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Crl.A.No.575 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.10.2022

PRONOUNCED ON: 14.12.2022

CORAM

THE HONOURABLE MR. JUSTICE **P.N.PRAKASH**

AND

THE HONOURABLE MR. JUSTICE **RMT.TEEKAA RAMAN**

Crl.A.No.575 of 2018

Murugavel

.. Appellant/sole accused

Vs.

The State Rep. By
The Inspector of Police,
T16, Nasarathpet Police Station,
Nasarathpetai, Thiruvallur District.
(Crime No.541 of 2014)

.. Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, praying to set aside the judgment of conviction and sentence awarded by the learned II Additional District and Sessions Judge, Poonamallee, in S.C.No.35 of 2015 dated 20.04.2018.

For Appellant : Mr.A.D.Shankar

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor



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JUDGMENT

WEB C **RMT.TEEKAA RAMAN, J.**

The convicted sole accused is the appellant herein.

2. By judgment dated 20.04.2018, the learned II Additional District and Sessions Judge, Poonamallee, has convicted the accused for the charge under Section 302 of IPC and sentenced him to undergo life imprisonment. Challenging the same, the accused has preferred this appeal.

3. Short facts leading to the filing of the appeal, are as follows:

(i) The criminal law was set into motion by filing the complaint-Ex.P1 by one Manivannan [PW1], Village Administrative Officer of Nasarathpet. On 16.08.2014, at 10.00am, he had received a phone call that near the fly over in Nasarathpet cemetery, an unidentified male body was lying and he along with his Village Assistant-Suresh [PW2] went and saw the scene of crime and found that one person (male) was found dead and a huge stone was found on the dead body and accordingly, he gave the complaint.



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(ii) Alexander [PW16], the Inspector of Police, Nasarathpet, received the complaint at 10.30.am on 16.08.2014 and registered the FIR [PW9] in Cr.No.541 of 2014 under Section 302 of IPC and he went to the scene of crime along with witnesses Suresh [PW2] and Mariappan [PW3] and inspected the scene of crime. He prepared the Observation Mahazar [Ex.P2] and also a Rough sketch [Ex.P10] and also taken the blood stained stone weighing roughly 25 Kg, blood stained soil and sample soil [M.O.1 to M.O.3] under the Seizure Mahazar [Ex.P3] and thereafter, sent the dead body for postmortem to the Kilpauk Medical College, through the Constable.

(iii) The message was conveyed to the brother of the deceased Moorthy viz., Gunalan [PW7] and he came along with the wife of the deceased Tmt.Ammu [PW5].

(iv) On the next day i.e., on 17.08.2014, the PW16-Inspector of Police has conducted the inquest in the mortuary of the Kilpauk Medical College and prepared the inquest report [Ex.P11]. Thereafter, in order to find out the cause of death, he made a requisition through Devabalan [PW8], the Grade-I Police Constable for conducting postmortem.



WEB COPY (v) Dr.Selvakumar [PW13], based upon the requisition for post mortem, he has conducted the postmortem and noted the following injuries.

Injuries:

1. Head found crushed and face deformed with underlying facial bones namely zygoma, maxilla, nasal bone and ramus of mandible found fractured on right side.
2. Laceration of size 14 x 13 x scalp deep over left fronto temporo parietal region of scalp with beveling of skin posteriorly where skull found exposed outside. On dissection – communitied fracture of vault of skull of size 11 x 6 cm in the left fronto temporo parietal bone.
3. Laceration of size 5 x 2 x bone deep over right forehead just above the right eyebrow.
4. Laceration of size 2.5 x 1.5 x muscle deep over front of right chin.
5. Laceration of size 1.5 x 1 x 0.5 cm just above the centre of chin.

On dissection of head:

Scalp: Bluish black bruising of size 22x18x0.3cm over both parietal, occipital and over left fronto temporo parietal region seen except right frontal and temporal region.

Meninges: Intact. **Brain:** marked sub dural and sub arachnoid haemorrhage seen all over the brain surface. Both ventricles were blood stained. **Base of Skull:** Fracture of anterior cranial fossa on both sides seen.



On dissection of thorax:

Fracture of inner third of right clavicle seen with surrounding bruising.

Fracture of sternum at the junction of 3rd rib seen on its front with surrounding bruising.

Ribs: Fracture of 1st to 4th rib on right side seen on its front in mid clavicular line with surrounding bruising. Fracture of 2nd and 3rd rib on its front at mid clavicular line on left side seen with surrounding bruising.

Thoracic cavity – Contains 350ml of fluid blood.

Heart: Normal in size. Chambers contains few ml of fluid blood, coronaries patent.

Lungs: Both lungs normal in size c/s: pale.

On dissection of abdomen:

Stomach: 25ml of brown coloured fluid seen. No specific smell felt, Mucosae pale

Liver, Spleen and both Kidneys: Normal in size, c/s: pale.

