



WEB COPY



Crl.A.No.713 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2024

CORAM :

THE HON'OURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.713 of 2018

Kannadasan

... Appellant

vs.

The State by Inspector of Police,
B-2, R.S. Puram Police Station,
Crime No.29 of 2018,
Coimbatore City.

... Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) Criminal Procedure Code, 1973, against the judgment and orders dated 30.10.2018 passed in S.C.No.121 of 2018 by the I Additional District and Sessions Court, Coimbatore.

For Appellant : Mr.N.Manoharan

For Respondent : Mr.S. Rajakumar
Additional Public Prosecutor.

JUDGMENT

This criminal appeal is filed against the judgment and orders dated 30.10.2018 passed by the I Additional District and Sessions Judge,



Crl.A.No.713 of 2018

Coimbatore, in S.C.No.121 of 2018.

WEB COPY

2. The appellant stood charged for the offences punishable under Sections 323 and 302 IPC by the trial court in S.C.No.121 of 2018.

3. The learned trial court judge, after full trial, convicted and sentenced the appellant, vide his judgment and orders dated 30.10.2018 as detailed hereunder :

<i>Conviction</i>	<i>Sentence</i>
Section 323 IPC	Fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for one month.
Section 304 (Part ii) IPC	Rigorous Imprisonment for ten years and to pay a fine of Rs.1,000/-, in default, to undergo Simple Imprisonment for one month.
The aforesaid sentences shall run concurrently. The period of sentence already undergone is set off under Section 428 Cr.P.C.	

4. The case of the prosecution as could be discerned from the oral and documentary evidence is as follows:



Crl.A.No.713 of 2018

WEB COPY

4.1. Tmt. Bakkiyam (P.W.1) is the wife of the deceased Ponraj.

Ponraj (deceased) and PW.1 were residing in R.S.Puram, Coimbatore along with their daughter Kamatchi (P.W.2) and son-in-law Senthilkumar (P.W.6). Ponraj was working as a watchman in Jayam Mahal Complex owned by Thiru.Balaji Srinivasan (P.W.7). PW.1 used to carry food for her husband for dinner. On 04.01.2018, the appellant Kannadasan wanted to go to the terrace of Jayam Mahal Complex to consume alcohol. P.W.1 and her husband Ponraj prevented him. Infuriated over this, the appellant threatened Ponraj with dire consequences and left the place. On 07.01.2018 at about 9.15 p.m. Bakkiyam (P.W.1) as usual carried food for her husband Ponraj. Ponraj was sitting on the third step of the staircase and P.W.1 was standing near the grill gate. At about 9.30 p.m, the appellant Kannadasan came over there and asked P.W.1 and the appellant to give way for him to go to the terrace. Since they prevented, he attacked P.W.1 and Ponraj and also pushed down Ponraj from the staircase. Ponraj sustained injuries on his head. P.W.1 raised an alarm and Senthilkumar (P.W.6), Balachander (P.W.3), who is the watchman of Kotak Mahindra Bank ATM and others rushed to the place and took the injured Ponraj to the Government Hospital, Coimbatore in an Auto.



Crl.A.No.713 of 2018

However, Ponraj was declared as brought dead to the hospital by the doctors in the Government Hospital, Coimbatore at about 11.40 hours (Ex.P17).

4.2. PW.1 went to R.S.Puram Police Station along with one Mohanagandhi at about 2.00 a.m. on 08.01.2018 and lodged a written complaint (Ex.P1) with Thiru. Mullai Prabhadevi (P.W.11), the then Sub Inspector of Police, R.S.Puram Police Station, Coimbatore. PW.11 received Ex.P1 from P.W.1 and registered FIR (Ex.P7) in Crime No.29/2018 of R.S.Puram Police Station. She then placed the records before Thiru.Jothi (P.W.13), the then Inspector of Police, R.S.Puram Police Station, Coimbatore, for investigation.

