

(2016) 02 MAD CK 0043

In the Madras High Court

Case No : Criminal Appeal No. 159 of 2012

Mani and Saravanan

APPELLANT

Vs

State rep. by the Inspector of Police

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34, 341, 404

Citation : (2016) 2 MLJ Criminal 146

Hon'ble Judges : M. Jaichandren; S. Nagamuthu, JJ.

Bench : Division Bench

Advocate : P. Nagaraju, Advocate, A. Praveen Kumar for (Legal Aid Counsel), for the Appellant; M. Maharaja, Addl. Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J. - The appellants are accused Nos. 1 and 2 in S.C. No. 14 of 2010 on the file of learned Principal Sessions Judge-II, Kancheepuram. The third accused was one Chalendran @ Madan. They stood charged for the offences under Sections 341 I.P.C., 302 r/w 34 I.P.C. and 404 r/w 34 I.P.C. By judgment dated 08.02.2012, while acquitting the third accused of all the charges, the Trial Court convicted these two appellants under all the three charges and sentenced each one of them to undergo simple imprisonment for one month for the offence under Section 341 I.P.C., to undergo imprisonment for life and to pay a fine of Rs. 1000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 302 r/w 34 I.P.C. and to undergo rigorous imprisonment for two years and to pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 404 r/w 34 I.P.C. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

2. When the appeal was taken up for hearing, there is no representation on behalf of accused No.2. Therefore, Mr. A. Praveen Kumar, a learned member of the bar, was appointed by this Court as the legal aid counsel for A2 and a set of

papers were entrusted to him immediately.

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

(i) The deceased in this case was one Chockalingam. The deceased was doing flower decoration business on contract basis. The first accused was an employee under him. In course of time, there arose misunderstanding between the first accused and the deceased, in the apportionment of wages, resulting in the first accused starting his own business, in competition to the business of the deceased. The deceased intervened in the business of the first accused and caused loss to the first accused. Further, on one occasion, the second accused damaged the motor cycle which was used by the deceased, consequent to which, a complaint was lodged in the Police Station and the second accused was made to compensate for the damage caused. These incidents are said to be the motive for accused Nos. 1 and 2 to develop a grudge towards the deceased and they decided to do away with the deceased. The third accused also joined hands with them.

(ii) It is further alleged that on 02.08.2008, all the three accused had taken the deceased to the field of one Rajendran in Gerugambakkam Village and attacked him. When the deceased tried to escape, the second accused pushed him down; the first accused held the legs of the deceased; the second accused held his hands and the third accused dashed the head of the deceased against a cement tank. The deceased, who sustained injuries on his head, died on the spot. Thereafter, it is alleged that all the three accused had escaped from the scene of occurrence, abandoning the dead body, taking away a gold bracelet, a gold chain, a money purse containing a sum of Rs.100/- from the person of the deceased as well as his "Hero Honda" motor cycle. This is the crux of the case of the prosecution.

(iii) P.W.1 is the Village Assistant of Gerugambakkam Village. On being informed by the Panchayat President about the incident, he went to the scene of occurrence at 7a.m. on 03.08.2008 and saw the dead body. Then, he went to Mangadu Police Station and presented a written complaint with regard to the same at 8a.m. Ex-P1 is the complaint.

(iv) P.W.19, the then Inspector of Police, Mangadu Police Station, on receiving the complaint, registered a case in Crime No. 649 of 2008 under Section 302 I.P.C. at 8a.m. on 03.08.2008. Ex-P15 is the First Information Report. He forwarded both the documents to the Court and took up the case for investigation. He went to the scene of occurrence and prepared an Observation Mahazar (Ex-P3) and a rough sketch (Ex-P16) at the place of occurrence at 9a.m. in the presence of witnesses. Then, he collected bloodstained earth from two different places (M.O.7 and M.O.9), sample earth from two different places (M.O.8 and M.O.10), a sample from the bloodstained portion of cement tank (M.O.5), a sample from the wall portion of the cement tank (M.O.6), a pair of slippers (M.O.14), four plastic tumblers (M.O.15), empty water packets bearing

the name "Hitech" (M.O.16), two quarter bottles labelled "Monitor Goldrum" (M.O.17), an airtel identity card (M.O.18) and a voter's identity card (M.O.19) from the place of occurrence under Ex-P4. Then, he summoned P.W.15, the fingerprint expert, to examine the place of occurrence. The expert found certain chance fingerprints on the material objects found at the place of occurrence, which were sent for comparison with that of the fingerprints of these accused. Ex-P13 is the report of P.W.15. In the presence of Panchayatdhars and witnesses, P.W.19 conducted inquest on the body of the deceased between 10a.m. and 12 noon. Ex-P17 is the inquest report. He sent the dead body to the Government Kilpauk Medical College for postmortem.

