

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 31.08.2016

DELIVERED ON 23.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.736 of 2015
and
Crl.R.C.No.1195 of 2012

Crl.A.No.736 of 2015

State, represented by:
The Inspector of Police,
Velur Police Station,
Namakkal District.
(Crime No.963 of 2010)

...Appellant

Vs

1. Prabakaran

2. Manoharan

...Respondents

Prayer:- Criminal Appeal filed under Section 378 Cr.P.C., to set aside the judgment of acquittal, dated 27.06.2012, made in S.C.No.27 of 2011 on the file of the learned Additional District and Sessions Judge, Additional District and Sessions Court, Namakkal, and convict the respondents/A1 & A2 as charged.

Crl.R.C.No.1195 of 2012

Chinnadurai

...Petitioner/P.W.3

/vs/

1. Prabakaran

2. Manoharan

...1st and 2nd respondents/A1 & A2

3. State by
Inspector of Police,
Velur Police Station,
Namakkal District.

...3rd respondent/Complainant

For Appellant
in Crl.A.736 of 2015 & : Mr. V.M.R.Rajendran
R3 in Crl.R.C.1195 of 2012 Additional Public Prosecutor

For Respondents
1 & 2 in Crl.A.736 of 2015 : Mr.R.Karthikeyan,
and Crl.R.C.1195 of 2012 for Mr.R.Saravanakumar

JUDGEMENT

V.Bharathidasan.J

The respondents 1 and 2 herein were accused 1 and 2 in S.C.No.27 of 2011 on the file of the learned Additional District and Sessions Judge, Namakkal. They stood charged for an offence under Section 341, 302 and 427 IPC. A1 stood charged for an offence under Section 324(2 counts) and A2 stood charged for an offence under Section 324 IPC. After trial, the trial Court, by judgment dated 27.06.2012, acquitted the accused from all the above charges. Against the order of acquittal, Crl.R.C.No.1195 of 2012 has been preferred by the father of the deceased in the case, who was examined as P.W.3 and the state has come with the appeal in Crl.A.No.736 of 2015.

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

The deceased, in this case, one Thirumurugan, is the son-in-law of A2. A1 is the son of A2. The deceased in this case, Thirumurugan, married the daughter of A2 and they have also got children by names, Muhilan and Tharun. One year prior to the occurrence, daughter of A2 committed suicide. Thereafter, A1 and A2 took the children with them. Then, A1 and A2 requested the deceased to settle his property in the name of the children, but, he refused. In the said circumstances, they decided to kill the deceased. On 28.09.2010, at about 8.45 a.m., while P.Ws.1 and 2 and the deceased were coming in a motorcycle, both the accused waylaid them and kicked down the bike, A1 attacked P.W.1 with an iron rod, on his leg and also attacked P.W.2 on his hands and wrist. A2 also attacked P.W.2 with a wooden log and caused injuries. A1 attacked the deceased with the same iron rod on the head and A2 poured petrol on the deceased and set fire on him. Accused 1 and 2 also caused damage to the motorcycle. On

the alarm raised by P.Ws.1 and 2, people residing in that area, came to the scene of occurrence and on seeing them, both the accused ran away. Then, public called 108 Ambulance and sent the injured persons to the Government Hospital, Vellur. Since the condition of the deceased was very serious, he was referred to the Government Medical College Hospital, Salem.

3. P.W.10, Sub-Inspector of Police, working in the Vellur police station, on receipt of the intimation from the Government Hospital, Velur, reached the hospital, at about 10.00 a.m., and he recorded the statement of P.W.1. Based on the said statement, P.W.10 registered a case in Crime No.963 of 2010 for the offences under Sections 341, 324 and 307 IPC. Then, he sent the First Information Report (Ex.P.17) to the Judicial Magistrate court and copies to the higher police officials.

