

Muniandi and Another Vs. the State

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Court : Chennai

Decided On : Sep-13-1995

Reported in : 1996CriLJ1842

Judge : J. Kanakaraj and ;Janarthanam, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 149, 302 and 323; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173(2), 207 and 313

Appeal No. : C.A. No. 403 of 1987 (Against order of Addl. Sessions Judge, Tirunelveli, D/- 8-4-1987.)

Appellant : Muniandi and Another

Respondent : The State

Advocate for Def. : R. Raghupathi, Addl. Public Prosecutor

Advocate for Pet/Ap. : V. Gopinath for ;K. Selvarang and ;B. Ullasavelan, Advs.

Judgement :

Janarthanam, J.

1. In respect of an occurrence that took place at 7 a.m. on 6-9-1984 at Alagianambiapuram, which lies within the jurisdiction of Panagudi police station, leading to the murders of one Uchimahali (deceased 1) and another

Panchavarnam (Deceased 2), the wheels of investigation proceeded on the basis of Exhibit P. 1 complaint given by P.W. 1, registered as a case of suspicious deaths in Crime No. 296/84 and ultimately, a final report under S. 173(2), Cr. P.C. had been filed by P.W. 12, the Inspector of Police, Valliyur, before the Judicial Second Class Magistrate, Nanguneri on 10-6-1985 for alleged offences under Ss. 147, 149 and 302, IPC as against accused 1 to 18.

2. The final report so filed had been taken on file as P.R. Case No. 20 of 1985 as against accused 1 to 18 and all copies of documents, on the appearance of the accused, had been given to them under S. 207, Cr. P.C. Thereafter, on 17-7-1985, it transpired that one of the accused, namely, accused 56, was aged 17 years and consequently, the case against the said accused was split up. The case, as against the rest of the accused, namely, accused 1 to 5 and 7 to 18 had been committed to Court of Session, Tirunelveli Division, Tirunelveli and thereafter, the case records pertaining to the juvenile accused - accused 6 has been submitted to the said Court of Session.

3. Learned Sessions Judge took the case as against accused 1 to 5 and 7 to 18 as S.C. No. 169 of 1986. The case was against the juvenile accused-accused 6 had been taken on file as SC No. 190 of 1986.

4. Before the trial commenced, that is to say, on 8-2-1987, the age of the juvenile accused-accused 6 had been determined, on taking M.O. 1 X-ray and she was found to have completed the age of 18 years.

5. Learned Sessions Judge tried both cases together. The following charges were framed as against accused 1 to 18 :

----- Firstly against accused Under Section 147, I.P.C. 1 to 18

Secondly against accused 1, Under Section 302, I.P.C. (as 2 and 13 respects deceased 1)

Thirdly against accused Under Section 302, I.P.C. (as 1, 2 and 13 respects deceased 2)

Fourthly, against accused Under Section 302 read with 3 to 12 & 14 to 18 Section 149, I.P.C. (as respects deceased 1)

Lastly against accused Under Section 302 read with 3 to 12 & 14 to 18 Section 149, I.P.C. (as respects deceased 2)

6. On trial, accused 1 and 2 were found guilty under S. 302, IPC (two counts), convicted thereunder and sentenced to imprisonment for life on each count, with a direction for the sentences to run concurrently. They were, however, found not guilty under S. 147, IPC and acquitted thereof. Accused 13 was found not guilty Ss. 147 and 302 (two counts) IPC and acquitted thereof. Accused 3 to 12 and 14 to 18 were also found not guilty under Ss. 147 and 302 read with S. 149 (two counts) IPC and acquitted thereof. Aggrieved by the conviction and sentence, accused 1 and 2 resorted to the present action.

7. Brief facts are :-

(a) Accused 1 to 18 are the residents of Alagianambiapuram. They are related to each other. Both deceased 1 and 2 were also the residents of Alagianambiapuram. Deceased 1's sister is P.W. 1 Her father is one by name Sudalai and her mother is one by name Sudali. P.W. 1's mother's mother is P.W. 3, whose daughter is deceased 2.

