

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Cr1.A.No.60/2018

Mr.P.Jayabal .. Appellant / Defacto
Complainant [PW1]

Vs.

1.The State rep.by
The Inspector of Police
Periyathatchur Police Station
Villupuram District. .. 1st Respondent /
Complainant

2.Mr.Murugavel
3.MrsPoovazhagi @ Sangeetha ... Respondents 2 and
3 / A1 and A2

Criminal Appeal filed under Section 372 of the Criminal
Procedure Code against the judgment dated 19.09.2017 in
SC.No.131/2017 passed by the learned I Additional District and
Sessions Judge, Tindivanam.

For Appellant : Mr.M.Mohammed Rafi
For R1 : Mr.V.Arul, APP

JUDGMENT

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

Appellant is the defacto complainant / P.W.1. Aggrieved
over the finding of acquittal by the Trial Court, the present
appeal came to be filed by the complainant.

2 The brief facts of the prosecution case, are as
follows:-

[a] Deceased Anandan is the brother of P.W.1-Jayabal,
appellant herein and P.W.2-Boopalan and husband of A-2-
Poovazhagi @ Sangeetha A-1-Murugavel worked as the Tractor
Driver with the deceased Anandan Thereafter, he developed
illicit intimacy with A-2. When the matters stood thus, on
18.07.2016 at about 1.30 a.m. when P.Ws.1 and 2 were there in

their respective houses, they heard the hue and cry of their brother Anandan from the nearby Velikaathan Grove [ntypf;fhj;jhd; njhg;g[]]. When P.Ws.1 and 2 rushed to the place of occurrence, they saw A-2 catching hold of the legs of the deceased while A-1 strangled the deceased with a nylon rope - M.O.1. On seeing P.Ws.1 and 2, the accused fled away from the scene of crime.

[b] P.W.3 a neighbour, has also witnessed the occurrence along with P.Ws.1 and 2. P.Ws.1 and 2 took the body of the deceased to their house and thereafter, P.W.1 went to the Periyathatchur Police Station to lodge the first information under Ex.P.1 with P.W.17-Mrs.Jaihind Devi, Sub Inspector of Police on 18.07.2016 at about 8.00 a.m. P.W.17, registered the crime in Cr.No.181/2016 u/s.302 IPC under Ex.P.11-FIR and forwarded Exs.P.1 and 11 to the jurisdictional Court and copies to the higher officials.

[c] P.W.18-Senthilkumar, Circle Inspector, Vikravandi, on receipt of FIR, took up the case for investigation ; went to the place of occurrence on 18.07.2016 at about 9.00 a.m. and prepared the Observation Mahazar [Ex.P.12] and Rough Sketch [Ex.P.13] in the presence of P.W.11 and one Sethuraj. He held inquest on the dead body of the deceased in the presence of villagers and panchayatdars and prepared the Inquest Report [Ex.P.14]. He forwarded the dead body to the hospital for postmortem through a Constable.

[d] P.W.15-Dr.Gitanjali, Medical Officer attached to the Government Hospital, Villupuram, upon receipt of the requisition from P.W.18, commenced the postmortem on 18.07.2016 at about 4.15 p.m. She noted the following injuries:-

"External Examination:- Eyes closed. Face congested. All finger nails cyanose.\nInjuries noted:-

[1] A transversely placed ligature mark length 18 cm, breadth 1.2 cm seen over front and sides of middle 1/3rd of neck The upper border is 6 cm below the chin and the lower border is 7cm above suprasternal notch.

[2] An oblique abrasion of length 6cmx0.5cm over the front of upper part of right thigh extending from right to left side."

Ex.P.9 is the Postmortem Certificate issued by him and the Viscera was preserved for Chemical Analysis. Ex.P.8 is the Viscera Report wherein it has been stated that there is no detection of poison. Ex.P.10 is the Final Report P.W.15 had

opined that "the deceased would appear to have died of asphyxia due to ligature strangulation of neck."

[e] P.W.4-Malar is the wife of P.W.1 and P.W.5-Banu is the wife of P.W.2. They have also seen their respective husbands running towards the place of occurrence at the relevant point of time P.Ws.6 and 7 also rushed to the spot on hearing about the occurrence. P.W.9 deposed that one week prior to the occurrence, he had seen the deceased beating his wife-A2. When enquired, the deceased informed him that A-2 is moving with A-1.

