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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.01.2015
CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CrI.A.(MD)No.256 of 2014

Ranjithraj @ Seit .. Appellant/1st Accused

Vs.

State through
The Inspector of Police,
Aralvaimozhi Police Station,
Crime No.277 of 2005
Kanniyakumari District. .. Respondent/Complainant

Criminal appeal filed under Section 374(2) of Cr.P.C. against the conviction and sentence dated 27.08.2013 passed in Sessions Case No.211 of 2006 by the District and Sessions Court, Kanyakumari Division at Nagercoil.

For Appellant : Mr.J.William Christopher

For Respondent : Mr.K.S.Duraipandian
Addl.Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by **A.SELVAM, J.**)

Challenge in this Criminal Appeal is to the conviction and sentence dated 27.08.2013 passed in Sessions Case No.211 of 2006 by the District and Sessions Court, Kanyakumari Division at Nagercoil.

2. The schema of the case of the prosecution is that the defacto complainant by name Rafiq (PW1) is the son of the deceased by name Kamaludeen and his wife name is Sabeela who has been examined as PW2. On 29.07.2005 the deceased has gone out in connection with his business and subsequently returned home and reported that he asked both the accused for having bath in Senbaharaman Pudur water falls by using filthy words against them. Both the accused have warned him and also threatened him and subsequently due to apprehension, the defacto complainant, deceased, PW2 and junior paternal uncle of PW1 by name Mahin Abubekkar have gone to the house of first accused by name Ranjith. At that time, the second accused by name Jeya has caught hold of the deceased and first accused has repeatedly attacked him by using a knife and after occurrence, both the defacto complainant and PW2 have lifted the then injured and ultimately found that he passed away and thereafter at about 10.30 pm, the defacto complainant (PW1) has given a complaint to the Head Constable by name Selvanarayanan (PW12) and the same has been registered in Crime



No.277 of 2005. The complaint given by the defacto complainant has been marked as Ex.P1.

3. On receipt of Ex.P1, the Inspector of Police, PW14 has taken up investigation, examined connected witnesses and made arrangements for conducting autopsy. The doctor by name Rajesh (PW3) has conducted autopsy and found the following internal and external injuries:

Ante-mortem injuries:

1)Horizontal stab injury seen over the inner aspect of right collar bone region measuring $4 \times \frac{1}{2} \times 3\frac{1}{2}$ cm. It is directed backwards and ends on the right side of wide pipe.

2)Stab injury $3 \times \frac{1}{2} \times 3$ cm seen over the left side of upper chest seen 3 cms below the middle of left collar bone. It is directed backwards and towards the left and entered the left pleural cavity.

3)Stab injury - $4\frac{1}{2} \times 2\frac{1}{2} \times 2\frac{1}{2}$ cm seen over the middle of left upper chest. It is directed backwards and penetrated 3rd rib in its front and entered the lungs where it ends as a point.

4)Stab injury $5\frac{1}{2} \times 2 \times 6$ cm seen over the left side of upper chest over lapping the previous injury and extending just below the previous injury. It is directed backwards through the 3rd intercostal space and penetrated the lungs and ends as a point.

5)Horizontal stab injury $4 \times \frac{1}{2} \times 6$ cm seen over the middle of left chest 10 cms below the middle of left collar bone. It is directed backwards through the 3rd intercostal space and entered the left pleural cavity.

6)Oblique stab injury $5 \times 3 \times 7\frac{1}{2}$ cms seen in front of middle of right chest 10 cms below the middle of right collar bone. It is directed backwards through the 3rd intercostal space and ends as a point in the lungs.

7)Horizontal stab injury $6 \times 2 \times 6\frac{1}{2}$ cm just below the previous injury seen in front of right chest. It is directed backwards through the 3rd intercostal space and ends as a point in the lungs.

8)Stab injury $5 \times 2 \times 5$ cm seen over the left side of outer aspect of lower abdomen. It is 5 cms above and 26 cms towards the left of umbilicus. It is directed backwards and inwards and ends close to the left kidney.

9)Horizontal stab injury $5 \times \frac{1}{4} \times 2$ cm seen over the right of upper back close to midline O/D it is muscle deep.

