



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Cr1. A(MD)No.83 of 2018

Subbulakshmi : Appellant/PW2

Vs.

1.Selvaraj :Respondent/Accused

2.The Inspector of Police
Lalapet Police Station,
Karur District.
(Crime No.570 of 2008) : Respondents/Complainant

PRAYER: Criminal Appeal is filed under Section 372 of the Code of Criminal Procedure, against the judgment dated 07.06.2010 in S.C.No.89 of 2009 on the file of the Sessions Judge, Karur.

For Appellant : Mr.S.Ravi

For Respondents : Mr.S.Chandrasekar for R2
Additional Public Prosecutor
Mr.T.Senthilkumar for R1

JUDGMENT

(Judgment of the Court was delivered by P.N.PRAKASH, J)

This criminal appeal is filed against the judgment in S.C.No.89/2009 on the file of the Sessions Judge, Karur. The trial Court, by judgment dated 07.06.2010 acquitted the accused/1st respondent. Challenging the acquittal, Subbulakshmi (P.W.-2) is before this Court in this appeal.

2. The prosecution story is as follows:

The deceased Vellaiya Goundar had two wives, Veerammal (deceased in this case) and Ponnammal. Through Veerammal, he had two daughters and a son, namely, Subbulakshmi (P.W.-2) and Murugayee (P.W.-3) and Arumugam. Through Ponnammal, he had a daughter by name Perumayee. Arumugam died leaving behind his widow Saroja and son Selvaraj (accused). While so, it is alleged that on 25.12.2008, Selvaraj (accused) picked up a quarrel with his grandmother Veerammal asking for a share in the property and when she refused, he challenged her saying that he would plough the field and thus take possession. Saying so, Selvaraj (accused) went towards the



fields and he was followed by Veerammal. In the fields, a quarrel once again ensued between Veerammal and Selvaraj (accused), in which, it is alleged that Selvaraj assaulted her with a stick and caused several injuries on her resulting in her death. On the complaint lodged by Thangavel (P.W.-1) the son-in-law of Veerammal and husband of Subbulakshmi (P.W.-2), the police registered a case in Crime No.570/2008 under Section 302 IPC and took up investigation.

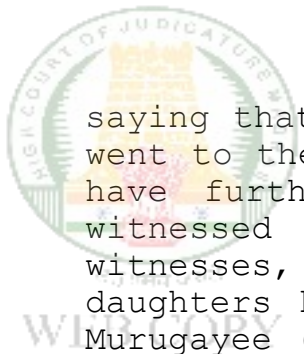
2.1. After completing the investigation, the police filed a final report in P.R.C.No.10/2009 before the Judicial Magistrate, No.I, Kulithalai for the offence under Section 302 IPC against Selvaraj. On committal, the case was taken on file as S.C.No.89/2009 and was tried by the Sessions Court, Karur. The trial Court framed a charge under Section 302 IPC and when questioned, the accused pleaded not guilty.

3. To prove the case, the prosecution examined 12 witnesses, marked 13 exhibits and one material object. When the accused was questioned under Section 313 of the Code of Criminal Procedure, he denied the allegations against him, but filed a written statement contending that he had gone to the fields with his friend Sathishkumar in the evening and thereafter, he left the fields and was not present, when his grandmother was allegedly done to death. From the side of the accused, two witnesses, Sathishkumar (D.W.-1) and Sivakumar (D.W.-2) were examined. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 07.06.2010 in S.C.No.89/2009, acquitted the accused, aggrieved by which, Subbulakshmi (P.W.-2) preferred a revision in Crl.R.C.(MD) No.700/2010 under Section 397 read with 401 of Cr.P.C., which was converted into an appeal under the proviso to Section 372 Cr.P.C. and renumbered as Crl.A(MD) No.83/2018.

4. Heard Mr.S.Ravi, learned counsel for the appellant, Mr.T.Senthilkumar, learned counsel for the accused and the learned Additional Public Prosecutor for the State.