(b) P.W. 1's father Sudalai, it is said, owns three houses in a row. The house of P.W. 3, it is said, is located at a distance of half a furlong away from the house of P.W. 1. Adjacent to the house of P.W. 3 is the house of accused 5.

(c) One Muthu, also a Harijan, is a resident of the said village. It appears some illicit intimacy got nurtured and developed between deceased 1 and the said Muthu for the past two years prior to the occurrence, which event happened on 6-9-1984. Because of such intimacy, the said Muthu was stated to have been taking her from her house to outside place and return back after sometime. The clandestine relationship between deceased 1 and the said Muthu, it is said, had been arranged by deceased 2.

(d) A few days prior to the occurrence, the said Muthu was stated to have taken deceased to outside place and returned to the village. On the day of such returning to the village, deceased 1 was left in the house of P.W. 3 for the night stay, while he himself took shelter and bed in the house accused 5 situate adjacent to the house of P.W. 3. P.W. 3 appeared to have made an earnest request to the said Muthu to marry deceased 1, since the affair between him and deceased 1, had become public. The said Muthu appeared to have taken up a stand that he was after all friendly with deceased 1 and that there was no incestuous connection between him and her and therefore, the question of himself marrying deceased 1 did not at all arise. The said Muthu also appeared to have requested P.W. 3 to see that deceased 1, was left in her house. P.W. 3, in turn, went and reported the matter to the parents of deceased 1 and they also agreed that their daughter-deceased 1 be retrieved to their custody.

(e) On the day previous to the occurrence the parents of deceased 1 reported the matter to one Subbiah and requested him amicably settle the matter. It appears that the said Subbiah convened a panchayat in the village at 7 p.m. in front of the temple of the village. The Panchayatdars enquired the said Muthu as to his alleged incestuous relationship with deceased 1 and he, in turn, flatly denied his having any sort of illicit relationship with deceased 1. Deceased 2 had also been enquired in the Panchayat and she was stated to have told the Panchayatdars that there had been illicit relationship between the said Muthu and deceased 1 and she also divulged that she was the person responsible for deceased 1 and the said Muthu meeting each other on two or three occasions for taking a trip away from the village. The said Muthu, however, did not accede to marry deceased 1 and so saying, he went away from the panchayat. Thereafter, the Panchayatdars unable to amicably settle the matter told the mother of P.W. 1 to report the matter to the police. Consequently, the mother of P.W. 1 went and reported the matter to Panagudi police station.

(f) On receipt of the petition, Exhibit P. 7 Constable P. 8, it is said, went to the village on the same night to make an enquiry as respects the petition so presented. The said Muthu, in turn, fearing for the police, was stated to have undertaken P.W. 8 to produce the said Muthu before the police station the next

day.

(g) The said Muthu, fearing for the police, was stated to have consumed poison in rather a bid to commit suicide and he was stated to have been taken to Government Hospital, Nagercoil in a bid to save his life. Accused 1 to 18, interested in the welfare of the said Muthu, got enraged and they were stated to have made a march towards the house of P.W. 1. The time was about 7 a.m. P.W. 2, the brother of deceased 2 was then stated to be sitting outside the house of P.W. 1, along with one Sornathai. Fearing risk at the hands of the accused, deceased 1 and 2 were stated to have been locked up inside in one of the three houses situate on the east belonging to the father of P.W. 1, while P.W. 3 was locked up inside P.W. 1's father's house, situate on the western side. P.W. 1 was then present outside the house. Accused 5 and 11 directed P.W. 1 to open the door of the house, to which course, he flatly refused. Accused 1 and 2 broke open the door and dragged P.W. 3 out of the house and kicked her. They also broke open the door of the other house and pulled out deceased 1 and 2 thereafter, all the accused without any exception, were stated to have beaten them black and blue. P.W. 3, fearing for her life, was stated to have run away from the scene, while P.W. 1 rushed to her garden land, in a bid to fetch her mother, who was stated to have been present therein then, to the scene. P.W. 2 alone was standing outside and had the fortuitous opportunity of witnessing the occurrence that happened then.