4.3. P.W.13 took up investigation in Crime No.29/2018, went to the scene of occurrence on 08.01.2018 at about 3.15 a.m, prepared an observation mahazar (Ex.P2) and a rough sketch (Ex.P13) in the presence of the witnesses Sambamoorthy (P.W.4) and Boopathi (not examined). He then proceeded to the Government Hospital and conducted inquest (Ex.P14) on the body of the deceased between 7.00 a.m. and 10.00 a.m. and handed over the body to the medical officer for



Crl.A.No.713 of 2018

conducting autopsy through Saravanan (P.W.8), the then Head Constable of Police, R.S.Puram Police Station along with his requisition letter (Ex.P9). He then examined the witnesses and recorded their statements under Section 161(3) Cr.PC.

4.4. Dr.Nandhakumar (P.W.12) conducted autopsy on the body of the deceased on 08.01.2018 at about 1.45 p.m. and found the following ante mortem injuries :

"The following ante mortem injuries seen in the body :

Reddish contusion 1 x 2 cm noted over right cheek on the right zygomatic bone. On dissection of scalp, Skull and Dura :- Reddish sub scalp contusion 5 x 3 cm seen over left parietal region. Left temporalis muscle found contused. Linear crack fracture measuring about 15 cm noted over left parieto temporal bone. Diffuse Sub dural seen over left parieto occipital region and sub arrachnoid hemorrhage seen over entire brain.

Other Findings :

- Peritoneal and Pleural cavities empty.*
- Hyoid bone - Intact.*
- Heart : al chambers contains about few cc of fluid blood. Coronaries patent stomach contains about 100 ml of dull white colour fluid, no specific smell,*



mucosa pale.

- *Small intestine contains about 10 ml of bile stained fluid, no specific smell, mucosa pale.*
- *Liver, Spleen, Lungs and Kidney : cut section pale.*
- *Urinary bladder empty.*
- *Viscera preserved and sent for chemical examiners report*
- *Blood preserved for analysis."*

He sent visceral organs for chemical analysis report. In the opinion of the doctor, the deceased would appear to have died due to '**CRANIO CEREBRAL INJURY**' and the time of death was 12 to 36 hours prior to autopsy. The postmortem certificate was marked as Ex.P10.

4.5. P.W.8 collected the dress (M.O.1 and M.O.2) worn by the deceased and handed over the same to the Inspector of Police along with his Special Report (Ex.P5).

4.6. PW.13 arrested the appellant near Gandhi Park Roundtana on 08.01.2018 at about 3.00 p.m. and recorded his confessional statement in the presence of the witnesses Dhanraj (P.W.5) and Manickam (not examined). Based on his confession, P.W.13 went to the house of the



Crl.A.No.713 of 2018

appellant along with him and recovered a black colour shirt (M.O.3) in the presence of the same witnesses under the cover of a mahazar (Ex.P4).

The appellant was produced before the concerned jurisdictional magistrate for remanding him to judicial custody.

4.7. Thiru.Jayaraman (PW.10), Executive Engineer of R.S. Puram South Tamil Nadu Electricity Board submitted a report (Ex.P6) stating that there was no power cut between 8.00 p.m. on 07.01.2018 and 6.00 a.m. on 08.01.2018.

4.8. P.W.13 after completing investigation laid a final report against the appellant for the offences punishable under Sections 323 and 302 IPC before the Judicial Magistrate No.I, Coimbatore, in PRC No.III/2018.

4.9. The learned Judicial Magistrate after furnishing copies of records to the appellant under Section 207 Cr.PC, committed the case to the Court of Sessions. The learned Principal District Judge, Coimbatore took the case on file in S.C.No.121/2018 and made over the same to the I Additional District and Sessions Judge, Coimbatore.



Crl.A.No.713 of 2018

WEB COPY

4.10. The trial court judge framed the charges against the appellant as stated in Paragraph No.2. Since the appellant pleaded not guilty, the case was posted for trial.

4.11. In order to bring home the guilt of the accused, the prosecution examined 13 witnesses, marked 17 documents and 3 Material Objects.

4.12. The appellant, when questioned under Section 313 Cr.P.C with regard to the incriminating circumstances appearing in evidence against him, denied of having committed any offence. He did not examine any witness on his side but marked Ex.R1 (a copy of FIR) and Ex.R2 (General Diary of R.S. Puram Police Station recorded for the period from 05.01.2018 to 10.01.2018).