10)Stab injury $4 \times 2 \times \frac{1}{2}$ cm seen over the inner aspect of front of left wrist O/D it is muscle deep.

11)Abrasion 4×3 cm seen over the back of right elbow.

12)Abrasion 4×3 cm seen over outer aspect of left knee. In all the above stab injuries one side was sharp and other and for blent.

O/D Chest and Abdomen:



Left pleural cavity contains about 500 gms of blood c clots. Right pleural cavity contains 750 gms of blood c clots. Left side of perinephric area shows haemetoma - measuring 100 gms.

Heart : Normal Coronaries - Patent

Lungs : Injuries described

Hyoid : Intact

Stomach : 50 ml of chyme like fluid Nil specific
smell. Mucose pale

Liver, spleen and kidney : normal C/S pale

Small Intestine : Nil specific

Bladder : Empty

Brain : Pale

4. The postmortem report has been marked as Ex.P3. After completing investigation, PW14, Inspector of Police, has laid a final report on the file of the Judicial Magistrate Court, Boothapandi and the same has been taken on file in PRC No.26 of 2005.

5. The Judicial Magistrate, Boothapandi after considering the fact and also perusing relevant records has found that the offences alleged to have been committed by both accused are triable by Sessions Court, has committed the case to the Court of Sessions, Kanyakumari Division and the same has been taken on file in Sessions Case No.211 of 2006.

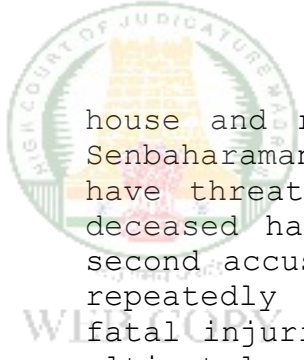
6. The trial court after hearing both sides and upon perusing relevant records has framed first charge against the first accused under Section 302 of the Indian Penal Code and second charge against the second accused under Section 302 r/w 34 of the Indian Penal Code and the same have been read over and explained to them and both of them have denied the charges and claimed to be tried.

7. On the side of the prosecution, PWs.1 to 14 have been examined and Exs.P1 to P16 and M.Os.1 to 7 have been marked.

8. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crimes. No oral and documentary evidence have been adduced on the side of the accused.

9. The trial Court after contemplating the available evidence on record has found the first accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.1,000/- with usual default clause. The trial Court has acquitted the second accused. Against the conviction and sentence passed upon the first accused by the trial Court, the present Criminal Appeal has been preferred at his instance as appellant.

10. The sum and substance of the case of the prosecution is that both PWs.1 and 2 are son and wife of the deceased Kamaludeen and they are the residents of Mathavalayam. On 29.07.2005 the deceased has gone out in connection with his business and after some time, he has come down to his



house and reported that he asked both the accused for having bath at Senbaharamanpudur water falls by using filthy words and both the accused have threatened him and subsequently PWs.1, 2 and others including the deceased have gone to the house of first accused and at that time the second accused has caught hold of the deceased and the first accused has repeatedly attacked on his person by using a knife and thereby caused fatal injuries. After occurrence, PWs.1, 2 and others have lifted him and ultimately found that he passed away and thereafter at about 10.30 pm, Ex.P1, complaint has been given by PW1, defacto complainant.

11. For the purpose of proving the charges framed against the accused, the defacto complainant has been examined as PW1 and his mother by name Sabeela has been examined as PW2 and his junior paternal uncle has been examined as PW13. The trial Court after considering the evidence of PWs.1, 2 and 13 coupled with medical evidence adduced by PW3 and other available evidence on record, has found the first accused guilty under Section 302 of the Indian Penal Code and sentenced him as stated supra.

12. The learned counsel appearing for the appellant/first accused has raised the following points so as to topsy-turvy the conviction and sentence passed against the appellant/first accused.

(i) Ex.P1 is the complaint alleged to have been given by PW1, wherein so many interpolations are found place and even the address of the defacto complainant (PW1) has not been properly given.

(ii) The occurrence has taken place on 29.07.2005 at about 09.00 pm. But Ex.P1 has not reached the Court without delay.

(iii) Motive for occurrence has not at all been established.

(iv) Even with regard to recovery of MO1, clinching/acceptable evidence has not been forthcoming on the side of the prosecution.