(h) Both the deceased 1 and 2 were stated to have been surrounded by all accused 1 to 18. Accused 1 and 2 were stated to have tied M.O. 2 rope around the neck of deceased 1 and 2 strangulated her to death. Similarly, by means of M.O. 3 rope, the neck of deceased 2 was also stated to have tied and in a like manner, she was also strangulated to death by them. At that time, Accused 13 was stated to be present near accused 1 and 2. Body of deceased 1 was then suspended by means of a rope being tied to a raf-ter in the house and the body of deceased 2 was allowed to lie nearby. Thereafter, all the accused ran away from there.

(i) sometime thereafter, P.W. 1 along with her mother Sudalai returned to the scene and after seeing the corpses of deceased 1 and 2, wept for sometime. Then

P.W. 1, along with her mother Sudalai went to Perungudi to lodge an information to the Village Administration Officer. The distance between the scene of occurrence and Perungudi is about two miles. After reaching there, they found to their dismay, the Village Administration Officer was not available. They therefore went to Vadakkankulam, which is one mile away from Perungudi for reporting the matter to the Revenue Inspector. They reached Perungudi at about 3 p.m. P.W. 1 lodged an information Exhibit P. 1 with P.W. 9. Thereafter, P.W. 1 and her mother returned to the scene village.

(j) P.W. 9 also returned to the scene at about 3-30 p.m. After inspecting the scene of occurrence, he prepared Yadast and despatched Exhibit P. 1 along with Yadast through a Thalayiari by name Arumugam to Panagudi police station.

(k) P.W. 10 was the Sub-Inspector of Police, Panagudi police station. At 4 p.m. on 6-9-1984, while he was in the station, he received Exhibit P. 1 complaint through the said Thalayiari Arumugam. On the strength of Exhibit P. 9 he registered a case in Crime No. 296/84 as deaths under suspicious circumstances. Exhibit. P. 9 is the copy of printed FIR. He despatched Exhibit P. 1 and copy of and copy of Exhibit P. 9 to the Court of the Judicial Second Class Magistrate, Nanguneri through the Constable Isakkimuthu, P.C. 2394. He also sent express reports to the concerned Officials. Besides, he informed P.W. 11 the then Inspector of Police over phone. He then went to the scene of occurrence.

(l) After the receipt of the Phone Message, P.W. 11, in turn, rushed and reached the scene village at 7-30 p.m. He took up further investigation of the case from P.W. 10, who was already present there. P.W. 9, Revenue Inspector was also present then. P.W. 11 after inspecting the scene, prepared Exhibit P. 8 observation mahazar. He also prepared two rough sketches of the scene, Exhibits P. 10 and P. 11. Between 7-30 and 9-30 p.m. he held inquest over the body of deceased 1. Exhibit P. 13 is the inquest report pertaining to deceased 1. Between 9-30 and 10-00 p.m. he held inquest over the body of deceased 2. Exhibit P. 14 is the inquest report pertaining to deceased 2. During the inquests of deceased 1 and 2, he examined P.Ws. 1 to 3. In the meantime at 8 p.m. he seized M.O. 2 rope from the neck of deceased 1, besides seizing M.O. 3 rope lying on the pial under

Exhibit P. 12 Mahazar. Exhibits P. 8 and P. 12 were attested by P.W. 9 and another. After inquest, at about 10-30 p.m. he sent the body of deceased 1 and 2 respectively through Constables, P.Ws. 4, 5, along with Exhibit P. 2 requisition for the purpose of autopsy. He searched for the accused and they were absconding. He also made arrangements for forwarding the seized MOs. 2 and 3 to the Judicial Second Class Magistrate's Court, Nanguneri. He also altered the case into one under Ss. 147, 323 and 302, IPC. He prepared express reports and sent the same to the concerned Officials Exhibit P. 15 is the copy of the express report.

(m) P.W. 6 was the then Civil Assistant Surgeon attached to the Government Hospital, Panagudi. On receipt of Exhibit P. 2 requisition, he commenced autopsy over the body of deceased 1 at 8 a.m. on 7-9-1984. Exhibit P. 3 is the postmortem certificate he issued as respects deceased 1. He was of opinion that deceased 1 would appear to have died of asphyxia due to strangulation. On the same day at about 9 a.m., he commenced autopsy over the body of deceased 2. Exhibit P. 4 is the Postmortem certificate as respects deceased 2. He was of opinion that deceased 2 would appear to have died of asphyxia due to strangulation. During the Course of autopsy, the doctor P.W. 6, obviously on instructions from P.W. 11, preserved the viscera of deceased 1 and 2 for sending the same to the Chemical Examiner for the purpose of analysis.

