

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 12.01.2017

CORAM:

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

Crl.A.No.725 of 2016

Angakutty @ Krishnamurthy ... Appellant

vs.

State, rep.by
The Inspector of Police,
Bungalow Pudur Police Station,
Crime No.176 of 2013
Erode District ... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 23.09.2016 passed by the First
Additional District and Sessions Judge, Erode, in S.C.No.73 of
2014

For Appellant : Mr.N.Manokaran
For Respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

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

The appellant is the second accused in S.C.No.73 of 2014, on
the file of the I Additional District and Sessions Judge, Erode.
The first accused was one Mr.Sekar @ Krishnamurthy. They stood
charged for the offence under Section 302 of the Indian Penal
Code. By judgement dated 23.09.2016, the trial Court convicted
both the accused under Section 302 of IPC and sentenced them to
undergo imprisonment for life. However, no fine was imposed.
Challenging the said conviction and sentence, the appellant is
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.Srinivasan. These
two accused are the co-brothers of the deceased. The wife of
the first accused is one Mrs.Aitha. The deceased had a close
relative by name Prabhu. Mr.Prabhu used to speak to Mrs.Aitha

frequently. This raised a suspicion in the mind of the first accused that there was some foul in the relationship between his wife and Mr.Prabhu.

(b) The first accused, on an earlier occasion, reprimanded both his wife as well Mr.Prabhu and warned them not to have any such talk over phone. On 18.06.2013, at Kananpalayam Village, there was a marriage function of a close relative of both the accused and the deceased. These two accused and the deceased participated in the said marriage. At around 7.00 p.m., in the marriage hall, it is alleged that the accused 1 and 2 wanted the deceased to come and identify the house of Mr.Prabhu, so that they could warn him. Accordingly, the deceased went along with accused 1 and 2, in a motor-cycle. After having travelled some distance, the deceased told the accused that he was not aware of the house of Mr.Prabhu and therefore, he could not take them further. This resulted in a quarrel. According to the case, these two accused believed that the deceased was in support of Mr.Prabhu. When the motorcycle reached a place at Kananpalayam near Sabarish Garden, these two accused stopped the motorcycle and attacked the deceased with hands and legs. The deceased shouted at these two accused. Infuriated over the same, it is alleged that these two accused dropped a huge stone on the deceased and killed him. Abandoning the body at that place itself, these two accused fled away from the scene of occurrence. The occurrence was not witnessed by any one.

(c) P.W.1, the Village Administrative Officer, found the dead body of the deceased lying near Sabarish Garden inside Arakankottai Channel, at 7.30 a.m. He visited the place of occurrence and found the dead body. The identity of the dead body was not known to him. During enquiry, P.W.1 came to know about the identity. Thereafter, he went to Bangalow Pudur Police Station and made a complaint at 9.00 a.m. on 19.06.2013. Since the assailants were not known, he mentioned that the deceased could have been done to death by unknown persons. The Special Sub Inspector of Police (P.W.11) registered a case on the said complaint in Crime No.176 of 2013 under Section 302 of the Indian Penal Code. Ex.P1 is the complaint and Ex.P10 is the FIR. He forwarded both the documents to Court, which was received by the learned Magistrate at 3.00 p.m. on 19.06.2013.

(d) The case was taken up for investigation by P.W.12, the then Inspector of Police. He visited the place of occurrence, prepared an observation mahazar and a rough sketch and also recovered the blood stained earth and sample earth from the place of occurrence. He conducted inquest on the body of the deceased and forwarded the body for postmortem. P.W.6 conducted autopsy on the body of the deceased and found the following injuries.

"External injuries (1) Crush injury present over right side face and scalp with # of skull Rt.side head with brain matter exposed. (2) Ant bite marks present in left lower limbs (3) Abrasion over both upper limbs and right greater toe. Scalp - Laceration over Rt side scalp extending from Rt mid eyebrow to lower end of occipital region measuring 30 cm x 10 cms x 0.5 cms. Eyelids closed. Nose, ears, mouth, dried. blood stains present. Tongue inside. Teeth ... fracture of Right side mandible present. Int.Exams: Thorax - # 6 and 7 ribs over left side anteriorly present. Heart both chamber empty, pale. Lungs, liver spleen, kidneys - pale. Hyoid bone intact. Intestines distended with gas. Bladder - empty Head - # extending from Rt.f rontal, temporal parietal to occipital bone present exposing the brain mater. Brain - 750 gms, crushed with approximately half of brain mater missing."

