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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2015

CORAM:

**THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE V.S.RAVI**

Cr1.A(MD)No.237 of 2013

Usha Kumari

.. Appellant/ P.W.1

Vs.

1. The State rep. by the
Inspector of Police,
Sipcot Police Station,
Thoothukudi District.
(In Crime No.139 of 2010)

.. 1st Respondent/
Complainant

2. Sakthivel Kumar
Accused

.. 2nd Respondent /

PRAYER: Criminal Appeal filed under Section 372 of Cr.P.C. praying this Court, to call for the records relating to the judgment dated 19.12.2012 passed in S.C.No.219 of 2012 on the file of the learned 1st Additional District & Sessions Judge, Thoothukudi and set aside the same as illegal and convict the second respondent / accused.

For appellant : Mr.R.Gandhi, Advocate

For Respondent No.1 : Mr.C.Ramesh
Additional Public Prosecutor

For Respondent No.2 : Mr.N.Ananda Kumar, Advocate

JUDGMENT

The appellant is the Prosecution Witness No.1 in S.C.No.219 of 2012 on the file of the learned 1st Additional District & Sessions Judge, Thoothukudi. The trial Court, by judgment dated 19.12.2012, has held that the accused is not guilty under Sections 341, 294(b), and 302 I.P.C and the accused is acquitted under Section 235(1)



Cr.P.C. Challenging the acquittal judgment passed in S.C.219 of 2012, the appellant/P.W.1 in S.C.No.219 of 2012 is before this Court with this present appeal.

2. The brief case of the prosecution is as follows;

On 18.04.2010 at about 6.50 P.M, at E.B.Colony, the deceased, namely, father of the P.W.1 Usha Kumari and her husband have walked on the side of the road, at that time, the accused came in a two-wheeler with Registration No.TN 69-E-9686 along with Muthumalai and waylaid them. Further, due to the previous enmity and with an intention to commit murder of the deceased father of the P.W.1, namely, Sathasivam, the accused, namely, Sakthivelkumar has abused the said deceased Sathasivam with filthy language and pushed him down and the said accused Sakthivelkumar has taken a stone from the ground and beaten the deceased Sathasivam on the forehead repeatedly and caused his death.

2.1. In order to prove the case of the prosecution, the prosecution has examined 12 witnesses as P.W.1 to P.W.12 and also marked 20 exhibits as Ex.P.1 to Ex.P.20 and also Material Objects as M.O.1 to M.O.10.

2.2. P.W.1 has stated that on 18.04.2010, evening at 5.00P.M, she has walked along with her deceased father Sathasivam and her husband in the road, at that time, the accused in the present case and one Muthumalai have come in the two wheeler and the accused assaulted her deceased father with the help of stone. At present, the said Muthumalai is no more. Thereafter, they have admitted the deceased in Thoothukudi Government Hospital and Aneesh has written the complaint and she has lodged the said complaint to the police as per Ex.P.1 and in the said complaint, her brother Kumar has signed as an attesting witness. Further, P.W.1 has stated that there is an enmity between the accused and the family of P.W.1, due to compound wall and the civil suit also has been filed and the judgment has been passed in their favour. P.W.2 Muthaiya has stated that the P.W.1 is his wife and he knows the accused. P.W.2 has also stated that there is a dispute between the present accused and the deceased, due to the common wall and the accused has assaulted the deceased with the help of stone and thereafter, he has taken the deceased in 108 Ambulance and the P.W.1 has lodged the complaint to the police and Kumar has signed as an attesting witness.

2.3. P.W.3, Aswathi Priya has stated that P.W.1 is her mother and P.W.2 is her father and her deceased grandfather has been taken to Thoothukudi Government Hospital by her mother. P.W.4 Ganesan has stated that the police have prepared Observation Magazar as per Ex.P.2 and recovered bloodstained earth as M.O.6 and sample earth as M.O.7 in the Athatchi as per Ex.P.3. P.W.5 Jeyapaandi has stated that the police have recovered the dresses of P.W.1 in the Athatchi as per Ex.P.4. P.W.6 Thiru. Balasubramanian, Village Administrative Officer has stated that he and the Village Assistant have signed in the confession statement given by the accused and



Ex.P.5 is the admissible portion of the confession statement and Ex.P.6 is the Athatchi for recovery of M.O.2 stone and Ex.P.7 is the Athatchi for recovery of M.O.8 shirt of the accused. P.W.7, Thiru.Perumal, Head Constable has stated that he has handed over the dead body of the deceased after conducting Postmortem and thereafter, he has recovered M.O.9 and M.O.10, namely, the dresses from the dead body of the deceased and submitted to the police station and Ex.P.8 is the Passport. P.W.8 Thiru.Gajendravaradhan, Assistant Director of Forensic Lab has stated that he has filed Chemical Analysis Report as per Ex.P.9, Serology Report as per Ex.P.10 and Serology Report (Blood sample of deceased) as per Ex.P.11.

