

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2015

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

AND

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Criminal Appeal No.143 of 2010

and

Criminal Revision Case No.596 of 2009

Cr1.A.No.143 of 2010

State represented by
The Inspector of Police,
Jayamkondam Police Station,
Ariyalur District.
Crime No.80 of 2007

... Appellant/Complainant

-vs-

1.Kamaraj
S/o.Natesan

2.Rajendran
S/o.Natesan

3.Gunasekaran
S/o.Natesan

... Respondents/Accused

1 to 3

Criminal Appeal filed under Section 378 of Criminal Procedure Code against the judgment of learned Principal District and Sessions Judge, Perambalur, passed in S.C.No.156 of 2007 dated 03.04.2009.

For Appellant : Mr.V.M.R.Rajentren
Additional Public Prosecutor

For Respondents: Mr.V.Rajamohan

Crl.R.C.No.596 of 2009

Maharajan
S/o.Ramasamy

... Petitioner/PW-1/De facto
Complainant

-vs-

1. State represented by
The Inspector of Police,
Jayamkondam Police Station,
Ariyalur District.

... Respondent/Respondent/
Complainant

2. Kamaraj
S/o.Natesan

3. Rajendran
S/o.Natesan

4. Gunasekaran
S/o.Natesan

... Respondents/Accused
1 to 3

Criminal Revision case filed under Section 397 and 401 of Criminal Procedure Code against the judgment of learned Principal District and Sessions Judge, Perambalur, passed in S.C.No.156 of 2007 dated 03.04.2009.

For Petitioner : Mr.T.Muruganantham

For Respondents: Mr.V.M.R.Rajentren
Additional Public Prosecutor [R1]
Mr.V.Rajamohan [R2 to R4]

COMMON JUDGMENT

(Judgment of the Court was made by C.T.SELVAM, J.)

Crl.A.No.143 of 2009 and Crl.R.C.No.596 of 2009 have been preferred against the judgment of learned Principal District and Sessions Judge, Perambalur, passed in S.C.No.156 of 2007 on 03.04.2009 acquitting the respondents of offences u/s.302 and 324 r/w 34 IPC.

2. The case of the prosecution is that PWs.1 and 3, respectively, are brother and sister of the deceased. There was a dispute over property between PW-3 and the accused, owing to which the accused assaulted PW-3 and when the same was questioned by PW-1 and the deceased, the accused assaulted the deceased with a wooden log and caused his death on 14.04.2007 at about 03.30 p.m. In the said attack, PW-1 lost his right eye. PW-1 preferred a complaint [Ex.P1] on 14.04.2007 at about 06.00 p.m. before PW-11, Inspector of Police, Jayamkondam Police Station, who registered a case in Crime 80 of 2007

for offences u/s.324 and 302 IPC. Upon completion of investigation and filing of charge sheet, the case was taken up on file in S.C.No.156 of 2007 on the file of learned Principal District and Sessions Judge, Perambalur.

3. To substantiate its case, the prosecution examined PWs.1 to 12, marked Exs.P1 to P20 and MOs.1 to 7. None were examined on behalf of respondents, however, one exhibit was marked. On questioning u/s.313 Cr.P.C., the accused denied the charges. Learned trial Judge, on appreciation of the evidence adduced by the prosecution, held that the prosecution has failed to establish its case beyond reasonable doubt and rendered a finding of acquittal.

4. Heard learned Additional Public Prosecutor, learned counsel for revision petitioner and learned counsel for respondents/accused as also perused the records.

5. Learned counsel for revision petitioner submitted that PW-1 mistakenly had informed of injury to his left eye whereas he actually had suffered an injury to his right eye as spoken to by him in Court. The error had been occasioned owing to the emotional turmoil and tension undergone by him at the occurrence since not only had he suffered grave injury but has also suffered loss of his brother in the attack. The trial Court wrongly had failed to place reliance on his evidence though he had been a direct witness to the attack upon the deceased and had clearly spoken thereto.

