

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.02.2017

CORAM

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

CRL.A.No.868 of 2016

Munusamy

... Appellant

versus

State rep. by
Inspector of Police,
Kelamangalam Police Station,
Salem
(Crime No.59/2011

... Respondent

Appeal filed under Section 374(2) of Cr.P.C. against the judgment dated 21.11.2012 passed in S.C.No.97 of 2011 by the learned Additional District and Sessions Judge, Krishnagiri District.

For Appellant : Ms.S. Shanthakumari
For Respondent : Mr.P. Govindarajan
Additional Public Prosecutor

J U D G M E N T

[Judgment of the Court was delivered by N. AUTHINATHAN, J.]

This appeal is directed against the conviction and sentence imposed in S.C.No.97 of 2011 on the file of the learned Additional District and Sessions Judge, Krishnagiri, ordering the accused to undergo life imprisonment and to pay a fine of Rs.500, in default, to undergo simple imprisonment for two months for the offence under Section 302 IPC.

2. The appellant stands charged on the allegations that at 8.00 p.m, on 03.03.2011 at the hut of the deceased Gengammal, he, with the intention of causing death, threw a big stone (M.O.1) over the head of Gengammal, resulting in her death and thereby committed the offence of murder, punishable under Sec.302 IPC.

3. The case of the prosecution as disclosed from the evidence of the prosecution witnesses and documents is briefly as follows:

4. Muniamma (P.W.1) is the daughter of the deceased Gengammal. Ramadas (P.W.2) is the husband of P.W.1. Gengammal's husband died 15 years prior to the occurrence. After the death of her husband, Gengammal developed an intimacy with the accused. Gengammal put up a hut on a poramboke land situate on the western side of Pancheswaram Gandhi Nagar Bus Stop. The accused suspected her moral conduct and often quarrelled with her on that account.

5. On 03.03.2011 at about 8.00 p.m, Muniamma (P.W.1) has gone to the hut of the deceased to deliver food. The accused came there in a drunken state and picked up a quarrel with the deceased. Suddenly, he picked up a knife and stabbed on her hip. She fell down. Then the accused picked up a stone lying nearby and dropped it on her head, resulting in her death. The accused fled from the scene. Ramadas (P.W.2) and Marisa (P.W.3), on hearing the cries of P.W.1, rushed to the place of occurrence. P.W.1 informed that the accused caused the death of the deceased. Muniappa (P.W.4) was a native of Pancheswaram. He was returning from his farm. On the way to home, he happened to see the accused between 8.30 p.m and 9.00 p.m in blood stained clothes near Pancheswaram Bus Stop. Munusamy (P.W.5) is the husband of one Rajammal, the then President of Thandarai Panchayat. The accused was a tenant under his brother Ramachandrappa. The accused and the deceased approached P.W.5 requesting him to mediate relations between them. He was unable to make peace between them. He advised them to go to police station This has happened three months prior to the occurrence. .

6. Chandrasekar (P.W.6) was the then Village Administrative Officer of Pancheswaram village. Muniappa (P.W.7) was the then Village Assistant of Pancheswaram Village. P.W.7 received a information about the murder of the deceased. He visited the scene of occurrence. He returned to the Office of the Village Administrative Officer and reported the matter to P.W.6.

7. P.W.6 along with P.W.7 visited the scene of occurrence. P.W1 accompanied by her husband (P.W.2) and the Village Administrative Officer (P.W.6) and others went to Kelamangalam Police Station and reported the matter. Ex.P.1 is the complaint given by P.W.1. Ex.P.4 is the endorsement made by the Village Administrative Officer on the complaint.

8. Mr.Rajarathinam (P.W.11), on receipt of the complaint Ex.P.1, at 3.00 a.m., on 04.03.2011, registered a case in Cr.No.59/2011 for the offence punishable under Sec.302 IPC.