2.4. P.W.9, Thiru.Veerbaghu, Special Sub Inspector of Police has stated that he has submitted Express F.I.R to the learned Judicial Magistrate No.1, Thoothukudi on 18.04.2010 at 22.30 hours and Ex.P.12 is the Passport. P.W.10, Thangaraj, Sub Inspector of Police has stated that he has received the Ex.P.1 complaint from P.W.1, Usha Kumari and registered a case in Crime No.139 of 2010 under Sections 341, 294(b) and 302 I.P.C and Ex.P.14 is the F.I.R. P.W.11, Dr. Manoharan, Senior Assistant Professor of Government Medical College Hospital, Thoothukudi has stated that he has conducted Postmortem on the body of the deceased Sathasivam and issued Postmortem Certificate as per Ex.P.16. P.W.12, Thiru.Dhanabalan, Inspector of Police has stated that he has prepared Rough Sketch as per Ex.P.17 and Inquest Report as per Ex.P.18 and he has recovered M.O.2 bloodstained stone, and after completing the investigation, he has filed the Final Report on 30.07.2010.

3. On completion of the evidences on the side of the prosecution, the accused has been questioned under Section 313 Cr.P.C., as to the incriminating circumstances mentioned in the evidences of prosecution witnesses and he has stated that he is an innocent and he is not involved in the case and he has got defence witness on his side. On the side of the defence, 2 witnesses have been examined as D.W.1 and D.W.2 and 3 exhibits have been marked as Ex.D.1 to Ex.D.3.

4. Having considered all the above materials on record, the trial Court has acquitted the accused, as mentioned in the beginning of this judgment and challenging the said judgment, the appellant has come forward with the present appeal.

5. It is stated in the Grounds of Appeal, that the Lower Court is not correct in acquitting the respondent / accused on the strength of minor contradictions between the evidences of prosecution witnesses. The prosecution has proved the date and place of occurrence in a manner known to law. Further, the evidences of P.W.1 and P.W.2 being the occurrence and eye witnesses are sufficient to convict the respondent/accused, since, the same is cogent, reliable and trustworthy. The Lower Court is not correct in holding that the first complaint has been suppressed by the



prosecution on the basis of the serial number found in the F.I.R. Further, the evidences of eye witnesses have been clearly corroborated by the confession statement given by the accused before the Village Administrative Officer under Ex.P.5 leading to the recovery of material objects and as such the order of acquittal is unsustainable in law. The prosecution witnesses have clearly deposed about the motive for the crime committed by the accused.

6. The points that arise for consideration in the present Criminal Appeal are as follows:-

- i) Whether the judgment passed by the Trial Court in acquitting the accused is sustainable?
- ii) Whether the appeal has to be allowed for the submission made on behalf of the appellant and also for the reasons and grounds mentioned in the Memorandum of Appeal?

7. Analysis, discussions and findings with regard to the above mentioned points:-

The learned counsel for the appellant has vehemently submitted that the prosecution has established the case through the eyewitnesses and the occurrence witnesses. The prosecution evidences are cogent, reliable and trustworthy. As per the confession statement of Ex.P.5, the Material Objects have been recovered and as such the order of acquittal is unsustainable in law. Hence, the learned counsel for the appellant has submitted to set aside the judgement passed by the Lower Court and convict the accused herein.

8. Per contra, the learned counsel for the accused has submitted that the judgment passed by the Lower Court is correct and the evidences of prosecution are not natural and there are reasons to disbelieve the same. The eyewitnesses are interested witnesses. Having an overall consideration of the facts, he has further submitted that the prosecution has not proved the case as against the accused beyond all reasonable doubts and hence, the trial Court has acquitted the accused, after properly appreciating the evidences and materials on record.

9. P.W.1, Usha Kumari has deposed in her evidence that the deceased Sathasivam is her father and on 18.04.2010 at 5.00P.M, she along with her husband and her deceased father have gone to Barath Store and also returning home after the purchase at 6.40P.M, and at that time, the accused Sakthivelkumar and one Muthumalai have come in two-wheeler and the accused pushed down the deceased, namely, father of P.W.1 and the deceased has fallen down and thereafter, the accused has beaten the deceased with M.O.2 stone and she has taken the deceased to Thoothukudi Government Hospital, and within half an hour, the father of the P.W.1 has expired. Thereafter, Aneesh has written the complaint as per the dictation of the P.W.1 and she has



lodged the said complaint to the police station and the brother of P.W.1, namely, Kumar has signed as an attesting witness in Ex.P.1 complaint. Further, P.W.1 has admitted in her cross examination that her complaint has been recorded by having a carbon and one copy has been given to her. Further, P.W.1 has deposed that after admitting her deceased father in the Government Hospital, Thoothukudi, the Doctor has enquired about the injury caused to the father of the P.W.1 and she has not informed the Doctor that two persons, one known person and another unknown person have assaulted the father of P.W.1 with Aruval.

