

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2016

CORAM:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU
and
THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

Criminal Appeal No.551 of 2010

State represented by
The Deputy Superintendent of Police,
Sethiyathope Sub Division,
Cuddalore District.
(Crime No.90/2008) ... Appellant/Complainant

Vs.

Murugesasa Asari ... Respondent/accused

Prayer : Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 28.01.2010 passed by the learned Sessions Judge, Cuddalore Division, Cuddalore made in S.C.No.25/2009

For Appellant : Mr.M.Maharaja
Additional Public Prosecutor

For Respondent: Mr.V.Rajamohan,
Legal Aid Counsel

JUDGMENT

(Judgment of the Court was delivered by

M.SATHYANARAYANAN, J.)

The respondent is the accused in S.C.No.25/2009 on the file of the Court of Special Judge constituted under Schedule Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 [in short "SC/ST Act"] and he stood charged and tried for the commission of offences under Section 302 IPC and under Section 3 (2)(v) of the SC/ST Act. The trial Court, vide judgment dated 28.01.2010, has acquitted the respondent/accused for the commission of the said offences and challenging the legality of the said judgment, the State has preferred this appeal.

2. Facts leading to the filing of this appeal are as follows:

2.1. The respondent/accused used to pester people by demanding money every now and then and as such, on one such occasion, on 23.05.2008 at about 8.00 p.m. opposite to the shop of one Arumaidurai at Omampuliyur, he pestered the deceased to

lend him money and since it was not acceded to, the respondent/accused caught enraged and vowed to kill him and accordingly whirled out a Chisel in the wearing apparel near his hip and stabbed him and caused severe injuries on the chest of the deceased and on falling also, he repeatedly stabbed him and as a consequence, he died instantaneously.

2.2. PWs.1 to 4 were chatting at the nearby bridge/culvert and on hearing hues and cries, they rushed to the scene of occurrence and on seeing them, the respondent/accused took to his heels. PW1, namely Mr.Gnanaprakasam, is the son of the deceased and he took his injured father in his moped two wheeler along with PW2 to Kattumannarkoil Government Hospital. The Casualty Medical Officer, on examining him, declared him as died on arrival and put the body in the mortuary. Thereafter, PW1 proceeded to Kattumannarkoil Police Station and lodged a written complaint/Ex.P1 to PW9, the Sub-Inspector of Police, who registered an F.I.R in Crime No.90/2008 for the offence under Section 302 IPC. PW9 sent the copy of the F.I.R as well as the original complaint to the jurisdictional Magistrate and also informed PW11, the Inspector of Police, Kattumannarkoil Police Station.

2.3. PW11, on receipt of the F.I.R., proceeded to the spot and since it was night time, he stayed in the Omampuliur village and at about 6.00 p.m., rushed to the scene of occurrence and in the presence of PW6 and another, prepared Observation Mahazar under Ex.P2 as well as Rough Sketch under Ex.P14 at about 7.00 p.m. on that day at Arymaidurai grocery shop. PW11 recovered blood stained earth as well as sample earth under Ex.P3 and on that day itself, conducted inquest on the body of the deceased in the mortuary of Kattumannarkoil Government Hospital and the body was identified by PW1. PW11, in the presence of panchayatdars, conducted enquiry and prepared Inquest Report under Ex.P15 and thereafter, sent a requisition to PW8 through Head Constable Mr.Gopinath for conducting postmortem.

2.4. PW8, on receipt of the body, commenced the postmortem at about 11.45 a.m. and noted the following features:

External injuries:

1) A stab injury of 3 x ¼ x 10 cm. On the right border of sternum on 3rd rib level.

2) A stab injury of 3 x ¼ x 2 cm. On middle of left thigh.

Internal Examination

3) Right 3rd rib was injured (stab injury) 2 x 1 x upto heart.

4) Lungs pale and intact.

5) Heart: Pericardium was ruptured/teared. Major blood vessels were cut on the base of the heart. Chambers were empty.

6) Blood clot of 500 grain was present in the cavity and are like of blood was seen in the cavity.

7) Liver, Kidneys, spleen were pale. Bladder empty.

8) Stomach: Partially digested food of 150 ml. was present. Intestine filled with gas.

- 9) Pelvic bone and hyoid bone were intact.
- 10) Spinal column normal.
- 11) Skull and membrane intact.

PW8, after completion of postmortem, opined that the deceased appear to have died due to shock and loss of blood due to the injuries sustained by the deceased and issued postmortem certificate under Ex.P9. PW8, after completion of postmortem, preserved the viscera and also sent the same for medical analysis and in that regard, PW11 also made a requisition to the jurisdictional Magistrate for sending the viscera for medical analysis.

