



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Cr1. A(MD)No.231 of 2016

Sathish

: Appellant/PW 1

Vs.

1.The Inspector of Police
Kayathar Police Station,
Tuticorin District.
(Crime No.193 of 2005)

..Respondent/Complainant

2.Murugan
3.Rajan
4.Vijayan
5.Inbasakaran
6.Thangadurai

: Respondents 2 to 6/
Accused 1 to 5

PRAYER: Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure, against the judgment dated 02.12.2011 in S.C.No.222 of 2011 on the file of the Additional Sessions Judge, Fast Track Court No.I, Thoothukudi.

For Appellant : Mr.G.Karuppasamy Pandian

For Respondents : Mr.R.Anandaraj for R1

Additional Public Prosecutor

Mr.V.Panneerselvam for R3 to R5

Mr.S.Poornachandran for R2

(Legal aid counsel)

Mr.D.Anbarasu for R6

(Legal aid counsel)

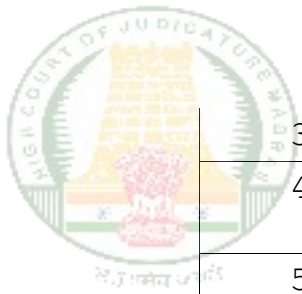
JUDGMENT

P.N.PRAKASH, J.

This criminal appeal is filed against the judgment in S.C.No.222/2011 on the file of the Additional Sessions Court, Fast Track Court, NO.I, Thoothukudi. The trial Court, by judgment dated 02.12.2011 acquitted all the accused A1 to A5/respondents 2 to 6. Challenging the acquittal, the appellant/P.W.1 is before this Court in this appeal.

2. The Trial Court framed as many as nine charges, as detailed below.

Charge	Penal Provisions	Accused
1	120 (B) IPC	A1 to A5
2	148 IPC	A1 to A5



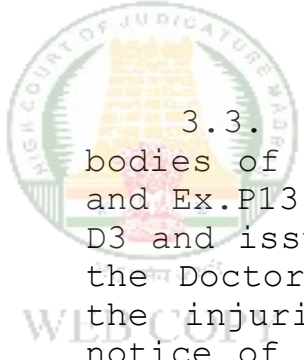
3	302 IPC	A3
4	302 r/w 149 IPC	A1, A2, A4 & A5
5	302 IPC	A1 and A2
6	302 r/w 149 IPC	A3 to A5
7	302 IPC	A4 and A5
8	302 r/w 149 IPC	A1 to A3
9	201(3 counts) IPC	A1 to A5

3. The facts in brief leading to the filing of this criminal appeal are as under:

It is the case of the prosecution that on account of previous motive, A1 to A5 had conspired to eliminate Mahesh (D1), Sri Ramaselvan (D2) and Antonydoss (D3), pursuant to which, on 10.06.2005, when Mahesh (D1), Sriramaselvan (D2) and Antonydoss (D3) were coming by lorry from Chennai with a consignment of iron rods, the lorry was intercepted around 2.30 a.m., by A1 to A5, and after murdering them, A1 to A5 threw the three bodies into an open Well belonging to one Murugaiah (P.W.14). Thereafter, they took the lorry with the consignment to a place, which was one kilometre away from Nalattinpudur Police Station and abandoned the lorry and fled.

3.1. Olimuthu (P.W.29), Sub Inspector of Police, Nalattinpudur Police Station was on rounds duty around his jurisdiction on 11.06.2005 and he noticed an abandoned lorry with a consignment of steel rods and registered a case in Nalattinpudur Police Station Crime No.151/2005 under Section 102 Cr.P.C. and prepared the printed FIR (Ex.P23). The lorry with the consignment was brought to the police station for further enquiry. While that being so, on 13.06.2005, Murugaiah (P.W.14) found three bodies floating in the open Well belonging to him and informed Angappan (P.W.13), the Village Administrative Officer.

3.2. Angappan (P.W.13) came to the Well and after seeing the three bodies gave a written complaint to Kayathar Police Station, based on which, Arumugavinayagam (P.W.28) Head Constable, registered a case in Kayathar Police Station Crime No.193/2005 on 13.06.2005 under Section 174 Cr.P.C. and prepared the printed FIR (Ex.P21). The bodies were fished out of the Well and on getting information, the bodies were identified by Sathish (P.W.1), the brother of D1. Investigation of the case was taken over by Paulraj (P.W.31) Inspector of Police, who conducted inquest over the three bodies and the inquest reports were marked as Ex.P35 (Mahesh) (D1), Ex.P.36 (Antonydoss @ Babu) (D2) and Ex.P.37 (Sriram Selvan) (D3) and the bodies were despatched for postmortem to the Government Hospital, Kovilpatti.



