

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.116 of 2016

Subban @ Theerthagiri ... Appellant/Accused

Vs

State represented by the
Inspector of Police,
Harur Police Station,
Dharmapuri District
Cr.No.196/2013

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
against the judgment dated 22.12.2015, in S.C.No.86 of 2014 on
the file of the learned Principal Sessions Judge, Dharmapuri.

For Appellant : Mr.V.Rajamohan

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGEMENT

(Judgment of the Court was delivered by S.Nagamuthu.J)

The appellant is the sole accused in S.C.No.86 of 2014 on the file of the learned Principal Sessions Judge, Dharmapuri. He stood charged for offences under Sections 302 I.P.C., and 25 (1-B) (a) of Indian Arms Act. By judgment dated 22.12.2015, the trial Court convicted the accused under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for six months for offence under Section 302 I.P.C., and to undergo rigorous imprisonment for three years and to pay a fine of

Rs.2,000/- in default to undergo rigorous imprisonment for six months for the offence under Section 25 (1-B) (a) of Indian Arms Act. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

2.The case of the prosecution, in brief, is as follows:-

The deceased in this case was one Mr.Gandhi @ Ramasamy. He was a resident of Sitheri Village in Dharmapuri District. The accused also belongs to the same Village. Both the accused and the deceased used to go for hunting of birds together by using country made unlicensed guns. On one occasion, a forest chicken was hunted by them. But, the deceased had taken the same without giving a share to the accused. This is stated to be the motive for the occurrence. It is further alleged that on 07.03.2013 around 5.00 am, when the accused and the deceased were in the forest, the accused on account of the above motive, shot the deceased, with a country made gun and caused his death. The occurrence was not witnessed by anyone. The accused fled away from the scene of occurrence.

3.P.W.1 is the son of the deceased. P.W.2 is the wife of P.W.1 and P.W.3 is the wife of the deceased. They have spoken that the deceased had gone to the forest in the morning on 07.03.2013 for hunting. Since, he did not return, till 5.00 pm on the same day, they went in search of the deceased. On the next day morning, about 7.00 am, in the forest area, they found the dead body of the deceased with gun shot injury. P.W.1 suspected that the deceased would have killed only by this accused. Therefore, he went to the Harur Police Station and made a complaint at 12.00 noon on 08.03.2013. P.W.11, the then Sub Inspector of Police, Harur Police Station on receipt of the said complaint registered a case in Crime No.196/2013 for offences under Sections 302 I.P.C., r/w 25(1)(A) of the Indian Arms Act. Ex.P.1 is the complaint and Ex.P.11 is the F.I.R. He forwarded both the documents to Court which were received by the learned Judicial Magistrate at 6.00 pm on 08.03.2013.

4.P.W.12, the then Inspector of Police attached to Harur Police Station, took up the case for investigation on 08.03.2013. On the same day, at 3.00 pm, he went to the place of occurrence and prepared an observation mahazar and a rough sketch, in the presence of P.W.6 and another witness. He also recovered blood stained earth and the sample earth from the place of occurrence and he examined few more witnesses and recorded their statements. He conducted inquest on the body of the deceased and sent the same for post mortem.

5.P.W.8, Dr.Thunderchief, conducted autopsy on the body of the deceased on 09.03.2013 at 2.15 pm and he found the following injuries on the body of the deceased:-

"Multiple (43) shot gun penetrating injuries with marginal abrasion seen over 54 x 42 cm involving right gluteal, outer aspect of upper half of right thigh, outer aspect of lower part of right side of abdomen and lower back along mid line and left side. Size of the penetrating wounds ranges from 1.3 x 1.0 cm - 0.3 x 0.3 cms. On dissection the penetrating wounds by shots passes through the subcutaneous tissue and lies in the muscle tissue. The underlying subcutaneous tissue and the muscles were found contused. Few shots (3) have existed out near the root of penis. The size of the exited wound measures 0.5 x 0.3 x 0.3 cm.

2.5 x 1.8 cm x bone deep laceration on the right temporal region, 2 cm behind ear with maggot crawling out from the wound.

6 x 2 cm reddish brown abrasion on left side forehead

3 x 3 cm reddish brown abrasion on left frontal region."

Ex.P.8 is the post mortem certificate. He gave opinion that the deceased would have died between 48 and 72 hours prior to the post mortem and the death was due to pellet injuries found on the body of the deceased.

6.P.W.12 arrested the accused on 14.03.2013 at 10.30 am. On such arrest, the accused gave a voluntary confession, in which, he disclosed the place where he had hidden single barrel muscle loaded guns. In pursuance of the said disclosure statement, he produced the guns (M.Os.2 & 3) from the place of hide out. P.W.12 also recovered the same in the presence of witnesses. On completing investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 12 witnesses were examined and 14 documents were exhibited, besides 4 Material Objects.

