



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2020

CORAM:

**THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

Crl. A. (MD)No.350 of 2018

David, S/o.Suyambu Nadar

...Petitioner/Appellant/
Sole Accused

Vs.

State through
The Inspector of Police,
Pazhavor Police Station,
Tirunelveli District.
(In Crime No.46 of 2012)

... Respondent/ Respondent/
Complainant

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, praying to call for the entire records connected to the Judgment dated 25.01.2018, passed in S.C.No.364 of 2012, on the file of the IV Additional Sessions Court, Tirunelveli, and set aside the conviction and sentence imposed against the appellant.

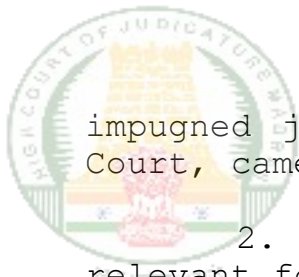
For Appellant : Mr.R.Alagumani

For Respondent : Mr.R.Anandraj
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was made by **T.RAJA, J.**)

The appellant is the sole accused in S.C.No.364 of 2012, on the file of the IV Additional Sessions Court, Tirunelveli, and he stood charged and tried for the commission of offences under Sections 294(b) and 302 I.P.C. The trial Court vide judgment dated 25.01.2018, has found him guilty for the commission of offences under Sections 294(b) and 302 I.P.C. and imposed Life Imprisonment and a fine of Rs.1,000/- with default sentence of one year Rigorous Imprisonment for the commission of offence under Section 302 I.P.C., and Rigorous Imprisonment for one month for the commission of offence under Section 294(b) I.P.C. and the sentences were ordered to run concurrently. The appellant/sole accused, aggrieved by the



impugned judgment of conviction and sentence passed by the Trial Court, came forward with this Criminal Appeal.

2. Facts leading to the filing of this Criminal Appeal, relevant for the purpose of disposal of this case, briefly narrated, are as follows:

2.1. It is the case of the prosecution that the appellant/accused had stolen a mobile phone, watch and Rs.1,000/- from the house of the sister-in-law of the deceased viz., P.W.4. Therefore, a fine amount of Rs.10,000/- was imposed on him by the Village Panchayat at the instigation of the deceased by name, Balakrishnan. In continuation thereof, there was an enmity between the deceased and the accused/appellant and the deceased often quarrelled with the appellant not to create any problem in his family. On 05.03.2012 at 04.45 p.m., when the deceased was chatting near Madhaganeri Bus-Stand along with his friends, the appellant came there and stabbed the deceased with knife and the deceased died on the way to the hospital.

2.2. Immediately, P.W.1 - Rajee Shri, wife of the deceased, lodged a complaint [Ex.P.1] before P.W.13 - Syed Nizar Ahammed, Sub-Inspector of Police, based on which, P.W.13 has registered a case in Crime No.46 of 2012 under Section 302 IPC on 05.03.2012 at 04.45 p.m. The copy of the F.I.R. was marked as Ex.P.10.

2.3. P.W.13 despatched the original F.I.R. and original complaint to the Court of jurisdictional Magistrate and a copy of the same to P.W.14 - Krishnaraj, Inspector of Police. After receiving the copy of the said F.I.R., P.W.14 went to the scene of crime in the presence of P.W.8 - Prabhu and one Muthukumarasamy and has prepared Observation Mahazar and Rough Sketch, which were marked as Exs.P.11 and P.12 respectively. He has also effected recovery of M.Os.4 and 5 and the same were received under cover of Mahazar Ex.P.13. P.W.14 enquired P.W.1, P.W.2, P.W.3, P.W.6 and one Muthukani, Kothandan and Jegan and recorded their statements. Thereafter, he conducted inquest on the body of the deceased in the presence of Panchayat members and the inquest report is marked as Ex.P.14 and sent the body of the deceased to Dr.Rajesh [P.W.9] through one Ponraja Boopathi, Head Constable [P.W.11].

2.4. P.W.9 conducted postmortem on 06.03.2012 at 12.45 p.m. The postmortem report is marked as Ex.P.2. The cause of death was opined to be hemorrhage shock and its complications due to stab injury on the chest and abdomen. The final report of the Doctor is marked as Ex.P.3.

