

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2015

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

AND

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Criminal Appeal No.784 of 2010

State represented by
The Inspector of Police,
B-13 Podanur Police Station,
Coimbatore District.
Crime No.61 of 2009 Appellant/Complainant

-vs-

1.Marimuthu
S/o.Munusamy @ Kurudan

2.Pandiyan
S/o.Velmurugan

3.Velmurugan
S/o.Masanam Respondents/Accused 1 to 3

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure against the judgment of learned Sessions Judge [Bomb Blast Cases], Coimbatore, in S.C.No.204 of 2009 dated 02.06.2010.

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

For Respondent : Mr.N.Duraisamy

J U D G M E N T

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

State has preferred this appeal against the judgment of learned Sessions Judge [Bomb Blast Cases], Coimbatore, passed in S.C.No.204 of 2009 on 02.06.2010, acquitting respondents 1 and 2 of offences u/s.302 IPC and third respondent of offence u/s.302 r/w.34 IPC.

2. The case of the prosecution is that respondents, due to previous enmity, with an intention to murder the deceased, assaulted him indiscriminately using a knife and wooden log and caused his death on 18.01.2009 at about 05.30 p.m. PW-1/father of the deceased, preferred a complaint before PW-12, Head Constable, Pothanur Police Station, who registered a case in Crime No.61 of 2009 for offence u/s.302 IPC. Upon completion of investigation and filing of charge sheet informing commission of offences u/s.302 and 302 r/w 34 IPC, the case, upon committal was tried in S.C.No.204 of 2009 on the file of learned Sessions Judge [Bomb Blast Cases], Coimbatore.

3. To substantiate its case, the prosecution examined PWs.1 to 16, marked Exs.P1 to P17 and MOs.1 to 13. None were examined on behalf of respondents nor were any exhibits 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. Hence, the present appeal by the State.

4. Heard learned Additional Public Prosecutor and learned counsel for respondents as also perused the records.

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

(i) As per the prosecution version, the complaint [Ex.P1] has been preferred on 18.01.2009 at about 6.15 p.m. whereas PW-10, an alleged eye witness, in cross, has deposed that the police had arrived at the scene of crime on 18.01.2009 at 06.00 p.m. itself i.e., even before preference of complaint. PW-15, Investigating Officer deposed to having visited the scene of crime on 18.01.2009 at 07.30 p.m. As against the prosecution version of the occurrence having taken place at 05.30 p.m. on 18.01.2009 and a complaint there regards having preferred by

PW-1 at 06.15 p.m. on the same day, the printed First Information Report [Ex.P12] has reached the Court only on 19.01.2009 at about 04.30 a.m., the next day. The delay has not been explained. Therefore, the very origin of First Information Report was doubtful.

- (ii) While it was the evidence of PW-3, son-in-law of PW-1, that he has written the complaint [Ex.P1] at the instance of PW-1, whereupon the First Information Report was prepared at the police station and their signatures were obtained therein and he has not signed any other document along with PW-1 except the First Information Report, no document signed by PWs.1 and 3 has been produced before Court. Only the complaint [Ex.P1] written and signed by PW-3 has been produced. Therefore, the very preparation of First Information Report, in the manner informed by the prosecution, was doubtful.
- (iii) PW-15, Investigating Officer, admitted to having submitted the 161(3) Cr.P.C. statements of PWs.10 and 11, eye witnesses, before Court only on 03.08.2009 though the same were recorded on 19.01.2009 itself. Therefore, the contention of accused that PWs.10 and 11 have been introduced as witnesses towards improving the prosecution case, cannot be brushed aside. PW-10, allegedly was an eye witness. PW-10, in cross, admitted that despite having witnessed the occurrence, he has not chosen to inform the same to the police personnel, who were present at the scene village. Therefore, his having witnessed the occurrence was doubtful.
- (iv) The prosecution witnesses contradicted each other. They have deposed to several facts which have not been disclosed at the time of enquiry. While PW-1 deposed to having gone to the funeral of his relative along with his son, the deceased and of threats meted out to the deceased by the accused at such place, it was the evidence PW-2, mother of the deceased, that neither she nor his husband attended the funeral. Therefore, from the evidence of PW-2, it was clear that both PWs.1 and 2 had no direct knowledge of the threats issued to the deceased by the accused.
- (v) While PWs.1 and 2 deposed to having required their son, the deceased, to stay at Dharapuram because of threats issued by the accused, it was the evidence of PW-4, cousin of the deceased, that the deceased assaulted A1 owing to which there was a scuffle between them and in order to avoid wrong acquaintances with his friends, PWs.1 and 2, made the deceased migrate to Dharapuram. PW-8, Village Administrative Officer and PW-15, Investigating Officer, were found at variance

regards the manner of recovery of M.O.3 - blood stained knife. Therefore, the prosecution witnesses were found to be unreliable.

(vi) The trial Court rightly has rejected the submission of the prosecution that the accused themselves had admitted to having assaulted the deceased towards protecting themselves holding that it was for the prosecution to prove its case.

Finding as above, trial Court has held that the accused was entitled to benefit of doubt and accordingly, acquitted the accused of all charges. This Court does not find any error in the reasoning of Court below.

This Criminal Appeal fails and accordingly, the same is dismissed.

Sd/-
Assistant Registrar (CS-II)

True Copy

Sub Assistant Registrar

To

1. The Sessions Judge [Bomb Blast Cases],
Coimbatore.
2. The Inspector of Police,
B-13 Podanur Police Station,
Coimbatore District.
3. The Public Prosecutor,
High Court, Chennai.
4. The Record Keeper,
Criminal Section,
High Court Madras.

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