4.13. The learned trial court judge after analysing the oral and documentary evidence on record, convicted and sentenced the appellant



Crl.A.No.713 of 2018

as stated in Paragraph No.3, vide his judgment and orders dated 30.10.2018, aggrieved over which, the appellant / accused has preferred the present appeal.

5. Heard Mr.N.Manoharan, learned counsel for the appellant and Mr.S.Rajakumar, learned Additional Public Prosecutor for the respondent.

6. Mr.N.Manoharan, learned counsel for the appellant contended that the prosecution has not established the guilt of the accused beyond reasonable doubts. He stressed the following points in support of his contention.

- i. there is a delay in lodging the complaint with the police and the police sent the FIR to court only at about 2.00 p.m. on 08.01.2018;
- ii. PW.1 did not take treatment in the hospital even though she stated that she was attacked by the appellant ;
- iii. though the prosecution had stated that the occurrence was witnessed by one Rithish, Pandian and Velmurugan they were not examined before the trial court ;
- iv. P.W.1 in her complaint (Ex.P1) had stated that she came to know



Crl.A.No.713 of 2018

WEB COPY

the name of the appellant only subsequently and in the circumstances the prosecution ought to have conducted an identification parade ;

v. P.W.2 and P.W.7 in their evidence had stated that they were enquired by the police on the night of 08.01.2018 and therefore, the FIR registered at about 2.00 a.m. by the police is hit by Section 162 Cr.PC ;

vi. P.W.1 in her deposition had stated that Ponraj was sitting in the staircase after having his dinner. However, in the postmortem certificate (Ex.P10) it is stated that his stomach was empty ;

vii.though PW.3 had admitted that there was a Closed Circuit Television (in short CCTV) camera in Kotak Mahindra Bank the prosecution did not take steps to get the CCTV footage ;

viii.the appellant was actually brought to the police station at about 3.00 a.m. on 08.01.2018 and since the police personnel were not able to apprehend the real culprit had foisted a false case against the appellant ;

ix. P.W.13, the Investigation Officer was not in town on 09.01.2018 as he had gone over to Chennai in connection with his official work. Therefore, he could not have recorded the further statement



Crl.A.No.713 of 2018

of P.W.1 on 09.01.2018 ;

According to the counsel, there are glaring contradictions in the case of the prosecution and therefore, the conviction and sentence passed by the trial court judge cannot be sustained.

7. Per contra, Mr.S.Raja Kumar, learned Additional Public Prosecutor would contend that the trial court after analysing the oral/documentary evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for dismissal of the present appeal.

8. In the instant case, there are three eyewitnesses to the occurrence. Baakiyam (P.W.1) is the wife of the deceased Ponraj. She was with her husband at the time of the occurrence. PW.1 had deposed that she used to carry food for her husband at about 9.00 p.m. to Jayam Mahal Complex where her husband was working as a watchman and that on the night of 08.01.2018, she as usual went over there carrying food. She had further deposed that the appellant on an earlier occasion on 04.01.2018 had come down to the place of occurrence and wanted to go to the terrace of the building to consume alcohol. Since her husband



Crl.A.No.713 of 2018

prevented this, he threatened him with dire consequences. On 08.01.2018 at about 9.30 p.m. when she was with her husband, the appellant wanted to go to the terrace and since this was prevented by both P.W.1 and her husband, he attacked both of them and also pushed her husband down from the staircase, as a result of which, her husband sustained injuries on his head.

9. The occurrence was witnessed by Balachander (P.W.3) who was working as a watchman in the ATM of Kotak Mahindra Bank and he corroborated the versions of P.W.1 in all material particulars.

