

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HON'BLE MRS.JUSTICE S.RAMATHILAGAM

Crl.Appeal No.116 of 2018

1. Sanjay Maruthu @ Sanjay Raja
2. Paul Peter ... Appellants

Vs

State rep. by
The Inspector of Police,
Karamadai Police Station,
Coimbatore. ...Respondent

PRAYER : Criminal Appeal filed u/s 374(2) against the judgment of the learned IV Additional District and Sessions Judge, Coimbatore in S.C.No.281 of 2011 dated 27.01.2017.

For petitioners : Mr.S.Ananthanarayan,
SC for Mr.R.Vijayakumar

For Respondent : Mr.K.Prabakar, APP

JUDGMENT

(Judgment of the Court was made by S.RAMATHILAGAM, J.)

This Criminal Appeal has been directed against the judgment of conviction passed by the learned IV Additional District and Sessions Judge, Coimbatore in S.C.No.281 of 2011 dated 27.01.2017, convicting the appellants/accused for the offences under Sections 302 IPC and sentencing them to undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- each and in default of which, to undergo simple imprisonment for a period of two months.

2. Case of the prosecution is that both the accused are friends and they are the habitual offenders of committing theft in and around Gandhipuram area. In one case, both the accused along with one Krishnasamy, who is a resident of Siddhapudur, were arrested by B4 Police Station for having committed theft and they were remanded to judicial custody. While so, the deceased Sivasamy, a Taxi Driver and PW.9 Moses went to B4 Police Station to see Krishnasamy since he belonged to their area and reprimanded the accused alleging that they were spoiling the character of Krishnasamy and challenged the accused that if they come out, they will teach a lesson to them for spoiling younger generation of Siddhapudur area. This led to develop animosity towards the deceased and PW.9 Moses and both the accused decided to do away the deceased and PW.9. On 24.11.2010 at about 10.00 p.m., both the accused, with the intention to murder the deceased Sivasamy, abducted him by cunningly hiring of his vehicle bearing Regn.No.TN-38-V-4609 and asked him to drive to Kovilpalayam. While the vehicle reached near Ganesh Nagar Teachers colony at about 20.30 a.m., both the accused demanded the deceased to get down from the vehicle and A1 armed with knife, cut the deceased on his left side of his neck and while the deceased Sivasamy was running for life, both the accused restrained him and A1 cut the deceased on his head and his face with knife and A2 armed with knife, stabbed him on his shoulder and his stomach. The deceased died on the spot due to multiple injuries caused by the accused. Thereafter, a case was registered, investigated and filed a final report by the respondent police before the learned Judicial Magistrate, Mettupalayam vide P.R.C.No.14 of 2011. On committal, the case was tried in S.C.No.281 of 2011 and disposed of by the learned IV Additional District and Sessions Judge, Coimbatore.

3. Before the trial Court, in order to prove its case, the prosecution has examined as many as 22 witnesses as Pws.1 to PW.22 and marked 30 exhibits as Exs.P1 to P30 and 16 material objects as Mos.1 to 16. On the side of defence, both the accused were examined as DWs.1 and 2 and no documents were marked.

4. PW.1, Prabhakaran, who is the complainant, spoke to seeing the dead body of the deceased lying down near his house on 25.11.2010 with cut injuries on his neck and head and that a vehicle, parking aside.

5. PW.2, Ramamoorthy, spoke to lying down a dead body near the house of PW.1 on 25.11.2010 with cut injuries on his head, neck and abdomen and one white Omni Van parking nearby the dead body.

6. PW.3 Ramesh, a close relative of the deceased, spoke to his coming to know on 25.11.2011 at about 9.00 a.m. that somebody murdered Sivasamy, identifying injuries on ear, head and on right hand palm and three punch injuries on abdomen of the deceased and an Omni Van parked nearby. Since he spoke that he does not know the accused, he was declared hostile.

7. Likewise, Pws.6, 8, 9, 10 and 14 were also declared hostile by the prosecution since they did not support the prosecution case.

8. Pws.4 and 5, who are the father and sister of the deceased, spoke to the deceased running a Cab and they coming to know about the murder of the deceased.

9. PW.7 Kathirvel, who is a Watchman working in Union Office, spoke to seeing both the accused on 25.11.2010 at 3.00 a.m. coming from East to West direction and identifying the accused during Test Identification Parade at Pollachi jail.

10. P.W.11 Anandkumar, a witness to the Observation and Seizure Mahazar, spoke to seizing blood stained earth and Omni Van by the police under Observation and Seizure Mahazars (Exs.P2 and P3).

