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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRIMINAL APPEAL (MD) No.314 of 2014

and

M.P (MD) Nos.1 & 2 of 2014

1.Lingammal

2.Gunasekaran

.. Appellants/Accused Nos.1 & 2

Vs.

The State,

Rep. By The Inspector of Police,

Chekkanoorani Police Station,

Madurai District.

Crime No.121 of 2013

.. Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, 1973, to set aside the Judgment dated 21.11.2014 passed in Sessions Case No.88 of 2014 by the V-Additional District Court, Madurai.

For Appellants : Mr.N.Ananthapadmanabhan

For Respondent : Mr.K.S.Durai Pandian

Additional Public Prosecutor

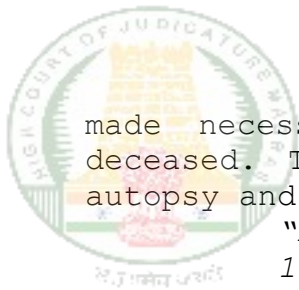
JUDGMENT

(Judgment of the Court was made by A.SELVAM, J)

Challenge in this Criminal Appeal is to the conviction and sentence, dated 21.11.2014 passed in Sessions Case No.88 of 2014 by the V-Additional District Court, Madurai.

2. The case of the prosecution is that the first accused Lingammal is the wife of the deceased by name Paraman. The second accused by name Gunasekaran is their son. At the time of occurrence, the accused and deceased have lived separately in a house, which situates in their garden. The deceased has used to make tussle with the accused by way of demanding partition of properties and having enraged at his conduct, on 25.03.2013 both the accused have contrived themselves to murder the deceased and in pursuance of their common intention, the second accused has attacked the deceased by using deadly weapon and the first accused has also lent her support and due to overtacts, the deceased has passed away. After occurrence, on information, the concerned Village Administrative Officer by name Moorthy has given Ex.P.1, complaint to P.W.9 viz., Sivaji Ganesan and the same has been registered in Crime No.121 of 2013.

3. On receipt of Ex.P.1, complaint, the Investigating Officer viz., P.W.11 has taken up investigation, examined connected witnesses and also



made necessary arrangements to conduct autopsy on the body of the deceased. The Doctor by name Sundarammal, viz., P.W.10, has conducted autopsy and she found the external and internal injuries:-

"External Injuries:-

- 1) A cut injury on left knee joint 4 cms X 0.5 cms X 0.5 cms.
- 2) Fracture left ulna, left wrist joint dislocated.
- 3) Cut injury 10 cms X 1 cms X 1 cms extended from occipital bone to left parietal one.

Internal Injuries:-

- 1) Right parietal bone fracture (5 cms)
- 2) Fracture of right occipital bone
- 3) Fracture right. Temporal fracture; right parietal bone fracture and right occipital bone fracture present.

Internal Exam:-

Brain matter protruding out of the fractured skull bone on right side. Heart, lungs congested, liver congested, stomach congested contains 50 ml of yellow colour fluid. Small intestine empty; bladder empty."

4. The post-mortem certificate has been marked as Ex.P.10. Since P.W.11 has been transferred, her successor in office viz., P.W.12 has continued investigation. After completing the same, laid a final report on the file of the Judicial Magistrate Court No.II, Usilampatti and the same has been taken on file in P.R.C.No.29 of 2013.

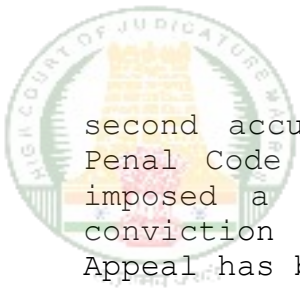
5. The Judicial Magistrate No.II, Usilampatti, after considering the fact that the offences alleged to have been committed by both the accused are triable by Sessions Court, has committed the same to the file of the Court of Sessions, Madurai Division and the same has been taken on file in Sessions Case No.317 of 2008 and subsequently, made over to the file of the trial Court.

6. The trial Court, after hearing both sides and upon perusing the relevant records, has framed a charge against the first accused under Section 302 read with 34 of the Indian Penal Code and against the second accused under Section 302 of the Indian Penal Code and the same has been read over and explained to them. The accused have denied the charge and claimed to be tried.

