



Crl.A.No.20 of 2019

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.09.2024
Pronounced on	19.09.2024

CORAM :

THE HONOURABLE Mr. JUSTICE **M.S. RAMESH**
AND
THE HONOURABLE Mr. JUSTICE **C.KUMARAPPAN**

Crl.A.No.20 of 2019

1. Mani
2. Kannan

-- Appellants/Accused 1 and 2

Vs.

State rep by The Inspector of Police
Karipatty Police station,
Same District,
Salem District
(Crime No.309 of 2014)

.... Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment dated 20.11.2018 in S.C.No.30 of 2016 on the file of the I Additional District and Sessions Judge, Salem.

For appellants : Mr.B.Vasudevan
For respondent : Mr.A.Gokula Krishnan
Additional Public Prosecutor



Crl.A.No.20 of 2019

WEB COPY

J U D G M E N T

C.KUMARAPPAN, J.,

The instant criminal appeal has been filed by the appellants/Accused 1 and 2 against the order of conviction dated 21.12.2018 passed in Sessions case No.30 of 2016 by the I Additional District Court, Salem.

2. Originally, there were four accused, but during the pendency of the trial, the 3rd accused, Senthil Kumar, died. Hence, the charge framed against him got abated. In respect of Murugan(A4), the trial Court has found him not guilty and acquitted him from all the charges. Hence, the instant appeal has been preferred by accused 1 and 2 against the conviction and sentence under Section 302 I.P.C, imposing a punishment of life imprisonment.

3. According to the prosecution, the accused 1 and 2 are brothers.



Crl.A.No.20 of 2019

WEB COPY

The deceased, Nallathambi is the maternal uncle of the appellants. There was a property dispute between the accused family and the deceased. Since the accused had intimidated the deceased's adopted son, qua P.W7 Dinesh, the deceased gave a police complaint against the accused. The deceased and P.W1, Srinivasa Gounder, waited at the Karmapuram Police Station for the arrival of the accused for enquiry. Since the accused did not turn up for enquiry, P.W1, Srinivasa Gounder and deceased returned to village in a two wheeler driven by P.W1.

4. While they were proceeding to their village, the appellants, along with his two friends, waylaid them and indiscriminately stabbed the deceased by knife, and the deceased succumbed to the stab injury. Further, the accused also intimidated P.W1. Immediately, thereafter, P.W1 gave a police complaint before the Karmapuram Police Station at about 5.30 hours, and the same was received by P.W11-Manivel who registered an F.I.R at about 21.15 hours in Crime No.309 of 2014. On registration of the F.I.R, he forwarded the same to the Jurisdictional Magistrate as well as to the Investigating Officer.



Crl.A.No.20 of 2019

WEB COPY

5. On receiving the copy of the F.I.R, the Investigating Officer, P.W12-S.Kandhavel proceeded to the scene of occurrence, prepared the observation Mahazaar and rough sketch, and also conducted an inquest over the body of the deceased. Thereafter, he made arrangement for the postmortem of the deceased and recovered sample soil, as well as the blood-stained soil. He has also recorded the statement of witnesses. On coming to know that the appellants had surrendered on 26.06.2014 before the Sangakiri Judicial Magistrate No.II, he made arrangements for police custody.

6. In the police custody, the appellants voluntarily gave a confession in the presence of the witnesses and in furtherance thereof, also effected the discovery of facts by recovering the knife. The recovered blood-stained knife was forwarded to the Court under Form 95, and made arrangements for forensic examination. Senthil Kumar (Accused No. 3) was arrested on 26.09.2014, and on surrender of the 4th accused before the Salem Judicial Magistrate II, he was also arrested



Crl.A.No.20 of 2019

WEB COPY

and taken into police custody for interrogation. The 4th accused gave a confession statement and identified the scene of occurrence. Thereafter, P.W.12-Investigating Officer recorded the statement of Krishnan-P.W8, the postmortem Doctor, as well as the forensic experts. After receiving the reports from the forensic department and completing the investigation, he laid the charge sheet before the concerned jurisdictional magistrate.

