

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1061 OF 2005

THAVISI

Appellant (s)

VERSUS

STATE REP.BY INSPECTOR OF POLICE, T.N.

Respondent(s)

(With appln(s) for bail and office report )

Date: 09/11/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s) Mr. B. Sridhar,Adv.

For Respondent(s) Mr. V. Kanagaraj, Sr. Adv.

Mr. V.G. Pragasam,Adv.

Mr. S. Vallinayagam, Adv.

Mr. G.N.Reddy, Adv.

UPON hearing counsel the Court made the following

O R D E R

The impugned judgment is set aside and the appeal is allowed in terms of the observations made in the signed order. The accused shall be released forthwith if not required in connection with any other case.

(Meenu Sethi)

Court Master

(Pushap Lata Bhardwaj)

Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

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CRIMINAL APPEAL NO. 1061/2005

Thavisi ... Appellant

VERSUS

State Rep. By Inspector of ... Respondent

Police, T.N. s

O R D E R

The appellant before us along with accused No.1- Murugan and accused No. 2- Ravi was tried for commission of an offence punishable under Section 364 and under Section 302 of the Indian Penal Code. All the accused persons were acquitted of the charge under Section 364 IPC. The accused No.1- Murugan and accused No.2-Ravi were convicted for commission of an offence under Section 302 IPC whereas the appellant before us being accused No.3 was convicted for commission of an offence under Section 302 read with 34 IPC.

The prosecution case as disclosed by P.W.1- Sivasubbu Thevar- father of the deceased was that he along with his family members was living at Keezhnatham village.

The accused Nos. 1 and 2 and the deceased were close friends. The deceased had borrowed a sum of Rs.1,000/- from accused No.2 which was demanded back from him on the date of occurrence i.e. 11.1.1999. On that day all of them went in the auto of accused No.3 to Thonithurai for

taking bath. At the time when they were taking bath, a demand was made by accused No.2 for return of the said sum from the deceased. The deceased allegedly gave an evasive answer. Whereafter accused No. 3 is said to have restrained the deceased from moving and accused No.1 and accused No.2 took aruvals and assaulted him on his neck. Immediately after the occurrence a hue and cry was raised. The accused Nos. 1 and 2 were said to have fled in the auto which was driven by accused No.3-the appellant. At that point of time two Police officers P.W.3- Chakravarthy, Sub-Inspector of Police and P.W.4 Sankaran, Head Constable, who were on patrol duty heard the cries raised by P.W.1 and in order to stop accused from fleeing, they chased the auto. Allegedly, the auto bearing Registration No. TN 72 E 0525 was traced. It was moving in front of a police jeep. Accused No.3 said to have stopped the auto. Accused No.1 and

accused No.2 got down and began to run towards Vellimalai. Accused No.3 drove the auto fast which was later on intercepted by P.W.-3 through his walkie-talkie. P.W-10 Veeraputhiran, Head Constable arrested the appellant-accused No.3 on 11.1.1999.

The accused Nos. 1 and 2 are not before us.

The first informant P.W.-1 in his deposition before the Court did not support the prosecution case. He, in his deposition stated that while he was taking bath in the river, there was crowd at that place and someone from the crowd informed him that someone had been stabbed. He had not seen the deceased being stabbed or murdered.

The High Court while affirming the conviction

and sentence passed by the learned trial Judge held as under:

"The only contention raised by A-3 was that there is no connecting evidence that it was A-3 who drove the auto rickshaw at that time or he took A-1 and A-2 from the place of occurrence; that at 12.30 p.m. the auto was seized and he was arrested by another police official, and there is bereft of any material to connect him with the case. This contention cannot be countenanced for the simple reason that at the earliest point of time, the special report was prepared by the police official, wherein the auto bearing Registration No. TN 72 E 0525 was referred to. It is not the case of A-3, when he was questioned under Section 313 Cr.P.C., that he did not

drive the auto at that time. The said auto has also been seized within a short span of two hours from the time of occurrence, and it was also immediately sent to the Court. It is pertinent to point out that A-3 has not stopped the auto; but it was chased by the police officials. That apart, it remains to be stated that A-1 and A-2 were travelling in the vehicle and they were also carrying two aruvals with them. The prosecution has brought forth sufficient evidence to prove the same. No explanation was forthcoming from A-3 why he has not stopped the auto, when it was chased by the police officials and why he carried A-1 and A-2 with two aruvals. In such circumstances, the conduct of A-3 would attract the provisions of Section 8 of the Evidence Act and the same would also indicate his complicity in the offence. Thus, the contention put forth by A-3 cannot be countenanced at all."

Learned counsel appearing on behalf of the appellant would submit that there was no evidence to

connect the appellant with the commission of an offence under Section 302/34 IPC.

Learned senior counsel appearing on behalf of the respondent on the other hand supported the judgment saying that in the First Information Report, P.W.-1 had categorically stated that the appellant had obstructed the deceased when he intended to flee away; which together with subsequent conduct, as had been noticed by the High Court, points to his guilt.

It is not in dispute that P.W-1 did not see the appellant herein at the spot. Although some role on the part of appellant has been ascribed in the First Information Report, which was recorded immediately after the accused were arrested in the matter but no evidence has been brought on record in this behalf. Allegations made in the F.I.R. cannot be a substitute for substantial evidence. As noticed here in before, the said witness in his evidence before the Court did not ascribe any role whatsoever to the appellant. There was then nothing on the record to suggest that accused No.3-appellant herein has taken part in the commission of murder. He might have driven the auto in which the accused Nos. 1 and 2 were travelling. Even there is nothing on record to show that the appellant shared any common intention with other accused persons to commit the murder of said Sivan Pandy.

We, therefore, are of the opinion that the appellant may have committed other offences but on the basis of his conduct alone, which has been noticed by the High court, we are sure that he cannot be held

guilty for commission of an offence under Section 302/34 IPC.

The impugned judgment is set aside and the appeal is allowed with the aforementioned observations.

The accused shall be released forthwith if not required in connection with any other case.

.....J.

( S.B.SINHA )

.....J.

(MARKANDEY KATJU )

New Delhi,

November 9, 2006.