

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/09/2005

CORAM

THE HON'BLE MR.JUSTICE N.DHINAKAR  
AND  
THE HON'BLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.1139 of 2001

1.Thangaraj  
2.Perumal  
3.Kalyani .. Appellants

-Vs-

State by  
Inspector of Police  
Cuddalore O.T. Police Station  
Cuddalore District  
Crime No.1090/2000 .. Respondent

Criminal appeal preferred under Sec.374(2) of the Code of Criminal  
Procedure against the judgment of the Principal Sessions Judge, Cuddalore, in  
S.C.No.78 of 2001 dated 21.8.2001.

!For Appellants : Mr.P.Venkatasubramanian

^For Respondent : Mr.M.K.Subramanian  
Government Advocate  
(Criminal Side)

:JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)  
This is an appeal by the appellants three in number, who stood charged  
and found guilty by the learned Principal Sessions Judge, Cuddalore, as stated  
below.

(1) A-1 was charged under Sections 302 and 506(II)(2 counts) of  
I.P.C., found guilty as per the charges and sentenced to undergo life  
imprisonment and also to pay a fine of Rs.500/- in default of which to undergo  
Rigorous Imprisonment for six months, under Sec.302 of I.P.C. and also  
sentenced to undergo Rigorous Imprisonment for six months under Sec.506(II) of  
I.P.C. under each count.

(2) A-2 was charged under Sections 302 read with 34 and 506(II) of  
I.P.C., found guilty as per the charges and sentenced to undergo life  
imprisonment and also to pay a fine of Rs.500/- in default of which to suffer  
Rigorous Imprisonment for six months, under Sec.302 read with 34 of I.P.C.  
and also sentenced to undergo Rigorous Imprisonment for six months under

Sec.506(II) of I.P.C.

(3) A-3 was charged under Sec.302 read with 34 of I.P.C., for which she was sentenced to imprisonment for life and also to pay a fine of Rs.500/- in default of which to undergo Rigorous Imprisonment for six months.

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

The deceased, Kaliyan, was the husband of A-3. A-1 is the brother and A-2 is the father of A-3. P.W.2 is the niece, while P.W.3 is the daughter of the deceased. A-3, her husband, the deceased, and P.Ws.2 and 3 were all living under the same roof. A-1 and A-2 were also living nearby. It is the usual practice of the deceased to come in a drunken mood during night hours and beat his wife, A-3. Then and there, she used to complain about the same to A-1 and A-2 who in turn, used to warn the deceased. On the previous day of occurrence namely 18.10.2000, as usual, in the evening hours, he came in a drunken mood and on that day also, he beat A-3, which was reported to A-1 and A-2. All of them took a decision to do away with him. On 19.10.2000 at about 1.00 A.M., when P.Ws.2 and 3 were sleeping inside the house, the accused came inside and asked them to go out; but, they refused. Immediately, A-1 sat on the chest of the deceased and throttled him. A-2 squeezed the testicles and A-3 was by their side. After finishing the crime, they went away. This was witnessed by P.Ws.2 and 3. A-3 and P.Ws.2 and 3 were sitting outside because they were intimidated by A-1 and A-2 that P.Ws.2 and 3 should not open their mouth. P.W.3 due to fear, informed to P.W.4, a nearby shop owner, who in turn, informed to P.W.5, the Village Menial, at about 9.00 A.M. He informed to P.W.1, the Village Administrative Officer, who went over to the place of occurrence and found the dead body of Kaliyan. Then, he proceeded to Cuddalore O.T. Police Station, where P.W.12, the Sub Inspector of Police was present. At about 1.45 P.M., P.W.1 gave a report, Ex.P1, to P.W.12, on the strength of which a case came to be registered in Crime No.1090 of 2000 under Sec.174(3) of Cr.P.C. Ex.P11, the printed First Information Report, was despatched to Court.

3. P.W.13, the Inspector of Police, took up investigation, proceeded to the spot, made an inspection in the presence of two witnesses and prepared Ex.P2, the observation mahazar, and Ex.P13, the rough sketch. He conducted inquest on the dead body of Kaliyan in the presence of panchayatdars and witnesses and prepared Ex.P14, the inquest report. On interrogation of the witnesses present, the Investigating Officer came to know that it was a case of murder. Then, he altered the provisions of law to Sec.302 of I.P.C. Ex.P15, the express report, was sent to Court, and further investigation was proceeded with. Thereafter, the dead body of Kaliyan was sent to the Government Hospital along with a requisition for conducting autopsy.