2.5. P.W.14 enquired P.W.4 and one Chudar and recorded their statements. On 06.03.2012 at 15.00 hours, arrested the appellant/accused and recorded his statement and as per the admissible portion of the confession statement Ex.P.15, P.W.14 effected recovery of a Knife [M.O.1], which was used for the commission of offence, and a small amount of poison contained in a Polythene bag [M.O.6] and the same were received under cover of



Mahazar Ex.P.16. He examined the witnesses and recorded their statements and sent the seized articles to the Court of jurisdictional Magistrate and he was transferred and hence, he handed over the case diary to P.W.15 - T.Vijayakumar, Inspector of Police.

2.6. Thereafter, P.W.15 - T.Vijayakumar, Inspector of Police conducted further investigation and upon completing the same, filed a charge sheet in P.R.C.No.48 of 2012 before the learned Judicial Magistrate, Valliyoor.

2.7. The Committal Court issued summons to the accused and on his appearance, furnished him the copies of documents under Section 207 Cr.P.C. and having found that the case is exclusively triable by the Sessions Court, had committed the same to the Principal District Court. Tirunelveli, which in-turn, made over the same to the IV Additional Sessions Court, Tirunelveli, which took it on file in S.C.No.364 of 2012. The appellant/accused was issued with summons and on his appearance, charges under Sections 294(b) and 302 IPC have been framed.

2.8. The prosecution, in order to sustain its case, examined PWs.1 to 15, marked Exs.P1 to P16 and also marked M.Os.1 to 6. The appellant/accused was questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances made out against him and he denied it as false. The appellant/accused did not examine any witness or mark any document.

2.9. The Trial Court, on consideration of oral and documentary evidence and other materials, had found the appellant/accused guilty of the offences and sentenced him as stated above, vide impugned judgment, dated 25.01.2018 and challenging the same, the present Criminal Appeal is filed.

3. Mr.R.Alagumani, learned counsel appearing for the appellant finding fault with the approach of the learned IV Additional Sessions Judge, Tirunelveli, pointed out the lacunae, which were completely overlooked by the Trial Court. Firstly, when it was the case of the prosecution that the appellant/accused had allegedly stolen a mobile phone, watch and Rs.1,000/- from the house of sister-in-law of the deceased viz., P.W.4, P.W.1 - wife of the deceased, P.W.4 and the deceased Balakrishnan arranged for a Village Panchayat and the appellant was found guilty and made to pay a fine to the tune of Rs.10,000/- for stealing of such articles from the house of P.W.4, sister-in-law of the deceased. In continuation thereof, the prosecution has stated that already there was an enmity existed between the deceased and the appellant and moreover, the deceased also often quarrelled with the appellant not to create any problem in his family. In view thereof, on 05.03.2012 at 04.45 p.m., when the deceased was chatting near Madhaganeri Bus Stand along with his friends, he was assaulted by the accused/appellant with a knife and consequently, the deceased died while he was rushed to Asaripallam Government Hospital. Thereafter, the respondent registered an F.I.R. in Crime No.46 of 2012 against the appellant for the offences under Sections 294(b) and 302 IPC.



4. Briefly narrating the case of the prosecution, Mr.R.Alagumani, learned counsel appearing for the appellant started attacking the evidence and also the ultimate findings reached by the Trial Court. Firstly, he argued that when P.W.1 was cited as eyewitness to the occurrence, she is also said to have given the first complaint before the respondent Police. In the complaint, when P.Ws.1, 2 and 3 were cited as eyewitnesses as though they were all present at the time of occurrence, P.W.1, wife of the deceased never stated the presence of P.Ws.2 and 3 in the complaint, whereas, when she appeared before the Trial Court, for the first time, she has brought out the presence of P.Ws.2 and 3 in the scene of occurrence. P.W.2 - Ganesan is also a relative of both sides, but when he was cited as eyewitness, in all fairness, P.W.1, wife of the deceased, who said to have seen the occurrence, should have clearly mentioned about the presence of P.Ws.2 and 3 in the complaint. Even P.W.3 - Duraisamy is also elder brother's son of the deceased and he was brought as eyewitness by the prosecution, whereas P.W.1 at the time of giving complaint, never spoken about the presence of P.W.3 also. Therefore, it is highly doubtful how the Trial Court has believed the case of the prosecution in its entirety.