He opined that the death of the deceased was due to shock and haemorrhages due to multiple injuries found on the body of the deceased.

(e) P.W.12, during the course of investigation, recovered blood stained clothes from the body of the deceased. He had requested the sniffer dog squad. P.W.7 brought a sniffer dog to the place of occurrence. But, the said attempt proved futile. The material objects recovered were all sent for chemical examination, which proved that there were human blood on all the material objects. During the course of investigation, it came to light that lastly the deceased was seen in the company of P.Ws.2 and 4. The investigation was continued by P.W.13. On completing the investigation, he laid a charge-sheet against both the accused.

3. Based on the above materials, the trial Court framed a loan charge under Section 302 of the Indian Penal Code against both the accused. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 13 witnesses were examined, 24 documents and 14 material objects were marked. Out of the said witnesses, P.W.1, the Village Administrative Officer, has stated that he found the dead body on 19.06.2013 at 7.30 a.m. and made a complaint to the police on the same day at 9.00 a.m. P.W.2 has stated that on 18.6.2013, at around 7.00 to 7.30 p.m., he found these two accused and the deceased travelling in a motorcycle together on the Authani to Sathiyamangalam Main Road. P.W.3, the wife of the deceased has

stated that she identified the dead body of the deceased. P.W.4 has stated that at around 8.00 p.m., on 18.6.2013, he found these two accused along with the deceased in a motorcycle at Kallipatti. P.W.5 has spoken about the preparation of observation mahazar and a rough sketch, at the place of occurrence. P.W.6 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.7, the head of the sniffer dog squad, has stated that the sniffer dog could not get any clue. P.W.8 has spoken about the forensic examination conducted on the material objects. P.W.9 has stated that he took the dead body and handed over the same to the doctor for post-mortem. P.W.10, a Constable, has stated that he typed out the statements of witnesses recorded under Section 161 Cr.P.C., during investigation, as instructed by P.W.12. P.W.11 has spoken about the registration of the case on the complaint of P.W.1. P.Ws.12 and 13 have spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, they denied the same. On the side of the accused, D.W.1 was examined and three documents were marked. Their defence was a total denial.

5. Having considered all the above, the trial Court convicted both the accused. Challenging the same, the appellant/second accused alone has come up with this appeal (We are informed that the first accused has not made any appeal so far).

6. We have heard the learned counsel for the appellant as well as the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. This is a case based on circumstantial evidence. The dead body of the deceased was found on 19.06.2013 at around 7.30 a.m. The doctor, who conducted autopsy, has stated that there were injuries on the body of the deceased and the death was due to shock and haemorrhage. It is from this, the prosecution has succeeded in establishing that the deceased had died due to homicidal violence before 7.00 a.m. on 19.06.2013.

8. Now the question is as to who were the perpetrators of the crime? In order to prove that these accused were the perpetrators of the crime, the prosecution relies only on the evidence of P.Ws.2 and 4. P.W.2 has stated that at around 7.00 to 7.30 p.m. he found these two accused along with the deceased going in a motor cycle on the Authani to Sathiyamangalam Main Road. Similarly, P.W.4 has stated that he saw these three travelling in a motorcycle, at around 8.00 p.m., on the same road. The learned counsel for the appellant would submit that

assuming that the evidence of P.Ws.2 and 4 could be believed, the very presence of these two accused, in the company of the deceased, would not be incriminating.

