatore.

For Appellant : Mr. J. Ramkumar

For Respondent : Mr. A. Natarajan, Public Prosecutor
assisted by Mr. Mohammed Muzammil
Government Advocate (Crl.side)

JUDGMENT

R. SUBBIAH, J

The sole accused in S.C. No. 33 of 2013 on the file of the Principal Sessions Judge, Coimbatore is the appellant in this appeal. He stood charged for the offence punishable under Section 302 (2 counts). After trial, by the Judgment dated 25.11.2013, he was convicted for the offence punishable under Section 302 of Indian Penal Code (in short IPC) and sentenced to undergo life imprisonment for each count with fine of Rs.10,000/-, in default to undergo six months rigorous imprisonment for each count. However, both the sentences were ordered to run concurrently.

2. The case of the prosecution is that one Narayana Reddy (PW7) was in the process of putting up a building construction in his land situated at Manikarar Thottam, Peelamedu Pudur,



Sowripalayam, Coimbatore. PW7 had entrusted the work of putting up the construction to Uppili @ Uppiliappan, PW3, who is an Engineer by profession. For the purpose of safeguarding the construction site where the building materials will be stored, PW3 had engaged the services of PW1, Vengatachalamoorthy, who is running a Security Service in the name and style of M & M Home Services and Security Services. PW1 in turn deputed one Elangovan as a Day Watchman in the construction site. The appellant/accused was a mason engaged by Balasubramanian @ Balan, PW8. The appellant/accused stayed in a thatched shed within the construction site. According to the case of the prosecution, the appellant/accused used to consume alcoholic liquor and he led a wayward life. Earlier, PW1 engaged PW10 as a Watchman in the construction site. When PW10 was working as a Watchman, he had a quarrel with the appellant/accused owing to the fact that the appellant attended nature's call within the constructed site itself. During such quarrel, the appellant threatened PW10 with dire consequences. PW10 therefore reported this to PW1 and also expressed his dis-inclination to work in the construction site any longer. Therefore, PW10 was sent to some other work by PW1 and in his place, one Ramasamy was posted as Night Watchman.

3. It is the further case of the prosecution that even after the change of Security guards, the appellant engaged in a quarrel with the said Elangovan, Day Watchman and Ramasamy, Night Watchman besides which he continued his nasty activities in attending to nature's call within the construction site. Hence, both the watchmen have complained about such activities of the accused to PW1, who is their employer. While so, on 19.08.2012 around 5.30 pm, PW7, the owner of the construction site along with his wife supervised the progress of the construction. At that time, Elangovan, Day Watchman complained to PW7 about the attitude of the appellant in attending nature's call within the construction site itself. On hearing this from Elangovan, PW7 instructed him to call the appellant/accused. Hence, Elangovan, raised his voice and called the appellant/accused, who was inside the construction site. On hearing his name being called by Elangovan, Day Watchman, the appellant/accused came out of the construction site. On seeing the appellant/accused, PW7 questioned him with regard to his activities in the construction site. At that time, the appellant/accused even confronted PW7 by stating as to who had given such a complaint against him. When it was stated that Elangovan, Day Watchman is the complainant, the appellant indulged in a wordy quarrel with Elangovan and in that process, both Elangovan and the appellant have exchanged body blows in front of PW7. PW7 therefore intervened and directed the appellant to get out of the construction site. PW7 also informed this to PW8 through whom the appellant was engaged as a Mason in



the construction site. PW7 also asked PW8 to remove the appellant from the work as a Mason from the construction site. Accordingly, PW8 asked the appellant to leave the construction site.

