

Muruganantham Vs. the State Represented by the

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SooperKanoon Citation : sooperkanoon.com/965274

Court : Chennai

Decided On : Jan-28-2013

Judge : M.Jaichandren

Appellant : Muruganantham

Respondent : The State Represented by the

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

28. 01/2013 CORAM THE HONOURABLE MR.JUSTICE M.JAICHANDREN and THE HONOURABLE MR.JUSTICE S.NAGAMUTHU Criminal Appeal (MD).No.308 of 2006 Muruganantham .. Appellant vs. The State Represented by the Inspector of Police, Thandikudi Police Station, in Cr.No.131 of 2003 Dindigul .. Respondent Criminal appeal is filed under Section 374 of Criminal Procedure Code to call for the records and set aside the judgment of connection and sentence passed in S.C.No.89/2005, dated 10.05.2006 on the file of the learned Additional District and Sessions Judge cum Fast Track Court, Dindigul and acquit the appellant/accused from all the charges levelled against him. !For petitioner ... Mr.S.Gopalakrishna Laskhman Raju Senior Counsel ^For respondent ... Mr.A.Ramar Additional Public Prosecutor :JUDGMENT (Judgment of the Court was delivered by S.NAGAMUTHU, J) The appellant is the first accused in S.C.No.89 of 2005 on the file of the learned Additional Sessions Judge, Fast track Court, Dindugal. Altogether there were two accused. There were as many as 3 charges framed against the accused. The first charge is under Section 120(b) IPC against both the

accused. The second charge is under Section 302 r/w 109 IPC against the second accused. The third charge is under Section 302 IPC against the first accused. By Judgment, dated 10.05.2006, the Trial Court acquitted the second accused, however, convicted the first accused under Section 302 IPC alone and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2,000/- in default, to undergo rigorous imprisonment for a period of one year. Challenging the same, the appellant/A1 is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Sandhya. She was the wife of PW2 and the daughter of PW3. She was residing at Mangalapuram Village. It is alleged that the second accused had illicit intimacy with the deceased. While so, the family members of the second accused had arranged for celebrating marriage for the second accused with a different girl. The deceased threatened the second accused challenging that she would not allow him to go for marriage with the other girl. Since the marriage prospects became bleak, because of the above threat made by the deceased, the second accused decided to do away with the deceased.

3. In pursuance of the said determination, he sought the help of the first accused. Accordingly, on 25.05.2003, at about 02.00 p.m. in the house of the first accused at Mangalapuram Village, both accused conspired to commit the murder of the deceased Sandhya. In pursuance of the said conspiracy, it is stated that the second accused instigated the first accused to commit the murder of the deceased. Thereafter, in order to execute the said conspiracy, on 07.06.2003, at about 01.45 p.m. the first accused went to the house of the deceased Sandhya. At that time, she was alone at her house. The first accused was armed with a knife. He stabbed the deceased repeatedly on various parts of her body, such as neck, chest, near left eye and other parts. The deceased died instantaneously. The first accused, thereafter, fled away from the scene of occurrence.

3. PW1 is the Village Administrative Officer of Kamanoor village. On 07.06.2003, according to him, at about 06.30 p.m. he received message from an unknown source that the deceased Sandhya was found dead with stab injuries at her house. Immediately, PW1 went to the house of the deceased along with his Assistant and

found the deceased lying dead with number of injuries all over her body.

4. PW2, the husband of the deceased, was not in his house at the crucial time. At about 06.00 p.m. on 07.06.2003, after completing his job elsewhere, PW2 returned to his house. When he returned to his house, he found the light in the bedroom still burning. In the said bedroom, the deceased was found with number of injuries lying in a pool of blood. She was dead. PW1 came to the spot at that time. Thereafter, PW1 went to the police station to prefer a complaint.

5. PW23 was the then Inspector of Police attached to Thandikudi Police Station. On 07.06.2003, at 09.00 p.m. PW1 preferred a complaint under Ex.P1. Based on the same, he registered a case in Cr.No.131 of 2003 under Sections 302 and 380 IPC. In the said complaint, PW1 had stated that the assailants were not known.

