

Muthukumar Vs. State Rep. by The

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Court : Chennai

Decided On : Aug-14-2015

Judge : S.Nagamuthu

Appellant : Muthukumar

Respondent : State Rep. by The

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

14. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU and THE HONOURABLE MR.JUSTICE V.S.RAVI CrI.A(MD)No.257 of 2008 Muthukumar .. Appellant/Accused No.1 Vs. State rep. by the Inspector of Police, Keela Rajakularaman Police Station, Virudhunagar District. (In Crime No.64 of 2007) .. Respondent/Complainant PRAYER Appeal filed under Section 374 of the Code of Criminal Procedure, against the conviction and sentence, dated 25.03.2008, made in S.C.No.76 of 2007 by the learned Principal Sessions Judge, Virudhunagar District at Srivilliputhur. For Appellant : Mr.T.J.Ebenezer Charles Legal Aid Counsel For Respondent : Mr.C.Mayilvahana Rajendran Additional Public Prosecutor :

JUDGMENT

(Judgment of the Court was made by S.NAGAMUTHU, J) The appellant is the first accused in S.C.No.76 of 2007 on the file of the learned Principal Sessions Judge,

Virudhunagar District at Srivilliputhur. There were totally two accused in this case. The second accused was one Mr. Mariappan @ Naduvula Mariappan. He is the father of the appellant/A1. The trial Court framed as many as 4 charges against the accused. The charge Nos. 1 to 3 were framed against the appellant/A1 under Section 302, 404 and 201 IPC respectively and the fourth charge was against the second accused under Section 201 r/w 302 IPC. By judgment dated 25.03.2008, the trial Court acquitted the appellant/A1 from the charge under Section 201 IPC, but convicted him under Sections 302 and 404 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for one year, for the offence under Section 302 I.P.C and to undergo rigorous imprisonment for two years and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for six months. The trial Court acquitted the second accused from the charge. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

2. The case of the prosecution in brief is as follows: (a) The deceased in this case was one Poomari, the wife of PW1. PW2 is the sister of PW1. PW3 is the sister-in-law of PW2. PW4 is the husband of PW2. The deceased and PW1 were residing at Chellampatti Village. The second accused is the uncle of PW1. (b) According to the case of the prosecution, the deceased had developed illicit intimacy with the first accused as well as with one Thangamariappan, the brother of PW1. PW1 and the other family members reprimanded the deceased and warned her to disconnect such illicit relationship with both the first accused and Thangamariappan. But, the deceased did not respond to the same. She continued the illicit affair with the first accused as well as with Thangamariappan. (c) While so, on 19.01.2007, at about 3.00 p.m., the first accused wanted the deceased to come with him to settle down separately. But, the deceased declined. Enraged over the same, he kicked the deceased on her legs and neck, and as a result, she died. Thus, according to the prosecution, the first accused committed murder of the deceased. It is further alleged that the deceased was wearing a gold ring. The first accused removed the same, after her demise and thus, he has committed offence under Section 404 IPC. It is further alleged that thereafter, in order to cause disappearance of the evidence, the first accused put poisonous substance into the mouth of the dead body of the deceased, as per the advise of the second

accused. Thus, according to the prosecution, the first accused committed offence under Section 201 I.P.C. and the second accused committed offence under Section 201 r/w 302 I.P.C. (d) In order to prove the charges, on the side of the prosecution, as many as 17 witnesses were examined, 27 documents were exhibited and 17 material objects were marked. Out of the said witnesses, PW1 in this case, as already stated, is the husband of the deceased. He has stated that on the day of occurrence, viz., 19.01.2007, in the morning, when he was about to go for his work, the deceased asked him whether she can go to the field to water the crops. PW1 permitted her and he left for his job. At about 06.00 p.m., he returned home and he found that his wife did not return. His children and mother told him that the deceased went for the field, but she did not return. Till 07.00 p.m., he went in search of the deceased, but he could not find her anywhere. Thereafter, he returned and slept at his house. According to PW1, next day, at 06.00 a.m., he and one Balasubramanian went in search of the deceased. At that time, they found the dead body of the deceased, near a Well. The clothes, which the deceased was taken for the purpose of washing, were all scattered. The bottle containing poison was found near the dead body and blood was oozing out through the nostrils. Immediately, he rushed to the Police Station and gave the complaint. (e) PW15, the then Sub Inspector of Police, attached to Keelarajakularaman Police Station, registered a case in Crime No.64 of 2007 for the offence under Section 174 Cr.P.C. at 10.00 a.m. on 20.01.2007. Ex.P1 is the complaint and ExP.23 is the F.I.R. PW15 forwarded these two documents to the Court. Then, she took up the case for investigation, went to the place of occurrence and prepared an observation mahazer and a rough sketch in the presence of witnesses. ExP5 is the observation mahazer and Ex.P24 is the rough sketch. She recovered from the place, where the dead body was found, a bottle containing some substances, a red colour jacket, a saree and a soap. Then, she conducted inquest on the body of the deceased and forward the body for postmortem. (f) PW13, Dr.Kumaresan conducted the autopsy on the body of the deceased, on 20.01.2007 at 05.00 p.m. He found the following injuries: ?External findings:

1. Abrasion of 3cm x 2cm in the left maxillary region. 2.Bluish black discolouration of whole of face, eyelids maxilla, cheek, lower lip, lower jaw and part of neck

adjoining the lower jaw. 3.Contusion of 4cmx3cm on the poster lateral aspect of left side of neck on the lower aspect. Internal Findings:

1. Ribs and collar bones intact. 2.Hyoid bone intact. 3.Both lungs normal. c/s.c ongested. 4.Heart and blood vessels ?. Normal. Blood clots found in the heart chambers. 5.Liver Normal in Contour ?. c/s congested. 6.Spleen size normal. 7.Stomach with partially digested food particles. 8.Intestines-distended with gas. 9.Kidneys-Normal c/s congested. 10.Uterus empty. Hymen absent. Blood stained swab taken and sent for examination. 11.Urinary bladder empty. 12.Brain and its membranes intact. 13.Cervical vertebra at C4 C5 C6 Level blood oozing present. Spinal card at the level of C4 C5 C6 located and with about 10 ml of blood clot composing the spinal card.?. (g) The internal organs numbering 8 were sent for analysis. In the report, it is stated that the density of the sand found on items 1 and 2 tallied with the sand found at the place of occurrence. The report further revealed that there was semen found on the dress materials of the deceased, but grouping was not conclusive. He gave final opinion that the death was due to the fracture of the bones at the neck. According to him, the death would have occurred, 22 to 24 hours prior to the autopsy. Ex.P12 is the postmortem certificate. (h) After continuing the investigation for some time, PW15 handed over the investigation to PW16, the Inspector of Police. Taking the case for investigation, PW16 examined PWs.1 to 4 and few more witnesses. Based on the postmortem report, he altered the case into one under Section 302 I.P.C. ExP26 is the alteration report. Then, he went in search of the accused. On 23.01.2007, at 11.30 a.m., the accused were arrested, in the presence of PW11 and another witness. On such arrest, the first accused gave a voluntary confession in which he disclosed the place where he had hidden the gold ring, a lungi and a shirt. In pursuance of the said disclosure statement, the accused took the police and the witnesses to the said place and produced the above material objects. They were all recovered under a mahazer. The second accused also gave a voluntary confession, but no disclosure was made out of the same. On returning to the Police Station, PW16 forwarded the accused to the court for judicial remand and forwarded the material objects to the court. He forwarded the dress materials found on the body of the deceased and the sand taken from the place of occurrence for comparison. The report revealed that they tallied with each other.

PW16 forwarded the first accused for medical examination to find out his potency. The doctor gave opinion that he was capable of performing sexual intercourse with a woman. Due to transfer, PW16 handed over the investigation to PW17. PW17 took up the case for investigation on 28.03.2007, examined the doctors and collected medical records. Finally, he laid Charge Sheet against the accused. (i) Out of the said witnesses PW2 has stated that on the date of alleged occurrence, at about 03.00 p.m., the deceased proceeded to the field belonging to one Mariappan and after some time, the accused also followed her. By about 05.00 p.m., the accused alone returned, but not the deceased. PW3 has also stated so. PW4 has stated that on the date of occurrence, by about 04.00 p.m., when he was returning home, he found the accused and the deceased talking together at Velikaruvan Kadu. They have further stated that the next day they came to know that the deceased was dead. PW5 has not stated anything incriminating against the accused or regarding any incriminating circumstances. PW6 - Dr.Ponnusamy has stated that on examination of the accused, he found that he was potent. PW7 is the Assistant Scientific Officer in the Forensic Lab at Ramanathapuram. He has spoken about the examination conducted on the internal organs of the deceased. He has also stated that there was no poison detected in the organs of the deceased. (j) PW8 is a Scientific Assistant of the Forensic Science Department at Chennai. He examined the sample earth taken from the place of occurrence and the soil stained on the saree of the deceased. On examination, he opined that the soil stained on the saree and the sample earth taken from the place of occurrence are one and the same. PW9 has spoken about the observation mahazar and the recovery of the material objects from the place of occurrence. PW10 Dr.Alavudin has spoken about the examination conducted on the Hyoid Bone. He was stated that there was no fracture on the Hyoid Bone of the deceased. PW11, the then Village Administrative Officer of Korakkampatti, has spoken about the confession statement of the accused and the disclosure statement made as well as the recovery of the material objects. PW12 is a constable who carried the body to the hospital for postmortem. He has spoken about the same. PW13 Dr.Kumaresan has vividly spoken about the postmortem conducted and his final opinion. PW14 is a Head Clerk of the Judicial Magistrate Court, who forwarded the material objects for chemical examination, as per the order of the learned Magistrate. PW15, the

then Sub Inspector of Police has spoken about the registration of the case. PW16 & 17 have spoken about the investigation done. (k) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C, they denied the same. However, they did not choose to examine any witness nor mark any document, on their side. The defence of the accused was total denial. (l) Having considered all the above materials, the trial court acquitted the second accused, but convicted the appellant/A1 alone under Sections 302 and 404 I.P.C. and accordingly, punished him. That is how he is before this court with this appeal.

