

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Criminal Appeal No.465 of 2016

G.S.Navaneetha Krishnan

... Appellant

vs.

1.The State, by Inspector of Police,
Kundadam Police Station,
Tharapuram(TK),
Tirupur Dt.

2.A.Arumugam

3.P.Ravi@Venkitachalam

4.P.Selvakumar

... Respondents

Criminal Appeal filed under Section 372 of Cr.P.C., to call for the records pertaining to the case in S.C.No.17 of 2013, on the file of the first Additional District and Sessions Court, Tiruppur and set aside the judgment dated 11.12.2015 and allow the appeal.

For appellant : Mr.A.Thiyagarajan

For Respondent : Mr.E.Raja
Additional Public Prosecutor for R1
Mr.J.Franklin for R3 and R4
No appearance for R2

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM.J.)

The judgment of acquittal passed in Sessions Case No.17 of 2013, dated 11.12.2015, by the I Additional District and Sessions Court, Tiruppur, is being challenged in the present Criminal Appeal.

2. The case of the prosecution is that prior to occurrence, the third accused and deceased, by name, Subbukutty, are having civil dispute in respect of a land bearing Survey No.549, Suriyanallur Village. Since an animosity has been existence between the third accused and deceased, all the

accused have hatched conspiracy, so as to murder the deceased. In pursuance of their conspiracy, on 26.11.2011, at about 10.45 a.m., at the instigation of the third accused, the first accused has come to 'Amman Rice Mill', the second accused with an intention to murder the deceased, has come to the place of occurrence. The first accused has caught hold of the deceased and attacked him by using stones. The accused 1 and 2 have dragged the deceased from drying yard to rice mill furnace and both of them have indiscriminately attacked the deceased by using stones and due to their overt acts, the deceased has passed away. After occurrence, the son of the deceased, by name, Navaneedhakrishnan (P.W.26), as defacto complainant, has given a complaint and the same has been registered in Crime No.614 of 2011. The complaint given by P.W.26 has been marked as Ex.P12.

3. On receipt of Ex.P12, the investigating officer, viz., P.W.28, has taken up investigation, examined connected witnesses and also made arrangements for conducting autopsy on the body of the deceased and accordingly, P.W.25-Dr.Jayasingh has conducted postmortem and he found the following external and internal injuries:

"1. Abrasion 3 x 1 cm noted over front of left hand and 1 x 1 cm, 2 x 1 cm noted over dorsum of left foot.

2.Laceration 4 xs 1 cm x bone with marginal abrasion deep noted over outer aspect of left eyebrow.

3.Laceration 3 x 1 cm x muscle deep with marginal abrasions noted over left under cheek, 1 cm below to left outer canthus.

4.Laceration 2 x 1 cm x muscle deep with marginal abrasion noted over left side neck, 1 cm below to left side ankle mandible.

5.Laceration 4 x 22 cm x muscle deep with marginal abrasion noted over left side lower ear lobe and mastoid region.

6.Right little toe found crushed and abrasion 3 x 2 cm and 3 x 2 cm noted over dorsum of right 3rd and 4th toes.

7.Contusion 6 x 4 cm noted over left cheek.

On dissection of Scalp, Skull and Dura: Sub (n.c) contusion 6 x 4 cm noted on left temporal region and 10x4 cm noted over left occipital region, left temporal (?) muscle found bruised. Crack fracture 4 cm in length noted over left supra orbital bone (n.c) Sub dural and sub arachnoid hemorrhages noted over both cerebral hemisphere, Subdural edge(?) weighting about 10 grams noted over left parietal lobes. Both cerebellums found

contused. Skull base fracture 4 x 3 cm noted over left anterior cranial fossa."

The postmortem certificate has been marked as Ex.P8. After transfer of P.W.28, his successor in office, viz., P.W.29, has continued investigation and after completing the same, laid a final report on the file of the Judicial Magistrate, Tharapuram and the same has been taken on file in P.R.C.No.11 of 2011.

4. The Judicial Magistrate, Tharapuram, after considering the facts that the offences alleged to have been committed by all the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Erode Division and subsequently transferred to Tiruppur Division and the same has been taken on file in Sessions Case No.17 of 2013 and subsequently made over to the trial Court.

5. The trial Court, after hearing arguments of both sides and upon perusing the relevant records, has framed a charge against the first accused under Sections 120-B, 302 read with Section 34 of the Indian Penal Code. Likewise, a separate charge has been framed against the second accused under the said Sections and against the third accused, a separate charge under Sections 120-B, 302 read with Section 109 of the Indian Penal Code have been framed and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 29 have been examined and Exs.P1 to P.16 and M.Os.1 to 4 have been marked.

7. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been let in on the side of the accused.

8. The trial Court, after hearing arguments of both sides and also upon perusing the relevant evidence available on record, has found all the accused not guilty under the charges framed against them and ultimately acquitted them. Against the judgment passed by the trial Court, the present Criminal Appeal has been preferred, at the instance of the defacto complainant, as appellant.