10. However, D.W.2, Dr.Loordarse Alphina has deposed that on 18.04.2010, she has worked as Assistant Surgeon in Government Hospital, Thoothukudi, at night 7.30P.M, the deceased Sathasivam has been admitted in the hospital, when she has enquired as to how he has got injuries and the persons who have come in 108 Ambulance have informed her that one known person and one unknown person have assaulted the said person on 18.04.2010 at 6.50P.M with Aruval and he has issued Accident Register as per Ex.D.3. On a perusal of the said Ex.D.3, it is found that D.W.2 has clearly stated in the said Accident Register that the said person has been brought to the Government Hospital, Thoothukudi in 108 Ambulance and he has been alleged to be assaulted by two persons, one known person and one unknown person, using Aruval on 18.04.2010 at 6.50P.M, near his house. Hence, it is clear that there are vital contradictions between the evidence of P.W.1 and the D.W.2. Further, P.W.1 has admitted that before the incident of the present case, she has lodged another complaint against the same accused, regarding dashing of her two-wheeler, namely, Scooty and the police have received the said complaint from her. Further, P.W.1 has deposed that the accused has assaulted the deceased with the help of M.O.2 stone. However, the P.W.11, Dr.Manoharan, Assistant Professor of Government Medical College Hospital, Thoothukudi has deposed that he has conducted Postmortem on the dead body of the deceased and issued Postmortem Certificate as per Ex.P.16 and also noted the following injuries.

"Following ante mortem injuries are noted on the body:-

1) A laceration of size 3cms x ½ cm x bone deep seen over the right eyebrow.

2. A laceration of size 5cms x 1cm x bone deep seen over the middle of forehead.

3. A laceration of size 6cms x 1 ½ cms x bone deep seen over the left eyebrow.

4. A laceration of size 4cms x ½ cm x bone deep seen over the left forehead.

5. A laceration of size 2cms x ½ cm x bone deep seen over the left cheek with a contusion of size 5cms x 4cms x 1cm.

half of frontal bone and facial bones except mandible showed comminuted fracture. Black eye noted in both sides."

Hence, it is seen that there is a contradiction between the evidence



of the P.W.1 and P.W.11, with regard to the injuries suffered by the deceased also.

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11. Further, P.W.2, Muthaiya has deposed that he is the husband of P.W.1 and Kumar has signed as an attesting witness in the Ex.P.1 complaint. However, the said Kumar has not been examined on the side of the prosecution. Further, P.W.3, Aswathi Priya has clearly deposed that P.W.2 is the second husband of her mother (P.W.1) and she has born to her mother through her first husband and her father has gone separately, leaving her mother and now, P.W.2 alone is taking care of their interests and on the date of occurrence, the deceased has been taken by the P.W.1 to Thoothukudi Government Hospital for treatment. Hence, P.W.1 to P.W.3 are interested witnesses of the deceased Sathasivam and also they have admitted that there is already an enmity between the accused and the deceased, due to the common wall. In the said circumstances, their evidences have to be considered with caution and care. Further, P.W.6, Thiru.Balasubramanian, Village Administrative Officer has deposed that he and the Village Assistant have signed in the confession statement and the Ex.P.5 is the admissible portion of the confession statement and the Inspector has recovered the M.O.2 stone in the Athatchi as per Ex.P.6 and also recovered M.O.8 shirt in the Athatchi as per Ex.P.7. However, as per Ex.P.16 Postmortem Report issued by the P.W.11, it is found that so many injuries are there and the same cannot be caused by the said material object. P.W.9, Thiru.Veerabaghu, has deposed that he has worked as Head Constable in Sipcot Police Station on 18.04.2010 at 22.30 hours, and he has submitted Express F.I.R to the learned Judicial Magistrate No.1, Thoothukudi.

