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(2011) 06 MAD CK 0436

Madras High Court (Madurai Bench)

Case No: Criminal Appeal (MD) No. 132 of 2004

State — APPELLANT

Vs

Viji @ Erul Murugan @ Sundar @ Kaisuppi and Muthuraj @ Mathan — RESPONDENT

Date of Decision: June 15, 2011

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302, 307, 34, 380, 427
- Tamil Nadu Public Property (Prevention of Damages and Loss) Act, 1992 - Section 3(1)

Hon'ble Judges: Rajeswaran, J; G.M. Akbar Ali, J

Bench: Division Bench

Advocate: P.N. Pandidurai, Addl. Govt. Pleader, for the Appellant; A. Haja Mohideen, Legal Aid Counsel, for the Respondent

Final Decision: Allowed

Judgement

S. Rajeswaran, J.
The State has preferred the appeal against the order of acquittal passed by the learned Additional Sessions Judge, Fast Track Court-I, Tirunelveli in S.C. No. 272 of 2001 dated 22.5.2003 wherein the Respondents were acquitted of the offence under Sections 302 r/w 34 IPC and 307 r/w 34 IPC and u/s 3(1) of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992.

2. The case of the prosecution is as follows:

(i) PW.1 was a Constable 1598 attached to Alangulam Police Station. He was entrusted with an investigation in Crime No. 697/97 for the offences under Sections 457, 380 IPC, along with Head Constable 2273. On 24.10.1997 at 8.00 p.m., both the deceased and PW.1 went in search of the property at Tirunelveli and Palayamkottai and were returning to Alangulam around 10.15 p.m.,. When they were standing in Tirunelveli Town, an

Ambassador Car bearing Regn. No. TN 67 C 1213 belonging to PW.2 came there and they got into the car and were returning to Alangulam in that Ambassador Car. While returning to Alangulam in that Ambassador Car at around 10.30 p.m., near Abhisekapatti Village, a lorry was parked on the northern side and red colour Yamaha Motor Cycle was parked in front of that lorry. Two unknown persons were standing with a sword like knife and the lorry driver was raising hue and cry and on seeing this incident, PW.1 and the deceased stopped the car and went near the lorry. The deceased Head Constable questioned them as to why they were standing there waylying and stopping the lorry. The accused questioned him how dare he to ask such questions and attacked him with a knife, and the other accused also attacked him and both the accused attacked the deceased indiscriminately. PW.1 and PW.2 raised alarm and on seeing that, the other accused attacked PW.1 also. PW.1 moved away and escaped from their attacking and in the mean time, PW.2 went and took car and PW.1 got into the car and attempted to escape. The accused waylaid the car and damaged headlight with the knife. They escaped from the place of occurrence and thereafter returned to the place of occurrence and after some time, the Head Constable, Murugiah was found dead in a pool of blood. PW.1 rushed to Alungalam Police Station and lodged a complaint before the Sub Inspector of Police PW.10 around 11.45 p.m.,. PW.10 registered the complaint in Crime No. 731/97 for the offences punishable under Sections 302, 307 and 427 IPC against the unknown but identifiable accused. (ii) The printed F.I.R. Ex.P14 was sent to Court through the Constable PW.11. PW.11 handed over the F.I.R. to the Judicial Magistrate, Thenkasi on 25.10.1997 at about 3.00 a.m.,.

