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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A[MD].No.327 of 2014

Rosemarry

: Appellant

Vs.

1.The Inspector of Police,
Thirukokarnam Police Station,
Pudukkottai District.
(Crime No.86 of 2010).

2.Arockiasamy

3.Michael

4.Theresa

: Respondents

PRAYER: Appeal is filed under Section 378 of the Code of Criminal Procedure against the Judgment and conviction dated 23.04.2014, made in S.C.No.140 of 2011 on the file of the Additional District and Sessions Court, Pudukkottai.

For Appellant : Mr.K.Balasundharam

For Respondent No.1 : Mr.C.Mayilvahana Rajendran,
Additional Public Prosecutor

For Respondents 2to4 : Mr.D.Ramesh Kumar

JUDGMENT

[Judgment of the Court was delivered by **S.NAGAMUTHU, J**]

This is an appeal against acquittal. The respondents 2 to 4 were the accused Nos.1 to 3 in S.C.No.140 of 2011 on the file of the learned Additional District and Sessions Judge, Pudukkottai. The first accused stood charged for the offences punishable under Sections 294(b) and 302 of the Indian Penal Code, the second accused stood charged for the offences punishable under Sections 324 and 302 r/w 34 of the Indian Penal Code and the third accused stood charged for the offences punishable under Sections 323 and 302 r/w 34 of the Indian Penal Code. Vide judgment dated 23.04.2014, the Trial Court acquitted all the accused from all charges. Challenging the said acquittal, the wife of the deceased, who is the *defacto* complainant in this case, has come up with this appeal.



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

2.1. The deceased, in this case, was one Mr. Jesuraj. He was a resident of South Street, Rajakulathur in Pudukkottai District. The first accused is the father of the second accused and the third accused is the wife of the second accused. They were all residing in the same Village and they were neighbours. There is a long standing dispute between these two family members in respect of a boundary dispute of the respective lands situated by the side of their houses. It is alleged that the deceased measured the said property and fixed the boundary. As per the said measurement made unilaterally by him, on 12.12.2010, around 01.00 p.m., the deceased was digging a pit to put up a boundary stone on the allotted properties. The first accused noticed the same. He went out of the house, reached the place of occurrence and questioned the deceased as to how he was justified in putting up a boundary stone without properly measuring the property. This resulted in a quarrel.

2.2. It is further alleged that suddenly, the first accused took out a crow-bar lying there and attacked the deceased on his head and back side. The second accused came to the place of occurrence, took out an aruval and cut the deceased on his head once. It is further alleged that the third accused also came to the place of occurrence, took out a wooden log and gave a single blow on the head of the deceased. Thereafter, when P.W.1 questioned, she alleged that the third accused attacked her on the right forehead. Then, all the three accused fled away from the scene of occurrence. The deceased has fainted at the place of occurrence. Thereafter, on hearing the alarm raised, the neighbours rushed to the place of occurrence. They took P.W.1 and the deceased to the Government Hospital at Pudukkottai. P.W.1 was admitted as inpatient. The deceased was given first aid treatment and since his condition was serious, he was advised to be taken to the Thanjavur Medical College Hospital. Accordingly, he was taken to the said Hospital and admitted there as inpatient.

2.3. On receiving intimation from the Government Hospital at Pudukkottai, P.W.13, the then Sub Inspector of Police, Thirukokarnam Police Station went to the Government Hospital, Pudukkottai, recorded the statement of P.W.1 and on returning to the Police Station, she registered a case in Crime No.486 of 2010, under Sections 341, 323, 506(2) and 307 of the Indian Penal Code against all the three accused. Ex.P.1 is the complaint. Ex.P.11 is the First Information Report. She forwarded both the documents to the Court.

2.4. The investigation was taken over by P.W.15, the then Inspector of Police. He went to the place of occurrence, prepared an on-site investigation report, mahazar and a rough sketch at 05.45 p.m., on the same day in the presence of the witnesses. Then, he examined few more witnesses at the said place of occurrence. On 13.12.2010,



around 08.10 a.m., the deceased, who was undergoing treatment in the Thanjavur Medical College Hospital, succumbed to the injuries. On receiving the death intimation, P.W.15 altered the case into one under Section 302 of the Indian Penal Code. Ex.P.16 is the alteration report. Then, between 11.30 a.m., and 01.30 p.m., on 13.12.2010, he conducted inquest on the body of the deceased and forwarded the dead body for post-mortem.

