

Meganathan Vs. State Rep. By The Inspector of Police, Pallikonda Police Station, Vellore District

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Court : Chennai

Decided On : Jul-21-2016

Judge : S. Nagamuthu & V. Bharathidasan

Appeal No. : Criminal Appeal Nos. 244 & 408 of 2015

Appellant : Meganathan

Respondent : State Rep. By The Inspector of Police, Pallikonda Police Station, Vellore District

Judgement :

(Prayer: Criminal Appeals filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellants by the learned I Additional Sessions Judge, Vellore, in S.C.No.104 of 2009 dated 09.04.2005.)

S. Nagamuthu, J.

1. The appellant in Crl.A.No.408 of 2015 is Accused No.1 and the appellant in Crl.A.No.244 of 2015 is Accused No.2 in S.C.No.104 of 2009 on the file of the learned I Additional Sessions Judge, Vellore, Vellore District. He stood charged for offences under Sections 364 and 302 of IPC. The trial court, by judgement dated 09.04.2015, convicted A1 and A2 under both the charges and sentenced them to

undergo imprisonment for life and to pay a fine of Rs.2,000/- each in default to suffer rigorous imprisonment for a further period of three months for offence under Section 364 of IPC and to undergo imprisonment for life and to pay a fine of Rs.3,000/- each in default to suffer rigorous imprisonment for a further period of three months for offence under Section 302 of IPC. Challenging the above conviction and sentences, A1 and A2 have come up with these criminal appeals.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Mr.Raghavan. He was a resident of Avadi, Chennai. A1 hails from Beemanathapuram Village in Vellore District. His father was working in a factory at Avadi in Chennai. Therefore, A1 also came down to Chennai and was living with this father. In due course, he secured an employment in a private company for some time. Thus, he was so staying in Avadi. He became a friend of the deceased-Raghavan. A1 was working as a driver in the private company. Five months prior to the occurrence, on one occasion, A1 and the deceased had gone to a wine shop at Avdi and consumed brandy. In an inebriated mood, they engaged in a quarrel with each other. In fact, there were physical exchange of blows between them. After ten days of the occurrence, enraged over the previous occurrence, the deceased with nine rowdy elements had gone to the house of A1 and attacked him. A1 sustained bleeding injuries. According to him, out of fear, A1 did not make any complaint to the police in respect of the violent attack made on him. A1, however, got wild. He, therefore, decided to do away with the deceased. This is stated to be the motive for the present occurrence. After the above occurrence, A1 had returned to his native place namely, Beemanathapuram. in Vellore District. He purchased a red colour Tata Sumo car bearing Regn. No. TN 23 Z 4502. He was plying the same for hire as taxi at Kandaneri Village.

3. On 09.04.2008, A1 taking the said Tata Sumo Car came to Avadi and met the deceased. A2 is a friend of A1 who also happened to be a driver. A1 informed A2 about the plan to do away with the deceased. A2 agreed to help A1.

4. On 11.04.2008, around 10.00 p.m., A1 and A2 went near the house of the deceased in the Tata Sumo Car. The deceased came out of his house and saw the car. A1 invited him to go for outing in the said car. A1 told him that both of

them could forget about the bitter past. The deceased agreed to accompany A1. Thus, A1 and A2 took the deceased in the car. The car was driven by A2.

5. They went to a wine shop near Ramarathna Theatre at Avadi and consumed brandy. Then, they proceeded towards Vellore. On their way, at a place known as "Sathuvacheri" , one of the tyres of the car punctured. Therefore, they stopped the vehicle by the side of the road and stayed in the car itself for the whole night. On 12.04.2008, they corrected the punctured tyre and again started their journey. On their way, A1 pledged his gold jewel in a shop at Pallikonda village and received a sum of Rs.6,500/-.

6. Around 06.30 p.m. all the three came in the car via, Katpadi to Vellore. In a wine shop near Vellore bus stand they again drank brandy. By that time it was around 10.30 p.m. A1 purchased two more bottles of brandy and then all the three went in the same car. By that time, the deceased was fully drunk and he had lost both his physical and mental balance. A1 and A2 made him to lie down on the back seat of the car. On their way, A1 took out a knife which he had readily brought and attacked the deceased with the same. They stopped the car near a burial ground at Kazhanipakkam village where they stabbed the deceased repeatedly with knife, killed him and threw the dead body in a burial ground. Then, they fled away from the scene of occurrence along with the car. When the occurrence was over it was 11.30 p.m. A1 returned to his village with the car.