6. The submissions of learned Additional Public Prosecutor are on similar lines.

7. Learned counsel for respondents/accused submitted that PW-11, Investigating Officer, had admitted that a case had been registered on the complaint of the accused in Crime No.81 of 2007 and no action had been taken thereupon. PW-11, Investigating Officer, has spoken to PW-1 having preferred the complaint and of his having been sent to hospital under a memo. PW-11, Investigating Officer, in cross, had admitted that in the confession statement recorded from the first accused, such accused had spoken to his having taken treatment at the Jayamkondam Government Hospital, thereafter at Chidambaram and Cuddalore Government Hospitals. PW-11 had admitted to no investigation whatsoever there regards. PW-11 had informed that owing to the death of the deceased, the complaint of the accused had been treated as false. Learned counsel contended that only to suppress the factual contradiction between the First Information Report and the evidence of PW-1 viz., that in the First Information Report injury to the left eye was informed whereas in the witness box, PW-1 has informed of injury to his right eye, that the prosecution has suppressed the medical records relating to PW-1.

8. This Court has considered the rival submissions.

9. In acquitting the respondents, the Court below has taken into consideration the following:

(i) There was no documentary evidence to substantiate the contention that there was a dispute over property between PW-3 and the accused.

(ii) Though PW-3, sister of the deceased, deposed to having witnessed the occurrence, the falsity of her version is laid bare by the subsequent registration of First Information Report in Crime No.81 of 2007 at her instance wherein she had informed of having undergone treatment at Jayakondam Government Hospital after informing PW-1 and the deceased about the assault upon her by the accused. If PW-3 really was an eye witness to the occurrence, she definitely could have narrated the occurrence in her complaint, but she has not done so. Hence, it was clear that she could not have witnessed the occurrence.

(iii) Though PW-1 deposed to having lost his right eye owing to assault upon him by the accused, no medical records have been produced in support thereof. In the absence of any documentary evidence, it cannot be construed that PW-1 had lost his eye owing to attack upon him by the accused 1 and 2.

(iv) When there was a counter complaint by the accused against the deceased, the prosecution could not have closed the same merely for the reason that the deceased died after preference of such complaint. The complaint, First Information Report, Wound Certificate and the statements of witnesses in such case should have been produced by the investigating officer.

(v) While PW-11, Investigating Officer, deposed to having arrested the accused on 20.04.2007 i.e., 6 days after the occurrence and of seizing the material objects at the instance of the accused, PW-1 deposed to having seen A1 at the police station while preferring the complaint [Ex.P1] in the present case. If such was the case, PW-11 could very well have effected arrest of A1 on that day itself and there was no explanation offered by PW-11 for not doing so. Therefore, the arrest and seizure of material objects effected by PW-11, 6 days after the occurrence, was unreliable.

(vi) Though PW-11, Investigating Officer, deposed to having examined accused 2 and 3 by taking them under police custody and of having seized material objects based upon their confession, no document has been produced by PW-11 to substantiate his version.

(vii) There were contradiction in the evidence of PW-1 and PW-2, alleged eye witnesses, regards the injuries sustained by PW-1 and the deceased at the hands of the accused.

For such as also other reasons, the trial Court has held that the prosecution has failed to prove its case, that the accused was entitled to benefit of doubt and accordingly, acquitted the accused of all charges. We find no error in the judgment of the trial Court.

In the result, Crl.A.No.143 of 2010 and Crl.R.C.No.596 of 2009 are dismissed.

Gm

Sd/-
Assistant Registrar (CS-VII)

/True Copy/

Sub-Assistant Registrar

To

1. The Principal District and Sessions Judge, Perambalur.
2. The Inspector of Police, Jayamkondam Police Station, Ariyalur District.
3. The Public Prosecutor, High Court, Madras.

+1 C.C. To MR.T.Muruganantham, Advocate in SR.NO.53243

Criminal Appeal No.143 of 2010
and
Criminal Revision Case No.596 of 2009

SKV(CO)
sd : 25/11/2015