

(2010) 07 MAD CK 0316

In the Madras High Court

Case No : Criminal Appeal (MD) No. 161 of 2009

Muthu @ Muthukrishnan

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 26-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 324, 34

Citation : (2010) 4 Crimes 59

Hon'ble Judges : M. Duraiswamy, J;M. Chockalingam, J

Bench : Division Bench

Advocate : N. Dilip Kumar, for the Appellant; N. Senthurpandian, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—This appeal challenges a judgment of the Additional Sessions Division, Fast Track Court No. I, Tirunelveli, dated 09.07.2008, made in S.C. No. 81 of 2008, whereby the appellant/accused No. 1, who stood charged u/s 324 IPC and u/s 302 read with Section 34 IPC, along with another accused ranked as accused No. 2, on trial, found guilty under both the charges and sentenced to undergo two years rigorous imprisonment for the former charge and life imprisonment and also to pay fine of Rs. 1000/- in default to undergo three months rigorous imprisonment for the latter charge and the sentences imposed on the appellant/accused No. 1 under both the charges were ordered to run concurrently. However, accused No. 2 was found not guilty and he was acquitted of the charges levelled against him.

2. Short facts necessary for the disposal of the appeal can be stated as follows:

(a) P.W.1 Muthu, P.W.2 Suyambu, P.W.3 Periyasamy, P.W.4 Ramar and P.W.8 Devika are all belong to the same place. Accused No. 1 is the son of Accused No. 2. Accused No. 1 and P.W.8 loved each other and since accused No. 1 was reluctant to marry P.W.8, P.Ws.2, 3 and one Perumal Nadar, the deceased in this

case, intervened and performed the marriage of accused No. 1 and P.W.8 on 19.04.2004, as a result of which they got one boy aged about 2 years.

(b) After the marriage, accused No. 1 was employed in Chennai and whenever he went to his native place he was making demand from P.W.8 that she should get money and jewels from her parental home. This was, in turn, informed to the deceased Perumal Nadar, P.W.2 and P.W.3 and when they questioned the same, accused No. 1 was giving evasive answer and on the contrary making the demand continuously. Therefore, P.W.8 lodged a complaint before the All Women Police Station, Valliyur, against accused No. 1 and the parents of accused No. 1. Ex.P-8 is the copy of the said complaint. Accused family was under the impression that the deceased Perumal Nadar was instrumental for the same.

(c) Based on Ex.P-8 Complaint, accused No. 1, P.W.8 and others were called to the police station and the matter was settled amicably that accused No. 1 should pay a sum of Rs. 50000/- within a period of six months and thereafter they should live separately. According to the agreement, accused No. 1 made a payment of Rs. 25000/- on 13.04.2007 and the remaining amount was yet to be paid. Apart from that, a complaint was given by the mother of accused No. 1 against the deceased Perumal Nadar and his brother in respect of a dispute over a tree and this was actually enquired into by the police and thus accused No. 1 had developed grudge against Perumal Nadar.

(d) On 25.09.2007, when accused No. 1 came to the village from Chennai, he met P.W.8 and asked her to put her signature in a stamp paper where a Divorce was recorded but, P.W.8 demanded the balance sum of Rs. 25,000/- from accused No. 1 for putting her signature, for which accused No. 1 was not amenable and he left the place. Accused No. 2 was employed in a Windmill as a Night Time Security and his services were terminated three days prior to the occurrence and in his place the deceased Perumal Nadar was appointed. All the above, developed grudge in the minds of accused Nos. 1 and 2 against the deceased.

(e) P.W.1 was employed as a Security in a Windmill situate in Vattavilai during the relevant time. The deceased Perumal Nadar was working in the windmill which is situate on the northern side of the windmill in which P.W.1 was working. On 25.09.2007 at about 6.30 p.m., P.W.1 and the deceased were proceeded to their respective windmill, which are adjacent to each other, by their by-cycles and at about 11.00 p.m. in the night, when P.W.1 was just standing in front of the windmill where he was employed, accused No. 1, armed with aruval, and accused No. 2 came there and enquired P.W.1 about Perumal Nadar, using filthy language, for which P.W.1 answered in negative. Immediately, aggrieved over by the answer, accused No. 1 attacked P.W.1 in which P.W.1 was injured and thereafter accused Nos. 1 and 2 left the place. P.W.1 left the place and informed the same to P.W.2, P.W.3 and one Arumugam and all of them assembled and proceeded to the windmill where Perumal Nadar was employed and when they reached the windmill at about 11.30 p.m., they found the dead body of Perumal

Nadar in a pool of blood, with severe injuries, lying in front of the room situate inside the windmill where he was employed. Thereafter they proceeded to the respondent Police Station and P.W.1 gave Ex.P-1 Complaint at about 5.00 a.m. on 26.09.2007 to P.W.17, the Sub-Inspector of Police. Based on Ex.P-1 complaint, P.W.17 registered a case in Crime No. 161/2007 under Sections 302 and 324 IPC and Ex.P-22, First Information Report, was despatched to the Court through P.W.14, the Police constable, and copies of FIR were sent to the higher Police Officers for further action. Thereafter, P.W.1 was sent for treatment with a medical memo.

