

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.436 of 2013

Murugesan

Appellant

Vs

State by
Inspector of Police,
Thalaivasal Police Station,
Cr.No.192/2010,
Salem District.

Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment passed by the learned I Additional District and Sessions Judge, Salem in S.C.No.222 of 2011 dated 25.04.2013.

For Appellant : Mr.R.Karthikeyan

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

JUDGEMENT

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

The first appellant is the first accused in S.C.No.222 of 2011 on the file of the learned I Additional District and Sessions Judge, Salem. The second accused was one Mrs.Vasuki. The trial Court framed as many as four charges. The first charge was against A.1 and A.2 for offence under Section 307 r/w 34 I.P.C; the second charge was against A.1 for offence under Section 302 I.P.C; the third charge was against A.2 for offence under Section 302 r/w 34 I.P.C and the fourth charge was against A.1 for offence under Section 324 I.P.C. By judgment dated 25.04.2013, the trial Court acquitted A.2 from all charges however, convicted A.1 for offence under Sections 302 & 307 I.P.C. The trial Court sentenced A.1 to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo further period of one year simple imprisonment for the offence under Section 302 I.P.C., and to

undergo rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- in default to undergo one year of simple imprisonment for the offence under Section 307 I.P.C. The trial Court acquitted A.1 from the other charges. Challenging the said conviction and sentence, the appellant/A.1 is before this Court with this Criminal Appeal.

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

P.W.1 is a resident of Adidravida Colony, Aargalur Village in Salem District. A.1 is the husband of A.2. They are the neighbours of P.W.1. Eight months prior to the occurrence, the son of P.W.1., had passed urine on the wall of the house of the accused. This resulted in a quarrel between the son of P.W.1 and A.1. In respect of the said occurrence, a complaint was made by the son of P.W.1 against A.1 and A.1 had already made a counter complaint against the son of P.W.1. Son of P.W.1 and A.1 were prosecuted before the learned Judicial Magistrate, Attur, where, they paid fine amount for having caused disturbance to the public piece. There was yet another crime, in which, there was a scuffle between the daughter of the accused and the daughter of one Mr.Balakrishnan. The accused had the feeling that the daughter of P.W.1 had induced the daughter of Mr.Balakrishnan to fight with the daughter of the accused.

3.At 9.30 pm on 16.03.2010, under the above stated impression and driven by the motive, A.2 came to the house of P.W.1 and pulled her daughter by name Ms.Kalaivani to her house. A.1 was just returning to his house with a knife which was used for cutting sugarcane. On seeing Ms.Kalaivani (P.W.3) being pulled by A.2, A.1 rushed towards them and started cutting P.W.3. He stabbed on her chest, head and hand and caused grievous injuries.

4.The son of P.W.1, by name Mr.Rajaji, who heard about the occurrence, rushed to the place of occurrence. On seeing him, A.1 cut him with Aruval on the middle of his head and on his neck. Mr.Rajaji fell down. P.W.1 intervened. A.1 cut her with Aruval on the left index finger. Then P.W.1 and others raised alarm which attracted the neighbours. On seeing them, both the accused fled away from the scene of occurrence.

5.P.W.1 and others arranged for 108 Ambulance and immediately, they took P.Ws.1, 3 and Mr.Rajaji, the deceased to the Government Hospital, Attur. P.W.18 - Dr.Anbuselvi examined P.Ws.1 and 3 at 10.40 pm on 16.03.2010. She found the following injuries on P.W.1:-

"1)Abrasion.. 10cmx1cm on left shoulder

2)Abrasion 1x1cm on left index finger"

P.W.18 found the following injuries on P.W.3:-

"1)Laceration 15x5 cm exposing bones
(stem) ota upper ... horizontally."

Ex.P.12 is the accident register pertaining to P.W.1 and
Ex.P.13 is the accident register pertaining to P.W.3.

6.P.W.17 - Dr.R.Ramamurthy, the Radiologist, gave opinion that the injuries sustained by P.W.3 is grievous in nature. On reaching the hospital, the deceased breathed lastly. The Doctor declared him as dead.

7.On receiving intimation from the hospital, P.W.19, the Inspector of Police rushed to the Attur Government Hospital and recorded the statement of P.W.1 at 11.30 pm. On returning to the Police Station, at 12.30 am, on 17.03.2010, he registered a case in Crime No.192 of 2010 for offence under Sections 302 & 307 I.P.C. Ex.P.16 is the F.I.R. He forwarded both the documents, complaint and Ex.P.16 (F.I.R.,) to the Court through Constable No.649.

