

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 24.02.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

and

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

CRIMINAL APPEAL Nos. 501 and 522 of 2016

1.Jagan ... Appellants/accused 2 and 3 in
2.Dineshkumar ... Crl.A. No.501 of 2016

1.Ranjith
2.Ambuli @ Anbu oli
3.Jamal @ Jamaludin
4.Prabhakaran @ ... Appellants/accused 1, 4, 5 and 6 in
Karuppu Pirabhu ... Crl.A. No.522 of 2016

Versus

State represented by
The Inspector of Police,
Kirumampakkam Police Station,... Respondent/Complainant in
Puducherry. both cases

Prayer: Criminal Appeals filed under Section 374(2) of Criminal
Procedure Code against the judgment dated 23.06.2016 passed by
the Principal Sessions Judge, Puducherry in S.C. No.14 of 2014.

For Appellants : Mr.V.Gopinath,
in Crl.A.522/16 Senior Counsel for
Mr.L.Mahendran

For Appellants in
Crl.A.No.501/16 : Mr.K.Gandhikumar
For Respondent : Mr.V.Balamurugan,
in both Additional Public Prosecutor
(Puducherry)

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by Dr.Anita Sumanth, J.)

These appeals are filed by six accused, A2 and A3 being appellants in Crl.A. No.501 of 2016 and A1, A4, A5 and A6 being appellants in Crl.A. No.522 of 2016, all challenging the judgment of the Principal Sessions Judge, Puducherry in S.C. No.14 of 2014 dated 23.06.2016.

2. All the appellants have been found guilty in terms of Sections 148, 341 and 302 r/w Section 149 of IPC and they were charged and convicted for offence under Sections 148 r/w.149 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-. In respect of the offence under Sections 341 r/w.149 IPC, they were convicted and sentenced to pay a fine of Rs.500/- and for the offence under Section 302 r/w.149 IPC, they were convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/-. All sentences were ordered to run concurrently. Challenging the said conviction and sentence, the appellants are before us in appeal.

3. The case of the prosecution is as follows:

The deceased in this case is one Balamurugan. On 05.01.2000, A1 to A6 along with a Juvenile formed an unlawful assembly and armed with weapons such as knife and veechu aruval committed riot and murder of Balamurugan s/o Chandrasekaran when he was proceeding on his motorcycle bearing registration No. PY01-AM-7646 inflicting 19 grievous injuries that caused his death.

4. The motive for the commission of the crime was stated to be the love affair that the deceased had with Kiruba, the sister of Ranjith, the first appellant in CA 522 of 2016, arrayed as A1. It is the case of the prosecution that after engaging in an affair with Kiruba for several years, the deceased had married someone else, on account of which the two families had quarrelled bitterly. The continuing hostilities between the families led A1 to engage the services of A2 to A6 as contract killers to commit the crime. The body of the deceased had been found floating in Kirumampakkam lake on 07.01.2000. The Tahsildhar had received information in this regard and had instructed PW14, the Village Administrative Officer of Kirumampakkam Village to look into the same. Thereafter, a complaint had been filed by PW6 the defacto complainant (Ex.P2) and an FIR registered.

5. The version of the prosecution is to the effect that the deceased had left his house on motorbike on 05.01.2010 at around 7 p.m. Since he did not return to his house for long, a search was launched, but to no avail. His brother, PW6, had received information from one Pachaiyappan (whose identity is not known) on 07.01.2010 at around 11 a.m. to the effect that the body of the deceased was found floating in Kirumampakkam lake. On going to the scene of occurrence PW6 identified the body as that of his brother finding several injuries inflicted on his head. He filed a complaint to the effect that the murder must have been committed by the family members of Kiruba. He stated that the deceased was having an affair with Kiruba but married another lady from Nettappakkam. This led to animosity and quarrel with the family of Kiruba. As a result his wife had also been taken away by her family and she had filed for divorce.