(n) At 7 a.m. on 7-9-84 P.W. 11 arrested accused 3 to 7 at Alagianambiapuram. He brought them to the police station at 8 a.m. and then sent to Court for the purpose of remand. He then went to Nagercoil and examined Muthu. He then returned to the scene of occurrence and examined P.Ws. 4 and 5. On the same day, he also examined the doctor, P.W. 6, He searched for the accused and they were not available. On 10-9-1984, he arrested accused 1 and 2 at Kaval Kinaruvilakku and brought them to the police station at 3-30 p.m. and thereafter sent them to the Court for the purpose of remand. On 18-9-1984, at about 12 noon, he arrested accused 8 to 12 at Alagianambiapuram and brought them to the police station and thereafter sent them to Court for the purpose of remand. On 28-9-1984, he sent Exhibit 5 requisition to the Judicial Second Class Magistrate's Court, Nanguneri for the purpose of remand. On 28-9-1984, he sent Exhibit P. 5 requisition to the Judicial Second Class Magistrate's Court, Nanguneri for the

purpose of sending the preserved vicera to the Chemical Examiner for the purpose of analysis on 15-10-1984 at 6.30 a.m. he arrested accused 15 to 18 at Alagianambiapuram and brought them to the police station at 7-30 a.m., from where he sent them to Court for the purpose of remand.

(o) P.W. 7 was the then Headclerk attached to the Judicial Second Class Magistrate's Court, Nanguneri. On receipt of Exhibit P. 5 requisition, as per the directions of learned Magistrate, he sent a letter, under the original of Exhibit P. 6 to the doctor, P.W. 6 requisition to send the preserved viscera to the Chemical Examiner for the purpose of analysis. The doctor, P.W. 6 in turn appeared to have sent the viscera to the Chemical Examiner for the purpose of analysis. Exhibits P. 16 and P. 17 are the reports of the Chemical Examiner, as relatable to deceased 1 and 2 respectively. Exhibits P. 16 and P. 17 reveal that no poison was detected in the visceras relating to deceased 1 and 2.

(p) At that stage P.W. 11 was transferred and his successor Inspector P.W. 12, after verifying the investigation earlier done by P.W. 11 and after further examining and recording the statement from the doctor P.W. 6 laid a final report under S. 173(2) Cr.P.C. 10-6-1985 as stated above.

8. On committal and submission of records, learned Sessions Judge framed charges against accused 1 to 18 as stated above.

9. The accused, when questioned as respects the charges so framed against them, denied the same and claimed to be tried.

10. The prosecution, in proof of the charges so framed against the accused, examined P.Ws. 1 to 12, filed Exhibits P. 1 to PP. 17 and marked Nos. 1 to 3.

11. The accused, when questioned under S. 313, Cr.P.C. as against the incriminating circumstances appearing in evidence against them, denied their complicity in the crime. They did not choose to examine any witness on their behalf.

12. Learned Sessions Judge, on taking into consideration the materials placed and after hearing the arguments of learned counsel for defence and learned Public

Prosecutor rendered the verdict, as stated above.

13. From the arguments of Mr. Gopinath, learned Senior Counsel representing Mr. K. Selvarangan, learned counsel appearing for the first appellant-accused 1 and Mr. B. Ullasavelan, learned counsel appearing for the second appellant-accused 2 and Mr. R. Raghupathi, learned Additional Public Prosecutor, the one and only point that arises for consideration is as to whether the conviction and sentence, as had been imposed upon the appellants accused 1 and 2 for the offences under S. 302, IPC (two counts) are sustainable in law, on the facts and in the circumstances of the case.

