



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 01.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.49 of 2011

State rep. By
The Inspector of Police,
Sethiathope Circle,
Cuddalore District,
(Orathur P.S Crime No.64/2007) .. Appellant

Vs

1.Kalaimani
2.Stallin
3.Jaganathan
4.Kanagasabai
5.Muthulakshmi .. Respondents

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C.,
against the judgment dated 20.04.2010 in S.C.No.270/2008 on the
file of the learned Principal Sessions Judge, Cuddalore.

For Appellant : Mr.M.Maharaja,
Additional Public Prosecutor

For Respondent : Mr.R.Sathuvarayar

JUDGEMENT

(Judgment of the Court was delivered by S.Nagamuthu.J)

This is an appeal against acquittal at the instance of the State. The respondents herein are the accused 1 to 5 in S.C.No.270/2008 on the file of the learned Principal Sessions Judge, Cuddalore Divison, Cuddalore. Mr.Krishnathevar, who is a Juvenile accused and the son of A.3 in this case, is separated and he has been dealt with under the Juvenile Justice (Care & Protection) of Children Act, 2000. A.1 stood charged for offences under Sections 147, 148, 302, 324, 324 r/w 149 I.P.C. A.2 stood charged for offence under Sections 147, 148, 302 r/w 149, 324, 324 r/w 149 I.P.C. A.3 stood charged for offences under Sections 147, 148, 302 r/w 149, 324, 324 r/w 149 I.P.C. A.4 stood charged for offences under Sections 147, 148, 302 r/w 149, 324 (2 counts), 324 r/w 149 I.P.C. A.5 stood charged for offences under Sections 147, 148, 302 r/w 149, 324 (2 counts), 324 r/w 149 and 294(b) I.P.C. By judgment dated 20.04.2010, the trial Court acquitted all the five respondents. Challenging the same, the State is before this Court with this Criminal Appeal.



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

The deceased in this case was one Mr.Perumal. P.Ws.1 & 2 are the sons of the deceased. A.4 and A.5 are the husband and wife respectively. A.1 is their son. A.3 is the brother of A.4 and A.2 is the son of A.3. Thus, all the five accused belonged to the same family. fifteen years before the date of occurrence in this case, one Mr.Vijayan who was the brother of P.W.1 and the son of the deceased was murdered. It was alleged that the fourth accused committed murder of Mr.Vijayan. P.W.4, Mr.Vigneswaran is the son of Mr.Vijayan. A.4-Mr.Kanagasabai, has a daughter by name Ms.Mythili. Mr.Vigneswaran had fallen in love with Ms.Muthili. On coming to know of the same, as a protest, A.1 attacked Mr.Vigneswaran, on one occasion, just one year before this occurrence. Out of these instances, there was a long standing enmity between the family of the accused and that of the deceased.

3. On 08.10.2007, at about 8.30 pm, P.Ws.1,2 and the deceased were in their house. All the five accused armed with deadly weapons came to the house of the deceased with murderous intention. One Mr.Krishnathevar, a Juvenile accused was also with these accused. A.1 was armed with a knife; A.2 was armed with a wooden log; A.3 was armed with a knife; A.4 was armed with a wooden log; A.5 and the juvenile accused were not armed with any weapon. A.5 shouted at the deceased party alleging that P.W.4 had spoiled the life of Ms.Mythili. The deceased was inside the house. He came out of the house and told A.5 to stop shouting and to leave the place peacefully. Suddenly, rest of the accused started motivating attacked on the deceased. A.1 cut the deceased on his head, the deceased fell down in a pool of blood. A.2 again cut P.W.1 on his head and caused injuries. A.3 cut P.W.1 and caused injuries. A.2 attacked P.W.1 with wooden log. In the same transaction, A.4 kicked P.W.1 and caused a simple hurt. A.1, A.2 & A.3 also attacked P.W.2 and caused injuries. After the occurrence, all the accused persons fled away from the scene of occurrence. P.Ws.1 and 2 are the injured eye witnesses and the occurrence was witnessed by P.W.3 also.

4.After the occurrence, P.W.4 brought an Auto and took all the three injured to the Government Hospital at Chidambaram. P.W.1 was admitted as inpatient. P.W.2 and the deceased were referred to Annamalainagar Medical College and Hospital. But, the deceased succumbed to injuries. P.W.2 was however, admitted in the said hospital. When P.W.1 was in the hospital, at about 2.30 am, the then Sub Inspector of Police, on receiving intimation from the hospital, came to the hospital and recorded his statement.

5.P.W.14, after recording the statement of P.W.1 returned to the Police Station and registered a case in Crime No.64 of 2007 for offence under Sections 147, 148, 294(b), 323, 302 I.P.C. Ex.P.1 is the complaint and Ex.P.15 is the F.I.R. He forwarded both the documents to the Court and handed over case diary to the Inspector of Police for investigation.



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6.P.W.16-the then Inspector of Police, took up the case for investigation. He proceeded to the place of occurrence, prepared an observation mahazar and rough sketch in the presence of witnesses and also recovered sample earth and the blood stained earth from the place of occurrence. He conducted inquest on the body of the deceased and forwarded the same for post mortem.