3. We have heard Mr.T.J.Ebenezer Charles, the learned Legal Aid Counsel appearing for the appellant/A1 and the learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully.

4. The learned counsel appellant would submit that the prosecution relies only on three circumstances. The first circumstance is based on the evidence of PW3 and PW4 who have spoken that the first accused was found with the company of the deceased between 3 to 5 p.m. on 19.01.2007. The second circumstance is the recovery of the gold ring on the disclosure statement made by the first accused, which, according to the prosecution, belonged to the deceased. The third circumstance is result of the soil test. Apart from these circumstances, according to the learned counsel, there are no other circumstances pleaded by the prosecution. All these circumstances have not been clinchingly proved by the prosecution, the learned counsel contended. 5.The learned Additional Public Prosecutor would vehemently oppose this appeal. According to him, PW2, PW3 and PW4 have seen the deceased lastly and there are no reasons to reject their evidences. So far as the recovery of the gold ring, the Village Administrative Officer has vividly spoken about the same and there is no reason to reject, that evidence also. He would further submit that the soil taken from the place of occurrence tallied with the soil stained on the saree of the deceased, by which the prosecution has clearly proved that the occurrence was at the place of occurrence. Thus, from these circumstances, the prosecution clearly proved the case, learned Additional Public Prosecutor submitted. 6.We have considered the above submissions. At the outset, we should say that in a case based on circumstantial evidence, the prosecution is bound to prove the circumstances pleaded and every

such proved circumstances should act as a link so as to form a complete chain of circumstances 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 in mind, let us now look into the circumstances pleaded and proved by the prosecution.

7. The first circumstance is that the first accused had illicit intimacy with the deceased. It is also admitted by PW1 which is corroborated by Ex.P1 that the deceased had illicit intimacy with one Thangamariappan also. Absolutely, there is no evidence that the accused had any grudge against the deceased or PW1. It is only PW1, who had grudges on account of the illicit intimacy of the deceased. Thus, absolutely, there is no evidence brought on record to prove the motive for the first accused to commit murder of the deceased. 8. The next circumstance is that PW2, PW3 and PW4 had lastly seen the first accused with the deceased together. According to PW2 and PW3, they saw the deceased going into the field at about 3 p.m., followed by the first accused. According to PW4, he found the first accused and the deceased sitting together and talking somewhere near place of occurrence. PW2 is the sister of PW1; PW3 is the sister-in-law PW1; and PW4 is the husband of PW2. If really, PW2, PW3 and PW4, who are closely related to PW1 and the deceased, had seen the first accused with the deceased, in the evening, when PW1 was searching for his wife, they would have certainly disclosed the same to PW1. On the next day morning, after the dead body was found out also, they did not disclose the same to PW1 or anybody else. In Ex.P1, PW1 has stated that the first accused had gone to Coimbatore 20 days before. If really PW2, PW3 and PW4 had seen the first accused, along with the deceased, certainly, they would have told the same to PW1, in which case PW1 would have mentioned the same in Ex.P1 and he would not have mentioned that the first accused had gone to Coimbatore 20 days before. Thus, the conduct of these three witnesses, who are closely related to PW1, in not disclosing about their seeing of the accused and the deceased going together either to PW1 or anybody else, would create enormous doubt in the veracity of their evidences. Therefore, their evidences are liable to be rejected.

9. The next circumstance relied on by the prosecution is that a gold ring (MO.9) was recovered on the confession made by the first accused. It is the case of the prosecution that it belonged to the deceased. But, nowhere it is stated by any one of the witnesses that lastly this gold ring was worn by the deceased. PW1 also has not stated so in his chief examination. In Ex.P1 also PW1 did not mention anything about the gold ring. During the investigation also, he did not say anything about the gold ring. Suddenly, a ring was introduced, after the arrest of the accused. Thus, this circumstance cannot be held to have been proved. 10. Apart from that, the result of the soil test will not go to connect the first accused with the crime. It connects the soil, which was found at the place of occurrence, and the soil found on the saree of the deceased. This has got nothing to do with the first accused. 11. Of-course, the prosecution has proved that the death of the deceased was a homicide. But, the circumstances placed before the Court to hold that the first accused alone committed the said homicide have not been proved at all. As we have already pointed out, the prosecution has to prove the case beyond reasonable doubts. Here, in this case, no circumstance has been proved against the first accused. In such view of the matter, we have no other option, except to acquit the appellant/A1.

12. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed by the trial Court in S.C.No.76 of 2007 on the appellant/A1 is set aside and he is acquitted. The bail bond, if any, executed by him shall stand terminated. The fine amount, if any, paid shall be refunded to him.

13. We appreciate the services rendered by Mr.T.J.Ebenezer Charles, the learned Legal Aid Counsel, who argued the case well. The Legal Services Authority is directed to pay his remuneration. To 1.The Principal Sessions Judge, Virudhunagar @ Srivilliputhur. 2.The Inspector of Police, Keela Rajakularaman Police Station, Virudhunagar District. 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai..

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