

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM

AND

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CrI.A.No.416/2017 & CrI.MP.No.8901/2016

Manikandan

..Appellant / A-1

Vs.

State rep. by,
The Inspector of Police
Anupparpalayam Police Station
Tiruppur District.

..Respondent

Criminal Appeal filed under Section 374 of the Criminal Procedure Code to call for the records connected to the judgment in SC.No.19/2016 on the file of the learned II Additional District and Sessions Judge, Tiruppur dated 27.03.2017 and to set aside the same.

For Appellant : Mr.S.Mohamed Ansar

For Respondent : Ms.M.Prabhavathi, APP

JUDGMENT

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

Appellant is arrayed as A-1 out of 2 accused, in the case in SC.No.19/2016 on the file of the Court of the learned II Additional District and Sessions Judge, Tiruppur. The appellant/A-1 stood charged and tried for offences u/s.120[b], 449, 302 [2 counts] IPC and A-2, his father, stood charged and tried for offences u/s.120[b] 302 read with 120[b] [2 counts] and 201 IPC. The Trial Court, under judgment 27.03.2017, acquitted A-2 from all charges levelled against him. However, convicted the appellant/A-1 for the said offences and sentenced him to undergo 10 years rigorous imprisonment with a fine of Rs.2,000/- and in default, to undergo 1 years rigorous imprisonment for the offence u/s.449 IPC and was sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- for each count, in default, to undergo 1 years rigorous imprisonment. Aggrieved over the said conviction and sentence, the present appeal came to be filed by the appellant/A-1.

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as follows:-

The brief facts of the prosecution case, are

[a] Deceased No.1-Revathy is the wife of P.W.1-Palanisamy and deceased No.2-Vignesh is the son of P.W.1 and Revathy. Both P.W.1 and deceased Revathy were residing along with their son at Tirupur. Deceased Revathy was doing the job of cutting waste materials of cloth from the house itself. When the matter stood thus, on 02.04.2014, while P.W.1 was in his work, he was informed by P.W.3-Thangaraj that the wife and son of P.W.1 were lying in a pool of blood and that he had informed Ambulance. P.W.1 immediately rushed to the spot and found both his wife and minor son were lying in a pool of blood with injuries on them. Both injured were taken to Malar Priya Hospital in the Ambulance, where the doctor who examined them, informed that Vignesh died at 5.50 p.m. and Revathy died at 6.45 p.m. on the same day. She issued Exs.19 and 21-Accident Registers and Exs.P.18 and 20-Death Intimations pertaining to deceased Revathy and Vignesh. When P.W.1 enquired P.W.3 as to what had happened, P.W.3 informed P.W.1 that at about 3.30 p.m., he saw a person wearing green coloured shirt, sitting on the pial and talking with the deceased Revathy. Sometime thereafter, when P.W.3's daughter went to give the birthday cake to Revathy, she found Revathy and Vignesh lying with injuries. On receipt of said information from her, P.W.3 immediately contacted P.W.1. P.W.1 further stated that upon enquiry, P.W.4-Poongodi, wife of P.W.3, informed him that at about 4.00 p.m., a person was coming out of the house of P.W.1 in an unusual and panic manner. Thereafter, P.W.1 went to Anupparpalayam Police Station and lodged the complaint under Ex.P.1.

[b] P.W.3-Thangaraj, a neighbour of P.W.1, stated that on 02.04.2014 he celebrated the birthday of his son and in order to give the cake to Revathy, his daughter went to the house of P.W.1 wherein she found both deceased lying in a pool of blood. P.W.3 immediately informed P.W.1 and also called the services of Ambulance. It is his further evidence that on the date of occurrence, at about 3.30 p.m., while he was supervising the construction work in his terrace, he saw the appellant/A-1 sitting on the pial and talking with the deceased Revathy. P.W.4-wife of P.W.3 had stated that while was returning to home from School on 02.04.2014 at about 4.00 p.m., she saw a person coming out of the house of the deceased and that his appearance is like that of the appellant/A-1. P.W.5-Perumal is the father of the deceased Revathy. On 02.04.2014, while he was on his duty, his granddaughter, i.e., daughter of P.W.1 and deceased Revathy, came and informed that someone had attacked her mother and younger brother. Immediately, when he rushed to the spot, he came to know that both injured were taken to hospital and thereafter, he went to hospital, wherein, he came to know that