WEB COPY

4. On the same day namely 19.08.2012 at about 08.45 pm, Mani, PW4, lorry driver came to the construction site with a sand load of lorry along with Loadman Senthilkumar, PW5 and one Sekar and they unloaded the sand in the construction site. At that time, they saw the accused coming from inside the building site and leaving the place without commenting any of his usual customary remarks to PWs 4 and 5 with regard to the quality of sand brought by them in the lorry. After unloading the sand, PW4 informed PW3, the site Engineer, who was at Karur, about the completion of the job of unloading of the sand. PW3 in turn informed PW4 to inform this to the Watchman on duty in the construction site. Therefore, PW4 went inside the partially constructed construction site where he found Ramasamy, Night Watchman (hereinafter referred to as D-1) lying in a pool of blood. He rushed back and informed it to PW5 and the other loadman Sekar and all of them went inside the construction site and saw D-1 lying in a pool of blood. Immediately, PW4 informed this to PW3, who in turn alerted PW1. PW1 asked PW4 to remain in the construction site. PW1 reached the construction site within 15 minutes thereof and all of them went inside the construction site by using a torch light and saw D-1 lying in a pool of blood. When search was made in the other room, they also saw Elangovan, Day Watchman (hereinafter referred to as D-2) also lying in a pool of blood. Immediately, PW1 proceeded to the police station and gave a complaint, Ex.P1 at about 23.00 hours. On the basis of the complaint Ex.P1, PW23, Sub-Inspector of Police registered the case in Crime No. 603 of 2012 for the offence under Section 302 of IPC. Ex.P20 is the copy of the first information report and it was forwarded to the Judicial Magistrate No.6, Coimbatore and other higher officials. On receipt of Ex.P20, PW24, Inspector of Police proceeded to the scene of occurrence at about 23.50 hours. On reaching the scene of occurrence, PW1 identified the dead bodies of D-1 and D-2 to PW24 at about 12.00 hours of 19/20.08.2012 with the help of a torch light/emergency lamp. Thereafter, PW24 informed the occurrence to the finger print experts and also instructed to get the services of sniffer dog to assist him in the investigation. PW24 also prepared an observation mahazar, Ex.P2 and a rough sketch under Ex.P21 in the scene of occurrence in the presence of witnesses. PW24 also engaged the services of Kamalahasan, PW15, Photographer to photograph the scene of occurrence. PW24 also made arrangements to send the bodies to the Government Hospital, Coimbatore through an ambulance. In the meantime, PW24 collected blood stained sand and sample sand from the scene of occurrence under a Mahazar attested by Nachimuthu



(PW2) and one Murugan. Between 3.15 and 6.15 am PW24 recorded the statement of PW1, PW4, PW5, Sekar - Loadman, PW2, Murugan @ Murugesan, PW3 and PW7. At about 7 pm, PW24 proceeded to the Mortuary attached to the Government Hospital, Coimbatore, where he conducted inquest on the deadbody of D-1 between 8.00 am to 9.30 am in the presence of PW5, Ponnusamy, Velusamy, Selvaraj, Rajeshkumar. Ex.P22 is the inquest report of D-1. Thereafter, PW24 conducted inquest over the deadbody of D-2 between 9.40 am and 11.25 am in the presence of PW1, Kalamani, Maheswari, Jeyachandran and Meena. Ex.P23 is the inquest report of D-2. After conclusion of inquest, PW24 sent the bodies for conducting postmortem through Unnikrishnan, Head Constable, PW21.

5. On receipt of the bodies, PW20, Doctor commenced the postmortem. After conclusion of Postmortem, he issued Ex.P12, Postmortem report in respect of D-1 and Ex.P16, postmortem report of D-2. According to PW20, the deceased appears to have died due to multiple injuries 12 to 24 hours prior to autopsy.

6. In the course of his investigation, on the same day namely 20.08.2012, PW24 recorded the statement of PW8 and PW9. PW24 also recorded the statement of Radha, wife of PW7. On the preliminary investigation, PW24 came to a conclusion that the death of the deceased would have been caused by way of objects like Wooden Reaper.

7. On the next day, PW24 proceeded to the scene of occurrence where he recorded the statement of Duraisamy Naidu and Arumugam, PW10. He also recorded the statement of Photographer, PW15. He further recorded the statement of Mr. Saravanan, Forensic Officer, Mrs. Kalarani, Finger Print Expert, PW18 and Mr. Madhankumar, Sniffer Dog Trainer. Thereafter, PW24 sent the material objects recovered in this case to the Forensic Science Department by preparing Form 95. He also recorded the statement of PW21, Head Constable.

8. On 29.08.2012, PW24 received an information that appellant in this case was arrested by the Kumbakonam Police Officials in connection with the case in Crime No. 381 of 2012 for the offences under Sections 4 and 5 of Explosive Substances Act. It was further informed that in the confession statement recorded in that case, the appellant had mentioned about the murder committed by him in the construction site at Peelamedu. It was also informed that the appellant herein was arrested and confined in Central Prison, Trichy in connection with that case. The remand report, confession statement and other documents in connection with the case in Crime No. 381 of 2012 were also sent to PW24 by post by the Inspector of Police, Kumbakonam West Police Station, PW6. On receipt of the same, PW24 forwarded them to the learned Judicial Magistrate No.6, Coimbatore on



05.09.2012 for obtaining a Prisoner Transit Warrant. Accordingly, on receipt of such a warrant, PW24 formally arrested the appellant accused in this case. PW24 also obtained permission for custodial interrogation of the accused for two days from the Judicial Magistrate Court. During such interrogation, the accused has given a voluntary confession in the presence of Soundararajan, PW16 and Dharmaraj and confessed to his causing the double murder of D-1 and D-2. Pursuant to such confession, the accused has produced the blood stained wooden log and it was recovered by PW24 in the presence of witnesses. After recording such confession and recovery of the wooden logs, the appellant was sent back to prison. On 12.09.2012, PW24 recorded the statement of the Doctor, PW20 who performed autopsy on the dead bodies of the deceased. On 05.11.2012, PW24 also recorded the statement of Arumugam, Inspector of Police, Kumbakonam West Police Station, PW11 and also Alagesan, Inspector of Police, Kumbakonam East Police Station, PW6. PW24 also recorded the statement of Krishnan, Assistant Engineer, Tamil Nadu Electricity Board, PW22 as to the availability of electricity power supply on the date of occurrence in the construction site. He also recorded the statement of Venkateswaran, Junior Scientific Officer, PW14. After conclusion of his investigation, PW24 filed the final report against the appellant/accused for the offence punishable under Section 302 of IPC (2 counts).

