

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.555 of 2014

R.Marimuthu, aged 45 years,
S/o. late Ramasamy,

.. Appellant/PW1

Vs

1. Kuppusamy
2. Parvathi
3. Kavitha

Respondents 1 to 3/Accused 1 to 3

4. State by :-

The Inspector of Police,
Negamam Police Station,
Coimbatore District.
(Crime No.74/2013)

.. Respondents/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
against the judgment dated 13.06.2014 in S.C.No.269/2013 on the
file of the learned Sessions Judge, Bomb Blast Cases, Coimbatore.

For Appellant : Mr.P.M.Duraswamy

For Respondent : Mr.S.Yogaraja Sekar,
Legal Aid Counsel for R1 to R3.

Mr.E.Raja,
Additional Public Prosecutor for R4.

JUDGEMENT

(Judgment of the Court was delivered by V.Bharathidasan.J)

The appellant in this appeal is prosecution witness No.1
in S.C.No.269 of 2013 on the file of the learned Principal
Sessions Judge, Bomb Blast Cases, Coimbatore. The appellant has
filed this appeal against the order of acquittal passed by the
Trial Court. The respondents 1 to 3 are A1 to A3 in the above
said Sessions Case. A1 to A3 stood charged for an offence under
Section 302 r/w.34 IPC. After trial, by judgment dated

13.06.2014, the trial Court acquitted all the three respondents. Against the order of acquittal, present appeal has been filed before this Court.

2.The case of the prosecution, in brief, is as follows:-

The deceased, in this case, one Ramasamy, is the father of P.W.1. A1, in this case, is a maternal uncle of the appellant's wife and there is a property dispute between A1 and the deceased family and they were not in talking terms. The latrine water let out from the house of the accused flows in front of the house of the deceased and the prosecution party have put sand on the stagnated water. Thereafter, the accused family put some stones in the common place, thereby, disturbing the prosecution party. Noticing the same, the prosecution party took steps to remove the stone. At that time, all the accused came to the house of the deceased and A3 caught hold of the hand of the deceased and A1 attacked the deceased with a crow bar and A2 attacked the deceased with the handle of a Spade. Then, they ran away. P.W.1, Son of the deceased, an eyewitness to the occurrence, took the deceased to the Government Hospital, Udumalpet. Since the condition of the deceased was serious, he was referred to Medical College Hospital, Coimbatore. On the way, the deceased succumbed to injuries. Then, P.W.1 went to Negamam Police Station and lodged a complaint (Ex.P.1).

3. P.W.13, Sub-Inspector of Police, working in Negamam police station, on receipt of the complaint, registered a case in Crime No.174 of 2013, for an offence under Section 302 IPC. Then, he sent the First Information Report, Ex.P.20, to the Judicial Magistrate Court and copies to the higher officials.

4. P.W.14, Inspector of Police, attached to Negamam Police station, on receipt of the First Information Report, proceeded to the scene of occurrence and prepared an Observation Mahazar (Ex.P.3) and a Rough Sketch (Ex.P.21) in the presence of witnesses. He also recovered bloodstained earth (M.O.3) and sample earth (M.O.4). Since the dead body of the deceased was brought back to Government Hospital, Udumalpet, P.W.14 conducted inquest over the dead body of the deceased in the hospital between 7.30 and 10.30 a.m in the presence of panchayathars and prepared an Inquest Report, Ex.P.22. Then, he sent a request for postmortem on the dead body of the deceased, through P.W.11, Head Constable.

5. P.W.6 Senior Civil Surgeon, Government Hospital, Udumalpet, conducted postmortem on the dead body and found the following injuries:-

" Injuries:

1. a sutured wound seen over right frontal scalp of size 6 x 1 cm.

2. Abrasion over the left elbow 1 x 1 cm.
3. Abrasion over left ankle lateral aspect
1 x 1 cm "

Ex.P.9 is the postmortem certificate. P.W.6 opined that the deceased appears to have died due to the injuries in the vital organ-brain.

6. P.W.14 arrested the accused at about 2.00 p.m., on the same day, near Vigneswara School Bus stop, Jakkarpalayam. On such arrest, A1 voluntarily gave a confession and based on the disclosure statement, P.W.14 recovered Crowbar(M.O.1), blood stained lungi (M.O.5) and shirt(M.O.6) of A1, in the presence of witnesses. A2 also gave a voluntary confession and based on her disclosure statement, P.W.14 seized the handle of a spade (M.O.2). A3 also gave a voluntary confession. Then, P.W.14 recorded the statement of the doctor, who conducted postmortem on the dead body of the deceased and other witnesses. After completing investigation, P.W.14 laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed a lone charge under Section 302 r/w.34 IPC against all the accused 1 to 3. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 14 witnesses were examined and 22 documents were exhibited, besides 10 Material Objects were marked.