Ex.P.16 is the first information report sent by him to the Court. He sent copies of the same to the higher authorities.

9. Sivakumar (P.W.12), the then Inspector of Police at Denkanikottai Police Station and in charge of Royakottai Police Station, took up the investigation. He visited the scene of occurrence and prepared an observation mahazar (Ex.P.3) and a rough sketch (Ex.P.17). He recovered Suri Knife (M.O.1) and grinding stone (M.O.2), blood stained earth (M.O.3) and sample earth (M.O.4) under Ex.P.2 mahazar in the presence of P.Ws.2 and 3. He visited the Government Hospital, Denkanikottai and conducted inquest over the dead body of the deceased at mortuary, attached to Denkanikottai Government Hospital between 8.00 a.m and 10.30 a.m in the presence of panchayatdars. Ex.P.18 is the Inquest Report. He gave a requisition Ex.P.14 through P.W.9 Sankar, Head Constable attached to Kelamangalam Police Station, to Government Hospital for causing post mortem. P.W.9 was present during post mortem.

10. Dr.Vijay (P.W.10), attached to Denkanikottai Government Hospital conducted autopsy on the body of the deceased and found the following injuries:

External Examination:

Injuries:

- (1) A wound over the left side of scalp 6x4 cm exposing brain matter
- (2) A lacerated wound over the left temporal region 2x2 cm bone deep
- (3) lacerated wound around neck 5x2 cm over right side neck.
- (4) lacerated wound over middle of neck 5x1 cm
- (5) cut injury 8x4 cm over right side forearm
- (6) laceration over fingers 2nd, 3rd 2x2 cm
- (7) lacerated wound over right palm 5x1cm
- (8) cut injury over left forearm 3x3 near elbow dorsum
- (9) lacerated wound left elbow dorsum 3x2 cms
- (10) lacerated wound near 3rd finger left side 2x1 cm
- (11) cut injury over 1st spaciangular 3x2 c.

- (12) punctured wound 3x2cm on over left lateral abdomen with fat protruding.

Internal Examination:

1. Heart:150 gm, Cahmber exmpty, c/s pale
- (2) Lungs @ 450 gm (L) 420gms. C/s pale.
- (3) Hyoid :Intact (4) Liver:1500gms c/s

pale (5) spleen 90 gms c/s pale (6)
Kidney - 100 gms each (7) Uterus -
atrophied (8) heart - all skull bones
fractured over both sides (9) brain -
Haemorrhage over both hemisphere.
Time of Death:16-18 hrs prior to Autopsy
Opinion: The deceased would appear to
have died of severe blood injury with
fracture of skull bones and injury to
vital organs - brain.

Ex.P.15 is the Post Mortem Certificate. He opined that the deceased would appear to have died of severe head injury with fracture of skull bones and injury to vital organs. According to him, the death would appear to have occurred about 16 to 18 hours prior to autopsy.

11. The Investigating Officer effected the arrest of the accused on 05.03.2011 at 6.30 a.m. He recorded the statement of the accused in the presence of the Village Administrative Officer (P.W.6). The accused gave a statement to the effect that if taken, he would produce blood stained clothes. Ex.P.20 is the admissible portion. In pursuance of it, he produced the blood stained clothes (M.Os.5 and 6) and they were seized under Ex.P.19 mahazar.

12. P.W.8 Venkoba Rao, the Head Clerk attached to D.M-cum-J.M Court, Denkanikottai sent the articles, seized in this case, to the chemical examiner under Ex.P.10 letter. Exs.P.11 and P.12 are the report of the chemical examiner. Ex.P.13 is the Serology Report. After completing investigation, the investigating officer laid charge sheet.

13. The prosecution in support of its case has examined 12 witnesses, marked Ex.P.1 to P.20 and produced M.Os.1 to 6.

14. When examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the prosecution evidence the accused reiterated his innocence. No witness was examined on his behalf.