7. The occurrence was not thus witnessed by anyone. P.W.3 was the then Village Assistant of Kazhanipakkam Village. On 13.04.2008 at 06.00 a.m. when he went to a Tea shop in the Village, the villagers informed him that a dead body of a male was found lying in the burial ground. Immediately, P.W.3 went to the burial ground and found dead body. He estimated the age of the dead body as approximately thirty years. Then, he went to P.W.1, the Village Administrative Officer and informed the same. P.W.1, the then Village Administrative Officer, immediately, went to Pallikonda Police Station and made a complaint at 09.00 a.m on 13.04.2008. Ex.P.1 is the complaint. On receipt of the said complaint, P.W.19, the then Sub Inspector of Police, registered a case in Crime No.162 of 2008 under Section 302 of IPC. Ex.P.23 is the FIR. Then, he forwarded both the complaint-

Ex.P.1 and the FIR-Ex.P.23 to the jurisdictional court which were received by the learned Magistrate at 10.30 a.m. on 13.04.2008 itself. Thereafter, he handed over the case diary for investigation to the Inspector of Police.

8. Taking up the case for investigation by P.W.23 went to the place of occurrence at 10.00 a.m. on 13.04.2008, prepared an observation mahazar (Ex.P.6) and a rough sketch (Ex.P.28) in the presence of the witnesses. He recovered some blood stained earth [M.O.9] and ordinary earth [M.O.10] and four compact discs [M.O.11-series] in the presence of the same witnesses under a mahazar (Ex.P.29). Between 11.00 and 11.30 a.m. he conducted inquest on the body of the deceased and then forwarded the dead body to the Government Vellore Medical College Hospital for postmortem.

9. P.W.18 Dr.Murugesan, conducted autopsy on the body of the deceased at 11.50 a.m. on 15.04.2008. He found the following injuries:-

" 1.An oblique cut injury with regular margin 10 x 3 cm x bone deep on both sides of the forehead with surrounding contusion. On dissection cut injury fracture on frontal bone Subdural haematoma on both side frontal and temporal region of the brain subarachnoid haematomata on both side parietal and occipital region of the brain intra cerebral haemorrhage on both cerebrum cerebellum basal ganglia and brain stem.

2. An oblique cut injury with regular margin 5 X 2 cm X bone deep above right eye brow.

3. An oblique cut injury with regular margin 6 x 3 cm X bone deep on the right eye brow.

4. An oblique cut injury 7 x 3 cm X bone deep and the base of the nose and left cheek on dissection cut injury fracture on the nasal bones.

5. An oblique cut injury with regular margin 8 x 4 cm x bone deep and right cheek and upper lip.

6. An oblique cut injury with regular margin 10 X 6 cm x bone deep on the right mastoid area directed above down wards and anterio posteriorly with surrounding contusion and the injuries were stained with sands.
7. An oblique lacerated 6 x 4 cm on the left mastoid region.
8. An oblique cut injury 9 x 3 cm x bone deep on the left tempero parietal region of scalp.
9. An oblique cut injury with regular margin 7 x 3 cm x bone deep over vertex on scalp.
10. An oblique cut injury 8 x 2 cm on the right temporal region of the scalp.
11. An oblique cut injury right parietal region of the scalp.
12. An oblique cut injury 8 x 2 cm x bone deep left occipital region of the scalp.
13. Multiple 10 numbers stab wound each measuring 1 x 1 cm x muscle deep and on the dorsum of the left hand.
14. Multiple 12 numbers stab wound each measuring 1 x 1 cm x muscle deep on the dorsum of the right hand.
15. 3 cut injuries oblique anterio posteriorly on the dorsum on the middle phalanx of the left index, middle and ring fingers on dissection cut injury fracture on the middle phalanx of the left index middle ring fingers.
16. 6 cm x 1 cm muscle deep incised wound left side of the neck
17. 15 X 1 cm muscle deep incised wound back of the chest and abdomen.