8. Out of the said witnesses, P.Ws.1, 2 & 3 have stated that the deceased who had gone for hunting in the morning on 07.03.2013 did not return till the evening. When they went in search of the deceased, they found the deceased dead with gun shot injuries around 7.00 am on 08.03.2013. P.W.4 has stated that he heard that the deceased had died of gun shot injuries. P.W.5, a close relative of the deceased has also stated that he heard that the dead body of the deceased was found in the forest around 7.00 am on 08.03.2013. P.W.6 has spoken about the preparation of observation mahazar and the rough sketch and the recovery of blood stained earth and the sample earth at the place of occurrence by P.W.12. P.W.7 has spoken about the arrest of the accused, disclosure statement and the consequential recoveries of M.Os.2 & 3. P.W.8 has spoken about the post mortem conducted and his final opinion regarding the cause of the death. P.W.9, the then Head Constable attached to the Harur Police Station has stated that he carried the F.I.R., to Court and handed over the same to the learned Judicial Magistrate concerned on 08.03.2013 at 6.00 pm. P.W.10, the then Police Constable has stated that he carried the dead body of the deceased from the place of occurrence and handed over the same to the Doctor, who conducted post mortem. P.W.11 has spoken about the registration of the case and P.W.12 has spoken about the investigation done and the final report filed in this case.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not chose to examine any witness nor did he mark any document on his side.

10. Having considered all the above materials, the trial Court convicted the appellant/accused as stated in the first paragraph of this judgment. Challenging the same, the appellant/accused is before this Court, with this Criminal Appeal.

11. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. As we have already narrated, there is no eye witness to the occurrence. It is the evidence of P.Ws.1 to 3 that the deceased who had gone to forest for hunting around 7.00 am on 07.03.2015 was found dead in the forest on 08.03.2015 at 7.00 am. According to the Doctor who conducted autopsy on the body of the deceased, there was number of pellets injuries found on the body of the deceased and the death of the deceased was also a homicide and it would have happened between 7.00 am on 07.03.2015 and 7.00 am on 08.03.2015.

13. Now the question is, "Who is the perpetrator of the crime ? None of the witness has stated that the accused was anywhere seen near the place of occurrence. There is no circumstance to connect the accused with the alleged crime. There is also no evidence to connect M.Os.2 & 3 with the injuries found on the body of the deceased. Thus, absolutely, there is no evidence connecting the accused with the death of the deceased. But, the trial Court had, in ignorance of the bar contained in Section 25 of the Indian Evidence Act, has extensively relied on the confession statement said to have been given by the accused to P.W.12 while in custody.

14. The trial Court has further held that since, the accused was not available in the Village, he would be conclusively held to be the perpetrator of the crime. The trial Court has further held that the accused has failed to explain his conduct in not available in the Village. In our considered view, these conclusions arrived at by the trial Court are not at all sustainable. The accused is in no way connected to the deceased and therefore, assuming that he was not available in the Village at the crucial time, that cannot be construed as a circumstance to hold the accused guilty. Thus, we find that there is no evidence to prove the charge of murder against the accused.

15. Now, turning to the charge under Section 25 (1-B) (a) of Indian Arms Act, P.Ws.7 & 12 have stated that the accused was found in possession of M.Os.2 & 3. Unfortunately, M.Os.2 & 3 were not sent for any opinion by Expert. It is not known as to whether M.Os.2 & 3 were in working condition or not. There is also no evidence that whether M.Os.2 & 3 are only toys or they were really a country made guns. It is not explained to the Court as to why no attempt was made by the prosecution to send M.Os.2 & 3 for examination and to prove that they were arms as defined in the Indian Arms Act. Further, there are lot of inconsistencies between the evidences of P.Ws.7 & 12 in respect of the recovery of M.Os.2 & 3 also. For these reasons, we hold that the prosecution has failed to prove the second charge also against the accused.

16. In view of the foregoing discussions, we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled for acquittal.

17.In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the accused/appellant by the learned Principal Sessions Judge, Dharmapuri, in S.C.No.86 of 2014, dated 22.12.2015, is set aside and the accused/appellant is acquitted. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the accused/appellant, shall stand discharged.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal Sessions Judge,
Dharmapuri.
- 2.The Director General of Police,
Mylapore.
- 3.The District Collector,
Dharmapuri.
- 4.The Chief Judicial Magistrate,
Dharmapuri.
- 5.The Superintendent,
Central Jail,
Vellore.
- 6.The Public Prosecutor,
High Court, Madras.
- 7.The Judicial Magistrate,
Harur.
- 8.The Inspector of Police,
Harur Police Station,
Dharmapuri District.

+1cc to Mr.N.Mohideen Basha, Advocate Sr.43201

Cr1.A.No.116 of 2016

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srg 23/08/2016