5. Arguing further, the learned counsel has stated that when the prosecution has brought out the case that P.W.7 - Ram Mohan, Auto driver, has also taken the deceased in his auto with P.W.1 and also the father and sister of P.W.1 and for the reason best known to them, the father of P.W.1 was not examined. Moreover, when the entire case of the prosecution is prepared on the basis of previous motive that the accused was brought before the Village Panchayat for having stolen the mobile phone, watch and Rs.1,000/- from the house of the sister-in-law of the deceased viz., P.W.4 and he was also found guilty and thereupon, fined with Rs.10,000/- by the Village Panchayat, none of the Village Panchayatars was produced by the prosecution to support their case that there was previous enmity or motive for causing the death of the deceased Balakrishnan. Therefore, there were serious defects in the evidence of P.W.1. P.W.1, wife of the deceased, who was also set up as an eyewitness, deposed before the Trial Court for the first time that P.Ws.2 and 3 were also present at the time of occurrence and P.W.7 - Ram Mohan, Auto driver, has also taken the body of the deceased, while he was alive in his auto along with P.W.1 and her sister [P.W.4] and the father of P.W.1, for the reason best known to her, in Ex.P.1 - Complaint, P.W.1 has not stated about the presence of P.Ws.2 and 3 and also her father, who also accompanied them in the auto. It is highly improbable to accept their case as spoken by the witnesses.

6. Coming to the delay in lodging the FIR, he has argued that when the occurrence is said to have been taken place on 05.03.2012 at 04.45 p.m., the First Information Report was registered only on 05.03.2012 at 22.00 hours and it has reached the learned Judicial Magistrate, Valliyoor, on 06.03.2012 at 02.00 a.m, which is unbelievable, for the reason that it was the case of the prosecution that they received the information from the Hospital authorities and



on receipt of information from the Hospital authorities indicating that the deceased was brought dead after the appellant/accused attacked him giving fatal injury, they registered an FIR on 05.03.2012 at 10.00 p.m., whereas, P.W.7 - Ram Mohan, Auto driver, in his evidence, deposed that the Police came at 06.00 p.m. Therefore, it is highly improbable to accept the case of the prosecution that they received information from the Hospital authorities and thereupon, they registered the First Information Report on 05.03.2012 at 10.00 p.m., when there was a complete discrepancy and there was no coercive evidence adduced by the prosecution with regard to the registration of the FIR. It is highly unbelievable the case of the prosecution and there was no acceptable explanation offered by the Investigating Officer to dispel the doubt raised by the defence. Therefore, even the registration of FIR against the accused/appellant has to be doubted and the case of the prosecution should be brushed aside.

7. Coming to the evidence given by P.W.2 - Ganesan, he has also pleaded the way in which he has spoken before the Trial Court, cannot be easily acceptable even by a man of ordinary prudence and the reason being that when P.W.2 - Ganesan has spoken before the Trial Court that he was a common brother-in-law of both the accused/appellant and the deceased, his presence in the scene of occurrence is not acceptable. It is highly unbelievable, the reason being that he deposed that when he had spoken with his friends viz., Gnanasekaran [P.W.6], Jegan, Muthukani, Kothandan and the deceased Balakrishnan, the accused/appellant came with a knife and attacked the deceased on his backside, left hand wrist, chest and abdomen. According to P.W.1, more than 20 persons were present in the scene of occurrence, but, none of the independent witnesses deposed about the involvement of the appellant in the alleged occurrence. P.Ws.1 to 3 are the relatives of the deceased. Further, the independent witnesses, whose names were mentioned in the F.I.R., was not examined as prosecution witnesses. Further, the presence of P.W.2 and the evidence adduced by him before the Trial Court to convict the accused/appellant also cannot be acceptable, merely, for the reason that, he was a common brother-in-law of both the accused/appellant and the deceased and the Trial Court has taken the same in favour of the prosecution and proceeded with the false evidence given by P.W.2. When there are no evidences whatsoever placed before the Trial Court by the prosecution to bring home the offence of murder allegedly made by the prosecution, it is improbable on the part of the Trial Court to convict and sentence the appellant with life imprisonment.

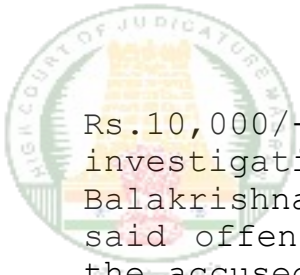
8. Mr.R.Anandraj, learned Additional Public Prosecutor appearing for the State supporting the conviction and sentence imposed against the accused/appellant, argued that when there being any motive, challenging the motive successfully before the Trial Court, the appeal filed before this Court is wholly un-sustainable in law. When there were three witnesses viz., P.W.1 - Rajee Shri, wife of the deceased, P.W.2 - Ganesan, a relative of both the



