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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.06.2015

CORAM

THE HONOURABLE MR. JUSTICE A.SELVAM
and
THE HONOURABLE MR. JUSTICE V.S.RAVI

CrI.A.(MD)No.63 of 2015

Panchavarnam

.. Appellant/PW2

Vs.

1.State rep.by

The Inspector of Police,
Manamadurai Police Station,
Sivagangai District.

..1st Respondent/Complainant

2.Boominathan

3.Shiyamala

..Respondents 2 & 3/Accused

Criminal appeal filed under Section 372 of Cr.P.C. against the order of acquittal dated 08.09.2014 passed in Sessions Case No.345 of 2009 by the District and Sessions Court, Sivagangai.

For Appellant	:	Mr.M.Jegadeesan
For R - 1	:	Mr.A.Ramar
		Addl.Public Prosecutor
For RR - 2 & 3	:	Mr.R.Venkateswaran

JUDGMENT

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

This Criminal Appeal has been directed against the order of acquittal passed in Sessions Case No.345 of 2009 dated 08.09.2014 by the District and Sessions Court, Sivagangai.

2. The crux of the case of the prosecution is that the defacto complainant by name Muthukrishnan is the son of the deceased and PW2 by name Panchavarnam is the wife of the deceased. On 25.09.2004 at about 05.00 am, the deceased has directed his wife to make idly. Subsequently, as usual, he has gone to a nearby tank. Since he has not returned till 6.00 o'clock, PW1 and others have searched him and ultimately found his dead body near a palisade of one Periyasamy and subsequently the defacto complainant has given a complaint to PW10, Inspector of Police and the same has been registered in Crime No.939 of 2004. The complaint given by the defacto complainant has been marked as Ex.P1.

3. On receipt of Ex.P1, PW10 has conducted initial investigation, examined connected witnesses and made arrangements to conduct autopsy on the body of the deceased and accordingly, Dr.Parthiban (PW9) has conducted autopsy and he found the following external and internal injuries:

Injuries:

(1) Cut injury over the upper part of the left forearm involving front, inner and back side 13x4x2 cms. oblique in nature.

(2) An oblique cut injury over the medial aspect of the right palm 6x1x1 cms.

(3) Semilunar cut injury over the right shoulder 6x2 skin depth.

(4) Cut injury over the outer end of the right clavicle 2x1x1 cm oblique in nature.

(5) An oblique cut injury over the left side of the chest at the level of the anterior axillary line, 13 cms below and lateral to the left nipple 6x2x2 cms.

(6) An oblique cut injury below and behind the right ear on the top of the right side of the neck 6x3x2 cm.

(7) Right pinna is horizontally. Cut at its lower end.

(8) Vertical cut injury below the right ear 5x2 skin depth.

(9) Cut injury just above the external auditory meatus on the right side 1x1 skin depth.

(10) An oblique cut injury over the right cheek 5x1x1 cm.

(11) Cut injury over the right side of the chin 3x1x1 cm

(12) Cut injury over the right temple 2x1x1 cm

(13) Semilunar cut injury over the right frontal region of the scalp 16x2x2 cms, exposing the skull bone.

(14) Semilunar cut injury over the left side of the forehead 7x1x0.5 cm.

(15) An oblique cut injury over the left temple 3x2x1 cm.

(16) An oblique cut injury over the left cheek 4x2x2 cms.

(17) An oblique cut injury over the left side of the neck below the angle of the mandible 6x3x2 cm.

(18) An oblique cut injury over the left side of the neck 3 cms below the injury No.17, 7x3x3 cms.

(19) An oblique cut injury below and behind the left ear, on the top of the left side of the neck 3x1x1 cm.

(20) Cut injury below the left scapula 4x2x1 cm oblique in nature.

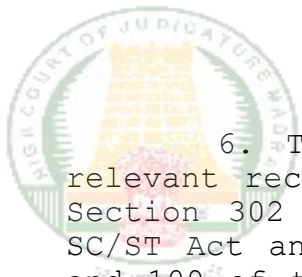
(21) An oblique cut injury over the (N.S) region 1x1x0.5cm.

Internal Examination

Scalp - as described earlier. Skull - Nad, Brain & Meninges - NAD, chest - chest wall - as described earlier. Trachea, mediastinum, oesophagus and heart - NAD, lungs - pale. Abdomen - Abdominal wall, peritoneum - NAD. Stomach - empty, liver, gall bladder, pancreas, kidneys and adrenals - pale. Bladder - empty. Small & large intestine - NAD. External Genitalia - NAD. Muscles and bones - as described earlier.

4. The post-mortem certificate has been marked as Ex.P10. Further investigation has been done by PW11 and after completing investigation, laid a final report on the file of the Additional District Munsif - cum - Judicial Magistrate Court, Manamadurai and the same has been taken on file in PRC No.55 of 2004.