11. PW.12 Ramamoorthy, who was then Municipal Councilor, spoke to arresting of the accused Sanjay Marudhu by the police in his presence and after arrest, the accused voluntarily made his confession on 4.12.2010 at 4.30 a.m. which is marked as Ex.P4 stating that he and other accused Paul Peter hired the Taxi of the deceased and they killed him at Gangesh Nagar due to previous enmity. PW.12 further spoke to the accused Sanjay Marudhu identifying the other accused Paul Peter in his house at Kalampalayam Siruvani road where the police arrested him and he also gave voluntary statement, which is marked Ex.P5 and that at about 7.a.m., accused Sanjay Marudhu producing his blood stained white shirt and black colour pant and accused Paul Peter producing his blue colour half sleeve shirt and blue colour pant which were hidden behind his house, which were marked as Mos.1 to 4 and seizing the same by the police under the cover of Seizure Mahazars vide Exs.P6 and P7. PW.12 further spoke to accused producing two knives with brazen handles hidden in a bush near S.M.D.Tower, Karamadi, which were marked as Mos.5 and 7 and seizing the same by the police under cover of Seizure Mahazars vide Exs.P8 and P9.

12. PW.15 Vijayakumar, Scientific Officer, who conducted chemical analysis in respect of the blood stained materials sent to him, spoke to finding blood in all the materials and giving

report under Ex.P11 revealing that the blood is of human and is of A group.

13. PW.16, Police Constable, who handed over the dead body of the deceased to the Doctor for autopsy, spoke to handing over the dead body of the deceased to his relatives after autopsy and seizing the material objects, viz., blood stained short, underwear, hip cord marked as Mos.8 to 11 and cash of Rs.400/- marked as MO.12 and brown colour Titan Watch marked as MO.13, under cover of the Special Report Ex.P12.

14. PW.17, Doctor, who conducted the autopsy over the dead body of the deceased, spoke to finding injuries on the body caused by Knives and he opined that the deceased would appear to have died due to multiple injuries and issued P.M.Certificate and final report which were marked as Ex.P13 and P14.

15. PW.21 Chenna Kesavan, who was the Investigation Officer, spoke to taking up investigation, proceeding to the scene of occurrence, preparing rough sketch Ex.P20 and Observation Mahazar Ex.P2 and examining the witnesses, PW.1, PW.2, PW.3 and one Belly @ Kumar, Muthu and conducting inquest in the presence of panchayatdars, collecting blood stained earth MO.14, seizing white colour Maruthi Omini van MO.16. He further spoke to handing over the body to PW.16 for post mortem, examining Pws.4 to 7 on 26.11.2010 and Pws.8, 9, 14 and one Rangaraj.

16. PW.22 Periyasamy, Inspector of Police, B4 Police Station, spoke to visiting the deceased Sivasamy and PW.9 Moses to the police station while he was investigating a case lodged against the accused A1 & A2 and reprimanding both the accused and that he warned the deceased and PW.9 Moses not to reprimand the accused when they were under his custody for interrogation. Later, he handed over all the accused for judicial custody along with case properties to the concerned Magistrate Court.

17. On closure of the evidence on the side of the prosecution, statements of the accused persons were recorded under Section 313 Cr.P.C., in which they denied all the allegations levelled by the prosecution and examined themselves as DW.1 and DW.2 in defence.

18. The learned trial Court finally heard arguments of both the sides and after assessing the entire evidence produced by the prosecution as well as by the defence, acquitted the appellants/accused from the charges levelled against them under Sections 364 and 341 IPC but convicted them for the offence under Section 302 IPC and passed sentence as mentioned supra. Aggrieved by the same, both the appellants are before this Court.

19. Heard the learned Senior Counsel appearing for the appellants and the learned Additional Public Prosecutor for respondent. Perused the entire materials available on record.

20. In this case, there is no direct evidence to prove the charges levelled against the appellants/accused and the prosecution case rests solely on the circumstantial evidence. There are three circumstances put forth by the prosecution namely, (1) motive, (2) last seen theory and (3) arrest, confession and recovery of material objects. To prove its case, the prosecution has examined as many as 22 witnesses, of whom, crucial witnesses, viz., Pws.3, 6, 8, 9, 10 and 14 have turned hostile and they did not support the prosecution case.

