

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22..03..2017

Coram:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

AND

THE HON'BLE DR. JUSTICE ANITA SUMANTH

Criminal Appeal No.132 of 2017

Sikkayan

...Appellant/Accused

-Versus-

State Rep. by its
Inspector of Police,
Anchetti Police Station,
Krishnagiri District.
[Crime No.69 of 2010]

... Respondent/Complainant

Appeal filed under Section 374(2) of Cr.P.C. challenging the judgement of conviction and sentence dated 23.02.2017 made by the learned Additional District and Sessions Judge, Hosur, Krishnagiri, in S.C.No.46 of 2013.

For Appellant : Mr.C.R.Malarvannan
for M/s.V. Rajamohan

For Respondent : Mr.P.Govindarajan,APP

JUDGEMENT

(Judgement of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is the sole accused in S.C.No.46 of 2013 on the file of the learned Additional Sessions Judge, Hosur, Krishnagiri District. He stood charged for offences under Section 302 of IPC and Section 25(1)(a) of The Arms Act. The trial court, by judgement dated 23.02.2017, convicted the appellant under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for one year for offence under Section 302 of IPC and to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months for the offence under Section 25(1)(a) of The Arms Act. Challenging the above said conviction and the sentences, the accused is before this court with the present criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Annadurai. The accused and the deceased were friends for a long time. They were residing at Madankottai, Gandhipuram Village, Krishnagiri District. As a friend, the deceased used to visit the house of the accused frequently. In due course, the deceased developed illicit intimacy with the wife of the accused. When this came to the knowledge of the accused, he reprimanded the deceased. Despite that the deceased continued to have illicit relationship with the accused. The accused got enraged. This is stated to be the motive for the occurrence.

3. On 29.06.2010 around 08.45 p.m. the deceased had gone out of his house to a nearby place to pass urine. The accused was lying in wait somewhere near the place of occurrence. As soon as the deceased reached the said place, the accused who was already armed with an unlicensed gun shot at the deceased. The pellets hit the chest of the deceased. The deceased raised alarm, fell down and died.

4. P.W.1, the father, P.W.2, the brother and P.W.3, the wife of the deceased heard the alarm raised by the deceased and rushed to the place of occurrence from their house where they found the accused shooting down the deceased with country made unlicensed gun. On seeing them, the accused ran away from the place of occurrence.

5. P.W.1, thereafter, went to the Anchetti Police Station and made a complaint (Ex.P.1) at 02.00 a.m. on 30.06.2010. The distance between the place of occurrence and the police station was 20 kms. On the said complaint, a case was registered in Crime No.69 of 2010 under Sections 302 of IPC and Section 25 of The Arms Act by the Sub Inspector of Police (P.W.13). Ex.P.7 is the FIR. Then, he forwarded both the complaint and the FIR to the court which were received by the learned Magistrate at 07.35 a.m. on 30.06.2010. In the mean time, P.W.13 handed over the case diary to the Inspector of Police for investigation.

6. The case was taken up for investigation by P.W.15, the then Inspector of Police. He went to the place of occurrence, prepared an observation mahazar and a rough sketch at the place of occurrence in the presence of witnesses. He also recovered some blood stained earth and sample earth from the place of occurrence under a mahazar in the presence of the same witnesses. After holding inquest on the body of the deceased, he forwarded the dead body to the government hospital for postmortem.

7. P.W.12, Dr.Ramkumar, conducted autopsy on the body of the deceased at 03.00 p.m. on 30.06.2010. He found the following injuries:-

"External Injuries: (1) Multiple penetrating wound over anterior aspect of chest wall each 3 x 4.5 cms with irregular edges inverted.

(2) Open comminuted fracture of both bone (right) forearm lower 3rd.

(3) Contusion of about 3 x 8 cms over (Right) suprascapular and (left) and (right) scapular region."

He recovered four pellets embedded in the body and handed over the same to the Investigating Officer. Ex.P.6 is the postmortem certificate. He opined that the death of the deceased was due to pellet injury found on the body of the deceased.

8. P.W.15 during the course of investigation, recovered the blood stained cloths from the body of the deceased and forwarded the same to the court. On 30.06.2010 at 02.00 p.m., P.W.15 arrested the accused in the presence of witnesses. While in custody, he gave voluntary confession in which he disclosed the place where he had hidden a unlicensed gun. In pursuance of the same, he took the police and the witnesses to the place of occurrence and produced the gun (M.O.3). P.W.15 recovered the same under a mahazar. On returning to the police station, he forwarded the accused to the court for judicial remand. The investigation was thereafter continued by his successor (P.W.16).

9. Based on the above materials, the trial court framed two charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 17 witnesses were examined, 12 documents and 6 material objects were marked.

