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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.12.2021

DELIVERED ON : 17.12.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

CRL.A.No.603 of 2018

G.Ramasamy

..Appellant/Accused

Vs.

The Inspector of Police
Dhali Police Station
Thiruppur District
Cr.No.398/15

..Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. to set aside the judgment dated 22.12.2017 passed in S.C.No.220 of 2015 by the III Additional District and Sessions Judge, Tiruppur at Dharapuram.

For Appellant : Mr.Philip Ravindran Jesudoss

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

J U D G M E N T

P.N.PRAKASH, J.

Challenging the judgment of conviction and sentence dated 22.12.2017 passed by the III Additional District and Sessions Judge, Tiruppur at Dharapuram, in S.C.No.220 of 2015, the accused has preferred this appeal.

2. For the sake of convenience, the appellant (Ramasamy) and the deceased (Kalidas) will be referred to by their respective names.

3. The prosecution story runs thus :



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3.1. Kalidas, who was aged about 33 years at the time of his death, was residing with his father Madanagopal (P.W.1) in Ward No.13, No.22/14, Bajanai Koil Street, Dhali Post, Udumalpet Taluk.

3.2. Ramasamy was a close relative of Dhanalakshmi (P.W.6). When the marriage of Dhanalakshmi (P.W.6) with Kalidas was fixed, Ramasamy did not want the marriage to go and so, he went and complained to Dhanalakshmi's (P.W.6's) father that Kalidas was already a married man and has children. However, Dhanalakshmi's (P.W.6's) father made enquiries about this and found that it was not so and hence, the marriage of Dhanalakshmi (P.W.6) with Kalidas was solemnised on 29.08.2014. Thereafter, there was no love lost between Ramasamy and Kalidas.

3.3. On 01.10.2014, while Kalidas was going with Dhanalakshmi (P.W.6) to a temple, a quarrel ensued between Ramasamy and Kalidas, in which, both of them freely fought. In the said fight, Kalidas is said to have bitten the ear of Ramasamy and on a complaint of Ramasamy, Kalidas was arrested, jailed and later released.

3.4. It is alleged that on 21.08.2015, when Kalidas was in his house, his sister's husband Jayaprakash (P.W.7) and his friend Periasamy (P.W.8) came to his house in the evening. At that time, Dhanalakshmi (P.W.6) asked them to have dinner and thereafter, return to their village. Since it was night time, they also agreed. In order to prepare dinner, Dhanalakshmi (P.W.6) asked Kalidas to buy some groceries. Kalidas went to Iyyanar Stores nearby, which was run by Shanthi (P.W.4). Along with Kalidas, Jayaprakash (P.W.7) and Periasamy (P.W.8) also went. When Kalidas was in the grocery shop, Ramasamy came there armed with a billhook (M.O.1) and indiscriminately attacked Kalidas on his head. This incident was witnessed by Shanthi (P.W.4), Jayaprakash (P.W.7) and Periasamy (P.W.8), apart from others. Kalidas sustained injuries and fled to his house and told Madanagopal (P.W.1) and Dhanalakshmi (P.W.6) that he had been attacked by Ramasamy and thereafter, he fainted.

3.5. Madanagopal (P.W.1) and Dhanalakshmi (P.W.6) rushed him by an ambulance to the Government Hospital, Udumalpet, where, Kalidas was examined by Dr.Vanaja (P.W.10), who in the accident register (Ex.P4), has recorded that Kalidas was brought to the hospital on 21.08.2015 at 08.00 p.m. by his wife Dhanalakshmi (P.W.6) and on enquiry, Dhanalakshmi (P.W.6) stated that her husband was attacked by a known person. Dr.Vanaja (P.W.10) noted the following injuries in the accident register (Ex.P4) :

(i) 12 x 3 x 2cm lacerated wound over the scalp;



- (ii) 6 x 4 x 3cm lacerated wound on the left neck. The blood vessels were found cut; and
- (iii) 10 x 3 x 2cm lacerated wound on the left shoulders with profused bleeding.

