

Easwaran Vs. State Rep. By Inspector of Police, Erode District

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Court : Chennai

Decided On : Jul-27-2016

Judge : S. Nagamuthu & V. Bharathidasan

Appeal No. : Criminal Appeal No. 801 of 2015

Appellant : Easwaran

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

Judgement :

(Prayer: This Criminal Appeal has been preferred to set aside the conviction imposed by judgment dated 16.12.2015 made in S.C.No.116 of 2015 on the file of the Sessions Court, Magalir Needhimandram (Magalir Fast Track Court, Erode), by allowing this appeal.)

S. Nagamuthu, J.

1. The appellant is the first accused in S.C.No.116 of 2015 on the file of the learned Sessions Judge, Magalir Needhimandram (Magalir Fast Track Court), Erode. One Mr.Raghunath was the second accused in the case. The Trial Court framed a charge under Section 302 IPC against the first accused and a charge under Section 302 r/w 34 IPC against the second accused. By judgment dated 16.12.2015, the Trial Court acquitted the second accused, however, convicted the first accused/appellant herein for the offence under Section 302 IPC and

sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for two years. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

The appellant is the father of the second accused. The deceased in this case was one Ms.Sathyabama. The second accused and the deceased Sathyabama were working in Bharath Electronics Shop at Erode. When they were so working, initially, they became friends and finally, it developed into a love for each other. The accused belonged to Kongu Vellala Gounder community, whereas, the deceased Ms.Sathyabama belonged to a different community. Though the second accused and the deceased decided to marry, the first accused opposed the same. Having been persuaded by the first accused, the second accused refused to marry the deceased. In this regard, the deceased made a complaint to the Sub-Inspector of Police, All Women Police Station at Erode against the second accused. That was pending enquiry.

3. While so, on 11.05.2014, at 11.30 a.m., the accused and other family members were available at their house. At that time, the deceased came to the house of the accused and stood on the verandah. The accused 1 and 2 were then in the hall of the house. On seeing the deceased, the first accused questioned her as to why she had come to his house. The deceased replied that she had come there to settle the issue between her and the second accused and to demand for marriage. This developed into a quarrel. The first accused suddenly went into the house and shortly, came out with an Aruval in his hand. The second accused joined him. Both of them dragged the deceased into their house, where the first accused repeatedly cut the deceased. The deceased died on the spot. Then the accused 1 and 2 fled away from the scene of occurrence.

4. P.W.1 is a neighbour of the deceased. It is alleged that he made a complaint at Sithodu Police Station on 11.05.2014 at 12.15 p.m. Based on such complaint, P.W.17, the then Sub-Inspector of Police, registered a case in Crime No.155 of 2014 under Section 302 IPC. Ex.P19 is the complaint and Ex.P20 is the FIR. He forwarded both the documents to the Court, which were received by the learned

Magistrate at 2.30 p.m. on 11.05.2014.

5. P.W.18 took up the case for investigation. He went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of witnesses. He conducted inquest on the body of the deceased and forwarded the body for post-mortem.

6. P.W.10 - Dr.Krishnakumar, conducted autopsy on the body of the deceased on 12.05.2014 at 10.10 a.m. He found the following injuries:-

"External injuries: Incised laceration measuring about 12 x 1 x 5 cm present over left side of neck extending from angle of mandible to posterior triangle of neck. Exposing deep muscle of anterior and posterior triangle, complete cut injury of carotid and partial cut of trachea present.

2. Incised wound 11 x 1 x 4 cm present over right side of neck extending from anterior to posterior triangle with complete cut injury of carotid and vagus nerve.

3. 2 Incised wounds each measuring 2 x 1 x 1 cm present over nape of the neck

4. Incised wound 5 x 1 x 1 cm over left cheek

5. Incised laceration 3 x 1 x 1 cm over mandible"

Ex.P15 is the Post Mortem Certificate. He gave opinion that the death of the deceased was due to shock and haemorrhage and due to multiple injuries on the body of the deceased.

7. P.W.18 arrested the first accused on the same day at 6.30 p.m. near Sathi Road, Karattupalayam, in the presence of witnesses. On such arrest, he disclosed the place, where he had hidden the Aruval. In pursuance of the same, he took the Police and the witnesses to the place of hide out and produced the Aruval. Then he forwarded the accused to the Court for judicial remand and handed over the Material Objects to the Court.

8. The investigation was thereafter taken over by P.W.19. On 16.07.2014, the second accused surrendered before the Magistrate. He took Police custody of the

second accused on 18.07.2014 on the orders of the learned Magistrate. During custody, he made a voluntary confession, in which he disclosed the place where he had hidden the shirt. He recovered the same and then he forwarded the accused to the Court and also handed over the Material Objects to the Court. At his request, the material objects were sent for chemical examination and report received. On completing the investigation, he laid charge sheet against the accused.

