

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.652 of 2016

Sengottaiyan .. Appellant/Accused

Vs

State represented by
The Inspector of Police,
Magudanchavadi Police Station,
Salem District.
Cr.No.983/2002 .. Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
to set aside the conviction and sentence passed by the
Principal Sessions Judge, Salem in S.C.No.129 of 2004, dated
21.04.2005.

For Appellant : Mr.S.Panneerselvam

For Respondent : Mr.V.M.R.RajenTren,
Additional Public Prosecutor,

JUDGEMENT

(Judgment of the Court was delivered by
V.Bharathidasan,J.,)

The accused in S.C.No.129 of 2004 on the file of the
learned Principal Sessions Judge, Salem, is the appellant
herein. Totally, there are two accused in this case, since
this appellant/A2 was earlier absconding, the case against him
was split up as S.C.No.129 of 2004, and A1 faced a separate
trial in S.C.No.95 of 2004. A2/appellant stood charged for the
offences under Sections 302 and 201 I.P.C. The trial Court
convicted A2/appellant, and sentenced him to undergo
imprisonment for life and to pay a fine of Rs.1000/-, in
default, to undergo rigorous imprisonment for six months for
the offence under Section 302 IPC and sentenced him to undergo
rigorous imprisonment for three years for the offence under
Section 201 IPC and the trial Court also ordered the sentences
to run concurrently. 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 one Arumugam, is the brother of P.W.6. P.W.1 is another brother's son of the deceased. There was a previous enmity between the accused and the deceased. Earlier the deceased owned a lorry, in which, the accused was working as a cleaner. In the year 1996, while the lorry was transporting textile goods to Bangalore, the lorry was totally destroyed by fire along with goods. Earlier the deceased was on the impression that it was an accident. But, subsequently he had suspicion that the accused was the cause for the said accident. In view of the same, there were frequent quarrel between the accused and the deceased.

3. In the above circumstances, on 09.10.2002, the body of the deceased was found in a well, which belongs to one Perumal Gounder. P.W.1, the brother's son of the deceased, on hearing the news, identified the deceased and immediately, he gave a complaint (Ex.P.1) against the accused before the respondent police.

4. Based on the complaint, P.W.7, the Sub-Inspector of Police, registered a case in Crime No.983 of 2002, for an offence under Section 302 IPC against both the accused and sent the First Information Report (Ex.P.6) to the Judicial Magistrate and also to the Inspector of Police.

5. On receipt of the First Information Report, P.W.9, the then Inspector of police, proceeded to the scene of occurrence, and prepared an Observation Mahazar (Ex.P7) and a Rough Sketch (Ex.P.11) in the presence of P.W.8 and another witness and made arrangements for taking photographs at the scene of occurrence. Then, he conducted inquest on the dead body of the deceased in the presence of panchayathars and prepared Inquest Report Ex.P.12 and sent the body of the deceased for postmortem to Government Mohan Kumara Mangalam Medical College Hospital, Salem.

6. P.W.5, the Doctor, working in the Government Mohan Kumara Mangalam Medical College Hospital, Salem, on 09.10.2002, at 5.15 p.m., conducted postmortem on the dead body of the deceased and found the following injuries:-

“ Injuries:

1. An oblique lacerated injury present on left side of forehead 8cm x 3.5 cm x 0.5cm.
2. Abrasion on left cheek 4 x 2 cm.
3. Black eye present on left side
4. Fracture of left temporal bone 8 cm in length, comminuted fracture.
5. Subdunal and subarachnoid hemorrhage present over both cerebral

hemispheres "

Ex.P. 3 is the Postmortem certificate. He was of the opinion that the deceased died of head injuries.

7. P.W.9, recovered the blood stained earth (M.O.3) and sample earth (M.O.4) in the presence of the witnesses and recorded the statement of other witnesses. On 10.10.2002, at about 12.00 p.m., he arrested Boopathy/A1 and on such arrest, he voluntarily gave a confession (Ex.P.9) and based on the disclosure statement, P.W.9 recovered the iron rod (M.O.6) and a blood stained full hand shirt (M.O.5) under Ex.P.10, mahazar. He examined the doctor, who conducted postmortem on the dead body of the deceased and other witnesses. On completion of the investigation, P.W.9 laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed the charges as stated in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 9 witnesses were examined and 16 documents were exhibited, besides 6 Material Objects.