2.5. P.W.12 conducted autopsy on the body of the deceased on 13.12.2010 at 03.00 p.m., He found the following injuries:

"External Injuries:

1. A sutured wound 22 cm right parieto temporal region.
2. Nasal bleeding seen.
3. Laceration 3 x 1 cm x bone depth left parietal region.

Internal Injuries:

1. Sub-scalp contusion over frontal, parietal, occipital-both sides.
2. Multiple fracture over frontal, parietal, temporal left side.
3. Craniotomy on right temporal bone done with 3 burr holes.
4. EDH present over both parietal region.
5. Cerebral Hemorrhage present in both parietal lobes."

2.6. Ex.P.10 is the post-mortem certificate. He opined that the death of the deceased was due to shock and hemorrhage due to the head injury. He further opined that the said injury found on the head of the deceased would have been caused by a crow-bar or by the blunt portion of aruval.

2.7. P.W.15, during the course of investigation, collected the cloths of the deceased found on the body.

2.8. When the investigation was in progress, it is alleged that the first accused appeared before P.W.9, the then Village Administrative Officer on 14.12.2010 at 11.00 a.m., On such appearance, the first accused wanted to give a confession orally. P.W.9 allowed him to confess and he reduced the same into writing. Ex.P.4 is the extra-judicial confession. Then, P.W.9 prepared a special report under Ex.P.5. Along with Exs.P.4 and P.5, P.W.9 took the first accused to P.W.15 and produced him before P.W.15 on 14.12.2010 at 12.30 p.m. On such production, P.W.15 arrested the first accused. While in custody, the first accused gave a voluntary confession, in which, he disclosed the place where he had hidden the aruval and in pursuance of the



same, he took the police and the witnesses to the place of hide out at 02.45 pm. He produced the crow-bar. P.W.15 recovered the same under a mahazar. On 14.12.2010, the second accused surrendered before the learned Judicial Magistrate at Devakkottai. On 20.12.2010, P.W.15 took police custody of the second accused on the orders of the learned Magistrate. While in custody, on 21.12.2010 the second accused gave a voluntary confession, in which, he disclosed the place where he had hidden the weapon. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the aruval and a wooden log. He recovered the same under a mahazar and on returning to the Police Station, he forwarded the accused to the Court and forwarded the material objects also to the Court. On his request, the material objects were sent for chemical examination. The report revealed that there was bloodstain on the dhoti alone. The investigation was, thereafter, continued by P.W.16. He collected the medical records, examined the doctor and on completing the investigation, he laid charge sheet against all the three accused.

2.9. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, on the side of the prosecution, as many as 16 witnesses were examined, 17 documents and 4 material objects were marked. Out of the said 16 witnesses, P.Ws.1 to 3, who are the wife, daughter and a neighbour of the deceased, have spoken about the entire occurrence as eye witnesses. They have stated that the first accused attacked the deceased with crow-bar on the head and back side, the second accused attacked the deceased with aruval on the head and the third accused attacked the deceased as well as P.W.1 with a wooden log. P.W.1 has further spoken about the complaint made by her to the police. P.W.4 has not stated anything incriminating against the accused. He has stated that he came to know about the occurrence later. P.W.5 has spoken about the preparation of observation mahazar and the rough sketch and the recovery of material objects at the place of occurrence. P.W.6 has spoken as though he witnessed the occurrence. P.W.7 also has stated that he witnessed the occurrence. These two witnesses have also stated about the individual overt acts of the accused. P.W.8 has stated that on 12.12.2010, at 02.05 p.m., when he was on duty as Assistant Surgeon, at the Government Hospital, Pudukkottai, P.W.1 was brought to him for treatment. He found no external injuries on her body. Ex.P.3 is the accident register. P.W.9, the Village Administrative Officer, has stated that the first accused appeared before him on 14.12.2010 at 11.00 a.m., and made extra-judicial confession. He has further stated about the confession made by the first accused to the police and the consequential recovery of M.O.2 - crow-bar at his instance. P.W.10 has spoken