Other Findings:

Hyoid bone: Intact. Larynx and Trachea: Mucosa pale. All vital midline structures of neck were intact. NAD. Lungs: Both sides-normal size. On cut section pale. Heart: Normal size, Great vessels normal, Coronary vessels patent. Coronary ostia were normal. All chambers empty. Stomach: Contained 150 ml of greenish

yellow coloured fluid without any characteristic smell. Mucosa pale. Small intestine: Contained yellowish chyme with bile stained fluid. No specific characteristic smell perceived. Mucosa pale. Larger Intestine: Distended with gas. Liver, Spleen, Kidney: On cut section found pale. Gall Bladder: Contained bile. Pancreas: Cut section pale. Bladder: Empty. Vertebral column and spinal cord: intact and NAD. All other internal organs : on cut section found pale."

P.W.18, the doctor, preserved the visceral organs and sent them for toxicological analysis. Ex.P.22 is the postmortem certificate. He gave opinion that the death of the deceased was due to the effect of cut injuries found on the head of the deceased.

10. After the postmortem was over, P.W.23 recovered the blood stained cloth materials from the person of the deceased. When the investigation was in progress, A1 on his own went to the Office of P.W.1 at 03.30 p.m. on 31.05.2008 and made a voluntary confession statement to P.W.1 in which A1 confessed that he along with A2 kidnapped and killed him. P.W.1 recorded the said extra judicial confession made by A1. Then, he took A1 and produced him before P.W.23 along with the extra judicial confession. P.W.23 in turn arrested A1. On such arrest, A1 made a voluntary confession in which he disclosed the place where he had hidden a blood stained knife. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the knife (M.O.1), pants (M.O.2), full sleeve shirt (M.O.3), jatti (M.O.4), banian (M.O.5), black colour purse containing driving license and a fifty rupee currency note (M.O.6) and cell phone (M.O.8). P.W.23 recovered M.O.1-knife under a mahazar Ex.P.5 and M.Os.2 to 8 under a mahazar (Ex.P.6). On being produced by A1, P.W.23 recovered the Tata Sumo Car bearing Regn. No.TN 23 L 4502 also under a mahazar (Ex.P.6). On returning to the police station, he forwarded the accused to the court for judicial remand and he also handed over the material objects to the court.

11. On a thorough examination of the car bearing Regn. No.TN 23 L 4502, P.W.23 found blood stains on the right side corner of the back seat. He recovered the same by means of a gauze cloth. He also recovered the blood stained cloths (M.Os.19 and 20) found in the car. He forwarded all the material objects to the

court with a request to the court to forward certain material objects to the Forensic Science Laboratory for chemical analysis. He also made a request to the court to conduct test identification parade in which, P.Ws.10 and 11 have identified the accused. On completing the investigation, P.W.23 filed charge sheet against both A1 and A2.

12. Based on the above materials, the trial court framed charges under Sections 364 and 302 of IPC. A1 and A2 accused denied the same. In order to prove the case, on the side of the prosecution, as many as 23 witnesses were examined, 33 documents and 21 material objects were marked.

13. Out of the said witnesses, P.W.1 was the then Village Administrative Officer of Kandaneri and Kazhanipakkam. He has stated about the complaint made by him on seeing the dead body on 13.04.2008. He has also spoken about the confession made by A1 to him on 31.05.2008 at 03.30 p.m. He has further spoken about the disclosure statement made by A1 to P.W.23 and the consequential recovery of the material objects.

14. P.W.2 was the one who found the dead body of the deceased first in the burial ground at Kazhanipakkam Village. He, in turn, informed P.W.3 about the same. P.W.3 has stated that on 13.04.2008, he was informed by the villagers that a dead body was lying in the burial ground at Kazhanipakkam village. He verified the same and then went to P.W.1 and informed the same and P.W.1, in turn, made a complaint. He has also spoken about the preparation of the observation mahazar and the rough sketch by the police at the place of occurrence.

15. P.W.4 was a resident of Kandaneri Village. According to him, on 12.04.2008, at 11.00 p.m. when he was returning to Kandaneri from Pallikonda in the cycle, he found a red colour Tata Sumo car proceeding from Kandaneri to Vellore. [He has not identified the vehicle. Neither he identified any of the accused].

16. P.W.5 was a resident of Avadi and the father of the deceased. He has stated about the earlier occurrence between A1 and the deceased. He has also spoken about the fact that on 11.04.2008, at 10.00 p.m. since the deceased did not return, he made a complaint at Avadi Police Station. Later on, he identified the dead body

from out of the photograph of the deceased that it was his son. P.W.6 is the mother of the deceased. She has also stated that on 11.04.2008 at 10.00 p.m. A1 and A2 took the deceased in the Tata Sumo car. P.W.7 is the brother of the deceased. He has also stated about the same fact. P.W.8 turned hostile and he has not supported the case of the prosecution in any manner.

