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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRL.A. NO.248 OF 2019

Muthu, 43 years,  
S/o Raman,  
Now confined at  
Central Prison-I(Convict),  
Puzhal, Chennai-66.

...Appellant

Vs.

The State rep. by  
The Inspector of Police,  
Melmaruvathur Police Station,  
Kancheepuram District.  
Crime No.343/2009

...Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment passed in S.C.No.227 of 2010 dated 29.02.2016 by the Additional District and Sessions Judge, Chengalpet.

For Appellant : Mr.K.Shanmugam

For Respondent : Mr.M.Babu Muthumeeran,  
Addl. Public Prosecutor

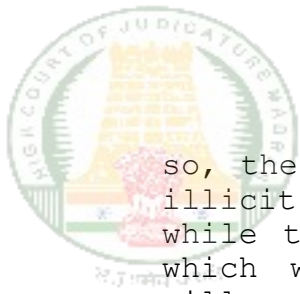
JUDGMENT

(Judgment of the Court was delivered by P.N.PRAKASH, J)

This criminal appeal is directed against the judgment and order dated 29.02.2016 passed in S.C. No.227 of 2010 on the file of the Additional District and Sessions Judge, Chengalpet, in and by which, the appellant herein, was convicted for the offence under Sections 449 and 302 IPC and for the offence under Section 449 IPC, sentenced him to undergo 10 years rigorous imprisonment and for the offence under Section 302 IPC, sentenced him to undergo life imprisonment and the sentences were ordered to run concurrently.

2. The prosecution story runs thus:

2.1 The deceased Ravichandran and the appellant hailed from the same village. The appellant has to his credit several criminal cases in which he used to get arrested frequently by the police and remanded in judicial custody. While that being



so, the appellant suspected that his wife Lakshmi was having an illicit affair with the deceased Ravichandran and on 03.09.2009, while the deceased was sleeping in the pump house of his farm, which was situated in the joint family property at Unamalai village, the appellant is said to have fatally attacked him and caused his death. The body of the deceased was found on 04.09.2009 by Sundaram(P.W.1), who gave a written complaint (Ex.P1) alleging that his brother Ravichandran has been brutally attacked by some one.

2.2 Based on the said complaint(Ex.P1), Veliappan(P.W.17), Inspector of Police, Melmaruvathur, registered a case in Crime No.343/2009 under Section 302 IPC and prepared the printed FIR (Ex.P13). The Investigating Officer went to the scene of occurrence and prepared an Observation Mahazar(Ex.P8) and Rough Sketch(Ex.P14) and seized the soil with blood stain, soil without blood stain, blood stained full hand shirt and blood stained white banian of the deceased under the cover of mahazar (Ex.P3). Inquest was conducted on the body of the deceased and Ex.P15 is the Inquest Report. Thereafter the body of the deceased was sent to the Government Hospital, Chengalpet, where Dr.Parasakthi( P.W.12) performed post mortem on the body of the deceased and noticed the following injuries.

- "(1)Contusion 13 cms x 8 cms seen over right temple
- (2)Laceration 4cm x 1 cm x bone deep seen over right temple; 4cm x 2 cm x bone deep seen over occipital region.
- (3)O/D of scalp diffuse sub scalp haematoma seen over whole scalp tissues; Right temporal bruise present."

The Doctor opined that the deceased would have died of shock and haemorrhage due to head injuries. The Viscera Report says that the deceased had consumed liquor.

2.3.While the police were groping in the dark, the appellant surrendered before Gopi(P.W.7), Village Administrative Officer on 07.09.2009 and gave an Extra Judicial Confession, which was recorded and marked as Ex.P5. In the said extra judicial confession, the appellant had stated that he had suspected the fidelity of the wife and with an intention to eliminate the deceased, on 03.09.2009, he went to the pump house in the night around 110' clock and brutally attacked the appellant with the stick(M.O.5) and caused his death.

2.4.Thereafter Gopi(P.W.7) took the appellant and handed him over to the investigating Officer(P.W.17), who formerly placed the appellant under arrest. The appellant was then placed under arrest by the investigating officer and based on the admissible portion of the confession(Ex.P6), a stick(M.O.5) and a blood stained full hand white colour shirt(M.O.6) worn by the



appellant at the time of the occurrence were seized under the cover of mahazar (Ex.P7). The seized items along with the blood stained clothes of the deceased were sent to the Tamil Nadu Forensic Sciences Department through the jurisdictional Court and the Serology Report(Ex.P10) shows that the blood stained shirt(M.O.3) and banian(M.O.4) of the deceased were found to be of 'A' Group. As regards the shirt that was seized from the appellant, the result of grouping test shows as inconclusive.

