



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2020

CORAM

THE HONOURABLE MR. JUSTICE T. RAJA

AND

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

CRL.A (MD) No. 389 of 2018

Masilamani

.. Appellant/Sole Accused

vs.

State

the Inspector of Police
Keelakarai Police Station
Keelakarai
Ramanathapuram District
(Crime No. 495/1985)

.. Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the Additional Sessions Court, Ramanathapuram at Madurai in S.C.No.244 of 1989 dated 31.03.1992.

For Appellant : Mr. R. Alagumani

For Respondent : Mr. K. Dinesh Babu

Additional Public Prosecutor

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY T. RAJA, J.)

The appellant is the sole accused in S.C.No.244 of 1989 on the file of the Additional Sessions Court, Ramanathapuram at Madurai. He stood charged for offence under Section 302 IPC. The trial Court, by judgment dated 31.03.1992 convicted the accused under Section 302 IPC and sentenced him to undergo imprisonment for life. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

2. The facts leading to the filing of the criminal appeal in nutshell are as follows:

The deceased in this case was one Solomon. He was a resident of Panaiyangal Village. The accused is the sister's son of the deceased. On 27.10.1985, at about 9.15 p.m., near a Church, with regard to selling of an axe, there was a wordy quarrel arose between the father of the appellant Durairaj and one Solomon. While so, the



accused went inside his house and brought an iron crowbar and attacked the said Solomon on his head and left shoulder. On account of the injuries sustained, Solomon died on the spot. The occurrence was witnessed by Balammal (P.W.-1), sister of the deceased. At that time, one Pasumalai (P.W.-2) son of the deceased also came there. When both P.W.-1 and P.W.-2 lifted the deceased along with one Selvam (not examined), who also there, the deceased was found dead. Thereafter, P.W.-1, P.W.-2 along with one Rajamanickam went to Keelakarai police station and preferred a complaint Ex.P.-1, which was registered in Crime No.495/1985 for offence under Section 302 IPC. Ex.P.-8 is the First Information Report.

2.1. On 28.10.1985, P.W.-9 Sub Inspector of Police proceeded to the place of occurrence and prepared an observation mahazar (Ex.P.4) and a rough sketch (Ex.P-9) in the presence of the Village Administrative Officer (P.W.-7) and another. He conducted inquest over the body of the deceased in the presence of Panchayatdars and the inquest report was marked as Ex.P.-10. He recovered bloodstained earth M.O.6 and sample earth M.O.-7 from the place of occurrence. Then, he forwarded the body for postmortem.

2.2. P.W.-5, who conducted the autopsy on the body of the deceased, found the following injuries:

1. An oblique lacerated wound of 2" x ¼ " scalp deep in size on the right parietal region of scalp close to midline and diffuse contusion around it. On exploration of the wound, haematoma benign the scalp present. A depressed communicated fracture of 6" x 3" in size involving the parietal and right temporal bones (Eight pieces of Bones with size longing from 1" x ¾" to 2 ½ x 1 ½". Membrances congested and rupture of 1 ½" x ¾" in size through which a portion of right parietal lobe of brain protruding a contusion of 8" x 2 ½" in size is present over the right parietal region.

He opined that the deceased would appear to have died of hemorrhage due to injury to brain about 14-18 hrs prior to autopsy. Ex.P-3 is the Postmortem Certificate.

2.3. P.W.-9, during the course of investigation, examined the witnesses P.W.-1 to P.W.-4 and recorded their statements. On the same day, on the same day, he arrested the accused in Keelakarai-Ramanathapuram Road at about 5.30 p.m. in the presence of witnesses. On such arrest, the accused made a voluntary confession, in which he disclosed the place where he had hidden the iron crowbar. In pursuance of the same, he took the witnesses and the police to the place of hide out and produced Iron Crowbar (M.O.-3). P.W.-9 recovered the same under a mahazar. Then, he forwarded the accused to judicial remand. Bloodstained cloth recovered from the body of the deceased was also sent to the Court. Since the present



Investigating Officer was transferred, the investigation was handed over to P.W.-10. He stated that since the occurrence had taken place long back, on suggestion by the then Public Prosecutor, the material objects were not sent for chemical analysis. Finally, he laid the charge sheet against the accused on 11.08.1986.