2.5. PW11 arrested the accused on 25.05.2008 near the grave yard at Kollidam river basin and the accused voluntarily came forward to give confession statement which was recorded in the presence of PW6 and one Jagadeesan. On the basis of admissible portion of the confession statement of the accused under Ex.P4, the weapon used for commission of the crime, namely Chisel/M.O.1 was recovered under Mahazar Ex.P5 and the respondent/accused was sent for judicial custody. PW11 also sent a requisition to PWs.7 and 8, namely Tahsildar and Deputy Tahsildar, Kattumannarkoil and ascertained that the deceased belongs to Hindu Adidravidar Community (Scheduled Caste) and the respondent/accused is a member of Hindu Kammalar Community (other caste) and accordingly, submitted a report, altering the offence to one under Section 3(2)(v) of the SC/ST Act.

2.6. PW12, the Deputy Superintendent of Police, on receipt of alteration report, continued with the investigation and examined PW8 and recorded the statement and after receipt of Serology Report and Chemical Analysis Report, has filed final report on 07.07.2008 for the commission of the offences under Section 302 IPC and under Section 3(2)(v) of the SC/ST Act on the file of the District Munsif cum Judicial Magistrate, Kattumannarkoil, which was taken on file in P.R.C.No.10/2008 and the committal Court issued summons to the respondent/accused and on his appearance, furnished him copies of documents under Section 207 CrPC and having found that the case is exclusively triable by the Special Court constituted under SC/ST Act, has committed the same to the said Court, who took it on file in S.C.No.25/2009 and on appearance of the accused, framed charges under Section 302 IPC and Section 3(2)(v) of the SC/ST Act and questioned him and the accused pleaded guilty to the charges framed against him.

2.7. The prosecution, in order to sustain their case, had examined PWs.1 to 12 and marked Exs.P1 to P23 and M.Os.1 to 3.

2.8. The trial Court, on consideration of oral and documentary evidence, found that though PWs.1 to 4 have corroborated with each other, their version appears to be parrotlike version and therefore, it creat doubts, as it was like tutored version with a view to implicate the accused. The trial Court, further found that there is also discrepancy as to the visit of the Investigating Officer, namely PW12 to the scene

of occurrence and at belated point of time only, the prosecution sought to introduce the theory regarding alleged abuse on account of un-touchability and racial discrimination and the father of PW1 was done away with it. The trial Court further found that though the occurrence took place during night hours, there is no reference at all as to whether the area was well illuminated with lights and there is no evidence to show that the lamps and light posts were burnt at the time of commission of offences and from the place where PWs.1 to 4 were chatting would not have sufficient light to identify the culprit/accused. Especially the fact that the weapon used is a small chisel, the trial Court found that since the accused is a carpenter, the chisel/M.O.1 was introduced as a weapon of offence to implicate him. The trial Court also found that the presence of PWs.1 to 4 near the scene of crime is also doubtful and the prosecution was unable to explain as to how all of them came to be present near the scene of occurrence at that time and since all of them belong to the caste of the deceased, they could have supported the case of the prosecution. Insofar as recovery is concerned, the trial Court found that there is nothing on record to show that M.Os.2 and 3 were seized and the wearing apparels at the time of postmortem and PW8, who conducted the postmortem, did not state anything about the removal of cloth at the time of postmortem. The trial Court also doubted about the presence of PW6, who was an witness to the chisel weapon seized, pursuant to the admissible portion of the confession statement given by the respondent/accused and there is also discrepancy as to the place of arrest. The trial Court also found that the statements recorded by PWs.11 and 12 were not actually recorded by them, but by some other persons and the prosecution has taken all endeavour to falsely implicate the accused and there is a serious doubt as to the presence of PWs.1 to 4 near the scene as well as PW6, who was the witness to the arrest and recovery. The trial Court, having found that the case of the prosecution is bristled with many infirmities and inconsistencies, has awarded benefit of doubt and acquitted the respondent/accused and the State, aggrieved by the same, has filed this appeal.

