

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.07.2015

Pronounced on : 24.11.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
and
THE HONOURABLE MR.JUSTICE C.T.SELVAM

CRL.A.No.664 of 2013
and M.P.No.1 of 2015

Chennaiyan Appellant / Accused

Vs.

The State rep. by
The Inspector of Police
Pochampalli Police Station,
Krishnagiri District.Respondent / Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the Judgment, dated 23.08.2013 made in S.C.No.3 of 2012 on the file of the learned Additional District and Sessions Judge, Krishnagiri, Krishnagiri District.

For Appellant : Mr.Udaya Shankar

For Respondent : Mr.V.M.R.Rajendran

Additional Public Prosecutor

JUDGMENT

(Judgment of the Court delivered by S.TAMILVANAN,J)

The criminal appeal has been preferred against the conviction and sentence imposed by Judgment, dated 23.08.2013 made in S.C.No.3 of 2012 on the file of the learned Additional District and Sessions Judge, Krishnagiri, Krishnagiri District.

2. It is seen that the appellant is the sole accused and he was convicted under Section 302 IPC (4 counts) and sentenced to undergo life imprisonment for each counts and also imposed a fine of Rs.1,000/- and in default to undergo Rigorous Imprisonment for three years; under Section 307 IPC (4 counts) and sentenced to undergo 5 years Rigorous Imprisonment for each counts and also imposed a fine of Rs.500/- and in default to undergo Rigorous Imprisonment for two years.

3. As per the prosecution case, the accused is the son of one deceased-Duraisamy Naidu born through his first wife. The deceased Vediappan is the son of the deceased Duraisamy

Naidu, the deceased Chinnapetta Naidu is cousin brother of the deceased Duraisamy Naidu and the deceased Abhinaya @ Abhirami, aged about 7 years is the grand daughter of the deceased Vediappan. The victim, Maheswari is the wife of the deceased Vediappan, the victim Aravindhana is the son of the deceased Vediappan and victims Nithya and Karthika are the neighbours of the deceased. The deceased Duraisamy Naidu owned 3 1/2 acres of land. During his life time, he partitioned the property in equal share to the accused Chennaiyan and the deceased Vediappan and retained 1/2 acres of land in his possession. But the accused is not satisfied with the above partition. Hence, the accused decided to kill his father Duraisamy Naidu and brother Vediappan's family, with his view that 1/2 acres of land would go to them because his father (deceased) lived with his brother Vediappan (deceased). As per the confession statement of the accused, the accused alone mixed poison with porridge, thereby the accused committed the murder of four persons and hence, he is liable to be punished u/s. 302 IPC (4 counts) and also for having attempted to murder of four persons and he is liable to be punished u/s.307 IPC (4 counts).

4. On appearance of the accused before the trial court, after satisfying that the accused had been furnished with free copies of the prosecution documents as required u/s. 207 Cr.P.C. Thereupon, charge u/s. 302 IPC and 307 IPC were framed, read over and explained to the accused. When the accused was questioned with regard to the substance of the charge, he denied the same, pleaded not guilty and claimed to be tried.

5. On the side of the prosecution, P.W.s.1 to 21 were examined and Exs.P.1 to P.38 and M.Os.1 and 10 were marked. On the side of the defence, neither oral nor documentary evidence was adduced.

6. After trial, the appellant / accused was convicted under Section 302 IPC (4 counts) and sentenced to undergo life imprisonment and also directed to pay a fine of Rs.1,000/- and in default to undergo Rigorous Imprisonment for three years; under Section 307 IPC (4 counts) and sentenced to undergo Rigorous Imprisonment for five years and also to pay a fine of Rs.500/- and in default to undergo Rigorous Imprisonment for two years. Aggrieved by the same, this Criminal Appeal has been preferred by the appellant / accused.

7. On the side of the prosecution, P.Ws.1 to 21 were examined. Out of the said witnesses, P.Ws.4,5 and 11 were turned hostile and did not support the prosecution case.

