

State by Vs. Subramanian

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Court : Chennai

Decided On : Oct-27-2014

Judge : A.Selvam

Appellant : State by

Respondent : Subramanian

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 27.10.2014 CORAM THE HONOURABLE MR.JUSTICE A.SELVAM and THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL(MD)No.191 of 2006 State by The Inspector of Police, Radhapuram Police Station.

(Crime No.186 of 1999).Appellant/ Complainant versus Subramanian .Respondent/ Accused Criminal appeal is filed under Section 378 of the Code of Criminal Procedure, 1973, against the Judgment dated 20.04.2001 passed in Sessions Case No.36 of 2000 by the Second Additional Sessions Court, Tirunelveli.

!For Appellant : Mr.C.Mayilvahana Rajendran, Addl.

Public Prosecutor.

^For Respondent : Mr.V.J.Kumaravel (No appearance) :

JUDGMENT

(Judgment of the Court was made by A.SELVAM, J.The order of acquittal dated 20.04.2001 passed in Sessions Case No.36 of 2000 by the Second Additional District and Sessions Court, Tirunelveli is being challenged in the present Criminal Appeal.

2.The crux of the case of the prosecution is that the accused by name Subramanian is the husband of deceased Valli and both of them have had despair against each other because of the alleged suspicious conduct of the deceased.

Due to the alleged suspicious conduct of the deceased, in the house of the accused, he attacked the deceased by using a knife and due to his overtacts the deceased has had passed away.

After occurrence, brother of the accused by name Shanmugam has given a statement to the concerned Village Administrative Officer, who has been examined as P.W.2 and P.W.2 has handed over the said complaint to the Sub Inspector of Police (P.W.10) and the same has been registered in Crime No.186 of 1999 under Section 302 of the Indian Penal Code.

The statement alleged to have been given by the de facto complainant has been marked as Ex.P.3.

3.On receipt of Ex.P.3, the Investigating Officer (P.W.13).has taken up investigation and made arrangements to conduct autopsy and P.W.11 has conducted autopsy on the body of the deceased and found the following internal and external injuries: 1.A stab injury of (torn) shape horizontal 2 c.m.X05 c.m.which puncturing the abdominal muscles, (nc) and peritoneum just 0.5 c.m.above (torn)umbilicus.

2.A 'V' shaped stab injury between at the level of 4th and 5th rib of 2 c.m.X05 c.m.of each limb of the 'V' which piercing through the intercostal muscle of 5th and 6th ribs pleural cavity of punctured the lower lobe of left lung of 1 c.m.X05 c.m.This injury is over(torn) axilla just 5 c.m.below the apex of the axilla in the mid axillary line.

A Tag of skin suspending in between the limbs of 'V' size of 2 c.m.?.

V ? 2 c.m.attached portion with the body that too is 2 c.m.3.A stab injury over the middle of back, just 1 c.m.lateral and right to the midline of the body, oblique, fusi (nc) shape 2.5 c.m.X05 c.m.which punctured the back(torn) the abdominal part of (nc) at level of just 4 c.m.above the bifurcating Abdominal forta dark colored blood in coming out of this injury.

The Postmortem Report has been marked as Ex.P.14.

The other Investigating Officer viz., P.W.14, has completed investigation and filed a final report on the file of the Judicial Magistrate's Court, Valliyoor and the same has been taken on file in P.R.C.No.17 of 1999.

The case has been committed to the Court of Sessions and taken on file in Sessions Case No.36 of 2000.

4.The trial Court after hearing both sides and upon perusing the relevant records has framed a charge against the accused under Section 302 of the Indian Penal Code and the same has been read over and explained to him.

The accused has denied the charge and claimed to be tried.

5.On the side of the prosecution, P.W.s.1 to 14 have been examined and Exs.P.1 to P.22 and M.Os.1 to 9 have been marked.

6.When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime.

However, no oral and documentary evidence have been let in on the side of the accused.