3. Mr.M.Maharaja, learned Additional Public Prosecutor would submit that the occurrence took place in a public place at about 8.00 p.m. on 23.05.2008 and Pws.1 to 4 were chatting near the scene of occurrence and their testimonies corroborate with each other on material particulars and simply because all the witnesses deposed on similar lines, it cannot lead to the presumption that their testimonies are parrotlike version. It is the further submission of the learned counsel appearing for the appellant/State that simply because PWs.1 to 4 belong to same caste as that of the accused, it cannot lead to the presumption that they were enimical to the respondent/accused and as per the contents of Accident Register/Ex.P10, the deceased said to have been stabbed by unknown persons. It is also contended by the learned Additional Public Prosecutor that simply because there is no evidence to show that the area was illuminated, it cannot lead to the presumption that PWs.1 to 4 would not have seen the occurrence for the reason that the respondent/accused was also known to PWs.1 to 4. As regards arrest and recovery, it is the

submission of the learned Additional Public Prosecutor that PW6 is a public servant and he has no axe to grind against the respondent/accused and the scientific evidence has also confirmed the fact that the deceased died on account of homicidal violence and simply because the prosecution has proved its case beyond reasonable doubt, the trial Court ought to have convicted and sentenced the respondent/accused adequately and prays for interference.

4. Per contra, Mr.V.Rajamohan, learned counsel appearing for the respondent/accused would contend that the trial Court, on a proper appreciation and analysis of oral and documentary evidence and other materials, has rightly reached the conclusion to acquit the respondent/accused and it cannot said to be perverse so as to warrant interference at the hands of this Court in exercise of it's appellate jurisdiction and would further contend that the scope of appellate jurisdiction to interfere with the order of acquittal should be slow and rare and hence, prays for dismissal of this appeal.

5. This Court has considered the rival submissions and also perused the materials placed before it.

6. PW1 is the son of the deceased and he would depose that before the Casualty Medical Officer he stated that the scene of occurrence is at Omampuliyur Bus stand and did not state that it took place in the bazaar, but in Ex.P1 he stated that the occurrence took place near grocery shop of Arumaidurai at Omampuliyur and did not state about burning of light/illumination near the said shop and the said fact has not been disclosed in Ex.P1. PW1 would further admit in the complaint that he did not state anything about abuse of the caste of the deceased. PW2 would depose that he knows the deceased and he also belongs to the same caste as that of the deceased and he along with his friends, namely PWs.1, 3 and 4, were chatting for about 3 years in the very same place and during the course of investigation, did not say anything about abuse of caste on the part of the respondent/accused. PW4 would depose that the respondent/accused pestered the deceased to part with some money and it was refused and there was a wordy altercation and the respondent/accused abused the deceased by using his caste name. PW4 in the cross examination has denied the suggestion that he did not say so with regard to use of caste name.

7. PW11/Investigating Officer in the cross examination would state that neither PW1 nor PW2 during the course of investigation did not say anything about abuse of caste by the respondent/accused and would admit that in the F.I.R., nothing has been stated about the scene of occurrence and also not stated that it took place in the Omampuliyur Bazaar. PW1 would further admit that in the rough sketch, nothing has been indicated about the burning of light/illumination in the area.

8. In *Yudhistir v. State of Madhya Pradesh* [1971 SCC (Cr1.) 684], the Hon'ble Supreme Court of India held that if any witness make improvements from F.I.R and the statements recorded during investigation, it should be accepted with a pinch of salt.

9. In *Rambilas & Others v. State of Madhya Pradesh* [1997 (8) Supreme 442] it has been held that parrotlike versions spoken to by the witnesses is not reliable.

10. The trial Court, on going through the testimonies of PWs.1 to 4, found that it is parrotlike versions and such versions are doubtful and thereby created doubt about the incident. It is also to be noted at this juncture that concerned witnesses did not say anything about the abuse of caste by the respondent/accused at the time of alleged commission of offences and admittedly, they made improvements during the course of oral evidence and there is also a doubt as to the place of occurrence. The trial Court also found that the occurrence took place at about 8.00 p.m. on 23.05.2008 and in the Rough Sketch/Ex.P14 and Observation Mahazar/Ex.P2, nothing has been stated about the burning of lamp post or illumination in the area and there is also discrepancy with regard to distance from which PWs.1 to 4 said to have seen the commission of offences. The trial Court also doubted as to when PWs.1 to 4 were examined by PW11, whether during night hours on the date of occurrence or on the next day and taking advantage of the fact that the respondent/accused is a carpenter, weapon might have been introduced. The trial Court further found that in the light of the fact that PWs.1 to 4 belong to same caste as that of the deceased and made improvements as to the abuse of caste by the said witnesses coupled with the fact that there is nothing on record to show as to how M.Os.1 to 3 were seized and also the fact that there is a grave doubt as to at which place the accused was arrested and the alleged recovery was made, found that very many doubts on vital aspects have been created in the version projected by the prosecution and accordingly awarded benefit of doubt and acquitted him.