17. P.W.9 has spoken about the occurrence that took place prior to the present occurrence between A1 and the deceased. He has further stated that on 11.04.2008, A1 and A2 took the deceased in the Tata Sumo Car. P.W.10 has turned hostile and he has not stated anything incriminating against the accused. P.W.11 is a Pawn Broker. He has stated that on 12.04.2008, at 11.00 a.m., A1 pledged his gold hewel for a sum of Rs.6,500/-. P.W.12 has stated that the accused had purchased the Tata Sumo Car bearing Regn. No. TN 23 L 4502 by securing loan from him. P.Ws.13 and 14 have turned hostile and they have not stated anything in favour of the prosecution.

18. P.W.15 was the then Sub Inspector of Police of Vellore North Police Station. He has stated that the dead body which was found in the burial ground after postmortem was over had been buried by him in the burial ground with the help of P.W.1 and others. He had recovered the blood stained clothes and the other materials from the body of the deceased and handed over the same to P.W.23. P.W.16 has spoken about the photographs taken of the dead body at the place of occurrence as requested by the investigating officer.

19. P.W.17, the then learned Judicial Magistrate No.I, Walajahpet, has stated that on 16.06.2008 he conducted test identification parade in respect of A1 and A2. In the test identification parade, P.Ws.10 and 11 correctly identified both A1 and A2. P.W.18 has spoken about the autopsy conducted and his final opinion regarding the cause of death.

20. P.W.19 has spoken about the registration of the present case on the complaint made by P.W.1. P.W.20 turned hostile and he has not supported the case of the prosecution in any manner. P.W.21 has also not stated anything incriminating against the accused. He has spoken only on hearsay information. P.W.22 is the Forensic Sciences Expert. He has stated that on examination of the materials

objects, he found blood stains on all the material objects except sample earth [M.O.10]. P.W.23 has spoken about the investigation done and the filing of charge sheet against the accused.

21. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. he denied the same as false. However, he did not choose to examine any witness nor did he mark any document on his side. His defence was a total denial.

22. Having considered all the above, the trial court convicted and sentenced the appellants/A1 and A2 as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, A1 and A2 are now before this Court with these criminal appeals.

23. We have heard the learned counsel appearing for the appellants/A1 and A2 and the learned Additional Public Prosecutor appearing for the respondent/State and we have also perused the records carefully.

24. This is a case based on circumstantial evidence. It is the settled principle of law that in a case of this nature, the circumstances projected by the prosecution are to be proved beyond reasonable doubts and such proved circumstances should form a complete chain without any break, pointing unerringly to the guilt of the accused and that there should not be any other hypothesis, which is inconsistent with the guilt of the accused. Keeping this broad principle in mind, let us now analyse the facts of the present case.

25. P.Ws.5 and 6 who are the parents of the deceased with whom the deceased was residing at Avadi in Chennai, have stated that on 11.04.2008 around 10.00 p.m., these two accused came to their house and took the deceased in the Tata Sumo Car. Thereafter, the dead body of the deceased was found by P.W.2 on 13.04.2008 at about 08.00 a.m. followed by P.W.1. The doctor, who conducted autopsy, has opined that the deceased had died due to the injuries found on the body. Thus, the prosecution has proved that the deceased had died some time between 10 p.m. on 11.04.2008 and 07.00 a.m. on 13.04.2008. Going by the nature of the injuries, we can safely conclude that the death of the deceased in

this case was a homicide.

26. Now, the next question is, Who were the perpetrators of the crime? In order to prove that the perpetrators of the crime were A1 and A2, the prosecution again relies on the circumstantial evidences. P.Ws.5 and 6, as we have already pointed out, have stated that at 10.00 p.m. on 11.04.2008, A1 and A2 came to the house and took the deceased in the Tata Sumo Red Colour car. They have identified A2 in court. But, during cross examination, they have admitted that A2 was not at all known to them previously. There was also no test identification parade conducted. During interrogation, they have not even stated any physical features of A2. Therefore, so far as A2 is concerned, it is too difficult to rely on the evidence of these two witnesses to prove the fact that A2 accompanied A1 when the deceased was taken for outing in the Tata Sumo car. But, the evidence of P.Ws.5 and 6 would clearly go to prove that the deceased was taken in the Tata Sumo Car by A1 along with another person. To that extent, as against A1, the prosecution, in our considered view, has succeeded in establishing the said fact.