8. P.W.2, wife of the deceased, Vediappan had deposed that the appellant /accused is her husband's brother and her father-in-law got 3 1/2 acres of land, out of which 1 1/2 acres of land was allotted to her husband, the deceased and

the appellant / accused herein and 1/2 acre of land had been kept by her deceased, father-in-law. On the date of occurrence, at about 6 a.m, she had brought water from village water pipe and kept in the pot, for preparing porridge. When the porridge was boiling in a country stove, that was kept out of the house, her father-in-law was sitting and mixing the same with spoon and at that time, the appellant was also sitting nearby her father-in-law. Then at about 9 a.m the porridge was consumed by herself, her husband, her father-in-law and others. As she fell unconscious, she was taken to the hospital at Dharmapuri. Two days after the occurrence, she came to know that her husband and three others died, on account of consuming the porridge. Had she seen the appellant / accused mixing poison in the porridge, she could not have taken and served the same to her husband and others, hence, as contended by the learned counsel appearing for the appellant / accused, she could not be an eye witness to say that the poison was mixed by the appellant / accused. P.W.3, Priyanka, did not consume porridge as she wanted tamarind rice.

9. It is not in dispute that the case was originally registered under Section 174 of the Code of Criminal Procedure. Subsequently, that was altered into Section 302 IPC. Even as per the evidence of P.W.4, there was no enmity between the appellant and the deceased. The appellant, deceased and their family members are only agriculturists, they were using pesticides for their agricultural work. As per the prosecution case, the death was caused on account of consuming porridge, that was mixed with pesticide.

10. P.W.1, who had given the written complaint, Ex.P.1 was not an eye witness. He went to the Hospital after the occurrence and found that four persons had died in the hospital at Dharmapuri. P.Ws.4, 5 and 11 were turned hostile and did not support the prosecution case. P.W.6 is a child witness, who was not in a position to adduce proper evidence. P.W.7 and P.W.8, while they were travelling to Melmaruvathur temple, got the message through phone and when they return back and see, four of them were died.

11. P.W.9, Doctor has deposed that on 30.12.2010, at about 12 Noon, he gave treatment to Maheswari, P.W.2. His evidence would show that P.W.2 was brought to the hospital, where she was unconscious and she was given treatment till 02.01.2011. The Discharge summary given by him was marked as Ex.P.2. P.W.10, father of P.W.2 was not an eye witness, only after the occurrence, he went to the hospital and saw his daughter, P.W.2 and also came to know that other persons including, husband of P.W.2 were found dead.

12. The evidence of P.W.12, Retired VAO of Mookampatti village, has deposed that the Inspector of Police had visited the scene of occurrence and prepared observation mahazar,

Ex.P.3 at 12.30 p.m and also recovered M.Os.1 to 10 from the scene of occurrence. According to him, only 6 months after the occurrence, on 22.07.2012, he went to the house of the accused along with his Assistant, where the accused was examined by the Inspector, and that the appellant / accused gave a confession statement, which has been marked as Ex.P.5. The poisonous bottle is marked as Ex.P.6.

13. P.W.13, Dr. Ramalingam, had deposed that in Gokulam Hospital, for the two children, by aged about 4 years, Nithyasri, Karthiga, he gave one day treatment for vomiting and fainting, then the vomit was stopped and they were discharged and he had further deposed that he did not do any test for the food found in the stomach of the children. The medical certificate given to Karthiga has been marked as Ex.P.7 and the medical certificate regarding Nithyasri has been marked as Ex.P.8.

14. P.W.14 is the Retired Special Inspector of Police, who has deposed that on 30.12.2010, when I was the Special Inspector of Police, Bargur, as per the Cr.No.534 of 2010 under Section 172, for the deceased Abinaya @ Abhirami, prepared the Post mortem enquiry report, in the presence of panchayatdars. The said Report was marked as Ex.P.9.

15. P.W.15, Dr.V.P.Chandrasekaran of Salem Vinayaka Mission Hospital, Salem has deposed that he had given treatment to Arvind, aged about 8 years, under the impression that he could have consumed poison and after 4 days as he was recovered, discharged from the hospital. He has also taken CT Scan and further deposed that the said vomit and fainting could have been occurred if he has consumed pesticides. The said Certificate issued by the Doctor is marked as Ex.P.10.

