

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.12.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

CRL.A.No.727/2016

1. Nagabooshanam
2. Jeyappa

..... Appellants

Vs

State by
The Inspector of Police,
Thali Police Station,
Krishnagiri District
Cr.No.96 of 2011

... Respondent

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Hosur, Krishnagiri District, Hosur in S.C.No.39 of 2012, dated 21.09.2016.

For Appellants : MrV. Rajamohan

For Respondent : Mr.P. Govindarajan
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellants are accused 1 and 2 in S.C.No.39 of 2012 on the file of the Additional District and Sessions Judge, Hosur, Krishnagiri District, Hosur. They stood charged for the offence under Section 302 IPC. By judgment dated 21.09.2016, the trial court convicted both the accused for the offence punishable under Sec.302 IPC and sentenced them to undergo life imprisonment and to pay fine of Rs.2000/-each, in default, to undergo one year rigorous imprisonment for each accused. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

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

(a) The deceased in this case was one Mr. Ramakrishnappa. He was an agricultural coolie by profession. It is alleged that the deceased had received wages in advance from these two accused, promising to come for agricultural work. But, as promised, he did not turn up. On 06.07.2011 around 8.00 p.m, the deceased was in a Hotel in Nellumar village. P.W.1 was also in the Hotel. He had come to the hotel to engage the deceased in his field. At that time, it is alleged that these two accused came to the shop and shouted at the deceased as to why he did not turn up for agricultural work, after having received advance money. This resulted in a quarrel between the deceased and the accused. P.W.1 pacified them and separated them.

(b) On 07.07.2011, around 9.00 a.m, when P.W.1 had gone in search of the deceased, he was lying dead near Saneeswaran Koil at Nellumar village. There were also injuries on his body. But he did not choose to complain to the police.

© The Village Administrative Officer made a complaint to the Police, upon which, the present case was registered in Cr.No.96 of 2011 for the offence punishable under Sec.302 IPC. Based on the earlier quarrel between the accused and the deceased, the accused were shown as suspected accused in the said case. After completing investigation, P.W.12 laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges against the accused as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 12 witnesses were examined. According to the prosecution, these two accused had attacked the deceased and killed him, but there was no eyewitness to the occurrence.

4. P.W.1 has spoken about the quarrel between the accused and the deceased on 06.07.2011. P.W.s.3 and 4 are the family members of the deceased. They have stated that they heard about the occurrence and came to the place of occurrence and saw the dead body. P.Ws.4 and 5 turned hostile and they have not supported the case of the prosecution in any manner. The Village Administrative Officer, who made the complaint, died subsequently.

5. P.W.6, Village Assistant was examined. He stated that he found the body. He had further spoken about the complaint made to the police by the Village Administrative Officer. He has also spoken about the preparation of the observation mahazar, rough sketch, recovery of bricks, blood stained earth and sample earth from the place of occurrence.

6. P.W.9 Dr.Karuppusamy has spoken about the post mortem conducted. According to him, there were injuries on the body of the deceased and the death of the deceased was due to shock and hemorrhage due to the external and the corresponding internal injuries. He would further opined that the death would have been caused by hitting with bricks.

7. P.W.10 has spoken about the registration of the case. P.W.11 and P.W.12 have spoken about the investigation done and final report filed.

8. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not choose to examine any witness nor mark any document on his side.

9. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

10. Heard the learned counsel for the appellant and the learned Additional Public Prosecutorr appearing for the State and we have also perused the records carefully.

11. This is a case based on circumstantial evidence. At the outset, we should say that it is well settled that in a case based on circumstantial evidence, the prosecution is bound to prove the circumstances projected by it beyond reasonable doubts and such proved circumstances should form a complete chain without any break, unerringly pointing to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. With this broad principle in mind, let us go into the circumstances projected by the prosecution.

12. The foremost circumstance, projected by the prosecution is that the deceased was found alive on 06.07.2011 at 8.00 a.m by P.W.1 and found the dead body on 07.07.2011 at 9.00 a.m. The Doctor, who conducted autopsy found the following injuries:

"Regarding the body of a Male aged about 55 years, named Ramakrishnappa, requisition received at 4.15 p.m. on 07.07.2011 from the Inspector of Police, Denkanikottai Circle, with his letter No.Cr.No.96/11 u/s 302 IPC dated 07.07.2011 -in-charge of Police Constable No.HC 1451 named Mr.(Thiru.)K. Kumaresan.

Identification and caste marks:

- 1) An old wound scar (nc) right knee joint.
- 2) An old wound scar (nc) over right grand toe.(n.c)
- 3) A black mole over left knee joint.

The body was first seen by the undersigned at 4.15 p.m on 7.7.2011. Condition then was rigor mortis present in all our limbs. Postmortem commenced at 4.30 p.m on 7.7.2011.