21. According to the prosecution, the motive of murder of the deceased by the accused is that both are friends and habitual offenders committing theft in and around Gandhipuram area; in one of the cases, both the accused along with one Krishnasamy, who is a resident of Siddhapudur, were arrested by B4 Police Station for having committed theft and they were remanded to judicial custody; while so, the deceased Sivasamy, a Taxi Driver and PW.9 Moses went to B4 Police Station to see Krishnaswamy since he belonged to their area and reprimanded the accused alleging that they were spoiling the character of Krishnasamy and challenged the accused that if they come out, they will teach a lesson to them for spoiling younger generation of Siddhapudur area. This led to develop animosity towards the deceased and PW.9 Moses and both the accused decided to do away with the deceased and PW.9. At the first instance, this appears to be somewhat suspicious since mere reprimanding the accused by the deceased and PW.9 Moses, the accused had turned up with sheer animosity towards the deceased and PW.9 even to murder them. Admittedly, till this incident, there was no enmity prevailing between the parties. To prove this motive, the prosecution examined P.W.9 Moses and PW.22 by the then Inspector of B4 Police Station. P.W.9 has not supported the case of the prosecution since he deposed that he did not go to the Police Station, but at the outpost, he reprimanded the accused and at the instance of the prosecution, this witness was declared hostile. P.W.22 the then Inspector of B4 Police Station though deposed that the deceased Sivasamy and PW.9 Moses came to police station and reprimanded the accused and on seeing this, he warned them not to reprimand the accused while they were under his custody for interrogation. This version was not supported by the P.W.9 who, according to the prosecution case, accompanied the deceased to Police Station and both of them reprimanded the accused. Though it is settled that the evidence of Police personnel cannot be discarded merely because they belong to police force and interested in the prosecution case, however, in

the absence of corroboration, it is not wise to rely solely on his evidence to arrive at a conclusion that the accused had motive to murder the deceased and PW.9. Therefore, the prosecution has failed to establish this incriminating circumstance that the accused had motive to cause murder of the deceased and PW.9.

22. With respect to last seen theory, according to the prosecution, on 25.11.2010 at Ganesh Nagar, Teachers Colony, where the dead body of the deceased was found, both the accused were seen by PW.6 and PW.7, who also identified the accused during Test Identification Parade at Pollachi jail. PW.6 did not support the prosecution case and at the instance of the prosecution, he was declared hostile. PW.7 Kathirvel, who is a Watchman in Maurya Engineering Works, deposed that he saw both the accused going from East to West. In cross-examination, he admitted that the next day, i.e. 26.11.2010 at about 3.00 p.m., he went to the police station and informed about the accused to the police. His evidence cannot be believed, because there was no reason for him to go to police station and inform what he had seen to police when even the police did not know who were the accused by then since the police came to know about the accused on 3.12.2010 only after PW.8 informed the police of what he heard along with PW.14 while consuming alcohol at a TASMAC shop, where both the accused were blabbering that they have planned to do away PW.9 Moses. But, they finished off the deceased, but they could not carry out the plan of doing away Moses and since Moses happened to be their friend and would be done to death, PW.8 and PW.14 went to police station on 3.12.2010 and informed the same to PW.21. Therefore, the version of PW.7 that he saw the accused does not inspire the confidence. Therefore, the prosecution has also failed to establish this clinching circumstance of last seen theory.

23. As regards the arrest, confession and recovery of material objects are concerned, it is the case of the prosecution that on 3.12.2010, PW.8 and PW.14 visited the police station and informed PW.21, the then Inspector of Police about what they happened to overhear while consuming alcohol at a TASMAC shop where the accused were blabbering that how they committed murder of the deceased Sivasamy and how their plan to kill Moses was failed. It is pertinent to note that both PW.8 and PW.14 did not support the prosecution case and at the instance of the prosecution, both the witnesses were declared hostile. On recording their statements, PW.21 arrested first accused (A1) Sanjay Marudhu on 3.12.2010 in the presence of Ramkutty and rangaraj and on the basis of confession of first accused, he arrested second accused (A2) Paul Peter at his residence on the same day and recorded his confessional statement in the presence of same witnesses. Later, he seized

M.Os.1 to 9, blood stained shirts and pants of both the accused, a Mobile phone from Isma Mobile Shop, blood stained knives hidden in a bush produced by the accused in the presence of same witnesses. For the best reasons known to the prosecution, the witnesses Ramkutty and Rangaraj in whose presence, the arrest and seizure of material objects was effected by PW.21 were not examined. Further, the prosecution has examined PW.13 Manikandan, who is working in Ishma Mobile Shop to verify and link the accused to the offence since he deposed that on 25.11.2010 both the accused came to his shop to sell a blue colour Nokia mobile and he bought the same for Rs.500/- and later on 4.12.2010, police brought two accused to his shop and enquired and seized the mobile MO.7 under Ex.P10 Mahazar. In this regard, it is pertinent to note that at the first instance, the prosecution has not proved that the mobile belonged to the deceased since no sim card or details of phone calls were collected. Secondly, admittedly, the Investigating Officer recovered Rs.400/- from the dead body of the deceased under MO.12. According to the prosecution, the accused are habitual offenders of committing theft to lead a lavish life, while so, it is not understood as to why the accused did not take the cash, but took only mobile that too for selling while cash was readily available. Hence, the version of PW.13 cannot be relied. Therefore, the prosecution has also failed to prove the circumstance of arrest, confession and recovery of material objects.

