



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 10.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.T.SELVAM
And
THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

CRL A(MD)Nos.35 and 36 of 2017

Ramesh ... Appellant/1st Accused in
Crl.A.(MD) No.35 of 2017

Mayilraj ... Appellant/2nd Accused in
Crl.A.(MD) No.36 of 2017

Vs.

The State,
Represented by its Inspector of Police,
Surandai Police Station,
Tirunelveli District.
(Crime No.307/2007) ... Respondent/Complainant
in both appeals

Common Prayer: Appeals filed under Section 374 of the Code of Criminal Procedure, 1973, praying to set aside the order of conviction and sentence imposed on the appellants by the learned I Additional District and Sessions Judge, Tirunelveli by judgment dated 21.12.2016 in S.C.No.266 of 2011.

For Appellant in : Mr.V.Arul
both appeals for Mr.P.Krishnan

For Respondent : Mr.S.Chandrasekar,
Additional Public Prosecutor

COMMON JUDGMENT

(The Common Judgment of the Court was delivered by C.T.SELVAM, J.)

The appellants/A1 & A2 have filed these Criminal Appeals, challenging the judgment, dated 21.12.2016, in S.C.No.266 of 2011 on the file of the I Additional District and Sessions Judge, Tirunelveli, in and by which, they were convicted for offence under Section 341 I.P.C. and sentenced to undergo one month R.I. and also convicted for offence under Section 302 IPC and sentenced to undergo life imprisonment and fine of Rs.1,000/- each, in default, six months rigorous imprisonment.



2.The prosecution case is that the deceased was done to death owing to brother of the accused having died owing to remorse over having to sell his house to repay the loan availed of from the deceased, who was engaged in money lending business. The appellants originally arrayed as Accused Nos.6 and 7, had engaged the service of Accused Nos.1 and 5 to do away with the deceased. Pursuant to the conspiracy entered upon on 15.12.2007, Accused Nos.1 to 3 attacked the deceased on 17.12.2007, at about 6.45 a.m., while Accused Nos.4 and 5 kept a watch. Owing to stab injuries caused by Accused Nos.1 and 3 and cut injuries caused by Accused No.2, the deceased died. Pending investigation, Accused Nos.6 and 7 had died and five persons were put to trial. Pending trial, Accused No.1 died and as a consequence the array of accused was altered to reflect the second accused as Accused No.1 and the third accused as Accused No.2 and Accused Nos.4 and 5 as Accused Nos.3 and 4.

3.P.W.1, brother of the deceased, preferred a complaint before Sub Inspector of Police at Surandai Police Station on 17.12.2007. P.W.21, Sub-Inspector of Police registered the complaint in Crime No.307 of 2007 under Section 302 IPC and prepared Ex.P.19 FIR. P.W.22, Inspector of Police, took up investigation, went to the scene and prepared observation mahazar Ex.P.8, as also rough sketch Ex.P.20. He conducted inquest over the body of deceased in the presence of Panchayatars and prepared Ex.P.21, Inquest Report and sent the body to Government Hospital, Tenkasi through PW-20 Head Constable for post-mortem. The Post-mortem Report is Ex.P.12. He examined PWs.1 to 21 and recorded their statements and recovered M.Os.1 to 17. On 22.12.2007, he arrested A1, A2 and A4, namely, Ramesh, Mayilraj and Madasamy near Srinivasa Perumal Temple at Surandai and recorded their confessions in the presence of P.W.6, namely, Duraipandian as also Murugaiyaiah, who also attested the confession of the accused. He sent the accused to judicial custody on 22.12.2007. Thereafter he prepared Ex.P.22 alteration report. On 27.12.2007, accused Samy @ Arumugasamy surrendered before Court. On 29.12.2007, P.W.22 took him into police custody and recorded his confession statement in the presence of P.W.11, Ponnampalam as also Paramasivapandian. On 30.12.2007, he arrested Accused Karaiadi Madasamy and Thirumalaivelu and sent them to judicial custody. He sent a requisition for chemical analysis. He obtained postmortem report and examined P.W.16 - Civil Assistant Surgeon namely, Dr.Sakthivelaiyathum and recorded his statement. Upon completion of investigation, he filed a charge sheet informing commission of offences under Sections 120(b), 341, 302 r/w 34 IPC. On committal, the case was tried in S.C.No.266 of 2011 on the file of learned I Additional District and Sessions Judge, Tirunelveli. Before trial Court, prosecution examined 22 witnesses and marked 22 exhibits and 17 material objects. None were examined on behalf of defence nor were any exhibits marked.



