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Criminal Appeal (MD)No.85 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.03.2020

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Criminal Appeal (MD)No.85 of 2018

Balu ..Appellant/*De facto* Complainant

Vs.

1.State represented by
The Inspector of Police,
Thiruvadanai Police Station,
Ramanathapuram District. ..Respondent No.1/Complainant

2.Santha Kumar

3.Santharaja

4.Prabhu : Respondents 2 to 4/Accused Nos.1to3

Prayer : Appeal is filed under Section 397 r/w 401 of the Code of Criminal Procedure to call for the records in S.C.No.2 of 2010 on the file of the learned Additional Sessions Judge -cum- Fast Track Court, Ramanathapuram, dated 15.04.2010 and set aside the same.

For Appellant : Mr.A.K.Manickam,
For Mr.R.Senthil Kumar

For Respondent No.1 : Mr.M.Chandrasekaran,
Additional Public Prosecutor

For Respondents 2to4 : Mr.S.Mahendrapathy

JUDGMENT

[Judgment of the Court was delivered by P.N.PRAKASH, J.]

The respondents 2 to 4 are accused Nos.1 to 3 in S.C.No.2 of 2010 on the file of the learned Additional Sessions Judge -cum- Fast Track Court, Ramanathapuram. The Trial Court framed as many as three charges, as detailed below.

Charge	Accused	Penal Provisions
1	1 to 3	120-B IPC
2	3	364 IPC
3	1 to 3	302 IPC



By judgment dated 15.04.2010, the Trial Court has acquitted all the three accused of all the charges framed against them. Challenging the said acquittal, the defacto complainant-Balu (P.W.1) has come up with the present Criminal Appeal.

2. The prosecution story is as follows:

2.1. The deceased Satheesh was the son of Balu (P.W.1) and was a native of Pannavayal Village, Thiruvadanai Taluk in Ramanathapuram District. The incident in this case is said to have occurred on 05.05.2009 around 11.45 p.m. It is alleged that three years prior to the date of occurrence, the deceased Satheesh had eloped with one Santha, the sister of Santhakumar (A-1) and Santharaja (A-2). They were away for about fifteen days and were brought back to the Village by Balu (P.W.1). A Panchayat was held between the families of the deceased and that of Santha, in which, Satheesh refused to take Santha and this had resulted in heartburn for the accused. Harboursing this grudge, A-1 and A-2, in tandem with A-3, conspired on 05.05.2009 at 08.00 p.m. near Muniyaiah Temple in Anchukottai Road, to wit, eliminate Satheesh and in pursuance of this conspiracy, A-3 picked up the deceased Satheesh from a cultural programme that was going on in connection with the festivities of the Village Temple and took Satheesh to a desolate place adjacent to a river-bed and all the three committed the murder of Satheesh.

2.2. On the complaint (Ex.P.1) given by Balu (P.W.1), the police registered a case in Crime No.87 of 2009 and after completing the investigation, filed a final report in P.R.C.No.12 of 2009 before the learned Judicial Magistrate, Thiruvadanai, for the offences under Sections 120-B, 364 and 302 of the Indian Penal Code against Santhakumar (A-1), Santharaja (A-2) and Prabhu (A-3).

2.3. On appearance of the accused, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the case was committed to the Court of Session in S.C.No.2 of 2010 and was tried by the Additional Sessions Court, Fast Track Court, Ramanathapuram.

2.4. The Trial Court framed charges against the accused, as detailed in Paragraph No.2.2 *supra*. When questioned, the accused pleaded not guilty. To prove the case, the prosecution examined 17 witnesses, marked 17 Exhibits and 10 Material Objects.



2.5. When the accused were questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against them, they denied the same. From the side of the accused, Ex.D.1, the report of the Dog Squad was marked in the cross-examination of the Investigating Officer. No witness was examined from the side of the accused.

2.6. After considering the evidence on record and hearing either side, the Trial Court, by judgment and order dated 15.04.2010 in S.C.No.2 of 2010, acquitted the accused of all the charges. Challenging the acquittal, Balu (P.W.1)/defacto complainant has preferred the present Appeal under the proviso to Section 372 of the Code of Criminal Procedure.

3. Heard the learned counsel for the appellant, learned Additional Public Prosecutor for the first respondent and the learned counsel for the respondents 2 to 4/Accused Nos.1 to 3.

4. Before advertng to the evidence on record, it may be apposite to refer to the Judgment of the Supreme Court in *Arulvelu and another v. State* [(2009) 10 SCC 206], on the scope of an appeal against acquittal, wherein it has been held that when two views are possible, the view that favours the accused merits acceptance.

5. This case is predicated on circumstantial evidence. In a case, based on circumstantial evidence, motive assumes very serious significance. In this case, the motive for the murder that was projected by the prosecution was that, the deceased had eloped with Santha, the sister of Santhakumar (A-1) and Santharaja (A-2) three years prior to the incident and they were brought to the Village by Balu (P.W.1), the father of the deceased. It is further alleged that the deceased did not come forward to marry Santha and that was projected as the motive for the murder. However, the evidence of Balu (P.W.1), the father of the deceased clearly shows that after Santha and the deceased were secured and brought back to the Village, a Panchayat was held, in which, Santha herself was not willing to marry the deceased, as the deceased was younger to her in age and the relationship was also a prohibited one, inasmuch as Santha was in the status of mother to the deceased. Even,



in the complaint (Ex.P.1), that was given by Balu (P.W.1), it is clearly stated that Santha had refused to marry the deceased and not otherwise. That apart, in the cross-examination of P.W.1 and other witnesses, it came to light that the deceased was having affairs with other women in the Village and was also having quarrel with some other persons. Most importantly, the evidence on record shows that the deceased was a close friend of A-3. All these aspects have been considered by the Trial Court to hold that the prosecution had failed to prove the motive for murder satisfactorily and we have no reasons to disagree with the said finding.