8.Taking up the case for investigation, P.W.19 proceeded to the place of occurrence and prepared an observation mahazar and rough sketch, in the presence of witnesses. He also recovered blood stained earth and the sample earth, in the place of occurrence. Then, he held inquest on the body of the deceased and then, forwarded the body for post mortem through Constable No.698. P.W.16 conducted autopsy on the body of the deceased and found the following injuries:-

"External Injuries:-

1.Red curved incised wound extending from the right mastoid bone area and passes upwards over the temporal scalp and rt. parietal scalp to the rt. Mandible in front of the rt ear exposing the underlying bone with the rt. ear attached to the skin flab 20x1x1 cms.

2.Curve linear Red incised wound extending from mid vertex and passes through the forehead to the rt. Eye with the evisceration of the rt. eye ball exposing the bone 20x3x1cms."

9.Ex.P.7 is the post mortem certificate. P.W.16 gave opinion that the death of the deceased was due to shock and hemorrhage due to the cut injuries found on the body of the deceased. He has further opined that the said injuries would

have been caused by a weapon like M.O.1 Koduval.

10. During the course of investigation, on 18.03.2010, P.W.19 arrested both the accused at 4.45 pm at Mummudi Village in the presence of P.W.7 and another witness. On such arrest, A.1 gave a voluntary confession, in which, he disclosed the place where he had hidden the Aruval. In pursuance of the same, he took P.W.19 and another witness to a bush and produced M.O.1 (Aruval). P.W.19 recovered the same under a mahazar, in the presence of the same witnesses.

11. On returning to the police station, P.W.19 forwarded both the accused to the Court for judicial remand. At his request, the recovered material objects were sent for chemical examination. The report revealed that there were blood stains on all the material objects including Aruval (M.O.1). On completing investigation, he laid charge sheet against both the accused.

12. Based on the above materials, the trial Court framed the charges as stated 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 19 witnesses were examined and 21 documents were exhibited, besides 7 Material Objects.

13. Out of the said witnesses, P.Ws.1 and 3 are the injured eye witnesses. They have vividly spoken about the entire occurrence. P.W.2 is the sister of the deceased. She has also spoken about the entire occurrence as an eye witness. P.Ws.4 & 5 who are the neighbours of the deceased, who were examined as eye witnesses, have turned hostile and they have not supported the case of the prosecution in any manner. P.W.6 has spoken about the preparation of observation mahazar and rough sketch at the place of occurrence and the recovery of material objects. P.W.8, yet another neighbour of the deceased, has also turned hostile and he has not supported the case of the prosecution in any manner. P.W.9, the brother of the deceased has spoken about the earlier occurrence which culminated as a motive for the accused to commit the crime. P.W.10 has also spoken about the motive. P.Ws.11 and 12 have turned hostile and they have not supported the case of the prosecution in any manner. P.Ws.13 and 14 have spoken about the fact that they carried the F.I.R., to the higher officials and to the Court. P.W.15 has spoken that he carried the dead body of the deceased to the hospital for post mortem. P.W.16 has spoken about the post mortem conducted and his final opinion regarding the cause of the death. P.W.17 has spoken that the injuries sustained by P.W.3 is grievous in nature. P.W.18 has spoken about the injuries found on P.Ws.1 and 3 and the treatment given by her to them. P.W.19 has spoken about the investigation done by him and the final report filed.

14. 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, no witness was examined however, two documents were exhibited as Exs.D.1 and D.2. Ex.D.1 is the photograph appeared in Kalaikathir newspaper dated 18.03.2010. Ex.D.2 is the photograph appeared in Thinathanthi newspaper dated 18.03.2010. Their defence was a total denial.

15. Having considered all the above, the trial Court found the appellant/A.1 guilty under the said charges and accordingly, sentenced him to undergo imprisonment for life and acquitted A.2 from all charges. Aggrieved over the same, the appellant/A.1 is before this Court with this appeal.

16. When this Criminal Appeal came up for hearing on 15.02.2016, there was no representation on behalf of the appellant/A.1. Therefore, this Court appointed Mr.R.Karthikeyan, a reputed Advocate, to argue the case on behalf of the appellant as a legal aid counsel.