24. In fact, as regards the allegation that in order to execute their plan to commit murder of the deceased, both the accused hired the vehicle of the deceased and abducted him, the trial Court has categorically observed that no material was placed to substantiate the same and none of the witnesses have spoken to about this and no trip sheet was produced and accordingly, the trial Court acquitted the appellants from the said alleged charges under Sections 364 and 341 IPC. When the appellants/accused were given benefit of doubt in acquitting them from the charges under Sections 364 and 341 IPC by the trial Court, having reached the conclusion that the prosecution has failed to prove the same as there was no evidence placed to establish that in order to execute their plan to murder the deceased, the appellants cunningly hired the vehicle of the deceased and abducted him and wrongfully restrained him, it is for the prosecution to establish as to how the deceased was trapped in and brought him at the place of scene of occurrence by the appellants/accused to commit murder. But the prosecution has not proved the same.

25. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt

is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence. In the instant case, there is no clinching circumstantial evidence against the accused much less conclusive in nature by which, conclusion of guilty can be drawn. The trial Court has heavily relied upon the evidence of the witnesses, who did not even support the prosecution case and were declared hostile by the prosecution. Learned trial Court convicted the accused/appellants on the basis of surmises and conjectures, while the fact is remains that the prosecution has not proved its case beyond reasonable doubt. Therefore, benefit of doubt goes in favor of accused/appellants and finding of conviction given by trial Court cannot be upheld on the basis of such type of evidence.

26. In this view of the matter, we find that impugned judgment dated 27.01.2017 delivered by trial Court does not stand in the eye of law for the purpose of conviction and sentence against the accused/appellants.

27. On the basis of above discussion, this Criminal Appeal is allowed and the impugned judgment dated 27.01.2017 in S.C.No.281 of 2011 passed by the learned IV Additional District & Sessions Judge, Coimbatore is hereby set aside and accused/appellants are hereby acquitted from the charges levelled against them. They shall be released forthwith if not required in any other case.

Suk

Sd/-

Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

To

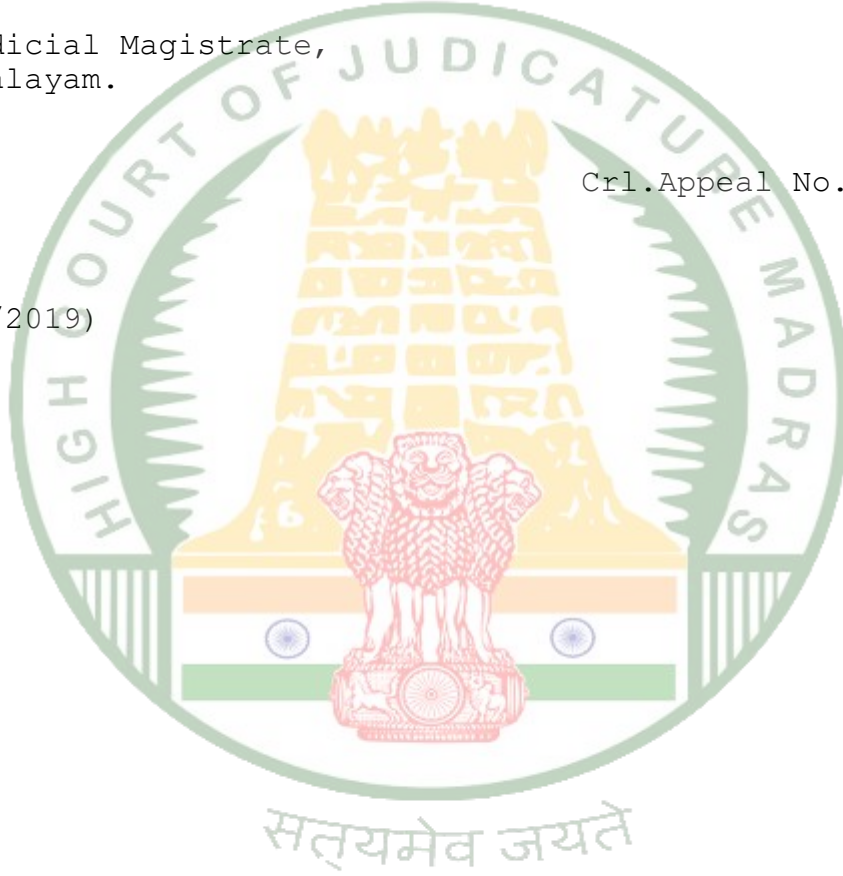
1. The IV Additional District and Sessions Judge, Coimbatore.
2. The Public Prosecutor, High Court, Madras-104.

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3. The Section Officer,
Criminal Section,
High Court, Madras-104.
4. The Superintendent
Central Prison,
Coimbatore.
5. The Inspector Of Police,
Karamadai Police Station,
Coimbatore.
6. The Judicial Magistrate,
Mettupalayam.

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