

Krishnasamy and anr. Vs. State

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Court : Chennai

Decided On : Jul-12-2004

Reported in : 2005CriLJ1240

Judge : N. Dhinakar and ;M. Chockalingam, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 120 and 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : C.A. Nos. 590 of 2001 and 1409 of 2002

Appellant : Krishnasamy and anr.

Respondent : State

Advocate for Def. : V.M.R. Rajendran, Addl. Public Prosecutor

Advocate for Pet/Ap. : K. Parameswari, Adv. in C.A. No. 590/01 and ;V. Sriram, Adv. in C.A. No. 1409/02

Disposition : Appeal allowed

Judgement :

M. Chockalingam, J.

1. The appellants, who were ranked as A-1 and A-2 and tried along with the third accused, since acquitted by the lower Court, stood charged, tried and found guilty,

as stated hereunder, have brought forth these appeals.

Accused Charges Guilty Punishment

A-1 120(b), 364, 302, 302 364 10 years R.I. & fine of Rs. 1,000/-

read with 109, in default, 3 months R.I.

120(b) 10 years R.I. & fine of Rs. 1,000/-

read with in default, 3 months R. I.

302

302 Life imprisonment & fine of Rs.

1,000/- in default, 3 months R.I.

201 3 years R.I. & fine of Rs. 1,000/-

in default, 3 months R.I.

A-2 120(b), 364, 302, 302 364 10 years R.I. & fine of Rs. 1,000/-

read with 109, 201 in default, 3 months R.I.

120(b) 10 years R.I. & fine of Rs. 1,000/-

read with in default, 3 months R. I.

302

302 Life imprisonment & fine of Rs.

1,000/- in default, 3 months R.I.

2. The short facts necessary for the disposal of this appeal are as follows :

(a) The deceased Ramasamy was the father of the first accused. The second accused was the cousin brother of the first accused. Accused Nos. 1 and 2 and the deceased Ramasamy all belonged to Devagowndanpatti. Long time before eking their livelihood, they went over to Kangeyam. A-1 was a tailor, and the deceased was working in a hotel. They were also residing at Kangeyam. The deceased, who lost his wife, married a widow by name Eswari. Not satisfied with her, he developed illicit intimacy with one vagrant by name Sumathi, who is shown as A-3. The first accused, a week before the occurrence, went over to Malvarpatti to attend a festive occasion, where all were talking about the illicit intimacy of the deceased with the said Sumathi. On 20-5-1999, at 7.00 A. M., the wife of A-1 went over to the deceased and made a request that he can send away Sumathi, in view of the outside talks. Pursuant to the same, there was a quarrel, in which the deceased attacked the wife of the first accused with the chappel, and on seeing this, A-1 and A-2 conspired and decided to do away with the deceased.

(b) On 22-5-1999, they met the deceased and informed him that a panchayat was to be convened at their native place Devagowndanpatti. So saying, they took him in a bus. The third accused also accompanied them. After reaching Devagowndanpatti, A-1 was telling them that the panchayat should not take place that day, and therefore, it would be better to go back to Kangeyam. They were walking towards the road. When they reached the metal road, A-1 was asking his father that he should abandon the third accused; but, he vehemently refused. Immediately, A-1 pushed the deceased down and pressed his neck, and A-1 and A-2 strangled him. A-1 threatened A-3 to squeeze his testicles; otherwise, he would kill her. She also did so. A-1 took out the waist cord of A-2, handed over to A-3 and asked her to strangle him with that. At the spot, the deceased died. A-1 asked A-2 and A-3 to leave the place, and they went away. A-1 went to the village and informed P. W. 4 Karuthiappan and P. W. 5 Ramasamy that his father Ramasamy died out of illness at Kangeyam. So saying, he took them to the place of occurrence, and with their help, he buried the body in the burial ground. A-1

went to his father-in-law's house at Malvarpatti, informed his wife about the occurrence and stayed over there.

(c) Next day, A-1 went to P. W. 3 Sakthivadivel, the Village Administrative Officer of Pudukottai, who was his relative, and informed him about the occurrence. P. W. 3 in turn, took A-1 to P. W. 1 Anadavan, the Village Administrative Officer of Maarampadi. P. W. 2 Sundarraaj, a Menial, was also present that time. A-1 volunteered to give a statement to P. W. 1, which was recorded in the presence of P. Ws. 2 and 3. His statement is marked as Ex. P1. P. Ws. 1 to 3 took the first accused to Eriyodu Police Station, where P. W. 12 Mohan, Inspector of Police, was present, to whom A-1 was handed over along with Ex. P1 report.