9. During the course of trial, on behalf of the prosecution, PWs 1 to 24 were examined, Exs. P1 to P26 were marked and Mos 1 to 23 were produced. When the accused was questioned under Section 313 of the Code of Criminal Procedure with respect to the incriminating materials made against him by the prosecution, he denied it as a false case. However, the accused did not examine any witness on his side or marked any document. The trial court, upon considering the oral and documentary evidence held the appellant guilty of the charges and convicted and sentenced him as mentioned supra.

10. The learned counsel appearing for the appellant would contend that the entire case of the prosecution rests upon the circumstantial evidence. The prosecution, though bound to prove such circumstances beyond reasonable doubt, has failed to prove all the circumstances against the appellant. According to the learned counsel for the appellant, there are many flaws and inconsistencies in the case projected by the prosecution and it warrants the acquittal of the appellant in this case. On behalf of the prosecution, the Driver of the lorry, who brought sand to the construction site, was examined as PW4 and the loadman was examined as PW5 to prove the offence alleged against the appellant. At the first blush, it is submitted that PW4, the Driver of the lorry has alleged that he saw the appellant coming



out of the building at about 8.45 pm when PW5 and another person were unloading sand, however, the appellant left the building without having any usual conversation with him. Similar was the version of PW5 who has also stated that he saw the appellant leaving the building at about 8.45 pm while he was unloading sand. If really PW4, PW5 or any one has seen the appellant coming out of the building, they could have informed it to PW1 who reached the scene of occurrence within 15 minutes. In fact, PW4, PW5 and another person by name Sekar were present in the scene of occurrence till PW1 reached the place, but there is nothing to suggest that either PW4 or PW5 and the other person Sekar have informed PW1 about the appellant exiting from the building at 8.45 pm when PW1 reached the construction site. Consequently, in the complaint given by PW1, there was no whisper about the presence of the appellant in the scene of occurrence at the time when PW4, lorry driver entered the building in question to unload sand. Therefore, the testimony of PW4 and PW5 during the course of trial about the appellant exiting from the building has to be discarded and it must be disbelieved. This is one of the major flaws in the case projected by the prosecution against the appellant and it goes to the root of the case.

11. The learned counsel for the appellant proceeded to contend that PW1 in his evidence has stated that PW4 informed him about the appellant leaving the building in a hurry without having any usual customary conversation with him, which the appellant used to do always. Had this version been true, PW1 ought to have stated it in the complaint, Ex.P1, but he did not indicate it in the complaint. Therefore, the entire case projected against the appellant has to be disbelieved. However, the trial court convicted the appellant solely on the basis of the testimony of PW4, which remains uncorroborated by any other prosecution witness. The trial court went on to conclude that there were three persons in the building namely D-1, D-2 and the appellant at the time of the occurrence. At the same time, at about 8.45 pm, PW4 and PW5 saw the appellant exiting the building and therefore, the only conclusion that could be reached is that the appellant had committed the murder of D-1 and D-2. Such a conclusion arrived at by the trial court is without any basis and not supported by any legal evidence.

12. The learned counsel for the appellant also would contend that the prosecution has not proved the last seen theory of the deceased with the appellant. PW7 and his wife came to the scene of occurrence at about 5.30 pm on 19.08.2012 and at that time, they saw D-2 and the appellant alive. This alone is not sufficient to prove the last seen theory. Further, the prosecution has not examined any other witness to strengthen the plea of last seen theory. Even in the inquest report, Ex.P23 of



D-2, it was stated that D-2 was last seen alive by his daughter Maheswari at 1.30 pm on 19.08.2012 when she came to the construction site to provide lunch for him. It was not stated anywhere that the appellant and D-2 were seen together alive. Similarly, in the inquest report of D-1 under Ex.P22, it was stated that the son of D-1 by name Senthil had seen his father alive at 8 pm. Thus, no one had seen the appellant along with the D-1 when he was alive, just prior to the occurrence. While so, the last seen theory has not been proved by the prosecution in any manner.

