

B. Chitra Vs. State, Rep. By Inspector of Police, Thanjavur District

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Court : Chennai Madurai

Decided On : Nov-29-2016

Judge : S. Nagamuthu & M.V. Muralidaran

Appeal No. : Criminal Appeal(MD)No. 85 of 2015

Appellant : B. Chitra

Respondent : State, Rep. By Inspector of Police, Thanjavur District

Judgement :

(Prayer: This Criminal Appeal is filed under Section 374(2) of Cr.P.C to set aside the Judgment and Conviction dated 26.02.2015, by the II Additional District and Sessions Court, Thanjavur in S.C.No.131 of 2012 and acquit the Appellant.)

M.V. Muralidaran, J.

1. The appellant is the second accused in S.C.No.131 of 2012, on the file of the II Additional District and Sessions Judge, Thanjavur. The trial Court framed charges under Section 302, 120(b), 364, 342 r/w 34, 467 and 201 of I.P.C against this Appellant/Accused.
2. The trial Court by Judgment dated 26.02.2015 convicted the appellant under Section 302 of I.P.C for life imprisonment and to pay a fine of Rs.1000/-, in default further undergo rigorous imprisonment for three months, convicted and sentenced

to undergo one year imprisonment under section 342 under IPC, further sentenced convicted and sentenced to undergo three year imprisonment, imposed fine of rupees five hundred, in default to pay the fine amount three months imprisonment, convicted and sentenced to undergo five years imprisonment under section 201 IPC, imposed fine of rupees thousand, in default three months imprisonment is ordered. The 2nd accused was found not guilty of other offences under sections 120 (B) r/w 302 and 364 of I.P.C and acquitted u/s. 235(i) Cr.P.C. The sentence imposed on the accused is ordered to run concurrently.

3. The case of the prosecution is that the second accused Chitra is the wife of deceased first accused. The deceased Mariammal is the Mother-in-law of the second accused and the mother of deceased first accused Baskar. On 08.12.2010, while P.W-1 Natarajan V.A.O. of Swamimalai was in duty at his office along with his assistant Seenivasan, and at about 8.30 p.m. one Baskar s/o Pazhani of Kandogi Street was standing waveringly in front of the office and P.W-1 asked Baskar, he told the V.A.O. that he and his wife Chitra had murdered his mother Mariammal regarding property dispute. Since he is afraid of to go to Police Station, he came to the office of P.W-1 to seek help. The P.W-1 has recorded the statement given by the said Baskar and obtained his signature after reading the same to him. The first accused Baskar told the VAO that he murdered his mother as he had no other way. The P.W-1, VAO handed over the first accused Baskar and the statement recorded by him to the Sub-Inspector of police, Swamimalai along with Ex-P1 complaint. The confession given by the 1st accused Baskar is Ex-P2. The PW-16 Nagalakshmi, the Sub-Inspector of Police registered a case in Cr.No.380 of 2010 Under Sections 120B r/w 302, 364,342 r/w 34, 302 r/w 34, 467 and 201 of I.P.C on the basis of the complaint given by PW1.

4. After filing the charge sheet before the Learned Judicial Magistrate, Kumbakonam in P.R.C.No.94 of 2011, the case was made over to the Learned IInd Additional District and Sessions Judge, Thanjavur and the same was numbered as S.C.No.131/2012. Pending trial 1st accused Baskar died and therefore the charges against him got abated. In this case, 20 witnesses were examined as prosecution side witnesses and 28 Exhibits were marked on the side of prosecution and there are 12 material objects produced before the Trial court.

But there was no witness and exhibits on the side of the accused.

5. In this case, PW-1 Natarajan, VAO of Swamimalai deposed that on 8.12.10, while he was in duty at his office along with his assistant Seenivasan, and at about 8:30 pm, the 1st accused Baskar S/o. Pazhani of Kandogi Street of Swamimalai was standing waveringly in front of his office. When P.W-1 asked Baskar, he told him that he and his wife Chitra had murdered his mother Mariammal regarding property dispute. Since he is afraid of to go to police station, he came to the office of P.W-1 to seek help. The P.W-1 has recorded the statement given by the said Baskar and obtained his signature after reading the same to him. PW-2 Seenivasan also given evidence as that of PW-1.

6. PW-3 Shantha deposed that she is the younger sister of the 1st Accused deceased Baskar and residing at Mannarkudi. The 2nd accused Chitra is her brother s wife. The deceased Mariammal is her mother. In the Tamil month of Margali 2010, her brother Baskar asked his mother to come over to Swamimalai where a negotiation was held with regard to partition of the property of Mariammal in the house of Sundara Vimalanathan. But her mother not agreed for partition and therefore she was taken by the accused 1 and 2 to their house and the same was informed to PW-3 by her mother. Thereafter PW-3 contacted her mother over phone, but the mobile phone of her mother went switched off. So PW-3 requested PW-5 Shanthi to ascertain whereabouts of her mother. PW-5 informed PW-3 at about 7 P.M that her mother was beaten up by the accused 1 and 2. Therefore PW-3 along with other relatives went to Swamimalai Police Station at about 9.30 P.M. From Police station, a constable and another one person were directed to go over to PW-3 s brother s house. Thereafter PW-3 was informed that her brother house was locked and she directed to break open the lock. Accordingly the lock was broken where her mother s dead body was found by covering brown sheet with blood stains.

