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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE S.SRIMATHY

Criminal Appeal No.779 of 2015

Billa @ C.Periyasamy
S/o.Venkatesan

.. Appellant/Accused No.2

Vs.

State represented by
Inspector of Police,
Ulundurpet Police Station,
Villupuram District.
Crime No.612 of 2010

.. Respondent/Complainant

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure against the judgment and order dated 30.11.2015 passed in S.C.No.251 of 2012 on the file of III Additional Sessions Court, Villupuram at Kallakurichi.

For Appellant : Mr.S.Saravana Kumar

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by S.SRIMATHY, J]

This criminal appeal is directed against the judgment of conviction and sentence dated 30.11.2015 passed by the III Additional Sessions Court, Villupuram, Kallakurichi, in S.C.No.251 of 2012.

2. The prosecution story runs thus:

2.1. Sankar (deceased), who, at the time of the incident, was 47 years of age and was living with his wife Iyayiram [PW-1] and his father Ramasamy [PW-3] in Kurumbur village in Kallakurichi. Ramar [A1] and Billa [A2] were also from the same village. It appears that a quarrel ensued between the families of Billa [A2] and that of Sankar in connection with the



festivities in the local Mariamman temple, in which, a police case was registered against Billa [A2] on the complaint given by Sankar. This being the motive, on 01.11.2010, around 05.00 p.m. while Sankar was returning home, he was accosted by Ramar [A1] and Billa [A2] near the Mariamman temple, they picked up a quarrel with him, and Ramar [A1] strangulated Sankar with a nylon rope [MO-1] and Billa [A2] kicked Sankar on his chest. One Ilayaraja [PW-2] and Sundaram [not examined] of the same village intervened, separated them and brought Sankar to his house and left him with his wife Iyayiram [PW-1]. Sankar asked for water to drink and by the time it was served, he is said to have died on the same evening. On the next day i.e. 02.11.2010, Iyayiram [PW-1] lodged a written complaint [Ex.P1], based on which, a case in Ulundurpet P.S.Crime No.612 of 2010 was registered on 02.11.2010 u/s.302 IPC against Ramar [A1] and Billa [A2].

2.2. Elangoven [PW-13], Inspector of Police [hereinafter referred to as 'the Investigating Officer'], took over the investigation of the case, went to the place of occurrence and prepared an observation mahazar [Ex.P3] and a rough sketch [Ex.P2]. The Investigating Officer [PW-13] conducted inquest over the body of Sankar. The inquest report was marked as Ex.P10.

2.3. Thereafter, the body was sent to the Government Hospital, Ulundurpet, for postmortem where Dr.Ganesh [PW-12] performed autopsy on the body of Sankar and issued the postmortem certificate [Ex.P8]. Dr.Ganesh [PW-12], in his evidence as well in the postmortem certificate [Ex.P8], has stated that, he found a ligature mark around the neck. He did not find any injuries on the chest. The sample of the visceral organs were sent to the Tamil Nadu Forensic Sciences Department. The Chemical Analysis Report [Ex.P6] disclosed that neither alcohol nor poison was detected in any of them. After receipt of the Viscera Report [Ex.P9], Dr.Ganesh [PW-12] gave his final opinion as to the cause of death, which is as under:

'Final Opinion: The deceased appears to have died of asphyxia due to the ligature in the neck 24 to 36 hours prior to pm.'

2.4. After examining the witnesses and collecting the various reports of the experts, the Investigating Officer [PW-13] completed the investigation and filed a final report in P.R.C.No.9 of 2011 in the Court of District Munsif-cum-Judicial Magistrate I, Ulundurpet, for the offence u/s.302 IPC, against Ramar [A1] and Billa [A2].

2.5. On appearance of the accused, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the



Court of Session in S.C.No.251/2012 and was made over to the III Additional Sessions Court, Villupuram, Kallakurichi, for trial. The trial Court framed a charge u/s.302 IPC against the accused and when questioned, the accused pleaded 'not guilty'.

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2.6. To prove the case, the prosecution examined 13 witnesses and marked 13 exhibits and 1 material object. Before the accused were examined u/s.313 Cr.P.C., Ramar [A1] died on 17.07.2015 and therefore, the trial proceeded only against Billa [A2]. When the appellant was questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined from the side of the appellant nor any document marked.

2.7. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 30.11.2015 in S.C.No.251 of 2012, convicted the appellant for the offence u/s.323 IPC for kicking Sankar and sentenced him as follows :

Provision under which convicted	Sentence
Section 323 IPC	One year simple imprisonment and fine of Rs.1,000/-, in default, to undergo three months simple imprisonment.

3. Challenging the conviction and sentence, the appellant filed the present appeal, which came up before a learned single Judge, who, in turn, forwarded the case to this Bench for disposal.

4. Heard Mr.S.Saravana Kumar, learned counsel for the appellant and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the respondent State.

5. Though the complaint [Ex.P1] was lodged by Iyayiram [PW-1], wife of Sankar, she had not actually witnessed the occurrence. In her complaint [Ex.P1] as well in her testimony, she has stated that her husband was brought home in the evening of 01.11.2010 by Ilayaraja [PW-2] and Sundaram [not examined] and that they told her about the quarrel and the alleged attack of the accused on her husband. Similarly, Ramasamy [PW-3] had also not witnessed the occurrence as he was nowhere near the place of occurrence, which he candidly admitted in the cross-examination. It is most important to state here that the complaint, in this case, was not given on 01.11.2010 and was given only on 02.11.2010 and the First Information Report was



registered at 06.30 a.m. on 02.11.2010. In the complaint [Ex.P1], there is absolutely no mention of Ramar [A1] strangulating Sankar with a nylon rope. Instead, it is stated in the complaint [Ex.P1] that Ramar [A1] and Billa [A2] picked up a quarrel with Sankar and assaulted him. The theory of strangulation was introduced only after the postmortem.

6. Iyayiram [PW-1], in her testimony, has stated that her husband used to consume liquor and come home drunk. It is the specific defence of the appellant that Sankar committed suicide by hanging in the wee hours of 02.11.2010 and that has been converted into a case of murder.

7. Be that as it may, the prosecution has not examined Sundaram and Ilayaraja [PW-2] turned hostile. As alluded to above, no injury was found on the chest of Sankar in the postmortem so as to draw an inference that Billa [A2] could have kicked him on his chest. Thus, we find no scintilla of evidence to connect the appellant with the crime.

In the result, the Criminal Appeal is allowed and the appellant is acquitted of the charge u/s.323 IPC. The conviction and sentence passed in S.C.No.251 of 2012 on the file of III Additional Sessions Court, Villupuram, Kallakurichi, vide judgment and order dated 30.11.2015, are set aside. Fine amount, if any, paid by the appellant shall be refunded. Bail bond executed shall stand discharged.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gm

To

- 1.The III Additional Sessions Court,
Villupuram, Kallakurichi.
- 2.-do- through Principal Sessions Judge,
Villupuram.
- 3.The District Munsif-cum-Judicial Magistrate No.1,
Ulundurpet,
Villupuram District.



4.The Chief Judicial Magistrate,
Villupuram.

5.The Inspector of Police,
Ulundurpet Police Station,
Villupuram District.

6.The Public Prosecutor,
High Court, Madras.

7.The District Collector,
Villupuram.

8.The Director General of Police,
Chennai.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras

Criminal Appeal No.779 of 2015

GJ (CO)
PR (17/11/2021)