13. As regards recovery of the weapon used for the commission of the offence, PW24 formally arrested the appellant only on 05.09.2012 when he was already in prison in connection with the case in Crime No. 381 of 2012 on the file of Kumbakonam West Police Station and took him in to police custody on 07.09.2012. During police custody, PW24 recorded the confession statement of the appellant, pursuant to which recovery of Wooden Reaper, MO9 was made. However, even before arresting the appellant or recording his confession statement, on 20.08.2012 itself, PW24 had come to the conclusion that the death would have been caused by using MO9, Wooden reaper and it was the weapon used in the commission of the offence. While so, the confession statement of the accused or the recovery of material objects pursuant to such confession statement has no significance in this case. Even PW13, Finger Print Expert in her evidence has stated that she did not lift any finger print from the scene of occurrence. It is the further submission of the counsel for the appellant that in the Serological report, marked as Ex.P6, it was mentioned as if blood group of both the deceased were found in MO9, Wooden reaper namely 'B' and 'AB' positive. But, PW14, Junior Scientific Officer admitted in the cross-examination that it is not possible to detect blood group of two persons in a single material object. Therefore, the Serological Reports are not reliable documents. But the trial court, relied upon the Serological Reports under Exs. P5 and Ex.P6 to record a conviction against the appellant.

14. As regards the motive projected by the prosecution for the murder of D-1 and D-2 by the appellant, it is feeble and it is not strong enough to infer that the appellant could have murdered the deceased owing to a petty quarrel ensued between him and D-2. Further, there is nothing to suggest that due to such previous enmity the appellant had caused the murder of D-1 and D-2. Thus, the circumstance projected against the appellant has not been proved in any manner. In this context, the learned counsel for the appellant placed reliance on the decision of the Honourable Supreme Court in the case of (Chaar Singh and another vs. State of Haryana) reported in (2009) (1) Crimes 11 (SC) wherein the Honourable Supreme Court held as follows:-



WEB COPY

"(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established.

(ii) The facts so established should be consistent with the hypothesis of the guilt of the accused, that is to say, they should not be explainable or any other hypothesis except that the accused is guilty.

(iii) The circumstances should be of a conclusive nature and tendency

(iv) They should exclude every possible hypothesis except the one to be proved and

(v) There must be a chain of evidence so complete so as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability, the act must have been done by the accused."

15. The learned counsel for the appellant also relied on the decision of the Honourable Supreme Court in the case of Sijoy Sen @ Sujoy Kr. Sen vs. State of West Bengal reported in (2007) 3 Supreme 101 wherein it was held that in a case of circumstantial evidence, the prosecution has to establish the chain of circumstance which inevitably connect the accused to the crime. Even if a single link breaks, the whole prosecution case collapses.

16. For the same proposition, the learned counsel also placed relied on the decision of the Apex Court in Shivaji @ Dadya Shankar Alihat vs. State of Maharashtra reported in AIR 2009 Supreme Court 59 wherein it was held that the Courts must take great care in evaluating the circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. By placing reliance on the above decisions, the learned counsel for the appellant prayed for allowing this appeal.

17. Per contra, the learned Public Prosecutor would contend that the deposition of PW4 and 5 has been duly corroborated by PW1, which would clinchingly prove that the circumstances projected by the prosecution has been proved without any missing links. The appellant herein was admittedly working in the construction site as a Mason. The appellant used to stay in a thatched shed within the construction site where construction materials will be stored. The appellant was a drunkard and indulged in unruly behavior. The attitude of the appellant in attending to nature's call within the construction



WEB COPY

site was earlier questioned by PW10, Arumugam who was working as a Watchman in the construction site. The appellant threatened PW10 with dire consequences and therefore PW10 expressed his dis-inclination to work in the construction site any longer and he voluntarily got relieved from the Watchman work entrusted to him in the construction site. It is in the place of PW10, Ramasamy /D-1 was deputed by PW1 as a Night Watchman, where Elangovan/D-2 was already working as Day Watchman. The appellant did not spare even D-2 and he engaged in a quarrel with him as well. The appellant continued his attitude by urinating and defecating in the on-going construction site and this was questioned by D-2 and a quarrel ensued between D-2 and the appellant. In fact, on 19.08.2012 at about 5.45 pm, PW7 and his wife visited the construction site and at that time, D-2 complained to PW7 about the nasty behavior of the appellant. When PW7 questioned this, the appellant confronted PW7 to reveal as to who has complained to him. When D-2 was stated to be the complainant, the appellant engaged himself in a brawl with the D-2 in front of PW7 and his wife. Therefore, PW7 asked the appellant to go out of the building for which the appellant retorted by stating that he was employed only by PW8 and it is PW8 who is competent to sack him from employment. Immediately, PW7 informed PW8 over phone and PW8 in turn asked the appellant to leave the construction site. On the same day at about 8.15 pm, PW4, Mani driver of the sand laden lorry came to the construction site where PW5, Senthilkumar and one Sekar unloaded the sand. At that time, PW4 and 5 saw the appellant stepping out of the building, but the appellant did not engage in any conversation with PW4. After unloading the sand, PW4 informed PW3 over phone about the unloading of sand for which PW3 asked PW4 to inform the Security men on duty in the construction site. Therefore, PW4 went inside the partially constructed building to find out as to whether the Security guard was there. When PW4 went inside the construction site, he found D-1 lying in a pool of blood without any movement. On seeing this, PW4 was panic-ridden and rushed back to inform it to PW5 and another loadman Sekar. Thereafter, PW4 and 5 and the said Sekar went inside the construction site and confirmed the same. This was informed to PW3, who in turn alerted PW1. PW1 reached the spot within 15 minutes thereof and he along with PW4 and 5 have scanned the building where they saw the dead body of D-1. They have also seen the dead body of D-2 in another room. PW1 has thereafter given the complaint, Ex.P1 to PW23 based on which the case in Crime No. 603 of 2012 was registered by PW23, Sub-Inspector of Police.