9. It is the positive case of the prosecution itself that there was no enmity between these two accused and the deceased and all the three were co-brothers and they together participated in a marriage function. When that be so, it cannot be stated that the presence of these two accused, in the company of the deceased, would be incriminating, which would conclusively go to prove that the deceased was done to death only by this accused. However, during cross-examination P.Ws.2 and 4 have given go-by to their earlier version by changing the place where they had seen the accused along with the deceased. Further, they did not disclose the fact immediately to the police. They were examined only after two days. From these facts, in our considered view, the evidence of P.Ws.2 and 4 cannot be believed and assuming that it could be believed, the fact as spoken by them would not be incriminating so as to conclusively prove that the perpetrators of the crime were the accused. In our considered view, the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant is entitled for acquittal. However, we make it clear that we have not expressed any opinion regarding the case against the first accused because he has not filed any appeal.

10. In the result, this criminal appeal is allowed; the conviction and sentence imposed on the appellant by the trial Court are set aside and the appellant/accused is acquitted. Fine amount, if any paid by him is ordered to be refunded forthwith.

Sd/-

Assistant Registrar

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सत्यमेव जयते

Sub Assistant Registrar

msk

1 The Judicial Magistrate No.I
Gobichettipalayam

2 do Thro The Chief Judicial Magistrate, Erode

3.The First Additional District and Sessions Judge,
Erode

4 The Principal Sessions Judge,
Erode

5 The Superintendent Central Prison,
Coimbatore

6 The District Collector, Erode

7 The Director General of Police
Mylapore, Chennai 4

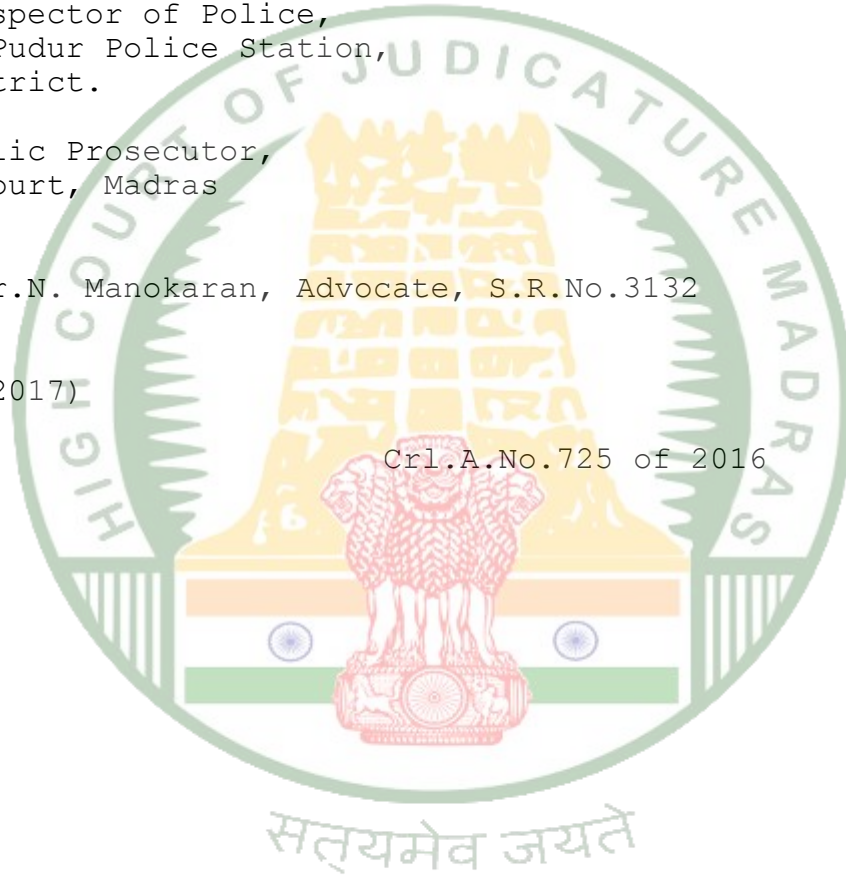
8. The Inspector of Police,
Bungalow Pudur Police Station,
Erode District.

9.The Public Prosecutor,
High Court, Madras

+1cc to Mr.N. Manokaran, Advocate, S.R.No.3132

vsn(CO)
md(01/02/2017)

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