both deceased had died. P.W.8-Sakthivel has stated in his evidence that on 02.04.2014, when he along with his friends were going to see a land for Real Estate business and was crossing the house of the appellant/A-1, he heard A-1 saying to A-2 that his Aunt Revathy is not parting with the money and A-2 in a fit of anger, asked A-1 to get the money from his aunt. Few days thereafter, on seeing the newspaper, P.W.8 came to know of the death of Revathy and his son and he went to police station and informed of his overhearing of the conversation between accused to the Investigating Officer.

[c] P.W.10-Murugesan, Special Sub Inspector of Police attached to Anupparpalayam Police Station, on 02.04.2014 at about 10.30 p.m., received the complaint under Ex.P.1 from P.W.1 and registered the crime in Cr.No.402/2014 for the offence u/s.302 [2 counts] IPC. Ex.P.14 is the First Information Report. He despatched the originals of Ex.P.1 and Ex.P.14 to the jurisdictional Court and copies to the higher officials.

[d] P.W.11-Selvaraj, Inspector of Police attached to the respondent police, on receipt of FIR, took up the case of investigation, went to the place of occurrence at 11.30 p.m., and prepared the Observation Mahazar [Ex.P.8] and Rough Sketch [Ex.P.15] in the presence of P.W.6 and one Balasubramaniam. He seized blood-stained earth [M.O.3] ; sample earth [M.O.4] ; Grinding equipment and Stone [M.Os.3 and 4] ; blood-stained holder [M.O.6] and a blood-stained knife [M.O.5] under the cover of Mahazar [Ex.P.9]. He went to hospital and recorded the statements of P.W.1 and P.W.3. The Investigating Officer, on receipt of death intimation from the hospital, held inquest on the dead bodies of the deceased persons in the presence of panchayatdars and witnesses and prepared Exs.P.16 and 17 - Inquest Report. He sent the dead bodies for postmortem.

[e] P.W.2-Dr.Jeyasingh, District Police Surgeon and Associate Professor in the Head of the Department of Forensic Medicine attached to Coimbatore Medical College Hospital at the relevant point of time, on receipt of requisition, conducted autopsy on the dead body of the deceased Revathy on 03.04.2014 at about 1.10 p.m. He found the following injuries:-

"Antemortem injuries:-

1.Laceration 3x0.5cmxbone deep noted over left frontal region, the inner end is 6cm above to the left eyebrow and the outer end is 14cm above to the mastoid bone.

2.Laceration 5x0.5cmxbone deep noted over left eyebrow.

3.Laceration 0.5x0.5cm noted over left upper lip.

4.Laceration 1x0.5x0.5cm with surrounding reddish contusion noted over right lower lip.

5.Left upper incisor found broken.

6.Crushed injury 6x8cm noted over front of face including both orbital, nasal and maxillary region."

Ex.P.2 is the Postmortem Certificate issued by him wherein he has opined that the deceased would appear to have died of head and facial injuries. Ex.P.3 is the Viscera Report pertains to the deceased Revathy wherein he has given the finding that no poison is detected in Viscera. Ex.P.4 is the Final Opinion.

[f] On the same day, P.W.2 conducted autopsy on the dead body of Vignesh at about 02.10 p.m. He noted the following injuries:-

Antemortem injuries:-

1.Abrasion 1x1cm, 0.25x0.25cm, 0.5x0.5cm noted over left cheek, 2x1cm noted over left eyebrow, 2x0.5cm noted over upper lip and 0.5x0.5cm noted over right jaw.

2.Laceration 1x0.5cmxbone deep noted noted over left forehead.

3.Depressed imprinted contusion over the area of 10x6cm noted over left side forehead and cheek.