15. The trial Court has accepted the case of the prosecution and come to convict the accused as aforesaid. Assailing the said conviction and sentence, the appellant has come on appeal.

16. The learned counsel for the appellant would submit that Muniamma (P.W.1) could not have witnessed the occurrence that she did not mention about the attack on the deceased using knife in her complaint; that the witnesses P.Ws.1 to 4 are close

relatives that there was inordinate and unexplained delay in lodging the first information report and that the trial Court erred in placing reliance on the materials placed by the prosecution.

17. The learned Additional Public Prosecutor supported the judgment of the trial Court.

18. P.W.1 is the daughter of the deceased Gengammal. Gengammal's husband died 15 years prior to the occurrence. P.W.2 is the husband of P.W.1. The deceased, accused and P.Ws.1 and 2 are the residents of Pancheswaram village.

19. It is seen from the evidence of P.Ws 1 and 2 that the husband of the deceased expired 15 years ago and she developed an intimacy with the accused. It is also their evidence that the deceased put up a hut on a poramboke land near Pancheswaram Bus Stop and resided there.

20. The motive for the occurrence is that the accused suspected the moral conduct of the deceased and therefore, wanted to get rid off her. The evidence of P.W.1 is that the accused, suspecting the moral conduct of the deceased, used to quarrel with the deceased. P.W.5 would state that the deceased informed him that the accused impeached her moral conduct and bet her. However, the prosecution has not been able to point out any clear evidence to show that the deceased indulged in hobnobbing with other men. There had been no earlier instances of any violent quarrel involving themselves. The deceased was aged 65 years as per the post mortem report. The accused is also 70 years old as could be seen from the evidence of P.W.1. In the absence of any concrete evidence and considering the age of the deceased and the accused, it is not easily possible to accept the evidence of the prosecution witnesses at its face value. There is thus, no proof as regards the motive part proposed by the prosecution. It has not at all been established.

21. P.W.1 has been cited as the only eyewitness of the occurrence. P.W.1 would state that on 03.03.2011 at about 8.00 p.m, she visited her mother who was at her hut to deliver food and at that time, the accused appeared and picked up a quarrel with the deceased. It is also her evidence that the accused stabbed the deceased using M.O.1 knife and when the deceased fell down he dropped M.O.2 Grinding Stone at her head, resulting in her death.

22. Admittedly, P.W.1 was married to P.W.2 and they were residing separately. It is seen from their residence that there residence is half a mile away from the residence of the deceased. P.W.1 would also state that the accused was residing

separately in the house at Gandhi Nagar. Thus, it is clear that the deceased was residing alone in her hut. The evidence makes it clear that P.W.1 is only a chance witness. She is also the daughter of the deceased. Therefore, her evidence cannot be easily and readily accepted.. The doctor, who conducted post mortem, found cut injury and punctured wound. P.W.1, in her evidence would state that the accused stabbed the deceased using M.O.1 knife. However, she did not state in Ex.P.1 Complaint that the accused stabbed the deceased using knife. If really she had been present at the place of occurrence, she would have certainly stated in Ex.P.1 complaint that the accused stabbed the deceased with knife. She has also not stated in the complaint that she visited the deceased only to deliver food. The reason given by her for being at the place of occurrence did not appear to be true. These circumstances throws serious doubt on the case of the prosecution.

23. P.Ws. 2 and 3 are not eyewitnesses. P.W.4 would state that he saw the accused in blood stained clothes at about 9.00 p.m. He is also a relative of P.W.1. P.W.5's evidence cannot by itself lead to the conclusion that the accused was the perpetrator of the crime.

24. The occurrence is said to have taken place at about 8.00 p.m on 03.11.2011. The complaint was lodged at 3.00 a.m on 04.03.2011. However, the Magistrate received the first information report only at 6.00 a.m. The place of occurrence is situated at about 15 kms from Kelamangalam Police Station. It is the evidence of the Village Administrative Officer (P.W.6) that his Assistant (P.W.7) informed him about the murder. Both of them visited the scene of occurrence. The delay appears to have been made because the prosecution wanted to suppress certain materials. It is a serious infirmity affecting the case of the prosecution.