3.3. Dr.Rajendra Prasad (P.W.23) performed autopsy on the bodies of D1 and D2 and issued postmortem certificate Ex.P10 (D1) and Ex.P13 (D2). Dr.Sankarasubbu performed autopsy on the body of D3 and issued postmortem certificate (Ex.P16). During postmortem, the Doctors noticed cut and stab injuries and it was clear that the injuries were ante-mortem. When this was brought to the notice of the police, the case was altered from one under Section 174 Cr.P.C. to one under Section 302 IPC vide Alteration Report (Ex.P38) on 14.06.2005. There was no breakthrough in the investigation until the Investigating Officer arrested A1, A2, A3 and A4 on 16.07.2007 and recorded their police confession, pursuant to which, he recovered knives, viz., M.Os.6,7,8 and 9, a Bruce lee chain (M.O.10) and four clothes (M.O.11 series).

3.4. Thangadurai (A5) was arrested and produced before the Judicial Magistrate, No.II, Kovilpatti on 23.03.2011 and he was taken into police custody. After completing the investigation, Paulraj (P.W.31) the investigating officer filed final report in PRC No.17/2007 before the Judicial Magistrate, No.II, Kovilpattti.

3.5. On the appearance of the accused, the provisions of Section 207 Cr.P.C., were complied with and the case was committed to the Court of Session in SC No.222/2011 and was made over to the Additional Sessions Judge, Fast Track Court No.I, Tuticorin for trial. The trial Court framed the charges as stated in paragraph No.2 cited supra. When questioned, the accused pleaded not guilty. To prove the case, the prosecution examined 31 witnesses, marked 42 Exhibits and 36 material objects.

3.6. When the accused were questioned under Section 313 Cr.P.C., they denied the same. On behalf of the accused, no witness was examined, but five exhibits were marked. After considering the evidence on record and hearing either side, the trial Court acquitted the accused of all the charges, challenging which, Sathish (P.W.1) brother of Mahesh (D1) is before this Court with this criminal appeal.

4. This appeal against acquittal was originally filed through M/s.T.Leninkumar and Mr.T.Dhandapani, Advocates. On 04.02.2019, this Court passed the following order:

"Originally, five accused faced prosecution in S.C.No.222 of 2011 before the Additional Sessions Judge, Fast Track Court No.1, Tuticorin, and they were acquitted on 02.12.2011. Challenging the acquittal, the de-facto complainant has filed C.A. (MD) No.231 of 2016. The State has not chosen to file any appeal against acquittal. Notice has been served on all the five respondents.

While that being so, Mr.T.Leninkumar and Mr.T.Dhandapani, counsel on record for the de-facto complainant, have filed a memo withdrawing their



7. This is a case based on circumstantial evidence and the witnesses, who were examined by the prosecution to speak about the last seen theory and the arrest of the accused turned hostile as stated above. In such view of the matter, though motive appears to have been established, we have no other legal evidence on record to upset the acquittal of the trial Court.



8. In the result, the criminal appeal is dismissed.

9. Before parting with the matter, we place on record our appreciation to Mr.G.Karuppasamy Pandian, Mr.S.Poorna Chandran and Mr.D.Anbarasu, for assisting us in this case and we direct the Tamil Nadu Legal Services Authority to pay them a sum of Rs.5,000/- (Rupees five thousand only) each.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Additional Sessions Judge,
Fast Track Court No.I,
Thoothukudi

2.The Inspector of Police
Kayathar Police Station,
Tuticorin District.

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

4.The Secretary,
Tamil Nadu Legal Service Authority,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.V.PANNEER SELVAM, Advocate (SR-49879[F] dated
26/02/2019)

+1 CC to M/s.S.POORNACHANDRAN, Advocate (SR-50306[F] dated
27/02/2019)

rr

Order made in
Cr1.A. (MD) No.231 of 2016
25.02.2019

KM/(20.03.2019) 5P 7C