5. The Additional District Munsif - cum - Judicial Magistrate Court, Manamadurai after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Sivagangai Division and the same has been taken on file in Sessions Case No.345 of 2009.



6. The trial Court after hearing both sides and upon perusing relevant records has framed first charge against the first accused under Section 302 of the Indian Penal Code and also under Section 3(2)(5) of SC/ST Act and second charge against the second accused under Section 302 and 109 of the Indian Penal Code and also under Section 3(2)(5) of SC/ST Act and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

7. On the side of the prosecution PWs.1 to 12 have been examined and Exs.P1 to P24 and M.Os.1 to 6 have been marked.

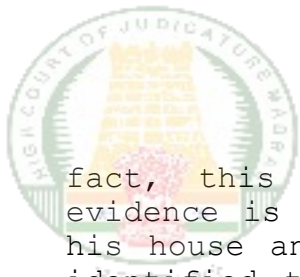
8. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

9. The trial Court after perpending the available evidence on record has found the accused not guilty under the Sections mentioned in the charges and ultimately acquitted them. Against the order of acquittal, the present Criminal Appeal has been filed by the wife of the deceased (PW2) as appellant.

10. The learned counsel appearing for the appellant has repeatedly contended that the wife of the deceased by name Panchavarnam and neighbours namely Dhanalakshmi, Malathi and Gunasekaran have given consistent evidence with regard to motive that existed in between the families of the deceased and accused and the specific evidence given by PW2 is that on the date of occurrence, her husband has gone to a nearby tank and the first accused has also followed him. Apart from their evidence, one Paraman has been examined as PW6 and his specific evidence is that near tank, he heard a queer noise and after some time, he has seen the first accused and the trial Court without considering the overwhelming evidence available on record has erroneously acquitted both the accused and therefore, the order of acquittal passed by the trial Court is liable to be set aside and both the accused are liable to be punished as per sections mentioned in the charges.

11. The learned counsel appearing for the respondents 2 and 3 has also equally contended that in the instant case, except motive uttered by PWs.2 to 5, no eye witnesses are available and even PW6 has not given consistent evidence so as to encrust the case of the prosecution and further, mere recovery as per alleged confession given by the first accused, is not at all sufficient. The trial Court after considering the overall evidence available on the side of the prosecution has rightly come to the conclusion that the prosecution has not established guilt of both the accused as mentioned in the charges and therefore, the order of acquittal passed by the trial Court need not be set aside.

12. As mentioned supra, the defacto complainant viz., Muthukrishnan is not an eye witness. It is true that PW2, wife of the deceased and PWs.3 to 5 have spoken about the alleged motive that existed in between the families of the deceased and accused and that itself is not at all sufficient for coming to a conclusion that the prosecution has proved guilt of the accused even without a speck of doubt. Apart from the evidence given by PWs.2 to 5, one Paraman has been examined as PW6. In



fact, this Court has closely perused his evidence and his specific evidence is that he heard a queer noise and subsequently he has come to his house and thereafter he has seen the first accused. Even he has not identified the voice of the deceased. Therefore, it is quite clear that PW6 has given only a fragile evidence and that itself cannot be a basis for coming to a conclusion that the prosecution has clearly established guilt of the accused mentioned in the charges.

13. It is found on record that the first accused has given a confession before PW8, Village Administrative Office and in pursuance of his confession, some material objects have been recovered.

14. It is a settled principle of law that on the basis of mere recovery under Section 27 of the Indian Evidence Act, 1872, the accused cannot be mulcted with liability, unless the prosecution has given some supportive or corroborative evidence. In the instant case, except the confession alleged to have been given by the first accused coupled with recovery of some material objects, no clinching evidence is available so as to point out guilt of the accused and further the evidence given by PWs.2 to 6 are of no use. Since the prosecution has not at all adduced even an iota of evidence so as to connect the accused with the crime, it is highly improbable and also impossible to come to a conclusion that the accused are real culprits. Therefore, virtually, the prosecution has failed to prove its case.

15. The trial Court after analysing the available evidence on record has rightly found that the prosecution has failed to establish the alleged nexus between the accused and crime. Therefore, viewing from any angle, the order of acquittal passed by the trial Court does not call for any interference. Under the said circumstances, the present Appeal deserves to be dismissed.

16. In fine, this Criminal Appeal is dismissed. The order of acquittal passed in Sessions Case No.345 of 2009 by the District and Sessions Court, Sivagangai is confirmed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

- 1.The District and Sessions Court, Sivagangai
2. The Additional District Munsif cum Judicial Magistrate, Manamadurai.
3. The Director General of Police Mylapore, Chennai.
- 4.The Inspector of Police, Manamadurai Police Station,Sivagangai District.
- 5.The Addl. Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.R.Venkateswaran, Advocate in SR.No 35080

+1cc to M/S.M.S.Jeyakarthik, Advocate in SR.No 34511

TS/ 14.07.2015/4P - 8C