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Court : Chennai Madurai

Decided On : Nov-29-2016

Judge : S. Nagamuthu &Amp; M.V. Muralidaran

Appeal No. : CRL.A [MD]. No. 91 of 2016 & Crl.MP (MD). No. 2375 of 2016

Appellant : Nandakumar

Respondent : The State Through the Inspector of Police, Thathiengarpet Police Station, Trichy District

Judgement :

(Prayer: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction dated 09.02.2016 made in S.C.No.92 of 2014, on the file of the learned Principal Sessions Judge, Tiruchirappalli.)

JUDGMENT

S. Nagamuthu, J.

1. The appellant is the sole accused in S.C.No.92 of 2014, on the file of the learned Principal Sessions Judge, Tiruchirappalli. He stood charged for the offences punishable under Sections 449 and 302 of the Indian Penal Code. By

Judgment dated 09.02.2016, the Trial Court acquitted the accused from the charge under Section 449 of the Indian Penal Code, but convicted the accused and sentenced him, as detailed below:- Section of Law

Sentence of imprisonment

Fine amount

302 IPC

To undergo imprisonment for life.

Rs.1,000/- in default to undergo simple imprisonment for six months.

Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:-

The deceased, in this case, was one Mr.Sundarraj @ Moorthy. PW-1 to PW-3 are the brother, the father and the mother respectively of the deceased. PW-4 to PW-6 are the wife, the sister-in-law and another sister-in-law of the deceased. PW-1 to PW-4 were all residing at Thandavampatti Village in Karur Taluk, Tiruchirapplli District. They had a farm house in the same village, where the deceased was residing with his wife - Mrs.Lakshmi [PW-4]. The accused is a resident of Thavittupalayam Village in Karur District.

2.2. Twelve years before the occurrence, the deceased had fallen in love with PW-4 and decided to marry her. But, PW-1 to PW-3 and the other family members did not agree for the same. The accused is a friend of the deceased. The accused took the deceased and PW-4 to Karur District and performed marriage for them. After the marriage, when the deceased and PW-4 returned to the house of PW-2, PW-2 and the other family members did not accept the marriage. Therefore, the deceased was residing along with PW-4 in the farm house. The accused being a friend of the deceased used to visit the house of the deceased often.

2.3. PW-5 - Mrs.Rajeshwari is the sister of PW-4. She is a divorcee. For quite sometime, the accused had developed illicit intimacy with PW-5. But, later on, the said relationship was stopped.

2.4. Out of the wedlock between the deceased and his wife [PW-4], there was no child born to them. Therefore, the deceased took PW-4 to a hospital at Salem for treatment. While PW-4 was so undergoing treatment in the hospital, PW-5 stayed with her in the hospital to help her. At that time, as a friend of the deceased, the accused visited the hospital along with his wife to enquire about the health of PW-4. At that time, the accused saw PW-5. It is alleged that from the said meeting, the accused had renewed his relationship with PW-5. It is further alleged that the accused, since had no child, wanted to marry PW-5. But, PW-1 to PW-3 opposed the same.

2.5. While so, on 19.01.2013, the accused came to the house of PW-1 in his motorcycle. At that time, the accused was fully in a drunken state. When PW-1 enquired him, he told that there was a domestic quarrel between him and his wife and therefore, he had come there to make a stay for one or two days so as to relax. PW-1 allowed him to stay as guest. While so staying, the accused went along with PW-1 and the other family members to their field to help them in their agricultural activities. In the meanwhile, he used to go to Kannanur or Thapettai in his motorcycle to purchase Parotta and also liquor. He brought liquor and eight Parotta in the farm house and stayed there.

2.6. On 21.01.2013, the accused again went to Kannanur along with the deceased in his motorcycle. They purchased Brandi bottles and Parotta and returned to the farm house. PW-1 had gone to his house situated in the village. PW-2 and PW-3 were working in the field. The deceased and the accused alone were in the farm house. It is alleged that both of them took Brandi and ate Parotta inside the house.

