

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.206 of 2016

K.Padma

... Appellant
/ De facto complainant

- Vs -

1. V.Ravi (A1)
2. R.Balan (A2)
3. T.Saravanakumar (A3)
4. B.Harihara Prasad (A4)
5. A.Manivannan (A5)
6. S.Muthuprakash (A6)
7. V.Muthukumar (A7)
8. State rep by Inspector of Police,
Kinathukadavu Police Station,
Coimbatore District.
(Cr.No.67 of 2015)

... Respondents

Prayer:- Appeal filed under Section 372 of the Code of Criminal Procedure against the order of acquittal passed in S.C.No.233 of 2015 on the file of the learned Special Judge for Bomb Blast Cases and Additional District Judge, Coimbatore dated 29.12.2015.

For Appellant : Mr.John Sathyan
for Mr.V.Sivakumar

For Respondents 1 to 7 : Mr.V.Purushothaman

For Respondent 8 : Mr.P.Govindaraj
Additional Public

Prosecutor

J U D G M E N T

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

This is an appeal against acquittal. The respondents 1 to 7 herein are the accused in S.C.No.233 of 2015 on the file of the learned Sessions Judge (Special Court for Bomb Blast Cases) Coimbatore. These accused stood charged as detailed below:

Serial Number of charge	Charge(s) framed against	Charge(s) framed under
1	A1 to A7	120(B) r/w 302 of IPC
2	A1 to A7	147, 148 & 341 of IPC
3	A1 & A2	294B & 302 of IPC
4	A3 & A7	302 r/w 34 of IPC

By judgment dated 29.12.2015, the trial Court acquitted all the accused. P.W.1 is the de facto complainant and the wife of the deceased. Aggrieved over the said judgment, she has come up with this appeal against acquittal.

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

2.1. The deceased in this case was one Mr.Veerakumar. P.W.1 is his wife. They got married 15 years before the occurrence and they got two children born out of the said wedlock. They were residing at Kaliyanpalayam village in Pollachi Taluk. The brother of the deceased one Mr.Sivakumar had married one Latha of Pathinam village. After the birth of a child, Mrs.Latha refused to return to the matrimonial home. This resulted in frequent quarrel between the two families. Mrs.Latha's father is one Mr.Easwaran. Mr.Easwaran's sister's daughter is one Manjula Devi.

2.2. The deceased Mr.Veerakumar was working in a private spinning mill known as K.V.Spining Mills. Miss Manjula Devi was also working in the same mill. The deceased, apart from working in the said mill, was also operating an Omni van, which he owned. He used to carry the workers from their respective houses to the mill and after the working time in the mill was over, he used to carry them back to their respective homes. This, he was doing as a business for his income. In such a way, P.Ws.2 and 3 who were working in the mill as well as Miss Manjula used to travel in the said omni van. In due course, there was a public talk that the deceased had developed illicit intimacy with Miss Manjula.

2.3. The first accused Mr.Ravi is the maternal uncle of Miss Manjula. The other accused are either his relatives or friends. The first accused was aggrieved over the above alleged illicit relationship between Miss Manjula and the deceased. He reprimanded the deceased on several occasions and warned him to stop the said relationship. On few occasions, he came along with the accused 2 to 4 to the house of the deceased and even warned P.W.1 that she should instruct her husband to stop the relationship with Miss Manjula. But the deceased did not take it seriously. This is stated to be the motive for the occurrence.

2.4. On 22.03.2015, for the night shift work in the mill,

the deceased wanted to go. Around 11.00 p.m. he took the Omni van. Since he was unwell, P.W.1 accompanied him in the van. The van went to Nasanakayanpudur village and picked up P.Ws.2 and 3 who also had to go for night shift work in the mill. When the van was proceeding towards the mill, it reached a place known as Mulluthali Karuparayan temple. When the van was slowly driven by the deceased, a motorcycle following the van suddenly overtook and came in front of the van. The motorcycle was driven by A1 and A3 was the pillion rider. Since the motorcycle just stopped in front of the van, the deceased stopped the van. Parking the motorcycle, A1 and A3 came near the van and A1 was armed with an arruval and A3 was armed with an iron rod. At that time, another car came from behind and parking the said car just behind the Omni van driven by the deceased, it is alleged that the accused 2, 4, 5, 6 and 7 came to the place of occurrence. The first accused who was armed with a weapon, shouted at the deceased that he had caused disrespect to his family. The deceased tried to persuade the first accused but the first accused suddenly started attacking the deceased with arruval. A3 attacked him with iron rod. The other accused also cut him with arruval and also attacked him with wooden logs. P.Ws.1 to 3 cried for help. On hearing the alarm raised, P.W.4 and one Dharmaraj rushed to the place of occurrence. Even before they could reach the place of occurrence, all the accused ran away from the place of occurrence with the material objects. But the deceased got down from the car, fainted and within a short while, he breathed his last.