Intestines: Distended with gas

Bladder: Empty

Pelvis: Intact

Spinal Column: fracture of body of C2, C3 Cervical vertebrae seen with surrounding bruising.”

and based upon the Serology and Biology report [Ex.P8], he found that no poisonous substance is deducted and in the spinal cord there were two major injuries resulting in the cause of death and issued the postmortem certificate [Ex.P6].



(vi) Devabalan [PW8], the Gr.-I Constable has collected the dresses [M.O.4 and M.O.5], from the dead body under Form-95 in Ex.P13.

(vii) On 17.08.2014, at about 1.00pm based upon the discrete information, the investigation officer [PW16] has arrested the accused below the flyover of Nasarathpet and the accused said to have given voluntary confession statement, and the same was recorded in the presence of witnesses viz., Senthilnathan [PW11] and Ramesh [PW14] and the admissible portion of the confession statement and the signature of the respective witnesses have been marked as Ex.P4 and Ex.P7. Based on the admissible portion of the confession statement of the accused [Ex.P12], the investigation officer [PW16] is said to have recovered a blood stained rose and brown colour checked lungi [M.O.8] under the mahazar [Ex.P5] and sent the same to Court for lab report.

(viii) During the investigation, Dr.Srinivasan from the Forensic Science Department has found that the material objects viz., M.O.1, 2 and 3 are having human blood and the Biology report is Ex.P6. Based upon the document, he has filed the final report.



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(ix) The final report was taken on file as PRC No.7 of 2015 and on committal, numbered as S.C.No.35 of 2015. Charge was framed under Section 302 of IPC against the accused and he denied the charge and claims to be tried and accordingly, during the trial, the prosecution examined PW1 to PW16 and marked Ex.P1 to Ex.P13 besides material objects M.O.1 to M.O.8. No witness was examined from the side of the accused nor any document marked.

(x) The learned II Additional District and Sessions Judge, Poonamallee, on consideration has held that charges are proved and laid the conviction as stated in paragraph No.2 of the judgment and hence, the appeal.

4. Heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor, appearing on behalf of the respondent police and perused the materials available on record.

5. PW5-Ammu is the widow of the deceased-Moorthy, while PW7-Gunalan is the brother of the deceased. They have confirmed the dead body as that of 'Moorthy @ Krishnamurthy'.



WEB COPY 6. PW1-Manivannan, PW2-Suresh and PW3-Mariappan are the witnesses who have set the criminal law into motion by filing Ex.P1-complaint which has resulted in registration of Ex.P9-FIR. Though, there is a minor delay, the complaint given by the Village Administrative Officer of the concerned village-Nasarathpet, was based upon the information given by the public and we do not find that there is much delay for the FIR to reach the Magistrate Court.

7 (a).The case of the prosecution is that the accused/appellant and the deceased Moorthy @ Krishnamurthy, were rack pickers and collects old plastic bottles and they used to stay at Poonamallee Bus Stand at night hours and the deceased Moorthy was married to one Ammu [PW5] and he deserted her and she was living at Kundrathur separately. The deceased Moorthy was living with his concubine Lakshmi [LW4] and both of them were staying at Poonamallee Bus Stand at night hours. The appellant/accused and the deceased Moorthy were collecting racks and plastics, sold them and earned money. They often used to consume alcohol together. On the fateful day viz., 16.08.2014 on the early morning they went to Nasarathpet cemetery to consume alcohol, which



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was bought by the appellant/accused on the previous day. On the way, the appellant/accused bought plastic tumbler and water packet from the petty shop owned by Yusuf [PW10] and went to Nazarethpet cemetery. While they were sharing the alcohol, the deceased demanded equal share in alcohol, which was refused by the appellant/accused and hence there arose a quarrel between them. It is the further case that due to the quarrel, the accused/appellant pushed down the Moorthy and dropped a big stone on his face and the Moorthy had died on the spot.

(b). After the alleged incident, the appellant/accused went to Poonamallee Bus Stand and met Lakshmi, lady-love of the deceased and informed that Moorthy was dead at the scene of crime and brought Lakshmi to the scene of crime and shown the place and thereafter, he fled away from the scene of crime.

8. As stated supra, on 16.08.2014 at about 10.00am, based upon the information from the public, the Village Administrative Officer[PW1], has informed the police.



9. The case of the defence as could be seen from the cross examination is one of total denial. The prosecution has relied on the circumstantial evidence and the last seen theory, to prove the charges.

10. According to the prosecution, the appellant/accused is a rack picker and permanently staying at Poonamallee Bus Stand. Based upon the evidence of the PW4, the trial Court has come to the conclusion that as the PW4 is working in a small hotel in Poonamallee, he also with the appellant/accused and deceased used to sleep in the Poonamallee Bus Stand and morning at 5.30 hours, they used to go and both the appellant/accused and deceased are moving together and they used to consume alcohol together and PW4 is an independent witness, who has no grudge to grind against the appellant/accused and hence, the alleged associateship of the appellant/accused along with the deceased, both during the rack picking as well as sharing the alcohol and staying together at the Poonamallee Bus Stand, are proved by the prosecution.