14. The causa causans for the occurrence, as projected by the prosecution, is the alleged consumption of poison by Muthu on the morning of the day of the occurrence and his being taken to Government Hospital at Nagarcoil, in a bid to save his life. All the accused, inclusive of accused 1 and 2 are somehow or other interested in the cause and welfare of the said Muthu. The provocation for the accused to rise in revolt against deceased 1 and 2 on the day of the occurrence was giving of Exhibit P. 7 complaint, which resulted in an enquiry being made by Constable P.W. 8 by his actually going to the scene village and enquiring about the whereabouts of the said Muthu. The said Muthu, being afraid of the police, was stated to have consumed poison.

15. When we perused Exhibit P. 7 complaint, the allegations therein are more or less innocuous, in not giving any cause for anxiety to a person like the said Muthu. What had been stated therein was that the said Muthu, who had been friendly with deceased 1 for quite sometime prior to the occurrence was not willing to marry her, as a consequence was not willing to marry her, as a consequence of his not being given proper 'seer', quantified in a sum of Rs. 2,000/- in consideration of his marrying her. The averments in Exhibit P. 7 are quite contra to the evidence, as projected in the Court through the mouth of P.Ws. 1 to 3. Their evidence, in sum and substance is that the said Muthu virtually refused before the panchayat that he had any sort of a connection with deceased 1 and therefore, he could not marry her. Their evidence would further reveal that the said Muthu had incestuous connection with deceased 1 and despite so, he refused to marry her before the

panchayatdars and this aspect of the matter was stated to have been spoken to by deceased 2 before the Panchayatdars. Neither the said Muthu nor a Panchayatdar like Subbiah had been examined by the prosecution to testify the same.

16. These things apart, no tangible materials, in the shape of best evidence had been placed before Court as to Muthu having consumed and getting admitted in the Government Hospital at Nagercoil, in a bid to save his life. In such state of affairs, the immediacy of the cause or the igniting factor for all the accused, inclusive of accused 1 and 2, to rise in revolt against deceased 1 and 2 as well as their family members, as projected by the prosecution appears to be rather highly improbable.

17. Leave alone the immediacy of the cause for the occurrence, even the occurrence, as projected by P.Ws. 1 to 3 cannot at all be expected to commend acceptance at the hands of the Court, on the facts and in the circumstances of the case. All the enraged accused 1 to 18 were stated to have made a march towards the house of deceased 1, in a bid to wreak vengeance, as a consequence of the said Muthu consuming poison and his being taken to the hospital in a precarious condition. All the accused, numbering 18, were stated to have belaboured P.Ws. 1 and 3, apart from breaking open the doors of the two houses and bringing out deceased 1 and 2 kept inside and they were also stated to have been belaboured by all the accused. If really P.Ws. 1, 3 and deceased 1 and 2 received such an on slaught of attack at the hands of accused 1 to 18, the plausibility or possibility of P.Ws. 1, 3 and deceased 1 and 2 sustaining at least some injury on their person cannot be ruled out of consideration. The pity is that neither P.W. 1 nor P.W. 3 had been sent to the hospital for the purpose of treatment and the plausible explanation given in a contumacious fashion is that they were not sent to the hospital, since there were no injuries on their person.

18. If we perused Exhibits P. 3 and P. 4 post mortem certificates, we are unable to find any visible injury or marks on their person as to their having been belaboured by all the accused prior to their having been strangulated to death, by means of tying a rope around their respective necks. We are able to find only a minimal abrasion on the right shoulder joint and right knee of deceased 1, as had been

described in Exhibit P. 3.

19. This apart, before ever an onslaught of attack had been made on deceased 1 and 2, it is the case of the prosecution as unfolded by P.Ws. 1 to 3, the doors of their houses were trashed and consequently, they were broken into pieces and thereafter only deceased 1 and 2 were brought out for an onslaught of attack to be made on them. On this aspect of the matter, questions had been hurled to the Investigating Officer P.W. 11 when he was in the box and he would candidly admit that the doors of three houses were in good condition, without being thrashed and destroyed. From this, it is clear that what P.Ws. 1 to 3 deposed before Court respecting the manner and methodology of the occurrence is divorced of the reality of the situation.