[f] P.W.18, in continuation of investigation, examined the witnesses and recorded their statements. He effected the arrest of the accused / A-1 and A-2 near Gingee Bus stand. A-1 came forward to give a voluntary confession statement, in the presence of P.W.12 and one Muthu, the admissible portion of the same is marked as Ex.P.15. In pursuant to the same, M.O.1-Nylon rope was seized under Mahazar-Ex.P.16 in the presence of the same witnesses. The accused were, thereafter, sent for judicial remand. On receipt of the Final Report from the doctor, he altered the offence from u/s.302 IPC to one u/s.120[b], 341, 302 read with 34 IPC. Ex.P.17 is the Alteration Report. He examined the witnesses, Medical Officer ; recorded their statements ; collected various documents relating to the case including the Medical Reports and on completion of investigation, filed the Final Report u/s.120[b] and 302 IPC as against A-1 and u/s.120 [b], 341, 302 read with 34 IPC as against A-2 on 13.09.2016 before the learned Judicial Magistrate No.2, Tindivanam, who took it on file and issued summons to the accused and on their appearance, furnished them copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of the

Principal District and Sessions Judge, Villupuram, u/s.209 Cr.P.C., who in turn had made over the case to the learned I Additional District and Sessions Judge, Tindivanam, who took it on file in SC.No.131/2017 and on appearance of the accused, had framed the charges u/s.120[b], 341, 302 read with 34 IPC and questioned them. The accused pleaded not guilty to the charge framed against them.

[g] The prosecution examined P.Ws.1 to 18 and marked Exs.P.1 to 17 besides marking M.O.1.

[h] The accused were questioned under section 313[1] [b] Cr.P.C., with regard to the incriminating circumstances against them in the evidence rendered by the prosecution and they denied it as false. No witness was examined and no documentary evidence was marked on the side of the accused.

[i] The Trial Court, on consideration and appreciation

of the oral and documentary evidence and other materials, has held that the prosecution has not proved the guilt of the accused and that the evidence of P.W.1 to P.W.3 is not reliable and acquitted the appellant/accused and hence, this appeal.

3 Mr.M.Mohammed Rafi, learned counsel for the appellant / P.W.1 [defacto complainant] would submit that the occurrence took place near the houses of P.Ws.1 to 3 at 1.30 a.m. on 18.07.2016. P.Ws.1 to 3, immediately on hearing the noise, rushed to the spot and found A-1 strangulating the deceased while A-2 catching hold of the legs of the deceased. Their evidence has been simply discarded by the Trial Court merely on the ground of delay in filing the first information. It is the contention of the learned counsel that P.Ws.1 to 3 are rustic villagers and merely because the complaint was lodged belatedly, that itself cannot be a ground to discard their evidence outrightly. He also submitted that the medical evidence had clearly established the case of strangulation and illicit intimacy between A-1 and A-2 has also been proved by the prosecution. Hence, it is submitted that the prosecution has proved the guilt of the accused persons beyond all reasonable doubt and prayed for setting aside the judgment of acquittal passed by the Trial Court and allowing of this appeal.

4 We have heard Mr.V.Arul, learned Additional Public Prosecutor appearing for the State during the stage of admission itself. We also perused the entire materials and evidence on record including the impugned judgment of acquittal.

5 The only point that arises for consideration is whether the prosecution has prove the guilt of the accused persons beyond all reasonable doubt and that the Judgment of Acquittal passed by the Trial Court is correct in the eye of law?

6 It is a well settled position of law that unless there are substantial and compelling reasons that are good and sufficiently strong reasons, the Appellate Court would not normally interfere with the order of acquittal. Similarly, when the Trial Court has appreciated the evidence properly, the Appellate Court would be reluctant to interfere with the finding of the Trial Court. In view of the above settled position of law, when we peruse the evidence and materials produced by the prosecution, we are of the view that this appeal is to be disposed of at the admission stage itself.

7 The prosecution mainly relied upon the evidence of P.Ws.1 to 3 who are stated to be the eyewitnesses to the occurrence. As per the prosecution version, the occurrence took place on 18.07.2016 at 1.30 a.m. [early hours]. The motive for the alleged crime is said to be the illicit relationship between A-1 and A-2 / wife of the deceased and that they had decided to do away the deceased. Accordingly, on 18.07.2016 at about 1.30