10. Senthilkumar (P.W.6) is the son-in-law of P.W.1 and the deceased (Ponraj). He also deposed that on 04.01.2018 at about 9.00 p.m. he was with his parents-in-law and talking to them. The appellant who came over there at about 9.00 p.m. wanted to go to the terrace of the building and picked up a quarrel with his father-in-law Ponraj and also threatened him with dire consequences. He had also deposed that on 09.01.2018, he was standing 10 feet away from the place of occurrence and the appellant who wanted to go to the terrace of the building attacked P.W.1 and the deceased Ponraj as he was prevented by them. He also



Crl.A.No.713 of 2018

pushed Ponraj down. Thus the evidence of P.W.6 is amply corroborated by the evidence of P.W.1 and P.W.3. The eyewitness account is clear and nothing useful was suggested to them during the course of cross examination to discredit or disbelieve their versions. P.W.1 in her complaint (Ex.P1) had stated that the appellant was wearing a black colour shirt (M.O.3) and she came to know that his name is Kannadasan (appellant). However, it is seen from the evidence of P.W.1 that she already knew him. Similarly the other witnesses namely P.W.3 and P.W.6 also knew the appellant, therefore, there was no necessity for the prosecution to conduct an identification parade. Moreover, it is to be pointed out that the present case is not based on circumstantial evidence or where the identity of the accused is not known to the eyewitnesses.

11. The victim, in the instant case was immediately rushed to the Government Hospital, Coimbatore, by P.W.1, P.W.6 and others, where he was declared as brought dead. A copy of the Accident Register (Ex.P17) shows that the victim was examined by the doctor by about 11.40 p.m. P.W.1 had gone over to R.S. Puram Police Station at about 2.00 a.m. on 08.01.2018 and had lodged her written complaint (Ex.P1).

In a case where the deceased is the husband and the eyewitness is the



Crl.A.No.713 of 2018

wife, it is natural for her to be distraught by the turn of events and she would not have been in a mental condition to go over to the police station and lodge a complaint. However, in the instant case, she had gone over to the police station at about 2.00 a.m. and had given a written complaint (Ex.P1). Moreover, the Investigation Officer had deposed that when the police officials were about to leave the police station on receipt of intimation from the hospital P.W.1 on her own came down to the police station accompanied by one Mohana Gandhi and lodged the written complaint. Therefore, there is no delay in lodging the complaint with the police.

12. Tmt. Mullai Prabhadevi (P.W.11), the then Sub Inspector of Police, R.S. Puram Police Station in her evidence had deposed that she sent the FIR to the Judicial Magistrate No.I, Coimbatore through Pugazhendi, Grade-I Constable attached to R.S.Puram Police Station. However, the FIR had reached the court only at about 2.00 p.m. on 08.01.2018. It is settled law that delay in lodging FIR and sending the FIR to Court may not to be fatal to the case of the prosecution in all cases. In the instant case, there are three eyewitnesses to the occurrence and their evidence is cogent and acceptable.



Crl.A.No.713 of 2018

WEB COPY

13. It is contended by the learned counsel for the appellant that though there are other witnesses to the occurrence, they have not been examined as a witness in the trial court. It is to be pointed out that three eyewitnesses to the occurrence have been examined and they have narrated the incident cogently and in the circumstances, non-examination of other eyewitnesses cannot be stated to be fatal to the case of the prosecution. It is also settled law that the entire case of the prosecution cannot be thrown out merely because all the eyewitnesses to the occurrence have not been examined.

14. PW.2 (daughter of PW.1) during the course of cross examination had stated that the police officials were in the hospital on the night of 08.01.2018 and that she was examined by them. Similarly, Thiru. Balaji Srinivasan (P.W.7) owner of the Jayam Mahal Complex had deposed that the police came down to the place of occurrence at about 10.30 p.m. on 07.01.2018. Relying on the evidence of P.W.2 and P.W.7 the learned counsel for the appellant contended that since the police had



Crl.A.No.713 of 2018

commenced investigation on the night on 07.01.2018 itself, the FIR (Ex.P7) registered at about 2.00 a.m. on 08.01.2018 is hit by Section 162 Cr.P.C. Thiru.Jothi (P.W.13), the Investigation Officer in his evidence had stated that he took up investigation only at about 3.00 a.m. on 08.01.2018 and not on the night of 07.01.2018. In any event, it is natural for the police officials to go over to the place of occurrence and enquire the persons who are present there. Such 'enquiry' by the police would not come under the purview of 'investigation'. Thus the registration of FIR at 2.00 a.m. on 08.01.2018 cannot be stated to be hit by Section 162 Cr.P.C.

