
(2004) 07 MAD CK 0100

In the Madras High Court

Case No : Criminal Appeal No. 381 of 1996

Arunachalam (A-1)

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 06-07-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 109, 302

Citation : (2004) 07 MAD CK 0100

Hon'ble Judges : S.K. Krishnan, J;M. Karpagavinayagam, J

Bench : Division Bench

Advocate : V. Murali, for the Appellant; E. Raja, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Karpagavinayagam, J.—The appellant Arunachalam was tried and convicted for an offence u/s 302 IPC, for having caused the death of one Thiruvannamalaiyan. Originally, the appellant Arunachalam and another accused, namely Subramani (A-2) were tried for offence under Sections 302 and 302 r/w 109 IPC, of whom, A-2 has been acquitted, and the appellant alone has been convicted as referred to above. Hence this appeal by A-1.

2. The case of the prosecution in brief, is as follows:

a) A-1 and A-2 are cousin brothers. P.W.2-Mariamamma is the wife of the deceased Thiruvannamalaiyan. Both the accused family and the deceased family were living at Melpattu village. A-2 owned 1 acre 40 cents of land in the said village. This land was leased out to the deceased for Rs.3,000/- for a period of five years. He also allowed the deceased to possess and enjoy the said land and take the yield arising therefrom. After five years period was over, the deceased demanded for the return of the lease amount. But, A-2 refused to make the payment. Due to this, there was a frequent quarrel between A-2 and the deceased. P.W.2 was often sent by the deceased to the house of A-2 asking for

the return of the payment. In spite of that no amount was given by A-2. Since the lease amount was given by the deceased to A-2 at the instance of P.W.2, the wife of the deceased, there was a frequent quarrel between the deceased and P.W.2.

b) On the day of occurrence, i.e. on 16.05.1994 at about 5.30 p.m, while the wordy quarrel was going on between the deceased and his wife P.W.2 near the land of A-1, she pleaded with A-1, who was passing that way, to save her by his intervention. Then, A-1 asked the deceased not to beat P.W.2 anymore and he tried to pacify both of them. But, the deceased scolded A-1, stating that he was supporting P.W.2, because he was having illegal relationship with her. Then the deceased again began to beat P.W.2. Efforts taken by A-1 to separate them failed. Therefore, he took a wooden log found near a tree and beat the deceased on his head. At that time, A-2 also instigated A-1 to attack the deceased. The incident was witnessed by P.Ws.3 to 5, who are the villagers. Both of the accused on seeing them, sped away from the scene.

c) Next day i.e., on 17.05.1994 at about 10.00 p.m, A-1 went to Village Administrative Officer-P.W.1 and gave an Extra-Judicial Confession, confessing that he attacked the deceased with the wooden log due to the quarrel and also handed over the said wooden log-M.O.1 to the Village Administrative Officer. P.W.1 recorded the statement Ex.P-1 and obtained the signature from him as well as the signature from the village menial-P.W.6.

d) Then P.W.1 and P.W.6 proceeded to the scene of occurrence along with A-1 to see the dead body. Since the dead body was not found at the spot, they went to the house of the deceased where the body was kept and saw the dead body with the injuries.

e) Thereafter, they went to the police station on 18.05.1994 at about 9.00 a.m. P.W.1 prepared Ex.P-2 report and produced the accused as well as M.O.1 wooden log and also handed over the report Ex.P-1 to P.W.15, the Sub Inspector of Police, on the basis of which, P.W.15 then registered a case for an offence u/s 302 and 302 r/w 109 IPC. He sent the complaint and the First Information Report to the Court and the superior officers.

f) P.W.16 the Inspector of Police went to the spot at 12.30 p.m. He observed all the formalities by preparing the Observation Mahazar and the Rough Sketch and he conducted inquest over the body of the deceased. On the same day, he examined P.Ws.2 to 5 and the panchayatdars. The dead body was then sent for postmortem.

g) P.W.11, the Doctor conducted postmortem on 19.05.1994 at about 9.00 a.m. He found as many as three injuries on the body of the deceased and gave opinion that the deceased would appear to have died of shock and hemorrhage due to the injuries on the head. Ex.P-8 is the postmortem certificate issued by him.

h) P.W.16 continued the investigation and subsequently, arrested A-2. He then arranged for sending the material objects for chemical analysis. After completion of the investigation, he filed the charge sheet against the accused.

