

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.02.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.OP.No.28173/2018 and Crl.A.SR.No.24765/2018

State represented by
The Public Prosecutor
High Court, Madras - 104.
[Cr.No.29/2014 of Vellimedupettai
Police Station]

.. Appellant /
Complainant

Versus

1.Suresh
2.Amsa @ Meenatchi
3.Manikandan
4.Parasuraman

.. Respondents
/ A-1 to A-4

Prayer in Crl.OP.No.28173/2018:- Petition filed under section 378 [3] Cr.P.C. to grant leave of this Court to prefer an appeal against the judgment of acquittal dated 13.09.2017 in SC.No.87/2015 on the file of the learned I Additional District and Sessions Judge, Tindivanam and convict the respondents/accused [A1 to A4] for the charges framed against them.

Prayer in Crl.A.SR.No.24765/2018:- Appeal sought to be filed under section 378 [1] Cr.P.C., to allow the appeal and set aside the judgment of acquittal of the respondents 1 to 4/A-1 to A-4 passed by the learned I Additional District and Sessions Judge, Tindivanam in SC.No.87/2015 dated 13.09.2017.

For Petitioner / Appellant: Mr.R.Prathap Kumar, APP

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

The State is the appellant herein. The appellant/State, aggrieved by the judgment of acquittal dated 13.09.2017 made in SC.No.87/2015 on the file of the Court of I Additional District

and Sessions Judge, Tindivanam, came forward to file the present Criminal Original Petition to grant leave to prefer an appeal against acquittal.

2 The facts leading to the present petition, have been narrated in detail and in extenso in the impugned judgment and therefore, it is not necessary to re-state the facts once again except cull out and extract the relevant and material facts for the purpose of disposal of this petition.

3 The case of the prosecution narrated in brief is that the 2nd respondent herein/A-2 had illegal intimacy with the 1st respondent herein / A-1 and the husband of A-2, viz., Siva [deceased], on becoming aware of the same, used to castigate her frequently. Therefore, a conspiracy has been hatched to do away with the life of Siva-husband of A-2. Accordingly, the services of A-3, who was the driver of TATA Ace Van which was an unregistered one, at the relevant point of time, was engaged and on the fateful day on 28.02.2014 at about 5.30 a.m., the said vehicle driven by A3 and occupied by A-1 and A-4, went behind TVX-XL Two-wheeler bearing Regn.No.TN-20-C-7322, driven by the deceased Siva in a rash and negligent manner with a deliberate intent to run over and kill him and dashed against him and as a consequence, Siva had fallen down and sustain grievous injuries and he was taken to the Government Hospital, at Tindivanam, by his brother-P.W.1 [Balaraman] and thereafter, the injured was referred to JIPMER Hospital in Puducherry for further medical treatment and without responding to the treatment, he died on 03.03.2014 at about 04.30 hours.

4 P.W.1-brother of the deceased, lodged a complaint on the file of Vellimedupettai Police Station as to the said incident, based on which, Ex.P.13-FIR came to be registered for the alleged commission of the offences u/s.279 and 304[A] IPC. There was no progress shown in the investigation. On 10.09.2014, A-1 to A-4 / respondents 1 to 4 herein, have voluntarily appeared before P.W.2 - Selvam, Village Administrative Officer [VAO] and gave a joint confession statement as to the conspiracy hatched in order to murder Siva - husband of A-2 and after recording the confession, P.W.2 has prepared the Special Report under Ex.P.3 on 10.09.2014 and took the accused to P.W.19 - Alexander, Inspector of Police attached to Vellimedupettai Police Station and they were subsequently arrested.

5 P.W.19 commenced the investigation and visited the scene of crime on 11.09.2014 and prepared Observation Mahazars [Exs.P.8 and P.9] and Rough Sketches [Exs.P.15 and P.16] respectively in the presence of P.W.9-Syed Kaspar Ali and another. Thereafter, based on the admissible portion of the

confession statement given by A-1 to A-4, M.O.1-Tata Ace Van was seized by P.W.19 on 11.09.2014 at about 11.00 a.m. under the cover of Mahazar [Ex.P.7]. In the interregnum, the vehicle was sold by the accused and it was purchased by P.W.10-Manikandan, and it was recovered from his custody and thereafter, the vehicle was sent for inspection to the Motor Vehicle Inspector on 13.10.2014 at 13.45 hours and the said official opined that he could not give any opinion on account of the late production of the vehicle.