2.7. Around 03.00 PM, when PW-2 and PW-3 were in the field, they had a noise emanating from the farm house indicating a quarrel between the accused and the deceased. Shortly, thereafter, PW-1 returned to the field. PW-2 and PW-3 told him to go and see as to what was the quarrel. Accordingly, PW-1 went to the farm house and found the house bolted from inside. PW-2 and PW-3 went to the

backyard of the said house. The backyard door was also bolted from inside. Then, PW-1 knocked at the doors. For sometime, there was no noise from the house. After sometime, the accused opened the door and came out. At that time, there were bloodstains on his cloth. He was having a knife also in his hands. He pushed PW-1 down, rushed towards the motorcycle and fled away from the scene of occurrence in the said motorcycle.

2.8. PW-1 and PW-2 rushed to the farm house and to their shock, they found the deceased lying in the room with multiple injuries. There was a hammer lying by the side of the deceased. There is a pool of blood in the house. They found the deceased dead. On hearing their alarm raised, the villagers gathered there. Immediately, PW-1 went to Thapettai Police Station and made a complaint at 06.30 PM, on 21.01.2013. On the said complaint, a case in Crime No.16 of 2013 was registered by PW-17 under Section 302 of the Indian Penal Code against the accused. EX-P1 is the complaint and EX-P17 is the First Information Report. Both the documents were forwarded to the Court, which were received by the learned Judicial Magistrate at 10.00 PM on the same day.

2.9. The case was taken up for investigation by PW-19, the then Inspector of Police. He went to the place of occurrence, around 06.30 PM, on 21.01.2013 prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of the witnesses. He recovered bloodstained earth and sample earth and also a hammer lying by the side of the dead body. Then, he conducted inquest on the body of the deceased. EX-P22 is the inquest report. Then, he forwarded the dead body for postmortem.

2.10. PW-11 - Dr.P.Velmurugan conducted autopsy on the body of the deceased. EX-P7 is the postmortem certificate. He noticed the following injuries:-

"External Examination: Both eyes partially closed. Mouth partially opened. Tounge inside the mouth. Blood staining present over the chest andabdomen and both upper limbs and forehead deep circular identification mark seen over the right side of the scalp 3 x 3 in the underlying right temporal bone fractured. Lacerate wound right eyebrow 3x2x1 cm present. Deep incised wound over the front of the neck (N.C) on right side. 4 x2 x2 with underlying blood vessels cut. Trachea cut opened

anteriorly.

Internal Examination:- Hand and neck: Fracture right temporal bone present. Contains partially digested food material measuring 300 ml".

He forwarded the visceral organs to the Forensic Lab for examination. The report revealed that there was neither poison nor alcohol found in the internal organs of the deceased. Finally, PW-11 gave opinion that the deceased would appear to have died of shock and hemorrhage due to multiple injuries found on the body of the deceased. He further opined that the injuries found on the body of the deceased could have been caused by weapons, like knife and hammer, [MO-1 and MO-2].

2.11. PW-19, during the course of investigation, recovered the bloodstained cloth from the dead body of the deceased. He examined many more witnesses and recorded their statements. In the meanwhile, the accused had surrendered before the learned Judicial Magistrate at Kulithalai. PW-19 took police custody of the accused, on the orders of the learned Judicial Magistrate, from 31.01.2013 to 02.02.2013. While in custody, at 10.00 AM, on 01.02.2013, the accused gave a voluntary confession, in which he disclosed the place, where he had hidden the knife. In pursuance of the same, the accused took the police and the witnesses to the hide out and produced MO-1, knife and MO-7 Hero Honda Motorcycle, bearing Registration No.TN-47-AX-3386. PW-19 recovered the same under separate mahazers.