3. In the trial Court, on the side of the prosecution, P.Ws.1 to P.W.16 were examined, Exs.P-1 to P-20 were filed and M.Os. 1 to 4 were marked.

4. Both the accused while being questioned u/s 313 Cr.P.C denied their complicity in crime in question.

5. Ultimately, the trial Court acquitted A-2 and convicted A-1 alone for the offence u/s 302 IPC. Hence, the appeal by A-1.

6. Challenging the conviction, Mr. V. Murali, the counsel appearing for the appellant, would contend that though eye witnesses were examined, those witnesses turned hostile and as such, there is no sufficient evidence to convict the accused and the only piece of evidence is the Extra-Judicial Confession, which would suffer from various infirmities and as such, this is a case of no evidence and consequently, the accused is entitled to be acquitted.

7. We have heard the learned Additional Public Prosecutor in respect of these aspects.

8. We have carefully considered the submissions made by the respective parties. We have also gone through the records.

9. According to the prosecution, on 16.05.1994 at about 5.30 p.m, when the wordy quarrel was going on between the deceased and his wife P.W.2, A-1 and A-2 intervened and at that time, the deceased uttered abusive words against A-1, as if he was having illegal relationship with his wife P.W.2 and this made him to take a wooden log found nearby and attack the deceased. In that process, A-2 also attacked the deceased with the hands. As referred to above, A-2 was acquitted as there is no evidence against him.

10. Now, to connect the appellant (A-1) with the crime, the only piece of evidence that is available is the Extra-Judicial Confession made by the first accused to P.W.1, the Village Administrative Officer. All the other eye witnesses, namely, P.Ws.2 to 5 turned hostile. The recording of Extra Judicial Confession has been spoken to by P.W.1, the Village Administrative Officer and P.W.6, the Village Menial.

11. It is settled law that even though there is no other evidence except the Extra-Judicial Confession, if the same is taken to be a reliable piece of evidence, then the conviction can be based. Bearing this principle in our mind if we look at the Extra Judicial Confession, we could safely hold that there is nothing to show that the Extra Judicial Confession has been voluntarily made by A-1 to P.W.1 without the intervention of the police.

12. According to the prosecution, the occurrence took place on 16.05.1994 at about 5.30 p.m. P.W.1 recorded the Extra-Judicial Confession on 17.05.1994 at

about 10.00 p.m. Only next day, the Village Administrative Officer (P.W.1) produced the accused along with the complaint and the report to the Sub Inspector of police P.W.15 at about 9.00 a.m.

13. Though it is the case of the prosecution that the Extra-Judicial Confession has been made by A-1 to P.W.1 before the commencement of the investigation, the evidence of P.W.6 and P.W.7 would make it clear that the statement was given by the accused to P.W.1, the Village Administrative Officer at the spot in the presence of the police officer. They also admit the same in the cross examination. Thus it is obvious that the Extra-Judicial Confession cannot be said to be a voluntary one and as such, it loses its value.

14. Further, it is noticed that the Doctor P.W.11 would state in his evidence and Ex.P-8-Post Mortem Certificate that the deceased would have died 96-100 hours prior to the commencement of postmortem. The postmortem was conducted on 19.05.1994 at about 10.40 a.m. If this time is reckoned, then it could be inferred that the death would have occurred in the evening of 15.05.1994. A according to the prosecution, the death had occurred only on 16.05.1994 about 5.30 p.m as per Ex.P-1, Extra-Judicial Confession. Therefore, the time of death as opined by Doctor P.W.11 also would not tally with the case of the prosecution. Consequently, this Court is constrained to hold that the prosecution has miserably failed to prove its case beyond reasonable doubt against the appellant.

15. Under those circumstances, we are unable to sustain the conviction imposed by the trial Court and therefore, the conviction and sentence imposed on the first accused are set aside and he is acquitted of the charge. The bail bond executed by the first accused shall stand cancelled. The appeal is allowed accordingly.