



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.06.2021
Pronounced on : 06.07.2021

C O R A M

THE HON'BLE MR.JUSTICE P.N.PRAKASH
AND
THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal No.498 of 2018

Kanagaraj ... Appellant/ Sole Accused
-vs-

The State Rep. By
Inspector of Police,
Kottur Police Station,
Coimbatore.
(Crime No.80 of 2012)

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the conviction and sentence passed by the learned III Additional District and Sessions Judge, Coimbatore dated 31.07.2015 in S.C.No.19 of 2013.

For Appellant : Mr.B.Thirumalai

For Respondent : Mr.R.Muniyapparaj
Government Advocate (Crl.Side)

J U D G M E N T

R.PONGIAPPAN, J.

The present appeal has been filed to set aside the conviction and sentence passed in S.C.No.19 of 2013 dated 31.07.2015, on the file of the learned III Additional District and Sessions Judge, Coimbatore.

2. The appellant is the sole accused. He stood charged for the offence under section 302 IPC. The accused denied the charge and opted for trial. Therefore, he was put on trial of the charge.

3. After full pledged trial, the learned III Additional District and Sessions Judge, Coimbatore, found the accused guilty of the offence under Section 302 IPC. Accordingly, the accused was convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for three months. Challenging the conviction and sentence the accused is before this Court, by way of filing the



present Criminal Appeal.

4. The relevant facts of the case, which gave rise to filing of this appeal are necessary to be recapitulated for the disposal of this appeal.

(i) The accused and the deceased Mayilsamy were father and son. The accused is married and has a daughter. The deceased Mayilsamy, his wife, the accused, his wife and daughter were living under same roof. The accused was addicted to alcohol and he used to quarrel with his father demanding money for consuming alcohol.

(ii) On 01.04.2012, the accused and his father, the deceased Mayilsamy had an argument, when the accused demanded money for consuming alcohol. Enraged by this, the accused was asked by his father Mayilsamy to get out of the house along with his wife and the child. Further, the deceased Mayilsamy, told the accused that he will not spare even a single paise from his property to the accused. After this argument, at around 9.00pm on 01.04.2012, PW4 who is the wife of the accused called PW3, her father and wanted her father to come and fetch her and her daughter as she was not willing to live alone with accused.

(iii) PW3, came to her house at 6.00am on 02.04.2012 for taking PW4 to his house. As the deceased Mayilsamy had left for his coconut grove by that time, PW3 and PW4 went there to inform him before leaving. When PW3 and PW4 reached the coconut grove, they saw the accused chasing the deceased Mayilsamy with a spade (kz;bt1;o) and hitting him on his head. According to PW3 and PW4, PW1 and PW2 were close by and they too saw the incident. Infact, PW1 and PW2 ran towards the scene of occurrence shouting at the accused. The accused, on seeing them, ran away from the scene of occurrence with the spade.

(iv) It is the case of the prosecution that criminal law was set in motion on a written complaint filed by PW1 with Kottur Police Station at 7.30 am on 02.04.2012. Ex.P1, is the signature of PW1. Immediately after the receipt of the complaint from PW1, Mr.P.Devakumar [PW10], the then Sub Inspector of Police, Kottur Police Station registered a case against the appellant/accused in Cr.No.80 of 2012. The printed FIR is marked as Ex.P17. After the registration of the FIR, a copy of it was sent to PW12-Mr.Subramani, who is the Inspector of Police, Analmalai Circle.

(v) On receipt of the copy of the FIR, PW12, rushed to the scene of occurrence and in the presence of PW5-Kadirvel and one Shivakumar, he prepared the observation mahazar under Ex.P2. He drew the rough sketch and the same was marked as Ex.P19. On the same day between 9.30 am and 10.30 am in the presence of same witnesses, he recovered the MO2 to MO4 under the cover of



seizure mahazar Ex.P3. Thereafter, in the presence of panchayatars and witnesses, he prepared the inquest report over the dead body and the inquest report was marked as Ex.P20. After the completion of above formalities, through PW8-Mr.Prabhu, PW12 sent the dead body of Mayilsamy, to Government Hospital, Pollachi for postmortem. He also submitted an application under Ex.P9 for conducting postmortem.