2.12. On returning to the Police Station, PW-19 forwarded the accused to the Court for judicial remand. He also handed over the material objects to the Court. At his request, the material objects were sent for chemical examination. The report revealed that there were human bloodstains on all the material objects, including the knife and hammer. On completing the investigation, he laid charge sheet against the accused.

2.13. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the

charges, on the side of the prosecution, 19 witnesses were examined, 25 documents and 7 material objects were marked.

2.14. Out of the said 19 witnesses, PW-1 to PW-3 have stated about the relationship between the accused and the deceased. They have further stated that the accused came to the house of the deceased and stayed with him. They have further stated that on the day of occurrence, the accused and the deceased went together to the nearby town, purchased Brandi Bottles and Parotta and returned to the farm house, where they together consumed liquor and also ate Parotta. They have further stated that PW-2 and PW-3 heard commotion from the house around 03.00 PM. After sometime, it stopped. After PW-1 returned, they told the same to him. He went to the farm house and knocked at the doors. At that time, the accused came out of the house with bloodstained clothes and fled away from the scene of occurrence.

2.15. PW-4 and PW-5 have turned hostile and they have not supported the case of the prosecution in any manner. PW-6, yet another sister-in-law of the deceased and PW-7, the family member of the deceased have not stated anything incriminating against the accused. PW-8 and PW-9 have turned hostile and they have not supported the case of the prosecution in any manner. PW-10 has stated that he heard about the occurrence and came to the place of occurrence. PW-11 has spoken about the autopsy conducted by him and his final opinion regarding the cause of death.

2.16. PW-12, a Scientific Officer from the Forensic Lab, has stated that he examined the material objects and found human bloodstains on all the material objects, including the hammer and knife. PW-13, the Head Clerk of the Court of learned Judicial Magistrate, has stated that she forwarded the material objects to the Forensic Lab for chemical examination. PW-14 has spoken about the photograph taken by him at the place of occurrence from various angles, as directed by PW-19. PW-15, the Village Administrative Officer, has spoken about the disclosure statement made by the accused and the consequential recovery of knife [MO-1] and Motorcycle [MO-7] from his possession. PW-16, a Head Constable, has stated that he handed over the dead body to the hospital for

postmortem, as directed by PW-19. PW-17 has spoken about the registration of the case, on the complaint made by PW-1. PW-18 has turned hostile and he has not supported the case of the prosecution in any manner. PW-19 has spoken about the investigation conducted by him and the filing of final report.

2.17. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. On his side, he examined one Mr.S.Chandrasekar as a defence witness. He has stated that the accused was working as a Driver under one Mr.Raja Murugan. DW-1 was then working as an Accountant under the said Mr.Raja Murugan. The business of Mr.Raja Murugan was at Kullampalayam, Karur District. The accused was known to him, because the accused was also working under the same employer. He has further stated that on 21.01.2013, the accused had turned up for duty and around 02.00 PM, he drove the Car carrying his employer - Mr.Raja Murugan to various places and returned home only at 10.00 PM. Thereafter, from 22.01.2013 onwards, the accused did not turn up for duty. Thus, the accused has examined him to prove his plea of alibi. EX-D1 is the letter given by his employer. [The same is eschewed from consideration, because it is not admissible in evidence]. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

3. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

4. This is a case based on circumstantial evidence. In a case of this nature, it is the bounden duty of the prosecution to prove the circumstances projected by it beyond reasonable doubt and all such proved circumstances should establish a close link with each other and form a complete chain unerringly pointing to the guilt of the accused and there should not be any other hypothesis, which will be inconsistent with the guilt of the accused. Keeping this broad principles in our mind, let us now examine the circumstances projected by the prosecution so as to

see whether such circumstances have been proved.

