

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.A.No.721 of 2015

Kaliaperumal ... Appellant

Vs

State by
Inspector of Police
Kattumannar Kovil Police Station
Kattumannar Kovil (P.O)
Cuddalore District. ... Respondent

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned II Additional District and Sessions Judge, Chidhambaram, in S.C.No.465 of 2006 on 05.10.2015.

For Appellant : Mr.A.Arasu Ganesan

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

JUDGMENT

[Judgment of the court was delivered by V.BHARATHIDASAN, J.,]

A3 in S.C.No.465 of 2006 on the file of the learned II Additional District and Sessions Judge, Chidhambaram, is the appellant herein. Totally there are five accused in this case. A2 and A4 stood charged for an offence under Section 147 IPC; A1, A3 and A5 stood charged for an offence under Section 148 IPC; A2, A4 and A5 stood charged for an offence under Section 341 IPC; A1 and A3 stood charged for an offence under Section 302 IPC. A2, A4 and A5 stood charged for an offence under Section 302 r/w.141 IPC. The trial Court acquitted A1, A2, A4 and A5 from all the above charges and acquitted appellant/A3 from the offence under Section 148 IPC and convicted the appellant/A3 for the offence under Section 302 IPC and sentenced him to undergo life imprisonment and also imposed a fine of

Rs.1,000/- in default, to undergo three months simple imprisonment. Challenging the above said conviction and sentence, the appellant / A3 is before this Court with this appeal.

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

(i) The deceased in this case was one Samikannu. The deceased and the appellant/A3 belongs to the same village and they were having some previous enmity in an election dispute. Later, the appellant developed an illicit intimacy with one Sivagami, PW.14, the brother's wife of the deceased and therefore, the appellant was sent out of the village by the deceased and his family members. In the above circumstances, on 16.08.2003, the appellant came to the village to participate in a 'Kabadi' tournament. At that time, he met PW.14 Sivagami and he was talking with her. Noticing that, the deceased and his brother beaten the appellant and the appellant being aggrieved over the same, on 18.03.2003, at about 6 p.m, all the accused formed an unlawful assembly and they waylaid him. A1 attacked the deceased with bill hook in the left hand and left shoulder and A3 attacked him with Aruval in his face and caused serious injuries. PW.1- wife of the deceased, PW.2 - brother of the deceased and PW.4 - another brother of the deceased, took the deceased to Raja Muthaiah Hospital, Chidambaram. PW.1 went to the respondent police and lodged a complaint (Ex.P1).

(ii) PW.22, Sub-Inspector of Police, registered a case in Crime No.676 of 2003 for the offence under Sections 147, 148, 341, 294 and 307 IPC and prepared First Information Report (Ex.P19) and sent the same to the Judicial Magistrate Court and also to the higher officials.

(iii) Dr.Neela Senthilkumar, who was then working as Lecturer in the above hospital, admitted the deceased and issued Accident Register Ex.P10.

(iv) One Sankaran (since died) was working as Inspector of Police in the respondent police, (Since the said Sankaran died, PW.23 has given evidence regarding the investigation done by the said Sankaran, Inspector of Police, based on the records), on receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence; since it was midnight and it was very dark, hence, he returned, and proceeded to the hospital where the deceased was admitted; since the deceased was unconscious, he recorded the statement of his wife (PW.1) and on the next day viz., 19.08.2003, he visited the scene of occurrence and prepared Observation Mahazar and rough sketch (Ex.P20) in the presence of witnesses and also recovered blood stained soil (M.O.1), sample soil (M.O.2), B.S.A. bicycle (M.O.3), one pair of chappels (M.O.4) and a rexin bag (M.O.5)

and on 21.08.2013, he arrested A1, A2 and A4 and on such arrest, A1 voluntarily gave confession and based on the disclosure statement (Ex.P23), he recovered bill hook (M.O.6). Thereafter, Mr.Sankaran, Inspector of Police, was deputed to some other work and hence, he handed over the investigation to PW.23.

(v) In the mean while, on 20.08.2013, the deceased succumbed to injuries. Hence PW.21, the in-charge Inspector of police, in the respondent police station altered the section in First Information Report into Section 302 IPC, and sent the altered First Information Report Ex.P6, to the Judicial Magistrate. Then, he proceeded to Raja Muthiah Hospital, Annamalai Nagar and conducted inquest on the dead body at about 12.30 p.m in the presence of panchayatdars and prepared Inquest Report Ex.P17, and sent the body for postmortem to the Government Hospital, Chidambaram.