27. Now, turning to the evidence of P.W.1, he was the responsible Village Administrative of Kandaneri Village at the relevant point of time. According to him, when he was at his Office at 03.30 p.m. on 31.05.2008, A1 appeared before him and made a voluntary confession. In the said confession, A1 narrated the motive and as to how he along with A2 killed the deceased and disposed the dead body. The learned counsel for the appellants would submit that the evidence of P.W.1 in respect of the extra judicial confession cannot be believed inasmuch as A1 had no acquaintance with P.W.1 and, therefore, there was no need for him to go to P.W.1 to make such a voluntary confession admitting his guilt. Though attractive, we find no force in the said argument. In the extra judicial confession itself A1 has stated as to why he had chosen to appear before P.W.1 and to confess his guilt. After all, P.W.1 was a responsible public servant against whom the accused can have no grudge at all. Though P.W.1 has been cross examined, at length, in respect of the extra judicial confession, nothing has been elicited to doubt his credibility. Thus, from the evidence of P.W.1 it has been clearly established that A1 had voluntarily made the extra judicial confession at 03.30 p.m. on 31.05.2008 to P.W.1 and he in turn, reduced the same into writing. Thereafter, P.W.1 had produced A1 to

P.W.23, the investigating officer, before whom, A1 again gave a confession voluntarily in which he disclosed the place where he had hidden the knife and other material objects. In pursuance of the said disclosure statement, P.W.23 recovered M.O.1 and M.Os.2 to 8 under two separate mahazars. The recovery of these materials objects in pursuance of the confession made by A1 further strengthens the case of the prosecution.

28. Though there is no other evidence worth considering against A1, in our considered view, the extra judicial confession given by A1 to P.W.1 by itself could be the sole basis for conviction of A1 as there is no doubt in respect of the said extra judicial confession and the same inspires the fullest confidence of this court.

29. It is the settled law that an extra judicial confession, if it is free from any doubt that by itself can be the foundation for conviction without there being any other evidence to corroborate the same. But, in the instant case, the fact that the deceased was lastly taken in a car by A1, which stands proved, lends sufficient corroboration to the extra judicial confession. From these evidences, we hold that it was A1 who caused the death of the deceased. The motive alleged, the way in which the deceased was taken in the car, killed and the body was disposed would all go to prove that A1 had clear intention to cause the death of the deceased. Thus, A1 is liable to be punished for offences punishable under Sections 364 and 302 of IPC.

30. So far as A2 is concerned, the said extra judicial confession cannot be the foundation for conviction. As has been held by the Hon'ble Supreme Court in *Kashmira Singh v. State of Maharashtra*, AIR 1952 SC 159, the proper approach towards the extra judicial confession of co-accused shall be to keep the confession of the co-accused aside first and to marshall all the other evidences available and on such marshalling, if it is found that the accused had committed the crime, to lend assurance to the said conclusion, then, the court may consider the confession of the co-accused. In other words, the confession of the co-accused cannot be the foundation for conviction. In the instant case, as we have already pointed out, except the extra judicial confession of A1, there is no other evidence against A2. Therefore, in our considered view, A2 is entitled for acquittal. To this extent, the

judgement of the trial court required interference at the hands of this court.

31. Now, turning to the quantum of sentence, the trial court itself has imposed only a proportionate sentence upon A1 which, in our considered view, does not at all require any interference at the hands of this court.

32. In the result, (1) Crl.A.No.244 of 2015:- This criminal appeal is allowed. The conviction and sentences imposed on the sole Appellant/A2-Stephen @ Mohan are hereby set aside and he is acquitted of both the charges. Fine amount already paid, if any, shall be refunded to him. The bail bond executed by the appellant/A2 shall stand terminated.

(2) Crl.A.No.408 of 2015:- This criminal appeal is dismissed and the conviction and sentences imposed on the sole appellant/A1-Meganathan are hereby confirmed. Since it is reported that the appellant/A1 is on bail, the learned I Additional Sessions Judge, Vellore, shall take appropriate steps to secure the presence of the appellant/A2 and to commit him to prison so as to suffer the sentences as imposed by the trial court and confirmed by this court.

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