Appearances found at the postmortem:

A male body lies on its back with all four limbs extended;

Opinion as to cause of death:

- a) Reserved pending report of:-
- b) The deceased would appear to have died of cardiopulmonary arrest due to injury to vital organ left injury of brain.

External appearances:

- 1) eyes closed. 2) Nose bleeding present form both nostrils 3) Mouth opened 4) Tongue kept inside month 5) penis seminal fluid comes out from penis 6) Anus: fluid matter comes out from anus.

External injuries:

- 1) Irregular laceration injury of 2 x 1 cm bone deep over left parietal region of skull 2) Irregular intrusion injury of 1 x 1 bone deep over left temporo parietal region of skull. 3) Irregular laceration injury of 3 x 1 x bone deep over left occipital region. 4) Irregular laceration injury of 4 x 1 bone deep over left occipital region (lower). 5) Irregular laceration injury of 2 x 1 x bone deep over left zygomatic (nc) region. 6) Irregular laceratin injury of 1 x 1/2 x bone deep over 2 cm below left eye. 7) 2/3 left ear lobe injured and missed 8) Irregular laceration injry 1 x 1 cm x bone deep over right upper lip 9) Abrasion of 3 x 3 cm over left extent chest. 10) Abrasion of 3 x 3 over left iliac crest.

Internal examination.

- 1) On opening of thorax shows nanubertum sterni fractured. 22nd to 9th ribs fractured. Left side in ostochondral (nc) region. Toraic cavity contains 400 ml

of liquid blood. 2) heart 150 gms. Chambers empty c/s pale 3) Lungs right 480 grams left 450 grams middle to be tabloid (nc) c/s pale. 4) Hybrid bone intact. 5) Stomach : 200 grams of partially digested food present. ... (nc) normal. 6) Liver 1500 grams c/s pale. 7) Spleen 50 grams c/s Pale. 8) Kidney 100 grams each c/s Pale 9) Skull and membranes intact 10) Brain: Haemorrhage present over left occipital region of brain

Time of death: 14 to 18 hours prior to autopsy

Sd/-...xxx
Medical Officer

13. He had opined that the death was due to shock and hemorrhage due to the injuries found on the body of the deceased. Further he had opined that the death would have been caused by hitting with bricks.

14. We do not find any reason to reject the opinion of the doctor who conducted Autopsy. From this evidence, it has been clearly established that the deceased was done to death some time between 8.00 a.m on 6.07.2011 and 9.00 a.m on 07.07.2011. We hold that the prosecution has thus established that the death of the deceased was a homicide.

15. Now the question is who was the perpetrator of the crime. In order to prove the case, the prosecution relies on only one circumstance viz., on 06.07.2011 at 8.00 p.m there was a quarrel between the accused and the deceased and that P.W.1 pacified them and separated them. Thereafter, the accused left the house. Assuming that it is true, based on this circumstance alone, we cannot conclusively hold that these accused were responsible for the death of the deceased. But the trial Court held that except these accused, there was no possibility for anyone to kill the deceased. We cannot afford to convict anybody on mere surmises or suspicion. Under Article 21 of the Constitution of India, the life and liberty of an individual could be deprived only by following the procedure established by law. The said procedure denotes a fair procedure where the proof of guilt is made beyond reasonable doubts. In other words, we cannot afford to convict anybody on mere surmises or suspicion.

16. In these circumstances, the prosecution has not even succeeded in establishing a strong suspicion against the accused by proving that there was quarrel between the deceased and the accused. Thus, we hold that the trial court had convicted the appellants/accused only on mere surmise and therefore the same

should not be allowed to sustain. We hold that the prosecution has failed to prove the case against the appellants/accused beyond reasonable doubts and we find absolutely no evidence against the accused. Therefore, the appellants/accused are entitled for acquittal.

17. In the result,

(i) The appeal is allowed and the conviction and sentence imposed on the appellants by the learned Additional District and Sessions Judge, Hosur, Krishnagiri District in S.C.No.39 of 2012 dated 21.09.2016 are set aside and the appellants are acquitted.

(ii) The fine amount, if any, paid, shall be refunded to the accused.

s/d-

Assistant Registrar (CS-IV)

//True Copy//

Sub-Assistant Registrar

To

1. The Inspector of Police,
Thali Police Station,
Krishnagiri District
 2. The Additional District and Sessions Judge,
Hosur, Krishnagiri District.
 3. The Principal District & Sessions Judge, Krishnagiri
 4. The Judicial Magistrate, Denkanikottai, Krishnagiri
 5. The Chief Judicial Magistrate, Krishnagiri
 6. The Superintendent Central Prison, Vellore
 7. The Director General of Police, Mylapore
 8. The Public Prosecutor,
High Court, Chennai.
- +1 CC to Mr. M. Mohideenbasha, Advocate sr 71974

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Judgment in
Crl.A.No.727/2016

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