6. The complaint proceeds on the assessment that persons inimical would have apprehended the deceased with the intent of doing away with him and committed his murder between 05.01.2010 when he left the house, and 07.01.2010, when his body was found. On the basis of the complaint, FIR bearing No. 3 of 2010 was lodged on 07.01.2016 at 12.30 pm registering a crime under section 302 IPC against 'unknown accused'. On the registration of the FIR the matter was taken up for investigation. PW28 T.Dhanasekaran, Sub-Inspector of Police registered an express FIR and thereafter handed over the files for investigation to PW 30 P.Purushothaman, Superintendent of Police, Bahur Circle, who commenced enquiry there upon. The inquest was conducted by PW30 who went to the scene of crime, laid Observation Mahazar and Rough Sketch in Ex.P24 and Ex.P22 respectively. Pieces of broken side mirror from a bike were seized under Ex.P25 as MO 12. The body was sent for post mortem along a requisition to the Pondicherry Government General Hospital.

7. In the course of the day, the bike from which the glass had broken was found, seized and produced before the IO by PW9. Inquest of the corpse was conducted by the IO and the same handed over to the relatives thereafter. PW30, coming to know of the involvement of A1 sought to apprehend and interrogate him but was unable to locate him immediately. In the meantime, he was informed of the involvement of A2 to A6 as contract killers in the murder and on 12.1.2010, he apprehended A1, A2 and A3. Upon interrogation, he would state that A1 and A2 voluntarily confessed to the murder and their confessions were recorded in the presence of the VAO, PW14. Pursuant thereto, MO's 13, 14 and

15 were seized under mahazar Ex.P.31 being the knives (murder weapons) and lungi worn by A1 at the time of commission of the crime.

8. The motor cycle bearing registration no.PY-01-V-6160 used by the deceased was seized along with other material objects such as another bike and two pawn receipts. On 16.10.2010 the IO arrested A4 who also confessed to the crime. The knife used by him in the commission of the crime was recovered. A5 and A6 were also arrested by the IO and a confession recorded from A6 in the presence of witnesses. Dr.S.Diwakar Senior Resident conducted post mortem. The post Mortem report in Ex.P92 along with the final opinion of the Doctor in Ex.P21 as well as a Chemical Examiner's Report were filed. Material objects such as a Lungi, blue shirt, white vest and brief, MO's 1 to 3, a knife 60cms long and a Kuthu kathi, MO's 6 and 7 and two motorcycles, MO's 4 and 5 a TVS Apache bearing registration No.PY-01-AR-5905 and TVS Suzuki motorcycle bearing registration no PY-01-V-6160 were seized under Mahazar. Mobile numbers found to have been used, being 99445522929, 9894054642 and 9677794478 were saved for call data retrieval.

9. The Investigating officer continued investigations, examining a total of 30 witnesses and collating several exhibits and evidences. Upon completion of enquiry a charge sheet was laid. When the accused were presented with the evidence gathered and proposed to be used against them, they pleaded that they were not guilty. The prosecution had examined 30 witnesses, presented 37 Exhibits and 16 Material objects and the defence, on their part, neither examined any witnesses nor produced any exhibits or evidence in support of their case. Upon conclusion of trial, the judge confirmed the charges laid against the accused as set out in the initial part of this order against which all the accused are in appeal.

10. We have heard the detailed submissions of Mr.V.Gopinath, learned Senior Counsel appearing for the appellants and Mr.V.Balamurugan, learned Additional Public Prosecutor appearing for the State.

11. This is a case based solely on circumstantial evidence and there is no eye witness for the murder stated to have been committed by A1 to A6. The convictions have been justified by the trial judge on two counts: strong motive and confessions of the accused. The case of the prosecution is that the complaint filed by PW6 C.Balapazhani, the brother of the deceased, reveals

the motive for the murder as being a love affair that the deceased had been having with the sister of A1, Kiruba, for several years. It was emphasised that the affair was not casual but Kiruba had undergone a few abortions owing to the close relations between her and the deceased. Notwithstanding this, the deceased had, two years ago married another girl by name Vijayasri from a different community. This had laid to animosity between the families. On account of the friction caused by the family of Kiruba, Vijayasri had left the marital home and PW6 would state that proceedings had been initiated before the family Court by her for divorce. It is this friction that was, according to PW6, the sole motive for the commission of the crime by A1, along with A2 to A6, engaged by him for commission of the murder.