7.The trial Court, after considering the available evidence on record, has given a specific finding to the effect that the prosecution has failed to establish the alleged guilt of the accused punishable under Section 302 of the Indian Penal Code and consequently acquitted him.

Against the order of acquittal passed by the trial Court, the present Criminal Appeal has been filed by the Investigating Officer as appellant.

8. Even though this Criminal Appeal has been posted today, the learned counsel appearing for the respondent/accused has not made his appearance.

Under the said circumstances, this Criminal Appeal is disposed of on merits on the basis of the contention put forth on the side of the appellant/Investigating Officer.

9. The consistent case put forth on the side of the prosecution is that the accused is the husband of the deceased by name Valli and both of them have lived together prior to occurrence and since the deceased has had suspected fidelity, the accused has attacked on her person by using a knife and thereby caused fatal injuries and due to that she has passed away.

10. The prosecution has set the law in motion only on the basis of the statement alleged to have been given by the de facto complainant by name Shanmugam to the concerned Village Administrative Officer, who has been examined as P.W.2.

Even though the prosecution has set the law in motion only on the basis of statement alleged to have been given by P.W.1, he has not virtually supported the case of the prosecution and he has become a hostile witness for the reasons best known to him.

The statement alleged to have been given by him has been marked through P.W.2 as Ex.P.3, wherein the alleged overtacts of the accused on the person of the deceased have been mentioned.

The other connected witnesses namely Murugesan, Kannan and Selvi (P.Ws.3 to 5) have also become hostile witnesses.

11. The learned Additional Public Prosecution has repeatedly contended that the occurrence has taken place inside the house of the accused and deceased and since the occurrence has taken place inside the house of the accused and deceased, by invoking Section 106 of the Indian Evidence Act, 1872, the Court can very well come to a conclusion that the accused has murdered the deceased

and the trial Court without invoking the said Section has simply acquitted the accused on the basis that all connected witnesses have become hostile witnesses and therefore the approach made by the trial Court for acquitting the accused is erroneous.

12.As rightly pointed out on the side of the appellant, the entire occurrence has taken place inside the house of the accused and deceased.

As pointed out earlier, deponent of Ex.P.3(P.W.1) has become a hostile witness.

Likewise, P.Ws.3 to 5 have also turned hostile and virtually even an iota of evidence is not available so as to point out the alleged guilt of the accused.

Even the Court can very well say that absolutely no evidence is available to the effect that prior to occurrence both the accused and deceased have been seen together.

The entire arguments put forth on the side of the appellant is based upon Section 106 of the Indian Evidence Act, 1872, wherein it has been clearly stated that if any fact is especially within the knowledge of a particular person, the entire burden of proving lies upon him.

In the instant case, no piece of evidence is available so as to come to a conclusion that prior to occurrence both the accused and deceased are seen together under same roof.

Since the said aspect is totally absent on the part of the prosecution, it is highly impossible to invoke provisions of Section 106 of the Indian Evidence Act, 1872.

13.The learned Additional Public Prosecutor has made an inert attempt by way of quoting the answers given by the accused to the questions posed to him under Section 313 of the Code of Criminal Procedure, 1973.

In the instant case, it is needless to say that absolutely no incriminating evidence is available against the accused.

Since no incriminating evidence is available against the accused, he need not say anything about his stand.

Under the said circumstances, the contention putforth on the side of the appellant is sans merit.

14.The trial Court after considering the available evidence on record has rightly acquitted the accused and in view of the discussion made earlier, this Court has not found any force in the contention putforth on the side of the appellant and altogether the present Criminal Appeal deserves to be dismissed.

15.In fine, this Criminal Appeal deserves dismissal and accordingly is dismissed.

The order of acquittal passed in Sessions Case No.36 of 2000 by the Second Additional District and Sessions Court, Tirunelveli is confirmed.

To 1.The Second Additional District and Sessions Court, Tirunelveli.

2.The Inspector of Police, Radhapuram Police Station.

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

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