

1.K.Muniyandi Vs. The State Rep by The

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Court : Chennai

Decided On : Aug-31-2015

Judge : S.Nagamuthu

Appellant : 1.K.Muniyandi

Respondent : The State Rep by The

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

31. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRL.A(MD).No.422 of 2010 1.K.Muniyandi 2.P.Paramasivam @ Paraman : Appellants Vs. The State rep by the Inspector of Police, Krishnankovil Police Station, Virudhunagar District, [Crime No.94 of 2007]. : Respondent PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 30.10.2010 made in S.C.No.204 of 2007, on the file of the Principal Sessions Court, Srivilliputtur, Virudhunagar District. !For Appellants : Mr.M.Ajmal Khan Senior Counsel For M/s.Ajmal Associates ^For Respondent : Mr.C.Mayil Vahana Rajendran Additional Public Prosecutor :

JUDGMENT

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JUDGMENT

of the Court was delivered by S.NAGAMUTHU, JJ. The appellants are the accused Nos.1 and 7 in S.C.No.204 of 2007, on the file of the Principal Sessions Court, Srivilliputtur, Virudhunagar District. Including the appellants, there were a total number of seven accused in the case. The Trial Court framed as many as five charges against the accused, as detailed below. Charge Accused Penal Provisions 1 1 to 7 302 r/w 120(B) IPC21 to 7 148 IPC32,3,4 and 6 341 IPC41,5 and 7 302 IPC52,3,4 and 6 302 r/w 149 IPC2 By Judgment dated 30.10.2010, the Trial Court acquitted the accused Nos.2 to 4 and 6 of all charges, but convicted the accused Nos.1 and 7, as detailed below:- Accused No.Convicted under Sections Sentence imposed Fine amount 1 and 7 302 r/w 34 IPC To undergo imprisonment for life. Rs.2,000/-. [No default sentence was imposed]. Though the fifth accused died during trial, the Trial Court found him also guilty. Challenging the said conviction and sentence, the accused Nos.1 and 7/the appellants have come up with this Criminal Appeal.

3. The case of the prosecution, in brief, is as follows:- The deceased, in this case, was one Mr.Koodandi alias Sandiyar alias Vijayan. There was enmity between the seventh accused on one side and the deceased on the other side over the issue of taking water from a Common Well for the purpose of irrigation. It is alleged that on 23.03.2007, at 03.00 PM, all the seven accused at Thumbaiyapram conspired to commit murder of the deceased. It is further alleged that on 03.04.2007 at 12.00 midnight, when the deceased was in his field taking water, all the seven accused came to the said place in an unlawful assembly carrying deadly weapons. On reaching the place of occurrence, it is alleged that the accused Nos.2, 3, 4 and 6 surrounded the deceased and prevented him from escaping from the place of occurrence. In the course of the same transaction, it is alleged that the accused Nos.1, 5 and 7 indiscriminately cut the deceased with aruvals and caused his death. Since the accused Nos.2, 3, 4 and 6 were the members of the unlawful assembly, according to the case of the prosecution, they were also constructively liable for punishment under Section 302 r/w Section 149 of the Indian Penal Code. It is alleged that the occurrence was witnessed by PW-2, the brother of the deceased and PW-3. After having seen the occurrence, according to PW-2, he and PW-3 went to a nearby field and concealed themselves out of fear. 3.1. It is further alleged that after committing the murder of the deceased, the first accused,

