

(2009) 01 MAD CK 0231

In the Madras High Court

Case No : Criminal Appeal No. 584 of 2007

Rani, Arjunan and Subbu

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 313
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2009) 01 MAD CK 0231

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

Bench : Division Bench

Advocate : N. Manokaran, for the Appellant; P. Kumaresan, APP, for the Respondent

Final Decision : Allowed

Judgement

M. Chockalingam, J.—This appeal challenges the judgment of the Additional Sessions Division, Fast Track Court, Dharmapuri made in

S.C. No. 179 of 2006, whereby A-1 and A-2 were stood charged u/s 302 IPC and A-1 to A-3 were stood charged under Sections 302 r/w

Section 201 IPC, tried and found guilty as per the charges. A-1 and A-2 were sentenced to undergo life imprisonment each and to pay a fine of

Rs. 2000/-, in default to undergo one year R.I. u/s 302 IPC and A-1 to A-3 were sentenced to undergo three years R.I. each and to pay a fine of

Rs. 1000/-, in default to undergo 6 months R.I. u/s 302 r/w Section 201 IPC and the sentences imposed on A-1 and A-2 were ordered to run

concurrently.

2. The short facts necessary for the disposal of this appeal can be stated as follows:

a) P.W.1 is the brother of the deceased Raja. A-1 is the wife of the deceased. A-2 and A-3 are the brothers of A-1. The marriage between the

first accused and the deceased took place 9 years prior to the occurrence. The deceased was addicted to liquor and was carrying on wayward

life. The spouses had quarrel often. On 17.11.2003 at about 8.30 p.m., the deceased went to the house of his mother-in-law to call A-1 back to

live with him. Thereafter, he did not return. On 18.11.2003, P.W.1 was informed that there was a dead body on the railway track nearby.

Immediately, he rushed over there and found that it was that of his brother.

b) The railway employees informed to the Railway station master on 18.11.2003 as to the fact that the dead body of the deceased was lying in the

railway track. On that information, a case came to be registered in Crime No. 292 of 2003 u/s 174 Cr.P.C. Ex.P.25, the F.I.R. was despatched

to the court. P.W.15, the Sub Inspector of Police of Railway police went to the spot and made an inspection in the presence of the witnesses. He

prepared the observation mahazar and Ex.P.27, the rough sketch. He recovered the material objects from the place of occurrence under a cover

of mahazar. Then, he conducted inquest on the dead body of the deceased in the presence of the witnesses and panchayatdars and prepared

Ex.P.28, the inquest report. Then, the dead body was sent for the purpose of autopsy. P.W.1 did not entertain any suspicion and that the railway

police closed the case as it was the railway accident.

c) P.W.17, the Doctor attached to the Government Hospital, Dharmapuri, on receipt of the requisition, has conducted autopsy on the dead body

of the deceased and has issued Ex.P.33, the post-mortem certificate, wherein he has opined that the deceased would appear to have died of

shock and haemorrhage due to the multiple injuries sustained.

d) A-1 to A-3 were called for and were enquired before the villagers. But they came forward to state that they did not know anything about the

incident. Thereafter, on 02.12.2003, again they were called and A-1 and A-2 made extra judicial confession to P.W.2 in the presence of P.W.1,

P.W.5 and villagers that on the date of occurrence, the deceased came in a drunken mood and quarreled with A-1 and at that time, A-1 pressed

his testicles and when he fell sown, it was A-2, who dashed him on the ground and caused his death and in order to screen the evidence, A-1 to

A-3 took the dead body and placed it on the railway track.

e) After knowing about the same, P.W.1 went to the railway police and gave the complaint. The matter was referred to Palacode Police station,

the respondent herein. On the strength of Ex.P.1, the complaint received from P.W.1, a case came to be registered by the respondent police in

Crime No. 661 of 2003 under Sections 302 and 201 IPC. Ex.P.34, the F.I.R. was despatched to the Court.

f) P.W.19, the Inspector of Police, took up the investigation, proceeded to the spot and made an inspection in the presence of the witnesses. He

prepared Ex.P.35 and P.37, the observation mahazars and Exs.P.36 and P.38, the rough sketches. He examined the witnesses and recorded their

statements. M.O.1, the pant of the deceased was recovered and the same was identified by P.W.1. A-1 to A-3 were arrested and A-1 came

forward to give confessional statement, which was recorded in the presence of the witnesses, the admissible part of which was marked as Ex.P.6.

Pursuant to the same, A-1 produced M.Os.2 and 3, clothes, which were recovered under a cover of mahazar. The material objects were

recovered from the place of occurrence under a cover of mahazar. The second and third accused also came forward to give confessional

statements, which were recorded in the presence of the witnesses. The admissible parts of the confessional statements of A-2 and A-3 were

marked as Exs.P.40 and P.39. The accused were sent for judicial remand. The Investigator examined the witnesses and recorded their statements.

The material objects recovered were sent for chemical analysis. Ex.P.14, the Chemical Analyst's report and Ex.P.15, the Serologist's report were

received. On completion of the investigation, the Investigating Officer has filed the final report.

3. The case was committed to the court of Sessions and necessary charges were framed. In order to substantiate the charges levelled against the

accused, the prosecution examined 19 witnesses and also relied on 40 exhibits and 6 M.Os. On completion of the evidence on the side of the

prosecution, the accused were questioned u/s 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses,

which they flatly denied as false. No defence witness was examined. The trial court, after hearing the submissions made and also looking into the

materials available, took the view that the prosecution has proved the case beyond reasonable doubt, found them guilty as per the charges and

awarded punishments as referred to above. Hence this appeal has arisen at the instance of the appellants.