(f) P.W.5, the Doctor attached to Government Hospital, Radhapuram, examined P.W.1 at 11.00 a.m. on 26.09.2007 and gave treatment to the injuries found on his body. Ex.P-3 is the Accident Register Copy issued by P.W.5 to P.W.1, wherein P.W.5 has recorded the statement given by P.W.1 to the effect that he was assaulted by one unknown person.

(g) P.W.20, the Inspector of Police attached to Coodankulam Police Station, was also in-charge of Radhapuram Police Station. He received a copy of Ex.P-22 FIR at 6.30 a.m. on 26.09.2007, took up the investigation, proceeded to the place of occurrence, made an observation in the presence of P.W.10 and P.W.11 and prepared Ex.P-25, the Observation Mahazar, and also drew Ex.P-26, the rough sketch. He conducted inquest on the body of the deceased Perumal Nadar and prepared Ex.P-27, the inquest report. Thereafter, he sent the body for postmortem through P.W.15, the Police Constable, with Ex.P-9 Requisition. P.W.20, the Inspector of Police, recovered, M.O.1 - bloodstained coconut leave, M.O.2 - bloodstained bedsheet, M.O.3 - bloodstained towel and M.O.4 - blood found on the cement mortar under Ex.P-28 Mahazar attested by P.W.10 and P.W.11. P.W.20 examined the witnesses and recorded their statements.

(h) P.W.9, the Doctor attached to Tirunelveli Medical College Hospital, on receipt of requisition from the Investigator, conducted autopsy on the body of deceased at 3.30 p.m. on 26.09.2007 and after postmortem he gave Ex.P-10, the Postmortem Certificate, opining that the deceased would have died of complications of cut injuries to the neck. After postmortem, P.W.15, recovered M.O.8 - bloodstained Lungi from the body of the deceased and handed over the same to the Inspector of Police.

(i) Pending investigation, P.W.20, the Inspector of Police, arrested both the accused on 26.09.2007 at about 04.00 p.m. and when enquired in the presence of P.W.12, accused No. 1 came forward to give confessional statement, admissible portion of the same is marked as Ex.P-16. At that time, P.W.20 recovered M.O.5 - blood found on the right leg of accused No. 1 under Ex.P-29 Mahazar, attested by P.W.12. Pursuant to Ex.P-16, accused No. 1 took and produced M.O.6 - bloodstained aruval and M.O.7 - banian and the same were recovered under Ex.P-30 Mahazar, attested by P.W.12. Thereafter, accused Nos. 1 and 2 were sent for judicial remand.

(j) P.W.21, the Inspector of Police, took up the further investigation in the case. He examined the witnesses and recorded their statements. On 08.10.2007, P.W.21 gave Ex.P-18 Requisition to the Judicial Magistrate, Nanguneri, to conduct identification parade, pursuant to which P.W.13, the Judicial Magistrate, conducted Identification Parade and Ex.P-19 is the Report relating to the identification parade. Based on Ex.P-4 Requisition made by the Investigator, the material objects were sent for Chemical Analysis under Ex.P-5, the letter of the Court, which resulted in two reports Ex.P-6, the Chemical Examiner's Report and Ex.P-7, the Serologist's report. P.W.21 examined the witnesses and recorded their statements. On completion of investigation, P.W.21 filed final report against the accused on 21.12.2007.

3. After committal proceedings, the case was taken on file by the Sessions Court in S.C. No. 81/2008 and necessary charges were framed. To prove the charges against the accused persons, the prosecution examined 21 witnesses as P.Ws.1 to 21 and marked 30 documents as Exs.P-1 to P-30 and produced M.Os.1 to 8. On completion of the evidence on the side of the prosecution, when the accused were questioned u/s 313 of the Code of Criminal Procedure about the incriminating circumstances found in the evidence of prosecution witnesses, they denied all of them as false. On the side of defence, neither oral evidence nor document evidence was let in. The trial court, after hearing the parties, took the view that the prosecution has proved the charges against appellant/accused No. 1 beyond reasonable doubt, found him guilty, convicted him thereunder and awarded punishments as referred to above but, however, recorded an order of acquittal in respect of accused No. 2 after forming an opinion that the prosecution has not proved the charge levelled against him and acquitted him of the said charge. Hence this appeal has been brought forth by accused No. 1.