16. P.W.16, Dr. Iniyal Mandothari, working in Government Hospital has given first aid to Arvind, aged about 10 years and Maheswari, aged about 40 years and sent both of them for further treatment to a Hospital in Dharmapuri. The said exhibits were marked as Ex.P.11 and Ex.P.12. Further, she has deposed that on 30.12.2010, Duraisamy Naidu was brought to the hospital, after his death. As per the request for post mortem, Ex.P.13, she has conducted post mortem and found that he could have died 6 to 8 hours prior to the post mortem. The said post mortem certificate was marked as Ex.P.14 and the Chemical Analysis Report was marked as Ex.P.15. As per the post mortem request of Chinnapit Naidu, Vediappan and Archana, which has been marked as Ex.P.16, Ex.P.19 and Ex.P.22 respectively, she has conducted post mortem and deposed that they could have died 6 to 8 hours prior to the post mortem and further deposed that they could have died due to the consumption of pesticide. The post mortem certificates were marked as Ex.P.17, Ex.P.20 and Ex.P.23 respectively. The Forensic Science Report was marked as Ex.P.18, Ex.P.21 and Ex.P.24 respectively.

17. As per the last seen theory, according to P.W.2 and

P.W.3, on 30.12.2010 at about 6.30 a.m, the porridge was prepared outside the house by the deceased Duraisamy and victim Maheswari and at that time, the accused came to the spot demanded with his father regarding partition and left the place. After completion of preparation of porridge, the deceased Duraisamy Naidu left the place of occurrence. On the same day, at about 9 am, the porridge was distributed to the deceased Duraisamy Naidu, Vediappan and others. After consuming porridge, the said Duraisamy Naidu, Vediappan, Chinnapetta Naidu, Abhinaya @ Abhirami were died and the said victim Maheswari was taken to treatment and she was rescued from the death.

18. The entire case is mainly based on the evidence of P.W.2. As discussed earlier, P.W.2 could not be construed as an eye witness for the occurrence. Prior to the alleged confession statement recorded by the Inspector, P.W.2 had not given any complaint, so as to alter the case registered under Section 174 Cr.P.C into a case under Section 302 IPC and other penal provisions against the appellant / accused.

19. Having gone through the evidence, we are of the view that there is no legal evidence available to prove the alleged guilt against the accused. The alleged confession given before the police is inadmissible in evidence, however, the confession statement leading to recovery alone is admissible.

20. It is seen that the case has been altered into Section 302 IPC (4 counts) from the case that was registered under Section 174 Cr.P.C only on suspicions and not based on any material evidence. On the aforesaid circumstances, we are of the view that the prosecution has not established the alleged guilt against the appellant / accused beyond reasonable doubt. Therefore, we find it just and reasonable to allow the appeal.

21. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed in judgment dated 23.08.2013 made in S.C. No.3 of 2012 on the file of the learned Additional District and Sessions Judge, Krishnagiri, Krishnagiri District is set aside. The appellant is acquitted of all charges levelled against him and he is directed to be set at liberty forthwith unless his presence is required in connection with any other case. The fine amount, if any paid by the appellant already, the same is ordered to be refunded to the appellant. The bail bond if any, executed by the appellant shall stand cancelled. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

tsvn

To

1. The Additional District and Sessions Judge
Krishnagiri, Krishnagiri District.
2. -do- Through The Principal Sessions Judge,
Krishnagiri.
3. The District Munsif Cum Judicial Magistrate Pochampalli,
Krishnagiri District.
4. The Inspector of Police
Pochampalli Police Station,
Krishnagiri District.
5. The Superintendent Central Prison, Vellore.
6. The Public Prosecutor,
High Court of Madras.
7. The District Collector Krishnagiri District.
8. The Director General of Police Mylapure Chennai.

CRL.A.No.664 of 2013

RSI (CO)
Eu 14.12.15



WEB COPY