8. Out of the witnesses examined, P.W.1 is the son of the deceased. He is an eyewitness to the occurrence. According to him, there was a civil dispute between the parties and on the date of occurrence, the prosecution party was trying to remove the stones put-up by the accused party in front of his house and at that time, there arose a quarrel and when the deceased enquired about the same, A3 caught hold of the hands of the deceased and A1 attacked the deceased with a crowbar and A2 attacked the deceased with the handle of a spade and thereafter, the accused ran away and he took the deceased to Government Hospital, Udumalpet and from there the deceased was referred to Medical College Hospital, Coimbatore, but, on the way, the deceased succumbed to injuries and therefore, he lodged a complaint.

9. P.W.2 is the wife of the deceased. She is also an eyewitness to the occurrence. According to her, at the time of occurrence, A1 attacked the deceased with a crowbar, A2 attacked the deceased with the handle of a spade and A3 caught hold of the hands of the deceased. P.W.3 is the wife of P.W.1. She has spoken about the civil dispute between them and the accused. She is also an eyewitness to the occurrence. She has also reiterated the evidence of P.Ws.1 and 2. P.W.4 is a witness to

the Observation Mahazar and also recovery of M.Os.3 and 4. P.W.5 is a Civil Surgeon, working in the Government Hospital, Udumalpet. He has deposed that he examined the deceased and at that time, he told him that 4 known persons attacked him and he issued an Accident Register. In the above occurrence, A3 got cut injuries and she was also taken to the hospital. P.W.5 also stated that he examined A3 and issued Accident Register, Ex.P.6, wherein, he has noted the following injuries:

- " 1. Lacerated injury 1 x ½ x ½ cm. Right leg above ankle.
- 2. Abrasion 5 x 1 cm right arm."

On the same day, at about 9.30 p.m., A2 also suffered injuries. He was also brought to the hospital. P.W.5 also examined A2 and issued Accident Register, Ex.P.7, wherein he has noted the following injuries:

- " 1. Abrasion ½ x ½ cm right foot.
- 2. Abrasion ½ x ½ cm right elbow.
- 3. Contusion 1 x 1 x 1 cm left forearm."

10. P.W.6 is the Doctor who conducted postmortem on the dead body of the deceased. P.W.7 is a Junior Scientific Officer, working in the Forensic Lab. He has examined the bloodstained material objects and given a report, Ex.P12. P.W.8 is a witness to the arrest of the accused and confessions given by A1 to A3 and also recovery of M.Os.1 to 6. P.W.9, Junior Assistant, working in the Tamilnadu Electricity Board, has deposed that there was no power cut in the village at the time of occurrence. P.W.10, Photographer, has stated that he took photographs of the deceased. P.W.11, Head Constable, has identified the body of the deceased for postmortem. P.W.12, Head Clerk, working in the Judicial Magistrate Court, No.II, Pollachi, has stated that he sent the material objects for chemical examination. P.W.13 is the Sub-Inspector of Police, who has Registered the complaint. P.W.14, Inspector of Police, has spoken about the investigation, arrest of the accused, recovery of material objects and recording of statements of witnesses and filing of charge sheet against accused after completion of investigation.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness or mark any documents on their side.

12. Having considered all the above materials, the trial Court acquitted all the accused, in respect of the charge, as detailed in the first paragraph of this judgment. Aggrieved against the acquittal of the accused from the charge, the present Criminal Appeal has been filed by P.W.1 in the case.

13. We have heard the Mr.Duraswamy, learned counsel for

the appellant and Mr. S.Yogaraja Sekar, learned Legal Aid counsel, appearing for respondents 1 to 3 and Mr. E.Raja, learned Additional Public Prosecutor, appearing for the State/4th respondent and we have also perused the records ,carefully.

14. Learned counsel for the appellant would contend that there are three eyewitnesses to the occurrence and the occurrence took place in front of the house of the deceased and P.Ws.1 to 3, being son, wife and daughter-in-law of the deceased, their presence in the scene of occurrence cannot be disputed and therefore, the trial Court ought not to have disbelieved the evidence of eye-witnesses. Apart from that, it is his contention that motive for the occurrence was also proved by the prosecution and the trial Court has erred in holding that there is a delay in filing the First Information Report, when the delay has been properly explained by P.W.1. The weapon used in the occurrence has also been recovered from the house of A1 and A2 and while so, the trial Court has failed to consider the same merely because A2 and A3 were also injured in the occurrence and hence the prosecution theory cannot be totally disbelieved, is his further submission.