6. PW23, took up the case for investigation and proceeded to the place of occurrence. He prepared an Observation Mahazar and a Rough Sketch at the place of occurrence. He had also made a request to PW22, the finger print expert to visit the scene of occurrence and to examine the same to find out whether any chance finger print was found at the place of occurrence. Accordingly, PW22, examined the place of occurrence on 07.06.2003. Since it was late night, he waited there and started examining the place of occurrence at 06.30 a.m. on 08.06.2003. During such examination, he found chance finger prints on the steel bureau and one chance finger print on the jewel box found near the cot, where the dead body was lying. Yet another chance finger print was found on the bureau. He photographed all the above chance finger prints and took the same to his office.

7. Continuing the investigation, PW23, conducted inquest on the body of the deceased at 06.30 a.m. on 08.06.2003 and prepared Ex.P17, inquest report. Then, he forwarded the body for autopsy.

8. PW21, doctor Tamil Arasan, conducted autopsy on the body of the deceased on 08.06.2003 at 03.00 p.m. He found the following injuries:- "1. Stab injury over the root of neck anteriorly size 3 x 2 x 4 cm on dissection puncturing the Treachea over upper 1/3 with surrounding haemorrhage.

2. Stab injury over left side of abdomen size 3 and 2 cm; on dissection fracture of 8, 9, 10th ribs over sternochondral junctions with surrounding haemorrhage and injuring the interior border of spleen of 1 cm length.

3. Left ear double torn and hanging.

4. Incised wound right ear lobule size 1 x cm x cm 5. Stab injury over lateral of left eye size 1 x . x . cm with surrounding haemotoma with (torn) sub conjunctival haemorrhage." Ex.P11 is the postmortem certificate. He opined that the deceased would appear to have died of shock and hemorrhage due to injuries found on the dead body. According to his opinion, the deceased would have died 24 to 36 hours prior to autopsy.

9. PW23 examined Pws 1 to 15 and recorded their statements. While so, on 09.06.2003, PW23, forwarded the finger prints of PW1 and the second accused for the purpose of comparison by PW22. PW22 received the same on 09.06.2003 in the morning. He took the enlarged photographs of the finger prints forwarded by PW23 and then, he compared the same with the enlarged photographs of the chance finger prints taken from the place of occurrence on 08.06.2003. On such comparison, he found that one of the finger prints found on the bureau tallied with the finger print of PW1. The other finger prints did not tally either with that of PW1 or with that of A2. On the same day, at 05.30 p.m. he received a sample finger print of the first accused from PW23. He took enlarge photographs of the same and compared the same with the chance finger prints lifted from the place of occurrence. Two chance finger prints taken from the place of occurrence tallied with the finger prints of the first accused. To this effect, he gave a report under Section Ex.P12.

10. PW23 continued the investigation and arrested the first accused on 11.06.2003 at 10.00 a.m. at Thandikudi Police Station. On such arrest, he made a voluntary confession, in which he disclosed the place where he had hidden the knife. In pursuance of the same, he took PW23 and PW20 to Mangalapuram Society and took out the knife from a bush. PW23 recovered the same under a Mahazar. Then, he produced a bag containing blood stain. PW23 recovered the same under a Mahazar. The said bag has been marked as Ex.P19. On the same

day at 05.00 a.m. he arrested the second accused at Mangalapuram. On returning to the police station, he sent both the accused to the Court for judicial remand. Then, he forwarded other material objects collected from the place of occurrence as well as from the dead body to the Court.

11. PW23 made a request to the Court to forward the above material objects for chemical examination. Ex.P21 is the analysts report. According to the same, blood was found on the knife. But, grouping test remained inconclusive. In the other materials, human blood of 'A' group was detected. On completing the investigation, PW23, laid charge sheet against the accused.

12. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of the judgment. The accused pleaded innocence and therefore, they were put on trial. In order to prove the charges on the side of the prosecution as many as 23 witnesses were examined and 23 documents were exhibited and 15 material objects were marked.

13. Out of the said witnesses, PWs 4 to 8 and PWs 10 to 15 have turned hostile and they have not supported the case of the prosecution in any manner. PW16, has spoken to about the conspiracy between these two accused. PWs2 and 3 have spoken about the previous motive and PWs 1 to 3 have stated about the fact that the deceased was found dead on 07.06.2003. PW9 is an important witness for the prosecution. According to him, on 07.06.2003, at 1.30 p.m., he found the first accused with bloodstained knife on his waist somewhere in between Mangalapuram Kombu and Pudalang Kadu Village. PW20 has spoken to about the arrest of the first accused and the subsequent recovery of knife. PW22 is the finger print expert who has spoken to about the examination conducted by him and his opinion. PW21 is the doctor who conducted postmortem who has spoken to about the cause of death. PW23 is the Inspector of Police who laid charge sheet on completing the investigation.

14. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness on their side or to mark any document.

15. Having considered the above materials, the trial Court acquitted the second accused. However, convicted the first accused under Section 302 IPC and accordingly, punished him. That is how the appellant/A1 is before this Court with this appeal.

16. We have heard the learned Senior Counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

17. This is a case based on circumstantial evidence. The following are the circumstances projected by the prosecution:- i) The motive between the deceased and A2 i.e. A2 had illicit intimacy with the deceased and when marriage arrangements were made for A2 with a different girl, the deceased protested and thus, the marriage prospects of the second accused was spoiled. ii) There was a conspiracy between the accused 1 and 2 to commit the murder of the deceased, which was hatched on 25.05.2003 at 02.00 p.m. at the house of A1. iii) The chance finger prints lifted from the place of occurrence tallied with the admitted finger print of the first accused. iv) The first accused was arrested on 11.06.2003, and on his confession the knife used for the commission of crime was seized. v) The first accused was found fleeing away from the scene of occurrence on 07.06.2003 by PW9. vi) According to the medical evidence, the death was due to the injuries found on the body of the deceased.

18. It is the contention of the learned Additional Public Prosecutor that all the above circumstances have been clearly proved and from and out of these circumstances, the prosecution has clearly proved the case, against the accused beyond all reasonable doubts and therefore, the conviction and sentence imposed by the trial Court need to be sustained.

19. On the contrary, it is the contention of the learned Senior Counsel appearing for the appellant/accused that none of the above circumstances have been proved by the prosecution and assuming that some of the circumstances have been proved, such proved circumstances do not form a complete chain so as to unerringly pointing to the guilt of the accused. Therefore, according to the learned Senior Counsel, the appellant is entitled for acquittal.

20. We have considered the above submissions. As we have already pointed out, the trial Court has disbelieved the evidence of PW16, who has spoken to about the conspiracy hatched between these two accused on 25.05.2003 at 02.00 p.m. in the house of A1. No appeal has been preferred against the said acquittal of the accused from the charge of conspiracy. Thus, it has become final.

21. The motive projected by the prosecution is only against the second accused and no motive has been projected against the first accused. Therefore, the first circumstance projected by the prosecution, namely, the motive has got no relevance to this appellant/A1.

22. The second circumstance is that the accused was found with bloodstained knife on his waist on 07.06.2003 at 01.30 p.m. by PW9 somewhere between Mangalapuram Kombu and Pudalang Kadu Village. Admittedly, the accused was not found anywhere near the place of occurrence. There is no evidence that he was found near the place of the deceased. PW9 is a close family friend of the deceased. Had it been true, that he saw the accused with the weapon on 07.06.2003, certainly he would have told the same to PW1 and other family members, in which case, even in the First Information Report, the name of the accused could have been mentioned at least as a suspect. He was examined only on 10.06.2003. Absolutely, there is no explanation at all by PW9, as to why he did not disclose the above fact to anybody including PW1 between 07.06.2003 and 10.06.2003. It is not known as to how PW23, the Inspector of Police, came to know that PW9 had some useful information. In the absence of such an explanation by PW9, as to why he did not disclose the above fact for three days, in our considered opinion, it is difficult to believe him. Therefore, the evidence of PW9 deserves only to be rejected. Accordingly, it is rejected.

