

State Rep by Vs. K.Vijayan Alias Muthupandi

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Court : Chennai

Decided On : Jan-09-2013

Judge : M.Jaichandren

Appellant : State Rep by

Respondent : K.Vijayan Alias Muthupandi

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

09. 01/2013 CORAM THE HONOURABLE MR.JUSTICE M.JAICHANDREN AND THE HONOURABLE MR.JUSTICE S.NAGAMUTHU CRIMINAL APPEAL (MD).No.188 of 2006 State rep by Inspector of Police, Ayikudi Police Station, Rep by Public Prosecutor, High Court, Madras ... Appellant Vs. K.Vijayan alias Muthupandi ... Respondent PRAYER Appeal is filed under Section 378 of the Code of Criminal Procedure to call for the records in S.C.No.23 of 1999, on the file of the learned Principal Sessions Judge, Tirunelveli, dated 29.06.2001 and set aside the same. !For Appellant ... Mr.A.Ramar Additional Public Prosecutor ^For Respondent ... Mr.N.Mohideen Basha :JUDGMENT ***** [Judgment of the Court was delivered by S.NAGAMUTHU, J.] This is an appeal, against acquittal, filed by the State. The respondent was the sole accused in S.C.No.23 of 1999, on the file of the learned Principal Sessions Judge, Tirunelveli. He stood charged for offences under Sections 302 and 392 of the Indian Penal Code. By Judgment dated 29.06.2001, the Trial Court acquitted him. As against the same, the State is now before this Court with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:- The accused hails from Kerala State. He was doing vegetable business in Kulathupula Village in Kerala State. The deceased, in this case, was one Mr.Babu alias Janardhanam. He was having business dealing with the accused. He used to supply vegetables from Madurai to the shop of the accused. On account of the said business, a sum of Rs.37,467/- had fallen due from the accused. The deceased once demanded the payment of the said money. This happened in Kerala. Therefore, there arose misunderstanding between them. This is projected as motive for the occurrence.

2.1. On 02.02.1998, at about 07.30 PM, the accused took the deceased in a Bajaj M-80 Motorcycle bearing Registration not KL-08-D-5759 from Kulathupula Village in Kerala State towards Tenkasi. When they were passing through a village, known as "Ilathur Village", the accused stopped the scooter and as soon as the accused got down from the scooter, the accused stabbed him with knife on his chest. On sustaining injuries, the deceased fell into a road side ditch. Parking the scooter on the road side, the accused jumped into the ditch and again stabbed him repeatedly. Then, he threw a big stone on the head of the deceased. The deceased died on the spot. Thereafter, after taking a sum of Rs.14,000/- from the possession of the deceased, the accused fled away from the scene of occurrence.

2.2. On the above allegations, the Trial Court framed charges under Sections 302 and 392 of the Indian Penal Code. In order to prove the case of the prosecution, on the side of the prosecution, as many as twelve witnesses were examined and twenty eight documents were exhibited, besides sixteen Material Objects. Out of the said witnesses, PW-1 is the Village Administrative Officer, who has stated that he found the dead body on 03.09.1998, at 10.00 AM and then, he made a complaint regarding the same to the police. PW-2 is a resident of Ilathur Village. He has stated that on 02.02.1998, at about 09.30 PM, he was waiting for bus at E.Vilakku Bus Stop. At that time, he heard the cry "appa appa" from the west. At that time, the bus arrived. Thereafter, he boarded the bus. While the bus was moving, he found one M-80 Motorcycle parked by the side of the road. PW-3 is the wife of the deceased. She has stated that the deceased had earlier gone to Kerala for collection. PW-4 is a resident of Kadaikkal Village in Kerala State. He was having business dealing with the deceased. The deceased used to supply vegetables to him. Accordingly, on 02.02.1998, at about 02.30 PM, the deceased

came to his shop and collected a sum of Rs.3,000/-. Thus, according to the prosecution, the deceased was lastly seen alive on 02.02.1998, at 02.30 PM, in Kerala State. PW-5 is a resident of Kuruvayur, Kerala State. He has turned hostile and he has not supported the case of the prosecution in any manner. According to the prosecution, the Bajaj M-80 Motorcycle bearing Registration not KL-08-D-5759 belonged to him. PW-6 was assisting the deceased in his business. He has stated that the deceased was having business dealing with the accused. He has further stated that the deceased had gone to Kerala on 02.02.1998 early in the morning.

2.3. On seeing the dead body, PW-1 made a complaint under EX-P1 to the Ayikudi Police Station. PW-8 was the then Sub Inspector of Police, attached to the Ayikudi Police Station. On receipt of EX-P1, he registered a case in Crime No.49 of 1998 for suspicious death. EX-P18 is the First Information Report. Then, he forwarded the First Information Report, EX-P18 and the complaint, EX-P1 to the Court and handed over the case diary to the Inspector of Police for investigation.

2.4. PW-12, the then Inspector of Police, took up the case for investigation on 03.12.1998 and proceeded to the place of occurrence. He prepared an Observation Mahazer [EX-P3] and Rough Sketch [EX-P26] showing the place of occurrence. Then, he conducted inquest on the body of the deceased between 03.00 PM and 06.00 PM, on 03.02.1998. EX-P27 is the Inquest Report. Then, he forwarded the dead body for postmortem. 2.5. PW-7, Dr.V.Sankarapandian, a Civil Surgeon, Government Hospital at Ayikudi, conducted autopsy on the body of the deceased. He found the following injuries:- 1. Lacerated injury left occipital region of scalp with fracture of occipital bone 3 cm x 2 cm x 3 cm size with blood clots and bony chips inside the skull.