(v) Since the occurrence has taken place during night hours, the prosecution has not adduced clear evidence with regard to existence of light.

(vi) Ex.P10 is nothing but a printed FIR and the same is not an exact reproduction of Ex.P1.

(vii) In the instant case, PWs.1, 2 and 13 and other witnesses are inter-related to each other and also related to deceased and their testimonies cannot be accepted.

13. In order to remonstrate the contentions put forth on the side of the appellant/first accused, the learned Additional Public Prosecutor has contended that in the instant case, motive for occurrence has been clearly established and further PWs.1, 2 and 13 have given clear evidence to the effect that in the place of occurrence the appellant/first accused has repeatedly attacked on the person of the deceased and thereby caused fatal injuries and in fact their evidence has been clearly corroborated by the doctor who conducted autopsy. The trial Court after evaluating the evidence adduced by PWs.1, 2 and 13 coupled with medical evidence adduced by PW3, has clearly come to the conclusion that the first accused has committed the offence punishable under Section 302 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court do not require any interference.

14. Basing upon the divergent submissions made on either side, the Court has to look into as to whether the prosecution has proved guilt of

the appellant/first accused punishable under Section 302 of the Indian Penal Code even without a speck of doubt.

15. As pointed out earlier, the specific case put forth on the side of the prosecution is that the occurrence has taken place on 29.07.2005 at about 09.00 pm in front of the house of the first accused.

16. The prosecution has set the law in motion only on the basis of Ex.P1, complaint wherein it has been clinchingly stated to the effect that in the place of occurrence the first accused has repeatedly attacked on the person of the deceased by using a knife. In order to corroborate the averments made in Ex.P1, author of Ex.P1 has been examined as PW1 and his mother has been examined as PW2 and his junior paternal uncle by name Mahin Abubekkar has been examined as PW13. In fact, this Court has perused the entire evidence adduced by PWs.1, 2 and 13 and ultimately found that all of them have given picturesque evidence with regard to nature and also details of attack made by the appellant/first accused on the person of the deceased. Further, the evidence given by PWs.1, 2 and 13 has been clearly corroborated by the medical evidence by way of examining PW3 coupled with Ex.P3, postmortem certificate. Since PWs.1, 2 and 13 have given clear evidence with regard to details of attack made by the appellant/first accused on the person of the deceased and since their evidence has been clearly corroborated by PW3 coupled with Ex.P3, this Court is of the considered view that the prosecution has clearly established the factum of occurrence.

17. The first point urged on the side of the appellant/first accused is that in Ex.P1, complaint, some inter-lineation are found place.

18. Of course it is true that some corrections have been made in Ex.P1, complaint. Even though certain corrections have been made in Ex.P1, the same do not alter the factum of occurrence, since in Ex.P1 it has been clearly stated that in the place of occurrence the appellant/first accused has repeatedly attacked the deceased by using a knife. Therefore, the first and foremost contention urged on the side of the appellant/first accused is not having succulence.

19. The second contention put forth on the side of the appellant/first accused is that the occurrence has taken place on 29.07.2005 at about 09.00 pm. Ex.P1 has reached the Court very belatedly and the same has not been explained on the side of the prosecution.

20. It is seen from the records that the occurrence has taken place on 29.07.2005 at about 09.00 pm. On the very same day, the concerned Magistrate has put his signature. Further the Court seal has been put forth on 30.07.2005. Considering the aforesaid factual circumstances, no inordinate delay has occurred in sending Ex.P1 to Court. Under the said circumstances, the second contention put forth on the side of the appellant/first accused is of no use.

21. The third contention put forth on the side of the appellant/first accused is that motive for occurrence has not at all been established on the side of the prosecution.



22. The defacto complainant (PW1) has stated in his evidence that on 29.07.2005 as usual his father (deceased) has gone out and subsequently returned home and reported that as usual he called both the accused by using filthy words for having bath in Senbaharamanpudur water falls and both the accused have threatened him. Even from the evidence adduced by PW1, the Court can easily deduce the motive for occurrence. Even assuming without conceding that the prosecution has not established motive for occurrence, it is an archaic principle of law that if there is an eye witness for occurrence, motive would become insignificant. In the instant case, PWs.1, 2 and 13 are eye witnesses and all of them have consistently stated to the effect that in the place of occurrence, the appellant/first accused has repeatedly attacked on the person of the deceased by using a knife. Therefore, the third contention put forth on the side of the appellant/first accused is sans merit.