(iii) PW.16 Inspector of Police V.K. Puram Police Station was incharge of Alangulam Police Station and on receipt of the F.I.R. in crime No. 731/97, he proceeded to the place of occurrence on 25.10.1997 at 0.45 hours and prepared an Observation Mahazar in the presence of PW.6 and PW.7. He also prepared a Rough Sketch Ex.P21 and conducted inquest upto 4.00 a.m.,. He gave a requisition for post-mortem and recovered bloodstained portion of the road and road without bloodstains, a pair of chappal, broken glass pieces of the headlight in the presence of PW.7. On 27.11.1997 at about 7.00 a.m., PW.16 arrested Accused No. 2 in the presence of PW.9 and one Veluchamy. Accused No. 2 gave a confession statement and handedover a knife. PW.16 gave requisition for conducting identification parade for Accused No. 2 before the Judicial Magistrate, Thenkasi on 28.11.1997 and identification parade was conducted by PW.3 on 1.12.1997 at Thenkasi Sub-Jail. PW.1 identified the Accused No. 2 in all the three parades during the identification parade. PW.16 recorded his statement on 28.12.1997. PW.16 arrested Accused No. 1 Viji from Anaipatti Village on 28.12.1997 at about 4.30 p.m.,. Accused No. 1 gave a confession statement and handeover five 100 rupee currency notes and the knife used at the time of occurrence. On 31.12.1997, PW.16 gave requisition to the Judicial Magistrate, Sengottai for conducting identification parade on the Accused No. 1, Viji and identification parade was conducted on 12.1.1998. PW.1 identified the Accused No. 1 in all the three parades. PW.16 had also gave requisition for sending the recovered articles for chemical analysis.

(iv) PW.17 took up further investigation and filed a final report against the accused for the offences punishable u/s 302 r/w 34 IPC, 307 IPC and Section 3(1) TNPPDL Act.

3. During trial 17 witnesses examined, 25 exhibits were marked. In conclusion of the trial, the learned Additional Sessions Judge, Fast Track Court No. 1, Tirunelveli acquitted the accused from the charges framed against the accused/Respondents herein.

4. Against the order of acquittal, the State had preferred this appeal. Despite the service of notice on Respondents/accused and their names were printed in the cause list, there was no representation on behalf of the Respondents/accused. Therefore, the State Lead Aid Services Committee was directed to appoint a Legal Aid Counsel from "B" Panel lawyers to assist the Respondents/accused in this appeal by order dated 25.3.2011 and the appeal was adjourned to 25.4.2011.

5. The Appeal was taken up for final hearing on 27.4.2011 in the presence of Mr. P.N. Pandidurai, Additional Public Prosecutor and Mr. A. Haja Mohideen, Legal Aid Counsel for Respondents.

6. Learned Additional Public Prosecutor for the State would submit that the evidence of PW.1 and PW.2 are cogent and convincing and the accused were identified during the identification parade and during the trial, and the medical evidence corroborate the evidence of PW.1 and PW.2. Learned Additional Public Prosecutor would further submit that the reasonings given by the trial Judge for acquitting the accused are not convincing.

7. On the contrary, learned Legal Aid Counsel appearing for the Respondents had pointed out the contradictions in the evidence of the prosecution witnesses and submitted that the order of acquittal need not be interfered with. He also pointed out that PW.2 did not identify the accused during the identification parade.

8. We gave our anxious consideration on the submissions made and perused the records including the judgment of the trial Court.

9. It is well settled that the appellate Court, while considering appeal against the judgment of acquittal, will not interfere unless there are compelling and substantial reasons for doing so. If the trial Court''s judgment is unreasonable and convincing materials have not been considered, it is the compelling circumstances for interference.

10. PW.1 and the deceased Head Constable were attached to Alangulam Police Station and they were deputed to go to Tirunelveli and Palayamkottai to investigate in the case in Crime No. 697/97 for the offences u/s 457, 380 IPC. On 29.10.1997 at 8.00 p.m., when they went to Tirunelveli, Palayamkottai and various other places in search of the properties and after completing the work when they were returning to Alangulam Police Station, the occurrence had taken place at 10.30 p.m., near Abhisekapatti Village. The complaint was lodged within an hour, at 11.45 p.m., and the distance between the place of occurrence and the Police Station is 22 kms and PW.1 went to the Police Station in

Ambassador Car along with PW.2 and lodged the complaint before the Sub Inspector of Police PW.10. PW.10 registered a complaint in Crime No. 731/97 for the offences under Sections 302, 307 and 427 IPC and sent the printed F.I.R. to the Court through the Constable PW.11. PW.11 received the F.I.R. on 25.10.1997 at 0.15 hours and handed over the same to the Judicial Magistrate, Thenkasi at 3.00 a.m.,. The Pass Port given to PW.1 is marked as Ex.P15. The distance between Alangulam Police Station and the residence of the Judicial Magistrate is 30 kms and he went by a lorry. There is no delay at all in lodging the complaint and the F.I.R reaching the Court.