4. P.W.9, the Senior Assistant Surgeon, attached to Government Head Quarters Hospital, Cuddalore (N.C.), on receipt of the requisition, conducted autopsy on the dead body of Kaliyan and found the following factors:

"R.M. Present in all limbs. Eyelids closed. Nose - No discharge of blood □ Mouth & lip swollen. Tongue - protruded. Jaws - clenched. Teeth - complete. Ears - No bleedings. Throat - Bloated with skin blasters present. Abdomen distended with gas, scrotum and penis swollen. Edematus, on cut section of scrotum □ gushes of foul smelling gas came out."

The Doctor issued Ex.P4, the postmortem certificate, with his opinion that the deceased would appear to have died of Asphyxia and death would have occurred

36 to 40 hours prior to postmortem. He also found alcoholic contents in the stomach.

5. During investigation, the Investigating Officer recovered M.Os.3 and 4 under Form 95. On 22.10.2000, A-1 and A-3 were arrested, when A-1 gave a confessional statement, which was recorded. P.W.13 gave a requisition to the Judicial Magistrate for recording the statements of P.Ws.2 and 3 under Sec.164 of Cr.P.C. Accordingly, P.W.11, the Judicial Magistrate No.II, Cuddalore, recorded the statements of P.Ws.2 and 3, which were marked as Exs.P9 and P10 respectively. On 31.10.2000, A-2 was arrested. All the material objects recovered from the place of occurrence and from the dead body, were sent to the Forensic Sciences Department for chemical analysis pursuant to a requisition given by the Investigating Officer. On completion of investigation, the Investigating Officer filed the final report before the committal Court.

6. The case was committed to Court of Session, and necessary charges referred to above, were framed against the appellants/accused.

7. In order to substantiate the charges levelled against the accused, the prosecution marched 13 witnesses and relied on 15 exhibits and 4 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which they denied as false. No defence witnesses were examined. On hearing the arguments advanced by either side, the trial Court found the appellants/accused guilty as per the charges, and awarded the punishments referred to above. Hence, this appeal at the instance of the appellants.

8. The learned Counsel appearing for the appellants inter alia made the following submissions:

In the instant case, P.Ws.2 and 3 were examined as eyewitnesses. A perusal of their evidence would clearly indicate that they are not only discrepant, but also thoroughly unbelievable. According to P.W.4, to whom P.W.3 informed about the occurrence, it was a suspicious death. P.W.4 in turn informed to the Village Menial, P.W.5. Thereafter, P.W.5 informed to the Village Administrative Officer P.W.1, and it was P.W.1, who gave Ex.P1 the report on the strength of which a case came to be registered. While the evidence of P.W.2 was like that, the same could not be believed. Both P.Ws.2 and 3 were close relatives of the deceased. Under the circumstances, in view of the discrepant evidence, it would suffice to reject their evidence.

9. The learned Counsel would further add that the medical evidence did not support the case of the prosecution; that the specific case of the prosecution was that A-1 sat on the chest of the deceased and strangled him, while A-2 squeezed the testicles and A-3 was standing by the side; that no overt act is attributed to A-3; that the medical evidence did not contribute anything as to the overt act attributed to A-2, and thus, it would be clear that A-2 and A-3 had no role to play; that so far as A-1 was concerned, the evidence what was adduced by the prosecution, cannot be found to be enough or sufficient or acceptable so as to take it as a legal evidence to sustain a conviction, and under the circumstances, the lower Court's judgment has got to be set aside.

10. The Court heard the learned Government Advocate (Criminal Side) on the above contentions.

11. The Court paid its full attention on the submissions made, and

made a thorough scrutiny of the available materials.

12. The specific case of the prosecution was that one Kaliyan, the husband of A-3, was done to death by strangulation by A-1 and squeezing his testicles by A-2. In the instant case, the evidence as brought forth by the prosecution, was sufficient to find that he died out of homicidal violence. The fact that Kaliyan died on account of homicidal violence was never questioned by the appellants either before the trial Court or before this Court. Hence, without any impediment, it could be safely recorded so.

