

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.454 of 2015

Gurunathan

... Appellant

vs.

State rep. By
Inspector of Police,
Bommidi Police Station
Dharmapuri District

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence imposed on the petitioner by the Additional Sessions Judge, Dharmapuri by judgment dated 26.6.2015 in S.C.No.207 of 2014 and acquit the appellant by allowing this appeal.

For appellant : Mr.R.Thirugnanam
For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

The conviction and sentence dated 26.6.2015 passed in Sessions Case No.207 of 2014 by the Additional District and Sessions Court, Dharmapuri are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the accused 1 to 4 and deceased Ramachandran are residents of same Village. With regard to poultry, a tussle has arisen between the first accused and deceased and with regard to vacating a house, a despair has arisen in between the deceased and accused 2 and 3. On 2.11.2013 at about 8 p.m., all the accused after taking liquor passed through a road and the same has been questioned by the deceased and having enraged at his conduct, the first accused has attacked him and due to his overtacts, he passed away.

3. After occurrence, the son of the deceased has given a complaint and the same has been registered in Crime No.386 of 2013. The complaint has been marked as Ex.P.1.

4. On receipt of Ex.P.1, the Investigating Officer, viz., P.W.19 has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly Dr.Sathish Babu (P.W.17) has conducted the same and he found the following external and internal injuries:

"External Injuries:

- 1) 3x3 cms contusion over the right side of occipital region.
- 2) 8x3 cm dark brown abrasion over the back of left side of upper abdomen
- 3) 6x2 cm dark brown abrasion over the below wound NO.2
- 4) 28x4.7 cm dark brown abrasion over lateral aspect of right knee
- 5) 3x2 cm dark brown abrasion over front of the left knee
- 6) 2.5x1.5 cm dark brown abrasion over lateral aspect of left knee
- 7) 1x0.5 cm dark brown abrasion over the back of the right ear
- 8) 0.5x0.5 cm dark brown abrasion over mid forehead

Dissection of Thorax and abdomen"

Rib cage was intact

Heart was normal in size, chambers contained fluid blood, valves, great vessels and coronaries were normal

Lungs were normal in size, cut section: Normal

Stomach contained 200 gms.of partially digested food particles with specific odour

Mucosa was normal

Liver, Spleen and Kidneys were normal in size

cut section: Normal

Urinary bladder was empty

Pelvic bone was intact

Dissection of Head and Neck:

Scalp: 3x3cmx scalp deep contusion

side of occipital bone

vault and duramater was intact

Brain was normal in size, cut section: Normal

Base was intact

Hyoid bone was intact, spinal column was intact

Viscera preserved for chemical analysis."

The Post-mortem Report has been marked as Ex.P.6. After completing investigation, P.W.19 has laid a final report on the file of Judicial Magistrate Court, Pappireddipatti and the same has been taken on file in P.R.C.No.19 of 2014.

5. The Judicial Magistrate, Pappireddipatti, after considering the fact that the offences alleged to have been

committed by all the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Dharmapuri Division and the same has been taken on file in Sessions Case No.207 of 2014 and subsequently made over to the trial court.

6. The trial court, after hearing arguments of both sides and upon perusing relevant records, has framed the first charge against the first accused under Section 302, second charge against accused 2 to 4 under section 302 r/w 109 of Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

7. On the side of the prosecution, P.Ws.1 to 10 have been examined and Exhibits P.1 to 13 and Material Objects 1 and 2 have been marked.

8. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. On the side of the accused, D.W.1 has been examined.

9. The trial court, after hearing arguments of both sides and upon perusing the available evidence on record, has found the first accused guilty under Section 304(ii) of the Indian Penal Code and sentenced him to undergo 5 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been preferred at the instance of the first accused as appellant.

10. The consistent case put forth on the side of the prosecution is that due to previous animosity, on 2.11.2013 at about 8 p.m., the first accused has attacked the deceased and due to his overtacts, he passed away and the remaining accused have lent their support to the first accused.