5. The first and foremost circumstance is the relationship between the accused and the deceased. It is the positive case of the prosecution that twelve years before the occurrence, it was only this accused, who performed the marriage of the deceased with PW-4. PW-1 to PW-3 and the other family members of the deceased opposed it stoutly. Even after the marriage, they did not accept the same. That is how, the accused was living with PW-4 separately in a farm house. The accused was moving with the deceased in a friendly manner. He used to visit the house of the deceased frequently. It is also in the evidence of PW-1 to PW-3 that the deceased wanted to marry PW-5 - Mrs.Rajeshwari. But, PW-5 had developed illicit intimacy with the accused. This is stated to be the motive for the occurrence. In our considered view, it is difficult to believe that there was any ill-feeling between the accused and the deceased. The very fact that the accused came to the house of the deceased, stayed there for three days, took the deceased to the nearby town for taking liquor and stayed with him in the farm house, would all go to show that they were only friends and not enemies. Even on the day of occurrence, according to PW-1 and PW-2, the accused took the deceased to the nearby town in his motorcycle, returned with Brandi Bottles and Parotta and they together inside the house drank Brandi and ate Parotta, just before the occurrence. Though this fact is disputed by the defence, assuming that this fact is true, this would only go to establish that there was a friendly relationship between the deceased and the accused and there was no ill-feeling between them, as it is alleged by the prosecution. Thus, the prosecution, in our considered view, has failed to prove the motive.

6. On the day of occurrence, it is stated that immediately before the occurrence, PW-2 and PW-3 found the deceased and the accused together inside the farm house. They had just returned in the motorcycle of the accused from a nearby town with Brandi Bottles and Parotta. They sat together, drank Brandi and ate Parotta. By speaking about this fact, PW-1 to PW-3 have made an attempt to prove the presence of the accused lastly in the company of the deceased.

7. The learned counsel for the appellant would submit that this fact is not true. In order to substantiate his contention, the learned counsel would take us through the evidence of PW-11, Dr.P.Velmurugan, who conducted autopsy on the body of the deceased, the postmortem certificate as well as the report of the chemical examiner. The chemical examination of the internal organs of the deceased would reveal that there was no alcohol found in the dead body. Had it been true, as spoken by PW-1 to PW-3 that the deceased had drunk and returned with the accused from the nearby town in the motorcycle with Brandi Bottles and Parotta, certainly, in the internal organs, alcohol would have been found. The very fact that there is no alcohol found in the internal organs and the very fact that there is no either undigested or partly digested Parotta found in the stomach of the deceased would go to show that the evidence of PW-1 to PW-3 that the deceased had just returned along with the deceased in the motorcycle, drank liquor and ate Parotta before the occurrence around 02.00 PM cannot be true.

8. PW-11, Dr.P.Velmurugan, has further opined that he had found only partial digested food particles in the stomach. He has further opined that considering the hardness of Parotta, it would normally take sometime to get fully digested in the human body. In the instant case, around 02.30 PM, they were found together eating Parotta and the deceased was found dead around 03.00 PM, just hardly within half an hour. It does not strike our common sense that Parotta would have been partially digested within less than half an hour from the time of eating. Thus, from the medical evidence, which is contrary to the eye-witness account, we find it difficult to believe the evidences of PW-1 to PW-3 that the accused and the deceased lastly seen inside the house, taking Brandi and eating Parotta.

9. In this regard, the evidence of PW-4, the wife of the deceased, also assumes importance. Of course, she has turned hostile. She has stated that she stayed in the main house of the deceased in the village. When she went to the farm house, she found her husband dead lying in a pool of blood and she only passed on information to others. The learned Additional Public Prosecutor would submit that since PW-4 has turned hostile, this part of her evidence cannot be taken note of. Though we are not inclined to believe the evidence of PW-4, we are prepared to believe only a part of her evidence, as there appears to be some truth in the said

statement of PW-4.

