

Murugan vs The State Rep. By The Inspector Of Police on 4 April, 2025

Author: B.R. Gavai

Bench: Abhay S. Oka, B.R. Gavai

2025 INSC 446

NON-REPORT

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 3318 OF 2023

MURUGAN

... Ap

Versus

THE STATE
REP. BY THE INSPECTOR OF POLICE

...Resp

JUDGMENT

AUGUSTINE GEORGE MASIH, J.

1. This appeal has been preferred by assailing the judgment passed by the Madras High Court, partly allowing the appeal of the appellant acquitting him of the offence under Section 148 of the Indian Penal Code (IPC) while sustaining the conviction and sentence of life imprisonment and fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for two years, imposed by the Trial Court under Section 302 IPC.

2. Briefly, the facts are that on 06.05.2018 at about 10:15 p.m., the deceased (Jagadeesh Durai) – a Special Branch Grade-I Constable found the appellant - Murugan (A1) and two others [Krishnan (A2) and Murugaperumal (A3)], carrying illegal sand in a tractor-trailer and with an intention to stop them from doing so chased them on a Motorcycle. He informed Inspector Virgin Sophia - PW24 over a cell phone regarding the transportation of the stolen river sand, detailing therein the names of the accused as also the registration number of the tractor. PW24 contacted Dhiraviam, Constable Grade II - PW21 and another constable – Muthaiah, instructing them to follow the sand smugglers. PW21 along with Muthaiah went on the motorcycle from Kakan Nagar to Pondicherry Road, to the site which was brought to their notice by the deceased constable (Jagadeesh Durai).

However, they could not find him and tried to contact him over his cell phone, which initially was ringing for some time but thereafter was switched off. All this happened during the course of night. They also visited the residence of the accused A1 to A3, but they were not found there.

3. The next morning at 5:30 a.m., PW1 found the dead body of the deceased with injuries on the head, in the land owned by Duraipandian (Retired Village Administrative Officer) - PW7. Three pairs of slippers and other articles were also found near the dead body along with the tractor and the trailer with one tyre out of the axle. Complaint was lodged (Exhibit P-1) and the articles found there were seized and marked.

4. On the basis of the statements recorded of the witnesses, the postmortem report and other evidence apart from the confessional statements of A2 and A3 before Maha Harichandran - PW13, A4 to A6 were also arrayed as accused. Upon completion of the investigation, the chargesheet was filed on 30.07.2018, leading to the framing of charges and subsequent trial, where A1 and A2 were convicted under Sections 148 and 302 of the IPC. They were sentenced to undergo rigorous imprisonment of three years under Section 148 and life imprisonment with Rs.10,000/- each as fine and, in default, to undergo imprisonment for two years under Section 302. Whereas A4 to A6 were convicted and sentenced to undergo two years rigorous imprisonment under Section 147 IPC and life imprisonment with fine of Rs.1,000/- each, in default whereof to undergo imprisonment for one year under Section 302 read with Section 149 IPC.

The Trial Court acquitted A3.

5. In appeal preferred before the High Court, A4 to A6 were acquitted. However, the conviction and sentence of A1 and A2 under Section 302 IPC were sustained while acquitting them of the charge under Section 148 of IPC. Appeal has been preferred by A1 only.

6. The counsel for the appellant has contended that the last seen evidence is that of Joseph - PW12, who claimed to have witnessed the incident while he was returning on the motorcycle from Valliyur along with Michael. The tractor-trailer was being driven at high speed by the appellant accompanied by two others being followed by the deceased constable shouting at them to stop. This was at night after 11:00 p.m. when, in the absence of any street light, chances of identification are very less. That apart, he recognized the deceased on the basis of his voice. Counsel asserts that this witness admits that he was present at the time of postmortem but this aspect of he having seen the appellant and two other accused i.e., A2 and A3, was not disclosed to the Police, rather the statement of this witness (PW12) was recorded only on 23.05.2018 after a period of 17 days. Prior thereto, he did not disclose anything to anyone. Inference under Section 114 of the Indian Evidence Act, 1872 warrants to be drawn and his evidence is not to be believed.

7. The involvement of all the accused, discovery and their specific roles have been brought about on the basis of extra judicial confession of A2 and A3 before PW-13, on 10.05.2018, which has been found to be not reliable by the High Court on the ground that A2 and A3 had been arrested on 08.05.2018 as per the admission of PW24. The alleged confessions, if any, made on 10.05.2018 would be inadmissible being firstly in police custody and secondly, there was no occasion for these

two to make such confessions.