(vi) PW.17 is the Doctor then working in Government Hospital, Chidambaram. She conducted postmortem (autopsy) and found the following injuries:-

" External Injuries:

1. A sutured wound transversely in middle of neck 10 cm in size.
2. Tracheotomy wound present.
3. A lacerated wound middle 1/3 of (L) forearm 10 x 4 x 2 exposing forearm muscles.
4. A laceration medial aspect of (L) arm 3 x 2 x 2 cm.
5. Nasal bridge depressed and fractured, nose deformed.
6. A sutured wound in inverted 'U' shape extending from (R) maxilla to (L) maxilla crossing the nose - about 20 cm in length.
7. A sutured wound (R) temporo parieto & occipital region 20 cm length.
8. A sutured wound transversely in middle of forehead 8 cm in size.

Internal Examination:

Thorax : Ribs - intact, Lungs - pale, heart - empty, hyoid - intact. No collections in pleura. Abdomen - distended with gas. Stomach - distended and had 200 ml. of undigested food materials with rice. Liver - pale, Spleen - pale, Kidney - pale, Intestines - distended with gas. Bladder - empty. Pelvis - intact. External genitalis - normal. Lower

limbs - normal, Skull - a linear fracture involving (R) temporal, parietal & occipital bone about 20 cm in length a piece of bone is missing in (R) temporal bone & brain matter exposed beneath it. Sub-dural haematoma in occipital region, laceration in (R) parietal lobe 5 x 3 x 2 cm and another in occipital lobe 6 x 5 x 4 cm. Other areas are normal."

The postmortem report is Ex.P12 and she was of the opinion that the deceased appeared to have died of injuries in the brain.

(vii) On 02.09.2003, A3, surrendered before the Judicial Magistrate, Chidambaram. Then PW.23 took up the investigation and took A3 under police custody and based on his disclosure statement, he recovered the iron knife (M.O.7) and recorded the statement of witnesses. Once again, Mr.Sankaran, Inspector of police joined duty. Hence PW.23 handed over the investigation to Mr.Sankaran, who completed the investigation and filed charge sheet.

3. Considering the above materials, the trial Court has framed charges as mentioned in paragraph-1 of the judgment. The accused denied the same. In order to prove the same, the prosecution examined 23 witnesses and marked 30 documents and 7 material objects.

4. Out of the witnesses examined, PW.1 is the wife of the deceased. She spoke about the motive. According to her, she reached the scene of occurrence after hearing the news and she took the deceased to Raja Muthaiah Hospital, Annamalai Nagar and lodged the complaint (Ex.P1). PW.2 is the brother of the deceased, he turned hostile. PW.3 is the witness to Observation Mahazar. He also turned hostile. PW.4 is another brother of the deceased. He also turned hostile. PW.5 also turned hostile. PW.6 is the wife of PW.4. According to her, only after hearing the news, she came to the scene of occurrence. PW.7 also turned hostile. PW.8 is a retired teacher. He only saw the deceased with injuries in the scene of occurrence. PW.9 turned hostile. PW.10 turned hostile. PW.11 and PW.12 were running the shops, near the scene of occurrence. According to them, after hearing the noise, they closed the shops. PW.13 is the witness for recovery of knife under Mahazar (Ex.P9). He also turned hostile. PW.14 turned hostile. PW.15 is the then Doctor working in Raja Muthiah Hospital, Chidambaram. He spoke about the admission of the deceased in the hospital and issuance of Accident Register. PW.16 is only a hearsay witness. PW.17 is the Doctor, who conducted postmortem on the dead body and

issued postmortem certificate. PW.18 is the person, who identified the deceased in the scene of occurrence. PW.19 is the then Head Constable in the respondent police. He received death information from the hospital. PW.20 is the then Grade-I Constable, who identified the body for postmortem and handed over the body to his relatives after postmortem. PW.21 is the then in-charge Inspector of Police in the respondent police station. He altered the First Information Report into Section 302 IPC and conducted inquest. PW.22 - Inspector of Police, registered the complaint. PW.23 spoke about the investigation and filing of charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. The accused examined 2 witnesses and marked 17 documents.

6. Considering the above materials, the trial Court acquitted A1, A2, A4 and A5 in all the above charges and convicted the appellant/A3 and sentenced him as stated in paragraph-1 of the judgment. As against the conviction and sentence, the present appeal has been filed by the appellant before this Court.

7. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the records carefully.