12. Further, P.W.10, Thangaraj, Sub Inspector of Police has deposed that on 18.04.2010 at 9.30P.M, he has received the complaint from the P.W.1 Usha Kumari and registered a case in Crime No.139 of 2010 under Sections 341, 294(b) and 302 I.P.C., and prepared F.I.R.as per Ex.P.14. Further, P.W.2, Muthaiya has deposed that he has signed in the Ex.P.1 complaint as an attesting witness. However, P.W.1 has deposed that her brother Kumar only has signed in the Ex.P.1 complaint as an attesting witness. P.W.12, Thiru.Dhanabalan, Inspector of Police has specifically pointed out that on a perusal of Ex.D.1 and Ex.D.2, namely, 17.04.2010-Crime No.137 of 2010 F.I.R Xerox true copy and 18.04.2010-Crime No.138 of 2010 F.I.R Xerox true copy, it is seen that the said two cases have been registered in one Serial Number. Further, D.W.1, Thiru.Ganapathy Ram, Special Sub Inspector of Police has also deposed that the Serial Number of the present case is C.1578403 and he has submitted printed F.I.R. copies of the previous cases in Crime Nos.137 of 2010 and 138 of 2010 and he has not submitted the copy of printed F.I.R copy relating to the Serial No.1578403 maintained in their police station. Further, D.W.1 has admitted that in the Serial No.1578402, six copies are there and only three copies have been used for registering the cases in Crime Nos.137 of 2010 and 138 of 2010 and in the Serial



No.1578403, six copies are there and only first three copies have been used for registering the present case, with regard to the complaint given by the P.W.1. Hence, it is crystal clear that the F.I.R has not been properly filed by the police and the police have not furnished any acceptable and sufficient reasons for not filing the proper F.I.R and Crime numbers in an appropriate manner, and also in accordance with law. On that ground only the Lower Court has clearly observed that the prosecution has not established the case through the believable and acceptable documents and evidences.

13. Further, P.W.11, Dr.Manoharan has clearly deposed that if a person has been assaulted with strong object, certainly there will be external injuries and however, there is no such external injuries to the deceased person. Further, P.W.12, Thiru.Dhanabalan, Inspector of Police has deposed that the accused have used M.O.2 stone to assault and he has not examined the attesting witness Kumar and in their case diary, there is no Accident Register, with regard to the deceased person and he has not got any knowledge about the person who has admitted the deceased person initially at the Government Hospital. However, D.W.2, Dr.Loordarse Alphina has deposed that she has given treatment to the deceased person, at the time of admitting in Thoothukudi Government Hospital and also filed the Accident Register as per Ex.D.3.

14. Further, P.W.12, Thiru.Dhanabalan, Inspector of Police has deposed that the Postmortem Doctor has informed if a person has been assaulted with leg, the fracture mentioned in the Postmortem Report could have happened, however, the said Doctor has not stated the said details in the 161(3) statement. Further, P.W.12 has deposed that in the occurrence has taken place, so many house are there and he has enquired the persons who are living in the nearby places and however he has not recorded the statements from them.

15. Further, in the decision of Hon'ble Supreme Court, in the case of **Sujit Biswas V. State of Assam**, reported in **2013(2) MWN (Cr.) 222 (SC)**, it is clearly observed as follows:-

"Burden though lies on accused to prove his innocence, burden on prosecution much greater to prove the case beyond reasonable doubt."

Furthermore, in the decision of the Hon'ble Supreme Court, in the case of Bhagwan Singh and others Vs. State of Madhya Pradesh, reported in 2002(2) Supreme 567, it is clearly held that the principle to be followed by the Appellate Court, considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so.

16. In the present case also, on thorough verification of materials on record, exhibits, material objects and prosecution evidences, it is found that there is no ample and trustworthy material records to strengthen the case of the prosecution. Further, it is found that there are material deficiency in the evidences of the prosecution. Further, the



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evidences of the eyewitnesses are not credible and the circumstances are inconsistent with the accused and the evidence of prosecution about the material objects are very doubtful. It is found that the reasons stated by the Lower Court for acquitting of the accused are fairly sound. Further, the finding given by the Lower Court is in accordance with proper appreciation of evidence and also the view taken by the Lower Court is reasonable.

17. **In the result**, the judgment of the learned 1st Additional District & Sessions Judge, Thoothukudi, passed in S.C.No.219 of 2012 dated 19.12.2012 is confirmed and the Criminal Appeal is dismissed.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar

To

1. The I Additional District & Sessions Judge,
Thoothukudi,
2. -Do-Thro' The Principal Sessions Judge,
Thoothukudi.
3. The Judicial Magistrate No.1, Thoothukudi.
4. -Do-Thro' The Chief Judicial Magistrate, Thoothukudi.
5. The Inspector of Police,
Sipcot Police Station,
Thoothukudi District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
7. The District Collector, Thoothukudi District.
8. The Director General of Police,
Mylapore, Chennai.

+1cc to M/s.Ajmal Associates, SR.No.47230

+1cc to M/s.N.Anandha Kumar, Advocate SR.No.47095

akm/14.09.2015 /8p-11c/

Crl.A. (MD) No.237 of 2013

17 .08.2015