

Murugesan Vs. the State Rep. By

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Court : Chennai

Decided On : Dec-09-2014

Judge : A.Selvam

Appellant : Murugesan

Respondent : The State Rep. By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 09.12.2014 CORAM THE HONOURABLE MR.JUSTICE A.SELVAM and THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL(MD)No.138 of 2009 Murugesan .Appellant/ Sole Accused versus The State rep.

by The Inspector of Police, Andipatti Police Station, Theni District.

(Crime No.350 of 2006).Respondent/ Complainant Criminal appeal is filed under Section 374 of the Code of Criminal Procedure, 1973, against the Judgment dated 04.02.2009 passed in Sessions Case No.91 of 2007 by the Principal District and Sessions Court, Theni District at Theni.

!For Appellant : Mr.S.Palanivelayutham ^For Respondent : Mr.R.Ramachandran, Addl.

Public Prosecutor.

:

JUDGMENT

(Judgment of the Court was made by A.SELVAM, J.Challenge in this Criminal Appeal is to the conviction and sentence dated 04.02.2009 passed in Sessions Case No.91 of 2007 by the Principal District and Sessions Court, Theni.

2.The crux of the case of the prosecution is that the accused is the husband of the deceased by name Bhagyalakshmi.

The accused has accentuated the deceased frequently to get lands of her share from the properties of her father.

The deceased has not done anyone.

Under the said circumstances the accused has decided to murder the deceased.

On 27.07.2006, at about 04.00 a.m.in the house of both the accused and deceased the accused has attacked the deceased by using a knife and due to overtacts committed by him, the deceased has passed away.

3.After occurrence, one Panchavarnam has given a complaint and the same has been marked as Ex.P.1.

The Inspector of Police by name Senthilvel has registered Ex.P.1 in Crime No.350 of 2006 and he has taken up investigation and also made arrangements to conduct autopsy on the body of the deceased and the same has been done by Dr.Tamilvanan (P.W.6) and he found the following internal and external injuries on the person of the deceased: ?1.A Horizontal stab wound over the right side of chest 5 c.m.below the right nipple 3 c.m.from midline of chest measuring 3 c.m.x 1 c.m.entering into thoracic cavity with surrounding contusion margin regular and clean both end of wound pointed O/D this Stab would passes downwards and medially in 5th intercostals space peiering right lower lobe of lung and enter into pericardium then right ventricle making 0.5 c.m.x 0.25 c.m.wound in right ventricle of Heart.

Right thoracic cavity contain about 1000 ml of blood.

2. An oblique stab wound in upper part of left chest 2 c.m. below the mid clavicle point 5 c.m. left midline of chest measure 3 x 1 c.m. margin regular and clean with surrounding contusion.

Both end of wound pointed O/D the wound passes in left IInd intercostals space passes posteriorly and medially enter into left thoracic cavity make injure left upper lobe of (nc) make 0.5 c.m. x 2 c.m. wound left thoracic cavity contain about 500 m.l. of blood.

3. An oblique stab wound in right loin 5 c.m. below the right costal margin measure 4 x 2 c.m. margin regular and clean with surrounding contusion.

Both end are pointed O/D the wound passed upwards postromedially entry into Abdomen cavity then entry into lower part of right lobe of liver making 1 x 2 c.m. wound.

And cavity contain about 100 m.l. of blood.

4. An oblique stab wound over the lower part of right axilla of breast measuring 3 x 1 c.m. with surrounding contusion margin regular and clean both end are pointed O/D the wound passes posteriorly into Breast tissue up to 3 c.m. not enter into thoracic cavity.

5. A stab wound over the dorsum of right hand measuring 2.5 x 1 c.m. depth 0.5 c.m. with surrounding contusion margin regular and clean both end pointed.

6. A stab wound in the middle of left fore arm dorsal aspect measure 4 x 2 c.m. depth 1 c.m. in the surrounding contusion margin regular and clean both end of wound pointed.

7. An abrasion measure 4 x 2 c.m. in ventral aspect of left forearm.

8. A stab wound Horizontal in direction in back of left side of chest 2 x 1 c.m. with surrounding contusion margin regular clean O/D wound passes anteriorly upto chest wall 1 c.m. not enter into thoracic cavity?. The Postmortem Report has been marked as Ex.P.7.

The subsequent Investigating Officers viz., P.Ws.14 and 15 have conducted further investigation and laid a final report on the file of District Munsif cum Judicial Magistrate's Court, Andipatti and the same has been taken on file in P.R.C.No.17 of 2006.

4.The District Munsif cum Judicial Magistrate, Andipatti after considering the fact that the offence alleged to have been committed by the accused is triable by Sessions Court, has committed the case to the Court of Sessions, Theni Division and the same has been taken on file in Sessions Case No.91 of 2007.

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

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

6.On the side of the prosecution, P.Ws.1 to 15 have been examined and Exs.P.1 to P.21 and M.Os.1 to 8 have been marked.

7.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.

8.The trial Court, after evaluating the evidence available on record, has found the accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.5,000/- with usual default clause.

Against the conviction and sentence passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

9.The learned counsel appearing for the appellant/accused has raised the following points so as to set aside the conviction and sentence passed against the appellant/accused: (i)The Investigating Officer has not examined P.W.2,

Selvi.Sangeetha, daughter of both the accused and deceased at the time of inquest.

(ii)The statement recorded from P.W.2 under Section 161(3) of the Code of Criminal Procedure, 1973 has reached the Court on 09.10.2006.