a.m., A-2 caught hold of the legs of the deceased and A-1 strangled him using Nylon rope [M.O.1] and the occurrence is said to have taken place in the Velikaathan thoppu. It is the version of the prosecution that P.W.1 and P.W.2-brothers of the deceased Anandan, were in their respective houses at the relevant point of time and on hearing the noise of the deceased, P.Ws.1 and 2 along with P.W.3 - neighbour, rushed to the spot and they saw A-1 strangulating the deceased and A-2 catching hold of the deceased legs. On seeing P.Ws.1 to 3, A-1 and A-2 fled away from the scene. Thereafter, P.Ws.1 to 3 brought the dead body to their house and informed about the occurrence to the police at 8.00 a.m. on 18.07.2016. Though P.Ws.1 and 2 in one voice, had stated that they rushed to the place of crime and saw A-2 catching hold of the legs of the deceased while A-2 strangled him using a nylon rope, their evidence is totally inconsistent with the evidence of P.W.3. P.W.3 had stated as if both the accused had caught hold of the legs of the deceased and strangled him. This version of P.W.3 is totally inconsistent with the evidence of P.Ws.1 and 2. It is further to be noted that the occurrence allegedly took place in the Velikaathan Thoppu. Admittedly, there was no source of light whatsoever, available at the alleged place of occurrence. Therefore, the witnesses, witnessing the occurrence and giving minute details about the alleged role played by each of the accused, is highly improbable and doubtful.

8 It is the version of P.W.1 that he along with P.W.2 had witnessed the occurrence in a moonlight. This version has been spoken for the first time before the Court during cross-examination. Therefore, this aspect also creates a serious doubt about the presence of P.Ws.1 to 3 in the occurrence place and witnessing the occurrence. Had they really witnessed the occurrence at the relevant point of time, their immediate reaction would be to take the victim to the hospital or would have made some attempts to save the life of the deceased. But, their evidence clearly indicate that they just took the dead body of the deceased to their residence and kept it on the cot and at 8.00 a.m., they lethargically went to the police station and lodged the first information. This conduct is against the normal human conduct. Therefore, their evidence is highly artificial and cannot be relied upon. Though the evidence of P.W.15-Medical Officer establishes the fact of death due to asphyxia due to ligature strangulation and the medical evidence also rule out suicide, the fact remains that if really a person is strangled, as alleged by the witnesses, in the open field, there must be some struggle mark over the body of the deceased. But a careful perusal of the medical evidence, it is seen that no such struggle marks are found on the body of the deceased. Yet another aspect which creates a serious doubt about the very place of occurrence itself is the Observation Mahazar [Ex.P.12] prepared by the Investigating Officer. Though

the Investigating Officer prepared the Observation Mahazar at 9.00 a.m. on 18.07.2016 in the presence of witnesses, the said Mahazar does not indicate the struggle marks or marks on the ground in the alleged place of occurrence. Though the Investigating Officer in his evidence has deposed as if he has prepared the Observation Mahazar and the Rough Sketch in the presence of witnesses, in cross examination, he had categorically admitted that he has prepared the Observation Mahazar only after the place of occurrence has been identified by P.W.1. When a place of occurrence is identified by the witness, based on which the Observation Mahazar and Rough Sketch was prepared and drawn, such documents cannot be a primary evidence at all and the same is hit by rule of hearsay evidence. The Investigating Officer has not seen any marks in the place of occurrence and in fact, the said documents have been prepared only after the identification of the place by the witness. Therefore, the evidence of the Investigating Officer cannot be considered as a direct evidence and it is only a hearsay in nature and cannot be given much importance. Further, as already indicated, even in Ex.P.12-Observation Mahazar, the Investigating Officer has not even found any struggle marks on the land on which the alleged occurrence took place. This aspect also throws considerable doubt on the very place of occurrence itself. Further, the Observation Mahazar shows as if the occurrence had taken place where there were full of thorns. If this statement of the Investigating Officer is considered, there should have been some struggle marks or injuries on the back of the deceased ; whereas, the Medical Evidence totally rule out any injury on the back of the deceased. This is also yet another aspect throwing serious doubt about the place of occurrence itself.

9 Similarly, the inquest is prepared only to show the cause of death. But the particulars mentioned in the Inquest Report by the Investigating Officer, show that the deceased was seen alive till 19.00 hours on 17.07.2016. This fact also creates serious doubt about the presence of P.Ws.1 to 3 in the place of occurrence and witnessing the alleged occurrence together, when the deceased was very much alive till 19.00 hours on 17.07.2016 only. The First Information was registered only at 8.00 a.m. on 18.07.2016, though the alleged occurrence took place as early as at 1.30 a.m. Further, FIR was despatched to the Court concerned only at 17.00 hours on the same day, with an inordinate delay. Though the constable was examined to show that the FIR had reached the Court at 11.00 a.m. itself, the fact remains that as per the seal of the Judicial Magistrate Court, FIR was received only at 15.00 hours on 18.07.2016. The delay in lodging the FIR coupled with the inordinate delay in despatching FIR and reaching of the same to the Court concerned, is also fatal to the prosecution and it remains unexplained. The huge delay which is the result of the

conduct, which is not otherwise normal from own kith and kin, the FIR loses its significance due to lack of spontaneity, deliberation, improvement etc. Hence, we are of the view that the Trial Court has appreciated the evidence and materials in proper perspective and reached the conclusion that the prosecution has not proved the guilt of the accused beyond all reasonable doubt.