10. There is yet another aspect, which needs discussion. PW-2 and PW-3 have stated that just before 03.00 PM, there was a commotion inside the farm house. Thereafter, it stopped. When PW-1 came, they told him about the same. Then, he went to the farm house of the deceased. According to him, the earlier version in EX-P1, which has been duly proved, is that he went towards northern entrance of the house. He found the door bolted from inside. He knocked at the same. There was no response. Soon thereafter, the accused opened the door from inside and came out with a knife in his hand. There were bloodstains both in the knife and the hammer. The accused pushed him down, ran towards the motorcycle and fled away from the scene of occurrence. This happened just in front of the northern main door of the house. But, PW-2 has stated that PW-1 had gone to the southern side door of the house, whereas PW-2 and PW-3 went to the northern side entrance of the house. According to PW-2, PW-1 knocked at the southern side door of the house. He has further stated that the accused ran out from the northern side entrance of the house, pushed down PW-1 and ran away from the scene of occurrence in his motorcycle. Thus, there is a material contradiction as to whether PW-1 was standing near the northern side door and whether he was pushed down by the accused or PW-2 was standing on the northern side entrance of the house and the accused pushed down PW-2 and ran away from the scene of occurrence. Similarly, who was standing near the southern side entrance of the house is also contradictory. Thus, this contradiction, in our considered view, is a material contradiction, which creates doubt in the evidences of PW-1 to PW-3.

11. As we have already pointed out, according to the case of the prosecution, the accused was found fleeing away with bloodstained cloth and bloodstained knife. But, PW-1 to PW-3 have not stated that the accused was having bloodstained knife in his hand, whereas it is the positive case of the prosecution that the accused ran away from the scene of occurrence with knife. It is the further case of the prosecution that after the accused was taken to the police custody, in pursuance of the disclosure statement made by him, knife [MO-1] was recovered, on 01.02.2013. But, PW-2 has admitted, during cross-examination, that the knife and the hammer were found nearby the dead body of the deceased and they were

recovered by the police. PW-3 has also stated so. Thus, the story of the prosecution that the accused ran away with bloodstained knife and the same was recovered from his possession, on 01.02.2013, cannot be believed.

12. Now, let us turn to the evidence of DW-1. DW-1 is a co-worker of the accused. According to him, on the day of occurrence, the accused drove the Car carrying his employer, went to several places and returned home only at 10.00 PM. Thus, the case of the accused is that that he was elsewhere along with his employer between 02.00 PM and 10.00 PM on the day of occurrence. During cross-examination, however, DW-1 has stated that he did not know as to whether the accused was all along with his employer between 02.00 PM and 10.00 PM.

13. Referring to the above, the learned Additional Public Prosecutor would submit that the accused has not proved the plea of alibi by examining the employer. It is his contention that no weightage could be given to the evidence of DW-1.

14. In our considered view, in the instant case, we need not examine as to whether the plea of alibi has been proved by the accused or not, because the prosecution has failed to prove that it was this accused, who was present at the place of occurrence in the company of the deceased lastly. It is too well settled that if only the prosecution is able to prove that the accused was lastly found in the company of the deceased and that from the circumstances projected by the prosecution, it could be concluded that the accused was the one, who caused the death of the deceased, then only, the question of disproving the said fact by proving the plea of alibi would arise. Here, in this case, since the involvement of the accused in the alleged crime has not been proved beyond reasonable doubts, there is no need for the accused even to prove the plea of alibi.

15. From the foregoing discussions, as we have already narrated, the prosecution has not proved the motive and also the fact that the accused was lastly seen in the company of the deceased in the farm house and that the accused was found fleeing away from the scene of occurrence with knife. Thus, none of the circumstances projected by the prosecution has been proved beyond reasonable doubts. In other words, we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the accused is entitled for acquittal.

16. In the result, this Criminal Appeal is allowed; the conviction and sentence imposed on the appellant, by Judgment dated 09.02.2016, made in S.C.No.92 of 2014, on the file of the learned Principal Sessions Judge, Tiruchirappalli, is set aside and the appellant is acquitted. Fine amount, if any, paid by the appellant shall be refunded to him.

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