15. P.W.1 in her complaint (Ex.P1) had stated that her husband after 'having dinner' was sitting on the staircase at about 9.30 p.m. and that the appellant who came over there attacked her and her husband and also pushed her husband down. Dr.Nandakumar (P.W.12), in his postmortem certificate (Ex.P10) had stated that the stomach contained about 100 ml of dull white colour fluid. This aspect was pointed out by the appellant's counsel who contended that the prosecution had failed to prove its case as the victim's stomach did not contain undigested food. It is to be pointed out that in the instant case, it is not necessary for this court to ponder over whether the victim was done away with before the



Crl.A.No.713 of 2018

dinner or after he had dinner. It just boils down to the murder of the victim and whether the appellant is the culprit. P.W.1 in her complaint (Ex.P1) had stated that her husband was standing on the third step of the staircase after having dinner. P.W.1 in her deposition before the trial court did not state that the incident took place only after the deceased Ponraj had his dinner. However, the mental condition of P.W.1 at the time of giving complaint to the police should be taken into consideration because within a fraction of a second her entire life had turned turtle and it is too much to expect her to give each and every minute detail in her complaint.

16. The contention of the learned counsel for the appellant that the appellant was brought to the police station at about 3.00 a.m. on 08.01.2018 has not been substantiated by the appellant. The entries in the General Diary (Ex.D2) do not speak about it. On the contrary, FIR which was registered at about 2.00 a.m. on 08.01.2018 and other details have been indicated in the General Diary.

17. It is true that P.W.13 was not in Coimbatore on 09.01.2018 and therefore, he could not have recorded the further statement of P.W.1 on



Crl.A.No.713 of 2018

09.01.2018. However, this aspect seems to be very trivial in nature.

There may be some minor discrepancies here and there and the entire case of the prosecution cannot be thrown out on this score.

18. The trial court had convicted the appellant only for the offences punishable under Sections 323 and 304(Part ii) IPC and had given cogent reasons for coming to such conclusions. The appellant had pushed down Ponraj (deceased) in a sudden fight and in the heat of passion and therefore, the conviction of the appellant under Sections 323 and 304(Part ii) IPC by the trial court is perfectly in order. In the instant case, the accused had no intention to cause the death of the deceased (Ponraj) and therefore, the sentence is modified as under :

"The appellant shall undergo Rigorous Imprisonment for five years and to pay a fine of Rs.1,000/- for the offence under Section 304 (Part ii IPC), in default, to undergo Simple Imprisonment for one month."

The sentence passed by the trial court with regard to 323 IPC shall remain intact.

19. In the result,



Crl.A.No.713 of 2018

- i. This Criminal Appeal is partly allowed.
- ii. While the conviction passed by the trial court is confirmed, the sentence is modified as under :

"The appellant shall undergo Rigorous Imprisonment for five years and to pay a fine of Rs.1,000/- for the offence under Section 304 (Part ii IPC), in default, to undergo Simple Imprisonment for one month."

- iii. The accused shall pay a fine of Rs.1,000/- for the offences under Section 323 IPC in default, to undergo simple imprisonment for a period of one month. The period of sentence already undergone by the appellant shall be set off.
- iv. The revision petitioner / accused shall surrender before the I Additional District and Sessions Court, Coimbatore within fifteen days from the date of receipt of a copy of this order / uploading of the order, failing which, the Trial Court shall take steps to secure his presence for serving the remaining period of sentence.

30.07.2024

Index : yes/no
Speaking /Non speaking Order
mtl



WEB COPY



Crl.A.No.713 of 2018

To

1. The I Additional District and Sessions Court, Coimbatore.
2. The State by Inspector of Police, B-2, R.S. Puram Police Station, Crime No.29 of 2018, Coimbatore City.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras



WEB COPY



Crl.A.No.713 of 2018

R.HEMALATHA, J.

mtl

Crl.A.No.713 of 2018

30.07.2024