12. Though several witnesses were examined by the prosecution, many had become hostile to the case of the prosecution. PW1 Balasubramaniam, nephew of the deceased, PW2 Ambedkar a resident of the village, PW3, P.Manikandan, PW4 N.Thirumal, PW8 S.Sivasankar, PW10 Gokulakrishnan, PW12 Silambarasan, PW13 Ramamoorthy, PW15 Antony Jenith, PW19 Sathiyamoorthy, PW21 Adhimulam f/o Vijayasri, PW22 Vijayasri, PW23, Nedunsezhiyan and PW24 Ganesan were all declared hostile. PW21, Adhimulam, the father of PW22, and PW22 Vijayasri herself, though declared hostile, would speak about the marriage of PW22 to the deceased and her having come to know about the affair that the deceased had been having with Kiruba. They would narrate that they had filed a case against the deceased who had sought restitution of the marriage. PW22 Vijayasri would state that Jayalakshmi, the wife of the brother of the deceased, had informed her that Kiruba had sexual relations with the deceased and undergone abortions a few times.

13. PW6 Balapazhani brother of the deceased spoke about the complaint filed by him upon identification of the body of his brother. He would mention the fact that the deceased had had an affair with Kiruba and his subsequent marriage with Vijayasri from Nettapakkam. He spoke about the ensuing subsequent hostile between the families. This, according to him, was the motive for the murder committed by A1 to A6. PW7 Sivaraman, a driver would also narrate and corroborate substantially the same facts, adding that the deceased had spoken over the telephone with him on the evening of 05.01.2010. PW11, a resident of the same area, had witnessed the seizure of material objects 1, 2 and 3. PW14, the VAO of Kirumambakkam village would state that he had proceeded to the PS on 12.01.2010 where the confessions of the accused had been recorded in this presence. The recovery of MO's 4, 5 and 6, the knives, TVS Apache Motorcycle and Suzuki Motorcycle were thereafter also effected in his presence. The receipts from the pawn shops where he had pledged the jewels

marked as Ex.P8 & P9 were also marked in his presence.

14. PW16 Velu spoke about the TVS Apache motorcycle and the registration thereof that stood in the name of his father. PW17 Rikhab Chand Jain spoke about the pawn receipts for the silver articles pledged with him. PW18 Arunachalam Village Assistant, Bahoor spoke about witnessing, along with another witness by the name of Mayavan, the confession of A4 in the Kirumampakkam PS, the admissible portion of which was marked as Ex.P13. He also witnessed recovery of a knife (MO 7) under mahazhar Ex. PW14. Though PW19 Sathiyamurthy was declared hostile, his testimony revealed that the sim card bearing number 9677794478 had stood in his name and that he had lost it. He would categorically deny that he had given the same to A1 for his use. PW20 Sankar was a witness to the confession of A6. PW23, Nedunchezian, though declared hostile would state that six persons had stayed in room no. 38 in his Guest house on the 9th & 10th of the month. The bill book evidencing such stay was marked as Ex.P.16.

15. PW25 Ranganathan and PW26 Sivaraman, police photographers, spoke about photographing the corpse at the mortuary and at the lake and producing the photos on Compact Disc seized as MO's 8, 9, 10 & 11. PW27 Lenath Presnev, police constable spoke about receiving information that A1 had committed murder on 05.01.2010. PW28 T.Dhanasekaran, Sub-Inspector of Kirumampakkam police station received the complaint filed by PW6 on 07.01.2000, registered an FIR and forwarded the same to his superiors who then took the matter up for inquest. PW29 Dr.S.Diwakar, spoke about conducting of post mortem and giving final opinion. The report is as follows:

'External Injuries:

ABRASIONS:

1. 3 cms x ½ cm, over the back of right shoulder;
2. 7 cms x ½ cm, over the outer aspect of right arm;
3. 7 cms x 1 cm, over the back of left chest;
4. 9 cms x ½ cm, over the black of left chest;
5. 1 ½ cms x ½ cm, over the front of right knee;
6. 4 cms x 3 cms, over the front of left knee;