5. While dealing with an appeal against acquittal, it is well settled that when two views are possible, the view that favours the accused merits acceptance. In this regard, it may be profitable to allude to the judgment of the Supreme Court in **Arulvelu and another v. State [(2009) 10 SCC 206]**.

6. The case of the prosecution rests on the alleged eye-witness account of Thangavel (P.W.-1), Subbulakshmi (P.W.-2) and Murugayee (P.W.-3). The motive for the offence is that, the accused demanded his share of property from his grandmother and that she refused to concede to his demand. Thangavel (P.W.-1), Subbulakshmi (P.W.-2) and Murugayee (P.W.-3) have stated that on 25.12.2008, the accused came to their house, demanded a share in the property from his grandmother and when she bluntly refused, he challenged her by



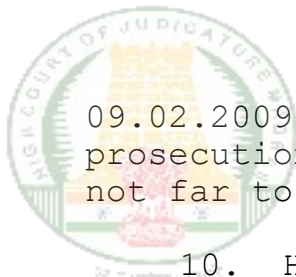
saying that he would plough the fields and dared her; saying so, he went to the fields and he was followed by Veerammal. The witnesses have further stated that they also followed Veerammal and they witnessed the occurrence. In the cross-examination of these witnesses, the defence was able to successfully establish that the daughters born to Vellaiya Goundar, namely, Subbulakshmi (P.W.-2), Murugayee (P.W.-3) and their half sister Perumayee had ganged up and had filed a partition suit in O.S.No.64/2002 in the Sub Court, Kulithalai, wherein, they have shown their deceased mother Veerammal and their nephew Selvaraj (accused herein) as defendants. To be more explicit, the plaint, which has been marked as Ex.D-1 in the cross examination of Subbulakshmi (P.W.-2) shows the names of Murugayee (P.W.-3), Subbulakshmi (P.W.-2) and Perumayee as plaintiffs and the accused has been shown as "Minor Selvaraj", aged about 13 years represented by his mother and guardian Saroja/second defendant. The other defendants in the suit are Saroja, mother of the accused and Veerammal grandmother of the accused. The prayer in the plaint is for partition of the properties that were left by Vellaiya Goundar allegedly in the possession of Veerammal.

7. This clearly shows that in the year 2002 when the suit was filed, the accused was hardly 13 years old and at the time of incident in the year 2008, he was 19 years of age. Admittedly, the suit in O.S.No.64/2002 was pending even at the time of occurrence and that was completely suppressed by these three witnesses, namely, Thangavel (P.W.-1) Subbulakshmi (P.W.-2) and Murugayee (P.W.-3). Only in the cross-examination, the defence was able to elicit from them about the filing of the suit and its pendency.

8.Mr.S.Ravi, learned counsel for the appellant/Subbulakshmi (P.W.-2) contended that after the suit was filed, Veerammal (deceased) was residing with Subbulakshmi (P.W.-2) and her husband Thangavel (P.W.-1). However, the Observation Mahazar (Ex.P-2) and the rough sketch (Ex.P.-11) clearly show that Veerammal was not residing with Thangavel (P.W.-1) and Subbulakshmi (P.W.-2), but was living in her own house, which was located very near to the place of occurrence. Thus, Thangavel (P.W.-1), Subbulakshmi (P.W.-2) and Murugayee (P.W.-3) had a better motive than the accused.

9. Be that as it may, the FIR in this case has been registered on the oral complaint (Ex.P-1) that was given by Thangavel (P.W.-1) husband of Subbulakshmi (P.W.-2). In that complaint, he has stated that the accused came to their house around 2.00 p.m., on 25.12.2008 and after picking up a quarrel with his grandmother (Veerammal), took the tractor of one Renganathan and along with his friend Sathishkumar proceeded to the fields for ploughing. During the course of investigation, the police recorded the statement of Sathishkumar under Section 161(3) of the Code of Criminal Procedure and made a requisition to the Judicial Magistrate, No.II, Karur to record the Sec. 164 Cr.P.C. statement of Sathishkumar and

<https://www.hccerindia.org.in/hccerindia>



09.02.2009. Strangely, Sathishkumar was not examined by the prosecution as a witness and the reason for his non-examination is not far to seek.