11 (a). In order to prove the last seen theory, prosecution has relied upon the evidence of PW6 (Ravi) and PW10 (Yusuf). PW10-Yusuf, has deposed that he is running a tea shop near the cemetery and he saw the



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appellant/accused and deceased at 5.30am on 16.08.2014, when both of them purchased tea.

(b) So also PW6-Ravi, who is running a tender coconut shop on the way to cemetery, has clearly deposed that on that date, both the rack pickers viz., Moorthy (deceased) and Murugavel (appellant/accused) came around 7.00 to 8.00 am along with a alcohol bottle and also purchased water packet and plastic bottle and at about one hour later, the appellant/accused Murugavel alone came out of the cemetery. Thereafter, around 10.00am, a passer-by has informed PW6 that someone was dead in the cemetery and he has found that the deceased Moorthy was found dead and thus, from the chief and cross examination of PW6 and PW10, around 7.00 to 8.00 am, in the morning, the deceased along with the appellant/accused was seen together and after one hour, the appellant/accused has come out of the said cemetery alone and around 10.00am, the general public who is crossing the cemetery has told the shop owner that some one was dead by dropping the stone on the head .

(c) Thus, on a combined reading of evidence of PW6 and PW10, both independent witnesses, the trial Court has rightly come to the



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conclusion that both the independent witnesses, have seen the appellant/accused in a close company of the deceased along with the alcohol bottle and also they have purchased plastic tumbler and water packet for mixing the alcohol. One hour thereafter, the accused alone has returned from the cemetery and in the cross examination, there is nothing to discredit the evidence of PW10, also assumes significance.

12. The last seen theory comes into play where the time gap, between the point of time when the appellant/accused and the deceased were seen last alive and when the deceased is found dead, is so small that possibility of any other person other than the accused being the author of the crime becomes impossible and the time gap between the three incidents narrated supra is so narrow, as rightly held by the trial Court.

13. The running of business by PW6 and PW10 near the scene of crime was not disputed by the defence during the cross examination and the acquaintance of the appellant/accused and the deceased with PW6 and PW10 were also not disputed and hence, the trial court by placing reliance upon the independence witnesses, has accepted the theory of last



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seen projected by the prosecution, which does not suffer from any irregularity or illegality, warranting interference.

14. The next leg of the prosecution is that recovery based upon the confession statement. As stated supra, the PW16-investigation officer could depose that on 17.08.2014 at 2.30pm, he arrested the appellant/accused based upon the discrete information, near the bridge of the Nasarathpet and based upon his confession statement, he has recovered the blood stained rose and brown checked lungi [M.O.5] which was seized under the seizure mahazar Ex.P5. The evidence of the attestors of the seizure mahazar viz., PW11 and PW14, is clear and cogent and nothing is elicited in the cross examination to disregard their evidence. The recovered material was sent for serology and the blood is also found to be of 'human blood'. The M.O.1-blood stained stone weighing 25 kg is seized from the scene of crime also had human blood as per the serology report.

15. PW11 is the Ward Member who is acquainted with the appellant/accused, deceased and other witnesses and he is a natural witness to speak about the living of those persons. Hence, the trial Court



has rightly relied upon the evidence of PW11 and held that the prosecution has let in positive evidence to prove the charges through the last seen theory and also recovery made from the accused, based upon the disclosure statement of the appellant/accused and hence, we find that the reasoning assigned by the trial Court does not suffer from any irregularity or illegality warranting interference.

16. In view of the discussion in the preceding paragraphs, we come to the conclusion that the prosecution has successfully demonstrated the last seen theory and the circumstantial evidences, to prove the charges beyond reasonable doubt. A similar finding arrived at by the learned Sessions Judge does not warrant any interference. Accordingly, the conviction laid by the trial Court is hereby confirmed. After perusing the material object M.O.1 and serology report contained therein and also the case of the prosecution that by dropping the stone weighing around 25kgs on the portion of the head of the person, the accused had committed the offence and hence, we find that the sentence awarded by the trial Court is found to be in consonance with the proved charges and thus, the sentence cannot be termed as excessive. Accordingly, the conviction and sentence passed by the learned II Additional District and



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Sessions Judge, Poonamallee, in S.C.No.35 of 2015 dated 20.04.2018, is confirmed and the appeal in Crl.A.No.575 of 2018, is dismissed.

17. Since the appellant/accused is on bail, the trial Court shall take steps to secure the appellant/Accused to commit him in prison to serve out the remaining period of sentence. The period of sentence already undergone by the appellant/accused, shall be set off under Section 428 of the Code of Criminal Procedure.

(P.N.P.,J.) (TKRJ)
14.12.2022

Index: Yes/No
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To

1. The II Additional District and Sessions Judge,
Poonamallee
2. The Inspector of Police,
T16, Nasarathpet Police Station,
Nasarathpetai, Thiruvallur District.
3. The Public Prosecutor,
Madras High Court, Chennai – 600 104.



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P.N.PRAKASH, J.

and

RMT.TEEKAA RAMAN, J.

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Pre-delivery Judgment made in
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14.12.2022