7. PW-4 Anbalagan who is the husband of PW-3 deposed that he accompanied with PW-3 and 10 others to Swamimalai Police Station. He narrated the same thing as that of his wife PW-3.

8. PW-5, Shanthi who is the Daughter-in-law of the deceased Mariammal deposed that after receiving phone from PW-3, she asked PW-6, Sornalatha who is her daughter to go and visit the house of the 1st accused Baskar. Her daughter after visit informed to her mother PW-5 that 1st accused Baskar was holding in a drunken mood. Thereafter she informed PW-3 that she is suspecting something therefore asked PW-3 to come over to Swamimalai. Accordingly PW-3 came to the police station. The police asked her to identify the house of 1st accused Baskar. Accordingly she identified the house and the same was break open where the police found the body of the deceased Mariammal.

9. PW-6, Sornalatha who is the daughter of PW-5 deposed that on 08.12.2010, after school was over she visited the shop of her mother PW5. Her mother asked her to visit the house of 1st accused Baskar who is none other than the uncle of PW-6. She also narrated the same thing as that of her mother PW-5. In cross, PW-6 stated that one Shanmugavel had tutored her how to give evidence in the Court.

10. PW-14, who is the Assistant Director of Forensic Science deposed that out of 13 material objects produced before him for inspection, object No.1. Wooden Reaper and object No.5. Coir bag measuring 92 x 62 cm are not having blood stains and other material objects are having blood stains.

11. PW-18, Soundarajan who is the Investigation officer deposed that he recovered material objects in presence of the accused on 09.12.2010 at about 3.30 A.M in front of the house of the deceased Mariammal. In his evidence, he has specifically stated that he recovered the blood stained wooden reaper measuring 105 cm and two blood stained Coir bags. PW-18 during his cross admitted that PW-3 has not stated to him that the panchayat was held in the house of Vimalanathan and also the deceased Mariammal was switched off in the 161(3) Statement given to him. Though Sundara Vimalanathan was shown in the list of witness, he was not examined despite obtaining 161 (3) statement from him.

12. On the evidence taken by the trial court namely IInd Additional District and Sessions Judge, Thanjavur came to the conclusion that the charges laid against the 2nd accused were proved by the circumstantial evidence led by the

prosecution.

13. In the above said circumstances, though there is no direct eye witness, the learned Trial Judge convicted the accused for the offences under sections 342, 302 r/w 34, 467 and 201 of I.P.C. Against the said conviction the present appeal has been filed.

14. We have heard Mr.M.Karunanidhi, learned counsel for the appellant and Mr.K.S.Durai Pandian, learned Assistant Public Prosecutor for the respondent and we have also perused the records carefully.

15. In this case, going through the evidences and documents produced by the prosecution, the investigation conducted by the prosecution is not proper. At the foremost, let us consider whether the prosecution established the alleged motive for the occurrence, which was spoken to by PW-3 and PW-5 are none other than the daughter and daughter-in-law of the deceased. First, we have to see the evidence of PW-3 Shantha who is the daughter of the deceased Mariyammal deposed that she received phone call from her brother s wife PW-5 Shanthi at 7.00 p.m. in the month of October 2010. PW-5 Shanthi stated to PW-3 that her mother was beaten up by tying her hands and legs. She never stated in her evidence that PW-4 Anbalagan who is the husband of PW-3 accompanied with her. She further stated that she only directed the persons went to the occurrence place to break open the lock. PW 3 and PW-5 deposed that already there was a dispute between the accused and the deceased Mariyammal with regard to the partition of property. The deceased stated that it will be considered only after return of her younger son, i.e the husband of PW-5 from foreign country. But the prosecution has not established the motive beyond reasonable doubt. Whereas PW-5 deposed that she informed to PW-3 Shantha that she is having some doubt and asked PW-3 to come over to Swamimalai. There are contra evidence with regard to information of beating the deceased Mariyammal and therefore the evidences of PW-3 and PW-5 have no credibility. A reading of the evidence of PW-6 clearly revealed that she is a tutored witness. PW-6 has categorically admitted that one Shanmugavel tutored her how to give evidence in the court.

16. Now we have to consider extra judicial confession said to have been given by the 1st accused to PWS-1 and 2 after the commission of the offence. It is settled law that extra judicial confession is a very weak piece of evidence. Here, though a claim was made that the 1st accused made a confessional statement to PW-1, VAO of Swamimalai, he died pending trial. Therefore the extra judicial confession given by the deceased 1st accused can't be the basis to convict the 2nd accused.