(vi) On receipt of such requisition, PW7-Dr.Suresh D.Joseph, on 02.04.2012 at about 2.20 pm while he was on duty, conducted autopsy over the dead body and found the following injuries.

External Injuries:

- i) A 2x0.5x bone deep cut injury 5 cm above left eyebrow
- ii) A 4x1x bone deep cut injury, situated 5 cm above the left ear.
- iii) A 5x2x bone deep cut injury, 2 cm above the injury no.2
- iv) A 5x2x bone deep cut injury, 5 cm behind the injury no.3
- v) lower portion of the left ear was cut and hanging.

Internal injuries:

- i) fracture of 1 to 5 left side rib bones
- ii) fluid mixed with blood found on the left pleural cavity
- iii) fracture on the top of the skull
- iv) fracture on the left side of the skull with 8x8 cm depression on the left temporal bone
- v) Damage to brain and intra cerebral haemorrhage present.

(vii) PW7 collected the Viscera, blood sample and forwarded the same for chemical examination. During the examination, poison was not deducted in the viscera. PW7 opined that the deceased would have appeared to have died of shock and haemorrhage due to the injury sustained in his vital organ such as brain and left lung. The postmortem certificate and the final opinion given by the Doctor was marked as PW12 and PW13, respectively.

(viii) In the meantime, on the same day about 7.10am, when PW6-Mr.Veerapandian, who is the Village Administrative Officer, Thalavaipalayam was in his office along with his Assistant Kalimuthu, the appellant/accused appeared before him and gave a confession statement. The extra judicial confession recorded by PW6 was marked as Ex.P4. After recording the extra judicial confession, PW6 prepared a special report and along with the same, he handed over the accused to PW12, investigation officer.

(ix) In continuance of investigation, PW12, in the presence of PW6 and one Kalimuthu, recorded the confession statement



from the accused. Consequentially, in view of the confession statement, the appellant identified the shirt (MO5) and spade (MO1) and after identifying the same, both the said material objects were recovered by PW12 under the cover of Seizure Mahazar Ex.P8 in the presence of same witnesses. The admitted portion of the confession statement was marked as Ex.P6. In the meantime, PW9-Mrs.Vimali Thiagarajan, the then Assistant Director, Forensic Science Department, Chennai, examined the material objects, which were collected during the time of investigation and issued a certificate under Ex.P11.

(x) Thereafter, PW12 recorded the statements from the witnesses, and came to the positive conclusion that the accused/appellant herein committed the offence of homicidal death and filed a final report, accordingly.

5. Based on the materials available, the trial Court framed charge for the offence under Section 302 IPC. The accused denied the charge and opted for trial. Therefore, the accused was put on trial.

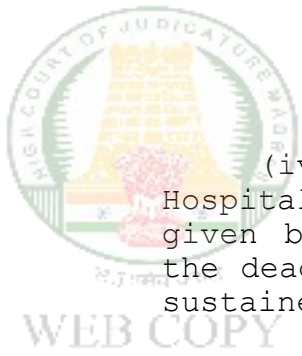
6. During the course of trial proceedings, in order to prove the case of prosecution, as many as 13 witnesses were examined on the side of the prosecution and 20 documents were exhibited as Ex.P1 to Ex.P20. Besides, 9 material objects [i.e. M.O.1 to M.O.9].

7. Out of the abovesaid witnesses, PW1-Chenniappan is the de facto complainant. PW2-Kalidass is the eyewitness to the occurrence. Since both of them have not supported the case of the prosecution, they were treated as hostile witnesses. Thereafter, even during the time of cross examination by the learned Additional Public Prosecutor, they did not say anything in support of the case of the prosecution.

(i) PW3-Shanmugam and PW4, Dhanalakshmi, who are the father-in-law and wife of the accused respectively, have deposed as during the time of occurrence, the accused was chasing the deceased Mayilsamy with a spade and hit him on his head. Further they have stated that immediately after the occurrence, the accused herein ran away from the scene of occurrence.

(ii) PW5-Kadirvel, is the resident of Kolarpatti. He has spoken about the preparation of observation mahazar and rough sketch and also about the seizure of MO2 to MO5 by the investigation officer.