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His pulse was not functional and so, he was declared dead, which intimation was sent to the police.

3.6. After attacking Kalidas, Ramsamy went straight to the Dhali Police Station with the weapon and surrendered. Abdul Khader (P.W.13), Sub-Inspector of Police, Dhali Police Station, questioned Ramasamy and at that time, he narrated the events. Abdul Khader (P.W.13) made entries in the General Diary and made Ramasamy sit in the police station, went to the place of occurrence and to the house of Kalidas and learnt that Kalidas had already been taken to the hospital for treatment.

3.7. Adbul Khader (P.W.13) returned to the police station and at that time, Madanagopal (P.W.1) came to the police station and gave a written complaint (Ex.P1), based on which, Abdul Khader (P.W.13) registered a case in Dhali P.S. Crime No.398 of 2015 under Section 302 IPC on 21.08.2015 at 20.15 hrs. and prepared the printed FIR (Ex.P7), which reached the jurisdictional Court on 22.08.2015 at 02.00 p.m., as could be seen from the endorsement thereon.

3.8. Investigation of the case was taken over by Parthiban (P.W.14), who was the Inspector (in charge) of Dhali Police Station, (hereinafter referred to as "the 1st I.O."). He placed Ramasamy under arrest at 00.30 hrs. on 22.08.2015 and recorded his police confession and also seized a billhook (M.O.1) and a bag (M.O.2) from him under Form-95, in the presence of witnesses viz., Rajakani, V.A.O. (P.W.2) and his assistant Iyappan.

3.9. Thereafter, the 1st I.O. went to the place of occurrence and prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P8). From the place of occurrence, the 1st I.O. seized soil with bloodstain (M.O.3) and soil without bloodstain (M.O.4) under the cover of a mahazar (Ex.P3). Thereafter, the 1st I.O. went to the Government Hospital, Udumalpet and conducted inquest over the body of Kalidas and the inquest report was marked as Ex.P9.

3.10. Dr.Shanti (P.W.11) performed autopsy on the body of Kalidas and issued the postmortem certificate (Ex.P5) and after getting the viscera report, gave her final opinion in Ex.P6, which is as under :

"The deceased would have died of shock and haemorrhage due to vascular injury of neck."



3.11. In the meanwhile, Ramasamy was produced before the jurisdictional Magistrate, who remanded him in judicial custody. The 1st I.O. recorded the statement of some witnesses and on the regular Inspector of Police, Anbarasu (P.W.17) (hereinafter referred to as "the 2nd I.O.") joining duty, the investigation was continued by the latter.

3.12. The clothes of Kalidas that were obtained after postmortem viz., M.O.6 (dhoti) and M.O.7. (underwear) were sent along with the other seized articles to the Tamil Nadu Forensic Sciences Department, for biological and serological examination. Serological report (Ex.P12) shows that human blood was detected in all the items, including the billhook (M.O.1). But, as regards grouping test, blood group 'A' was detected in the clothes of Kalidas viz, M.O.5 to M.O.7., as well in his shirt, which strangely was not marked in the trial Court.

3.13. The 2nd I.O. completed the investigation and filed a final report in P.R.C.No.17 of 2015 in the Court of the Judicial Magistrate No.I, Udumalpet under Section 302 IPC against Ramasamy.

3.14. On appearance of Ramasamy, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session, Tiruppur, in S.C.No.220 of 2015 and was made over to the III Additional District and Sessions Judge, Tiruppur @ Dharapuram, for trial. The trial Court framed a charge against Ramasamy under Section 302 IPC and when questioned, he pleaded "not guilty".

3.15. To prove the case, the prosecution examined 17 witnesses and marked 12 exhibits and 7 material objects.

3.16. When Ramasamy was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined from the side of Ramasamy nor any document marked.