7.P.W.12-Doctor, conducted autopsy on the body of the deceased and found the following injuries:-

"1.Laceration 3 x 1 x 2 cm over forehead;

2.Laceration 3 x 1 x 1 cm over left parietal region;

3.Abrasion 2 x 1 cm over left shoulder"

Ex.P.16 is the post mortem certificate. P.W.12 opined that the death was due to shock and hemorrhage due to the injuries sustained.

8.P.W.15-Doctor, treated P.Ws.1 and 2 gave opinion regarding the injuries sustained by them. On completing investigation, P.W.16 laid charge sheet against the accused.

9.Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused 1 to 5. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 16 witnesses were examined and 26 documents were exhibited, besides 9 Material Objects.

10.Out of the said witnesses, P.Ws.1,2 & 3 are the eye witnesses to the occurrence. Out of whom, P.Ws.1 and 2 are the injured eye witnesses. P.W.4 came to the place of occurrence after the occurrence was over and he took P.Ws.1 & 2 and the deceased to the hospital. He also spoken about the motive of the accused persons. P.Ws.5,6,7, 10 & 11 have turned hostile and they have not supported the case of the prosecution, in any manner. P.Ws.8 & 9 have spoken about the observation mahazar and the recovery of material objects. P.W.12 has spoken about the post mortem conducted by her and her final opinion regarding the cause of the death of the deceased. P.W.14 has spoken about the registration of the case. P.W.15 has spoken about the treatment given to the P.Ws.1 and 2. P.W.16 has spoken about the investigation done by him and the final report filed by him to the Court.

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 of the witnesses on their side besides four documents marked on their side.



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12. Having considered all the above materials, the trial Court acquitted all the accused, in respect of all the charges, as detailed in the first paragraph of this judgment. Aggrieved against the acquittal of the accused from the above charges, the State has preferred the present Criminal Appeal.

13. We have heard the learned Additional Public Prosecutor appearing for the State and the learned counsel appearing for the respondents/accused and we have also perused the records carefully.

14. The learned counsel for the respondents/accused would submit that in the same occurrence, A.3 and A.4 have sustained serious injuries and they were taken from the place of occurrence in 108 Ambulance and admitted in the hospital. When A.4 was in the hospital as in-patient, a statement was recorded by the Police, upon which, a case in Crime No.65 of 2007 was registered for offence under Sections 294, 336, 324 & 323 I.P.C., against the prosecution party, on the same day. The said case was not investigated properly by the Police.

15. In this case, the trial Court has discussed number of facts and circumstances to come to the conclusion that the prosecution had failed to prove the case beyond reasonable doubts. One of the important grounds, upon which the trial Court acquitted the accused, was that, the counter case in Crime No.65 of 2007 was not investigated properly by the Police. It is in evidence that A.3 and A.4 sustained injuries in the very same occurrence. There is no denial of the said fact. But the said injuries have not been explained by the prosecution witnesses. This would only give an inference that though P.Ws.1 and 2 are injured eye witnesses and though P.W.3 also happened to be one of the eye witnesses to the occurrence, they have not come forward with the true version of the occurrence. As held by the Hon'ble Supreme Court in (1976) 4 Supreme Court Cases 394, Lakshmi Singh and others vs. State of Bihar we find that the trial Court was right in holding that the failure on the part of the prosecution in not explaining the injuries sustained by the accused is fatal to the case of the prosecution.

16. The trial Court has also found fault with the Investigating Officer inasmuch as he did not investigate the case in Crime No.65/2007 at all. Ex.P.26 is the record pertaining to the case in Crime No.65/2007. The trial Court has recorded that in respect of the case in Crime No.65/2007, there was no final report filed in culmination of the investigation done in the said case. It is needless to point out that after the case is registered under Section 154 Cr.P.C., on completing investigation, the Investigating Officer is statutorily bound to submit a report, either positive or negative, to the jurisdictional Court. Thereafter, it is for the learned Judicial Magistrate, before whom the said report is filed, either to accept or to take cognizance or to even order for further investigation.



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17. Here, in this case, since, no final report whatsoever was filed by the Police in Crime No.65 of 2007, there was no occasion for the judicial scrutiny of the correctness of the said investigation done. This is yet another serious flaw in the case of the prosecution.

18. Apart from that, P.Ws.1 to 3 are the interested eye witnesses. Since, there are two versions about the occurrence, it is the duty of the prosecution to examine the independent witnesses who were admittedly present at time of occurrence, so as to establish the fact. Though, few independent witnesses were examined in this case, they have turned hostile and they have not supported the case of the prosecution in any manner. Further, some other independent witnesses present at the time of occurrence have not been examined in this case for the reasons best known to the prosecution.

19. The trial Court has also pointed out certain material contradictions between the evidences of P.Ws.1 to 3 in which also, we find justification. Thus, the trial Court has, for sound reasons, come to the conclusion to acquit the accused. We do not find any perversity in the judgment of the trial Court.

20. In view of the foregoing discussions, the Criminal Appeal fails and accordingly, the same is dismissed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

jbm

To

1.The Principal Sessions Judge,
Cuddalore.

2.The Public Prosecutor,
High Court, Madras.

1 cc to Mr.R. Sathuvarayar, Advocate, sr. 6254

Cr1.A.No.49 of 2011

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