

Murugan Vs. State Rep. by

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Court : Chennai

Decided On : Nov-02-2011

Judge : S.Palanivelu, J.

Acts : Indian Penal Code (IPC) - Sections 302, 341, 324, 307, 323, 34; Code of Criminal Procedure (CrPC) - Section 313, 233 (2)

Appeal No. : Criminal Revision Case(MD)No.507 of 2009

Appellant : Murugan

Respondent : State Rep. by

Judgement :

1. This revision challenges the judgment of acquittal passed in S.C.No.68 of 2009 by the learned Additional District Judge, Fast Track Court, Ramanathapuram.

2. The case of prosecution may tersely be stated as follows:

2.(a) Revision Petitioner/P.W.1 is son of deceased Rani. P.W.2 is sisterr of P.W.1. P.W.1 laid a complaint Ex.P.1 with the 1st respondent police on 3.9.2008 at about 1.30 a.m., stating that the second accused picked up quarrel with Rani with regard to the grassing of cattle, that on 2.9.2008 at about 5.00 p.m. the goat belonging to P.W.1 went into the house of 2nd accused and the daughter of Nagalakshmi by name Malathi exaggerated the event and 2nd accused shouted and hence the deceased asked 2nd accused why should she shout like that, that at that time 1st

and 3rd accused also came and the first accused by stating that through out the year the deceased was disturbing them, cut on the head of deceased by means of Vangaruval, that both 2nd and 3rd accused assaulted Rani by means of stick on her body indiscriminately, that on raising alarm by P.W.1 to P.W.3 and others by name Selvam, Karuppaiah came and P.W.1 took his mother to Paramakudi Government Hospital and hence the complaint.

2.(b) On receipt of information with regard to the occurrence, the Head Constable P.W.7 proceeded to the Government Hospital, Paramakudi and recorded Ex.P.1 complaint from P.W.1, since the injured was not in a state of giving statement. The 1st and 3rd accused also were being treated as inpatients in the said hospital and P.W.7 also recorded statement from the 1st accused. He came to the police station on 3.9.2008 at about 1.30 a.m and registered a case in Cr.No.95/2008 under section 341, 324, 307 IPC on the complaint given by P.W.1. He lodged FIR, Ex.P.4.

2.(c) On the same day P.W.7 also registered a case in Cr.No.96/2008 under Section 324 IPC on the statement given by the first accused. At about 2 a.m. on the same day, he sent the FIRs to the Court and placed the copy of FIRs before the Inspector of Police for information. He received information from the Government Hospital, Madurai, that on 4.9.2008 at 3.45 a.m., Rani breathed her last.

2.(d) P.W.14 Inspector of Police took up the case in Cr.No.95/2008 for investigation, proceeded to the scene of occurrence on 3.9.2008 at 7.00 a.m. and prepared Ex.P.17 Observation Mahajar and Rough Sketch Ex.P.18. He also lifted blood stained earth as well as the sample earth, M.O.2 and M.O.3 respectively under Mahazar Ex.P.14. Then he went to Government Rajaji Hospital at Madurai and recovered M.O.4 and M.O.5 blood stained saree and blood stained inskirt of the injured under Mahazar Ex.P.15. He examined the witnesses and recorded their statements. On getting information that the injured died on 4.9.2008, he again proceeded to the above said hospital at 7.00 a.m., got death intimation and altered the case into one under section 302 I.P.C. under alteration report Ex.P.19. He conducted the inquest on the body the deceased in the presence of

Panchayatdars and prepared Inquest Report Ex.P.20. He also gave a requisition through P.W.7 for conducting post mortem over the dead body, to the Medical Officer.

2.(e) P.W.11 Doctor attached to the Government Rajaji Medical College Hospital, Madurai, conducted Post Mortem over the dead body of the deceased and issued Ex.P.11 Post Mortem Certificate with opinion that the deceased would appear to have died of injury No.1 and its corresponding internal injuries and its complications thereof. He has observed the following injuries on the body:-

1. A transversely oblique sutured incised wound involving both the parietal areas of 17 cms x 1 cm x brain deep. The right end of the wound is 10 cms inner to the top of the ear lobule and 8 cms above the outer aspect of the right eyebrow. The left end of the wound is 11 cms inner to the top of the left ear lobule and 12 cms above the outer aspect of left eyebrow.

On dissection, the wound found cutting the underlying soft tissues, both parietal bones through and through measuring 17 cms x 1 cm, cutting the underlying duramater measuring 17 cms x 1 cm through and through cutting the underlying both parietal lobe of brain measuring 17 cms x 1 cm x 3 cms with diffuse subdural haematoma both parietal regions and right occipital region.

2. A transversely oblique incised wound over outer aspect of right eyebrow 4 cms x 0.5 cm x muscle deep. The inner end of the wound is 7 cms from the glabella and the outer end is 8 cms from the tragus of the right ear.