(v) P.W.14, Tutor in Forensic Medicine, attached to Government Kilpauk Medical College, Chennai, conducted autopsy on the dead body at 2.50p.m. on 04.08.2008 and he found the following injuries:

"Injuries:

1. A dark brown irregular abrasion over the R side of the abdomen 28 x 15 cm over the sternum and epigastrium. R arm 4 x 4 cm L shoulder 12 x 7 cm, R forehead 3 x 1 cm R chin 4 x 1 cm, R eyebrow 1x 1 cm, R sides of neck 4 x 1 cm.
2. A dark red subscalp contusion over the R temporal and R parietal bone.
3. A depressed fracture of R frontal to R temporal bone with diffuse subarachnoid haemorrhage over the R frontal and parietal lobes. No other injury are made out. All the injuries are ante mortem in nature.

Heart intact c/s clotted blood. Lungs. C/s Congested. Hyoid bone intact. Trachea empty. Stomach 200 ml of liquid rice. No specific smell. Liver, Spleen, Kidneys are normal in size. C/s congested. Pelvis, spinal column, are intact. Scalp, bones, membranes vide injury column. Brain vide injury column."

Ex-P12 is the postmortem certificate. The Doctor opined that the deceased would appear to have died of traumatic head injury. The viscera of the deceased was sent for chemical analysis and Ex-P5 is the Viscera Report.

(vi) During the course of investigation, P.W.19, on 07.08.2008, at 11p.m., arrested accused Nos. 1 and 2, in the presence of witnesses. On such arrest, the first accused gave a voluntary confession statement in which he disclosed the place where he had hidden the motor cycle and the golden bracelet. Pursuant to the said statement, the gold bracelet (M.O.3), which was pledged in "Govindasamy Pawn Broker Shop" was recovered in the presence of witnesses under a mahazar, Ex-P8, in the presence of P.W.s 12 and 14. The second accused also came forward to give a voluntary confession statement, which was recorded in the presence of P.W.s 12 and 16. Pursuant to the said statement, the money purse belonging to the deceased (M.O.24), the key of the motor cycle (M.O.25) were recovered under Ex-P7 and the motor cycle bearing Registration No. TN 09 AD 6188 (M.O.1) came to be recovered under Ex-P9, in the presence of same witnesses. On returning to the Police Station, he sent accused Nos. 1 and 2 for

judicial remand and also forwarded the case properties to the Court. On 14.08.2008, he arrested the third accused in the presence of P.W.13 and another. The third accused, on being examined, gave a voluntary confession statement in which he disclosed the place where he had hidden the gold chain. Pursuant to the said statement, the gold chain (M.O.2) was recovered under a mahazar, Ex-P11, from the place of hideout. Thereafter, P.W.19 produced him before the Court. He examined further witnesses and recorded their statements. On completing the investigation, he laid the charge sheet against the accused on 25.09.2008.

(vii) Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the judgment. The accused denied the same.

(viii) In order to prove the case, on the side of the prosecution, 19 witnesses were examined, 23 documents and 25 material objects were marked. Out of the said witnesses, P.W.1, the Village Assistant, has spoken to the fact that on information, he went to the scene of occurrence at 7a.m. on 03.08.2008 and found the dead body of the deceased. He has also spoken about the lodging of complaint with the Police. P.W.2 is the mother of the deceased. She has stated that lastly, when the deceased left the house, he was wearing minor gold chain (M.O.2) and gold bracelet (M.O.3). P.W.3 has spoken about the preparation of Observation Mahazar and rough sketch, at the place of occurrence by the Inspector of Police and the recovery of material objects from the place of occurrence. P.W.4 has spoken about the photographs taken by him at the place of occurrence on being summoned by the Investigating Officer, P.W.19. P.W.s 5 and 6 have turned hostile and they did not support the case of the prosecution. P.W.7, the Head Constable attached to Mangadu Police Station, has stated that he carried the dead body to the hospital for postmortem. P.W.8, Dr. Thirunavukkarasu, is the forensic expert, who has stated that, at the request of P.W.19, the Investigating Officer, he visited the place of occurrence and helped P.W.19 to recover the material objects from the place of occurrence. P.W.9 is a close relative of the deceased. He is the sister's son of P.W.2. He has stated about the complaint lodged by the deceased along with his friend as against the second accused for having damaged his motor cycle, which was the cause for enmity between the deceased and the second accused. P.W.10 is a friend of the deceased, who has also spoken about the same. P.W.11 is the vital witness for the prosecution, who has stated that at about 4p.m. on 02.08.2008, he found accused Nos. 1 and 2 and the deceased near Ashok Pillar in Chennai. P.W.12 has stated about the arrest of accused Nos. 1 and 2 and the consequential recoveries made. P.W.13 has stated about the arrest of the third accused and the consequential recovery of material objects made. P.W.14 has spoken about the autopsy conducted by him and the final opinion regarding the cause of death. P.W.15 is the fingerprint expert. According to him, on 03.08.2008, at 7.30a.m., on the instruction of P.W.19, he visited the place of occurrence and examined the material objects found there. He found chance finger prints on plastic tumblers and when he examined them subsequently, they did not tally with that of the accused. Ex-P13 is the report submitted by him. P.W.16 has turned hostile and

he has not supported the case of the prosecution. P.W.17 is the proprietor of "Govindasamy Pawn Broker Shop". He has stated that on 04.08.2008, P.W.16 pledged the gold chain in his shop, for which, he issued the receipt marked as Ex-P14. He has further stated that the said gold chain was later on recovered from him by the Police on 07.08.2008. He has not identified the gold chain in Court. P.W.18 is the owner of the land where the dead body was lying. P.W.19 has spoken about the registration of the case, the investigation done and the filing of final report against the accused.