13. Now, the question that would arise for consideration, would be whether the prosecution has proved the nexus of the crime with A-1 to A-3 in the case. At the outset, it can be well stated that A-3 is not attributed with any overt act. It was also the case of the prosecution that at that time, the deceased, Kaliyan, was in a drunken mood and was also sleeping. The prosecution came with a case stating that A-3 was holding the legs of the deceased. In view of the evidence available, the said act was not necessary under the circumstances, and thus, the case of the prosecution against A-3 is doubtful and hence, it can be rejected. This Court is of the view that A-3 has got to be acquitted of the charges against him.

14. So far as A-2 was concerned, in the instant case, the specific case of the prosecution was that he squeezed the testicles of the deceased; but, the dead body of Kaliyan was subjected to postmortem by P.W.9, the Doctor, who has given his opinion also. A perusal of the postmortem certificate issued by him, does not reveal any injury corresponding to the act of squeezing of the testicles of the deceased by A-2. Thus, it can be well stated that the medical evidence did not support the case of the prosecution in respect of the act of the second accused. Thus, A-2 cannot also be found guilty, and accordingly, A-2 is entitled for an acquittal.

15. As regards A-1, this Court is of the considered opinion that the prosecution has proved its case. In the instant case, the first contention of the learned Counsel for the appellants that P.Ws.2 and 3 were close relatives, and thus, they have come forward to give false evidence has got to be discountenanced for the simple reason that in the instant case, A-3 is the mother of P.W.3, and P.W.2 is the niece of A-3; that A-2 is the grand father of both, and A-1 is the uncle of P.W.2 and grandfather of P.W.3. Thus, it would clearly reveal that P.Ws.2 and 3 are close relatives of the accused also. Hence, there was no necessity for P.Ws.2 and 3 who were living together at the relevant point of time, to come before a Court of law to give false evidence. The Court is mindful of the legal proposition that if an eyewitness before a Court of law is related to the deceased, his evidence has got to be carefully scrutinized. In the instant case, despite the exercise of careful scrutiny, the Court has to necessarily accept the evidence of P.W.2. P.W.2 has given a graphic narration of the incident from the time till the end, and his evidence has inspired the confidence of the Court. From his evidence, it would be clear that A-1 sat on the deceased, strangled him and caused his death directly, which injury, according to the medical opinion, was fatal. Under the circumstances, the medical evidence also stood in full corroboration of the ocular testimony adduced through P.W.2 in respect of the act of the first accused. Thus, the contention of the learned Counsel for the appellants in that regard, under the circumstances, cannot be accepted.

16. The other contention put forth by the learned Counsel for the appellants that there was a quarrel preceding the occurrence, and therefore,

the act of the first accused would not fall within the ambit of murder cannot be accepted legally, since there is no material to show that there was any quarrel that preceded the occurrence. Under the circumstances, the act of the first accused would clearly fall within the ambit of murder, and the lower Court has found him guilty and awarded life imprisonment, which, in the opinion of this Court, does not require any interference by the Court.

17. In the result, the conviction and sentence imposed upon the appellants 2 and 3 are set aside, and they are acquitted of the charges framed against them. So far as the first appellant is concerned, the conviction and sentence imposed upon him are confirmed. Accordingly, this criminal appeal is partly allowed. It is reported that the appellants are on bail. Hence, the bail bonds executed by the appellants 2 and 3 shall stand cancelled, and the fine amounts if any paid by them, will be refunded to them. As regards the first appellant, the Sessions Judge shall take steps to commit him to prison to undergo the remaining period of sentence imposed upon him.

(N.D.,J.)

(M.C.,J.)

26-9-2005

Index: yes

Internet; yes

To:

- 1.The Principal Sessions Judge, Cuddalore.
- 2.The Chief Judicial Magistrate, Cuddalore.
- 3.The Judicial Magistrate No.II, Cuddalore.
- 4.The District Collector, Cuddalore.
- 5.The Director General of Police, Chennai 4.
- 6.The Superintendent, Central Prison, Cuddalore.
- 7.The Superintendent, Special Prison for Women, Vellore.
- 8.The Public Prosecutor, High Court, Madras.
- 9.The Inspector of Police, Cuddalore O.T. Police Station Cuddalore.

Nsv/

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