8. The delay in reaching followed by presentation of the FIR to the Magistrate at 3:30 p.m. has also been highlighted by the counsel for the appellant. He has referred to the evidence of PW-15, the Head Clerk in the Magistrate's Court, who deposed that he received the FIR at 3:30 p.m. on 07.05.2018. Nothing has been stated by him with regard to the transfer of the Magistrate, before whom the said FIR had to be presented, which is the ground taken by the prosecution as an explanation for the delay in presentation of the FIR to the Magistrate.

9. Reference has also been made to the evidence of PW-20, the constable who was sent with the FIR to the Court, where he had stated that the Magistrate has been transferred. However, this witness admits that ordinarily the FIRs have to be handed over to the Clerk of the Court, which was not done in the present case and he had reached the Court at 3.30 p.m. when the FIR was presented to the Magistrate. Both these witnesses have admitted that as per practice, FIRs under Section 302 IPC cases were being sent immediately and the entries were also made forthwith.

10. Counsel for the appellant submits that as per the prosecution, PW-24 was informed about the sand theft on the basis of the information received by the deceased constable from Manoharan and Maharajan. None of these two witnesses have been examined, which is the relevant information on the basis of which the deceased had proceeded to follow the accused and chased them. It has also been highlighted by the counsel that no case has been registered against the accused person under the Mines and Minerals (Development and Regulation) Act, 1957 for the theft /smuggling of river sand.

11. Another aspect which has been highlighted is that no sand was found in the tractor-trailer and this aspect has been admitted by PW-1 in his cross- examination. He has also stated that there was no river sand on the ground as well where the tractor- trailer were parked.

12. Counsel for the appellant contends that the very basis of the prosecution story leading to chase of the accused by the deceased constable Jagadeesh Durai is the theft of the river sand clashes with there being no evidence with regard to the sand being available in the trailer or nearby. It has been argued that the evidence of the alleged eye witness Tr. Arokiya Sesuraja - PW2 has been disbelieved by the High Court, which finding has not been challenged and has attained finality. Similarly, the extra judicial confessions of the co-accused (A2 and A3) before Maha Harichandran - PW13 having found to be made during the police custody thus not admissible, leaves no evidence against the appellant rendering the conviction under Section 302 IPC illegal and unsustainable. The prosecution case having been shattered, the appeal deserves to be allowed.

13. On the other hand, learned counsel for the State has pointed out that there is ample evidence which connects the appellant with the commission of the offence. The call records clearly indicate that the deceased informed PW24 and PW1 about the theft of the river sand by all three accused. The intention was apparent, as during the run, the tyre of the trailer to the tractor having been damaged, the tractor had come to a halt and to avoid arrest at the hands of the deceased, the appellant and the co- accused proceeded to attack him, resulting in his death. Recovery, as has been

effected from the spot, specifically the three pairs of slippers, establishes the presence, apart from the fingerprints taken from the tractor-trailer as also the weapon of offence i.e., “wheel spanner”, which matches with that of the fingerprints of the appellant.

14. He, however, could not dispute the factum that the evidence as has been led by the prosecution to a great extent, relatable to the eye witness - Tr. Arokiya Sesuraja – PW2, and the extra judicial confession before Maha Harichandran PW-13 has been disbelieved by the High Court. Those were the two star witnesses, who, alongwith the evidence of Joseph (PW 12), the last seen witness, formed the basis for connecting the appellant with the crime.

15. With evidence of these three crucial witnesses having been disbelieved by the Court, the only evidence which has been pressed into service is the electronic evidence and the fingerprints which have been found at the site, apart from the slippers.

16. The counsel for the respondent has, however, vehemently supported the judgment passed by the High Court and has thus prayed for dismissal of the appeal.

17. Having considered the submissions made by the counsel for the parties and having gone through the above referred to statements of the witnesses, what is apparent is that the High Court has ignored the factum that the evidence of the witnesses which were the basis of the prosecution case and the backbone having crumbled, with the Court itself not relying thereon while giving benefit to the co- accused, the same benefit could not have been denied to the appellant being similarly placed in the given facts and circumstances of the present case.

18. The aspect with regard to the presentation of the FIR before the Magistrate at a belated stage also carries weight. As per the evidence, the body of the deceased was found at 5:30 a.m. on 07.05.2018 and the FIR is alleged to have been registered soon thereafter. The report and the FIR were presented to the Magistrate at 3:30 p.m. Explanation which has been put forth is that the delay occurred because of the transfer of the Magistrate as per the constable - PW20, who had brought the FIR to the Court. No evidence has been produced with regard to the transfer of the Magistrate nor has the Head Clerk – PW15, in the Magistrate’s Court stated anything about the Magistrate’s transfer. The justification, therefore, does not appear to be reasonable for the delay in presentation of the FIR before the Magistrate. Another aspect which has come to light is that, the inquest report was prepared after 1:00 p.m. as Tr. Arokiya Sesuraja - PW2 has stated that he had signed the same at that time. It thus appears that the prosecution has failed to explain the inordinate delay in the presentation of the report to the Magistrate casting doubt on the prosecution case.