11. Now, Ex.P1 itself is entrustment of the investigation in Crime No. 697/97 to PW.1 and the deceased. The General Diary of Alangulam Police Station is marked as Ex.P25. From the General Diary, it could be seen that PW.1 Constable 1598 and the deceased Head Constable 2273 were present in roll call on 24.10.1997 at 7.00 a.m., and at 8.00 a.m., PW.1 and the deceased were entrusted with the case in Crime No. 697/97 registered for the offences under Sections 457 and 380 IPC. The registration of the complaint in Crime No. 731/97 is entered in the General Diary at 11.45 p.m.,. The entries in the General Diary strengthens the case of the prosecution that PW.1 and the deceased were entrusted with an investigation in Crime No. 697/97 and PW.1 was with the deceased in that work.

12. PW.16 Inspector of Police received the intimation about the occurrence on 24.10.2007 at 11.45 p.m., and went to Alangulam Police Station. On 25.10.1997 at 0.15 hours collected the F.I.R. in Crime No. 731/97. Thereafter, he went to the place of occurrence along with the Sub Inspector of Police and Constable at about 0.45 hours and prepared an Observation Mahazar and Rough Sketch in the presence of P Ws.6 & 7. He conducted inquest upto 4.00 a.m., in the presence of panchayatdars and sent the dead body to Palayamkottai Government Hospital for post mortem through the Constable PW.13. PW.13 received the body from the place of occurrence on 25.10.1997 at about 4.00 a.m., and produced in the Palayamkottai Government Hospital along with requisition.

13. On 25.10.1997 at 11.15 a.m., the post-mortem was commenced at 11.45 a.m., on 25.10.1997 and was conducted by PW.14. PW.14 noted down the following injuries:

1) 26 cm x 3 cm x bone depth heavy cut gaping injury seen from the left side of nose, crossing the inner aspect of left eye, eye-brow, forehead and upto the parietal region, 7 cm above the helix of left ear. The wound was in an arched pattern. The underlying soft tissues, bone, greater vessels were found severed. The margins of wound was regular.

2) 7 cm x 3 cm x bone depth vertically placed cut 11 injury seen. 3 cm below and lateral to the medial and of the left clavicle.

3) 7 cm x 3 cm x bone depth cut injury seen parallel to the previous injury in the midline vertically placed. Margins are regular. The underlying soft tissues found cut with surrounding bruising.

4) 10 cm x 1 cm cut injury seen on the left deltoid region. The underlying soft tissues found cut.

5) 7 cm x 2 cm cut injury seen on the left upper chest 11 cm above and lateral to the left nipple close to the left axillary fold vertically placed. On dissection, the underlying soft tissues showing blood clots and with irregular tearing of intercostal muscles.

6) 7cm x3 cm x bone depth cut injury seen 9 cm below and lateral to left nipple, transversely placed. On further dissection, the wound communicates with the thoracic cavity making subcutaneous bruising and causing injuries to spleen, liver which corresponds to injury No.5.

7) 8 cm x 4 cm cut injury placed 3 cm medial to the anterior superior iliac spine on the left side.

8) 7 cm x 2 cm cut injury seen on the right lower chest, transversely placed.

9) 21 cm x 3 cm x bone depth cut injury seen from the centre of right scapula crossing the midline and extending upto the left back close to the midline. It was a spindle shaped injury with regular margins.

10) 9 cm x 2 cm x muscle depth cut injury seen on the left lower back.