4. P.W.13, Inspector of Police, attached to the respondent police, on receipt of the First Information Report, at about 12.00 noon on 28.09.2010, commenced the investigation. He proceeded to the scene of occurrence and prepared an Observation Mahazar (Ex.P.2) and a Rough Sketch (Ex.P.18), in the presence of witnesses. He recovered the damaged motor cycle (M.O.4), Cellphone (M.O.5), damaged parts of the motorcycle (M.O.6), bloodstained earth (M.O.7) and sample earth (M.O.8) from the scene of occurrence, under a cover of mahazar, Ex.P.3. Then, he recorded the statements of P.Ws.1 and 2. At 1.45 p.m., on 28.09.2010, he received information that the deceased succumbed to injuries. Hence, P.W.13 altered the charge into Section 302 IPC and the Alteration Report is Ex.P.19. On 29.09.2010, at about 6.00 a.m., he conducted inquest on the dead body of the deceased, in the presence of panchayathars and prepared an Inquest Report, Ex.P.20. Then, he sent a requisition, for conducting postmortem on the dead body.

5. P.W.7, Assistant Professor, working in Mohan Kumaramangalam Medical College Hospital, Salem, conducted autopsy on the dead body of the deceased on 29.09.2010, at 10.10 a.m., and found the following injuries :-

" Dermo epidermal burns seen over outer aspect of left side chest, abdomen, left shoulder, outer aspect of left upper arm, back of left elbow, front of neck, both sides of cheek, left side of forehead, front of nose, right side chest, right axilla, right upper arm, back of right elbow, inner aspect of right forearm, back of both sides of chest, front and back of left lower leg. (antemortem).
Burnt area shows hypreemic.

Lacerated wound seen over right parietal region
M-7x2.5x bone deep. "

Ex.P.9 is the Postmortem Report. He also gave opinion(Ex.P.10) that the deceased would have died due to head injury and burn injuries.

6. P.W.13, arrested the accused in Kuchipalayam Bus Stop and on such arrest, accused No.1, voluntarily gave a confession and based on the disclosure statement, P.W.13 recovered an Iron rod (M.O.1), a Wooden Log (M.O.2) and a plastic bottle (M.O.3) in the presence of witnesses. P.W.13 recorded the statement of the doctor, who conducted postmortem on the dead body of the deceased and other witnesses. After completion of investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined and 21 documents were exhibited, besides marking 10 Material Objects.

8. Out of the witnesses examined by the prosecution, P.w.1 is the friend of the deceased and also an injured eyewitness. According to him, on 28.09.2010, at about 8.00 a.m., when he, along with deceased and P.W.2, proceeding in a motorcycle near Ramasamy temple bridge, the accused way laid them and attacked them with iron pipe and wooden log and when he raised alarm, persons residing around the area came there and sent them to Government Hospital, Vellur in 108 Ambulance and subsequently, he gave a statement, at about 10.30 a.m., before P.W.10.

9. P.W.2 is another injured eyewitness. He also says that while he, P.W.1, and the deceased were travelling in a bike, A1 and A2 waylaid them and attacked them. P.W.3 is the father of the deceased. He has spoken about the motive. According to him, he sent the injured deceased and P.Ws.1 and 2 in the ambulance and he followed them and admitted them in Government Hospital, Vellur and subsequently, took the deceased to Government Hospital, Salem.

10. P.W.4 is the Village Administrative Officer. He is a witness to the Observation mahazar and recovery of material objects. P.W.5 is the doctor, who treated the deceased at the Government Hospital, Vellur. According to him, P.W.3 brought the deceased to the hospital, the deceased was conscious and told him that two known persons attacked

him. He has further stated that he found injuries and issued Accident Register, Ex.P.4 and he also admitted P.Ws.1 and 2 in the hospital and issued Accident Registers, Exs.P.5 and 6.

11. P.W.6 is a doctor, working in the Government Hospital, Nammakkal, and examined the deceased and issued Accident Register, Ex.P.7. P.W.7 is the doctor working in the Government Hospital, Mohan Kumara Mangalam Medical College Hospital, Salem and conducted postmortem on the dead body of the deceased and gave postmortem report, Ex.P.9 and also gave opinion with regard to the cause of death.

