

K.Balasekar Vs. State, Represented By

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Court : Chennai

Decided On : Aug-31-2015

Judge : S.Nagamuthu

Appellant : K.Balasekar

Respondent : State, Represented By

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.228 of 2008 #K.Balasekar : Appellant Vs. State, Represented by Inspector of Police, Bodi Town Police Station, Crime No.528 of 2006. : Respondent PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 14.03.2008 made in S.C.No.42 of 2007, on the file of the learned Additional Sessions Judge [Fast Track Court]. Periyakulam. !For Appellant : Mr.P.Andiraj ^For Respondent : Mr.C.Mayil Vahana Rajendran Additional Public Prosecutor :

JUDGMENT

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JUDGMENT

of the Court was delivered by S.NAGAMUTHU, J]. The appellant is the sole accused in S.C.No.42 of 2007, on the file of the learned Additional Sessions Judge [Fast Track Court]. Periyakulam. He stood charged for the offence punishable under Section 302 of the Indian Penal Code. By Judgment dated 14.03.2008, the Trial Court has convicted the appellant under Section 302 of the Indian Penal Code. As against the said conviction and sentence, the appellant has come up with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:- The deceased, in this case, was one Mrs.Parameshwari. Long before the occurrence, she was given in marriage. But, the said marriage was broken by means of divorce. Out of the said wedlock, the deceased had a female child. Sometime before the occurrence, the deceased had gone to Mumbai along with the child seeking employment. After one year, she returned to the house of PW-1, viz., her mother, along with the child. At that time, she told PW-1 that in Mumbai, she had married the accused. She left behind the child in the custody of PW-1 and went to Mumbai. She requested PW-1 to find a house for rent for the deceased and her husband to live. Accordingly, PW-1 arranged for a house of one Mr.Murugan. The deceased and the accused returned from Mumbai and they lived together for about one week. When the accused was in Mumbai, the deceased used to go to Mumbai for sometime and then return back to her native place. Similarly, the accused also used to come over to Bodi for sometime and then to return back. 2.1. Lastly, four days before the date of occurrence, the accused had come to Bodi. He came to the house of PW-1, where the deceased was staying. He told PW-1 that he was insisting the deceased to come over to Mumbai, but, she was not willing and instead, she was quarrelling with him. PW-1 told him that she would send the deceased and the child to Mumbai soon. The accused was convinced of the said assurance made by PW-1 and he was lying on the cot in the house. PW-1 went to a nearby shop and returned within half an hour. When she entered into the house, she found that the deceased was lying facing upwards. The accused was sitting on her hip. Then, the accused was found cutting the neck of the deceased with a knife. On seeing PW-1, the accused ran away from the scene of occurrence. PW-1 went near the deceased and found that she was dead. Then, she informed her another daughter by name - Rajalakshmi. After her arrival, PW-1 went to the Police Station to make

a complaint. 2.2. PW-13, was the then Sub - Inspector of Police at Bodi Nagar Police Station. At 11.00 AM, on 14.09.2006, PW-1 appeared before him and presented the complaint. PW-13 registered a case in Crime No.528 of 2006, under Section 302 of the Indian Penal Code. EX-P1 is the complaint and EX-P15 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police. 2.3. PW-14, the then Inspector of Police, taking up the case for investigation, proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence. Between 01.00 PM and 01.30 PM, PW-14 conducted inquest on the body of the deceased. He recovered bloodstained earth and sample earth from the place of occurrence. Then, he forwarded the dead body for postmortem. From the place of occurrence, PW-14 recovered a knife, a mat and four plastic papers containing bloodstains. Then, he forwarded the dead body for postmortem. 2.4. PW-7, Dr.S.Raveentranath, conducted autopsy on the body of the deceased at 05.10 PM, on 14.09.2006. He noticed the following injuries. "1. A cut injury on the anterior neck extending up to vertebra present 17 X25 X2cm exposing unlying structure.

2. Right internal jugular vein & carotid artery were cut, larynx was cut right border 9.5 cm from angle of mandible. Left border 10 cm in the left angle of stab injury on the left shoulder 2 X2X5cm.