(iii) PW6 -Veerapandian, is the Village Administrative Officer. He has stated about the surrender of accused/appellant before him and about the recording of extra judicial confession. Further, he has stated about the confession statement given before by the investigation officer and also about the recovery of MO1 and MO2.



(iv) PW7, Dr. Suresh D. Joseph, attached with Government Hospital, Pollachi has stated about the receipt of requisition given by the investigation officer for conducting autopsy over the dead body of the deceased, further stated about the injuries sustained by the deceased and also about the cause for death.

(v) PW8-Prabhu, is the then Grade I constable Kottur Police Station. He has deposed about the entrustment of dead body to the Doctor for conducting postmortem and also about the receiving of the material objects which were removed from the dead body of the deceased.

(vi) PW9-Mrs. Vimalai Thiyagarajan, is the then Assistant Director, Forensic Science Department, Chennai. She has deposed about the examination of MO1 to MO9 and about the issuance of certificate under Ex.P10 and Ex.P11.

(vii) PW10 to PW13 are the then police officers, in the Kotur Police Station. They have stated in their evidence in respect to the registration of the case, the details of investigation and about the filing of final report.

8. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. However, he did not chose to examine any witness or mark any document on his side.

9. Having considered all the above, the learned III Additional District and Sessions Judge, Coimbatore, found the appellant guilty for the homicidal death. Accordingly, the accused was convicted under Section 302 IPC and sentenced as stated in paragraph No.3 of this judgment.

10. Aggrieved over the conviction and sentence the appellant is before this Court with the present Criminal Appeal.

11. We have heard Mr.B.Thirumal, learned counsel appearing for the appellant/accused and Mr.R.Muniyapparaj, learned Government Advocate (Crl.Side). We have also perused the records carefully.

12. Before the trial Court, the prosecution agency attempted to prove their case in two limbs. Primarily, by way of producing extra judicial confession statement said to have been recorded from the accused and secondly, by way of examining the eyewitnesses.

13. The learned counsel appearing for the accused/appellant would contend that the alleged extra judicial confession said to have been recorded from the accused was done by PW6 only after the registration of the police case. Therefore, it cannot be said that the same is a voluntary one, further, the same is not



sufficient to accept the case of the prosecution with entirety. More than that, the evidence in respect to arriving the police station along with the accused, PW6-VAO had given contradictory evidence and therefore, the evidence given by PW6 cannot be entertained to accept the case of the prosecution.

14. The learned counsel appearing for the appellant/accused would further contend that PW3 and PW4 who are the alleged eyewitnesses to the occurrence, has stated in their evidence that PW1 and PW2 have also seen the occurrence. Since the said evidence was not supported through the evidence of PW1 and PW2, it should be presumed that PW3 and PW4 have also not seen the occurrence. Apart from that in the charge sheet, filed by the investigation officer, he has shown that PW4 Dhanalakshmi is a hearsay witness. But during the time of giving evidence, PW4 improved her version and stated the occurrence as she has seen the occurrence and therefore, it is necessary to hold that the prosecution has not proved their case beyond reasonable doubt.

15. Per contra, the learned Government Advocate (Crl Side) appearing on behalf of the respondent would contend that since all the witnesses examined on the side of prosecution gave evidence before the trial Court, after a long gap from the date of occurrence, it would be probable for them to give such evidence with some minor contradiction and therefore, the said contradiction cannot be taken into account for deciding the appeal. According to him, interference in the findings arrived at by the trial Court is not necessary.

16. Now, on considering the rival submissions made by the learned counsel appearing on either side with the relevant records, it seems that before the trial Court, the extra judicial confession said to have been given by the accused was marked as Ex.P4. In the said document, the accused had clearly admitted that he is having the habit of drunkenness. Further he had narrated the incident happened in his house on 01.04.2012 and about the occurrence happened on 02.04.2012 in the coconut grove. In this regard, PW6, Village Administrative officer had given the cogent evidence in respect to the surrender of accused and about the recording of extra judicial confession statement.

