

(2005) 09 MAD CK 0118

Madras High Court

Case No: Criminal Appeal No. 1017 of 2001

Sakthivel @ Sakthi and Raju

APPELLANT

Vs

State of Tamilnadu by Inspector
of Police

RESPONDENT

Date of Decision: Sept. 28, 2005

Acts Referred:

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

Hon'ble Judges: N. Dhinakar, J; M. Chockalingam, J

Bench: Division Bench

Advocate: V. Parthiban, for the Appellant; S. Jayakumar, Assistant Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

M. Chockalingam, J.

The appellants, two in number, have brought forth this appeal challenging the judgment of the learned I Additional Sessions Judge cum Chief Judicial Magistrate, Erode made in SC. No. 34/2000, finding the appellants guilty u/s 302 IPC and awarding life sentence.

2.The short facts that are necessary for the disposal of this appeal can be stated thus:

(a) P.Ws.2 and 3 are the father and mother of the deceased, Rajendran, respectively. P.W.5 is the wife and P.W.8 is the concubine of the deceased. P.W.6 is the elder brother of the deceased, who was also living with them during the relevant time. The deceased married P.W.5 against the wish of her parents and thus there was a quarrel. Apart from that, he was also keeping P.W.8. Thus, there was a quarrel between the accused and the deceased in that regard also. He was advised by P.Ws. 2,3,5 and 6, but he did not change himself. On the date of occurrence, namely

16.9.1999, at about 9.00 p.m., the deceased along with his elder brother, P.W.6 informed his parents that he was going over to the house of his father-in-law in order to take P.W.5 back. Accordingly, both of them, went over there. He made a request to the parents of P.W.5 that he might be permitted to take her back. There arose a quarrel. In the quarrel, that took place in front of the Tea Stall of P.W.4, A1 assaulted the deceased with M.O.3 and caused injury. The deceased attempted to escape by running. He was chased by the accused, and they caught hold of him and strangulated him with a nylon rope, M.O.4, in front of Prabukumar Cinema Theatre and the occurrence was witnessed by P.Ws.4, 6, 10 and 11. P.W.6, due to fear ran away from the scene of occurrence, came to his residence, informed to his parents, met P.W.1, the Village Administrative Officer on 17.9.1999 at 7.00 a.m. and narrated the entire incident and the same was recorded by P.W.1. The statement of P.W.6 is marked as Ex.P9. The Village Administrative Officer, prepared a report, Ex.P2, and produced both Exs.P2 and P9 before the respondent police. P.W.14, the Head Constable, who was on duty at Bangalapudur Police Station, received both, on the strength of which, he registered a case in Crime No. 520/99 for the offence u/s 302 of IPC. The printed First Information Report, Ex.P10 was despatched to the Court along with Exs.P2 and P9.

(b) P.W.16, the Inspector of Police, who was in-charge of the said Police Station, on receipt of the copy of the First Information Report, took up investigation, proceeded to the scene of occurrence, made an inspection in the presence of two witnesses and prepared an observation mahazar, Ex.P4 and a rough sketch, Ex.P13. He recovered M.O.1, bloodstained earth, and M.O.2, sample earth under a cover of mahazar Ex.P5. He conducted inquest on the dead body of Rajendran at the scene of occurrence in the presence of witnesses and panchayathars and prepared Ex.P14, the inquest report. Following the same, the dead body of the deceased Rajendran, was sent to the Government Hospital, Gobichettipalayam, for the purpose of autopsy through P.W.13, a Police Constable, along with a requisition Ex.P11.

(c) On receipt of the requisition, P.W.15, the Assistant Doctor, attached to the Government Hospital, Gobichettipalayam, conducted autopsy on the dead body of Rajendran and found the following injuries:-

1. Two lacerated wound just above the left eyebrow (a) 1 cm x 1/2 cm x bone depth (b) 1 cm x 1/2 cm x bone depth.
2. Lateral to wound (a) left eye lids swollen and dark coloured. Conjunction contused.
3. Abrasion 1/2 cm x 1/2 cm over the bridge of the nose.
4. Diffused contusion Rt. Temporal region.
5. Laceration 2 cm x 1/2 cm x bone depth over occipital region.

6. Neck : (a) Rope mark 30 cm x 1/2 cm encircling the neck. (b) Rope mark 33 cm x 1/2 cm encircling the neck 2 cm below the first (a) rope mark. (c) Rope mark 32 cm x 1/2 cm encircling the neck 4 cm below the (b). Rope mark appears x shaped on the left side neck due to crossing of (a) and (b).

7. Abrasion 1 cm x 1/2 cm right thigh.

8. Abrasion 1 cm x 1/2 cm below right knee joint.

The Doctor has issued a postmortem certificate Ex.P12 and has opined that the deceased would appear to have died of asphyxia due to strangulation.

(d) Further investigation was taken up by P.W.17, the Inspector of Police and on 18.9.99 he arrested both the accused. A2 gave a confessional statement and the admissible part is marked as Ex.P6. Consequent upon the confession, A2 produced M.O.3, blood stained reaper, and M.O.4, nylon rope along with M.O.9, the bloodstained shirt. The material objects recovered by the Investigating Officer from the scene of occurrence as well as from the accused were subjected to chemical analysis by the Forensic Sciences Department. The chemical analyst's report, Ex.P17 and the serologist's report, Ex.P18 were received by the committal court. On completion of investigation, the Investigating Officer filed a final report before the Committal Court.