3. A stab injury on the right outer abdomen 2 X2X05 cm". EX-P5 is the postmortem certificate. According to PW-7, the death was due to shock and hemorrhage due to the cumulative effect of all the injuries. 2.4. The investigation was, thereafter, taken up by PW-15, on 17.09.2006. He came to know that the accused had surrendered before the learned Judicial Magistrate No.VI, Madurai, on 19.09.2006. As per the order of the jurisdictional Magistrate, on 21.09.2006, he took police custody of the accused. While in custody, in the presence of PW-1 and another witness, he made a voluntary confession, in which he disclosed the place, where he had hidden a shirt. In pursuance of the same, he took PW-15 and the witnesses to Kalamman Temple, situated at Theni Main Road and from a bush, he took out a shirt and produced the same. PW-15 recovered the same under a mahazer. On completing the investigation, he laid charge sheet against the

accused. 2.5. 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, 15 witnesses were examined, 17 documents and 8 material objects marked. Out of the said 15 witnesses, PW-1 is the mother of the deceased. She has spoken about the entire occurrence as an eye-witness. PW-2 has spoken about the observation mahazer prepared and the recovery of the material objects from the place of occurrence. PW-3 is yet another daughter of PW-1. According to her, PW-1 informed her about the occurrence and then, she rushed to the place of occurrence, where she found the deceased in a pool of blood. There was a cut injury on her neck. Thus, she is not an eye-witness to the occurrence. PW-4 is the landlord of the house, where the accused and the deceased were residing. He has stated that on the crucial date, when he was in the upstairs of the house, he had the alarm raised in the downstairs. When he came down, he found four or five people standing just in front of the house of the deceased. PW-1 told him that the accused had committed the murder of the deceased. 2.6. PW-5 is an important witness. He was running a Ambassador Car for hire. On 14.09.2006, at 09.00 to 09.30 PM, when he was driving the car from Subburaj Nagar, the accused stopped the car. He wanted PW-5 to say whether he could come to Dindigul. PW-5 fixed hire at Rs.1,500/- for the same. The accused agreed and got into the car. The car went to the Bodi Paramasivan Temple. As requested by the accused, PW-5 stopped the car. The accused got down from the car and went to his house telling PW-5 that he would return back within ten minutes. When he returned, the accused was found perplexed. There was bloodstain on his hand. When PW-5 enquired him, he told that there was some domestic problem. In order to see as to what had happened in the house, according to PW-5, he went to the house. But, the house was found locked. The people, standing there, told that there was bloodstain everywhere. When he returned, the accused had absconded. 2.7. PW-6 was running a petty shop in Bodi Paramasivan Kovil Street. According to him, on 08.09.2006, the deceased came to his shop and used the public telephone. On 10.09.2006, around 10.00 PM, the accused came and spoke over phone. Thereafter, according to him, he came to know that the deceased was killed, on 14.09.2006. PW-7, Dr.S.Raveentranath, who conducted autopsy on the body of

the deceased, has spoken about the same. PW-8 is the Head Clerk of the Court, who has spoken about the receipt of the material objects and forwarding of the same for chemical analysis. PW-9 is the Village Administrative Officer, in whose presence, according to the case of the prosecution, the accused gave a voluntary confession, in which he disclosed the place, where he had hidden bloodstain shirt. Accordingly, based on his confession, the bloodstain shirt was recovered. PW-10 is the photographer, who has spoken about the photograph taken by him on the dead body as well as the place of occurrence. PW-11 is the Head Constable, who forwarded the dead body for postmortem. PW-12 is yet another Head Constable, who has stated that he handed over the First Information Report and the complaint to the learned Judicial Magistrate at 02.00 PM, on 14.09.2006. PW-13 is the Sub-Inspector of Police, who has spoken about the registration of the case. PW-14 has spoken about the investigation done by him. PW-15 has spoken about the further investigation done by him and the laying of the charge sheet. 2.8. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. However, he did not choose to examine any witness nor to exhibit any document. His defence was a total denial. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

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

4. The learned Senior Counsel appearing for the appellant would submit that EX-P1 is a doubtful document and the same cannot be believed. Secondly, the learned Senior Counsel would submit that PW-1 would not have seen the occurrence at all, as her presence, at the time of occurrence, is highly doubtful. He would further submit that the evidence of PW-1 is completely destroyed by the evidence of PW-5. At any rate, according to the learned Senior Counsel, the prosecution has not proved the case beyond reasonable doubts and therefore, the accused is entitled for acquittal.

5. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal. According to him, there is no reason to reject the eye-witness account of PW-1. He would submit that simply because PW-1 being the mother of the deceased, her evidence cannot be rejected. Her evidence is duly corroborated by the evidence of PW-4. The eye-witness account of PW-1 is duly corroborated by the medical evidence also. Thus, according to the learned Additional Public Prosecutor, the prosecution has proved the case beyond reasonable doubts.

6. We have considered the above submissions.

7. PW-1, the mother of the deceased, has stated that she witnessed the entire occurrence. Because she happens to be the mother of the deceased, who is highly interested in the case of the prosecution, her evidence requires close scrutiny. According to her evidence, the accused made a complaint to her that the deceased was not willing to come to Mumbai. PW-1 persuaded him and told him that she would send the deceased to Mumbai as early as possible. Thereafter, the accused was lying on the cot in the house. PW-1 went to a nearby shop and returned within half an hour. When she entered into the house, she found that the deceased was lying facing upwards. The accused was sitting on her hip. Then, the accused was found cutting the neck of the deceased with a knife. On seeing PW-1, the accused ran away from the scene of occurrence. Thus, it is the positive case of PW-1 that the accused was all along only in the house of the deceased, until she was killed. But, the evidence of PW-5 is quite contrary to the same. According to him, at 09.00 - 09.30 AM, when he was in Subburaj Nagar, the accused came and wanted to go to Dindigul in the Car. He fixed the hire of Rs.1,500/-. The accused got into the car. The car came straight to the place of occurrence. The accused got down from the car, went to the house, under the guise of taking some material and within ten minutes, he returned. At that time, PW-5 found the accused with bloodstain. When PW-5 went to the house, the house was found locked and there was nobody else in the house.

8. If the evidence of PW-5 is to be believed, then, the whole story projected by PW-1 must be false, because the accused was not at all at the house of the deceased. He was in Subburaj Nagar. If the evidence of PW-1 is to be believed,

then, the evidence of PW-5 is to be rejected. Thus, the evidences given by PW-1 and PW-5 are quite contrary to each other and mutually destructive. When there are two sets of evidences, one favouring the accused and the other favouring the prosecution and they are mutually destructive, the only course for the Court is to reject both the evidences and to give benefit of doubt arising out of the same to the accused. Therefore, the evidences of PW-1 and PW-5 are liable to be rejected.

9. The next fact spoken to by PW-5 is that when he went to the house of the deceased, he found the same locked and there was nobody else in the house. The neighbours told him that there was blood everywhere. If this part of the evidence of PW-5 is again believed, then, the story projected by PW-1 that the house was kept open, when she entered into the house and she found the accused cutting the deceased cannot be true. PW-5 has stated that there was nobody else in the house. Thus, the evidence of PW-5, on this aspect, is again destructive of the evidence of PW-1 and vice versa. Thus, PW-1 and PW-5 are mutually destructive and it is difficult to believe either PW-1 or PW-5. If these two witnesses are rejected, there is no other evidence to prove the guilt of the accused. Thus, the accused is entitled for acquittal, as the prosecution has not proved the case beyond reasonable doubts.

10. In the result, this Criminal Appeal is allowed; the conviction and sentence imposed on the appellant, by Judgment dated 14.03.2008, made in S.C.No.42 of 2007, on the file of the learned Additional Sessions Judge [Fast Track Court]. Periyakulam, is set aside and the appellant is acquitted. Fine amount, if any, paid by the appellant shall be refunded to him. Bail bond executed by the appellant and the sureties shall stand terminated. To 1.The Additional Sessions Judge [Fast Track Court]. Periyakulam. 2.The Inspector of Police, Bodi Town Police Station. 3.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai. .

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