8. In the instant case, all the material witnesses turned hostile. PW.1 is the wife of the deceased. She came to the scene of occurrence only after hearing the news. She also spoke about the motive. She lodged the complaint Ex.P1, implicating as many as five persons. She along with PW.2 and PW.4, brothers of the deceased, took the deceased to Raja Muthiah Hospital, Chidambaram. At the time of admission, the deceased was conscious and told the Doctor that two persons have attacked him. In Ex.P10 - Accident Register, it was mentioned that the deceased was attacked by two known persons. All other material witnesses including P.Ws.2 and 4, brothers of the deceased turned hostile. But the trial Court convicted the appellant considering the evidence of PW.4, a hostile witness. According to PW.4, on the date of occurrence at about 6.30 p.m, while he was standing near ''Seerani Hall'', A3 attacked the deceased and ran away from the scene of occurrence; and he did not see other accused. But he was treated as hostile by the prosecution. The evidence of hostile witness can be relied upon by the prosecution to the extent to which it supports the prosecution version of the incident, provided, it should be corroborated by the evidences and there is no legal bar to base the conviction of the accused upon such testimony provided, it should be corroborated by other reliable evidences. But in the instant

case, there is no evidence available on the record to corroborate the testimony of PW.4. Apart from that, in the First Information Report, as many as five persons were implicated and while the deceased was admitted in the hospital, he has stated that only two persons attacked him. All other material witnesses turned hostile. Moreover, the trial Court acquitted all the other accused, but convicted the appellant alone under Section 302 IPC, based on the uncorroborated testimony of the hostile witness PW.4. In our considered view, as mentioned earlier, there are lot of contradictions in the prosecution case and the evidence of PW.4 is also not corroborated by any other witnesses. Hence, it is highly unsafe to rely upon the evidence of PW.4 to convict the appellant. Hence, the appellant is entitled for acquittal.

9. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the accused on 05.10.2015 in S.C.No.465 of 2006 on the file of the learned II Additional District and Sessions Judge, Chidhambaram, are set aside. The appellant/A3 is acquitted and fine amount already paid, if any, shall be refunded to him. His bail bonds shall stand terminated.

sd/
Assistant Registrar

/true copy/

Sub Assistant Registrar

mra

To

1. The II Additional District and Sessions Judge,
Chidhambaram.
2. The Inspector of Police
Kattumannar Kovil Police Station
Kattumannar Kovil (P.O)
Cuddalore District.
- 3.The District Munsif Court,
Judicial Magistrate.
Kattumannarkoil.
- 4.The Superintendant,
Central Prison, Cuddalore.

5.The superintendent of Police,
Cuddalore District.

6.The District Collector,
Cuddalore District.

7.The Director General of Police,
Mylapore. Chennai-4

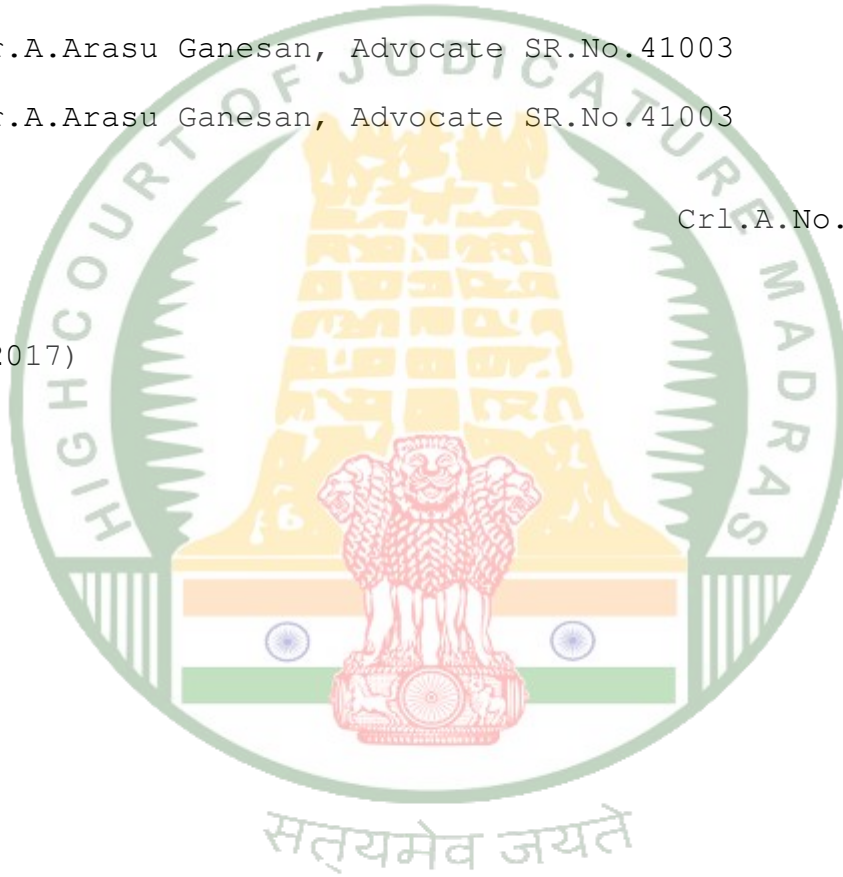
8.The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.A.Arasu Ganesan, Advocate SR.No.41003

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GMI (CO)
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