6. Balu (P.W.1), the father of the deceased, in his evidence, has stated that on 05.05.2009 around 11.30 p.m., A-3 came to his house and took the deceased to the Village Temple for the cultural programme and that at 11.45 p.m., the deceased was murdered. Strangely, this fact that A-3 had taken the deceased with him at 11.30 p.m., was not disclosed by Balu (P.W.1) in the complaint (Ex.P.1). The Trial Court has given satisfactory reasons for rejecting the First Information Report in this case.

7. As stated above, the First Information Report was registered on the complaint (Ex.P.1) given by Balu (P.W.1) at 09.00 a.m., on 06.05.2009. Balu (P.W.1), in his complaint (Ex.P.1) has stated that his close relative Velli Muthu, whose house is located near Atthani Kanmoi, had invited his elder brother Karunanithi for dinner. While Velli Muthu and Karunanithi were having dinner around 11.45 p.m., on 05.05.2009, they heard noise from the adjacent land of Arumugam. When both of them went there, they found A-1, A-2 and A-3 armed with weapons and the deceased lying in a pool of blood. They came and informed him as to what they saw. This is the sum and substance of the allegations in the complaint (Ex.P.1), based on which, the First Information Report was registered. Thus, the name of Velli Muthu and Karunanithi (P.W.3) appears in the complaint. It is not known as to why neither Velli Muthu nor Karunanithi themselves had given the complaint to the police and instead, why the First Information Report had to be routed through Balu (P.W.1), whose evidence, on this aspect, was clearly hear-say.

8. The prosecution did not choose to examine Velli Muthu for reasons best known to them. However, the prosecution examined Karunanithi as P.W.3. The Trial Court



has disbelieved the evidence of Karunanithi (P.W.3) on the ground that after having seen the accused armed with weapons and the deceased in a pool of blood, he did not take any steps to ascertain whether the deceased was dead or alive. Instead, he had gone to the house of Balu (P.W.1) to inform him. We are conscious of the fact that, witnesses cannot be expected to react in a particular fashion in all circumstances. However, Karunanithi (P.W.3) had not chosen to be the complainant and the contention of the defence that he was introduced only subsequently to bridge the gap between the time of occurrence and the giving of the First Information Report appears to be probable. The deceased was none other than Karunanithi's (P.W.3) own younger brother's son. The Trial Court has had the opportunity to see the demeanour of Karunanithi (P.W.3) and has disbelieved him. Yet another reason for disbelieving Karunanithi (P.W.3) was that, Balu (P.W.1), in his evidence, has stated that Karunanithi (P.W.3) came to his house around 12 in the mid night and told him about the murder of Satheesh and thereafter, he along with his wife and daughter and Karunanithi (P.W.3) went to the place of occurrence and saw the body of the deceased. In the chief-examination itself, Balu (P.W.1) has stated that the cultural programme was stopped and every one rushed to the place of occurrence. Police bandobast was available for the cultural programme. Therefore, when the whole village had seen the body on the mid night of 05.05.2009, giving of complaint only at 9 'O' Clock on 06.05.2009 appears very strange.

9. Superadded, the evidence on record shows that the police photographer had already come to the place of occurrence at 08.00 a.m., on 06.05.2009 and taken photographs of the dead body. The defence has marked the report of the Dog Squad as Ex.D.1 in the cross-examination of the Investigating Officer. The report Ex.D.1 shows that the Dog Squad was summoned to trace the assailants and in it, it is stated that some unidentified persons had committed the murder. If Karunanithi (P.W.3) had seen the occurrence, as stated by him, there would have been no necessity for the police to have called the Dog Squad nor would the report bear the finding that the assailants were unidentified persons. Balu (P.W.1) has further embroidered a story by saying that he fainted at 12 in the mid night on seeing the body of his son and gained consciousness only at 07.00 a.m., on the next day. Had he fainted, he would have been carried to the hospital by his own family members or by the villagers, who, admittedly, had gathered around the



body after stopping the on-going cultural programme. The fact that he swooned on seeing the body has not been stated by him in his complaint (Ex.P.1).

10. As regards the charge of conspiracy, the prosecution projected the evidence of Rasu (P.W.4), who is said to have overheard A-1, A-2 and A-3 at around 08.00 p.m., on 05.05.2009 in Muniyaiah Temple scheming to eliminate the deceased. Rasu (P.W.4) is none other than the co-brother of Balu (P.W.1). If Rasu (P.W.4) had seen A-1, A-2 and A-3 conspiring to eliminate the deceased at 08.00 p.m., on 05.05.2009, the first thing he would have done is to have gone and alerted Balu (P.W.1) or the deceased of the impending attack. All these facts have been borne in mind by the Trial Court for acquitting the accused and we have no reasons to disagree with the findings.

11. As alluded to above, when the evidence on record militates against common sense and common course of natural events of human conduct, a well reasoned order of acquittal should not be reversed.

12. In the result, this appeal is devoid of merits and accordingly, the same stands dismissed.

Sd/-

Assistant Registrar (A.D.II)

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/ /2020

Sub Assistant Registrar(CS)

To

- 1.The Additional Sessions Judge -cum-
Fast Track Court, Ramanathapuram.
- 2.The Inspector of Police,
Thiruvadanai Police Station, Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Record Keeper, Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.K.Veluchamy, Advocate Sr.No.11667

AKM/08.05.2020 /6P-6C/

Judgment made in
Criminal Appeal (MD)No.85 of 2018