23. The fourth contention put forth on the side of the appellant/first accused is that with regard to recovery of MO1, inconsistent evidence has been put forth on the side of the prosecution.

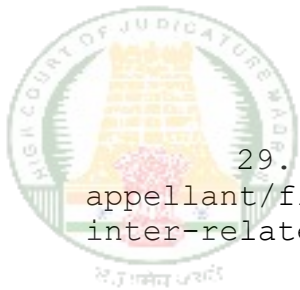
24. It is seen from the records that MO1, knife has been recovered on the basis of confession alleged to have been given by the first accused in the presence of one Peer Mohammed (PW5). Of course it is true that some flimsy contradictions are in existence in the evidence given by PW5 and connected records and that itself would not militate the case of the prosecution. Therefore, the fourth contention put forth on the side of the appellant/first accused goes out without merit.

25. The fifth contention put forth on the side of the appellant/first accused is that since the occurrence has taken place on 29.07.2005 at about 09.00 pm, the prosecution has not adduced acceptable evidence with regard to existence of light.

26. For the purpose of proving the said aspect, on the side of the prosecution, PW7, concerned line man has been examined on the side of the prosecution and his specific evidence is that on 29.07.2005 at about 09.00 pm, no power cut has occurred. It is also seen from the rough sketch (Ex.P11) that occurrence has taken place near a church. Considering the juxtaposition of the place of occurrence and also considering the evidence of PW7, the Court can easily come to a conclusion that sufficient light has been existence in the place of occurrence.

27. Even assuming without conceding that there is no light in the place of occurrence, it is seen from the records that PWs.1, 2 and 13 have known the first accused. Since the first accused is already known to PWs.1, 2 and 13, all of them can easily identify him at the time of occurrence. Therefore, viewing from any angle, the said contention put forth on the side of the appellant/first accused cannot be accepted.

28. The sixth contention put forth on the side of the appellant/first accused is that printed FIR is not an exact reproduction of Ex.P1. In fact, this Court has perused Ex.P10, FIR, wherein some flimsy discrepancies are found place and that itself would not pave the way for coming to a conclusion that both Ex.P1 and Ex.P10 are concocted documents.



29. The last contention put forth on the side of the appellant/first accused is that PWs.1, 2 and 13 and other witnesses are inter-related to each other and also related to the deceased.

30. It is a settled principle of law that testimonies of interested witnesses cannot be discarded merely on the basis of relationship. Even though PWs.1 and 2 are the son and wife of the deceased and PW13 is the junior paternal uncle of PW1, their uncontroverted testimonies cannot be discarded merely on the basis of relationship between each other and also deceased. Therefore, viewing from any angle, the contentions put forth on the side of the appellant/first accused would not affect the case of the prosecution.

31. It has already been pointed out that PWs.1, 2 and 13 have given clear evidence to the effect that in the place of occurrence, the appellant/first accused has repeatedly attacked the deceased by using a knife and thereby caused fatal injuries and only due to his overtacts, he passed away. The evidence given by PWs.1, 2 and 13 are clearly corroborated by PW3, the doctor who conducted postmortem coupled with Ex.P3.

32. The trial Court after considering the available evidence on record has rightly invited conviction and sentence against the appellant/first accused. In view of the foregoing enunciation of both the factual and legal premise, this Court has not found any force in the contentions put forth on the side of the appellant/first accused and altogether the present Criminal Appeal deserves to be dismissed.

33. In fine, this Criminal Appeal is dismissed. The conviction and sentence passed in Sessions Case No.211 of 2006 by the District and Sessions Court, Kanyakumari Division at Nagercoil are confirmed. Connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(RTI)

\\True copy\\

Sub Assistant Registrar

To

- 1.The District and Sessions Court, Kanyakumari Division at Nagercoil
- 2.The Inspector of Police, Aralvaimozhi Police Station, Kanniyakumari District.
- 3.The Superintendent, Central Prison, Madurai
- 4.The Addl. Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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