25. P.W.1 would state that a police team visited the place of occurrence at 5.00 a.m on 04.03.2011 and the body was removed at 5.30 a.m. The Investigating Officer (P.W.12) would state that he conducted inquest between 8.00 a.m and 10.30 a.m at mortuary, attached to the Government Hospital, Denkanikottai. The Sub Inspector of Police (P.W.11) who registered the case, would state that he removed the body of the deceased from the place of occurrence and sent to the hospital at 4.00 a.m before the arrival of the investigating officer. However, Sankar (P.W.9), the then Head Constable of Kelamangalam Police Station, through whom, requisition for causing post mortem sent, would state that the body was handed over to him at 10.30 a.m and he removed the body from the scene of occurrence. In the Post Mortem certificate, it is mentioned that the requisition was received at 12.30 p.m on 04.03.2011. According to the

Investigating Officer, inquest was held between 8.00 a.m and 10.30 a.m. Thus, a different version regarding the manner and circumstances in which the body was removed from the place of occurrence. This cannot be lost sight of and completely overlooked under the facts and circumstances of the case. A reasonable doubt is thus created.

26. The Inspector of Police (P.W.12) claims to have arrested the accused and recorded his statement and in pursuance of the information furnished by him, he seized blood stained clothes of the accused in the presence of P.Ws.6 and 7. The Village Administrative Officer (P.W.6) would state that on 05.03.2011 at about 6.30 p.m, he was summoned to the police station by the Inspector of Police and the accused was interrogated by the Inspector in the Police Station itself. His Assistant (P.W.7) did not support the case of the prosecution as regards the arrest and recovery. He would state that the accused was arrested on the next day of the occurrence. He has been treated as hostile witness. He would state he was asked to sign by the Inspector and he feigned ignorance of the contents of Ex.P.20 statement of the accused. Thus, the arrest of the accused and the alleged recovery appear to be highly artificial. Mere reliance on the arrest and recovery of certain articles on the basis of alleged confession is not safe to enter a conviction against the accused.

27. The whole evidence adduced on the side of the prosecution to bring home the complicity of the accused with the commission of the crime does not inspire confidence. The case against the accused appears to have been filed solely on suspicion. Suspicion, however, strong, cannot take the place of proof. There is no clinching proof connecting the accused with the commission of the crime. Having regard to the whole facts and circumstances of the case, we hold that the prosecution has not by any reliable evidence shown or adduced any proof which conclusively connect the accused with the commission of the offence. The accused is entitled to the benefit of doubt. The accused is therefore not found guilty of the offence with which he is charged. The trial court does not appear to have analysed the case in its proper perspective. Therefore, the judgment of the trial court cannot be supported and it is liable to be set aside.

28. In the result,

(i) the Appeal is allowed and the conviction and sentence imposed on the appellant by the learned Additional District and Sessions Judge, Krishnagiri District in S.C.No.97 of 2011 dated

21.11.2012 are set aside and the accused is acquitted.

(ii) The fine amount, if any paid, shall be refunded to him.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Thenkanikottai.

2.-Do- Thro The Chief Judicial Magistrate,
Krishnagiri.

3.The Additional District and Sessions Judge,
Krishnagiri District.

4.Thro' The Principal Sessions Judge,
Krishnagiri.

5.The Director General of Police,
Mylapore.

6.The Superintendent,
Central Prison, Salem.

7.The District Collector,
Krishnagiri District. सत्यमेव जयते

8.The Inspector of Police,
Kelamangalam Police Station,
Salem.

9.The Public Prosecutor,
High Court, Chennai.

CRL.A.No.868 of 2016

nri[col]
srg 24/03/2017