9. Out of the witnesses examined, P.W.1 is the brother's son of the deceased. According to him, on 09.10.2002, the dead body of the deceased was found in the dried well of one Perumal Gounder and after identifying the body, on suspicion, P.W.1 has given a complaint before the respondent police. He had also spoken about the motive between the accused and the deceased.

10. P.W.2 is the person, who knew the accused and the deceased. According to him, before the occurrence, the deceased was talking to him and thereafter, the accused followed him. On the next day, P.W.2 heard the news that the deceased was found dead in the Well. P.W.3 is one of the brothers of the deceased. He spoke about the motive. P.W.4, is the resident of the same village. According to him, on 08.10.2002, at 9.00 p.m., he saw the deceased came towards Muniappal Koil and the accused followed him and on the next day, he heard that the deceased was found dead in the well. P.W.5 is the Doctor, who conducted postmortem on the dead body of the deceased and gave a postmortem report, Ex.P.3. P.W.6, photographer, had taken photographs of the dead body of the deceased at the scene of occurrence. P.W.7, Sub Inspector of Police, registered the complaint. P.W.8, Village Administrative Officer, is a witness to the Observation Mahazar and recoveries of M.O.3 and M.O.4 and also a witness to the arrest of Boopathy/A1 and recovery of M.O.5 and M.O.6. P.W.9, Inspector of Police, conducted investigation, arrested the accused, recovered the material objects and recorded the statements of the witnesses. After completing investigation, he laid charge sheet against the accused.

11. 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 choose to examine any of the witnesses nor did he mark any documents on his side.

12. Having considered all the above, the trial Court found the accused/Appellant herein guilty under the said charges and accordingly, sentenced him as detailed in the first paragraph of this judgment. Aggrieved over the same, the appellant is before this Court with this Criminal Appeal.

13. We have heard Mr. S.Pannerselvam, learned counsel appearing for the appellant and Mr.V.M/.R.Rajentran, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

14. The learned Counsel for the appellant would submit that it is a case based on circumstantial evidence. A1, in this case, similarly placed accused filed a separate appeal in C.A.No.606 of 2015 and this Court, by a judgment dated 11.07.2016 acquitted A1, and since A2 is also a similarly placed accused, he is also entitled for acquittal based on the above judgment.

15. We have carefully considered the above judgment and this Court acquitted A1 for the following reasons :

"16. Keeping the above principle in mind, we analyze the facts of the present case. In the instance case, the prosecution relied upon the one and only circumstance, viz, P.W.2 and 7 said to have seen the accused following the deceased before the occurrence. Except that circumstance, there is no other circumstance available to connect the murder with the accused. Even as per the evidence of P.Ws.2 and 7, they have not seen the accused and the deceased together. According to P.W.2, he was talking to the deceased for some time. Thereafter, the deceased left and he saw the accused following the deceased. But, according to P.W.7, when he was taking dinner in the hotel, the deceased came and thereafter, both the accused came there. From the above evidence, it cannot be concluded that it is only the accused, who has committed the crime. Except that, there is no other evidence available to connect the accused with the crime. In the above circumstances, we are of the considered view that the prosecution failed to prove the guilt of the accused beyond any reasonable doubt. Hence, the accused is entitled for acquittal. "

16. Now, we have to consider the case of A2 with reference to the evidence available against him. It is the evidence of P.W.2 that he was talking to the deceased for some time. Thereafter, the deceased left and P.W.2 saw the accused following the deceased, which was disbelieved by this Court in the Appeal filed by A1. According to P.W.4, he saw the deceased came near Muniappan Koil and both the accused also came following the deceased.

17. From the above evidence, it cannot be concluded that it is this the accused, who has committed the crime. Except that, there is no other evidence available to connect the accused with the crime. In the above circumstances, we are of the considered view that the prosecution failed to prove the guilt of the accused beyond any reasonable doubt. Hence, the accused is entitled for acquittal.

18. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/accused by the learned Principal Sessions Judge, Salem, in S.C.No.129 of 2004, dated 21.04.2005, are set aside and the appellant/accused is acquitted. The fine amount, if any paid, shall be refunded to him.

sd/
Assistant Registrar

/true copy/

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Salem.
 2. The Superintendent,
central Prison,
Salem.
 3. The Inspector,
Magudanchavadi police station,
Salem.
 4. The Public Prosecutor,
High Court, Madras.
- +lcc to Mr.S.Panneerselvam, Advocate Sr.No.48871.

Cr1.A.No.652 of 2016

EV(CO)
GN(09/02/2017)