2. Lacerated wound on the right side chin with fracture mandible at midline with dislocated right OMJt with broken two lower incisors size 4 cm x 1 cm x bone deep.

3. Elliptical punctured wound between 6th and 7th rib right side 3 cm x 2 cm x 10 cm piercing the right lobe of liver, on the right supero lateral aspect.

4. Incised wound over the left arm lateral aspect size 5 cm x 2 cm x 2 cm.

5. Incised wound over the right elbow 2 cm x 1 cm x 3 cm.

6. Incised wound over the left hand palm 4 cm x 2 cm x 2 cm.

7. Multiple abrasion present below the right knee joint each 2 cm x . cm in diameter.

8. Multiple abrasion present below and behind the left knee 1 cm x . cm in diameter.

9. Abrasion over left wrist joint 2 cm x 1 cm in diameter." He opined that the deceased would appear to have died of shock and haemorrhage due to the multiple injuries sustained. 2.6. Continuing the investigation, PW-12 arrested the accused on 05.02.1998, at 05.00 AM at Sengottah Bus Stand in the presence of PW-1 and another witness. On such arrest, he made a voluntary confession, in which he had disclosed the place, where he had hidden the knife [MO-8], cash of Rs.14,000/- [MO-9] and M-80 Motorcycle, [MO-10]. In pursuance of the said disclosure statement, at 07.00 AM, he took the police and the witnesses to Ilathur Vilakku and produced knife [MO-8] from the hide out. PW-12 recovered the same under a mahazer in the presence of the same witnesses. Then, at 10.00 AM, he took PW-12 and the witnesses to his vegetable shop and produced Rs.14,000/- [MO-9]. PW-12 recovered the same under EX-P12 in the presence of the witnesses. Then, on the same day, at 11.00 AM, he took the police and the witnesses to a place near his shop and identified Bajaj M-80 Motorcycle bearing Registration not KL-08-D-5759, [MO-10]. PW-12 recovered the same under EX-P8, a Mahazer. Since at that time, the accused had also injuries, PW-12 forwarded him to the hospital for treatment. Then, he made a request to the Court to forward the Material Objects for chemical examination. On completing the investigation, PW-12 laid charge sheet against the accused for offences under Sections 302 and 392 of the Indian Penal Code.

3. Having considered the above materials, the Trial Court acquitted the accused of all charges. The State is aggrieved.

4. We have heard the learned Additional Public Prosecutor and the learned counsel appearing for the respondent/accused and perused the records carefully.

5. In this Criminal Appeal, it is submitted by the learned Additional Public Prosecutor that the prosecution has proved the case beyond reasonable doubt, and therefore, the Judgment of the Trial Court needs interference. According to him, the Motorcycle recovered from the accused was used by him for the commission of the crime. He has further stated that though PW-5 has turned hostile, from the other circumstances, the accused should have been convicted.

6. The learned counsel appearing for the respondent/accused would stoutly oppose this Criminal Appeal. According to him, this is a case, where there is no evidence against the accused. Therefore, the Judgment of the Trial Court needs no interference at all.

7. We have considered the above submissions. Admittedly, this is a case based on circumstantial evidence. It is the settled law that in a case based on circumstantial evidence, the circumstances projected by the prosecution should be proved beyond all reasonable doubts and all such proved circumstances should form a complete chain unerringly pointing to the guilt of the accused and there shall be no other alternative hypothesis, which is consistent with the innocence of the accused.

8. Applying the above principles to the facts of the present case, if we look into the evidence available on record, we find that there is no error in the Judgment of the Trial Court. There is no evidence that the deceased was lastly seen alive in the company of the accused. PW-5, who was examined to speak about the occurrence, has turned hostile. As per the evidence of PW-4, the deceased was lastly seen alive in Kerala State on 02.02.1998. After that, where did the accused go?. Absolutely, there is no evidence. There is no evidence that the Motorcycle bearing Registration not KL-08-D-5759, [MO-10] was used by the accused. PW-2, in his evidence, has stated that at the time of occurrence, he found one M-80 Motorcycle parked on the side of the road near the place of occurrence. But, he has not identified the said Motorcycle. He has not given any other particulars regarding the same. From this, it cannot be said that the Motorcycle, which was recovered from the accused, was used by the accused at the time of commission of the crime.

9. Next, the prosecution relies on the recovery of Rs.14,000/- from the possession of the accused. Admittedly, the money was recovered from the business place of the accused. It cannot be said that this amount is the stolen money from the deceased. The knife, which was recovered from the accused, also does not contain any bloodstain. There is no link between the knife and the crime. Thus, the so-called confession made by the accused to the police is inadmissible in evidence.

10. Having considered all the above, the Trial Court found that the circumstances projected by the prosecution have not been proved, and thus, the prosecution has failed to prove the case against the accused beyond reasonable doubts. In our considered opinion too, the prosecution has failed to prove the case beyond reasonable doubts, and thus, the Judgment of the Trial Court requires no interference at the hands of this Court.

11. In the result, the Judgment dated 29.06.2001 made in S.C.No.23 of 1999, on the file of the learned Principal Sessions Judge, Tirunelveli, is confirmed and the Criminal Appeal is dismissed. NB To 1.The Principal Sessions Judge, Tirunelveli. 2.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai. 3.The Inspector of Police, Ayikudi Police Station, Tirunelveli.

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