appellant and the deceased and P.W.3 - Duraisamy, elder brother's son of the deceased, the motive attributed by the prosecution against the appellant is that before the date of death of the deceased, the accused was found guilty for having stolen the mobile phone, watch and Rs.1,000/- from the house of the sister-in-law of the deceased [P.W.4], for which, he has been fined with Rs.10,000/- by the Village Panchayat at the instigation of the deceased Balakrishnan. When the Trial Court has accepted the motive placed by the prosecution that has led to the cause of death of the deceased Balakrishnan, the accused/appellant did not even take any effort to impeach the evidence placed by the prosecution with regard to the theft of mobile phone, watch and Rs.1,000/- from the house of the sister-in-law of the deceased [P.W.4]. It was also the case of the accused/appellant that the accused for having stolen the mobile phone, watch and Rs.1,000/- from the house of the sister-in-law of the deceased, a fine of Rs.10,000/- was imposed and thereafter, no complaint has been made by the deceased family and that cannot be taken as a defence to disbelieve the motive attributed against the accused/appellant, the reason being that, for the offence of theft of mobile of phone, watch and Rs.1,000/-, P.W.-4, who is the sister-in-law of the deceased, never took any effort to go to Police Station and having found that the best way to punish the accused/appellant was to bring him before the Village Panchayat, which is the better and effective machinery to punish the appellant/accused, the appellant was made to appear before the Village Panchayat and fined with Rs.10,000/- for the theft of such articles and hence, it is not open to the accused/appellant to say before this Court that the prosecution has failed to establish the motive by showing any corroborative evidence that when the accused/appellant has made an attempt to steal the articles from the house of the sister-in-law of the deceased, no complaint was given in this regard.

9. Again, coming to the finding given by the Trial Court believing the case of the prosecution on the basis of the evidence of P.W.2 - Ganesan, who is an independent witness and in his evidence, he has clearly spoken that he is not only the brother-in-law of the deceased, but also the brother-in-law of the accused/appellant. Therefore, there is no need for him to speak lie against the accused/appellant. We also find merits in the findings recorded by the Trial Court.

10. As a matter of fact, the accused/appellant was found guilty for having committed the offence of theft of mobile phone, watch and Rs.1,000/- from the house of the sister-in-law of the deceased viz., P.W.4, for which, P.W.1, P.W.4 and the deceased have jointly made arrangement for holding Village Panchayat. The accused/appellant was brought before the Village Panchayat and he was found guilty on the evidence placed by the deceased, P.W.1 and P.W.4. Accepting the theft of mobile phone, watch and Rs.1,000/- committed by him from the house of the sister-in-law of the deceased, the accused/appellant has paid the fine amount of



Rs.10,000/-, imposed by the Village Panchayat. When the investigation and the arrangements have been made by the deceased Balakrishnan to prosecute the accused/appellant for committing the said offence from the house of his sister-in-law, it appears that the accused/appellant has nurtured motive to wreak vengeance against the deceased Balarkrishnan. Therefore, when he was chatting near Madhaganeri Bus Stand, the appellant/accused has come and assaulted the deceased in the presence of P.W.1 and others. When P.W.1, wife of the deceased, P.W.2, brother-in-law of the accused/appellant had spoken clearly about the incident, the Trial Court finding merits on the evidence produced, has rightly believed the case of the prosecution. Therefore, when the motive and the cause of the death, has again been corroborated by P.W.7 - Ram Mohan, Auto driver, who had also spoken before the Trial Court that he brought the deceased into his Auto and taken him to the Hospital with P.W.1 and father and sister of P.W.1, the argument advanced by the learned counsel appearing for the appellant that the father of P.W.1, who accompanied with the deceased, P.W.1 and P.W.4, should be examined, is highly unacceptable. The reason being, we also make it clear that when the Trial Court was having ample evidence as we mentioned above, non-examination of the father of P.W.1, who also said to have been accompanied with P.W.1, the deceased and the sister of P.W.1, cannot be construed as fatal to the case of the prosecution. Therefore, we do not find any irregularity or infirmity in the judgment of the Trial Court, warranting interference by this Court. Hence, this Criminal Appeal fails and the same is dismissed. The conviction and sentence imposed by the Trial Court are confirmed.

Sd/-

Deputy Registrar (Ac)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

smn2

To

1.The IV Additional Sessions Judge,
Tirunelveli.

2.The Judicial Magistrate,
Valliyoar.

3.The Inspector of Police,
Pazhavor Police Station,
Tirunelveli District.

<https://hcservices.ecourts.gov.in/hcservices/>



4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl. A. (MD)No.350 of 2018
14.02.2020

VB (22.07.2020) 8P 5C