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3. Based on the above materials, the trial Court framed a lone charge under Section 302 IPC. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 10 witnesses were examined, 10 documents and 7 material objects were marked.

4. Out of the said witnesses, P.W.1 claims to have witnessed the said occurrence. According to her, the appellant is her sister's son and with regard to selling of an axe, there was a wordy quarrel between her brother (deceased) the father of the appellant. She witnessed the occurrence in the moonlight. While so, the accused went inside his house and brought an iron crowbar and attacked the said Solomon on his head and left shoulder. On account of the injuries sustained, he died on the spot.

5. P.W.2 is also an eye witness to the occurrence. He has also stated that when he went in search of his father, who had gone to tie the cow, on hearing a noise, he went near the place of occurrence. He further narrated that the accused attacked his father by using a crow-bar on his head and left shoulder and on account of which, he died.

6. P.W.-3 is yet another eye witness to the occurrence. She is also the sister of the deceased. She has stated that on hearing a noise, when she went to the place of occurrence, she saw his brother falling down in pool of blood. Thus, according to the prosecution, P.Ws.1 to 3 are the eye witnesses to the occurrence. P.W.1 has spoken about the complaint made by him and also about FIR.

7. P.W.5-Dr. Shahul Hameed has stated that on 28.10.1985, when he was on duty at the Government Hospital, Keelakarai, at 12.10 midnight, the deceased was brought to him. He found the deceased dead and he gave the postmortem certificate Ex.P-3. His opinion is that the deceased died due to hemorrhage and the injuries sustained to the brain. P.W.-7 is the Village Administrative Officer, who had spoken about the preparation of observation mahazar and rough sketch. P.W.-8 is the Sub Inspector, who registered the FIR. P.W.-9 and P.W.-10 have spoken about the investigation done and filing of final report.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. Having considered all the above, the trial Court has convicted him under Section 302 IPC and accordingly, punished him. That is how, he is now before this Court with this appeal.



9. We have heard the learned counsel for the appellant, the learned Additional Public Prosecutor for the respondent and we have also perused the records carefully.

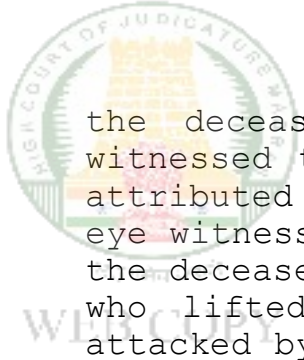
10. Learned counsel for the appellant has made the following submissions:

- When the occurrence had taken place in the evening hours near the Church, except P.W.-1 to P.W.-3, who are interested witnesses, no independent witness has been examined.
- P.W.-1 deposed before the trial Court that the alleged occurrence had taken place at 9.15 p.m., whereas P.W.-3 deposed that the occurrence had taken place at about 6.00 p.m. and hence, the version of the eye-witnesses are doubted.
- Though the FIR was registered as early as on 23.30 hrs on 27.10.1985, it has reached the concerned Court only on 28.10.1985 at about 11.15 hrs. and the delay has not been explained properly.
- When it is the case of the prosecution that there was a wordy quarrel between one Durairaj (father of the appellant) and the deceased, the said Durairaj was not examined.
- According to P.W.-4, the axe was recovered by the police, however, it has not been produced before the trial Court. Moreover, the appellant was 19 years at the time of occurrence, hence, the accused may be considered as juvenile who did not know the good or bad at the time of occurrence.

11. Learned Additional Public Prosecutor, however, opposed this appeal by stating that when the medical evidence corroborates the evidence of the eye-witness P.W.-1 and P.W.-2, the prosecution has proved its case beyond reasonable doubts. He would further submit that though there is a delay in the FIR reaching the Court, it will not affect the root of the prosecution case. Since the eye-witnesses have categorically and consistently deposed before the trial Court, it is proved that it was this accused, who caused the death of the deceased, which has also been corroborated by the medical evidence and hence, no interference is warranted. He concluded his argument by submitting that the non-examination of Durairaj is no way affect the core of the prosecution case. Hence, the appeal is liable to be rejected, he contended.