4. Advancing arguments on behalf of the appellant/accused No. 1, the learned Counsel Mr. N. Dilip Kumar, would make the following submissions.

(a) In the instant case, the prosecution has miserably failed to prove its case. On the strength of the same evidence, the trial judge was not ready to believe the case of prosecution as against accused No. 2 and acquitted him of the charges levelled against him, but has erroneously found accused No. 1, the appellant herein, as guilty. In the instant case, the prosecution had no direct evidence to offer in respect of the charge of murder but, it relied on circumstantial evidence.

(b) Added further the learned Counsel, in the instant case, it is highly doubtful whether Ex.P-1 Complaint could have come into existence as put-forward by the prosecution. According to the prosecution, the occurrence was at 11.00 or 11.30 p.m. in the night hours on 25.09.2007. Insofar as P.W.1 is concerned, he was not an eye-witness to the occurrence. According to him, when he was in the Windmill, two persons came there and questioned about the deceased Perumal Nadar and when he gave an answer in negative, accused No. 1 attacked him and thereafter he went to the police station, along with others, and gave a complaint to P.W.17, the Sub-Inspector of Police, attached to the respondent police at 5.00

a.m. on 26.09.2007. A very reading of Ex.P-1 would clearly indicate that P.W.1 has only stated two persons came there and he has not stated that those two persons were accused Nos. 1 and 2 and he further stated that he did not know both the persons. However, P.W.1 in his evidence has candidly admitted that he knew accused No. 2 and all his family members. It is pertinent to point out that P.W.1 has also admitted that the place where the deceased Perumal Nadar was working adjacent to the windmill where he was employed and on the date of occurrence at about 6.30 p.m. he and the deceased were proceeded to their respective windmills. It is also available in the evidence of P.W.1 that the deceased Perumal Nadar was actually given employment in the place of accused No. 2 just three days prior to the occurrence. In the above circumstances, it is quite clear that P.W.1 knew accused Nos. 1 and 2 very well and if to be so and if really accused Nos. 1 and 2 had come to the place where P.W.1 was working and in the transaction P.W.1 was attacked by accused No. 1, he would have certainly mentioned in Ex.P-1 complaint about the presence of accused No. 1 and accused No. 2 but there is no whisper in Ex.P-1 about accused Nos 1 and .2 at all and even in the Identification Parade, P.W.1 was not able to identify accused No. 2 and hence accused No. 2 was acquitted by the trial court.

(c) Added further the learned Counsel, P.W.1 has candidly admitted that at the time of occurrence he was attacked from backside and hence he did not even notice who were the persons attacked him with weapon and, under the circumstances, the Identification Parade which was conducted subsequently, though in which P.W.1 was able to identify accused No. 1, it was not useful to the prosecution as an evidence to prove its case. Added further the learned Counsel. from the evidence of P.W.1, the windmill where he was working was not easily approachable windmill whereas the windmill in which the deceased Perumal Nadar was employed was easily reachable by the villagers and if to be so, when accused No. 2 was actually employed in that windmill where the deceased was employed, there was no need for the accused persons to approach P.W.1 and ask about the deceased Perumal Nadar and instead, accused No. 2 could have very well taken his son - accused No. 1 directly to the windmill where Perumal Nadar was employed and all would go to show that the prosecution was not able to fix the identity of the assailants and thus it becomes clear that taking into account the earlier instances which prevailed between the families of prosecution party and accused party, the prosecution party has falsely roped accused Nos. 1 and 2 in the case and on the same evidence the trial judge has acquitted accused No. 2 and in such circumstances, the prosecution has miserably failed to prove its case as against the appellant also and hence the appellant/accused No. 1 is also entitled for an order of acquittal in the hands of this Court.

5. The Court heard the learned Additional Public Prosecutor on all the submissions made by the learned Counsel for the appellant and paid its anxious consideration to the submissions made on either side and perused the materials on record.

6. It is not in controversy that one Perumal Nadar, pursuant to the occurrence that had take place in the night hours on 25.09.2007, was found dead and following the inquest made by P.W.20, the Investigator and preparation of Ex.P27, the inquest report, the body of the deceased was subjected to postmortem by P.W.9, the Doctor, who, in his evidence before the Court as well as through the contents in Ex.P-10, the postmortem certificate, has categorically opined that the deceased died of complications of cut injuries to the neck. The said fact that Perumal Nadar died out of homicidal violence was not a subject matter of controversy before the trial judge and hence it has got to be recorded so.