(ix) 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 nor mark any document. The defence of the accused was one of total denial. Having considered all the above, the Trial Court convicted these two appellants as stated in the first paragraph of the judgment. That is how, accused Nos. 1 and 2/appellants are before this Court with this appeal.

4. We have heard the learned counsel appearing for the respective appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

5. This case is based on circumstantial evidence. P.W.2 is the mother of the deceased, who has spoken about the motive between accused Nos. 1 and 2 and the deceased. There is not much dispute with regard to the same. But, the said motive alone cannot go to conclusively prove that these two accused were the perpetrators of the crime. She has further stated that on 02.08.2008, at about 2p.m., the deceased lastly left her house. This is also not disputed by the accused. Thereafter, it is the evidence of P.W.11 that these two accused were found in the company of the deceased at about 4p.m. on 02.08.2008 near Ashok Pillar. Assuming that this circumstance stands proved, this, by itself, would not go to even remotely indicate that these accused had committed the murder of the deceased because the place of occurrence is nowhere near the place where they were found in the company of the deceased. P.W.11 has further stated that on 02.08.2008 itself, he came to know that the family members of the deceased were searching for the deceased. He has admitted that even then, he did not tell anything to the family members of the deceased that he found these two accused along with the deceased at about 4p.m on 02.08.2008. He has further admitted that even on 03.08.2008, he did not say anything about the same to the family members of the deceased and for the first time, he disclosed this fact only when he was examined by the Police. This creates a doubt in the case of the prosecution. Thus, in our considered view, this circumstance, namely, these two accused were found in the company of the deceased lastly on 02.08.2008, at 4p.m. near Ashok Pillar, has not been proved.

6. Apart from this, the prosecution relies on the arrest of these accused and the consequential recovery of material objects. P.W.19 has stated that accused Nos. 1 and 2 were arrested on 07.08.2008 and it is alleged that pursuant to the disclosure statement made by the second accused, the motor cycle bearing

registration No. TN 09 AD 6188 was recovered. But, absolutely, there is no evidence that the said motorcycle belonged to the deceased. Moreover, P.W.2, the mother of the deceased has not identified the motorcycle as the one belonging to the deceased. She has not even stated that lastly, when the deceased left the house, he went on the motorcycle. Similarly, from the disclosure statement made by the first accused, the gold bracelet (M.O.3) is alleged to have been recovered from "Govindasamy Pawn Broker Shop". According to P.W.17, the owner of the shop, one Sukumar, P.W.16, pledged the golden bracelet. But, unfortunately, this witness has not identified M.O.3 as the one pledged in his shop. P.W.16 has turned hostile and he has not supported the case of the prosecution in any manner. Thus, the recovery of gold bracelet and the motorcycle does not help the case of the prosecution in any manner.

7. From the second accused, it is stated that as per the disclosure statement, he produced a money purse. The said money purse marked as M.O.24 has not been identified to be that of the deceased by his family members. Thus, the recovery of material objects, allegedly, at the instance of these accused, do not connect these accused with the crime, in any manner.

8. From the evidence, it is also seen that the chance fingerprints were taken from the material objects found at the place of occurrence. But, the chance fingerprints did not tally with the fingerprints of these accused. If that is so, it is doubtful whether these accused would have committed the murder of the deceased at all. The investigation has not revealed as to whose fingerprints were found on the material objects recovered from the place of occurrence. This strong doubt in the case of the prosecution has also not been obviated by the prosecution.

9. Apart from the above, there is no other evidence against these accused. It is needless to point out that in a case based on circumstantial evidence, the circumstances projected by the prosecution should be proved beyond reasonable doubts and such proved circumstances should form a complete chain, without any break and the same should unerringly point to the guilt of the accused and there should not be any other hypothesis which is inconsistent with the guilt of the accused. In this case, we find that the prosecution has not proved the vital circumstances. The only circumstance proved is the motive.

10. Therefore, we hold that the prosecution has failed to prove the case against these accused beyond all reasonable doubts and hence, they are entitled for an acquittal.

11. In the result, the appeal is allowed and the conviction and sentence imposed on the appellants/accused by the Trial court are set aside and they are acquitted of all the charges. Fine amount, if any, paid, shall be refunded to the appellants/accused.

12. Mr.A. Praveen Kumar, the legal aid counsel appointed by us, who advanced arguments on behalf of A2, shall be remunerated by the State Legal Aid Board

suitably.