18. According to the learned Public Prosecutor, PW8 is the Supervisor in the construction site and PW9 is his nephew. Both PW8 and 9 learnt that the appellant left the construction site hurriedly and therefore they went in search of the



appellant. Since the appellant belonged to Kumbakonam, they went to Singanallur Bus Stand wherefrom buses bound to Kumbakonam originate. They have also spotted the appellant there. When they confronted the appellant about the death of D-1 and D-2 in the construction site, he confessed to the crime, but he warned PWs 8 and 9 not to disclose the same to any one and threatened them with dire consequences. In view of such threat, PW8 did not disclose it to the respondent police immediately however, when PW8 was enquired by PW24 on the next day i.e., 20.08.2012, he disclosed it to PW24 about the confession of the appellant in causing the double murder and the consequent threat of the appellant. The statement of PW8 was also duly recorded by PW24.

19. The learned Public Prosecutor also contended that on 24.08.2012, based on reliable information, PW11, Inspector of Police, Kumbakonam West Police Station searched the house of one Anandhan and seized some explosive substances. In connection with such recovery of explosive substances, a case in Crime No. 381 of 2012 was registered under Ex.P4. During the course of investigation in Crime No. 381 of 2012, the appellant was arrested on 29.08.2012 by Kumbakonam West Police officials. During interrogation in the case in Crime No. 381 of 2012, the appellant has voluntarily given a statement to the effect that he had caused the double murder on 19.08.2012 which is the subject matter of the case in Crime No. 603 of 2012. When this was intimated by PW6 to PW24, he made arrangements to obtain a Prisoners Transit (PT) warrant, formally arrested the appellant in the case in Crime No. 603 of 2012, recorded his voluntary confession statement, based on which recovered the material object MO9, Reaper wood. The fact that MO9 contain blood stains was proved by the prosecution through examination of PW14, Junior Scientific Officer. In effect, the prosecution has proved the circumstances leading to the death of D-1 and D-2 in all probabilities and beyond all reasonable doubt.

20. It is further contended by the learned Public Prosecutor that PW1 is the complainant in this case and he is the Security Service Provider engaged by PW7, owner of the building. PW1 as well as PW7 have clearly spoken to about the erratic behavior of the appellant in the past. This was also corroborated by PW3, Site Engineer that the activities of the appellant were unruly in nature. Above all, PW4 and PW5 have seen the appellant soon after the occurrence at about 8.45 pm when he exited from the building. According to PW4, the appellant used to engage himself in some conversation with him but on that day, he quietly left the building without having any word. Admittedly, at 8.45 pm on 19.08.2012, in the partially constructed building, the presence of the appellant was proved and except the appellant, there was no one else in the building at that time. After the appellant left the building, PW4 and 5