17. Today, when the matter was taken up for hearing, Mr.R.Karthikeyan, learned counsel has submitted that he sent a notice to A.1 to his present address but, he has not given any further instruction. Therefore, he argued the matter based on the records available. We have heard the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

18. The learned counsel for the appellant would submit that there is enormous delay in preferring the complaint, which creates doubt in the case of the prosecution. He would further submit that P.W.1 has admitted that she signed only in a blank paper and therefore, she cannot say anything about the contents of Ex.P.1 complaint. He would further submit that the entire occurrence would not have happened at the place of occurrence as there are contradictory statements. P.W.1 has stated to P.W.18, the Doctor that she was attacked by the accused in her house. Whereas, P.W.3 has stated that she was attacked by the accused near Mariamman Temple. The case of the prosecution is that A.2 pulled P.W.3 out of her house and brought to her house and from where, A.1 stabbed her. According to the learned counsel, there is no consistency regarding the place of occurrence as projected in the prosecution case. He would further submit that P.W.1 told the Doctor, at the earliest point of time, that she was attacked by five known persons. But, P.W.3 has stated that she was attacked by four known persons. This contradiction has not been explained away, the learned counsel submitted.

19. P.W.2 has admitted that the Police arrived at in the scene of occurrence even before the deceased, P.Ws.1 and 3 were taken to the hospital. There was some other earliest

information to the Police and which has been suppressed. Further, the medical evidence does not corroborate the eye witness account. For these reasons, according to the learned counsel, the case of the prosecution needs to be rejected.

20. The learned Additional Public Prosecutor appearing for the State would oppose this Criminal Appeal. According to him, P.Ws.1 and 3 are injured eye witnesses, more particularly, P.W.3 has sustained grievous injuries. According to him, there is no reason to reject the evidences of P.Ws.1 and 3. P.W.2 is none other than the sister of the deceased. Quite naturally, she had been present at the place of occurrence, he submitted. Thus, from the eye witness accounts of P.Ws.1 to 3, according to the learned Additional Public Prosecutor, the prosecution has proved the case beyond reasonable doubt. He would further submit that the medical evidence also duly corroborate the eye witness accounts.

21. We have considered the above submissions.

22. As rightly pointed out by the learned Additional Public Prosecutor, P.Ws.1 and 3 are injured eye witnesses, whose presence, at the place of occurrence, cannot be doubted. The injuries sustained by P.W.3 are grievous in nature. So far as P.W.2 is concerned, she is the sister of the deceased and therefore, her presence in the place of occurrence was also quite natural. All the three witnesses have stated that it was this accused who caused injuries on P.Ws.1 and 3 and on the deceased. Though they have stated that A.2 facilitated A.1 to cause injuries on P.Ws.1 & 3 and on the deceased, the trial Court has rejected the evidences of P.Ws.1 to 3 as against A.2. In our considered view, on that score, the entire evidence of P.Ws.1 to 3 cannot be rejected. The principle "Falsus in uno falsus in omnibus", is not applicable to the Indian Criminal Jurisprudence. It is the settled law of this Country that when the truth and falsehood are mixed up in the evidence of a witness, if the Court is able to separate the truth from the falsehood, there can be no legal impediment to act upon the said truth spoken to by the said witnesses.

23. In this case, the trial Court has rightly culled out the truth from the evidence of P.Ws.1 to 3 to the effect that it was A.1 who caused injuries on P.Ws.1 & 3 and on the deceased. The further allegation that A.2 facilitated A.1 to commit the crime has not been proved and to that extent, the trial Court has rejected the evidence of P.Ws.1 to 3. In our considered view, the trial Court was right in doing so.

24. So far as the discrepancies pointed out by the learned counsel for the appellant/A.1, we do not find any force at all. So far as the evidence of P.W.1, during cross examination, that she cannot say anything about the contents of

Ex.P.1, there is nothing surprising in the same because, P.W.1 is an illiterate witness and then, when she was generally asked as to what are the contents of Ex.P.1, quite naturally, she had answered that she could not say about the contents of Ex.P.1. This cannot be taken as a favourable point for the accused. The other discrepancies such as earliest statement made to the Doctor etc., are concerned, in our considered view, these are all only minor discrepancies. It is the human nature to exaggerate the occurrence. Because there is some exaggeration in the evidence of these witnesses, the said witnesses cannot be stated as liars and the credibility of the said witnesses cannot be doubted. In such view of the matter, the argument based on the discrepancies pointed out by the learned counsel in the evidences of these witnesses is only liable to be rejected. In our considered view, the prosecution has clearly proved that it was this accused who caused the death of the deceased and also caused injuries on P.Ws.1 and 3. The medical evidence also duly corroborates the eye witness account.