11. The prosecution has set the law in motion only on the basis of Ex.P.1, Complaint, alleged to have been given by the son of the deceased, who has been examined as P.W.1. The prosecution has examined other connected witnesses. The trial court has invited conviction and sentence only on the basis of evidence given by P.W.2.

12. The learned counsel appearing for the appellant/first accused has contended that in the instant case, except the evidence of P.W.2, no other piece of evidence is available for the purpose of proving that in the place of occurrence, the first accused has attacked the deceased and further P.W.2 has not given concrete evidence with regard to the attack alleged to have been made by the first accused and further P.W.12

Dr.Arunkumar has given evidence to the effect that he has first seen the deceased. The person who brought him has reported that the deceased has fallen down and the trial court, without considering feeble evidence available on the side of the prosecution, has erroneously invited conviction and sentence against the appellant/first accused. Therefore, the conviction and sentence passed by the trial court are liable to be set aside.

13.The learned Additional Public Prosecutor has contended that in the instant case, the wife of the deceased has been examined as P.W.2 and she has given clear evidence to the effect that in the place of occurrence, the first accused has attacked the deceased and only due to his overtacts, he passed away and the trial court, after considering the sole testimony of P.W.2, has rightly invited conviction and sentence against the appellant/first accused and the same do not warrant interference.

14. As pointed out earlier, the entire case of the prosecution hinges upon the evidence of P.W.2. It is an admitted fact that P.W.2 is the wife of the deceased. In fact, this Court has perused the entire evidence adduced by her. In one place, she used to say that she has seen the occurrence, but immediately, she used to say that she does not know the place where the first accused has attacked on the person of the deceased. Further, it is seen from the evidence of P.W.2 that at the time of seeing the alleged occurrence, her younger sister has also been present in the place of occurrence and she has been examined as P.W.18, but for the reasons best known to her, she has become hostile witness. Therefore, except the evidence of P.W.2, no other piece of evidence is available.

15. It has already been pointed out that P.W.2 has clearly admitted in her evidence that she does not know the place where the first accused has attacked on the person of the deceased. If really P.W.2 has actually seen the occurrence, definitely she would know the place where the first accused has attacked the deceased. But, as pointed out earlier, P.W.2 has given only nebulous evidence and further for the purpose of corroborating the evidence of P.W.2, no other piece of evidence is available and further P.W.18 has become a hostile witness. Therefore, by way of believing the nebulous evidence given by P.W.2, the Court cannot come to a conclusion that the first accused has attacked the deceased in the place of occurrence.

16. At this juncture, it would be more useful to look into the evidence given by P.W.2. It is an admitted fact that immediately after occurrence, the then injured has been taken to P.W.12 and his specific evidence is that the person, who brought the deceased to his dispensary has reported him that the then injured has fallen down. Therefore, it is very clear that the prosecution has not established the role alleged to have been played by the appellant/first accused, beyond reasonable doubt.

17. It has already been pointed out that P.W.2 has not given concrete evidence. It is a settled principle of law that conviction and sentence can be invited on the basis of sole testimony. But, in the instant case, the evidence given by P.W.2 cannot be a sole basis for coming to a conclusion that the first accused has attacked the deceased in the place of occurrence.

18. The trial court, without considering the lack of evidence, has erroneously found the first accused guilty under section 304(ii) of Indian Penal Code. In view of the discussions made earlier, this Court has found acceptable force in the contentions put forth on the side of the appellant/first accused and altogether, the present Criminal Appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed. The conviction and sentence passed in Sessions Case No.207 of 2014 by Additional District and Sessions Court, Dharmapuri are set aside. The appellant/first accused is acquitted. Fine amount, if any, paid by the appellant/first accused is ordered to be refunded.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To :

- 1.The Additional sessions Judge, Dharmapuri.
2. The Principal District and sessions Judge, Dhamapuri.
- 3.The Inspector of Police Bommididi police station
4. The superintendent of central Jail,Vellore.
5. The Public Prosecutor, High court madras.
6. The Section Officer, Criminal section
High court Madras.

+1 cc to Mr.R.Thirugnanam,Advocate(sr.59077)

Cr1.A.No.454 of 2015

kji(co)
cp 30/10/2015