4.Vertical oblique cut injury with serrated edges 2x1cmxtracheal deep noted over right side neck. The tailing of the wound 2cm in length. The wound passed downwards over the left side of the neck and cutting the underlying muscle, vessels, nerves and up to the tracheal lumen deep [1st ring]."

Ex.P.5 is the Postmortem Certificate issued by him wherein he has opined that the deceased would appear to have died of multiple injuries. Ex.P.6 is the Viscera Report pertains to the deceased Revathy wherein he has given the finding that no poison is detected in Viscera. Ex.P.7 is the Final Opinion.

[g] P.W.11, in continuation of his investigation, recovered the blood stained clothes from the dead bodies under Mahazars and sent the same to the Court to be sent for chemical analysis. On 07.04.2014, P.W.11 came to know of surrender of

the appellant/A-1 before the learned Judicial Magistrate No.2, Erode, and took him under police custody on 15 .04.2014. The appellant/A-1 was enquired by P.W.11 in the presence of one Rajendran and P.W.7-Balasubramanian, VAO and A-1 came forward to give a voluntary confession statement, the admissible portion of which is marked as Ex.P.10. He also effected the arrest of A-2/father of A-1 and he also came forward to give a confession statement, admissible portion of which is marked as Ex.P.11. Both accused were sent for judicial remand. P.W.11, the Investigating Officer, examined the Medical Officers, other witnesses and recorded their statements and obtained the Medical Reports and on completion of investigation, filed the Final Report against the accused u/s.302 read with 120[b], 449, 302 [2 counts] and 201 IPC, before the learned Judicial Magistrate No.1, Tiruppur, who took it on file in PRC.No.45/2014 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, Tiruppur, u/s.209 Cr.P.C., who in turn, had made over the case to the learned II Additional District and Sessions Judge, Tiruppur, who took it on file in SC.No.19/2016 and on appearance of the accused, had framed the charges u/s.120[b], 449, 302 [2 counts] IPC as against A-1 and u/s.120[b], 302 read with 120[b] [2 counts] and 201 IPC as against A-2 and questioned them. The accused pleaded not guilty to the charge framed against them.

[h] The prosecution examined P.Ws.1 to 11 and marked Exs.P.1 to 21 besides marking M.O.1 to M.O.13.

[i] The accused were questioned under section 313 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 evidence was let in on the side of the defence nor any documents were marked.

[j] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, found that the prosecution has not proved its case as against A-2 and acquitted him of all charges leveled against him ; however, convicted and sentenced the appellant/A-1 as above stated and hence, this appeal.

3 The learned counsel for the appellant submitted that absolutely there is no evidence whatsoever available against the appellant/A-1 and the entire case is based on the circumstantial evidence. It is his further submission that the Investigating Officer-P.W.11 has not even conducted fair investigation in the case and except the evidence of P.W.3-Thangaraj that he has seen the appellant/A-1 at 3.30 p.m. on 02.04.2014, talking with the deceased Revathy, no other

circumstance whatsoever is available on record to connect the appellant/A-1 with the grave crime and hence, submitted that the prosecution has not proved the guilt of the appellant/A-1 beyond all reasonable doubt.

4 Per contra, M/s.M.Prabhavathy, learned Additional Public Prosecutor appearing for the State submitted that the evidence of P.Ws.3 and 4 proves the last seen theory and P.W.8 had overheard the conversation between A-1 and A-2 and hence, submitted that both the deceased were found murdered within a short span of time, after the appellant/A-1 was seen in front of the house of P.W.1. Hence, it is the submission of the learned Additional Public Prosecutor that the prosecution has proved the guilt of the appellant/A-1 and the judgment of the Trial Court does not warrants interference at the hands of this Court and prays for dismissal of the appeal.

5 We have perused the entire materials and evidence on record.

6 In the light of the above submissions, now it has to be analysed whether the prosecution has proved the circumstances relied upon by them as against the appellant/A-1?

7 The prosecution had put forth the following circumstances to establish its case:

- [a] Motive
- [b] Last Seen Theory.

