



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2016

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A[MD].No.202 of 2014

Thilagaraj : Appellant

Vs.

- 1.Dharmaraj
- 2.Muruganandam
- 3.Kalaiivanan
- 4.Mubarak
- 5.State Rep by

The Sub-Inspector of Police,
Thuraiyur Police Station,
Trichy District, Crime No.371 of 2012.

: Respondents

PRAYER: Appeal is filed under Section 372 of the Code of Criminal Procedure against the Judgment and conviction dated 06.08.2013 made in S.C.No.74 of 2013 on the file of the Sessions Court, Trichy.

For Appellant : Mrs.M.Krishnaveni

For Respondent Nos.1to4 : No Appearance

For Respondent No.5 : Mr.C.Mayil Vahana Rajendran
Additional Public Prosecutor

JUDGMENT

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

This is an appeal against acquittal of the respondent Nos.1 to 4, who are the accused in S.C.No.74 of 2013, on the file of the learned Principal Sessions Judge, Trichirappalli. The respondent Nos.1 to 4 stood charged, as detailed below.

Charge	Accused	Penal Provisions
1	1 to 4	120-B IPC
2	2 and 3	364IPC
3	2 to 4	302 IPC
4	1	302 r/w 34 IPC



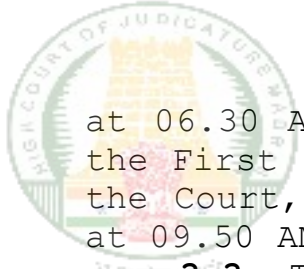
2. By Judgment dated 06.08.2013, the Trial Court acquitted the respondent Nos.1 to 4 from all the charges. Aggrieved over the same, the appellant, who is the father of the deceased, has come up with this Criminal Appeal.

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

The deceased, in this case, was one Mr.Ranjith. PW-1 is his father and PW-2 is his brother. They were all residing at Thuraiyur in Trichirappalli District. The first accused - Mr.Dharmaraj is also a resident of the same village. He is a friend of the deceased. On account of the said friendship, the deceased used to frequently visit the house of the first accused. In due course, it came to light that the deceased had developed illicit intimacy with the mother of the first accused. The first accused and his brother objected to the same. They reprimanded and warned him not to visit their house. But, the deceased did not stop the illicit intimacy with the mother of the first accused. The accused Nos.2 to 4 are his close friends. Therefore, the first accused decided to do away with the deceased. This is stated to be the motive for the first accused. On account of the said motive, the first accused conspired with the accused Nos.2 to 4 to commit murder of the deceased.

3.1. It is further alleged that on 10.09.2012, at about 10.45 AM, the deceased was standing near Balaji Medical Shop on the Perambalur Road at Thuraiyur. At that time, the accused Nos.2 and 3 came there in a Motorcycle and took the deceased to the Police Station. Thereafter, the deceased did not return. PW-2, the brother of the deceased, claims that he was present at the time when the deceased was taken by the accused Nos.2 and 3 in the Motorcycle. When he enquired, it is stated that the accused Nos.2 and 3 told him that they were taking the deceased to the Police Station. PW-2 returned home and then, around 01.45 PM, he spoke to PW-1 and wanted him to return back home immediately. PW-1, a Mason by profession, was engaged in the work at his place. Therefore, he could not return home immediately.

3.2. Around 04.30 PM, he returned home. PW-2 informed him about the above occurrence. PW-1 and PW-2 immediately went to the house of the first accused to enquire the whereabouts of the deceased, believing that the first accused would have taken the deceased with the help of the accused Nos.2 and 3. It is further alleged that at that time, at 07.00 PM, when they enquired the first accused, he told that since the deceased had not stopped his illicit intimacy with his mother, he along with the others had done away with the deceased and threw him in a bush near Sudharshana College, at Kalipatti. PW-1 and PW-2 went to the said place and they did not find the deceased. Therefore, they returned home. On the next day, around 06.00 AM, when PW-1 went to the same village in search of the deceased, he found the dead body of the deceased near a bush. There were number of injuries on his body. Then, he went to the Thuraiyur Police Station and made a complaint



at 06.30 AM, on 11.09.2012. EX-P1 is the complaint and EX-P15 is the First Information Report. Both the documents were forwarded to the Court, which were received by the learned Judicial Magistrate at 09.50 AM.