11. It is well settled position of law that in appeal against acquittal, certain cardinal principles are required to be kept in mind, namely,

(a) When there is presumption of innocence in favour of the accused which has been strengthened by the acquittal of the accused by the trial Court,

(b) if two views are possible, a view favourable to the accused should be taken,

(c) that the trial Judge had the advantage of looking at the demeanour of the witnesses and

(d) the accused is entitled to a reasonable benefit of doubt, a doubt which a thinking man will reasonably, honestly and consciously entertain.

12. The Appellate Court however must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him

under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforce, reaffirmed and strengthened by the trial Court. If two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court. In an appeal against an order of acquittal, no interference will be made that the trial Court except in rare and exceptional cases where there has been some manifest illegality in the approach to the case or the appreciation of the evidence or where the conclusion of fact recorded by the trial Judge is wholly unreasonable so as to be liable to be characterized as perverse and there has been a resultant miscarriage of justice.

13. In the light of the above cardinal principles laid down by the Hon'ble Supreme Court of India in a catena of decisions, this Court is of the view that the findings recorded by the trial Court in acquitting the respondent/accused cannot said to be perverse or bristled with illegality. The conclusion reached by the trial Court also cannot said to be unreasonable and therefore, no interference is warranted.

14. In the result, this Criminal Appeal is dismissed, confirming the judgment of acquittal passed by the learned Sessions Judge, Cuddalore Division, Cuddalore dated 28.01.2010 made in S.C.No.25/2009.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

सत्यमेव जयते

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To
1.The Sessions Judge,
(Special Sessions Court constituted
under SC/ST.Act.1989)
Cuddalore Division, Cuddalore.

2. -do- Through The Principal Sessions Judge,
Cuddalore.

3. The District Munsif -Cum-Judicial Magistrate,
Kattumannarkoil.

4. -do- Through The Chief Judicial Magistrate, Cudalore.

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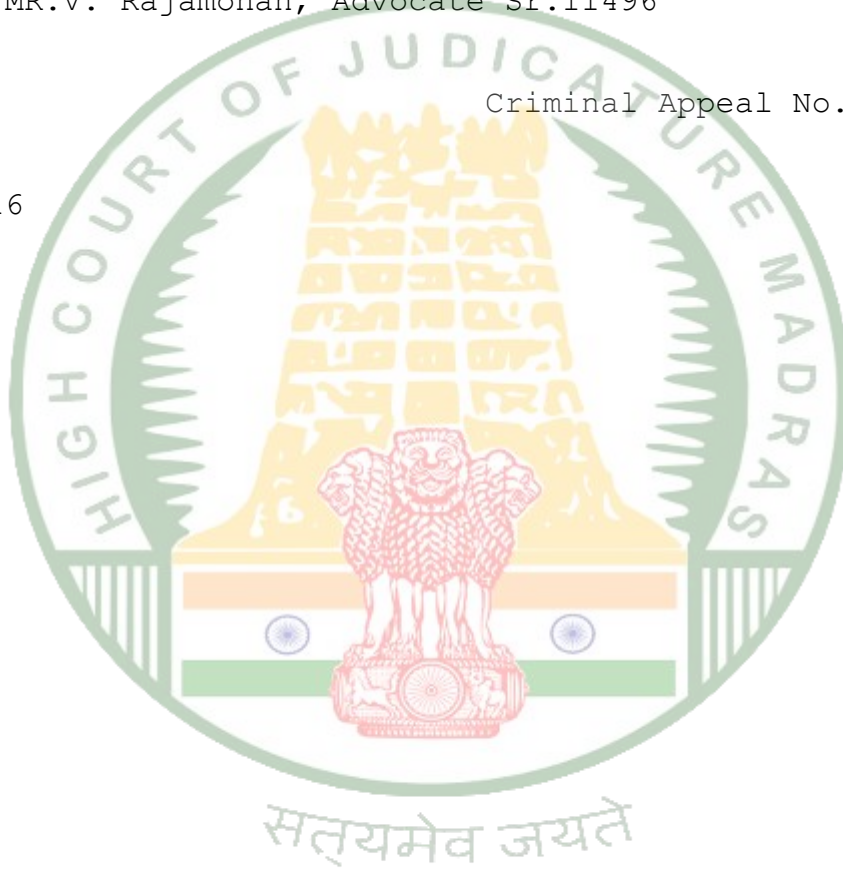
5. The Deputy Superintendent of Police,
Sethiyathope Sub Division, Cuddalore District.

6. The Inspector of Police,
Kattumannarkoil Police Station,
Cuddalore District.
7. The Public Prosecutor,
Madras High Court, Chennai.
8. The Section Officer, Criminal Section,
High Court, Madras-104.

+ 1 cc to MR.V. Rajamohan, Advocate Sr.11496

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