2.5.After examining various witnesses and collecting the various reports, the investigating officer completed the investigation and filed a final report in PRC No.3 of 2010 before the Judicial Magistrate, Maduranthagam for the offences under Sections 449 and 302 IPC.

2.6 On appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied and the accused was committed to the Court of Sessions, Chengalpet in S.C.No.227 of 2010 and made over to the First Additional District and Sessions Court, Chengalpet for trial. The Trial Court framed charges under Sections 449 and 302 IPC against the appellant and when questioned, the appellant pleaded "not guilty" to the charges.

2.7. To prove the case, prosecution examined 17 witnesses, marked 16 exhibits and 6 material objects and when the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. No witness was examined on the side of the appellant.

2.8. After considering the evidence on record and on hearing either side, the Trial Court by judgment and order dated 29.02.2016 in S.C. No.227 of 2010 had convicted and sentenced the appellant, as under.

| OFFENCE     | PUNISHMENT        |
|-------------|-------------------|
| U/S 449 IPC | 10 years R.I.     |
| U/S 302 IPC | life imprisonment |

2.9. For filing the present appeal, the High Court Legal Services Committee has nominated Mr.K.Shanmugam, Advocate, who has preferred the present appeal.

3. Heard Mr.K.Shanmugam, learned counsel for the appellant and Mr.M.Babu Muthumeeran, learned Additional Public Prosecutor for the respondent.

4. The prosecution has proved the facts beyond a peradventure coupled with the fact that the deceased Ravichandran's body was found in the pump house of the farm in the village on 04.09.2009.



5. The short question is, whether the appellant was the perpetrator of the offence. As rightly contended by learned counsel for the appellant, there is absolutely no shred of evidence to show that the deceased had illicit intimacy with the wife of the appellant. The only piece of evidence as against the appellant is his extra judicial confession that was allegedly given by him to Gopi(P.W.7), the Village Administrative Officer. Now it has to be seen whether the extra judicial confession(Ex.P5) inspires the confidence of this Court for sustaining the conviction and sentence of the appellant.

6. This Court carefully perused the evidence of Gopi(P.W.7), the Village Administrative Officer as well the extra judicial confession(Ex.P5). Gopi(P.W.7) in his evidence has stated that while he was in his office on 07.09.2009, the appellant appeared before him and gave a statement confessing that he had committed the murder of Ravichandran. Gopi(P.W.7), the Village Administrative Officer further stated that, at that time, Devendhiran(P.W.8) and Rajangam(P.W.9), the thalaiyaris, were also present in his office. It is seen that both Devendhiran (P.W.8) and Rajangam(P.W.9) attested the confession statement Ex.P5, which was given by the appellant. However, during trial, both of them completely turned hostile and did not support the prosecution case.

7. Mr.K.Shanmugam, learned counsel for the appellant, drew the attention of this Court to the opinion given by Dr.Parasakthi, (P.W.12) in the cross examination, wherein she has stated that the three injuries found on the deceased could have occurred on account of the deceased falling backward on the ground after losing his balance. Admittedly, the deceased was drunk as could be seen from the Viscera Report(Ex.P11).

8. Thus we have only the solitary evidence of Gopi (P.W.7) to sustain the conviction, which in our opinion is too vague.

9. In the result, the appeal deserves to be allowed and is accordingly allowed by setting aside the judgment and order dated 29.02.2016 passed in S.C.No.227 of 2010 by the Additional District and Sessions Judge, Chengalpet and the appellant stands acquitted. The appellant shall be released, if not required in any other case.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

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To

1.The Inspector of Police,  
Melmaruvathur Police Station,  
Kanceepuram District.

2.The Additional District and  
Sessions Judge, Chengalpet.

3.The Superintendent,  
Central Prison-I,  
Puzhal, Chennai.

4.The Public Prosecutor,  
High Court, Madras.

+lcc to Mr.K.Shanmugam, Advocate Sr.No.30771

Crl.A. No.248 of 2019

RSV(CO)  
RVM(12/05/2022)