3.3. Taking up the case for investigation, PW-24 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of PW-1 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. He also recovered a Cell Phone, two sticks and a water bottle. Then, he conducted inquest on the body of the deceased. EX-P26 is the inquest report. Then, he forwarded the dead body for postmortem.

3.4. PW-14 - Dr.P.Madhavan conducted autopsy on the body of the deceased, at 01.10 PM, on 11.09.2012. EX-P8 is the postmortem certificate. He noticed the following injuries:-

"1.A lacerated wound of 2" X 1/4" X 1/4", over the center of the scalp.

2. An abrasion of 1" X 1" on the left side of cheek.

3. A small laceration over the left ear.

4. A small laceration above the left eyebrow.

5. An Abrasion of 1" X 1/2" over the right wrist.

6. Diffuse & ill defined contusion over the chest wall in front and abdomen.

7. A contusion of 4" X 3" X 1" over the right upper leg below the right knee fracture right upper 1/3 present.

8. A contuded abrasion 2" X 2" 1/2" over the lower 1/3 of left leg above the ankle".

He gave opinion that the deceased would appear to have died of shock and hemorrhage due to multiple injuries to vital organs.

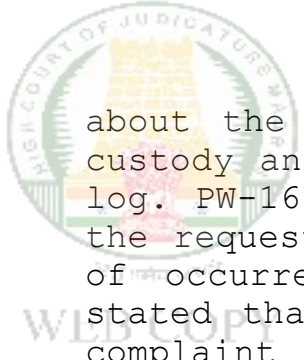
3.5. PW-24, during the course of investigation, at 03.30 PM, on 11.09.2012, arrested the accused Nos.1 and 4. At 07.30 PM, on 21.09.2012, PW-24 came to know that the other accused had surrendered before the learned Judicial Magistrate on 13.09.2012. He took police custody of the accused Nos.2 and 3 on 21.09.2012 till 24.09.2012. While in custody, on 22.09.2012, in the presence of PW-16 and another witness, they gave independent voluntary confessions. In his disclosure statement, the fourth accused disclosed the place, where he had hidden the sticks and also a Car. In pursuance of the same, he produced a stick and the Car bearing Registration No.TN-48-Y-3143. On returning to the Police Station, he forwarded the accused to the Court for judicial remand and handed over the material objects to the Court. At his request, the material objects were sent for chemical examination. It was found that in wooden log and the stick, human bloodstain was ~~noticed and in another stick, no bloodstain was noticed.~~ PW-24, on completing the investigation, laid charge sheet against the

accused.

3.6. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, on the side of the prosecution, 24 witnesses were examined, 31 documents and 12 material objects were marked. Out of the said 24 witnesses, PW-1 and PW-2 are the father and brother of the deceased. PW-2 has stated that lastly, the deceased was taken by the accused Nos.2 and 3 in their motorcycle, at 10.40 AM, on 10.09.2012. He has further stated that he informed PW-1 to return back home immediately. PW-1 returned home at 04.30 PM. Thereafter, according to PW-1 and PW-2, they went to the house of the first accused to enquire about the whereabouts of the deceased. They came to know that the deceased had been attacked by the first accused along with the other accused. PW-1 and PW-2 have further stated that they went in search of the deceased to the place informed by the first accused. Since the deceased was not found there, they returned home. They have further stated that on the next day, at 06.00 AM, they found the dead body of the deceased and then, PW-1 made a complaint to the police.

3.7. PW-3 has spoken about the fact that the accused Nos.2 and 3 took the deceased in the Motorcycle, when he was standing near the Medical Shop. PW-4 has also spoken about the same facts. PW-5 has stated that on 10.09.2012, between 11.00 AM and 12.00 Noon, when he went to Kalipatti Road, he found these four accused near Sudharsana College. At that time, yet another person was found there. All the five persons were quarreling with each other. On the next day, he came to know about the occurrence. PW-6 has stated that he accompanied PW-5 to Kalipatti Road. He has also spoken about the same facts. PW-7 has stated that he was in Balaji Medical Shop, on 10.09.2012, at 10.45 AM. He has stated that the accused Nos.2 and 3, at that time, took the deceased in the Motorcycle. PW-8 has stated that on 10.09.2012, at 12.00 Noon, he found a White Colour Ambassador Car proceeding towards a graveyard. He did not notice the car number. The inmates of the car were quarreling with each other. Inside the Car, he found the deceased and the second accused. PW-9 is the owner of a Grocery Shop at Kalipatti. He has stated that on one day, the fourth accused came in a Car and purchased a water bottle from his shop. PW-10 has stated about the preparation of Observation Mahazer and the Rough Sketch and the recovery of material objects at the place of occurrence.