WEB COPY

saw the dead bodies of D-1 and D-2 and therefore, it can be inferred and assumed that except the appellant, no one could have committed the murder of D-1 and D-2. There is also no scope for any one else to enter the building after PW7 and his wife left the building site at about 6.45 pm. In between 6.45 pm and 8.45 pm, D-1 and D-2 were done to death by none other than the appellant. Admittedly, PW7 has seen the appellant and D-2 alive at about 5.45 pm when the appellant confronted D-2 as to why he complained to PW7 about him. This would further strengthen the case of the prosecution that it was none other than the appellant who had committed the murder of D-1 and D-2 due to previous enmity. Above all, PW8 and 9 went in search of the appellant and met the appellant at Singanallur bus stop where the appellant confessed to the crime, but threatened PWs 8 and 9 with dire consequences. PW8 also has stated about such threat to PW24 when his statement was obtained on 20.08.2012. In effect, it is submitted that there was previous wrangle between the appellant and PW10 & D-2 in connection with the unruly and nasty behavior of the appellant and he was warned by PW1, PW3 and also PW7. Ultimately, on 19.08.2012, PW8 had sacked the appellant from his employment and it had infuriated the appellant. This has led to a wrangle between the appellant and D-2 and it led to the death of D-1 and D-2 in the construction site. Further, it was the appellant who was staying in the construction site all along and on 19.08.2012, between 6.45 pm and 8.45 pm, except D-1, D-2 and the appellant, none was there in the building. This led to an inference that except the appellant, there was no chance or scope for any one to have caused the murder of D-1 and D-2. In fact, the presence of the appellant at about 8.45 pm was duly proved by PW4 and 5. Further, the confession of the appellant led to recovery of MO9 and it is in consonance with Section 27 of the Indian Evidence Act. Above all, even though the appellant, when questioned under Section 313 of the Code of Criminal Procedure, feigned ignorance and innocence, he did not offer any explanation for his absence from the construction site soon after the occurrence. Therefore, an adverse inference can be drawn as against the appellant as has been held by the Honourable Supreme Court in the case of Lyngdoh vs. State of Meghalaya reported in 2016 (15) Supreme Court Cases 572. The learned Public Prosecutor therefore would contend that the trial court, on right appreciation of the material evidence, has convicted and sentenced the appellant for the offence under Section 302 of the IPC and prayed for dismissal of the appeal.

21. We have heard the learned counsel for the appellant and the learned State Public Prosecutor for the prosecution. We have given our thoughtful consideration to the submissions made and have also gone through the materials placed before us.



22. This is a case of circumstantial evidence inasmuch as no one has witnessed the murder of D-1 and D-2. In other words, there is no eye witness to the occurrence and therefore it goes without saying that the burden is heavy on the shoulders of the prosecution to prove beyond all reasonable doubt that it was the appellant who has caused the murder of D-1 and D-2 in this case. Whether the prosecution has discharged such burden and clearly proved by oral and documentary evidence about the overt act attributable on the part of the appellant is to be examined.

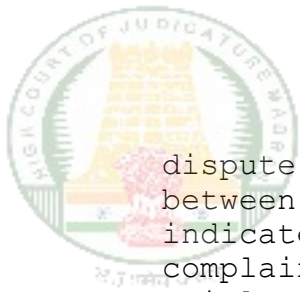
23. Keeping the above principles in mind, we proceed to consider the case of the appellant in this appeal. The appellant was employed as a Mason in an on-going construction site situated at Manikarar Thottam, Peelamedu Pudur, Sowripalayam, Coimbatore. The appellant was engaged by PW8, Head Mason. The land over which the construction was in progress belongs to PW7. PW7 had entrusted the task of putting up the construction to PW3, an Engineer. PW3 had entrusted the security related arrangements for the construction site to PW1, who is a Security Service provider. Earlier, PW1 engaged PW10 as a Watchman in the construction site. There was a dispute between PW10 and the appellant owing to the misconduct of the appellant in attending to nature's call in the construction site itself. When this was questioned by PW10, the appellant threatened him with dire consequences, with the result PW10 voluntarily disengaged himself from the work of Watchman in the construction site in question and chose to get himself engaged in some other location under the control of PW1. After PW10 was disassociated with the security related service in the on-going construction site, PW1 deputed D-1 as a Night Watchman where D-2 was also working as a Day Watchman. It is the case of the prosecution that the appellant also had a dispute with D-2 inasmuch as D-2 also questioned the appellant about his attending nature's call in the constructed site itself. In fact, D-2 complained about such conduct of the appellant to PW7 when he along with his wife visited the progress of the construction on 19.08.2012 at about 5.45 pm. When PW7 questioned the appellant about his attitude, he had even confronted PW7 to reveal as to who has complained against him. When PW7 has stated that it was D-2 who gave the complaint, the appellant engaged himself in a quarrel with D-2 and even in front of PW7, he exchanged body blows with D-2. This was reprimanded by PW7 and he had shown the appellant the exit door. However, the appellant refused to budge by stating that he was only engaged by PW8 and it is he who has got the authority to relieve him from the employment as a Mason in the construction site. Immediately, PW7 informed this to PW8, employer of the appellant and PW8 asked the appellant to leave the construction site. This is said to be the motive for the appellant to cause the murder of D-1 and D-2.