12. We have considered the said submissions.

13. The prosecution case rests on the eye-witnesses account of P.W.-1 to P.W.-3. P.W.-1 has categorically stated that it was this accused, who went to his house and brought a crowbar and attacked



the deceased on his head and left shoulder. P.W.-2 has also witnessed the said occurrence and he has also spoken the overt-act attributed as against the accused. Therefore, the evidence of the eye witness P.W.1 has been sufficiently corroborated. Moreover, when the deceased fell down, it was P.W.-1, P.W.-2 along with one Selvam, who lifted and found him dead. Further when the deceased was attacked by the accused with a crow bar on account of which he fell down, it was P.W.1, P.W.2 along with one Selvam who have lifted and found the deceased dead. These witnesses also properly gave evidence against the accused that the accused only attacked the deceased and owing to the grievous injuries caused by the accused with the help of a crow bar, the deceased died. Secondly, P.W.9 Investigation Officer deposed that as he was transferred out of the said police station and on 2.11.85, Mr.Devaraj, took over charge as Sikkal Circle Inspector and thereafter, P.w.10-Yesudoss, Inspector of Police, who took over charge of Sikkal Circle Inspector on 9.6.86, in his deposition, stated that when he perused the relevant filed relating to the case, since the incident took place on 27.10.1985, due to long passage of time, he took opinion from the learned Public Prosecutor, who also told him that since the incident took place long time back, the material objects need not be sent for chemical analysis. Since P.W.9 Investigation Officer was transferred out and subsequently, P.W.10-Yesudoss also took over the charge and in view of the opinion given by the learned Public Prosecutor, they have not sent the material objects for chemical analysis, the contention made by the learned counsel appearing for the appellant/accused that the material objects have not been sent to the forensic laboratory for analysis to find out whether the blood stain found in the material objects tallied with the blood of the deceased, cannot be accepted. The reason being that on the basis of the confessional statement given by the accused, the crow bar was found buried and when it was recovered, there was no bloodstain. Even if it were sent for chemical analysis, no purpose would have been served, hence, the same cannot be considered as a fatal lacuna in the prosecution case. As we already held, when P.W.1 has seen the accused attacking the deceased on his head by a crow bar and when he fell down, he went and lifted him and the evidence given by P.W.1 was also supported by the version of another witness, P.W.2 and the evidence of these witnesses have not been discredited by the accused, we are not able to find any ground to interfere with the finding and conclusions reached by the trial Court against the appellant/accused. Secondly, though the age of the appellant/accused was said to be 19 years at the time of occurrence, no materials whatsoever have been placed either before the trial Court or before this Court to substantiate the same. When the credentials placed by the prosecution on the eye-witness account of P.Ws.1 to 3 coupled with the fact that the injuries were found on the vital part, it is clear that it is this accused, who caused the death of the deceased and hence, we are not inclined to interfere with the judgment rendered by the trial Court.



14. In the result, the criminal appeal fails and the same is accordingly, dismissed. The conviction and sentence imposed by the trial Court are hereby confirmed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020
Sub Assistant Registrar(CS)

RR

To

- 1.The Judicial Magistrate,
No.I, Ramanathapuram.
- 2.The Chief Judicial Magistrate,
Ramanathapuram.
- 3.The Additional Sessions Judge,
Ramanathapuram.
- 4.The Principal Sessions Judge,
Ramanathapuram.
- 5.The Inspector of Police
Keelakarai Police Station
Keelakarai
Ramanathapuram District.
- 6.The Superintendent,
Central Prison,
Madurai.
- 7.The Superintendent of Police,
Ramanathapuram.
- 8.The District Collector,
Ramanathapuram.
- 9.The Director General of Police,
Mylapore, Chennai-4
- 10.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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JUDGMENT MADE
CRIMINAL APPEAL No. (MD).No.389 of 2019

28.02.2020

NR(12.06.2020) 7P 13C