at 05.00 AM, on 04.04.2007, appeared before PW- 1, the then Village Administrative Officer of Pattakkulam. The first accused wanted to give confession in respect of the murder of the deceased. PW-1 agreed. Then, the first accused gave a confession, which was reduced to writing by PW-1. But, the signature of the first accused was not obtained. Then, PW-1 took the first accused to the Krishnankovil Police Station and produced him along with EX-P1, the confession and his report under EX-P2. 3.2. PW-14, the then Sub-Inspector of Police, attached to the Krishnankovil Police Station, on receipt of the said report, registered a case in Crime No.94 of 2007, under Section 302 of the Indian Penal Code. EX- P32 is the First Information Report. Then, he forwarded EX-P1 and EX-P32 to the Court and handed over the first accused to the Inspector of Police, along with an aruval, a pant and lungi produced by the first accused. 3.3. Taking up the case for investigation, on 04.04.2007 at 07.35 AM, PW-15 examined the first accused and recorded his statement. He altered the case into one under Sections 147, 148, 341, 302 and 120(B) of the Indian Penal Code, at 08.15 AM. He forwarded the alteration report to the Court. Then, he proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of PW-1 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. Then, he conducted inquest on the body of the deceased and prepared an inquest report under EX-P35 and forwarded the dead body for postmortem. PW-7, Dr.R.Ganesh Babu, conducted autopsy on the body of the deceased on 04.04.2007, at 12.45 PM. He found the following injuries:- "1. Lacerated injury measuring 20 X20X10CM on the left shoulder and he bone area remained exposed and left hand was about to fall down and in the left hand, the blood remained clotted.

2. Lacerated injury measuring 15 X2X2CM on the left cheek and it is further extended upto the left side lip and left side ear.

3. Lacerated injury measuring 14 X5X4CM on the right leg.

4. Lacerated injury measuring 15 X5X5CM on the lower portion of the left thigh.

5. Lacerated injury measuring 16 X6X4CM on the right thigh.

6. Lacerated injury measuring 3 X2X12 CM on the right hand index finger and also on the right hand palm. 7.Lacerated injury measuring 10 X4X3CM on the back portion of right leg. 8.Lacerated injury measuring 25 X3X2CM, extended from left side mouth upto left side ear. 9.Lacerated injury extended from left side face upto to the left side ear.

10. Lacerated injury measuring 28 X5X5CM, extended from left side neck upto back side of the neck.

11. Lacerated injury measuring 15 X3X3CM on the left side neck, extended upto sternomastoid upper part upto C3 vertebral in midline.

12. Lacerated injury measuring 2 X2X12 CM on the left side frontal region". According to PW-7, the death was due to shock and hemorrhage due to the cumulative effect of all the injuries. 3.4. During the course of investigation, PW-15 arrested the accused Nos.2 to 7 in the presence of PW-12 and another witness. On the confessions made by the these accused independently, number of material objects were recovered. Since the accused Nos.2 to 4 and 6 were acquitted by the Trial Court, we do not elaborately deal with the same. From the seventh accused, on his disclosure statement made, an aruval was recovered under EX-P30, a mahazer. On completing the investigation, he laid charge sheet against all the accused. 3.5. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, 16 witnesses were examined, 35 documents and 15 material objects were marked. Out of the said 16 witnesses, PW-1, the Village Administrative Officer, has spoken about the appearance of the first accused, the confession given by him and the consequential recoveries made. 3.6. PW-2 is the brother of the deceased, who has stated that all the accused came to the place of occurrence in an unlawful assembly. He has further stated that the accused Nos.2, 3, 4 and 6 surrounded the deceased and the accused Nos.1, 5 and 7 indiscriminately cut the deceased. He has further stated that the occurrence was witnessed by PW-3 also. He has further stated that after the occurrence, he along with PW-3, went to the nearby field and concealed themselves till 08.15 AM, out of

fear. Then, he went to the place of occurrence after 08.15 AM and found the deceased dead. PW-3 to PW-5 have turned hostile and they have not supported the case of the prosecution in any manner. PW-6 has spoken about the motive. 3.7. PW-7, Dr.R.Ganesh Babu has spoken about the autopsy conducted by him on the body of the deceased and his final opinion regarding the cause of death of the deceased. PW-8 has spoken about the scientific analysis conducted, more particularly, the fact that there was human blood found on the material objects. PW-9 is the Head Clerk of the Court. He has spoken about the forwarding of the material objects for chemical analysis. PW-10 is the Head Constable, who carried the First Information Report to the house of the learned Judicial Magistrate No.II. According to him, at 07.15 AM, he handed over the First Information Report to the house of the learned Judicial Magistrate. PW-11 is the Sub-Inspector of Police, attached to the Krishnankovil Police Station, who has spoken about the motive between the parties. PW-12 has spoken about the arrest of the accused Nos.2, 3, 4, 5 and 7 and the consequential discoveries made. PW-13 is the Head Constable, who carried the dead body to the hospital for postmortem. PW-14 has spoken about the registration of the case. PW-15 and PW-16 have spoken about the investigation done and the final report filed against the accused. 3.8. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied the same as false. However, they did not choose to examine any witness nor to exhibit any document. Having considered all the above materials, the Trial Court acquitted the accused Nos.2 to 4 and 6 of all charges, but convicted the accused Nos.1 and 7, as detailed in the first paragraph of this Judgment and punished them accordingly. That is how, the appellants are now before this Court with this Criminal Appeal.