2.5. P.W.4 called 108 ambulance service which rushed to the place and the paramedical staff in the ambulance, after examining the deceased, declared him dead. Thereafter, P.W.1 went to the police station and made a complaint, which was drafted by P.W.5 a close relative of P.W.1. Ex.P1 is the complaint.

2.6. P.W.11 registered a case on the said complaint in crime No.67 of 2015 under Sections 147, 148, 341 and 302 I.P.C. In the complaint, P.W.1 mentioned the names of the accused 1 to 5 as the assailants and two other persons without naming them. Thus, the F.I.R. was registered against seven assailants. Ex.P14 is the F.I.R.

2.7. The case was taken up for investigation by P.W.14. He went to the place of occurrence and prepared an observation mahazar and a rough sketch at 02.00 a.m. on 23.03.2015 in the presence of witnesses. He recovered the bloodstain earth and sample earth from the place of occurrence. He conducted inquest on the body of the deceased and forwarded the same for postmortem. He recovered the Omni van which also was damaged by the accused.

2.8. P.W.7 Dr.Saravanapriya conducted autopsy on the body of the deceased on 23.03.2015 at 02.55 p.m. She found the following injuries:

"Injuries: (1) Transversely oblique cut injuries 12x8cmxbone deep noted over front of right elbow joint, on dissection the wound passes downwards, backwards, cutting the underlying muscle, vessels including brachial artery, nerves, tendons and partially cutting the lateral condyle of humerus.

(2) Transversely oblique cut injury 10x3cmxbone deep noted over back of right lower forearm. The lateral end is 4 cm above to the wrist joint and the medial end is 2 cm above to the wrist joint. The wound passes downwards, inwards cutting the underlying muscle, vessels, nerves, tendons and both bones.

(3) Vertically oblique cut injury 3x1x0.5 cm noted over back of right mid forearm.

(4) Transversely oblique cut injury 8x3cmxbone deep noted over back of right hand. The lower end is at the level of 4th and 5th ring web space and the upper end is 3 cm above and medial to the head of 2nd metacarpal bone. The wound passes downwards, inwards, cutting the muscle, vessels, nerves, tendons, cutting the head of 4th metacarpal bone.

(5) Superficial cut injury 7x2cmxsubcutaneous deep noted over outer aspect of right mid arm. The medial end is 5 cm below and lateral to the shoulder joint.

(6) Multiple reddish abrasions of varying sizes and shapes over an area of 4x3cm noted over back of left elbow.

Other findings: Pleural and peritoneal cavities: empty; Hyoid bone: intact; Larynx and Trachea: cut section pale; Heart: all chambers contains above few cc of fluid blood; Stomach contains about 300 grams of cooked rice particles, no specific smell, mucosa pale; small intestine contains about 10 ml of bile fluid, no specific smell, mucosa pale; Liver, spleen, brain, lung and kidney : cut section pale; Urinary bladder empty; Viscera preserved and sent for chemical analysis; Blood preserved for analysis."

Ex.P4 is the postmortem certificate. She gave opinion that the death of the deceased was due to shock and hemorrhage due to multiple injuries.

2.9. P.W.14 in the course of investigation, recovered

bloodstain clothes from the body of the deceased. Around 06.30 a.m. he arrested all the accused. On such arrest, the first accused made a voluntary confession, out of which an arruval was recovered from the place of hideout. The first accused also produced a bloodstain shirt. The second accused gave a voluntary confession, in which he disclosed the place where he had hidden patta knife and bloodstain shirt. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced the said material objects. The third accused also gave a voluntary confession in which he disclosed the place where he had hidden an iron rod. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced the said material object. He also identified the Maruthi Suzuki 800 car bearing registration No.TN 20 AC 6114.

2.10. On returning to the police station he forwarded the accused to Court and handed over the material objects also to the Court. At his request, the material objects were sent for chemical examination. The report revealed that there were bloodstains on all the material objects. The investigation was continued by his successor (P.W.15), who laid chargesheet against the accused.

2.11. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined, 23 documents and 15 material objects were marked.

2.12. Out of the said witnesses, P.Ws.1 to 3 are the eyewitnesses to the occurrence. P.W.4 has stated that he came to the place of occurrence on hearing the alarm raised by P.Ws.1 to 3. P.W.5 has stated that being a relative of P.W.1 he drafted the complaint as spoken by P.W.1 and then complaint was presented to the police.

2.13. P.W.6 is the brother of the deceased and husband of Mrs.Latha. He has spoken about the previous motive. P.W.7 has spoken about the postmortem conducted and her final opinion regarding the cause of death. P.W.8 has spoken about the arrest of the accused and the consequential recovery of the material objects. P.W.9 has spoken about the preparation of the observation mahazar and the rough sketch. P.W.10 a constable has stated that he entered the confession statements of the accused in the laptop as directed by P.W.14. P.W.11 has spoken about the registration of the case. P.W.12 a scientific expert has stated that he examined the material objects and found bloodstains on the same. P.W.13 a constable has stated that he took the dead body of the deceased from the place of occurrence and handed over the same to the doctor as directed by the

investigating officer. P.Ws.14 and 15 have spoken about the investigation done and the final report filed.