(d) On the strength of Ex. P1 report, P. W. 12 registered a case in Crime No. 108/99 under Sections 120(b) and 302 I. P. C. The printed First Information Report Ex. P12 was despatched to the Court. The Investigating Officer recovered M. O. 7 bloodstained shirt, from A-1 under a mahazar. A-1 gave a confessional statement voluntarily, which was recorded by the Investigating Officer. The admissible part of the same is marked as Ex. P2, pursuant to which he produced M.O. 1 wrist watch, M. O.2 towel and M. O. 3 a pair of chappels, and all were recovered under Ex. P3 mahazar in the presence of two witnesses. He proceeded to the scene of occurrence, made an inspection and prepared Ex. P4 observation mahazar and Ex. P14 rough sketch. A requisition was sent to P. W. 9 Krishnajirao, Tahsildar, Veda sandhur, to make an inspection of the spot and for the exhumation of the dead body.

(e) On 25-5-1999 at about 12.00 Noon, P. W. 9, the Tahsildar, proceeded to the scene of occurrence and exhumed the body of the deceased. P. Ws. 4 and 5 identified the body. P. W. 9 conducted the inquest in the presence of witnesses and panchayatdars, and he prepared Ex. P7 inquest report. A requisition was sent to the Medical Officer at the Government Hospital, Madurat.

(f) On receipt of the requisition, P. W. 10 Dr. Thiyagarajan, District Police Surgeon & Professor of Forensic Medicine, Madurai Medical College Hospital, Madurai, came over to the scene of occurrence and conducted autopsy on the dead body. He found the following Antemortem injuries:

(1) On dissection of Nose, Nasal septum base deviated to the left side with laceration of mucosal surface with appreciable blood clots.

(2) Lacerated injuries seen on both lips front of inner surface, upper lip 3 in number each, curvi linear 1 cm x linear x muscle deep, lower lip 4 in number each 1.5 cm x linear x muscle deep convexity downwards in upper lip, convexity in lower lip upwards, (sic) teeth impression.

(3) On dissection of scrotum and penis, well appreciated blood clots seen on both testes and root of penis.

(4) Bloodless dissection of the neck reveals: Blood clot on both sides of the neck front and middle 3rd each 8 x 6 cm. Fracture both greater horns from the body of Hyoid bone, benzidine test intense and immediate positive (antemortem fracture).

(5) On examination of neck : Superficial skin in midst of decomposition reveals deeply furrowed continuous ligature mark 22 cm x 0.5 cm x muscle deep faced on the back with postmortem lividity, in the middle of neck encircling the neck.

The Doctor has issued Ex. P10 postmortem certificate, wherein he has stated that no definite opinion can be given regarding cause of death due to advanced purification.

(g) All the clothes from the dead body were also recovered. A-2 and A-3 were arrested by the Investigating Officer on 26-5-1999 at 10.15 A.M. at Nallamanarkottai Bus Stop. A-2 gave a confessional statement, the admissible portion of which is Ex. P16. Pursuant to the same, M. O. 8 waist cord was recovered under Ex. P17 mahazar.

(h) The further investigation was taken up by P. W. 13 Rajkumar, Inspector of Police. He sent a requisition to the concerned Court to send all the material objects for chemical analysis. Accordingly, they were sent along with a covering letter by the Court. On analysis, the Chemical Analyst's report Ex. P21 and the Serologist's report Ex. P22 were received by the Court. The final report, on completion of the investigation, was filed by him before the Court.

3. In order to prove the charges levelled against all the three accused, the prosecution examined 13 witnesses and relied on 22 exhibits and 9 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses. They flatly denied them as false. No defence witnesses were examined. The trial Court, on hearing the rival submissions and scrutiny of the materials, found A-1 and A-2 guilty of the said offences and awarded the punishments as referred to above, while it acquitted A-3 of all the charges. Hence, A-1 and A-2 have brought forth these two appeals.

4. Advancing their arguments on behalf of the appellants, the learned Counsel made the following submissions :

The trial Court has found both the appellants A-1 and A-2 guilty, when there was absolutely no evidence. What was available for the prosecution was only the circumstantial evidence. P. Ws. 2 to 7 all have become hostile. According to the prosecution, the extra-judicial confession was recorded by P. W.1, V. A. O., in the presence of P. W. 2. But, P. W. 2 has not supported the prosecution case and has turned hostile. P. W. 3 was another V. A. O. before whom the first accused appeared and informed about the occurrence. There is no explanation why P. W. 3 V. A. O. has not reduced the said information into writing, but has in turn taken A-1 to P.W. 1 another V. A. O. P. W. 3 has also turned hostile. Thus, what was available for the prosecution was only that of the evidence of P. W. 1., and in view of the number of suspicious circumstances attendant over the evidence of P. W. 1 and the so-called extra-judicial confession, the prosecution has miserably failed to prove its case. Even the medical evidence has not supported the prosecution case. On the same evidence, while specific accusation was made against A-3, attributing overt act in causing the death of the deceased, the lower Court, though acquitted A-3, has erroneously found A-1 and A-2 guilty. In the instant case, there was no evidence available, and thus, it can be stated that the prosecution has not established the sequence of events, as expected in a case of this nature, which was rested upon the circumstantial evidence, and the prosecution has not proved the guilt of the accused, and in such circumstances, the lower Court should have

acquitted them. Therefore, they seek acquittal in the hands of this Court.