9. Based on the above materials, the trial Court framed charges as detailed in the first para of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 19 witnesses were examined and 23 documents were exhibited, besides 20 Material Objects were marked.

10. Out of the said witnesses, P.Ws.1 to 6 and 8 have turned hostile and they have not stated anything incriminatory. Thus, their evidences are not at all useful to the prosecution in any manner. P.W.1 has even disowned the complaint allegedly made by him to the Police. P.W.7 has spoken about the preparation of Observation Mahazar and Rough sketch and he has also spoken about the recovery of blood stained earth and sample earth from the place of occurrence. P.W.9 has spoken about the chemical analysis conducted on the material objects. P.W.10 has spoken about the post-mortem conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.11 has spoken about the earlier complaint made by the deceased against the second accused alleging that he was not willing to marry her and cheated her. P.W.12 has stated that the deceased made a complaint on 24.03.2014 that she was attacked by two unknown persons. P.W.13 has spoken about the photographs taken at the place of occurrence as directed by P.W.18. P.W.14 has stated that he handed over the FIR and the complaint to the learned Magistrate at 2.30 p.m. on 11.05.2014. P.W.15 has stated that he took the dead body from the place of occurrence and handed over the same to the doctor for post-mortem as directed by P.W.19. P.W.16 - the Head Clerk of the Magistrate Court has stated that he forwarded the material objects for chemical examination as directed by the Magistrate. P.W.17 has spoken about the registration of the case on the complaint

made by P.W.1. P.Ws.18 and 19 have spoken about the investigation done and final report filed.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C, they denied the same as false. However, they did not choose to examine any witness on their side nor marked any document in their favour.

12. Having considered all the above, the trial Court acquitted the second accused, however, convicted the first accused as detailed in the first paragraph of this judgment. Aggrieved over the same, the first accused/appellant is before this Court with this appeal.

13. We have heard the learned Senior Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

14. The learned Senior Counsel for the appellant would submit that in the instant case, the Trial Court has convicted the accused erroneously, though, there has been no evidence to prove the alleged guilt of the accused. He would point out that the Trial Court has convicted the accused solely based on the recovery of Aruval (M.O.13) on the alleged confession of the first accused, which according to him, is illegal. In effect, according to the learned Senior Counsel, the conviction and sentence imposed by the Trial Court are not at all sustainable.

15. The learned Additional Public Prosecutor is not in a position to seriously dispute the correctness of the arguments advanced by the learned Senior Counsel. Though the learned Additional Public Prosecutor tried to persuade this Court to sustain the conviction, in our considered view, as rightly pointed out by the learned Senior Counsel, the Trial Court has convicted the accused on mere surmises, which is illegal.

16. As we have already pointed out, P.Ws.1 to 6 and 8 have turned hostile. There is no other evidence against the accused except the evidence of P.W.7 regarding the arrest of the first accused and the consequential recovery of Aruval. The Trial Court has held that the said Aruval was the one which was used for killing the

deceased. The Trial Court has further held that since the said Aruval was in the possession of the first accused, it is inferable that he only had caused the death of the deceased. Thus, the view taken by the Trial Court, in our considered view is far-fetched. First of all, the Trial Court ought to have taken note of the legal position that it is not every fact that is discovered out of the disclosure statement made by the accused while in custody that makes the disclosure statement admissible in evidence as provided under Section 27 of the Evidence Act. It is only the discovery of a relevant fact out of the disclosure statement, that makes the said statement admissible under Section 27 of the Evidence Act. The relevancy of the fact discovered out of the disclosure statement should therefore be established by the prosecution. In other words, the connection, nexus or the relationship between the fact discovered and the crime or the accused should be established. Here in this case, absolutely, there is no evidence that the Aruval in question was used for causing the death of the deceased. Thus, the statement of the accused, out of which, the alleged recovery of the Aruval was made, itself is inadmissible and therefore, the Trial Court was not correct in relying on the same. In our considered view, the Trial Court has committed serious illegality in concluding that since the Aruval was recovered from the possession of the accused, he had committed the crime. Under Article 21 of the Constitution of India, the life and liberty of an individual can be deprived of only by following the procedure established by law. In other words, the conviction of an accused cannot be made on mere surmises or suspicion. In the instant case, the Trial Court has convicted the accused on mere surmises, which in our considered view, cannot be allowed to sustain. For all these reasons, we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellant/first accused is entitled to acquittal.

17. The Criminal Appeal is allowed and the conviction and sentence imposed on the appellant by the Sessions Court, Magalir Needhimandram (Magalir Fast Track Court) Erode, in SC.No.116 of 2015 are hereby set aside. The appellant is acquitted and he is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to him. Bail bond, if any, shall stand discharged.