6 Prior to the said confession and recovery, the body of the deceased Siva on his demise on 03.03.2014, was sent through P.W.18-Venkatesan, Sub Inspector of Police to JIPMER Hospital, Puducherry, for conducting autopsy and P.W.16-Dr.Ambika Prasad Patra, conducted autopsy and gave the opinion that "the injuries suffered by the deceased are antimortem injuries and the deceased would have died due to cranio-cerebral and chest injuries and complications thereon". The Postmortem Certificate issued by P.W.16 was marked as Ex.P.12. Thereafter, P.W.18 had examined P.Ws.2, 9, 3, 4, 5 and others and recorded their statements and thereafter, upon receipt of the death intimation of the deceased Siva, altered the sections under Alteration Report [Ex.P.17] to one u/s.120-B, 302 and 201 IPC. P.W.18, after completion of the investigation, filed the Final Report against the accused, charging them for the commission of the said offences on 04.11.2014 before the Court of Judicial Magistrate No.1, Tindivanam, who took it on file and issued summons to the accused and on their appearance, furnished them with copies of the documents u/s.207 Cr.P.C., and having found that the case is exclusively tried by the Sessions Court, has committed the said case to the Court of Principal District and Sessions Judge, Villupuram, who in turn, had made over the case to the Court of I Additional District and Sessions Judge, Tindivanam, who took it on file in SC.No.87/2015.

7 The accused were summoned and charges were framed u/s.302 read with 120-B IPC and 201 IPC and when they were questioned, they denied the charges. The prosecution, in order to sustain their case, examined P.Ws.1 to 19 ; marked Exs.P.1 to P.18 as well as M.Os.1 and 2.

8 All the accused were questioned u/s.313[1][b] Cr.P.C., with regard to the incriminating circumstances made out against them in the evidence adduced by the prosecution and they denied it as false. On behalf of the accused, A-1 examined himself as D.W.1 and also examined one Suseela as D.W.2 and Ramachandran as D.W.3. No documentary evidence was marked on their side.

9 The Trial Court, on consideration of oral and documentary evidences and other materials, found that the

prosecution has failed to prove the guilt of the accused beyond reasonable doubt and therefore, acquitted all the accused vide impugned judgment dated 13.09.2017 and challenging the legality of the same, the State has filed the present petition seeking leave to file the appeal against acquittal.

10 Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the petitioner/appellant-State would submit that the case of the prosecution is based on circumstantial evidence and the following are the circumstances projected by the prosecution to connect the respondents / accused with the commission of crime:

[1] Motive ; [2] Conspiracy ; [3] Last Seen Theory ; and [4] Extra-judicial confession.

11 The learned Additional Public Prosecutor appearing for the petitioner/appellant-State would contend that though all the accused have voluntarily appeared before P.W.2-VAO on 10.09.2014 and gave a confession statement, based on which, the real investigation has commenced and the fact of criminal conspiracy and other related criminal offences have been made out, the fact remains that it was a confession made voluntarily. Though extra-judicial confession is a very weak piece of evidence, ample corroboration has been made to the said confession statement in the form of last seen theory spoken to by the concerned witnesses as well as the recovery of the Van and since the prosecution had connected all the circumstances without any missing link, the Trial Court ought to have convicted the accused/respondents herein and prays for grant of leave to prefer an appeal against acquittal.

12 This Court paid its best attention to the submissions made by the learned Additional Public Prosecutor appearing for the petitioner/appellant-State and also perused the materials placed before it including the impugned judgment dated 13.09.2017, which has been filed in the form of typed set of documents.

13 The incident took place at about 5.30 a.m., on 28.02.2014 and according to the prosecution, A-2 had illicit intimacy with A-1 and on becoming aware of the same, her husband, viz., Siva [deceased], used to castigate her and in order to do away with his life, a conspiracy came to be hatched based on which, when the deceased Siva was riding his two-wheeler on 28.02.2014 at about 5.30 a.m., A-1 and A-4, who were the occupants of M.O.1-Tata Ace Van driven by A-3, closely followed the two wheeler of the deceased and in a rash and negligent and deliberate manner, dashed against the said two - wheeler, as a result of which, the deceased was thrown out and sustained grievous injuries. The deceased was initially

admitted in the Government Hospital, Tindivanam and after reference, got admitted in JIPMER Hospital, Puducherry and without responding to the treatment, he died on 03.03.2014 at about 04.30 hours and initially, a case was registered by Vellimedupettai Police Station on the basis of the complaint given by the brother of the deceased, viz., P.W.1 in Cr.No.29/2014 for the offences u/s.279 and 304[A] IPC and the real truth came to light only on the basis of the confession given by A-1 to A-4 before P.W.2-VAO on 10.09.2014.

14 The real investigation has commenced only after the alleged extra-judicial confession said to have been given by A-1 to A-4 before P.W.2-VAO.