15. Per contra, Mr.S.Yogaraja Sekar, Learned Legal Aid counsel, appearing for the respondents 1 to 3, contended that A2 and A3 also suffered injuries in this case and they have also been admitted in the hospital, but, no counter case was registered and no investigation was done on that aspect and hence, the prosecution has not come to the Court with clean hands. It is his further submission that at the time of admitting the deceased in the hospital, the deceased had stated to the Doctor that 4 persons had attacked him, when according to the case of the prosecution, only these respondents were the perpetrators. Apart from that, there is a long delay in filing First Information Report and the First Information Report also has reached the Court with much delay, which also creates doubt in the prosecution case, is his contention. The trial Court, considering all the evidence has come to the conclusion that the prosecution had failed to prove its case beyond reasonable doubt and acquitted the respondents 1 to 3 and there is no reason to interfere and reconsider the judgment of the trial Court, is his further contention.

16. We have considered the rival submissions and perused the materials.

17. P.Ws.1 to 3 are said to be eyewitnesses to the occurrence. According to them, when their family members tried to remove the stone put-up by the accused, all the 3 accused came to their house and quarreled with them, and when the deceased came out of the house and enquired about the same, A3 caught hold of the hand of deceased and A1 attacked him with a

crowbar and A2 attacked the deceased with the handle of a spade and thereafter they ran away from the scene. Thereafter P.W.1 has taken the deceased to the Government Hospital, Udumalpet, where the deceased had informed the doctor, P.W.5, that 4 known persons had attacked him with crowbar. In the earliest statement of the deceased to the Doctor, he had impleaded 4 persons. Apart from that, in the same occurrence A2 and A3 have also sustained injuries. Both A2 and A3 were also taken to Government Hospital, Udumalpet. P.W.5, the same Doctor, who gave treatment to the deceased, had treated them. At about 9.30 a.m., on examining A2, P.W.5 found injuries on her and issued Accident Register, Ex.P.7. It is seen from his evidence that at that time, A2 informed the Doctor that she was assaulted by 7 known persons, with a wooden log. At 9.40 p.m., P.W.5 has also examined A3 and found injuries on her and issued Accident Register, Ex.P.6. A3 also has informed the Doctor that at about 7.30 p.m., 7 known persons did attack her with a crowbar and a stone and she and A2 were admitted in the hospital as inpatients. However, no counter case was registered and no investigation has been done, regarding the injuries sustained by A2 and A3. The prosecution has, totally, suppressed the above said fact. P.W.14, investigating officer, has also admitted the fact that both A2 and A3 were injured and admitted in the hospital. Despite the same, he did not take any steps to register the counter case and investigate the same. Hence, the prosecution has suppressed the origin and genesis of the case and the truth was not placed before the Court.

18. Apart from that, there is also a considerable delay in lodging the complaint. Even though the occurrence had taken place on 29.04.2013, at about 7.30 p.m., the First Information Report came to be registered only on 30.04.2013, at about 2.30 a.m. and the First Information has also reached the Court only at about 10.00 a.m. There is no proper explanation by the prosecution for the above delay. It also creates a doubt in the prosecution case. Considering the above evidence, the trial Court has acquitted the accused.

19. In an appeal against acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him and the fundamental principle of criminal justice delivery system is that every person, accused of committing an offence shall be presumed to be innocent, unless his guilt is proved by a competent Court of law. Secondly if the accused has secured an order of acquittal, the presumption of his innocence is reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court. In the instant case, as already held, the

prosecution has suppressed the origin and genesis of the occurrence and the truth was not before the Court, and the trial Court has rightly acquitted the accused. Hence, we find no perversity in the judgment of the trial Court. In the above said circumstances, we find no reason to interfere with the order of acquittal passed by the trial Court. Hence, the appeal fails and the same is deserves to be dismissed.

20.In the result, the Criminal Appeal fails and accordingly, the same is dismissed. The judgment of the trial Court in S.C.No.269 of 2013 dated 13.06.2014 is hereby confirmed.

s/d-
Assistant Registrar (CS-V)

//True Copy//

Sub-Assistant Registrar

To

1. The Sessions Judge,
Bomb Blast Cases,
Coimbatore.
2. The Judicial Magistrate No II, Pollachi
3. Do Thro The Chief Judicial Magistrate, Coimbatore
4. The Public Prosecutor, High Court, Madras

Copy to

The Section Officer,
Criminal Section, High Court, Madras-104

+1 CC to M/s. S. Yogaraja sekar, Advocate sr 44561
+1 CC to Mr. P.M. Duraisamy, Advocate sr 44460

Crl.A.No. 555 of 2014

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