10 Further, it is the version of the prosecution that A-1 and A-2 were arrested at Gingee Bus stand at 1.30 p.m. on 18.07.2016. But the evidence of P.Ws.1, 2, 5 and 12 proves the fact that A-2 was very much available in the house when the police visited the place of occurrence in the early morning hours on 18.07.2016. Therefore, the arrest and seizure projected by the prosecution is also highly doubtful in this case.

11 In view of all the above facts, we are of the view that merely because the prosecution has proved the death due to asphyxia, that itself cannot be a ground to presume that it was only these accused who had committed the offence of murder. When the evidence of the eyewitnesses is attached to artificiality and against normal human conduct, it is unsafe to rely on their evidence in a grave crime. Hence, we are of the considered view that the Trial Court has rightly reached the conclusion of acquitting the accused and the impugned judgment of the Trial Court, does not require any interference at the hands of this Court.

12 In the result, the criminal appeal is dismissed in the admission stage itself and the judgment of the learned I Additional District and Sessions Judge, Tindivanam, vide judgment dated 19.09.2017 in SC.No.131/2017 is hereby confirmed.

s/d-

Assistant Registrar (CS VIII)

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Sub-Assistant Registrar

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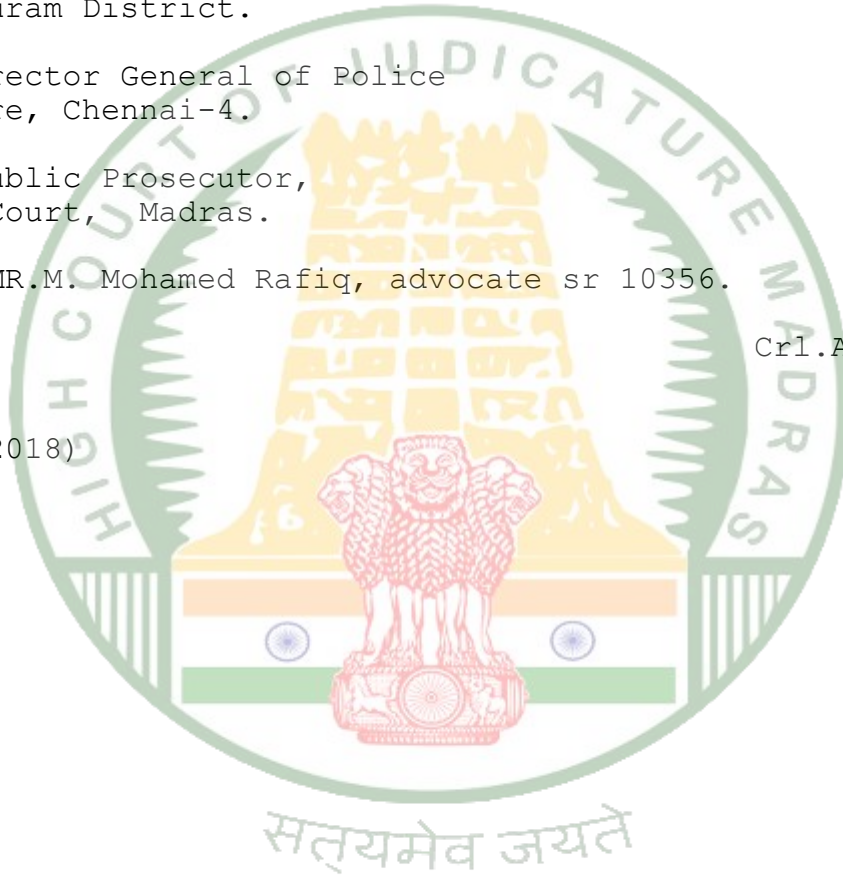
1. The I Additional District and Sessions Judge
Tindivanam.
2. The Principal District and Sessions Judge
Villupuram District.

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3. The Judicial Magistrate No.1,
Tindivanam.
 4. The Chief Judicial Magistrate,
Villupuram District.
 5. The Inspector of Police
Periyathatchanur Police Station,
Villupuram District.
 6. The District Collector
Villupuram District.
 7. The Director General of Police
Mylapore, Chennai-4.
 8. The Public Prosecutor,
High Court, Madras.
- +1 CC to MR.M. Mohamed Rafiq, advocate sr 10356.

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