15 The prosecution, in order to prove the conspiracy, had examined P.Ws.3, 4, 5 and 6 and they had deposed that on the previous night, on 27.02.2014, A-1 to A-4 had conspired to murder the deceased on account of the fact that the deceased started creating problems to A-1 and A-2 and it is also the testimony of P.W.3 and P.W.4 that they had informed the said act of conspiracy of A-1 to A-4 to their respective husbands, viz., P.W.1 and P.W.4-Ramesh. The Trial Court has recorded the fact that if really the said prosecution witnesses were aware of conspiracy, they would have immediately and definitely taken steps to lodge a complaint to the police and that, they would have never allowed the deceased to proceed in his two wheeler on the date of occurrence and they would have informed the deceased about the conspiracy ; but they did not do so and therefore, their conduct was very unusual.

16 The prosecution, in order to prove the last seen theory, had examined P.Ws.11, 12 and 17. The Trial Court had recorded the finding that admittedly, there was no light in the vicinity of the place in which the alleged incident took place and P.W.14, who is said to be the eyewitness to the occurrence, during the course of his testimony, admitted that the place of occurrence had no light and there was not even a street light and he was unable to explain how he could identify the involvement of Tata Ace Van as well as the presence of A-1, A-3 and A-4 and therefore, the Trial Court disbelieved his evidence.

17 P.Ws.5, 11, 12 and 17, in their testimonies would submit that they were having the morning tea at about 5.30 a.m. and they saw the deceased riding his two-wheeler and it was followed by Tata Ace Van in the same direction. The Trial Court has recorded the finding that they did not specify the date on which they saw the Tata Ace Van.

18 The Trial Court, on analysing the testimonies of P.Ws.11, 12 and 17, found that there were serious discrepancies

and contradictions between their testimonies and thereby, the credibility of their evidence is also seriously doubtful. It is not unusual to see a two-wheeler and a Van on the road and therefore, this Court is of the considered view that the Trial Court was right in reaching the said conclusion. The Trial Court has also recorded the finding that at the time of incident on 28.02.2014, the Investigating Officer did not take photographs of the accident spot and also not summoned the services of forensic officials to take forensic examination and based on the confession, the vehicle was seized from P.W.10 and the Motor Vehicle Inspector who caused inspection of the vehicle, gave an opinion that he could not give any opinion on account of the fact that it was produced much belatedly. Therefore, the prosecution is unable to prove that Tata Ace Van was used for commission of the offence and it is also to be remembered at this juncture that according to the prosecution, at the time of commission of the offence on 28.02.2014, the Van was an unregistered vehicle and P.W.10 had produced the same from the Financing Bank and thereafter, got the vehicle registered.

19 The Trial Court has also recorded the finding that even according to the prosecution, the accused persons, through their mobile phones had contacted with each other and that is also one of the instances of conspiracy and however, the cellphone call records have not been seized and analysed and therefore, it cannot be said that there was a conspiracy among A-1 to A-4.

20 As regards the extra-judicial confession, the Trial Court after analysing the evidence of P.W.2 and also taking into consideration very many decisions of this Court as well as the Hon'ble Apex Court, found that the extra-judicial confession is a very weak piece of evidence and unless the said evidence is supported by the other evidences of quality, it cannot be the sole basis to reach the conclusion as to the guilt on the part of the accused and also recorded the finding that the case of the prosecution rests upon the circumstantial evidence and the prosecution has miserably failed to prove the chain of all the circumstances which solely leads to the guilt on the part of the accused and also further recorded the finding that suspicion cannot replace proof and taking note of all the infirmities in the case projected by the prosecution, has awarded benefit of doubt and acquitted A-1 to A-4.

21 This Court, on an independent application of mind to the submissions made by the learned Additional Public Prosecutor appearing for the petitioner/appellant-State and on going through the impugned judgment, is of the considered view that the Trial Court has properly considered and appreciated the oral and documentary evidences and other materials and after applying

various judgments rendered by this Court as well as the Hon'ble Supreme Court of India and on proper application of the settled legal principle, has rightly reached the conclusion to award benefit of doubt and acquitted the respondents / A-1 to A-4.

22 In the considered opinion of the Court, in the absence of any infirmity or error in appreciation of the evidence, this Court would not normally interfere with the judgment of acquittal passed by the Trial Court.

23 In the result, the Criminal Original Petition seeking leave to file the appeal, is dismissed and consequently, the criminal appeal SR.No.24765/2018 is rejected.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

AP

To

1.The I Additional District and Sessions Judge

Tindivanam.

2.The Principal District and Sessions Judge

Villupuram.

3.The Judicial Magistrate No.I

Tindivanam.

4.The Chief Judicial Magistrate

Tindivanam.

5.The Inspector of Police

Vellimedupettai Police Station.

6.The Director General of Police

Mylapore, Chennai-4.

7.The District Collector,
Villupuram District.

8.The Public Prosecutor
High Court, Madras.

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and Crl.A.SR.No.24765/2018

RV(CO)
GN(07/03/2019)