4. We have heard the learned counsel for the appellants, the learned Additional Public Prosecutor for the respondent and also perused the records carefully.

5. In this case, the prosecution mainly relies on the eye-witness account of PW-2 and the extra judicial confession given by the first accused to PW-1. Except these two evidences, there is no other evidence available, upon which the prosecution makes reliance to sustain the conviction. So far as the extra judicial confession

said to have been given by the first accused to PW-1 is concerned, it does not contain the signature of the first accused. It is nothing but the statement of PW-1. He has stated that what was said by the first accused was reduced to writing by him. A reading of the entire statement, viz., EX-P1, would go to show that the first accused has stated as if he alone had gone to the place of occurrence and committed the murder of the deceased. He had not stated anything incriminating against the rest of the accused. However, PW-2 has stated that he witnessed the occurrence. He has further stated that all the accused came to the place of occurrence in an unlawful assembly and all were armed with deadly weapons. He has further stated that the accused Nos.2, 3, 4 and 6 surrounded the deceased and the accused Nos.1, 5 and 7 cut the deceased indiscriminately. Thus, there is a major contradiction between EX-P1, the so-called extra judicial confession and the evidence of PW-2. This contradiction has not been explained away by the prosecution.

6. Now, turning to the evidence of PW-2, his conduct assumes much importance. He is none other than the brother of the deceased. He has stated that after the occurrence, he went to the nearby field, concealed himself, out of fear till 08.15 AM, he went to the place of occurrence after 08.15 AM and found the deceased dead. It is highly an unnatural human conduct. Being the brother of the deceased, going by the natural human conduct, one could expect him to have gone to the rescue of the deceased, provided he had valour and courage. He did not do so. At least, he would have returned to the village and informed his relatives and villagers so as to go to the rescue of the deceased and to take him to the hospital. He did not also do so. He has stated that he was sitting in the field for the whole night and thereafter, at 08.15 AM, he came to the place of occurrence and found the deceased dead. It is highly unbelievable. In the meanwhile, the case was registered and the police came to the place of occurrence. According to PW-15, even the alteration report itself was made at 08.15 AM. Therefore, it is too difficult to believe the presence of PW-2. Since his conduct is highly unnatural, we find no reason to believe him. Assuming that he could be believed, his evidence is contrary to EX-P1.

7. It is too well settled that the extra judicial confession can be the sole foundation for the conviction, provided it inspires the confidence of the Court. In such an event, there is no need to look for corroboration. But, in this case, EX-P1 is duly contradicted by the evidence of PW-2. EX-P1 also does not contain the signature of the first accused. There was no compelling need for the first accused to have gone to PW-1 to confess, because he had no acquaintance with PW-1. For the reasons stated above, we hold that the prosecution has failed to prove the case beyond reasonable doubts. Thus, the accused are entitled for acquittal.

8. In the result, this Criminal Appeal is allowed; the conviction and sentence imposed on the appellants by Judgment dated 30.10.2010, made in S.C.No.204 of 2007, on the file of the Principal Sessions Court, Srivilliputtur, Virudhunagar District, is set aside and the appellants are acquitted. Fine amount, if any, paid by the appellants shall be refunded to them. Bail bond executed by the appellants and the sureties shall stand terminated. To 1.The Inspector of Police, Krishnankovil Police Station, Virudhunagar District. 2.The Principal Sessions Court, Srivilliputtur, Virudhunagar District. 3.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

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