24. The case of the prosecution further unfolds that on the same day namely 19.08.2012 at about 8.45 pm, PW4 driver of a sand-laden lorry came to the construction site along with PW5 and one Sekar, Loadman. While PW4, PW5 and another person namely Sekar were engaged in unloading the sand, they were alleged to have seen the appellant leaving the construction site hurriedly at about 8.45 pm. According to PW4, normally the appellant used to engage himself in some conversation or other with him and even assess the quality and quantity of the sand unloaded by him, but unusually, on that day, he did not engage himself in any such conversation but hurriedly left the building. Subsequently, after unloading the sand, PW4 called upon PW3 to inform about the deliverance of the sand load in the construction site. PW3 in turn informed PW4 to intimate it to the duty watchman in the construction site. Hence, in order to inform the duty watchman, PW4 went inside the construction site, where he saw D-1, Ramasamy, Night Watchman lying in a pool of blood. PW4 screamed and came out of the building and informed PW5 and the above said Sekar about D-1 lying in a pool of blood. Thereafter, PW4, PW5 and Sekar went inside the building and saw D-1 lying in a pool of blood. Immediately, PW4 informed PW3, who in turn informed it to PW1. PW1 asked PW4 to remain in the building till he reaches. Thereafter, in about 15 minutes PW1 reached the building, went inside the construction site and saw D-1 lying in a pool of blood. When he further scanned the building, he also saw D-2 lying in another room in a pool of blood. PW1 thereafter proceeded to the police station and gave the complaint, Ex.P1 to PW23.

25. Now, it is the submission of the counsel for the appellant that had PW4 and 5 really seen the appellant exiting out of the construction site at about 8.45 pm on 19.08.2012, they could have informed it to PW1 when he reached the construction site soon after the occurrence. However, in the complaint, Ex.P1, there was no whisper about the appellant leaving the construction site soon after the occurrence, as spoken to by PW4.

26. It is to be seen that PW4 and PW5, in their testimony, have clearly stated that they saw the appellant leaving the building in a hurry without even making a customary conversation with them, which he used to do. PW4 also stated in his evidence that he informed it to PW1 soon after he reached the scene of occurrence. PW1 also stated that he was informed by PW4 about the appellant leaving the construction site at about 8.45 pm. However, at the time of lodging the complaint, PW1 did not indicate about the appellant leaving the construction site at 8.45 pm. The fact remains that PW1, in Ex.P1, complaint had narrated the entire sequence of event with respect to the



dispute between the appellant and PW10 on the one hand and rift between the appellant and D-2. Merely because PW1 omitted to indicate about the appellant leaving the building, in the complaint, Ex.P1, as has been deposed by PW4 and PW5 before the trial court, it does not mean that the version of PWs 4 and 5 has to be discarded. It is pertinent to note that PWs 4 and 5 have seen the appellant leaving the construction site at about 8.45 pm and it was also informed to PW1. However, PW1 has not directly seen the appellant leaving the construction site. Therefore also the non-mentioning of the appellant leaving the construction in the complaint, Ex.P1 is quite natural. Ex.P1 need not be a encyclopedia of facts. Moreover, PW1 also went to the extent of stating in the complaint, Ex.P1 that the appellant would have caused the murder. That apart, the deposition of PWs 4 and 5 with regard to the appellant leaving the construction site at 8.45 pm on the date of occurrence is cogent, clear and corroborative with each other and it inspires the confidence of this Court.

27. It is to be mentioned that PW7, the owner of the building, supervised the construction site at about 5.45 pm. At that time, D-2 complained about the nasty behaviour of the appellant and it was questioned by PW7. Infuriated by such complaint given by D-2 against him, the appellant even exchanged body blows with D-2 in front of PW7 and PW7 pacified both of them. PW7 thereafter asked the appellant to leave the construction site, but the appellant refused to budge by stating that PW7 has no authority to ask him to leave the construction site and if at all, PW8, who is his employer, has got such authority to remove him from his employment. Therefore, PW7 called PW8 and asked him to sack the appellant out of his employment as a Mason in the construction site. PW8 accordingly asked the appellant to leave the construction site. PW7 thereafter left the construction site at about 6.45 pm.

28. When the above sequences of events, as unfolded from the testimony of prosecution witnesses, is assessed and examined, it could be evident that notwithstanding the non-mentioning of the appellant exiting from the construction building in the complaint, Ex.P1, there are other evidence brought out by the prosecution through the testimony of PW1, PW4 and 5 which are corroborative with each other. If the evidence of PW1, PW4 and PW5 is assessed carefully, it would give rise to an inference that after PW7 left the construction site an hour before the occurrence, there were three persons in the construction site namely appellant, D-1 and D-2. As rightly pointed out by the trial court, there was no scope for any one to enter the building site between 6.45 pm to 8.45 pm. Out of the three persons, D-1 and D-2 were dead and it was the appellant who was alive among the three. Further, there were



WEB COPY

also rift and heart burns between the appellant and D-1 & D-2 which was also proved by the prosecution. In such circumstances, the only inference that could be drawn is that the appellant is the aggressor and he had caused the murder of D-1 and D-2 in this case.