17. However, the main issue, which is necessary to be seen in this appeal is that while at the time of giving evidence as PW6, the Village Administrative Officer has stated that after recording the confession statement from the accused, the particulars of surrender and other things were intimated to the police station and thereafter, by using the police vehicle, some police personnel came to his office and afterwards, all of them went to the police station.



18. Per contra, the investigation officer in this case, while at the time of giving evidence as PW12, categorically stated that only PW6, had produced the accused in the police station. Therefore, in respect to production of the accused in the police station, PW6 has given contradictory evidence.

19. Now, on considering the said aspect thoroughly, it is clear from the evidence of PW6 that only the police personnel had come to his office, in otherwise, he has not particularly stated that PW12 also came to his office. Even assuming that PW12 also attended the office of PW6, after the confession was recorded, since the evidence of PW6 in respect to the recording of extra judicial confession is clear and cogent, the said contradiction now indicated by the appellant/accused is not sufficient to disbelieve the validity of extra judicial confession statement.

20. Another one aspect in respect to the said document is that, as per the evidence of PW6, he has recorded the extra confession station on 02.04.2012 at about 10 am. On the other hand, PW10, the then Sub Inspector of Police, who registered the FIR in this case has stated in his evidence that on 02.04.2012 at about 7.30, the case pertains to this occurrence have been registered. Therefore, it is very clear that the extra judicial confession has been recorded after the registration of the case. In this connection, it is necessary to verify whether PW6 had recorded the said extra judicial confession after acquiring the knowledge of the registration of the case or not.

21. In this regard, in respect to the registration of the case, PW6 did not say anything. According to him, he alone informed the surrender of the accused to the police station. The said evidence is very clear and understandable that at the time of recording the evidence, PW6, is not having any knowledge in respect to the registration of the case. Moreover, PW12 has stated in his evidence that on the date of occurrence at 14.30 hrs the accused was produced by PW6 in the police station. Therefore, it is made clear that without knowing the registration of case, PW6 recorded the extra judicial confession statement. Accordingly, though the extra judicial confession is recorded after the registration of the case, the same cannot dilute the case of the prosecution.

22. Further, in respect to recovery of material objects, the evidence given by PW6, is very supportive in nature. In otherwise, nothing was suggested on the side of the accused that the material objects marked in this case are not recovered as alleged by the prosecution.

23. Secondly, during the time of trial on the side of prosecution four witnesses have been examined as eyewitness to the the occurrence. From the above, the de facto complainant,



who is the eyewitness to the alleged occurrence and one another eyewitness, who is examined as PW2 have not supported the case of the prosecution. Hence they were treated as a hostile witness. Even after treating them as a hostile witness, during the time of their cross examination, they have not stated anything in support of the prosecution case.

24. On the other hand, PW3, who is the father-in-law of the accused/appellant and PW4, wife of the accused has clearly narrated the occurrence without any contradiction.

25. In the said occasion, it is the case of the accused/appellant that in the charge sheet filed by the investigation officer, PW4 was cited a hearsay witness. On the other hand, during the time of giving evidence, she has narrated the occurrence as she was present during the time of occurrence. So the said evidence is a false one.

26. In this regard, on going through the evidence recorded from PW4, it is true before the trial Court she has narrated the occurrence as she was present during the time of occurrence in the occurrence place along with PW3. In respect to the said evidence, during her cross examination, on the side of accused, nothing was suggested as she has not given any statement under Section 161 Cr.P.C that she is not present at the time of occurrence. More than that, before the investigation officer also, nothing was suggested as PW4 did not give 161 Cr.P.C. statement as she saw the occurrence.

27. In general in criminal cases, statements recorded by the police during the course of investigation cannot be used for any purpose during the trial except to contradict the witness as provided under Section 145(1) of the Evidence Act, 1872. Similarly, if there are material improvements or contradictions or omissions which amount to contradictions found in the deposition then it would be necessary for the defence to bring the earlier statement made before the police on record and further to prove it in accordance with the manner prescribed under Section 145 of the Evidence Act, 1872. Therefore, without following the said procedure in the trial Court, the submission now made by the appellant/accused cannot falsify the case of prosecution.