4.1. P.W.1 - Arumugasamy is the brother of the deceased. His complaint is marked as Ex.P.1. He spoke to preferring complaint. P.W.1 had been informed of his brother, the deceased, having been found dead by P.W.2, driver of the deceased, who was on his way to work.

4.2. P.W.2 - Basker resided at Kurnkavanam. He spoke to informing the death of the deceased to P.W.1 as also of preferring of the complaint.

4.3. P.W.3 - Srinivasan spoke to preparation of complaint by him.

4.4. P.W.4 - Bharatharaj examined as an eye witness spoke to the attack of the deceased by the accused. According to him, Accused No.1 / appellant in Crl.A.(MD) No.35 of 2017 has caused cut injuries to the neck and ear of the deceased by using an aruval, while Accused No.2 / appellant in Crl.A.(MD) No.36 of 2017 caused stab injury to the chest and Accused Nos.3 and 4, who were acquitted by the trial Court, kept a watch over the scene of occurrence.

4.5. P.W.5 - Ramayiah spoke to seeing the accused with weapons before the occurrence.

4.6. P.W.6-Duraipandian spoke to arrest, confession and recovery with regard to accused Ramesh and Mayilraj.

4.7. P.W.7 - Marriyappan spoke to purchase of knives by accused Arumugasamy and Mayilraj.

4.8. P.W.8 - Ramesh was examined to establish the last seen theory.

4.9. P.W.9 - Pattu Muthu @ Devanthran spoke to the failure of the attempt made by the accused to kill the deceased on the day previous to the occurrence.

4.10. P.W.10 - Arunachalam spoke to attesting observation mahazar and recovery of material objects.

4.11. P.W.11 - Ponnampalam, Village Administrative Officer spoke to arrest, confession and recovery.

4.12. P.W.12 - Silamparasan spoke to the quarrel between deceased and one Chandiran.

4.13. P.W.13 - Veliyappa Thevar @ Vellaidurai and P.W.14 - Lakashmanan spoke to roaming of the accused near Pillayar Temple on 15.12.2007.

4.14. P.W.15- Murugesh photographer, deposed that on instructions by police officials, he took photographs of the body of deceased.

4.15. P.W.16 - Dr.Sakthi Veliayathum, Doctor, who conducted post-mortem on the body of deceased, opined that the deceased would appear to have died owing to multiple injuries.

4.16. P.W.17 - Assistant Director, Regional Forensic Science Laboratory, Tirunelveli, spoke to various tests conducted by him.

4.17. P.W.18 - Arunaachalam, a Court clerk, spoke to sending material objects for chemical examination.

<https://hcservices.courts.gov.in/hcservices9> 4.18. P.W.19 - Ramasamy a Police Constable, spoke to receiving First Information Report and of handing over the same to Judicial

Magistrate, Thenkasi.

4.19. P.W.20 - Minor Raj, Head Constable, spoke to handing over the body of deceased to Doctor for post-mortem and on completion thereof, handing over the body to the relatives.

4.20. P.W.21 - Rajendran was Sub Inspector of Police, spoke to registration of case in Crime No.307 of 2007 u/s.302 I.P.C., and of forwarding Ex.P.19, Original First Information Report to Judicial Magistrate, Thenkasi and copies thereof to higher officials.

4.21. P.W.22 - Jamal was the Inspector of Police at Surandai Police, who conducted investigation in the case and spoke to visiting the place of occurrence, preparation of mahazars, examination of witnesses, arrest of accused and of obtaining various reports and on completion of investigation, filing charge sheet informing commission of offences under Sections 120(b), 341, 302 r/w 34 IPC.