7. On the side of the prosecution, P.Ws.1 to 12 have been examined and Exs.P.1 to P.16 and M.Os.1 to 7 have been been marked.

8. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. However no oral and documentary evidence have been let in on the side of the accused.

9. The trial Court, after considering the available evidence on record, has found the first accused guilty under Section 302 read with 34 of the Indian Penal Code and sentenced her to undergo imprisonment for life and also imposed a fine of Rs.1,000/- with usual default clause. The



second accused has been found guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.1,000/- with usual default clause. Against the conviction and sentence passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the accused as appellants.

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10. The entire case of the prosecution is based upon Ex.P.1, complaint alleged to have been given by the defacto complainant viz., P.W.1-Moorthy. It is an admitted fact that P.W.1 is a Village Administrative Officer. On receipt of certain information, he has given Ex.P.1, but P.W.1 is not at all eye witness. The younger brother of the deceased by name Perumal has been examined as P.W.2. Even though on the side of the prosecution, some more witnesses have been examined for the purpose of establishing the alleged guilt of both the accused, almost all of them have become hostile witnesses.

11. The learned counsel appearing for the appellants/accused has sparingly contended that in the instant case, absolutely there is no evidence so as to connect both the accused with the crime and the trial Court, without considering that even an iota of evidence is not available on the side of the prosecution, has erroneously invited conviction and sentence against the appellants/accused and therefore, the conviction and sentence passed by the trial Court are liable to be set aside.

12. The learned Additional Public Prosecutor has contended that in the instant case after occurrence the second accused has voluntarily given extra judicial confession to P.W.2 and further, the first accused has given an extra judicial confession to P.W.6 and on the basis of available evidence, the trial Court has rightly invited conviction and sentence against both the accused and therefore, the conviction and sentence passed by the trial Court do not require any interference.

13. As pointed out earlier, P.W.1 is not at all eye witness and he has simply given Ex.P.1, compliant, wherein no mention has been made with regard to overtacts alleged to have been committed by both the accused.

14. The younger brother of the deceased by name Perumal has been examined as P.W.2 and he simply stated that after occurrence, he met the second accused and he reported to the effect that a tussle has taken place between him and his father and subsequently, his father passed away. Nowhere in the evidence given by P.W.2 it is stated to the effect that the second accused has attacked his father and due to his overtacts, he passed away. Therefore, the evidence given by P.W.2 is of no use. The other witnesses, namely, Pandi, Ramayee and Surakka have been examined as P.Ws.3 to 5 and all of them have become hostile witnesses and one Sethuraman has been examined as P.W.6 and he has given evasive evidence with regard to extra judicial confession alleged to have been given by the first accused. Therefore, it goes without saying that absolutely there is no evidence on the side of the prosecution so as to connect both the accused with the crime.

15. Even though no piece of evidence is available on the side of the prosecution so as to connect the accused with the crime, the trial Court has erroneously invited conviction and sentence against the accused. In view of the discussion made earlier, this Court has found considerable



force in the contention putforth on the side of the appellants/accused and altogether, the present Criminal Appeal is liable to be allowed.

16. In fine, this Criminal Appeal is allowed and the conviction and sentence passed against the appellants/accused in Sessions Case No.88 of 2014 by the V-Additional District Court, Madurai are set aside. The appellants/accused are acquitted and fine amounts if any paid by them are ordered to be refunded forthwith. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

ps
To

- 1.The V-Additional District Court,
Madurai.
- 2.The Director General of Police,
Chennai-4
- 3.The District Collector, Madurai District.
- 4.The Judicial Magistrate NO.II, Usilampatti.
- 5.The Inspector of Police,
Chekkanoorani Police Station,
Madurai District.
- 6.The Superintendent, Central Prison, (Women's Speerat cell)
Trichy, (In duplicate to serve 1st appellant/1st Accused)
- 7.The Superintendent, Central prison, Madurai
(In duplicate to serve 2nd appellant/2nd Accused)
- 8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

COPY TO:

THE SECTION OFFICER,
CRIMINAL SECTION, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2cc to MR.N.ANANTHAPADMANABAN,ADVOCATE IN SR NOS. 5337 & 5431

Judgment made in
Crl.A (MD) No.314 of 2014
05.02.2015

RG.10.02.2015 4P.12C.