28. Further, in respect to minor contradictions referred by the appellant's counsel, it is necessary to see the judgement of our Hon'ble Apex Court in Sachin Kumar Singhraha Vs. State of Madhya Pradesh, reported in 2019 (8) SCC 371 wherein our Hon'ble Apex Court has held as follows.

"12. The Court will have to evaluate the evidence before it keeping in mind the rustic nature of the depositions of the villagers, who may not depose about exact geographical locations



WEB COPY

with mathematical precision. Discrepancies of this nature which do not go to the root of the matter do not obliterate otherwise acceptable evidence. It need not be stated that it is by now well settled that minor variations should not be taken into consideration while assessing the reliability of witness testimony and the consistency of the prosecution version as a whole."

29. Therefore, applying the ratio laid down in the above judgment to the facts of the case, we are of the opinion that the testimony of PW3 and PW4, appears as a cogent and trust worthy. Their evidence has clearly proved the occurrence as during the relevant point of time, with an intention to kill his father, the accused/appellant herein by using the spade, attacked the deceased and caused multiple fatal injuries. The evidence given by the post mortem doctor in respect to injury sustained by the deceased also corroborates the said evidence.

30. It is the case of the accused/appellant that the records viz., 161 Cr.PC statement recorded from the witnesses have not been forwarded to the Judicial Magistrate immediately and therefore, the same would create a doubt whether the investigation in this case has been completed as alleged in the prosecution case. In this regard, PW12, has fairly conceded in his evidence that only after five months, 161 Cr.P.C. statements are handed over in the Judicial Magistrate, Court.

31. Therefore, in the said circumstances, it is necessary to find out whether such act committed by the investigation officer is fatal to the prosecution or not. In this aspect, before making submissions as above, it is necessary for the accused/appellant to show in what way due to the said lapse he got prejudiced. Only in the said event, we may come to the conclusion that the act committed by the investigation officer is prejudicial to accused and therefore, the same would falsify the case of prosecution. But, herein it is a case, to substantiate his contention, none of the circumstances were indicated on the side of the accused. Therefore, we are of the opinion that non sending the records immediately to the Court is only a defect committed by the investigation officer. In the judgment reported in 2010 (3) SCC Cri. 1402, our Hon'ble Apex Court has held as follows:

"Defect in the investigation by itself cannot be a ground for acquittal. Investigation is not the solitary area for judicial scrutiny in a criminal trial. Where there has been negligence on the part of the investigating agency or omissions, etc, which resulted in defective investigation, there is a legal obligation on the part of the court



WEB COPY

to examine the prosecution evidence de hors such lapses carefully to find out whether the said evidence is reliable or not and to what extent it is reliable and as to whether such lapses affected the objects of finding out the truth. The conclusion of the trial in the case cannot be allowed to depend solely on the probity of investigation. There may be highly defective investigation in a case. However, it is to be examined as to whether there is any lapse by the Investigating Officer and whether due to such lapse any benefit should be given to the accused. If primacy is given to such designed or negligent investigations or to the omissions or lapses by perfunctory investigation, the fake and confidence of the people in the criminal justice administration would be eroded."

32. Therefore, applying the dictum laid down by our Hon'ble Apex Court, it is very clear that the defect committed by the investigation officer is not at all sufficient to disbelieve the entire case of the prosecution.

33. In the result, in the light of the above discussion, the Criminal Appeal is dismissed and the impugned order of conviction and sentence passed by the learned III Additional District and Sessions Judge, Coimbatore dated 31.07.2015 in S.C.No.19 of 2013, is hereby confirmed.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

ars

To

1. The III Additional District Sessions Judge,
Coimbatore.
2. Do Thro The Principal Sessions Judge,
Coimbatore.
3. The Judicial Magistrate II,
Pollachi.



4. Do Thro The Chief Judicial Magistrate,
Coimbatore.

5. The Superintendent of Police,
Central Prison, Coimbatore.

6. The Inspector of Police,
Kottur Police Station,
Coimbatore.

7. The District Collector,
Coimbatore District.

8. The Director General of Police,
Mylapore, Chennai - 4.

9. The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer,
Criminal Section, High Court,
Madras.

Criminal Appeal No.498 of 2018

KV(CO)
GN(02/08/2021)