5. When the accused were examined under Section 313 Cr.P.C. on the incriminating materials against them, they denied their complicity in the crime and stated that they had been falsely implicated in the case.

6. On appreciation of materials before it, trial Court, under judgment dated 21.12.2016, convicted appellants/accused for offences u/s.341 and 302 IPC and sentenced them to one month R.I. for offence under Section 341 I.P.C. and sentenced him to life imprisonment and fine of RS.1,000/- i/d 6 months R.I. for offence u/s.302 IPC. Against such finding, the present appeal has been filed.

7. Heard learned counsel for appellants and learned Additional Public Prosecutor appearing for respondent in both appeals.

8. The prime contention of learned counsel for accused is that no witnesses at the scene of occurrence have been examined to prove the case of prosecution. He submitted that though the case of the prosecution was based on the alleged enmity between the deceased and the original accused Nos.6 and 7 and the conspiracy hatched by them on 15.12.2007, no witness has made a whisper thereof. Ex.P.8 - Observation Mahazar and Ex.P.20 - Rough Sketch do not reflect any field belonging to either P.W.4 or his alleged lessor Jesurajan near the scene of occurrence. P.W.4, the alleged eye-witness is a close relative of the deceased and his presence in the scene at the time of occurrence is unbelievable. It would suffice if the accused put-forth a probable defence, which the accused had done in the present case. The degree of proof required of the prosecution was much higher and the prosecution has failed to establish the case against the accused. Learned counsel prayed for acquittal of the accused.



9. We have heard learned Additional Public Prosecutor on the above submissions.

10. The prosecution case rests mainly on the evidence of P.W.4 an alleged eye witness. In the instant case, the prosecution would fail for the following reasons:

(i) The occasion for P.W.4 to be near the scene of occurrence and witnessing the occurrence is informed by him to be that of his attending to his fields, at a distance of 200 feet from the scene and which he had taken on lease from one Jesurajan. There is no material whatsoever to support the claim of P.W.4 of his conducting agricultural operations at such place. Neither has Jesurajan been examined nor has any material been produced to substantiate the prosecution case of land of Jesurajan being situate near the place of occurrence. Ex.P.8, observation mahazer as also Ex.P.20 topo-sketch do not throw light on such aspect.

(ii) Investigating officer P.W.22 has admitted to neither Ex.P.8 nor Ex.P.20 informing the position of P.W.4 holding land close to the place of occurrence. Quite surprisingly, P.W.22 admits that the witnesses examined at the inquest all belong to neighbouring village by name Kurungavanam and the same was 5 kms. away from the scene of occurrence. He has admitted that none residing near the scene of occurrence had been examined. The occurrence has taken place on a public road. P.W.4 has admitted to being a relative of the deceased. It appears that P.W.4, a relative of the deceased, is only an obliging witness, who has no reservation in deposing to an occurrence, he has not seen.

11. This Court is unable to attach any credence to the evidence of P.W.4. There is nothing else to support the prosecution case. In the circumstances, these Criminal Appeals are allowed. The conviction and sentence imposed on the accused by the trial Court, are set aside. They are acquitted of the charges. They are directed to be set at liberty forthwith, unless their custody is required in connection with any other case. The fine amount shall be refunded.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,



2.The Principal District Judge,
Tirunelveli.

3.The Judicial Magistrate,
Tenkasi.

4.The Chief Judicial Magistrate, Tirunelveli.

5.The District Collector,
Tirunelveli.

6.The Director General of Police,
Mylapore, Chennai -4.

7.The Superintendent of Police,
Central Prison, Palayamkottai.

8.The Inspector of Police,
Surandai Police Station,
Tirunelveli District.

9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

10.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+ 2 ccs TO Mr.P.Krishnan , Advocate in SR No. 60529,60530

sj

AE/SKN RSK/SAR4/02.07.2018/6P/14C

Judgment made in
CRL A(MD)Nos.35 and 36 of 2017
10.04.2018