7. Before the trial Court, in order to prove the prosecution case, they relied on as many as 12 witnesses, 21 documents and also marked 6 material objects.

8. The trial Court, after having considered the oral and documentary evidences, has acquitted the 4th accused, Murugan. However, as against the appellants 1 and 2, the trial Court has found them guilty for the offence under Section 302 I.P.C and were sentenced to undergo life imprisonment and a fine of Rs.5,000/-, each, in default simple imprisonment for 6 months. Assailing the said order, the instant



Crl.A.No.20 of 2019

appeal has been filed.

9. The learned counsel appearing on behalf of the appellants would vehemently contend that the entire evidence revolves upon the ocular evidence of P.W.1 and P.W.3, and the alleged motive of property dispute, between the deceased and accused 1 and 2. It is the contention of the learned counsel that, though the prosecution relied upon ocular evidence, no witnesses has supported the prosecution. Even the recovery witnesses who allegedly witnessed the confession statement have turned hostile. Therefore, as against accused 1 and 2, no material are available incriminating them. It is the further contention of the learned counsel for the appellants that, even the motive alleged has not at all been proved. Therefore, it is his contention that the order of the learned trial Judge is illegal and liable to be interfered with.

10. Per contra, the learned Additional Public Prosecutor would contend that the evidence of P.Ws 1 to 3 would clinchingly establish the proof of the charges against the accused. Though P.W3 did not speak about the occurrence during his chief examination, he has resiled from



Crl.A.No.20 of 2019

WEB COPY

his chief examination and admitted during the cross examination about the involvement of the accused. It is the further contention of the learned Additional Public Prosecutor that, the very registration of the F.I.R instantaneously and the availability of the previous complaint Ex.P9 and its C.S.R-Ex.P10 would further demonstrate the involvement of the accused, including his motive. Therefore, he would submit that the order of conviction passed by the Sessions Judge is well merited and does not require any interference.

11. We have given our anxious consideration to either side submissions.

12. If we look at the prosecution case, they relied upon the ocular testimony of P.Ws.1 and 3. According to the prosecution, P.W.1 is a person who was traveling with the deceased at the time of the occurrence. Similarly, P.W.3 is a person who was working in a nearby farm and witnessed the occurrence. Both are the key witnesses. Though P.W1 had spoken about the occurrence, he unfortunately was



Crl.A.No.20 of 2019

not able to identify the accused. The relevant portion of the evidence of P.W1 are as follows.

“...ஆஜர் எதிரிகள் யாரையும் எனக்கு தெரியவில்லை.
.....எனக்கு முழங்காலில் காயம் ஏற்பட்டது.
நான் திரும்பி பாக்கும் போகும் போது
நல்லதம்பியை ஒருவர் குனிந்து கொண்டு வயிற்றின்
இரண்டு பக்கமும் குத்தி கொண்டு இருந்தார்.
கத்தியால் குத்தியவர் அருகில் இருந்த நபர் போடா
கிழவா என்று சொன்னார். இல்லையென்றால்
உன்னையும் குத்திவிடுவேன் என்று சொன்னார்.
அவர்கள் இருவரின் அடையாளம் எனக்கு
தெரியவில்லை.....”

Therefore, the evidence of P.W1 is of no use to further the prosecution case.

13. Coming to the other ocular testimony of P.W3, during his chief examination, he also did not identify the culprit.

“....நான் என்ன என்று எட்டி பார்த்தேன். 4 பேர்



Crl.A.No.20 of 2019

சத்தம் போட்டு கொண்டிருந்தார்கள். சீனிவாசகவுண்டர் அடித்து போட்டுவிட்டு சென்றதாக சொன்னார்கள். யார் அடித்தார்கள் என்று நானும் கேட்கவில்லை. அவரும் சொல்லவில்லை. போலிசார் என்னை விசாரித்தார்கள்”.