7. In order to prove the charges levelled against the appellant/accused, the prosecution had no direct evidence to offer but it relied on certain circumstantial evidence. The circumstances relied on by the prosecution before the trial court were that accused No. 1 and accused No. 2 approached P.W.1, who was standing in front of the windmill, and when they made enquiry about the deceased Perumal Nadar they received answer in negative from P.W.1 and immediately accused No. 1 attacked P.W.1 with the wooden part of aruval and caused injury and left the place and consequently the dead body of Perumal Nadar was found at the place of occurrence with severe injuries and pursuant to the confessional statement made, the weapon of Crime M.O.6 - Aruval was recovered from accused No. 1. On the strength of these circumstances, the prosecution added the motive part of animosity that had prevailed against the families of parties in the past.

8. It is well settled proposition of law that when the prosecution relied on a number of circumstances, they must be placed and proved strictly without leaving any doubt in the mind of the court and also pointing to the hypothesis that except the accused no one could have committed the offence. If this test is applied, the court is afraid whether it can sustain the conviction of the appellant/accused No. 1. The circumstances which are noticed by the Court and stand against the prosecution story are as follows.

(a) According to P.W.1 he was employed in a windmill and accused No. 2 was also employed in the adjacent windmill and both the windmills belonged to the same owner. The services of accused No. 2 was terminated three days prior to the occurrence and in his place, the deceased Perumal Nadar was employed. P.W.1 has categorically admitted that he knew accused No. 2 and his family members. P.W.1 has added that at the time of occurrence he was attacked from back and hence he could not know the identity of the assailants and the weapon with which he was attacked.

(b) Further, the evidence of P.W.1 is highly doubtful for two reasons. Firstly, P.W.1 in his evidence has admitted that he knew accused No. 2 and all his family members. If really accused No. 2 and his family members are known to him and it was accused Nos. 1 and 2 who actually approached him at the time of occurrence and enquired about the deceased Perumal Nadar, there is no

impediment for him in mentioning the name of accused Nos. 1 and 2, in clear terms, in Ex.P-1 Complaint but he has not done so and this would clearly indicate that he did not know the assailants and then he was not able to name them in the Complaint.

(c) According to P.W.1, the occurrence had taken place at 11.00 p.m. in the night hours and both the assailants were standing behind and attacked him and therefore he could not see their identity. If to be so, the subsequent identification parade will be of no consequence and no evidentiary value can be attached thereto. Further, it is pertinent to point out that P.W.1 was unable to identify accused No. 2, who was well known to him, at the time of identification parade.

(d) Further, the prosecution relied on the evidence as to the arrest and recovery of M.O.6 - weapon of crime pursuant to the confessional statement alleged to have been given by accused No. 1. P.W.1 has candidly admitted that both the accused were available in the police station between 6 and 7 a.m. on the next day morning and thus the claim of the Investigator that the accused were arrested at about 4.30 p.m. and thereafter they gave confessional statement, pursuant to which M.O.6 - weapon of crime and M.O.7 - bloodstained banian were recovered from accused No. 1 cannot be accepted as true evidence.

9. All the above circumstances noticed by this Court would clearly indicate that P.W.1 has come before the Court to give a false version and further the evidence of P.W.1 is shrouded with full of doubt and sustaining a conviction based on his evidence would be highly unsafe. Hence, the trial judge has taken a view that P.W.1's evidence cannot be relied on to hold the charge levelled against accused No. 2 as proved and the same reasoning are equally applicable to appellant/accused No. 1 also. In a given case like this, when the other circumstances relied on by the prosecution are not available to them and further the only evidence available, which was the evidence of P.w.1, is actually shrouded with suspicion, it would be highly unsafe to sustain a conviction on the evidence of P.W.1 and therefore the appellant/accused No. 1 is entitled for an order of acquittal by upsetting the judgment of the trial court in founding him guilty.

10. In the result, the appeal is allowed and the judgment of the trial court, dated 09.07.008, made in S.C. No. 81/2008, insofar as finding the appellant guilty under Sections 324 and 302 read with Section 34 IPC, convicting and sentencing him thereunder, is set aside and the appellant is acquitted of the charges levelled against him. The appellant is directed to be released forthwith, unless his presence, in accordance with law, is required in connection with any other case. The fine amount, if any, paid is directed to be refunded.