

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN
AND
THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.A.No.781/2013

Subbammal .. Appellant/P.W.2

Versus

1 The Inspector of Police
Vellore Police Station
Namakkal District. .. Respondent /
Complainant
2 Suresh
3 Prabhu
4 Sethu Pandian
5 Kalaivani @ Kalaikaviya ... Respondents/A1 to A4

Appeal filed under section 372[2] Cr.P.C., against the judgment passed by the learned Additional District and Sessions Judge, Namakkal in SC.No.56/2012 dated 30.09.2013.

For Appellant : No appearance
For R1 : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

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

This is an appeal against acquittal. The appellant is the mother of the deceased Mr.Balasubramaniam. The respondents 2 to 5 are the accused in SC.No.56/2012 on the file of the learned Additional District and Sessions Judge, Namakkal. They stood charged for the offences u/s.120[B], 341, 302, 302 read with 109 and 404 IPC respectively. By judgment dated 30.09.2013, the Trial Court acquitted all the accused from all the charges levelled against them. Challenging the said acquittal, the appellant/P.W.2 is before this Court with this appeal.

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

[A] The deceased Balasubramaniam, was a resident of Kadambankurichi village in Karur Taluk. The wife of the deceased, namely Mrs.Kalaiselvi @ Kalaikaviya, is the daughter of P.W.1 and also the granddaughter of P.W.2 and she had developed illicit intimacy with A1. This resulted in enmity between the deceased and A1. There existed frequent quarrels between the deceased and his wife [A4]. This is stated to be the motive for the occurrence.

[B] According to the case of the prosecution, on 07.02.2010, all the four accused assembled at the house of A4 and conspired to do away with the deceased. It is further alleged that on 10.02.2010, at about 23.00 hrs., the deceased was proceeding in his motorcycle bearing Registration No.TN-47-S-4960, through Chettiyar Street in the said village and when he was passing through the house of one Samiyappan, all the four accused emerged there, intercepted the motorcycle driven by the deceased. A1 took a Koduval and cut the deceased on the backside of the head and when the deceased fell down, A3 took the same Koduval and attacked on the upper side of the back indiscriminately. A2 induced A1 and A3 to cause the death of the deceased and he died on the spot. A3 took away the cellphone of the deceased and thereafter, they left the place of occurrence with the weapon.

[C] P.W.1, on receipt of the death intimation of the deceased from one Pitchaimuthu at 02.00 hrs. on 11.02.2010, went to the place of occurrence and thereafter, went to the Velur Police Station along with his wife and Pitchaimuthu and made a complaint to P.W.16, the then Sub Inspector of Police attached to the said Police Station. In the complaint, it was alleged that the assailants were not known. P.W.16, on receipt of the complaint from P.W.1, registered a case in Cr.No.171/2010 on 11.02.2010 at 02.00 hrs. for the offence u/s.302 IPC. Ex.P.1 is the complaint and Ex.P.19 is the FIR. He forwarded both the documents to the Court, which were received by the learned Magistrate at 08.30 a.m. on the same day.

[D] P.W.18, the then Inspector of Police, took up the case for investigation. He proceeded to the scene of occurrence at about 03.00 hrs on 11.02.2010 and prepared the Observation Mahazar [Ex.P.17] and also prepared a Rough Sketch [Ex.P.20] in the presence of P.W.15 and another witness. He also recovered blood stained earth [M.O.11] ; sample earth [M.O.12], Motorcycle bearing Regn.No.TN-47-S-4960 [M.O.15], a pair of chappals [M.O.13] and a Helmet [M.O.14] in the presence of the same

witnesses under a Mahazar. P.W.18 summoned the services of P.W.10 [Photographer] to take photographs at the scene of crime in various angles. He also conducted inquest on the dead body of the deceased between 04.30 hrs and 06.30 hrs. in the presence of the Panchayatdars and witnesses and prepared Ex.P.21 [Inquest Report]. He sent the dead body of the deceased for postmortem.

[E] P.W.9, Dr.Rajeswari, attached to the Government Hospital, Karur, conducted autopsy on the body of the deceased on 11.02.2010 at 10.00 hrs. She found the following injuries:-

"External Injuries:-

[1] Incised wound 8x2 cm about 5 cm depth in the upper back extending from midline into the right scapular region fracturing the spine, 3rd rib posteriorly and lateral border of scapula.

[2] Large deep cut injury about 25cm length starting in the forehead just above the medial aspect of left eye and intending laterally above the right eye and cutting the right ear into two halves into the back of head upto the neck slightly oblique direction with depth of about 8 cm. Face smeared with mud. Hyoid-Preserved.

Craniotomy:- # Base of skull which is irregular and extends from left orbital bone, midline, right orbital bone and the right petrous temporal bone and parietal bone about 20 cm in length. Crushing of the eyeballs and mid brain present. O/D Brain-Pale.

Thorax:- # of right 3rd rib posteriorly near the spine. Laceration of right lung posteriorly in the apex. left lung intact and pale. Heart:-

Pale. Chambers empty. Abdomen:- No haemoperitonium. Stomach:- pale filled with 250 gms of semi-solid matter [preserved]. Intestines:- pale. All other organs were pale. Bladder-empty."