about the confession made by the second accused and the consequential recoveries of M.Os.1 and 3 on his confession. P.W.11, a Head Constable, has stated that he handed over the dead body for post-mortem, as directed by P.W.15. P.W.12 has spoken about the post-mortem conducted and given his final opinion regarding the cause of death. P.W.13 has spoken about the registration of the case on the complaint of P.W.1. P.W.14, a Scientific Assistant from the Forensic Lab, has stated that she examined the material objects and found that there was bloodstain only on M.O.4-dhoti. P.Ws.15 and 16 have spoken about the investigation done by them and the filing of final report.

2.10. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied the same as false. However, they did not choose to examine any witness nor to exhibit any document. Their evidence was a total denial. Having considered all the above materials, the Trial Court acquitted all the three accused. Aggrieved over the same, the defacto complainant, namely, the wife of the deceased, is now before this Court with this Criminal Appeal.

3. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the State and the learned counsel appearing for the accused. We have also perused the records carefully.

4. The learned counsel for the appellant would submit that the Trial Court has unwarrantly overlooked the eye witnesses account including the eye witnesses account of the injured witness, namely P.W.1. He would further submit that the medical evidence duly corroborates with the eye witnesses account. He would further point out that there was no delay in making the complaint. But the Trial Court has, on unreasonable grounds, acquitted the accused. Thus, according to the learned counsel, the appeal deserves to be allowed.

5. The learned Additional Public Prosecutor appearing for the State would support the arguments advanced by the learned counsel for the appellant.

6. However, the learned counsel appearing for the accused would vehemently oppose this appeal. According to him, the Trial Court has acquitted the accused for sound reasons, holding that the prosecution had failed to prove the case beyond reasonable doubts. He would further point out that P.W.2 has admitted that the first accused sustained injury in the very same occurrence and he was in the very same Hospital, when the deceased was also taking treatment. He would further state that the Investigating Officer-P.W.15 has admitted that the first accused, in his



confession, has stated about the treatment given to him in the hospital. He would, further, state that the second accused also sustained injury in the same occurrence. But, according to the learned counsel, prosecution has completely suppressed the injuries sustained by the accused Nos.1 and 2 and there was no investigation done regarding the same. The learned counsel would, further, submit that the medical records pertaining to the treatment given to the deceased at the Government Hospital at Pudukkottai as well as at the Thanjavur Medical College Hospital have not been produced. Thus, according to the learned counsel, the suppression of these material records, which would have spoken volumes about the nature of the injury sustained by the deceased, would create enormous doubt in the case of the prosecution. The learned counsel would, further, submit that the medical evidence also does not corroborate the eye witnesses account. For these reasons, according to the learned counsel, the Trial Court was right in acquitting the accused.

7. We have considered the above submissions.

8. At the outset, we should state that in a case of this nature, where the acquittal of the accused is challenged, this Court should bear in mind that the presumption of innocence of the accused gets doubled, if once the Trial Court acquits the accused. The said presumption of innocence needs to be rebutted by means of strong evidence by making out a very strong case by the police. We should also state that the from and out of the evidences available on record, if two views are equally possible, the view taken by the Trial Court cannot be substituted by the view of the Appellate Court. Keeping these broad principles in our mind, let us go into the evidences available in the case.

9. It is the positive case of the accused that the accused Nos.1 and 2 also sustained injuries in the very same occurrence, but the true version is not before the Court. The true version has not been placed before the Court by the prosecution. We have seen considerable force in the said argument of the learned counsel appearing for the accused. P.W.2, during cross-examination, has admitted that the first accused was undergoing treatment at the Government Hospital at Pudukkottai, when the deceased was also undergoing treatment as inpatient in the very same ward. P.W.15, during cross-examination, has admitted that when the first accused was arrested, in his confession, he told that he underwent treatment for the injuries sustained by him in the very same occurrence at the Government Hospital, Pudukkottai. Despite the same, the prosecution has not come forward to offer any explanation regarding the injury sustained by the first accused as by the second accused. There was not even any investigation done by P.W.15 in respect of the injury sustained by the first accused.