25.Having come to the said conclusion, now, we have to examine as to what was the offence that was committed by A.1. A.1 came to the spot with Aruval. He had strong motive against the deceased and his family members. The injuries were caused on the middle of the head and on the neck of the deceased. Thus, the situs of the injuries would clearly explain the intention of A.1 to cause the death of the deceased.

26.Thus, the act of A.1 squarely falls within the first limb of Section 300 I.P.C., in having caused the death of the deceased and so he is liable to be punished under Section 302 I.P.C. So far as the injury caused on P.W.3 as it was done with an intention to cause death of P.W.3., the trial Court was right in convicting him for offence under Section 307 I.P.C. So far as the injury caused on P.W.1 is simple in nature, the trial Court has acquitted A.1 for offence under Section 324 I.P.C. We concur with the said findings.

27.Now, turning to the quantum of punishment, the trial Court has imposed minimum punishment on A.1, which according to us is just and reasonable, requiring no interference at the hands of this Court. In effect, we do not find any merit at all in this appeal.

28.In the result, the Criminal Appeal fails and accordingly, the same is dismissed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

<https://hcservices.ecourts.gov.in/hcservices/> Sub Assistant Registrar

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To

1.The I Additional District and Sessions Judge,
Salem.

2.The Public Prosecutor,
High Court, Madras.

3.The Superintendent, Central Prison, Salem.

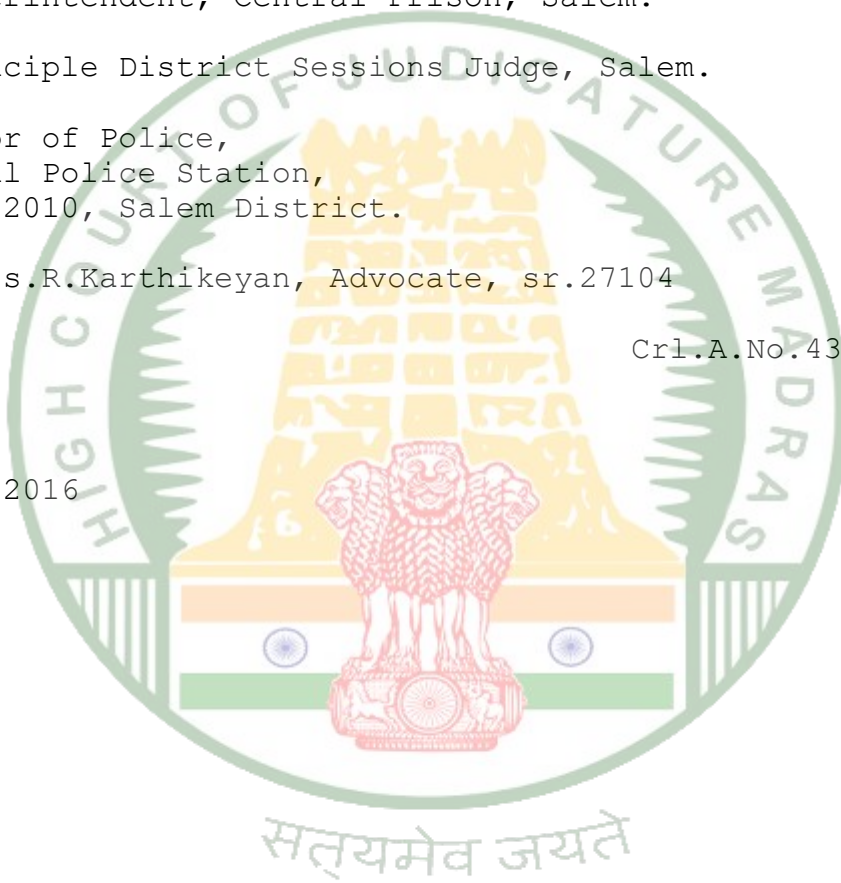
4.The Principle District Sessions Judge, Salem.

5.Inspector of Police,
Thalaivasal Police Station,
Cr.No.192/2010, Salem District.

1 cc to M/s.R.Karthikeyan, Advocate, sr.27104

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