11) 9 cm x 3 cm x muscle depth cut injury seen on the right buttocks.

14. All the ante-mortem injuries noted down by the Doctor during the post-mortem are cut injuries and he gave opinion as to the cause of death that the deceased would have died due to shock and haemorrhage due to multiple heavy cut injuries sustained by him. He had further stated during the evidence that the deceased appeared to have died 10 - 12 hours prior to the post-mortem and the injuries found on the body are possible through the knife recovered from the accused.

15. Accused No. 2, Muthuraj @ Mathan was arrested by PW.16 on 27.7.1997 at about 7.00 am., at Thuthikulam Vilakku in the presence of PW.9 and confession statement was recorded. Pursuant to the confession statement, A2 produced MO.2 knife, which was recovered in Athatchi Ex.P.13. PW.9 and one Veluchamy has attested the Athatchi,Ex.P13. The admissible portion of the confession statement was marked as Ex.P12.

16. Accused No. 1, Viji @ Erul Murugan was arrested along with one Hema Latha from a sugar cane filed near Anaipatti Village on 28.12.1997 at 4.30 p.m., and a confession statement was recorded in the presence of PW.15 Ganesan and one Poosathurai. Pursuant to the confession statement, MO.1 knife was recovered from him under Mahazar Ex.P20. The admissible portion of the confession statement of Accused No. 1 is marked as Ex.P19. PW.15 Ganesan and Poosathurai have attested the Mahazar Ex.P20.

The recovered knives MO.1 and MO.2 were identified by PW.1 and were marked through PW.1.M Os.1 and 2 were also shown to PW.2 and during trial, he also identified that the accused were having weapons like M Os.1 and 2. The weapons were also shown to the Doctor PW.14 and he also admitted that the injuries sustained by the deceased are possible through M Os.1 and 2.

17.P Ws.1 and 2 witnessed the occurrence with the help of head lights of the lorry and head lights of the Ambassador Car bearing Regn. No. TN 67 C 1213 in which they were returning to Alangulam Police Station. PW.1 mentioned the identity of the accused as identifiable in the age group of 25 - 30 years. In Ex.P.14 also, it is mentioned as identifiable 2 accused of the age group of 25 - 30 years. Accused No. 2 is aged about 25 years and the weapon MO.2 was recovered from him in the presence of PW.9. Accused No. 1 is aged about 24 years and MO.1 was recovered from him in the presence of PW.15. The identification parade was conducted by the Judicial Magistrate, Sengottai for the accused No. 2 on 1.12.1997 at about 4.00 p.m., and PW.1 had identified the accused No. 2 in all the three parades. PW.2 did not identify the Accused No. 2. The report of the Judicial Magistrate about the identification for Accused No. 2 is marked as Ex.P2. Identification Parade for the Accused No. 1 was conducted by PW.3 on 12.1.1998 at 3.30 p.m., in the Thenkasi Sub Jail and PW.1 identified the Accused No. 1 in all the three parades. PW.2 was summoned for identification parade for Accused No. 1 but he did not attend the identification parade conducted for A1. However, he identified the accused during the trial. He also explained that out of fear, he could not identify the accused No. 2 during the identification parade conducted on 1.12.1997.

18. PW.8 is a money lender residing at Thirumalai Mill Street in Kandipperi. He knew the Accused No. 1 very well. He used to lend money to the employees of Thirumalai Mill at Vilangulam near Tirunelveli Town and on 24.10.1997 at 10.00 p.m., he was standing in front of Thirumalai Mill to collect the money lent. At that time, Accused No. 1 came in a Motor Cycle along with another person and that the other person was having a sword like weapon with bloodstains. He suspected that they would have committed some offence but he did not prefer any complaint and at about 11.00 p.m., he returned home. He found the dead body of the deceased near Abhisekapatti Bus Stand.

19. The available evidence is cogent and sufficient to prove the guilt of the accused for the death of Head Constable Murugiah. The manner of injuries sustained by the deceased shows that there is a brutal attack on the deceased.