However, P.W3, while being examined by the prosecution after declaring him as hostile, he admits that the accused 1 and 2 have stabbed the deceased. However, during the cross examination by the accused, he unequivocally retracted and stated that he did not witness the occurrence. The relevant admission of P.W3 is as follows:

“...சம்பவத்தை நான் நேரில் பார்க்கவில்லை.

சீனிவாசகவுண்டரை எதிரிகள் ஓடி போடா கிழவா என்று

சொன்னது உண்மை தான்.”

Therefore, the star witnesses are P.W1 and P.W.3, which relied upon by the prosecution, did not implicate the accused, though they speak about the death of the deceased.

14. Therefore, if the ocular evidence goes, the remaining evidence



Crl.A.No.20 of 2019

WEB COPY

is the discovery of fact. In order to prove the discovery of facts against the appellants, P.W6 was examined. According to the prosecution, when the appellants were taken to the police custody on 26.06.2014, they gave a confession statement in the presence of P.W6 and with one Ravi. In pursuance thereof, they also effected recovery of two wheeler, as well as the knife. But P.W6 in so many words, though he states that he has signed on 26.06.2014, did not speak anything as to the discovery of fact. Therefore, the recovery of blood-stained MOs', which according to the prosecution has been used to stab the deceased, has not been proved in the manner known to law. Even the blood stains, though it is recorded as human, the grouping result was inconclusive. Therefore, the recovery of the knife at the instance of the appellants was not proved and further, even if proved, there are no scientific evidence connecting this weapon with the occurrence. Therefore, when there is no convincing direct evidence implicating the accused, and regarding the recovery at the instances of the accused, mere motive alone cannot be a ground to lay conviction against the accused. Here, the trial Court erroneously swayed upon the narration in Ex.P.1- complaint, and found



Crl.A.No.20 of 2019

the accused 1 and 2 guilty.

WEB COPY

15. It is well settled principle of law that the benefit of doubt is a salutary principle of criminal law, so that no innocent person is punished. But at the same time, the doubt must be reasonable and one calculated to further justice and not to frustrate it. Here, while looking at the evidence of P.W.1 and P.W.3, they did not implicate the accused, and there are reasonable doubt in the recovery of knife at the instance of the appellants. Therefore, apparently there are no evidence against the appellants. At this juncture, it is also relevant to mention here that the suspicion, howsoever strong, the same will not be equated with that of the actual proof.

16. In a criminal prosecution, what is essential is proof beyond reasonable doubt. Here, in view of the reasonable doubt, which we have discussed herein above, we could not find any material in support of the prosecution. Besides, the prosecution has also miserably failed to prove the charges beyond reasonable doubt. Therefore, this is a fit case to



Crl.A.No.20 of 2019

interfere with the order of conviction.

WEB COPY

17. Accordingly, this Criminal Appeal is allowed. Consequently, the conviction and sentence imposed upon the appellants by the trial Court in S.C.No.30 of 2016 dated 21.12.2018, is hereby set aside. The appellants are acquitted of all charges levelled against him. The fine amount, if any paid, is directed to be refunded. The bail bonds executed, if any, shall stand terminated.

[M.S.R., J.] [C.K., J.]
19.09.2024

Index: Yes

Neutral Citation: Yes

Speaking order: Yes

srn

Note: Issue order copy today(19.09.2024)

To

1. The Superintendent of Prison,
Central Prison, Coimbatore
2. The Inspector of Police
Karipatty Police station, Salem District,
Salem District
3. The Public Prosecutor, High Court of Madras.



WEB COPY



Crl.A.No.20 of 2019

M.S.RAMESH, J.
and
C.KUMARAPPAN, J.

srn

Pre-delivery judgment made in
Crl.A.No.20 of 2019

19.09.2024