8 At the outset, it is to be stated that the entire prosecution case rests on the circumstantial evidence. The fact remains that the prosecution has not put forward any specific, definite, clinching and incriminating circumstances except placing reliance on the sole circumstance, viz., the last seen theory said to have been spoken by P.Ws.2, 4 and 9. Before proceeding to consider the above said circumstance, it is relevant to state that it is well settled that in a case of circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn, should be fully proved and circumstances must be conclusive in nature to connect the accused with the crime. Keeping in mind, the above said settled principle of law, let us now consider the circumstances relied on by the prosecution.

MOTIVE AND THE LAST SEEN THEORY:-

9 The motive projected by the prosecution is that deceased Revathy is the Aunt of the appellant/A-1 and whenever the appellant/A-1 visited the house of the deceased Revathy, she used to tease him in front of others on the ground that his father, viz., A-2, has already served jail sentence. When the

matter stood thus, on 02.04.2014, the appellant/A-1 went to the house of the deceased Revathy and demanded money and the same was declined by her. Thereafter, A-1 came to his house and informed the same to his father/A-2 and both father and son, conspired to kill the deceased Revathy. Accordingly, the appellant/A-1 again went to the house of Revathy at 4.30 p.m. on the same day, and thrashed the head of Revathy with a grinding stone and in the same transaction, he has also stabbed the six year old son of Revathy with knife and caused injuries on him. A perusal of the evidence of P.W.2-Dr.Jeyasingh coupled with the Postmortem Certificates [Exs.P.2 and 5], we have no doubt in our mind to hold that this is nothing but a brutal murder of a mother and an innocent child of the age of 6 years. Postmortem Certificates [Exs.P.2 and 5] as well as the Final Opinion [Exs.P.4 and 7] issued the Doctor clearly shows the brutality of the person causing murder of the unfortunate mother and the son in the house.

10 At the risk of repetition, it is to be stated that this is a case of circumstantial evidence and with regard to motive, as discussed above, though the prosecution has examined P.W.1-Palanichamy, husband of the deceased Revathy and father of the deceased child, a close scrutiny of his evidence would disclose that he has not whispered anything about the previous dispute between the accused family and his wife. When the prosecution relies upon a specific motive in the case of circumstantial evidence, it has to be proved as any other circumstances. Be that as it may, P.W.1 has never spoken anything about the motive aspect as projected by the prosecution in the charge sheet. P.W.1, on hearing the information about the injuries caused to his wife and son, rushed to the spot and took them to the hospital. P.Ws.3 and 4-Thangaraj and Poongodi, neighbours of P.W.1 had stated that on 02.04.2014, they celebrated the birthday of their daughter and when their daughter went to the house of the deceased Revathy to give the cake, she found both the deceased lying in the pool of blood and immediately, she informed her father, who in turn, had pressed the services of the Ambulance and also informed P.W.1. It is the further evidence of P.W.3 that at about 3.30 p.m., on the same day, while he was supervising the construction work in his terrace, he saw the appellant/A-1 sitting in the pial of P.W.1's house and was talking with the deceased Revathy.

11 It is to be noted that P.W.1 never stated in his evidence that P.W.3 informed him about the presence of A-1 in his house and chatting with his wife. Even in the complaint [Ex.P.1], no mention whatsoever has been made about the presence of A-1 in the house of P.W.1 just prior to the occurrence. Therefore, this part of the evidence of P.W.3, seeing A-1 sitting in front of the house of P.W.1 and talking with the deceased Revathy, is doubtful. Had P.W.3 really seen A-1