29. During trial, when the appellant was questioned under Section 313 of the Criminal Procedure Code, he feigned innocence, but has not chosen to give any explanation for his absence from the construction site soon after the occurrence. In fact, there was no explanation offered by the appellant as to when he left the construction site. Therefore, an adverse inference can be drawn against the appellant. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of Lyngdoh vs. State of Meghalaya reported in 2016 (15) Supreme Court Cases 572 wherein it was held that when the accused gives evasive answers in the examination under Section 313 of Cr.P.C. an adverse inference can be drawn. In this case, as observed above, when the appellant was questioned under Section 313 of the Code of Criminal Procedure, he remained tight-lipped without offering any explanation for his absence from the construction site soon after the occurrence. The appellant also did not explain as to whether any other person was present in the construction site at the time of occurrence. When the appellant choose to remain silent without offering any explanation for his absence from the construction site soon after the occurrence, an adverse inference can be drawn against him. The trial court is wholly justified in drawing such an adverse inference against the appellant/accused and in concluding that the prosecution has successfully proved the guilt against the appellant/accused in this case. We see no reason to interfere with such a finding recorded by the trial court.

30. Reference can also be made to Section 8 of The Indian Evidence Act deals which reads as follows:-

8. Motive Preparation and previous or subsequent conduct:-

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

31. In the present case, the motive and the enmity between the appellant and the accused for committing the murder is clearly brought out. Atleast few hours prior to the occurrence, there was a brawl between the appellant and D-2 in front of PW7 which led to the sacking of the appellant from his employment as Mason. Earlier also, the appellant had a similar quarrel with PW10, with the result, PW10 expressed his dis-



inclination to work in the construction site any longer and he voluntarily left the construction site. Thus, the previous conduct of the appellant is not blemish-less or free from any suspicion. Moreover, he has also confessed about the murder of D-1 and D-2 to PWs 8 and 9 when they traced the appellant at Singanallur Bus Stand wherefrom buses to Kumbakonam originate. These are relevant for consideration in this case, as has been contemplated under Section 8 of the Indian Evidence Act. Therefore, if Section 8 of the Indian Evidence Act is applied to this case, we are of the view that the prosecution has clearly brought forth the motive or previous conduct as well as subsequent conduct of the appellant for the murder of D-1 and D-2 in this case.

32. The next submission of the learned counsel for the appellant is that even on 20.08.2012, PW20 has reached a conclusion that wooden reaper was used for the double murder. In other words, even before the arrest of the appellant, PW20 has fixed the wooden reaper as the material used for commission of the offence. Therefore, the recovery of material object in this case has not been proved in a manner known to law. We are not in a position to accept this submission of the counsel for the appellant. On 20.08.2012, upon noticing the nature of injuries sustained by D-1 and D-2 namely head injury, PW24 has presumed that the injuries could have been caused by an object such as wooden reaper. It does not mean that he has recovered or fixed the wooden reaper as the material object used in the commission of offence on 20.08.2012 itself. PW24 recovered MO9 only after the arrest of the appellant and on the basis of his confession statement. PW24 has only arrived at a preliminary conclusion on 20.08.2012 based on the injuries sustained by the deceased and inferred that wooden reaper would have been the material object used in the commission of the offence. However, the fact remains that the appellant was taken into custody for interrogation only on 07.09.2012 and thereafter, on the basis of his confession statement, the wooden reaper, MO9 was recovered on 07.09.2012. Therefore, the recovery in this case has been proved in a manner known to law. Such recovery made by PW24, pursuant to the confession of the appellant, is in consonance with Section 27 of The Indian Evidence Act and we see no reason to disbelieve the theory of recovery put forth by the prosecution.

33. To crown all the above, there are enough material evidence made available to connect the appellant to the commission of offence. In effect, on analysis of the entire evidence, we could only come to the conclusion that the prosecution has proved its case against the appellant beyond all reasonable doubt. The trial court, on a correct approach, has found the appellant guilty and convicted him for the offence



punishable under Section 302 of IPC. Such conviction and sentence imposed by the trial court, in our considered opinion, is legally sustainable.

34. In the result, we confirm the Judgment dated 25.11.2013 passed in S.C. No. 33 of 2013 on the file of the Principal Sessions Judge, Coimbatore. The Criminal Appeal is dismissed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

rsh
To

- 1.The Principal Sessions Judge, Coimbatore
- 2.The Judicial Magistrate VI, Coimbatore
- 3.Do Thro The Chief Judicial Magistrate, Coimbatore
- 4.The Superintendent of Central Prison, Coimbatore
- 5.The Superintendent of Police, Coimbatore
- 6.The Public Prosecutor, High Court, Madras
- 7.The Section Officer,
Criminal Section
High Court, Madras 104.

Criminal Appeal No. 172 of 2018

KK(CO)
SP(14/07/2020)