3. 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 file any document nor examined any witness. Their defence was a total denial. Having considered all the above, the trial Court acquitted them from all the charges. P.W.1 / de facto complainant has come up with this appeal.

4. We have heard the learned counsel appearing for the appellant / de facto complainant, the learned counsel appearing for the accused 1 to 7 and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

5. As we have already narrated, in the instant case, P.Ws.1 to 3 have been examined as eyewitnesses to the occurrence. The trial Court has disbelieved them and has acquitted all the accused. The learned counsel for the appellant would submit that the trial Court was not right in disbelieving P.Ws.1 to 3. He has taken us through the evidences of P.Ws.1 to 3. We are not at all persuaded by the submission of the learned counsel for the appellant for more than one reason. First of all, the trial Court has acquitted the accused on the ground that there was no proper identity of the assailants by P.Ws.1 to 3. In this regard, we have gone through the evidence of P.W.1. In the chief examination, P.W.1 has stated that she could identify only the accused 1 to 3 and she could not identify the accused 4 to 7. She has further stated that in the complaint she mentioned the names of all the seven accused. When she was specifically asked to identify the accused, she expressed her inability to identify the accused 4 to 7. This witness was treated as hostile, but not on the ground that she has been treated as hostile, we reject her evidence. The presence of P.W.1 is doubtful as held by the trial Court, because had it been true that she was present, she would not have omitted to mention the names of all the seven accused in Ex.P1 because the accused were already known to her but in Ex.P1 she has mentioned only the names of the accused 1 to 5 and not the names of the accused 6 and 7. Before the Court, this witness had declined to identify the accused 4 to 7 at all and that is the reason why she was treated as hostile. She has stated that in the complaint she had mentioned the names of all the accused on getting those details from P.W.2. P.W.2 has stated that she did not know the names of any of the accused. Admittedly the complaint was drafted by P.W.5 a relative of P.W.1. Therefore, it is inferable that the complaint would have been drafted after due deliberation to implicate as many number of people as possible. The F.I.R. itself is thus, doubtful. In a case of this nature

where there are multiple number of accused, in the event, it is not possible to separate the grain from the chaff, then all the accused would be entitled for acquittal. The trial Court was unable to separate the grain from the chaff and therefore the trial Court has acquitted all the accused. In which we do not find any infirmity.

6. P.W.1, during the cross examination, has admitted that she came to know the names of all the accused only from the details furnished to her on the day when she was examined in Court by P.W.3. P.W.3 has had a different story to say. According to her, except A1, whose name also she came to know on enquiries, she did not know all the other accused. But, in the later part of her deposition, she has stated that the second accused Balan who is the father of Miss Manjula Devi was also one of the assailants. Had it been true that she was the one who had furnished the names of all the seven accused to P.W.1, when the complaint was prepared, nothing would have prevented her from mentioning the names of all the seven accused and identified them in Court when she was examined as a witness. This would again go to create doubt in the the F.I.R.

7. Now, turning to the evidence of P.W.2, she has stated that she knew only A2 and other accused were not at all known to her. There was no test identification parade also held. Considering all these anomalies in the case, the trial Court had acquitted all the accused.

8. Presumption of innocence is in-built in a fair procedure as guranteed under Article 21 of the Constitution of India. The said presumption of innocence gets doubled by the acquittal recorded by the trial Court. Unless the prosecution makes out a very strong case to rebut the said presumption and unless the conclusion arrived by the trial Court acquitting the accused is found to be perverse, it is not possible for the appellant Court to interfere with the said order of acquittal. It is too well settled that even if there are two views which are equally possible from out of the evidence, the view taken by the trial Court acquitting the accused cannot be substituted by the other view by the appellate Court. In the instant case, in our considered view, the view taken by the trial Court cannot be stated to be perverse. We cannot afford to convict the accused when there is no proof to prove the guilt of the accused beyond reasonable doubts. Conviction on surmises and suspicion is not the approved mode in our system. Thus, in our considered view, the judgment of the trial Court does not deserve any interference at the hands of this Court. We hold that there is no merit at all in this appeal.

9. In the result, the appeal fails and the same is accordingly dismissed. The acquittal of the accused is hereby confirmed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kk

To

1. The Special Judge for Bomb Blast Cases
and Additional District Judge, Coimbatore.
2. The Inspector of Police,
Kinathukadavu Police Station,
Coimbatore District.
3. The Public Prosecutor,
Madras High Court.

+1 cc to Mr.V.Sivakumar Advocate sr 72937

+1 cc to M/s.V.Purushothaman Advocate sr 72793

Crl.A.No.206 of 2016

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