3. A contusion on the back of right side of chest measuring 7 x 3 cms.

4. A contusion back of middle right forearm 5 cms x 3 cms.

5. Multiple transverse linear contusions over both gluteal regions and back of right thigh.

2.(f) P.W.14 continued the investigation by examining the police personnel. Again he went to Madurai Government Hospital and arrested the 1st accused and brought him to the police station. He gave a confession statement in the presence

of P.W.4 and P.W.5, in which the admissible portion is Ex.P.2. In pursuance of the same, the 1st accused took the police and witnesses to his house and produced one Vangaruval M.O.1, which was seized by P.W.14 under cover of Mahazar Ex.P.3. He sent the first accused for judicial custody and despatched M.O.1 under Form-95 to the Court. Then he examined the Doctor P.W.8, who had given treatment to the deceased when she was admitted to the hospital. P.W.14 gave requisition Ex.P.12 to the Court to send the material objects for chemical examination. P.W.10, Scientific Assistant gave Ex.P.8 Biological Report to the Court, in which it is stated that the billhook, saree, petticoat and the earth contained blood. Ex.P.9 is the report from the serology department in which it is stated that the saree, petticoat and earth contained blood of human origin belonging to 'O' group. The blood in the billhook was found to be human origin and grouping test was inconclusive.

2.(g) P.W.14 gave requisition to the Court to take police custody of the accused 2 and 3 who surrendered before the Court on 4.11.2008. He examined them and recorded the confession statement given by them. After completion of the investigation, he laid charge sheet under Section 302, 302 r/w 34 and 323 I.P.C.

2.(h) He also took up the case in Cr.No.96 of 2008 for investigation and proceeded to the scene of occurrence, prepared observation mahajar and rough sketch in the presence of witnesses. He examined 1st and 3rd accused who got injured on their hands and also the eye witnesses. In his investigation it transpired that out of wordy quarrel between the deceased and the 1st accused, the accused assaulted Rani and P.Ws.1 and 2 for their defence, assaulted the 1st and 3rd accused, causing simple injuries and he lodged a final report as 'Mistake of Fact' in Cr.No.96 of 2008 finding that the accused are aggressors. The Court accepted the same on 26.06.2009. The final report in Cr.No.96 of 2008 is Ex.P.21.

2.(i) The accused were put on trial and on completion of prosecution evidence, they were questioned under Section 313 Cr.P.C. as regard incriminating materials available against them in the prosecution evidence. They denied complicity in the offences. They examined D.W.1 and marked Ex.D.1 to Ex.D.4. The accused filed statement under Section 233 (2) Cr.P.C. stating that on 2.9.2008 at about 8.30

p.m. there was noise heard in front of house of second accused, that the first and third accused proceeded there and found a crowd, that there was no light, that P.W.1 and P.W.2 possessed sticks in their hands, also in the hands of the deceased, that her son-in-law Manimuthu was having vettu arruval in his hand, that they were attacking the house of second accused, that when A1 and others asked them, they assaulted them, that since it was dark, it could not be stated who assaulted whom, that at 9.15 p.m. on the same day, they went to Paramakudi Government Hospital by bus and in the same bus, the injured Rani was also taken, that 3rd accused and Rani were sent to Madurai Hospital at 11.00 p.m. and he was taking treatment as inpatient in Paramakudi Government Hospital, that his signature was obtained in a blank paper by the Inspector of Police in the hospital at 3.00 a.m. On 3.9.2008, that on the same day he was sent to Madurai Government Hospital and that on 6.9.2008 at about 6.00 p.m. he was taken by police from his house and was detained.

3. The learned Fast Track Court Judge, Ramanathapuram, on perusal of materials found the accused not guilty of the charges framed against them and acquitted them of all the charges. Hence, P.W.1 has preferred this revision. The State has not filed any revision.

4. The following is the point for consideration:

Whether the prosecution has brought home the guilty of the accused beyond all reasonable doubts?

Point:

5. The first and foremost feature at a glance on the prosecution case is inordinate and unexplained delay in receipt of the complaint and FIR by the Judicial Magistrate, Paramakudi. The occurrence took place on 2.9.2008 at 5.00 p.m. P.W.7 Head Constable recorded the same and registered the case in Cr.No.95 of 2008 on 3.9.2008 at 1.30 p.m. But the FIR and complaint were received by the learned Judicial Magistrate, Paramakudi only on 4.9.2008 at 10.30 a.m. It is in the evidence that the distance between the Judicial Magistrate Court, Paramakudi and the respondent police station is 19 kms. But after the occurrence, the FIR reached

the Court after considerable delay. In the first page of FIR, in column No.3.(a), it is stated that on 2.9.2008 at about 9 'O' clock the occurrence took place. The goat entered into the house of the deceased at 5.00 p.m. The complaint does not show the time of occurrence accurately. But P.W.1 in his chief examination has stated that the occurrence took place at 9.00 p.m. In the cross examination he has confirmed the time of occurrence at 9.00 p.m. on 2.9.2008. The difference in the time of occurrence and the unexplained delay are fatal to the prosecution. It is added that neither P.W.7 nor P.W.14 have explained about them in their evidence.