23. The next important circumstance projected by the prosecution, is that the chance finger prints lifted from the place of occurrence tallied with the finger print of the appellant/A1. Even according to the prosecution, the first accused was arrested only on 11.06.2003. He was not available in the interregnum period, i.e. from the date of occurrence till the date of arrest, even for interrogation. It is not the evidence of the Investigation Officer, that he had occasion to interrogate the

first accused and that he got his finger prints for the purpose of comparison. But, curiously, PW22 has stated that he received the finger prints of A1 on 09.06.2003 at 05.30 p.m. itself for the purpose of comparison and on comparison he gave opinion on the same day that the finger prints sent to him as that of the A1 tallied with the chance finger prints taken from the place of occurrence. PW23, the Investigation Officer, in his evidence has stated that on 09.06.2003, he forwarded the finger prints of the first accused to PW22 for comparison. He has not at all stated where from, at what time and in whose presence, he got the finger prints of the first accused for the purpose of comparison. When the fact remains that the first accused was arrested only on 11.06.2003, it is very strange that PW23 happened to collect the finger prints of the first accused as early as on 09.06.2003 itself.

24. In order to get our doubts cleared off, we went through the case diary. In the entries made on 09.06.2003, in the case diary, there is no indication that these two accused were available for interrogation by PW23. There is also no indication that the finger prints were taken from A1 and A2 on that day for the purpose of comparison. There is no entry at all on the same day that the finger prints of the accused were sent to PW22 for the purpose of comparison. Thus, it is not known, as to how PW23 had come to possess the finger prints of these two accused as early as on 09.06.2003 itself, when the accused was not at all available for them either for interrogation or for arrest. During cross-examination of PW23, it was suggested to him that the finger print which was sent by him on 09.06.2003 was not that of the first accused. Thus, it has not been proved to the satisfaction of this Court that the finger print which was sent by PW23 to PW22 for the purpose of comparison was that of the first accused. Therefore, though it is true that the finger prints sent by PW23 to PW22 tallied with the chance finger prints, since there is no proof that the finger prints sent by PW23 was taken from the first accused, it cannot be held that the chance finger prints found at the place of occurrence were that of the first accused. Thus, we hold this important circumstance projected by the prosecution also has not been proved.

25. The last circumstance relied on by the prosecution is the recovery of weapon on the confession of the first accused on 11.06.2003. Of course, it is true that in

the said weapon there was human bloodstain. But, the blood grouping has not tallied. There is no one to identify the weapon, as the one which was used by the accused in the commission of crime. Thus, in our considered opinion, the relevancy between the weapon and the crime has not been established by the prosecution. Apart from that, the arrest of the first accused on 11.06.2003 is also not beyond doubts, since, according to PW23, he was in possession of the sample finger print of A1 on 09.06.2003 itself. Thus, the last circumstance projected by the prosecution also has not been proved beyond all reasonable doubts.

26. Apart from that, the another circumstance is that the death was due to the injuries found on the deceased, upon which there is no controversy before this Court.

27. From the foregoing discussions, it is clear that the prosecution has not proved most of the circumstances projected and there is no evidence at all unerringly pointing to the guilt of the accused. To put it in simple terms, we hold that the prosecution has failed to prove the case beyond all reasonable doubts against the accused. Therefore, the appellant is entitled for acquittal.

28. In the result appeal is allowed and the conviction and sentence imposed by the learned Additional District Sessions Judge cum Fast Track Court, Dindigul, in S.C.No.89 of 2005, dated 10.05.2006 are set aside and the appellant/A1 is acquitted. The bail bond executed if any shall stand discharged and the fine amount paid if any shall be refunded. jkr To The Additional District Sessions Judge(FTC) Dindigul.

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