3.17. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 22.12.2017, in S.C.No.220 of 2015, convicted Ramasamy of the charge under Section 302 IPC and sentenced him to imprisonment for life and fine of Rs.1,000/-, in default, to undergo six months simple imprisonment. Further, the trial Court directed Rs.1,00,000/- as compensation to be paid by Ramasamy or his family members to Dhanalakshmi (P.W.6) within a period of one month. Challenging the said conviction and sentence, Ramasamy has preferred this appeal.



5. The case of the prosecution rests not only on the eyewitness account of the incident of Shanti (P.W.4), Jayaprakash (P.W.7) and Periasamy (P.W.8), but also on the dying declaration that was made by Kalidas to his father Madanagopal (P.W.1) and wife Dhanalakshmi (P.W.6) that he was attacked by Ramasamy.

7. The learned counsel for Ramasamy contended that Shanthi (P.W.4) could not have been an eyewitness because, she has stated in her cross-examination that only after she heard a sound, she went out to see. We are unable to appreciate this submission because, according to Shanthi (P.W.4), Kalidas came to her shop, bought a cigarette and was smoking. At that time, she would have been attending to her own work in the shop. However, when the attack took place, naturally, Kalidas would have shouted. This would have attracted the attention of Shanthi (P.W.4) and she would have seen Ramasamy hacking Kalidas. The accident register copy (Ex.P4) as well as the postmortem certificate (Ex.P5) shows that Kalidas was attacked at three places. Thus, even if Shanthi (P.W.4) had not witnessed the first assault, she would have definitely seen the second and third assaults. The substantive evidence of Shanthi (P.W.4) has been corroborated by Jayaprakash (P.W.7) and Periasamy (P.W.8).

9. Madanagopal (P.W.1) and Dhanalakshmi (P.W.6), have, in their evidence clearly stated that Jayaprakash (P.W.7) and



Periasamy (P.W.8) came to their house and she (P.W.6) invited them to have their dinner and go; she asked Kalidas to fetch some groceries; Kalidas went along with Jayaprakash (P.W.7) and Periasamy (P.W.8); soon, Kalidas came running home with injuries saying that he has been attacked by Ramasamy, thereafter, he fainted. The statement of Kalidas to Madanagopal (P.W.1) and Dhanalakshmi (P.W.6) that he had been attacked by Ramasamy, is a dying declaration under Section 32(1) of the Evidence Act. The fact that Kalidas stated that he was attacked by Ramasamy, finds a place in the complaint (Ex.P1) that was lodged by Madanagopal (P.W.1).

10. The learned counsel for Ramasamy further contended that according to Shanthi (P.W.4), Kalidas had purchased a cigarette and was smoking and did not purchase any grocery; therefore, the version of Dhanalakshmi (P.W.6) cannot be true. We are unable to countenance this submission because, it is Dhanalakshmi's (P.W.6's) specific case that she sent her husband to buy groceries. However, if Kalidas had gone to the grocery shop of Shanthi (P.W.4) and instead of purchasing groceries, bought a cigarette and was smoking when the attack took place, the testimony of Dhanalakshmi (P.W.6), cannot be jettisoned on that score. Further, just because Dhanalakshmi (P.W.6) had asked Kalidas to buy groceries, it does not mean that the latter should not buy a cigarette and have a smoke. It is not uncommon amongst smokers to have a puff when they go out, for, they may not find it comfortable to smoke amidst their family members, be it elder or younger. Thus, Kalidas would have wanted to have a smoke first and then buy groceries and hence, he would have bought a cigarette first. But, before buying groceries, he would have been attacked by Ramasamy. Thus, we have no reasons to disbelieve the testimonies of Madanagopal (P.W.1), Shanthi (P.W.4), Dhanalakshmi (P.W.6), Jayaprakash (P.W.7) and Periasamy (P.W.8).