4. Advancing arguments on behalf of the appellants, the learned Counsel inter-alia has made the following submissions:

a) The occurrence has taken place on 17.11.2003 night, but the prosecution had no direct evidence to offer and it has relied on its entire case on

circumstantial evidence. The main circumstance relied on by the prosecution was the extra judicial confession alleged to have been given by A-1 to

A-3 on 02.12.2003, pursuant to which P.W.1 went to the railway police and gave Ex.P.1, the report and the same was also transferred to the

regular police, namely Palacode police station and the case was registered in Crime No. 661 of 2003. Except this piece of evidence, the

prosecution had no further evidence to offer. So far as the extra judicial confession was concerned, according to the prosecution, it was given by

A-1 to A-3 to P.W.2, the Oorgounder in the presence of P.Ws.15 and the others. So far as P.W.2 was concerned, he has turned hostile. So far

as P.W.1 was concerned, he has categorically stated that A-1 to A-3 gave extra judicial confession on 02.12.2003 itself and they waited for a few

days and he went to the police station on 08.12.2003, but according to the statement recorded by the police, extra judicial confession was made

only on 07.12.2003 and not before that. Further, if the extra judicial confession was made by A-1 to A-3 on 02.12.2003 as claimed by P.W.1,

why there was a delay of 5 days in making such a report as found in Ex.P.1 and no reason was coming from the prosecution. Thus, this would cast

a doubt whether A-1 to A-3 could have committed the offence and that P.W.1 has given a false report as found in Ex.P.1. Further, P.W.5 was the

other witness examined in this regard. P.W.5 has not stated when the extra judicial confession was made. Further, initially, the dead body of the

deceased was found and it was actually recorded as an accident. The prosecution was able to show through the medical evidence that it was

actually not an accident, but it was due to homicidal violence, but the prosecution has miserably failed to prove the nexus of the accused with the

crime and the trial court took an erroneous view. All the evidence did not support the prosecution case in any way and under these circumstances,

the appellants are entitled for acquittal in the hands of this Court.

5. The court heard the learned Additional Public Prosecutor on the above contentions and has paid its anxious consideration on the submissions made.

6. It is not in controversy that the dead body of Raja, the husband of A-1, was found on the railway track and a case was registered by the railway

police in Crime No. 292 of 2003 u/s 174 Cr.P.C. Though P.W.1 identified the dead body that it was his brother, did not whisper anything about

the suspicion that he entertained and that the case was also closed as an accident. Thereafter, according to the prosecution, suspicion was

entertained by the villagers and P.W.2, the Oorgounder called A-1 to A-3 and enquired them, but they pleaded no knowledge. Thereafter, on

02.12.2003, again they were called by P.W.2 and in the presence of P.Ws.1,5 and the villagers, A-1 to A-3 made extra judicial confession and

P.W.1 went to the railway police station and gave Ex.P.1, the report. The case was referred to Palacode Police Station and a case came to be

registered in Crime No. 661 of 2003 under Sections 302 and 201 IPC against all the three accused. As rightly pointed out by the learned Counsel

for the appellants, the prosecution had no direct evidence to offer. The only circumstance, which according to the prosecution was strong, was the

extra judicial confession alleged to have been given by A-1 to A-3 to P.W.2 in the presence of P.Ws.1, 5 and the villagers on 02.12.2003.

P.W.2, the Oorgounder has turned hostile. So far as P.W.1 was concerned, he was so categorical that extra judicial confession was made only on

02.12.2003, but they waited for a period of 5 days and he went to the police station on 08.12.2003. What was the reason for such a delay

remained unknown. If really such an extra judicial confession was made on 02.12.2003, as claimed by P.W.1, he would have rushed to the police

station immediately, but not done so. Apart from that, even after the extra judicial confession alleged to have been made by A-1 to A-3 as to the

involvement of murder of the deceased, who is the brother of P.W.1, the witnesses did not claim that they produced A-1 to A-3 before the police,

but it was the police who caused the arrest of them. Had it been so, there was no impediment for producing them before the police on that day

itself.

7. Apart from that, in the instant case, no other material was placed before the court. The identity of the dead body was not in dispute. The

medical opinion was canvassed to show that the death was due to homicidal violence. In a given case like this, the prosecution must prove clearly

the nexus between the crime and the accused. In the instant case, though the prosecution was successful enough in bringing forth the fact that the

death was due to homicidal violence and the dead body was placed on the railway track, it has rested its case entirely on the circumstantial

evidence, namely the extra judicial confession alleged to have been given by A-1 to A-3 to P.W.2 in the presence of P.Ws.1,5 and the villagers.

But, even the extra judicial confession for the above reasons cannot be accepted as a piece of evidence to act so or to come to a conclusion.

Hence the trial court without appreciation of the circumstances in the proper perspective, has taken an erroneous view. Except the extra judicial

confession, the prosecution had no evidence to offer. Hence it would be highly unsafe to sustain conviction on such a weakest piece of evidence.

Therefore, the appellants are entitled for acquittal.

8. Accordingly, the conviction and sentence imposed by the trial court on the appellants are set aside and the appellants are acquitted of the

charges levelled against them. The bail bonds if any executed by them shall stand terminated and the fine amounts if any paid by them shall be

refunded to them. Accordingly, this criminal appeal is allowed.