17. Now let us examine the evidence of PW-4 Anbalagan who deposed that his wife PW-3 accompanied with him. When PW-4 seeing the body of the deceased Mariyammal, there are certain Cigarette marks in the dead body. He further deposed that he found ink in the left hand thumb of the deceased Mariyammal. Whereas PW-20 Doctor Suganthi who conducted autopsy on the dead body deposed that there was no such ink in the left hand thumb. She has not noted the cigarette mark on the dead body except the injuries mentioned by her before post mortem.

18. The learned counsel for the appellant argued that PW-17 who is the hand writing expert deposed that the documents sent to him with the Thumb Impression said to have been of the deceased Mariyammal, no name is mentioned in the documents namely blank white paper, Rs.100 and Rs.20 stamp papers. PW-17 also admitted that two Thumb Impression said to have taken from the LTI deceased Mariyammal, have not mentioned in the said documents that it was procured from the dead body of Mariyammal. So the prosecution has not established the fact that the thumb impression contained in blank stamp papers said to have recovered from the deceased house is that of the deceased Mariyammal.

19. The entire reading of evidence of PW-18 Investigation Officer reveals that it was not corroborated with the confession statement obtained by him under Section 161 (3) Cr.P.C from PWs 3 to 11. The evidence of PW-18 is not helpful to the case of the prosecution. Further the other evidences of PW-3 to Pw-6 are contrary to each other and the same cannot be the basis for conviction of the appellant herein. Apart from that the body of the deceased was found in between the house of 1st accused Baskar and the deceased Mariyammal as per the

evidence of PW-18. Whereas all other witnesses namely PW-3 to PW-6 deposed that the body of Mariyammal was found in the house of 1st accused Baskar. That apart, it is a vital factor that PW-18 had shown recovery of two material objects 1. Blood Stained Wooden Reaper and 2. Blood Stained two Coir Bag from the occurrence place. Whereas PW-14 the Assistant Director of Forensic Department stated that there is no blood stain in the above said two material objects. Further except M.O-8 Coir Bag, the wooden reaper was not in the list of material objects produced by the prosecution. The weapon said to have used to murder the mother of 1st accused Mariyammal was recovered by the prosecution is Blood stained wooden reaper. But admittedly there is no such wooden reaper is produced before the court and the wooden reaper produced before the Forensic Department was not having blood stain. Therefore the prosecution failed to prove the factum of murder of Mariyammal by the 2nd accused/Appellant herein and it is a fatal to the case of the prosecution.

20. Further there is no answer by the prosecution as to why they have not examined the Panchayatar Sundara Vimalanathan though his name was mentioned in the list of witness. The non examination of the above said Sundara Vimalanathan is fatal to the case of the prosecution.

21. In this case the conviction is based on circumstantial evidence, on presumption, surmises and conjectures. The prosecution failed to establish the circumstantial evidence beyond reasonable doubt.

22. As for as circumstantial evidence is concerned, when the entire prosecution case rests on circumstantial evidence, it requires very high degree of probability. In other words, the evidence must be of such a nature as to exclude any other inference except that of guilt and it requires very high degree of probability and inference should be verified with scrupulous accuracy. As observed in *Kuldip Sing Vs- State of Punjab*, 2002 SCC (Cri) 1534, when the prosecution relies on circumstantial evidence in order to prove the guilt incrimination circumstances must be established by cogent and reliable evidence. We have already referred to various factors relied on by the prosecution are not impressed on us, more particularly in the absence of establishing the link on all aspects. The reading of

the entire prosecution witnesses and the materials placed created considerable doubt and we are not able to agree with the conclusion arrived at by the learned Sessions Judge. The circumstances relied on by the prosecution are not sufficient to establish the guilt of the accused. Circumstantial evidence should be strong, convicting, unassailable, leading to the only inference and conclusion that the crime should have been committed only by the accused and not give any chance even to doubt about the hands of third parties. In the present case, the prosecution has failed to establish the above said factors. Hence the conviction by the trial court on the basis of the circumstantial evidence must go. Therefore the benefit of doubt is given to 2nd accused and the appellant / 2nd accused is acquitted from all the charges.

23. In the light of what is stated above, we hold that the prosecution has failed to establish the guilt beyond all reasonable doubts. Though prosecution has relied on circumstantial evidence, the same has not been established and there are many missing links in the circumstances. The learned Additional Sessions Judge failed to consider all these aspects and we are unable to concur with the conclusion arrived at. Accordingly, the conviction and sentence imposed on the 2nd accused/appellant are set aside and the criminal appeal is allowed.

24. In the result, the criminal appeal is allowed and conviction and sentence imposed on the appellant are hereby set aside and the appellant is acquitted and she is directed to be set at liberty forthwith unless her presence is required in connection with any other case. Fine amount paid if any by the appellant shall be refunded to her.

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