

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31-8-2010

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM  
AND  
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

CRL.A.No.267 of 2010

1.Bhaskaran  
2.Periyasamy

.. Appellants/Accused NOs.1 & 2

vs

The State rep. By  
The Inspector  
Mangalamedu Police Station  
Mangalamedu  
Perambalur District  
(Crime No.66/2006)

.. Respondent /Complainant

Criminal appeal preferred under Sec.374(2) of the Code of Criminal Procedure against the judgment of the Sessions Judge, Mahila Court, Perambalur, made in S.C.No.5 of 2008 dated 11.2.2010.

For Appellants : Mr.P.Mani  
For Respondent : Mr.V.Balasubramanian  
Additional Public  
Prosecutor

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

Challenge is made to a judgment of the Mahila Court, Perambalur, made in S.C.No.5 of 2008 whereby the appellants shown as A-1 and A-2 respectively, along with A-3 stood charged under Sec.302 read with 34 of IPC, tried and found guilty as per the charge and awarded life imprisonment along with a fine of Rs.2000/- and default sentence. As far as A-3 was concerned, the charges stood abated since he died pending proceedings.

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

(a) A-1 was a tenant under P.W.7. He was residing with his wife P.W.8 and children P.Ws.2 and 9, the son and daughter respectively. He was carrying on a tea stall also. Since A-1 was carrying on cattle business, he used to go to different places often. Taking advantage of his absence, the wife of A-1 developed intimacy with the deceased Mangavel, who was doing coolie work in the cattle shed. This came to the knowledge of A-1, and he rebuked them. When it came to the knowledge of the wife and the son of the deceased, they were

living separately. The deceased used to stay in the cattle shed during night hours. Despite the warning, the wife of A-1 and also the deceased continued to have their illicit relationship. Then A-1 planned with A-2 and A-3 to finish him off.

(b) Accordingly, on 3.3.2006 during night hours, when the deceased fell asleep at the cattle shed, all the three went over there, and A-1 and A-2 held him, while A-3 attacked him with a stick on different parts of the body. At that time, A-1 took a stone and dashed it on his head. As a result, the deceased died at the spot. All the three accused fled away from the place of occurrence.

(c) On the next morning i.e., 4.3.2006, P.W.2, the son of A-1, who went over there to play outside, found the dead body and informed to P.W.7. P.W.7 in turn informed to P.W.1, the son of the deceased, and also his wife. They went to the place, and after ascertaining the same, P.W.1 approached the Village Administrative Officer (VAO), P.W.11. The statement of P.W.1 was recorded, and along with his report, Ex.P3, the statement was placed before the respondent police.

(d) P.W.15, the Sub Inspector of Police, attached to the respondent police station, on receipt of the report, Ex.P3, registered a case at about 10.00 A.M. in Crime No.66/2006 under Sec.302 of IPC. The printed FIR, Ex.P10, was despatched to the Court.

(e) On receipt of the copy of the FIR, P.W.16, the Inspector of Police of the Circle, took up investigation, proceeded to the spot, made an inspection and prepared an observation mahazar, Ex.P1, and also a rough sketch, Ex.P11. Then he conducted inquest on the dead body of Thangavel in the presence of witnesses and panchayatdars and prepared, Ex.P12, the inquest report. He recovered the material objects from the place of occurrence. He also interrogated the witnesses and recorded their statements as required under law. The dead body was sent to the Government Hospital along with a requisition for the purpose of postmortem.

(f) Pursuant to the requisition made by the Investigator, the dead body of Thangavel was subjected to autopsy by P.W.14, the Civil Assistant Surgeon, attached to the Government Hospital, Perambalur, and he has given a postmortem certificate, Ex.P9, with his opinion that the deceased would appear to have died of shock and haemorrhage due to injury to vital organ brain about 14 to 18 hours prior to autopsy.

(g) Pending the investigation, A-1 was arrested on 7.3.2006, when he came forward to give a confessional statement voluntarily. The same was recorded. The admissible part is marked as Ex.P16. Then he took the police party to his house and also produced M.O.1, bloodstained shirt. The same was recovered under a cover of mahazar. A-1 was sent for judicial remand. Following the same, A-2 was also arrested. He also gave a confessional statement. The same was recorded. Thereafter, he was sent for judicial remand. Following the arrest of A-3 on 8.3.2006, he also gave a confessional statement. The same was recorded, and he was also sent for judicial remand.

(h) P.W.17, the Inspector of Police, took up further investigation and on completion of the same, filed the final report.