20. Therefore, the Respondents/accused are liable to be convicted for the offences punishable u/s 302 r/w 34 IPC. The reasoning of the learned trial Judge for acquittal of the accused that the identification features of the accused are not given in detail in Ex.P1 and PW.2 did not identify the accused during identification parade are not acceptable. PW.1 had stated in Ex.P1 that two identifiable persons in the age group of 25 - 30 years have committed the offence. Accused No. 1 is 24 years old and Accused No. 2 is 25 years old. They were identifiable by PW.1 in the presence of PW.3, Judicial Magistrate,

Sengottai during the identification parade. Though PW.2 has not identified the accused among several other persons during the identification parade, he identified the accused during the trial. He also explained that out of fear, he could not identify the accused during the identification parade. Thus, though PW.2 did not identify the accused during the identification parade, his evidence can be used to corroborate the evidence of PW.1 that PW.1 and the deceased travelled in the car on the date of occurrence and the occurrence had taken place on 24.10.1997 at about 10.30 p.m., near Abhisekapatti Village. The other grounds adduced by the learned trial Judge for acquitting the Respondents/accused that there are no bloodstains on the clothes of PW.1 and PW.2; they did not attempt to prevent the attack and they did not lift the deceased, owner of the car was not examined; log book of the vehicle in which the police travelled to arrest Accused No. 1, was not recovered; owner of the sugarcane field where Accused No. 1 was arrested was not examined; there is no reference in the investigation that the deceased had his dinner; the lorry and yamaha motor cycle were not recovered, are not very serious in nature to discredit and disbelieve the evidence of PW.1 and PW.2.

21. The entire case of the prosecution rests on the ocular evidence of PW.1 and PW.2. It is the definite version of PW.1 and PW.2 that the deceased Head Constable on seeing the assailants waylaying the lorry at knife point, he bravely interfered to discharge his duty and in that course, he himself had become a victim. PW.1 and PW.2 had seen the occurrence and later PW.1 had definitely identified the accused. The credibility of the evidence of PW.1 and PW.2 has been simply disregarded by the trial Court in a heinous crime. If the trial Court ignores the admissible evidence, it is the duty of the appellate court to re-appreciate the evidence for the purpose of ascertaining as to whether any of the accused really committed the offence. The case on hand is a fit case where the trial Court has totally ignored the evidence of PW.1 and PW.2 and the identification of the accused in the identification parade before the Judicial Magistrate. Therefore, the Trial Court''s judgment is unreasonable and it is the compelling reason for interference.

22. In our considered opinion, the available evidence established the guilt of the accused beyond reasonable doubt for the murder of Head Constable Murugiah by the accused and therefore, the Respondents/accused are liable to be convicted for the offence u/s 302 r/w 34 IPC.

23. Regarding the other charge u/s 307 r/w 34, PW.1 has not sustained any injury. The evidence of PW.1 that the accused attempted to attack him but he escaped from the attack is not corroborated by the evidence of PW.2. There is no sufficient evidence for the offence u/s 307 r/w 34 IPC and therefore, the order of the trial Court for the charge u/s 307 r/w 34 IPC is confirmed. Similarly, there is no sufficient evidence available for the charge u/s 3(1) of TNPPDL Act and the order of acquittal passed by the learned Judge for the offence u/s 3(1) of the TNPPDL Act is confirmed.

24. In the result, the Criminal Appeal is allowed and the Respondents/accused 1 and 2 are found guilty for the offence u/s 302 r/w 34 IPC and they are convicted and each of

them is sentenced to undergo life imprisonment and to pay a fine of 1,000/-, in default, to undergo one year rigorous imprisonment. The order of acquittal regarding the charges u/s 307 r/w 34 IPC and Section 3(1) of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 are confirmed.

The Trial Court is directed to take steps to secure the presence of both the accused/Respondents herein and commit them to undergo the imprisonment and report the same to this Court.