5. This Court heard the learned Additional Public Prosecutor on those contentions.

6. It is not in controversy that the dead body of the deceased one Ramasamy was exhumed by P. W.9 Tahsildar, Veda sandhur, on a requisition given by P. W. 12 Inspector of Police, and P. W. 10, the Doctor, has also been requested to conduct autopsy on the dead body at the spot, and he has also issued Ex. P10 postmortem certificate. The prosecution came forward with a specific case that all the three accused have strangled Ramasamy and squeezed his testicles, thereby causing his death. The Doctor has clearly stated in his certificate that no definite opinion could be given regarding the cause of death, due to the advanced putrefication of the body. At this juncture, though the death was caused and the dead body was buried, it cannot be stated that the evidence of the Postmortem Doctor was in support of the prosecution case or one of the circumstances pointing to the guilt of the accused.

7. So many circumstances are seen, which stood against the prosecution case. In the instant case, the prosecution solely rested its case upon the circumstances. Needless to say that in a case like this, the prosecution has to prove the hypothesis pointing to the guilt of the accused that none else except the accused could have committed the offence. When this test is applied, the Court is of the considered opinion that the prosecution has miserably failed in its attempt. P. Ws. 1 to 8 were examined in order to prove the circumstances pointing to the guilt of the accused. According to the prosecution, the first accused, after the commission of the offence, went over to P. W. 3, a close relative of his, and informed him about the occurrence; but, P. W. 3 has not reduced the said information into writing, though he was a Village Administrative Officer, and he in turn, took the first accused to P. W. 1, another Village Administrative Officer. There is no explanation forthcoming from the prosecution side why P. W. 3 has not acted so.

8. According to the prosecution, the extra-judicial confession was recorded by P. W. 1 in the presence of P. W. 2. P. W. 2 has turned hostile, since he stated that he did not know what transpired between P. W. 1 and the first accused. According to the prosecution, P.Ws. 4 and 5 were the persons, whose assistance was taken by

A-1 to bury the dead body of the deceased, and they have also turned hostile. Pursuant to the confessional statement, all the material objects were recovered by the Investigating Officer during investigation; but, the witnesses marched in that regard, have also turned hostile. Thus, what was available for the prosecution was only that of the extra-judicial confession recorded by P. W. 1, the Village Administrative Officer. It is pertinent to note that the evidence of P. W. 1 does not stand free from suspicion. It is true that the Court can rely upon the extra-judicial confession, if the evidence in that regard is convincing and inspires the confidence of the Court. But, in the instant case, it cannot be stated so. Hence, it would be highly unsafe to base a conviction only on the extra-judicial confession, alleged to have been made by the first accused to P. W. 1., and that too, when all the circumstances indicating that it cannot be so.

9. One strong circumstance against Ex. P1, the alleged extra-judicial confession, was that a scrutiny of the same would clearly reveal that it would have been one in the language by the police, and not one before a Village Administrative Officer. P. W. 2 in his evidence has stated that all the documents were prepared in the Police Station, and thus, it would be quite evident that Ex. P1 extra-judicial confession should have come into existence only before the Police Station, and in view of the same, no importance can be attached to Ex. P1 document. It can be well stated that nothing was available for the prosecution before the trial Court; but, the trial Court, even without considering all the aspects of the matter, has found the appellants/ A-1 and A-2 guilty. As rightly pointed out by the learned Counsel for the appellants, once the prosecution has attributed the overt acts for A-3 also, the lower Court has acquitted A-3 and has found A-1 and A-2 guilty, while their acts in causing the death, as per the prosecution, were not separable.

10. In view of the above discussions, the prosecution has miserably failed to prove the sequence of circumstances pointing to the guilt of the accused, as one expected in the instant case. The Court is of the view that both the appellants /A-1 and A-2 are entitled to acquittal, which was not done by the lower Court, and hence, the conviction and sentence passed by the lower Court have got to be set aside only by upsetting the same.

11. In the result, both the criminal appeals are allowed, setting aside the conviction and sentence passed by the lower Court. The appellants /A-1 and A-2 are acquitted of the charges levelled against them, and they are directed to be set at liberty forthwith, unless their presence is required in any other case.

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