10. As rightly pointed out by the learned counsel for the accused, the medical records pertaining to the treatment given to the deceased at the Government Hospital, Pudukkottai as well as at the Thanjavur Medical College Hospital, have been suppressed by the prosecution. Therefore, it is not known as to whether the deceased was conscious, and whether he made any statement to the doctor or to the police, when he was undergoing treatment in the said hospital. Certainly, the injuries should have been mentioned in the accident register maintained at both the Hospitals. It is not explained to the Court as to why these evidences recorded have been suppressed by the prosecution. It is also not known as to whether the deceased was conscious, when he was undergoing treatment at the Government Thanjavur Medical College Hospital and whether he made any statement. But these vital information have been suppressed by the prosecution and it is not explained to the Court. This also creates enormous doubt in the case of the prosecution.

11. So far as the injuries found on the body of the deceased are concerned, it is stated by all the eye witnesses that the second accused cut the deceased with aruval on his head. But the doctor, who conducted autopsy, has stated that there was a single injury on the head, which would have been caused by a blunt weapon. He noticed only a suture of the wound. Originally the nature of the injury, which was found on the body of the deceased, could be seen only in the accident register maintained at the Pudukkottai Government Hospital. In the absence of the same and in the absence of the examination of the doctor, who made a suture of the said wound, it is difficult to know about the nature of the wound. However, the doctor, who conducted autopsy, has stated that the said injury was a blunt injury, which would have been caused by a crow-bar. He has further opined that the injury would have also been caused by the blunt side of aruval. When it is the positive case of the prosecution that the second accused cut the deceased with aruval on his head, the absence of any cut injury on his head makes further doubt in the case of the prosecution. It is not at all the case of the eye witnesses that the second accused attacked the deceased with aruval by using the blunt side of the same. Thus, absolutely, there is no evidence against the second accused.

12. So far as the first accused is concerned, the learned counsel for the appellant would submit that the injury, which is on the head of the deceased, would have been caused by a crow-bar on the attack made by the first accused. But, it is in evidence that the third accused attacked the deceased also on his head <https://hcservices.com/courts/hcservices/>. But, unfortunately, for three independent blows caused by the accused, viz., one blow by each accused, there was only one injury found on the body of the deceased. As we have



already pointed out, the nature of the injury is also not known, because the doctor, who noticed the injury, at the first instance, has not been examined. These aspects have been elaborately dealt with by the Trial Court. Thus, we agree with the conclusion arrived at by the Trial Court that the medical evidence does not corroborate the eye witnesses account.

13. These eye witnesses are none else than, the family members of the deceased or close relatives of the deceased.

14. In view of the foregoing discussion, we have to hold that these witnesses have not come up with true version of the occurrence. They are suppressing an important part of the occurrence. From various circumstances available, it is inferable that when the deceased was digging a pit to put up a boundary stone unilaterally, the accused would have questioned the same, in which, it is inferable that the same would have resulted in a quarrel and in the said quarrel, there were blows between the accused and the deceased, in which, both were sustained injuries. Unfortunately, the deceased died. P.W.1 survived and accused Nos.1 and 2 also survived. But the prosecution has projected as though the accused were the aggressors and the deceased party did not cause any injury at all on the accused. In our considered view, the true version of the occurrence is not placed before the Court by the prosecution. For these reasons, in our considered view, the Trial Court was right in acquitting the accused. Thus, we find no reason to interfere with the acquittal of the accused.

15. In the result, the appeal is dismissed. The acquittal of the accused is, hereby, confirmed.

Sd/
Assistant Registrar(W)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Additional District and Sessions Judge,Pudukkottai.

2.The Inspector of Police,

Thirukokarnam Police Station,Pudukkottai District.

3.The Additional Public Prosecutor,

Madurai Bench of Madras High Court,Madurai.

+1cc to M/S.K.Baalasundharam, Advocate in SR.No.53736

Judgment made in
CRL.A[MD].No.327 of 2014
16.09.2016

SML