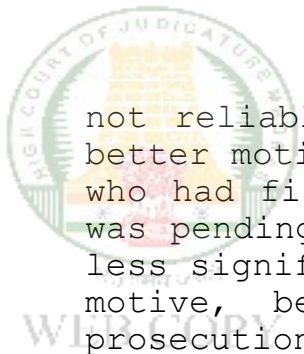
10. However, the accused examined Sathishkumar as D.W.-1. Sathishkumar (D.W.-1) in his evidence before the trial Court, has stated that the accused is his friend; he knows the family of the accused; on 25.12.2008, the accused and he were in the place of occurrence and were resting under the neem tree and at that time, Renganathan was running a tractor; the tractor tyre suffered a puncture and so, Renganathan left the place with his tractor in order to fetch a Mechanic to repair it; Renganathan demanded Rs.700/- for ploughing; after Renganathan left, he (Sathishkumar) also left to play cricket nearby; after some time, he heard the news that Veerammal was found dead in the fields and so, he came there; around 5.00 p.m., the accused also came there to the fields and was there throughout, but was taken away by the police. The Sec. 164 Cr.P.C. statement given by Sathishkumar (D.W.-1) was marked as Ex.D.-3. A statement recorded under Section 164 Cr.P.C., can be used for corroboration and for contradiction unlike a statement under Section 161(3) Cr.P.C.

11. Even in the Sec. 164 Cr.P.C. statement given by Sathishkumar (D.W.-1) to the Magistrate, he has clearly stated that the accused and he were there in the fields on the said date and Renganathan was ploughing the fields; the tyre of the tractor suffered a puncture to repair which, Renganathan left; after sometime, he also left the place for playing cricket. Beyond this, he had not stated anything more in his Sec. 164 Cr.P.C. statement.

12. Normally, the police would not sponsor the recording of Sec. 164 Cr.P.C. statement of an eye-witness. In this case, the police have had the Sec. 164 Cr.P.C. statement of Thangavel (P.W.-1), Subbulakshmi (P.W.-2) and Sakthivel (P.W.-4) recorded by the Judicial Magistrate, No.II, Karur. Of course, there is no bar in law for the police to have the statement of eye-witnesses recorded under Section 164 Cr.P.C.

13. Thangavel (P.W.-1) stuck to the complaint (Ex.P.-1) given by him and the statement given by him to the Magistrate. A reading of the evidence of Sathishkumar (D.W.-1) shows that only after the incident, Selvaraj (Accused) had come to the place of occurrence on coming to know of his grandmother's murder. It is trite that equal weightage should be given to the testimony of defence witnesses as observed by the Supreme Court in **State of Uttar Pradesh v. Baburam (2000) AIR SCW 1798**.

14. The trial Court, which had the opportunity to see the demeanor of Thangavel (P.W.-1), Subbulakshmi (P.W.-2) and Murugayee (P.W.-3) and Sathishkumar (D.W.-1), had chosen to discard the testimonies of the three eye-witnesses on the ground that they were



not reliable, as the facts and circumstances show that they had a better motive to get rid of Veerammal (deceased), since it was they, who had filed the suit against her for the properties and the suit was pending as on the date of occurrence. Though motive is of very less significance in a case involving ocular evidence, nevertheless, motive, being double-edged weapon, is capable of cutting the prosecution with equal force as in the case at hand. In such view of the matter, this Court does not find any infirmity in the findings of the trial Court warranting interference.

15. In fine, the criminal appeal is devoid of merits and accordingly, the same is dismissed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

RR

To

1.The Sessions Judge,
Karur.

2.The Inspector of Police
Lalapet Police Station,
Karur District.

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

+1 CC to M/s.S.RAVI, Advocate (SR-9830[F] dated 03/03/2020)

+1 CC to M/s.T.SENTHIL KUMAR, Advocate (SR-10019[F] dated
04/03/2020)

Crl.A. (MD)No.83 of 2018
02.03.2020

RR

KK/17.03.2020/ 5P- 6C