9. The learned counsel appearing for the appellant/defacto complainant has contended to the effect that in the instant case, for the purpose of proving prior conspiracy, P.W.22 has been examined and prior to occurrence, the first accused has contacted the deceased over cell phone and the said fact has been spoken by one Krishnamoorthy (P.W.14) and

further, the defacto complainant, who is none other than the son of the deceased, has seen all the accused together after occurrence. The wife of the deceased has been examined as P.W.1 and she has spoken about the alleged conversation between the first accused and deceased over phone and the trial Court, without appreciating the available evidence on record properly, has erroneously acquitted all the accused and therefore, the judgment passed by the trial Court is liable to be set aside and the accused are liable to be mulcted with punishment, as per the Sections mentioned in the charges.

10. The learned counsel appearing for the accused has argued that the wife of the deceased has been examined as P.W.1 and during the course of cross-examination, she has stated to the effect that the persons, namely, Balasubramaniam, Yuvaraj and Sivakumar have murdered her husband and further on the side of the prosecution, acceptable/trust worthy evidence is not available. Under the said circumstances, the trial Court has rightly acquitted all the accused and therefore, the order of acquittal passed by the trial Court does not require any interference.

11. The specific case of the prosecution is that due to an immovable property, a dispute has been existence between the third accused and deceased Subbukutty. Under the said circumstances, all the accused have hatched a conspiracy so as to murder the deceased and in pursuance of their conspiracy, on 26.11.2011, at the instigation of the third accused, the accused 1 and 2 have indiscriminately attacked the deceased by using stones in the rice mill of the deceased and due to their overt acts, he passed away.

12. The entire argument put forth on the side of the appellant/defacto complainant is that on the side of the prosecution, replete evidence is available with regard to conspiracy among the accused; telephonic conversation between the first accused and deceased and also last seen theory.

13. The genesis of the case of the prosecution has started from the alleged telephonic conversation made between the first accused and deceased. For the purpose of proving the said aspect, one Krishnamoorthy has been examined as P.W.14 and his specific evidence is that he handed over his Cell-phone to one Murugesan, who is none other than the brother-in-law of the first accused and the said Murugesan has handed over the same to the first accused and the first accused has contacted the deceased and asked him to come to his rice mill. Unfortunately, the said Murugesan has not been examined. Further, even though on the side of the prosecution, certain call details have been marked, for the purpose of proving the real conversation between the first accused and deceased, no document has been filed. It

is true that the wife of the deceased has spoken the said aspect to certain extent. But that itself would not be sufficient for coming to a conclusion that the first accused has asked the deceased to come to the place of occurrence. Therefore, the genesis of the case of the prosecution has not at all been established.

14. It is true that the defacto complainant (P.W.26) has given evidence to the effect that after occurrence, he has seen all the accused together. Likewise, P.W.22 has spoken about the alleged conspiracy. Their evidence would not be sufficient for connecting the accused with the crime.

15. It is an admitted fact that the entire case of the prosecution hinges upon circumstantial evidence. It is a settled principle of law that in a case purely rests upon circumstantial evidence, there should not be any missing link. In the instant case, the contention of the prosecution is that all the accused have conspired together and only at the request made by the first accused through cell-phone, the deceased had come to the place of occurrence. As animadverted to earlier, on the side of the prosecution such fact has not been established. Therefore, the genesis of the case of the prosecution has remained unproved.

16. As rightly pointed out on the side of the appellant/defacto complainant, some piece of evidence is available with regard to alleged conspiracy and also last seen theory and that itself would not be sufficient for connecting all the accused with the crime. Further, if really such a conspiracy has become emerged amongst all the accused, definitely some of the accused would have taken some lethal weapons for committing crime, to the place of occurrence. In the instant case, except some stones, no weapons have been seized from the place of occurrence. The specific case of the prosecution is that the first accused and second accused have used stones so as to attack the deceased. Even the said stones have been subjected to chemical examination, but no blood stains are found out. Therefore, for connecting all the accused with the crime, absolutely there is no evidence on the side of the prosecution. Under the said circumstances, on the fragile and rickety evidence given by P.Ws.22 and 26, the Court cannot come to a conclusion that the prosecution has established the guilt of all the accused as mentioned in the charges.

17. The trial Court, after considering the vital infirmities/lack of evidence on the side of the prosecution, has rightly passed its judgment. In the light of the discussion made earlier, this Court has not found any acceptable force in the contention put forth on the side of the appellant/defacto complainant and altogether the present appeal deserves to be dismissed.

In fine, this Criminal Appeal is dismissed. The judgment passed in Sessions Case No.17 of 2013, by the trial Court, is confirmed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To :

- 1.The Inspector of Police,
Kundadam Police Station,
Tharapuram(TK),
Tirupur Dt.
 2. The First Additional District and Sessions Judge,
Tiruppur.
 - 3.do thro'The Principal District and Sessions Judge,
Tiruppur.
 - 4.The judicial magistrate, Dharapuram.
 - 5.do thro' The Chief Judicial magistrate,
Dharapuram.
 - 6.The Public Prosecutor,
High Court, Madras
- +1 cc to Mr.A.Thiyagarajan, advocate, sr.68195.

br(co0
krd 23/12

सत्यमेव जयते

Cr1.A.No.465 of 2016

WEB COPY