20. The case of the prosecution is that deceased 1 and 2 had been strangled to death by accused 1 and 2 by tying MO 2 and MO 3 ropes around their respective necks. This aspect of the matter is spoken to by P.W. 2 alone. Deceased 1 is none-else than the sister's daughter of P.W. 2, while deceased 2 is his own sister. Worthy it is to state at this juncture that P.W. 1 is the sister of deceased 1, while P.W. 2 is the mother deceased 2. When such an onslaught of attack was stated to have been perpetuated by accused 1 to 18, P.Ws. 1 and 3 did not at all go to the rescue of either deceased 1 or deceased 2. What P.W. 1 would state was that she ran away from the scene to fetch her mother Sudali, who was then available in her garden land situate one mile away from the scene of occurrence. P.W. 3 in her chief examination would say that she ran away from there in a bid to save her life. It is intriguing to note as to be P.W. 2 alone was left off from an attack without being noticed by the accused, when especially he was stated to have been presented all along in the scene. If really P.W. 2 had been bodily present, going by the adage 'blood is thicker than water, he could have rushed to the rescue of deceased 1 and 2, not caring for perilous consequences, if any he has to face at the hands of the accused. He would not at all murmur or whisper anything as to such aspect of the matter. Further, when we scrutinised his evidence, it transpires that he was standing at such a distance that it was not possible for him in the melee that was following to correctly decipher what was happening to deceased 1 and 2 at the hands of accused 1 and 2.

21. Apart from such a dismal feature of his evidence, it is worthwhile to note that he did not rush to report the occurrence to any of the authorities concerned. He would be available in the scene when P.Ws. 1 and 3 returned back to the scene. According to the prosecution, P.Ws. 1 and 3 returned back to the scene. Though on such an admission, P.W. 2 was present, neither he narrated the occurrence either to P.W. 1 or P.W. 3; nor P.Ws. 1 and 3, daunted by curiosity, after finding the dead bodies of deceased 1 and 2 asked P.W. 2 as to what had happened to them. Such sort of *res gestae* evidence is completely absent. If really P.W. 2 had witnessed the occurrence, in the normal run of things, he could have stated to P.Ws. 1 and 3 as to how the occurrence took place immediately on their arrival at the scene or P.Ws. 1 and 3 as to how the occurrence took place immediately on their arrival at the scene or P.Ws. 1 and 3 would have ascertained from P.W. 2 as to how the occurrence had happened.

22. A signal circumstance is traceable to the averments in Exhibit P. 1 - FIR as to the absence of P.W. 2 in the scene at or about the time of the occurrence. If really he had been present, his name could have been mentioned in Exhibit P. 1. That apart, the averments in the FIR, specifically state that deceased 1 and 2 died under suspicious circumstances, thereby requiring no further investigation to be made. For the sake of emphasis, we may again reiterate and state that if P.W. 2 had really been present in the scene and had the fortuitous opportunity of witnessing the occurrence, he should have told the same to P.Ws. 1 and 3, when they returned back to the scene of occurrence after sometime and in the first information, P.W. 1 could have stated in a positive fashion as to how the occurrence had happened without mentioning therein that the death of deceased 1 and 2 was under suspicious circumstances.

23. In view of the dismal features exhibited by the testimony of P.W. 2 the lone and sole witness for the occurrence, we are unable to place any safe reliance upon his testimony to mulct criminal liability upon the appellants-accused 1 and 2, as had been done by the Court below for an offence under S. 302, IPC (two counts). In this view of the matter, both the appellants accused 1 and 2 are found not guilty of the offences under S. 302, IPC (two counts) and consequently, the conviction and sentence, as had been imposed on them by the Court below

deserve to be set aside.

24. Before parting with the case, we want to observe that the procedure adopted by the Court below, in having a joint trial and recording common evidence, appears to be unwarranted, on the face of the sanguine and salutary relevant provisions adumbrated under the Madras Children Act, 1920 (Act IV of 1920, as amended by Madras Act XXXVII of 1958), which were applicable to the case on hand, inasmuch as the occurrence had happened in the year 1984.

25. In fine, the appeal is allowed, the conviction and sentence, as had been imposed upon the appellants-accused 1 and 2 by the Court below, are set aside and they are acquitted thereof. The bail bonds, if any, executed by them, shall stand cancelled.

26. Appeal Allowed.

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