speaking with the deceased Revathy, on seeing both the deceased lying in a pool of blood, the normal conduct of P.W.3 would be to inform the presence of A-1 in the house of P.W.1 prior to the occurrence, to P.W.1 immediately. Whereas, he has never whispered a word about the identity of the appellant/A-1 except stating that some person, wearing a green shirt, was sitting and talking with the deceased Revathy. It is further to be noted that as per the version of P.W.3 before the Investigating Officer, he has already knew the appellant/A-1. If that be so, he could have informed of the same to P.W.1 But that has not been done so. This aspect creates serious doubt about the evidence of P.W.3. At any event, even assuming that the evidence of P.W.3 is believable and the appellant/A-1 was found talking with the deceased Revathy, his evidence does not show any unusual behaviour or happenings in the house. Admittedly, A-1 and deceased Revathy are close relatives. Therefore, mere talking of the appellant/A-1 in front of P.W.1's house with the deceased alone, cannot be taken as a serious circumstance without any other incriminating materials against the appellant/A-1. Further, the very charge of the prosecution is that the appellant/A-1 had trespassed into the house of the deceased Revathy at 4.30 p.m. on 02.04.2014. But the evidence of P.W.3 that he saw accused at 3.30 p.m., is against the very charge itself. It is to be noted that in the evidence of P.W.4-wife of P.W.3, she had never identified the accused. She has merely stated that one person, looking like that of the appellant/A-1, came from the house of the deceased Revathy at about 4.00 p.m., on 02.04.2014. Even before Court, she has not identified the appellant/A-1. These facts creates serious doubt about the entire prosecution version. It is not the case of either P.W.3 or P.W.4 that the accused are known to them previously. There was no reason as to why prosecution has not conducted any Test Identification Parade.

12 Yet another disturbing factor in this case is that the manner in which the investigation has been conducted in a double murder case. P.W.11-Investigating Officer has conducted the investigation callously and recklessly. Admittedly, the knife [M.O.5] was seized from the house of the deceased itself. But, no attempt whatsoever has been made by the Investigating Officer to find out any chance finger prints in the knife. He has not even made an attempt to call for the Forensic persons to the spot. These factors clearly expose the nature and conduct of the Investigating Officers we have in this State. When murders of this nature are investigated callously without any seriousness, the criminal justice system will be collapsed. P.W.11-Investigating Officer has not even taken any interest to investigate a grave crime involving twin murder, viz., of a mother and a son of 6 years old, in a proper manner. The statements of P.Ws.3 and 4 recorded by him under 161[3] Cr.P.C., were sent to the Court only on 04.04.2014 with an inordinate

delay. This conduct of the Investigating Officer clearly exhibits ingratitude on their part to solve the murder case by filing the Final Report somehow or the other, without making any efforts to collect the incriminating materials against the accused.

13 This is the high time for the State Government to give special training for the Investigating Officers as to how to proceed with the investigation. We are pained to note that in several Sessions Cases, investigations are done in a casual manner without any seriousness. The erring Investigating Officers also go scot-free, without any accountability. The Director of Prosecution and the State Government have to press into service the Departmental proceedings against the erring officials/Investigating Officers who conduct the investigation in a lethargic and casual manner and who file Final Report only for the purpose of solving the cases.

14 In the instant case, except the evidence of P.W.3-neighbour, we do not find any other circumstances which are incriminating to the appellant/A-1. No doubt, it is case of double murder, where a mother and her son were brutally murdered. But, unfortunately, the Investigating Officer in this case had not collected any material evidence and he has not even made an attempt to find out the chance prints in the knife which was very much available in the scene of crime and was recovered under Mahazar.

15 It is also seen from records that the case properties seized from the place of occurrence, were not sent to the Court concerned immediately and only Form 95 alone was sent and the same was returned. Thereafter, it was resubmitted only in the month of May 2014. All these would go to show that the Investigating Officers, nowadays, are not taking anything seriously, even in brutal murders, Final Reports are filed casually. Hence, we are of the view that the State Government and the Authorities concerned should take the issue seriously as it involves lives of individuals.

16 By making the above observations and perusing the entire materials placed on record and further the date and time of occurrence also differs from the evidence of P.W.3 with that of the Accident Registers, wherein the timing was mentioned as 5.20 p.m. on 02.04.2014 and the same is totally against the prosecution version, we are of the view that there is no incriminating material to connect the appellant/A-1 in a grave crime. We only sympathize P.W.1 who had lost his young wife and son. But, an accused cannot be convicted merely on the basis of sympathy. Hence, we have no other option except to hold that the prosecution has failed to establish the charges framed against the appellant/A-1.