OBLIQUE, INCISED GAPING WOUNDS:

- 7.3 cms x ½ cm, over the right cheek;
- 8.1 ½ cms x ½ cm, over the right side of upper lip;
- 9.2 cms x 1 cm, over the left eyebrow;
- 10.4 cms x ½ cm, over the left cheek;
- 11.7 cms x ½ cm, over the antr. Aspect of left parietal area;
- 12.3 cms x ½ cm over the post. Aspect of left parietal area;
- 13.6 cms x 1 ½ cms, over the back of right elbow;
- 14.2cms x 1 cms, over the upper aspect of sternum;
- 15.Four in number of over the back of left forearm; varying sizes
- 16.9 cms x 2 cms, over the right palm, with cut fracture of the underlying bones;
- 17.3 cms x 2 cms, over the back of right hand, with cut fracture of the underlying bones;
- 18.5 cms x 2 cms, over the left palm, with cut fracture of the underlying bones;
- 19.4 cms x ½ cms, over the left frontal area, with cut fracture of the frontal bone; '

16. PW30 Superintendent of police Bahur circle narrated the detailed investigated undertaken by him, the recording of the confessions from the accused and subsequent recovery of Material Objects and laying of charge sheet before the Court.

17. Upon a careful consideration of the submissions made and the records of the case, we are of the view that the prosecution is not entitled to succeed in the matter. The case against the appellants is based wholly on circumstantial evidence. The testimony of PW6 Balapazhani may, at best, reveal animosity between the families. However, there is nothing brought on record to indicate, let alone confirm the position that the murder of the deceased was committed by A1 to A6. Several witnesses such as PW 5, PW 7, PW 21, PW 22, would corroborate the narration of facts to the effect that the deceased had an affair with Kiruba, the sister of A1 and thereafter married Vijayasri. This can, no doubt, lead to animosity between the families. The question before us is whether this is sufficient to arrive at or justify the inference

of murder. The sequence of events sought to be made out by the prosecution is this. In view of the strong motive for the murder, A1 engaged contract killers A2 to A6 and a juvenile, pawned silver jewellery that, according to the State, funded the purchase of the murder weapons and murdered the deceased in a gruesome fashion. Thereafter, they stayed in a lodge to avoid detection. The testimonies of the pawn broker, PW17 and owner of the lodge, PW23, though later declared as hostile, were pressed into service to establish the events as they sought to portray them.

18. However, we are unconvinced. The motive, as well the testimonies, neither categorically support nor establish the case of the prosecution beyond all doubt. What stands established is that the demise of Balamurugan was a homicide and that it occurred between 05.01.2010 & 07.01.2010. The charges foisted against A1 to A6 however have not been proved. Substantial reliance has been placed on the confessional statements of the accused. However, the statements are inadmissible as evidence in terms of section 25 of the Evidence Act, recorded as they are by the police authorities. Quite apart from the embargo placed by statute, the statements themselves do not seem credible and we are not persuaded it to accept the same as voluntary. The confessional statements are rejected as unreliable and no reliance can be placed on the same.

19. In the result, the appeals are allowed. The appellants are acquitted of all charges, the sentences imposed by the trial court are set aside and the appellants directed to be set at liberty forthwith.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

msr/vga/msv

To

1.The Principal Sessions Judge,
Puducherry .

2.The Judicial Magistrate No.1 Puducherry

3.The Chief Judicial Magistrate Puducherry
(for information)

4.The Inspector of Police
Kirumampakkam Police Station
Puducherry

5.The Superintendent
Central Prison, Kalapet, Puducherry
(In duplicate for communication to the detenue)

6.The Public Prosecutor Puducherry

7.The District Collector
Pattayanchattiram, Vazhudavoor Road,
Pondy 605 009

8.The Director General of Police
No.4, Dumas Street, Pondy

+1 cc to M/s.L.Mahendran Advocate sr 12877

+2 ccs to Government Pleader sr 12315. 12316

CRIMINAL APPEAL Nos.501 and 522 of 2016

sai (co)

aa13/07/2017

WEB COPY