10. Out of the said witnesses, P.Ws.1 to 3 have stated that soon after the deceased had gone out of his house for passing urine, they had alarm raised by the deceased. They rushed to the place of occurrence where they found the accused shooting down the deceased with a country made gun. They have further stated that the deceased died on the spot and the accused fled away from the scene of occurrence. P.W.1 has spoken about the complaint made to the police. P.W.4 has stated that he came to know about the occurrence later. P.W.5 has also stated that he came to know about the occurrence later. P.W.6 has stated about the illicit relationship between the deceased and the wife of the accused. P.W.7 has stated that eight days before the occurrence, the deceased had requested him to inquire the accused since the accused was threatening him to kill him. P.W.8 has stated that he heard about the occurrence, went to the place of occurrence and found the dead body. P.W.9 has also spoken about the same facts. P.W.10, the Village Administrative Officer has spoken about the preparation of the observation

mahazar and the rough sketch and also the recovery of material objects from the place of occurrence. He has also spoken about the arrest of the accused, disclosure statement made by him and the consequential recovery of country made gun (M.O.3). P.W.11, a Constable has stated that he handed over the dead body to the doctor for postmortem. P.W.12, the doctor, has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death.

11. P.W.13, the Sub Inspector of Police has spoken about the registration of the case. P.W.14, Mrs.Radhika Balachandran, Assisted Director (Retd.,) from the Regional Forensic Sciences Laboratory, has stated that she examined the blood stained earth and sample earth sent to her for examination. She found that there were blood stains on the blood stained earth. P.W.15 to P.W.17 have spoken about the investigation done by them and P.W.17 has further spoken about the filing of charge sheet against the accused.

12. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. he denied the same as false. However, he did not choose to examine any witness nor did he mark any document on his side. His defence was a total denial.

13. Having considered all the above, the trial court convicted the appellant/accused under both the charges and sentenced him as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, the accused is now before this Court with the present criminal appeal.

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

15. The learned counsel for the appellant/accused would submit that P.Ws.1 to 3, who claim to have witnessed the occurrence, would not have seen the occurrence at all, as they were in their house at the time of occurrence whereas, the occurrence had taken place at a far off place where the deceased had allegedly gone for passing urine. We find force in the said argument. It is the evidence of P.W.3 that she heard the alarm raised by the deceased. P.Ws.1 and 2 have also stated so. It is not the case that the accused shot deceased more than once. It is the case that the accused shot him only once. The alarm would have been raised by the deceased only after he was shot at by the accused. Thereafter, when P.Ws.1 to 3 rushed to the place of occurrence, they would not have seen the accused shooting him

down at all. At the most, they could have seen only the accused fleeing away with the gun from the place of occurrence. P.W.3 has stated during cross examination that P.Ws.1 to 3 were inside their house and were watching television programme. At that time, they heard the sound of shooting. Then only they rushed out of the house. According to her, when they reached the place of occurrence, the accused had already left the place of occurrence. Thus, from the evidence of P.W.3 it could be inferred that at the the time when they reached the place of occurrence, the accused was not at all there. Since P.Ws.1 and 2 had also accompanied P.W.3, they would not have seen the occurrence. Thus, the evidences of P.Ws.1 to 3 are difficult to be believed.

16. Then comes the arrest of the accused and the consequential recovery of M.O.3-Gun. According to the case, the accused was arrested on 30.06.2010 at 02.00 p.m. It was only thereafter according to the case, the accused gave a voluntary confession out of which M.O.3 was recovered. But, P.W.1 during the course of examination, has stated even before he reached the police station to make complaint, the accused was kept in the police custody. He has more specifically stated that early morning at 07.00 a.m. on 30.06.2010, when he visited the police station, he found the accused kept in the police lock-up. If this part of the evidence of P.W.1 is taken into account, then, the case of the prosecution that the accused was arrested only at 02.00 p.m. on that date and thereafter M.O.3 was recovered from his possession cannot be believed. Above all, though it is alleged that M.O.3 was used by the accused to shoot the deceased, for, no reason explained before this court that the gun was not sent for ballistic opinion, there is no evidence whether the gun (M.O.3) was in working condition. There is no evidence whether the same had been used for shooting in the recent past. There is also no evidence as to whether M.O.4-pellets which were recovered from the dead body could have fired from M.O.3. This is not explained to the court as to why these pellets were also not sent for expert opinion. Had M.Os.3 and 4 been sent for ballistic opinion, some more light could have been thrown in the case of the prosecution. It is, in our considered view, a serious flaw in the case of the prosecution. Thus, as of now, there is no evidence that M.O.3 was used and M.O.4 series were fired from the same which hit the deceased. In view of the above, inconsistencies, improbabilities and the shortcomings in the case of the prosecution, we hold that prosecution has failed to prove the case beyond any reasonable doubt. Thus, the appellant/accused is entitled for acquittal.

17. In the result, the Criminal Appeal is allowed and the conviction and sentences imposed on the appellant/accused by the trial court are hereby set aside. He is acquitted of both the charges. Fine amount already paid, if any, shall be refunded to

him. The appellant/accused is directed to be set at liberty forthwith unless his detention is required in connection with any other case.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

kmk

To

1. The Principal District Judge, Krishnagiri
 2. The Additional Sessions Judge, Hosur, Krishnagiri District.
 3. The Chief Judicial Magistrate, Hosur
 4. The District Munsif cum Judicial Magistrate
Thenkanikottai, Krishnagiri District.
 5. The Superintendent, Central Prison, Vellore
 6. The Inspector of Police, Anchetti Police Station, Krishnagiri
District.
 7. The District Collector
Krishnagiri
 8. The Director General of Police
Mylapore, Chennai 4
 9. The Public Prosecutor, High Court, Chennai.
- +1 CC to Mohideen Basha, sr 17803

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NRI (CO)
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