11. Now, coming to the surrender of Ramasamy in the police station, this conduct of his, is relevant under Section 8 of the Evidence Act. Abdul Khader (P.W.13) has stated that while he was in the police station on 21.08.2015 around 09.00 p.m., Ramasamy came there with a billhook (M.O.1) and a bag (M.O.2) and told him that in 2014, on account of previous enmity, Kalidas had torn his ear by biting and so, he has hacked him in front of Iyyanar Stores. A part of the statement of Ramasamy made to Abdul Khader (P.W.13), is relevant and admissible and is not hit by the bar under the proviso to Section 162 Cr.P.C. because, the said statement was made prior to commencement of any investigation by the police. However, the statement of Ramasamy that he hacked Kalidas, is a confession made to a police officer and that would be hit by Section 25 of the Evidence Act. The statement of Ramasamy to Abdul Khader



(P.W.13) that Kalidas had earlier torn his ear by biting, is not a confession, but an admission that shows the motive for the offence. (See Bheru Singh Vs. State of Rajasthan [(1994)2 SCC 467] and a Division Bench judgment of this Court authored by one of us (PNPJ) in Sudalaimani Vs. State [2014-2-LW(Crl) 372 : 2014 (3)MLJ(Crl) 385]). Normally, our police would say that they went in search of the accused, found him near a bus stand, arrested him, recorded his confession statement and based on the disclosure of the accused, recovered the weapon underneath a bridge. This stereotyped story has not been professed in this case.

12. Resuming our discussions, after the attack, Kalidas fled and Ramasamy ran southwards, as could be seen from the testimony of Shanthi (P.W.4). Within a short while, Ramasamy had gone to the police station and surrendered. Abdul Khader (P.W.13) had acted rightly, by making Ramasamy sit in the police station, making entries in the General Diary and going to the place of occurrence, in order to find out the veracity of Ramasamy's version. When Abdul Khader (P.W.13) went there, he learnt that Kalidas was attacked and he had been taken to the hospital for treatment.

13. The 1st I.O., who was in charge of Dhali police station at the relevant point of time, has stated that on coming to know of the incident in the limits of Dhali police station, he came and commenced the investigation of the case, arrested Ramasamy in the police station itself, recovered the billhook (M.O.1) and a bag (M.O.2) under Form-95 and thereafter, proceeded further with the investigation of the case.

14. The learned counsel for Ramasamy contended that had Ramasamy been in the police station, that would have been known to Madanagopal (P.W.1). The police will not be so foolish enough to expose a surrendered accused to the irate family members of the deceased as that would lead to serious law and order problem in the station itself. That apart, Madanagopal (P.W.1) has neither stated that he saw Ramasamy in the police station nor that he did not see Ramasamy in the police station. Madanagopal's (P.W.1's) testimony is silent on this aspect and therefore, we cannot read into his testimony anything more.

For all the foregoing reasons, we find no merit in this appeal and accordingly, this criminal appeal is dismissed as being devoid of merits. However, we set aside that portion of the judgment and order of the trial Court directing Ramasamy to pay Rs.1,00,000/- as compensation to Dhanalakshmi (P.W.6) and instead, we direct the State of Tamil Nadu to pay a compensation of Rs.3,00,000/- (Rupees Three Lakhs only) to Dhanalakshmi



(P.W.6) from the Tamil Nadu Victim Compensation Scheme, 2013, within three months from the date of receipt of a copy of this judgment. We also direct the trial Judge and the Secretary, District Legal Services Authority, Tiruppur, to interact with the Collector, Tiruppur District and ensure that the compensation amount is paid to Dhanalakshmi (P.W.6) as directed by us.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The III Additional District and Sessions Judge,
Tiruppur at Dharapuram.
- 2.The Secretary,
District Legal Services Authority,
Tiruppur.
- 3.The District Collector,
Tiruppur District.
- 4.The Inspector of Police,
Dhali Police Station,
Thiruppur District.
- 5.The Superintendent,
Central Prison,
Coimbatore.
- 6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Philip Ravindran Jesudoss, Advocate SR. No.68013

Cr1.A.No.603 of 2018

BS (CO)

PR (27/12/2021)