12. P.W.8 is the Village Administrative Officer, who is a witness to the arrest and confession of the accused. P.W.9, Head Constable, working in the Judicial Magistrate court, sent the material objects for chemical examination. P.W.10 is the Sub-Inspector of Police, who recorded the statement of P.W.1 in the hospital and registered the First Information Report. P.W.11, Head Constable, identified the body of the deceased for postmortem. P.W.12 is the Head Constable, who submitted the express First Information Report to the Judicial Magistrate Court. P.W.13 is the Inspector of Police, who conducted investigation and laid charge sheet against the accused.

13. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side, Form-95 was marked as Ex.D1 and Arrest memo was marked as Ex.D2. However, they did not choose to examine any witness.

14. Having considered all the above materials, the trial Court acquitted the accused in all the charges and aggrieved over the same, father of the deceased, P.W.3 filed the present Criminal Appeal.

15. We have heard Mr.V.M.R.Rajendran, learned Additional Public Prosecutor, Mr.B.Vasudevan, learned counsel for the Revision Petitioner and Mr.P.Karthikeyan, learned counsel appearing for the respondents 1 and 2, and we have also perused the records carefully.

16. P.Ws.1 and 2 are injured eyewitnesses to the occurrence. P.W.1 is the author of the First Information Report. According to him, P.W.10, Sub-Inspector of Police, came to the hospital at about 10.45 a.m. and recorded his statement. As per the said statement, recording of the statement is said to have completed at 11.15 a.m, whereas the First Information Report has been registered at about 10.30 a.m. itself. Moreover, the First Information Report, had

reached the Judicial Magistrate Court only at 6.00 p.m., on 28.09.2010. P.W.12, Head Constable, who submitted the First Information Report, has admitted that the distance between the police station and the Court is only 5 kms. Eventhough the First Information Report was said to have registered at 10.30 a.m., it has reached the Court only around 6.00 p.m. with a delay of more than 7 ½ hours. The delay in sending the First Information Reports to Court has significant importance. In view of the evidence of P.W.1 that P.W.10 recorded his statement at about 10.45 a.m., and completed the recording of the statement only at 11.15 a.m., and the fact that the First Information Report was said to have registered at 10.30 a.m. itself, it creates a doubt in the prosecution case. The prosecution did not explain the delay in sending the First Information Report. Apart from that, there are lot of contradictions in the evidence of P.Ws.1 and 2, injured eyewitnesses, regarding the nature of weapons used and the manner of attack.

17. Yet another important circumstance is, according to P.W.3, father of the deceased, he only admitted the deceased in the hospital and informed the doctor about the occurrence. According to him, the deceased was conscious. P.w.5 Doctor, who treated the deceased in the government Hospital, Vellur, also says that the deceased was conscious. But, no efforts have been taken to get a judicial dying declaration of the deceased. Considering all the above infirmities, the trial Court has acquitted the accused.

18. It is settled law that in a case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him. Every person shall be presumed to be an innocent, unless his guilt is proved by a competent Court. 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 the evidence on record, the appellate Court should not disturb the finding and the acquittal recorded by the trial Court. In the instant case, absolutely, there is no evidence pointing to the guilt of the accused and the trial Court, after considering the entire evidence, has 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, both the appeal and the revision fail and the same are deserve to be dismissed.

19.In the result, the Criminal Appeal and the Criminal Revision fail and accordingly, the same are dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mrp

To

1.The Additional District and Sessions Judge,
Additional District and Sessions Court,
Namakkal.

2.The District Collector,
Namakkal District.

3.The Superintendent of Police,
Namakkal District.

4.The Director General of Police,
Chennai.

5.The District Munsif cum Judicial Magistrate,
Paramathi.

6.The Inspector of Police,
Velur Police Station,
Namakkal District.

7.The Public Prosecutor,
High Court, Madras.

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Cr1.A.No.736 of 2015

GMI (CO)
PSI (29/12/2016)