3.The case was committed to Court of Session, and necessary charge was framed. In order to substantiate the charge, the prosecution marched 17 witnesses and also relied on 14 exhibits and 10 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 flatly denied as false. No defence witness was examined. The trial Court heard the arguments advanced on either side, and took the view that the prosecution has proved the case beyond reasonable doubt and hence found the accused/appellants guilty under Sec.302 read with 34 IPC and awarded life imprisonment which is the subject matter of challenge before this Court.

4.Advancing the arguments on behalf of the appellants, the learned Counsel would submit that in the instant case, the prosecution had no direct evidence to offer and it relied only on circumstantial evidence; that the prosecution did not place sufficient circumstances or prove the same; that the circumstances relied on by the prosecution, were only the motive and the recovery of M.O.1, shirt, a bloodstained one; that as far as the motive was concerned, P.W.8 was the person who was alleged to have got intimacy with the deceased, and he actually did not support the prosecution; that what was all spoken to by P.W.1 is available; that on the basis of that motive, it cannot be taken that the guilt of the accused has been brought home; that it is claimed by the Investigator that M.O.7, bloodstained shirt, was recovered pursuant to the confessional statement; that the shirt though it was claimed as a bloodstained one, was not sent for chemical analysis; that no report was coming forth; that under the circumstances, it cannot be taken as any circumstance pointing to the guilt of the accused; that the prosecution had no more evidence to offer, but the trial Judge has taken an erroneous view and found both the appellants/accused guilty, and hence they are entitled for acquittal in the hands of this Court.

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

6.It is not in controversy that the dead body of Thangavel, pursuant to the inquest made by the Investigating Officer, P.W.16, was subjected to postmortem by P.W.14, the Doctor, who has given his opinion under Ex.P9. Thus the prosecution was successful enough in proving the fact that Thangavel died out of homicidal violence in view of the evidence recorded by the trial Court.

7.In order to substantiate the charge levelled against the appellants/accused that they caused the death of the deceased by sharing the common intention, the prosecution had no direct evidence to offer. As rightly cautioned by the learned Counsel, it is trite law that in a given case like this, where the prosecution rested its case on the circumstantial evidence, the circumstances must constitute a chain without a snap and be pointing to the hypothesis that except the accused, no one could have committed the offence. In



the case on hand, if this legal principle is applied, this Court is afraid whether it can sustain the conviction rendered by the trial Court. In the instant case, the prosecution commenced its story that A-1 was aggrieved over the illicit intimacy between his wife and the deceased. The only witness examined in this regard, is P.W.8 who has also turned hostile. That apart, P.W.1 was actually living separately during the relevant time. Even assuming that the prosecution has proved the motive part, that by itself cannot be taken as a proof pointing to the guilt in respect of which they stood charged before the trial Court.

8.Except the above, what was all available for the prosecution before the trial Court was only one circumstance namely the recovery of M.O.7, bloodstained shirt, which, according to the Investigator, was recovered from A-1 on production following the confessional statement recorded by him. Now, it is pertinent to point out that in a given case like this, though the recovery is relied upon by the prosecution in order to show the nexus of the crime with the accused, it should not be forgotten that what is recovered following the confessional statement made by the accused, is found to be under Sec.27 of the Evidence Act, and it must all be pointing to the nexus of the crime with the accused. In the instant case, what was all recovered was not the weapon of crime, but only a bloodstained shirt. If to be true, there could not have been any impediment for the Investigator to put forth a requisition or sending the bloodstained shirt for analysis, but it was not done, and no forensic report has been received. Under the circumstances, the alleged recovery even assuming to be true, cannot point to the nexus of the crime with the accused.

9.After marshalling the evidence, it would be quite clear that the prosecution was successful enough in proving the fact that Thangavel died out of homicidal violence. Thus it can be well stated that the prosecution had not only lacked in evidence, but also bereft of evidence pointing to the guilt of the accused. But, the trial Court has taken an erroneous view. Under the circumstances, this Court has to make undone the judgment of the trial Court by upsetting the same.

10.In the result, this criminal appeal is allowed setting aside the judgment of conviction and sentence passed by the trial Court, and the appellants/A-1 and A-2 are acquitted of the charge levelled against them. They are directed to be set at liberty forthwith unless their custody is required in connection with any other case. The fine amount if any paid by them, shall be refunded to them.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

- 1.The Sessions Judge  
Mahila Court  
Perambalur
- 2.The Inspector of Police  
Mangalamedu Police Station  
Mangalamedu  
Perambalur District  
(Crime No.66/2006)
- 3.The Public Prosecutor  
High Court, Madras.

1 cc To Mr.P.Mani, Advocate, SR.64881/10

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pmk.13.9.2010.



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