6. The next disturbing feature in the prosecution case is that there is no evidence with regard to the presence of light nearby the scene of crime. Admittedly, the occurrence took place at 9.00 p.m. Neither the Observation Mahazar nor the Rough Sketch would indicate that there was light in the place of occurrence. The eye witnesses have also stated that by means of light, the accused were identified by them. They did not say about the source of light in the place. In the absence of light in the place of occurrence, a serious doubt has arisen whether P.W.1 and P.W.2 were able to see the accused assaulting the deceased and causing of injury on various parts of her body by which accused. Even though in the cross examination P.W.1 says that there was light in the scene of crime as well as the electrical post was also there, they were not mentioned in the Observation Mahazar and in the Rough Sketch. It is also one of the suspicious circumstances which lead the Court to lay doubt on the prosecution case.

7. The learned Fast Track Court Judge has discussed about the obtaining signature of P.W.1 in the hospital. His appreciation of evidence give rise to the fact that P.W.1 took the FIR book to the Government Rajaji Hospital, Madurai, and P.W.1's signature was obtained in the hospital and it transpires that the FIR Ex.P.4 and the Alteration Report Ex.P.19 were together sent to the Judicial Magistrate Court, Paramakudi and they were received only on 4.9.2008 alone. He has also found fault with P.W.7 in the matter of not sending the FIR promptly to the Court. This Court does not find any infirmity in the findings aforestated recorded by the trial Court.

8. P.W.14 has admitted that he did not examine the Head Constable who took the express FIR to the Court and that he also does not produce the passport given to the Head Constable for taking the F.I.R. to the Court.

9. The next suspicious circumstance in this case is the despatch of statements of witnesses and other records to the Court prepared by the police, belatedly. Immediately after the occurrence P.W.14 has recorded the statements of witnesses and prepared the records. The material objects, sample earth, blood stained earth, saree and petticoat were also stated to have been seized immediately after the occurrence. But the statements of the witnesses and the Mahazars for the recovery of material objects reached the Court on 19.3.2009 only. Hence, there was a delay of over six months for the records to reach the Court. The above said factors probablize the defence version.

10. It is also stated that there are some discrepancies with regard to the scene of crime. In the Charge Sheet, it is stated that the occurrence took place in front of the house of P.W.1. But in the Rough Sketch and Observation Mahazar it is mentioned that it is on the road from Nainarkovil lead to Kadu Adarthakudi. The version with regard to the place of occurrence also raises doubt. The name of P.W.2 has not been mentioned in Ex.P.1. She is the sister of P.W.1. If really had she been there, P.W.1 might have mentioned in her name in the complaint as if she is eye witness. Hence, the Court finds impediment in placing reliance upon the evidence of P.W.2. The necessary corollary would be that the evidence of P.W.1 remains uncorroborated.

11. P.W.1 represented before the doctor that his mother was assaulted by three known persons by Aruval but he in his complaint and evidence would say that she was assaulted by Vangaruval. In the cross examination, P.W.1 has stated that he told the doctor that his mother sustained injury by Vangaruval, that he knows the different between Vangaruval and Aruval and that M.O.1 is Vangaruval, it is not aruval. The description of the weapon as stated by P.W.1 differs from one occasion to other. When P.W.1 was able to differentiate Vangaruval and Aruval, he might have stated uniformly about the weapon in his complaint and his version before the Doctor. This is yet another suspicious circumstances in this case.

12. Ex.P.1 complaint is silent about the assault made on the accused and the injuries sustained by them. Even though the injuries suffered by the accused were simple in nature, P.W.1 is bound to mention about them in his complaint. As mandated by Police Standing Orders, the investigator has produced the entire file in Cr.No.96 of 2008 in which he has found that the accused party were aggressors. The Court has to find out the origin and genesis of the occurrence. As far as this aspect is concerned, this Court could not find on the materials and evidence placed before it as to which party is the aggressors, since the case of the prosecution is bristled with inconsistencies and infirmities.

13. The above said discussion taken up by this Court, on a careful scrutiny of the materials and evidence placed by the prosecution, would reveal that the occurrence as projected by the prosecution is doubtful one. The infirmities, discrepancies in the version and the contradictions in the prosecution case would vividly show that the prosecution has not established its case beyond all reasonable doubt. As far as exercising of powers by the revisional court on the order of acquittal is concerned, it is limited. It is settled law, that the revisional court can interfere with the judgment of acquittal only if the findings of the trial Court are perverse and the judgment has caused grave injustice. The State has not been preferred any revision. This Court does not find any perversity in the findings recorded by the Court below. It has appropriately appreciated the evidence and analysed the circumstances to pass a judgment of acquittal which does not warrant any interference from this Court, which deserves to be confirmed and accordingly it is confirmed. This point is answered accordingly.

14. In the result, the Criminal Revision Case is dismissed.

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