3.8. PW-11 to PW-13 have spoken about the same facts. PW-14 has spoken about the autopsy conducted by him and his final opinion regarding the cause of death. PW-15 has spoken about the confession made by the accused and the recovery of Ambassador Car on the confession made by the fourth accused. They have also spoken



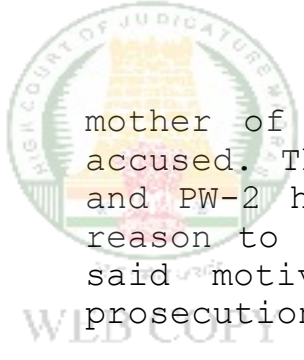
about the confession made by the accused Nos.2 and 3 in police custody and the consequential recovery of Motorcycle and a wooden log. PW-16, the Head of the Sniffer Dog Squad, has stated that at the request of PW-24, he took the police sniffer dog to the place of occurrence. But, it yielded no positive result. PW-17 has stated that he handed over the First Information Report and the complaint to the learned Judicial Magistrate, at 09.50 AM, on 11.09.2012. PW-18, a Constable, has spoken about the handing over of the dead body to the hospital for postmortem, as directed by PW-24. PW-19 has spoken about the registration of the case on the complaint made by PW-1. PW-20 and PW-21 have turned hostile and they have not supported the case of the prosecution in any manner. PW-22 has stated that the first accused, who was working as an Auto Mobile Lab Assistant, was on leave on 10.09.2012, from 03.30 PM onwards. PW-23, the Head Clerk of the Court of learned Judicial Magistrate has spoken about the handing over of the material objects for examination, as directed by the learned Judicial Magistrate. PW-24 has spoken about the investigation conducted by him and the filing of final report.

3.9. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied the same as false. However, they did not choose to examine any witness nor to exhibit any document. Having considered all the above materials, the Trial Court acquitted the respondents Nos.1 to 4. That is how, the appellant is now before this Court with this Criminal Appeal.

4. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the State and also perused the records carefully. There is no representation on behalf of the respondent Nos.1 to 4.

5. This is a case based on circumstantial evidence. It is too well settled that in a case based on circumstantial evidence, the prosecution is required to prove the circumstances projected by it beyond reasonable doubts and the proved circumstances should establish a close link with each other and form a complete chain unerringly pointing to the guilt of the accused and there should not be any other hypothesis, which will be inconsistent with the guilt of the accused. Keeping this broad principles in our mind, let us now examine the circumstances projected by the prosecution so as to see whether such circumstances have been proved.

6. The first and foremost circumstance is the motive for the first accused. It has been stated by PW-1 and PW-2 that the deceased was a friend of the first accused. On account of the said friendship, he used to visit the house of the first accused. In due course, the deceased developed illicit intimacy with the

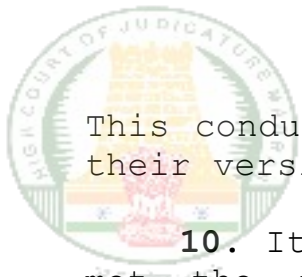


mother of the first accused. This was objected to by the first accused. This is stated to be the motive for the occurrence. PW-1 and PW-2 have clearly spoken about the same. We do not find any reason to reject the evidences of PW-1 and PW-2 in respect of the said motive for the first accused. Thus, we hold that the prosecution has established the motive for the first accused.

7. The first charge is that on account of the said motive, these four accused conspired to do away with the deceased. Of course, it is true that the conspiracy in general is hatched in secrecy and therefore, the Court, under all circumstances, cannot expect direct eye-witnesses account for the same. Here, in this case, except the fact that the accused Nos.2 to 4 are the friends of the first accused, there is no other evidence available even remotely to infer that all the accused conspired to commit the murder of the deceased. This has been rightly appreciated by the Trial Court. Thus, in our considered view, the charge of conspiracy to commit the murder of the deceased allegedly hatched between the accused Nos.1 to 4 has not been proved.