(iii) P.W.2, Selvi.Sangeetha, daughter of both the accused and deceased, has given contra evidence with regard to place of occurrence.

(iv)Both P.Ws.1 and 2 have given evidence that the police have come to the place of occurrence, after some time.

10.The learned Additional Public Prosecutor has contended that in the instant case, P.W.2 is the daughter of both the accused and deceased and her specific evidence is that on the date of occurrence the accused has resided along with them and during early morning the accused has attacked the deceased by using a knife and under the said circumstances the prosecution has clearly established the guilt of the accused even without a speck of doubt and the trial Court after considering the available evidence on record has rightly invited conviction and sentence against the accused and therefore the conviction and sentence passed by the trial Court against the accused do not warrant interference.

11.Before contemplating the rival submissions made on either side, the Court has to find out as to whether on the date of occurrence, the accused has resided alongwith the deceased and P.W.2?.

12.It is an admitted fact that P.W.2 is the daughter of both the accused and deceased.

During the couRs.of chief examination, she has clearly stated that prior to one month, the accused has come to house and on the date of occurrence he resided alongwith them.

In fact, this Court has groped the entire evidence given by P.W.2 and ultimately found that no cross-examination has been put to P.W.2 to the effect that on the date of occurrence, the accused has not resided along with the deceased and

P.W.2.

Further P.W.2 is a competent witness to speak about the said aspect.

Since the specific evidence given by P.W.2 is that on the date of occurrence the accused has resided alongwith the deceased in the house, the Court cannot disbelieve the above portion of evidence.

13.It is true that in the instant case, except P.W.2, no other piece of evidence is available so as to point out the alleged guilt of the accused under Section 302 of the Indian Penal Code and the evidence given by P.W.2 is that on 27.07.2006 the accused has attacked the deceased by using a knife and thereby caused fatal injuries on her person.

It is seen from the Rough Sketc.viz., Ex.P.17 that the occurrence has takenplace in the hall, where both the accused and deceased have resided at the time of occurrence.

14.The fiRs.and foremost contention putforth on the side of the appellant/accused is that during inquest the Investigating Officer has not examined P.W.2.

15.It is true that she has been examined on 27.07.2006, but she has not been examined during the time of inquest.

Further the statement given by her has reached the Court on 09.10.2006.

16.The occurrence has taken place on 27.07.2006 and on that date itself she has been examined.

But unfortunately, the Investigating Officer has not examined her at the time of inquest and further her statement recorded under Section 161(3) of the Code of Criminal Procedure, 1973 has reached the Court on 09.10.2006 and therefore the mistakes pointed out on the side of the appellant/accused would not militate the case of the prosecution.

17.It is seen from the evidence given by P.W.2 that the occurrence has takenplace inside the bedroom.

In fact this Court has perused the chief examination given by P.W.2 and her specific evidence is that at the time of occurrence she and her sister have slept on bed, whereas their mother has slept on a mat, but during the couRs.of cross-examination, she would say that the occurrence has takenplace inside the bedroom.

It is nothing, but a fliMs.contradiction.

As stated earlier, the occurrence has takenplace inside the house of both the accused and deceased.

Under the said circumstances, the said contention putforth on the side of the appellant/accused would not pave the way for disbelieving the version of the prosecution.

18.It is also seen from the records that P.Ws.1 and 2 have consistently stated in their evidence that after some time from the time of occurrence, the police have come to the place of occurrence.

But in the instant case, P.W.13 has gone to hospital and recorded a statement from P.W.1 and that itself cannot be a basis for coming to a conclusion that P.W.2 has adduced false evidence, since she is the daughter of both the accused and deceased.

19.It has already been pointed out that the occurrence has takenplace inside the house of both the accused and deceased.

Further P.W.2 has categorically stated in her evidence that on the date of occurrence her father (accused) has resided along with them.

With regard to that aspect, no cross- examination has been done on the side of the accused.

Therefore, it is quite clear that on the date of occurrence both the accused and deceased have resided together.

Since both the accused and deceased prior to occurrence have resided together, as per Section 106 of the Indian Evidence Act, 1872, the entire burden lies upon the accused.

But in the instant case, the accused has not discharged his burden.

Since the accused has not discharged his burden as contemplated under Section 106 of the Indian Evidence Act, 1872 coupled with the evidence given by P.W.2, the Court can unflinchingly come to a conclusion that the accused has murdered the deceased in the place of occurrence and further the points raised on the side of the appellant/accused are not at all sufficient to disbelieve the case of the prosecution.

20.The trial Court after considering the available evidence on record has rightly found the appellant/accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.5,000/- with usual default clause.

In view of the foregoing narration of both the factual and legal premise, this Court has not found any acceptable force in the contention putforth on the side of the appellant/accused and therefore the present Criminal Appeal deserves to be dismissed.

21.In fine, this Criminal Appeal deserves dismissal and accordingly is dismissed and the conviction and sentence passed in Sessions Case No.91 of 2007 by the Principal District and Sessions Court, Theni are confirmed.

The trial Court is directed to take appropriate steps so as to imprison the appellant/accused to serve out the remaining period of sentence.

[A.S.,J.].[V.S.R.,J.].09.12.2014 Index:Yes/No Internet:Yes/No.smn To 1.The Principal District and Sessions Court, Theni.

2.The Inspector of Police, Andipatti Police Station, Theni District.

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

A.SELVAM, J.

and V.S.RAVI, J.

smn Judgment made in CrI.A(MD)No.138 of 2009 09.12.2014

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