17 In the result, the criminal appeal is ALLOWED. The conviction and sentence imposed on the appellant/A-1 for offences u/s.449, 302 [2 counts] IPC by the learned II Additional District and Sessions Judge, Tiruppur District, in SC.No.19/2016 vide Judgment dated 27.03.2017, are hereby set aside. He is acquitted of all charges levelled against him. Fine amount, if any paid by him, shall be refunded to him.

11 It is reported that the appellant / A-1 is in jail. He is directed to be released forthwith unless his presence/custody is required in connection with any other case / proceedings. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

AP
To

- 1.The Principal District and Sessions Judge
Tiruppur District.
- 2.The II Additional District and Sessions Judge
Tiruppur District.
- 3.The Judicial Magistrate No.1,
Tiruppur.
- 4.The Chief Judicial Magistrate,
Tiruppur District.
- 5.The Inspector of Police
Anupparpalayam Police Station
Tiruppur District.
- 6.The District Collector
Tiruppur District.
- 7.The Director General of Police
Mylapore, Chennai-4.
- 8.The Superintendent of Prison
Central Prison, Coimbatore.

9. The Public Prosecutor,
High Court, Madras.

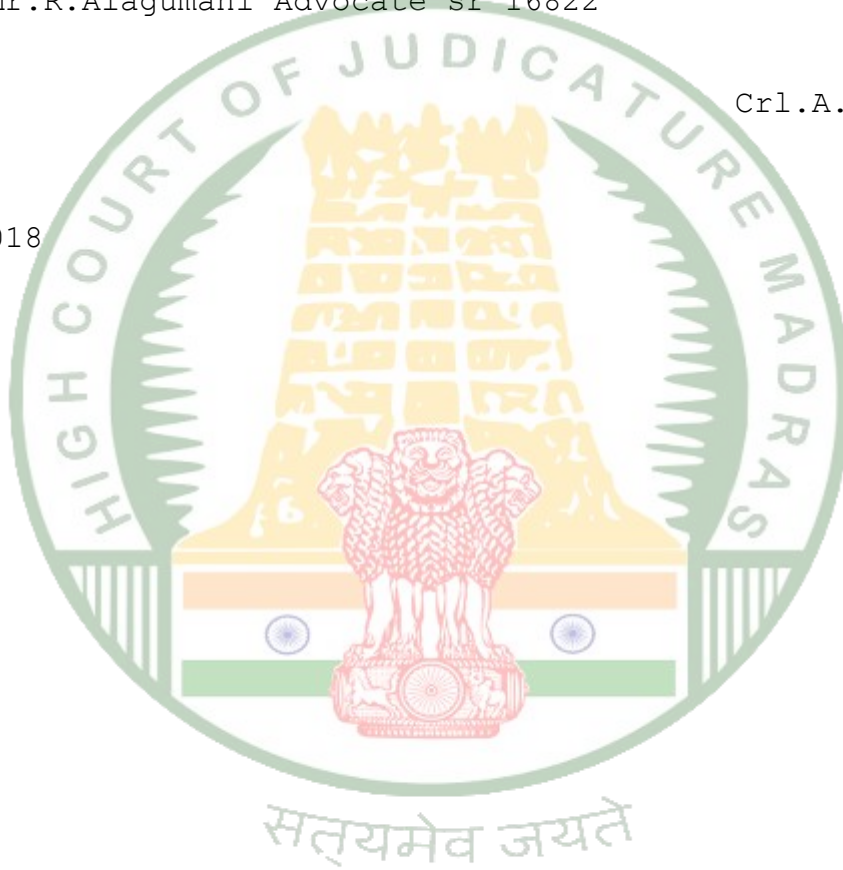
10. The Superintendent of Police
Tiruppur

copy to
The Section Officer
Criminal Section
High Court Madras-104

+1 cc to Mr.R.Alagumani Advocate sr 16822

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