8. Then, comes the actual occurrence. The alleged occurrence was not noticed by anyone. The only evidence available through PW-1 to PW-4 is that, at 10.45 AM, on 10.09.2012, when the deceased was standing near Balaji Medical Shop, the accused 2 and 3 took him in the motorcycle under the guise of taking him to the Police Station. But, the Trial Court, on appreciating the evidences of these witnesses, came to the conclusion that there is no truth in the allegation that these witnesses had seen the deceased being taken by the accused Nos.2 and 3.

9. We do not find any reason to reject the said conclusion arrived at by the Trial Court. The conduct of these four witnesses has been taken note of very seriously by the Trial Court. PW-2 has stated that he was very much present at the time when the deceased was taken in the motorcycle by the accused Nos.2 and 3, after manhandling him. PW-2 knew very well that the accused Nos.2 and 3 were the friends of the first accused. It is not known as to why PW-2 kept silent and he did not react. He has stated that the accused Nos.2 and 3 took the deceased to the Police Station. If that be so, by a natural human conduct, PW-2 would have gone to the Police Station in search of the deceased. However, according to him, PW-2 simply returned back home and wanted his father to return home immediately. Had it been true that PW-2 had informed PW-1 that the accused Nos.2 and 3 had taken the deceased to the Police Station, after attacking him, PW-1 would not have confined himself at the work place, instead of rushing to his house to take further action in the matter. He has stated that till 04.30 PM, he was engaged in his job in a casual manner. He returned home only at 05.30 PM. Thereafter, he went to the house of the first accused along with PW-2 to enquire about the whereabouts of the deceased.



This conduct of PW-1 and PW-2 to keep silence till 07.00 PM, make their version doubtful.

10. It is the evidence of PW-1 and PW-2 that at 07.00 PM, they met the first accused at his house and enquired about the deceased, for which, the first accused told that he along with the accused Nos.2 to 4 had already finished the deceased and threw him near Sudharsena College in a bush. Having heard this information, in our considered view, going by the natural human conduct, PW-1 and PW-2 would not have kept silent. Instead, they have stated that they went to Sudharsena College and since they did not find the deceased there, they returned home and slept for the whole night. This conduct of PW-1 and PW-2 creates further doubt. On the next day, at 06.00 PM, according to them, they found the dead body near the place of occurrence. Thus, between 10.45 AM on 10.09.2012 and 06.00 PM, on 11.09.2012, PW-1 and PW-2 did not show any natural human conduct and their conduct in sleeping for the whole night at their house during the interregnum period would create enormous doubt about their veracity. For these reasons, the Trial Court rejected the evidences of PW-1 and PW-2. Similarly, the evidences of PW-3 and PW-4 have also been doubted by the Trial Court. Though they have stated that they saw the deceased being taken in the Motorcycle at 10.45 AM, on 10.09.2012, they did not inform the same to anyone, which, in our considered view, would create doubt about their veracity. For this reason also, the Trial Court has rejected the case of the prosecution that the deceased was taken in the Motorcycle by the accused Nos.2 and 3.

11. In an appeal against acquittal, it is the settled law that when there are two views possible, one favouring the accused and the other favouring the prosecution, the Appellate Court is expected not to substitute its view in the place of the view taken by the Trial Court, unless the view taken by the Trial Court is perverse. In the instant case, the view taken by the Trial Court is the only view, which any reasonable man, could arrive at. There is no other alternative view available. Thus, we do not find any infirmity in the Judgment of the Trial Court warranting interference at the hands of this Court.

12. In view of the foregoing discussions, we do not find any merit in the Criminal Appeal, which is, accordingly dismissed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar



To

1. The Principal Sessions Judge, Trichy.

2. The Judicial Magistrate, Thuraiyur.

3. The Sub-Inspector of Police,
Thuraiyur Police Station,
Trichy District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO M/s.M.KRISHNAVENI, ADVOCATE IN SR No. 52531

NB

TE/SKS-RR/SAR-III : 14/10/2016 : 8P/6C

JUDGMENT MADE IN
CRL.A[MD].No.202 of 2014
12.09.2016