3. The case was committed to Court of Sessions. Necessary charges were framed against the appellants/ accused.

4. In order to substantiate the charges levelled against the accused, the prosecution examined 17 witnesses and relied on 18 exhibits and 9 material objects. 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 the prosecution witnesses, which they flatly denied as false. Neither a witness was examined nor a document was marked on the side of the defence.

5. After hearing the arguments advanced by both sides, and on scrutiny of the materials available on record, the trial Court found the accused guilty as per the charge and awarded punishment referred to above, which is the subject matter of challenge in this appeal.

6. The learned counsel for the appellants would vehemently submit that in the instant case the prosecution relied on the evidence of P.Ws.4,6 and 10. All these three witnesses have turned hostile. It is pertinent to point out that according to the prosecution, P.W.6, who witnessed the occurrence, came over to the house and informed to the parents. Then he met the Village Administrative Officer on the next morning at about 7'O clock and gave a statement. That statement is marked as Ex.P9. The Village Administrative Officer along with his report, which is marked as Ex.P2, placed Ex.P9, the statement of P.W.6, before the Head Constable. The Head Constable, who was in station, registered a case. The evidence of P.W.3, the mother

of the deceased is clearly to the effect that some boy came over to the house and informed that a dead body was found, and they were asked to come and verify whether it was the dead body of her son and only thereafter, P.W.6, along with P.W.3, went to the scene of occurrence and verified, and the dead body was found to be that of her son, Rajendran. Thus it would be clear that the entire story of the prosecution that P.W.6 accompanied the deceased, witnessed the occurrence and gave a report of this case becomes false. Thus the entire case of the prosecution has to be destroyed.

7. In the instant case, the alleged confessional statement given by A2 and subsequent recovery were nothing but subsequent introduction to suit the prosecution case. Thus the prosecution did not bring forth any legal evidence acceptable by a court of law to sustain the conviction. Hence, the judgment of the lower court has got to be set aside.

8. The court heard the learned Additional Public Prosecutor, on the above contentions.

9. It is not in controversy that one Rajendran, son of P.Ws.2 and 3, died out of homicidal violence. The dead body was subjected to postmortem. P.W.14, the doctor, attached to the Government Hospital, Gobichettipalayam, gave a postmortem certificate, Ex.P12, wherein he has opined that the deceased died out of asphyxia due to strangulation. Apart from that, the fact that Rajendran died out of homicidal violence was never questioned by the accused either before the trial court or before this Court. Hence, without any difficulty, the Court can record so.

10. The point for consideration before this Court is whether the prosecution has proved the case beyond reasonable doubt?

11. In the instant case, after analysis of the entire evidence and on hearing the submissions made by the learned counsel on either side, the Court has to answer the above point in the negative. The prosecution relied on the direct evidence adduced through the evidence of P.Ws.4, 6 and 10. According to the prosecution, all the three eye witnesses have turned hostile. Thus their evidence was not in support of the prosecution.

12. The specific case of the prosecution was that P.W.6 accompanied the deceased, went to the parental home of P.W.5 and made a request to take her back. At that time, the quarrel arose, during which A1 and A2 attacked the deceased and following the same, the deceased was strangled. Thus the prosecution came out with a story that P.W.6, was an eyewitness to the occurrence. P.W.3 is none else than the mother of the deceased and also P.W.6. According to P.W.3, they were informed by a boy that a dead body was found and they were asked to go and verify. Accordingly, accompanied by P.W.6, P.W.3, went to the scene of occurrence and found the dead body of her son, Rajendran. This part of the evidence of P.W.3, would clearly be indicative of the fact that P.W.6, was all along in the house and

never accompanied the deceased.

13. Further case of the prosecution was that it was P.W.6, who gave statement to P.W.1, the Village Administrative Officer which was recorded under Ex.P9, on the strength of which, P.W.14, the Head Constable registered a case in Crime No. 520/99 and the First Information Report, Ex.P10 was despatched to the Court. P.W.3, further deposed that on compulsion, P.W.6 signed the statement. Thus, Ex.P9, and the consequent registration of the case have not come in the ordinary course as one expected in law, but tainted with invalidating factors. Thus the evidence of P.W.3 would be suffice to find the prosecution evidence as totally false.

14. Apart from that, two witnesses, P.Ws.4 and 6 have turned hostile. Their evidence did not support the prosecution case. Hence, the lower court without properly marshaling and considering the evidence, found the accused guilty. Thus it can be well stated that the prosecution had no direct evidence to offer at all. The lower court has taken an erroneous view and found the accused/appellants guilty, which, in the opinion of this Court, has to be necessarily set aside, and the interest of justice would also require so. Accordingly, the appellants are entitled for an acquittal.

15. In the result, this criminal appeal is allowed setting aside the conviction and sentence imposed upon the appellants. The appellants are acquitted of the charge framed against them. It is reported that the appellants are on bail. Their bail bonds shall stand cancelled.