19. That apart, prosecution has rested its case, in its entirety, upon the evidence of PW-2, who is alleged to be the eye witness. He claims to have seen the commission of the offence, but his entire evidence has been disbelieved by the High Court on the ground that the presence of the said witness at the spot is wholly impractical, the conduct inconsistent and against the normal human behaviour. According to this witness, he had gone to the field at 10:00 p.m. to assess the value of maize crop grown therein and during that period he witnessed the occurrence leading to the death of the police constable - Jagadeesh Durai. He failed to inform the incident to the Police immediately, rather the

said information was given by him after 36 days i.e., on 12.06.2018, especially when he had participated in the agitation on 07.05.2018, the very next day and even signed the inquest report at 1:00 p.m.

20. With the evidence of eye witness having been discarded, the last seen witness is PW-12 who stated in his evidence that while he was coming at about 11:00 p.m., a tractor-trailer driven by A1 had crossed him with two other persons with him, one sitting on the tractor-trailer and the other in the trailer. The deceased was following the tractor, shouting at the accused to stop the same. He even saw the tractor-trailer taking a diversion and going into the maize field. This witness also admits to having been present at the time of the postmortem being conducted on the deceased on 07.05.2018. He has admitted that he had known the deceased earlier and was a resident of an adjacent village situated at a distance of 3 kms. Despite knowing the deceased, witnessing the incident and accompanying the dead body for the postmortem, he still chose not to inform the Police about the same. 20.1 What has come to light in his evidence is that he had given his statement to the Police under Section 161 on 23.05.2018, after 17 days of the incident. This, again casts doubt upon the veracity of the evidence of the witness. A person who recognizes not only the appellant but also the deceased and is also present at the time of postmortem would not have, in natural course, hesitated to approach the Police officials to give information with regard to the involvement of the accused in the alleged offence. The evidence, thus of PW-12 does not command any credence which could be made the sole basis for holding the appellant guilty of an offence under Section 302. The last seen evidence, therefore, also having been found to be not trustworthy.

21. In *Karakkattu Muhammed Basheer vs. State of Kerala*¹, this Court after referring to various judgments passed by this Court summarized the basic established principles which need to be taken as a guide for the Courts in cases of circumstantial evidence. In Paras 16 to 18 thereof, it was held as follows:-

“16. Thus, these basic established principles can be summarized in the following terms that the chain of events needs to be so established that the court has no option but to come to one and only one conclusion i.e. the guilt of the accused person. If an iota of doubt creeps in at any stage in the sequence of events, the benefit thereof should flow to the accused. Mere suspicion alone, irrespective of the fact that it is very strong, cannot be a substitute for a proof. The chain of circumstances must be so complete that they lead to only one conclusion that is the guilt of the accused.

17. Even in the case of a conviction where in an appeal the chain of evidence is found to be not complete or the courts could reach to any another hypothesis other than the guilt of the accused, the accused person must be given the benefit of doubt which obviously would lead to 2024 (10) SCC 813 his acquittal. Meaning thereby, when there is a missing link, a finding of guilt cannot be recorded.

18. In other words, the onus on the prosecution is to produce such evidence which conclusively establishes the truth and the only truth with regard to guilt of an accused for the charges framed against him or her, and such evidence should establish a chain

of events so complete as to not leave any reasonable ground for the conclusion consistent with the innocence of accused.”

22. In the case of circumstantial evidence, which ultimately turns out is that, with other evidence having been discarded, the sequence of events must be of such a nature which leads to only one conclusion that it is the accused and the accused alone who would be the person to have committed the offence, thus, leaving no scope for coming to any other conclusion.

23. In these circumstances, merely the recovery at the site of the incident of a wheel spanner, which according to the prosecution has fingerprints of the accused on it and three pairs of slippers would not be enough for holding the appellant guilty of having caused the death of the deceased.

24. In the light of the above, the judgment and order of conviction and sentence as passed by the Courts below are set aside. The appeal is accordingly allowed.

25. The appellant be released forthwith, if in custody and not required in any other case.

26. Pending application(s), if any, also stand disposed of.

.....J. [ABHAY S. OKA]J. [AHSANUDDIN
AMANULLAH]J. [AUGUSTINE GEORGE MASIH] NEW DELHI;

APRIL 04, 2025