Ex.P.13 is the Postmortem Certificate. She gave opinion that the death of the deceased was due to shock and hemorrhage due to the injuries to the vital organs like brain. She further opined that the death would have occurred 8 to 12 hours prior to autopsy.

[F] P.W.18, during the course of investigation, examined the witnesses including A4 and recorded their statements. He recovered the blood stained cloth from the body of the deceased. Then, on 11.02.2010, he arrested A1 and A2 in

the presence of P.W.11 and another witness. On such arrest, A1 gave a voluntary confession. In pursuance of the same, the motorcycles driven by A1 and A2, bearing Regn. Nos. TN-47-X-2599 [M.O.3] and TN-47-T-7841 [M.O.5] were seized under a cover of Mahazar. A2 also gave a voluntary confession in the presence of the same witnesses, in which, he disclosed the place where he had hidden the Koduval. In pursuance of the same, he took the police and the witnesses to the house of A1 and from the place of hide out, they produced blood-stained Koduval [M.O.4], which was recovered under a cover of Mahazar. He also recovered 2 sovereigns of gold chain [M.O.6] from A2. Thereafter, he forwarded the accused to the Court for judicial remand. P.W.10 recovered the same under a Mahazar in the presence of the same witnesses. On the same day, at about 12.30 noon, the Investigating Officer effected the arrest of A4 and she gave a voluntary confession, pursuant to which, a chain [M.O.1] was recovered under a Mahazar. Thereafter, he returned to the Police Station and forwarded the accused for judicial remand and also handed over the material objects to the Court. At 15.00 hrs., he arrested A3 at Ponni Nagar 3rd Main Road. He gave a voluntary confession. In pursuance of the same, the cellphone of the deceased [M.O.7] was recovered under a Mahazar. A3 was also sent for judicial remand. Upon examining few more witnesses and recording their statements, and on completing the investigation, he laid the charge-sheet against the accused on 23.04.2010 for the alleged offences u/s.120-B, 341, 302 r/w 109, 302 r/w 120-B, 404 IPC.

[G] 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 18 witnesses were examined, 24 documents and 15 material objects were also marked.

[H] Out of the said witnesses, P.Ws.1 to 3 have stated about the motive and they have further stated that they heard the information that the deceased was lying dead with injuries at the place of occurrence. They rushed to the scene of crime and found the deceased dead. They had not witnessed the occurrence at all. P.Ws.4 to 9 have turned hostile and they have not supported the case of the prosecution in any manner. Some of the witnesses, among P.Ws.4 to 9, who were examined to speak about the occurrence as eyewitnesses, have totally given a go-by to the prosecution case and they have not stated anything incriminating against the accused. P.W.10 has spoken about the photographs taken by him at the place of occurrence from various angles. P.W.11 has spoken about the arrest of A1 and A2 on

13.02.2010 at 06.00 hrs. and the consequential recovery of the material objects. This evidence is also of no use to the prosecution case because the link between the recovered material objects and the crime has not been established. P.Ws.12 and 13 are the Police Constables, who carried FIR to the Court and the dead body to the hospital for postmortem respectively. P.W.14 is the doctor, who has spoken about the postmortem conducted on the dead body of the deceased and her final opinion regarding the cause of death. According to her, there were number of cut injuries on the body of the deceased and the death was due to shock and hemorrhage due to the same. P.W.15 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. P.W.16 has spoken about the registration of the case and P.W.18 has spoken about the investigation done by him and the filing of the final report.

3 When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. However, they did not chose to examine any witness nor marked any documents, on their side.

4 Having considered all the above, the Trial Court acquitted the accused persons as detailed in the first paragraph of this judgment. Challenging the said acquittal, the appellant/P.W.2 is before this Court with this appeal.

5 When this appeal was taken up for final hearing, there was no representation for the appellant. We have heard Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State/1st respondent and we also perused the materials placed on record carefully.

6 In this case, there was no incriminating evidence at all against the accused. Except establishing the enmity between A1 and the deceased, there is no other evidence available on record to hold the accused guilty. As we have already pointed out, P.Ws.1 to 3, who have supported the prosecution case, are not the eyewitnesses to the occurrence and they have spoken only about the enmity. They have further stated that they heard about the occurrence, went to the place of occurrence and found the dead body of the deceased and the independent witnesses, viz., P.Ws.4 to 9, have turned hostile and they have not supported the prosecution case in any manner. Thus, absolutely there is no evidence against the accused and therefore, the Trial Court was right in acquitting them. We do not find any merit at all in the appeal.

7 In the result, the criminal appeal is dismissed.
The judgment of acquittal by the Trial Court in SC.No.56/2012
dated 30.09.2013, is hereby confirmed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

AP

To

- 1 The Additional District and Sessions Judge
Namakkal.
 - 2 The District Munsif cum Judicial Magistrate
Paramathi.
 - 3 The Chief Judicial Magistrate
Namakkal.
 - 4 The Inspector of Police
Vellure Police Station
Namakkal District.
 - 5 The Public Prosecutor
High Court, Madras.
- 1 cc to Mr.N.Anandakumar, Advocate, sr.25922

Cr1.A.No.781/2013

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