



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2016

CORAM:

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

Cr1.A.(MD)No.168 of 2015

Manikandan @ Mani

.. Appellant/
Accused

Vs.

State represented by
The Inspector of Police,
Alangulam Police Station,
(Crime No.610 of 2012),
Tirunelveli District.

.. Respondent/
Complainant

Criminal appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973, against the Judgment dated 09.07.2015 passed in Sessions Case No.86 of 2014 by the Principal District and Sessions Court, Tirunelveli, Tirunelveli District.

For Appellant : Mr.V.Kathirvelu
Senior Counsel for Mr.T.Sekar

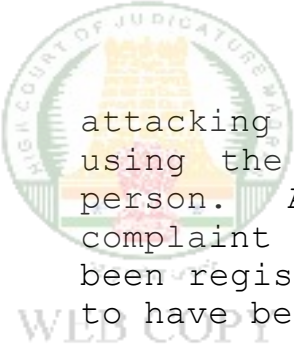
For Respondent : Mr.A.Ramar,
Additional Public Prosecutor.

JUDGMENT

[Judgment of the Court was made by **A.SELVAM, J**]

Challenge in this Criminal Appeal is to the convictions and sentences dated 09.07.2015 passed in Sessions Case No.86 of 2014 by the Principal District and Sessions Court, Tirunelveli.

2.The case of the prosecution is that the deceased Prema is the daughter of the de facto complainant by name Madathy (P.W.1) and injured witness by name Periyasamy (P.W.8). On 17.12.2012 at about 04.00 p.m. with intention to murder the deceased the accused has trespassed into the compound of P.W.8 and attacked the deceased by using an aruvai indiscriminately and due to his injuries he passed away. During the course of occurrence, P.W.8, father of the deceased has tried to deter the accused from



attacking the deceased, but the accused has also attacked him by using the very same weapon and thereby caused injuries on his person. After occurrence, the de facto complainant has given a complaint to the Sub Inspector of Police (P.W.15) and the same has been registered in Crime No.610 of 2012. The complaint alleged to have been given by P.W.1 has been marked as Ex.P.2.

3. On receipt of Ex.P.2, the Investigating Officer viz., P.W.17 has taken up investigation, examined connected witnesses and also made arrangements for conducting autopsy on the body of the deceased and accordingly Dr.Sridharan (P.W.16) has conducted necropsy on the body of the deceased and he found the following external and internal injuries:

"1) Head found separated. It is severed by a heavy cut injury in the neck region it lies 6 cm below chin and 6 cm above supra-sternal notch cut and exactly matches with the stump of trunk in its colour, contour, complexion and anatomical continuity of soft tissues, vessels, nerves and vertebrae.

2) An oblique gapping curve shape heavy cut injury of size 21 x 4 cm x cavity deep, seen in both temporo-parietal region of head. It extends from 8 cm above right ear upto 5 cm above left ear. It cuts underlying soft tissues and underlying bones.

3) An oblique gapping heavy cut injury of size 15 x 4 x 4 cm seen in right shoulder. It cuts underlying soft tissues.

4) Cut injury of size 5 x 2 x 1 cm seen in right side of chest. It cuts underlying soft tissues.

5) Cut injuries of size 2 x 1 x 1 cm & 1 x 1 x 1 cm seen in front of middle of chest.

6) An oblique gapping heavy cut injury of size 6 x 3 x 3 cm seen in outer part of left forearm. It cuts underlying soft tissues & underlying both bone.

OTHER FINDINGS:

Peritoneal cavity & Pleural cavities appear normal.

Heart: appears normal and coronary vessels are patent.

Hyoid bone intact.

Stomach: about 50 ml of mucosal fluid, no specific smell & mucosa pale.

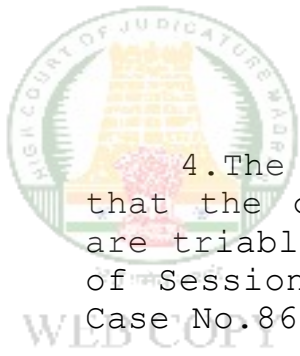
Small intestine: about 50 ml of mucosal fluid, no specific smell & mucosa pale.

Lungs, Liver, Spleen & Kidneys: appear normal, c/s pale.

Brain: described Bladder : empty Uterus: normal, c/s. Pale.

Viscera preserved for chemical analysis".

The Postmortem Certificate has been marked as Ex.P.11. The further investigation has been done by successor of P.W.17 and ~~advice for completion of~~ investigation, has laid a final report on the file of the Judicial Magistrate Court, Tenkasi and taken on file in P.R.C.No.75 of 2013.



4.The Judicial Magistrate, Tenkasi after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Tirunelveli Division and taken on file in Sessions Case No.86 of 2014.

5.The Trial Court after hearing arguments of both sides and upon perusing the relevant records, has framed first charge against the accused under Section 449 of the Indian Penal Code, second charge against him under Section 302 of the Indian Penal Code and third charge against him under Section 307 of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

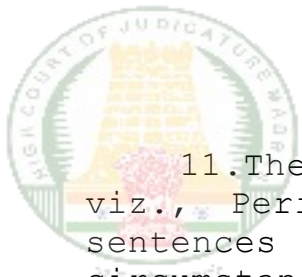
6.On the side of the prosecution, P.W.1 to P.W.18 have been examined and Ex.P.1 to P.20 and M.O.1 to M.O.10 have been marked.

7.When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. However no oral and documentary evidence have been adduced on the side of the accused.

8.The Trial Court after hearing arguments of both sides and after perpending the available evidence on record, has found the accused guilty under Sections 447 of the Indian Penal Code and sentenced him to undergo three months rigorous imprisonment and also imposed a fine of Rs.500/- with usual default clause. He has also been found guilty under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and also imposed a fine of Rs.20,000/- with usual default clause. Further he has been found guilty under Section 307 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of seven years and also imposed a fine of Rs.5,000/- with usual default clause. Against the convictions and sentences passed by the Trial Court, the present Criminal Appeal has been preferred at the instance of the accused as appellant.

9.The consistent case of the prosecution is that on 17.12.2012 at about 04.00 p.m. with intention to murder the deceased Prema, the accused has entered into the compound of P.W.8, Periyasamy, which situates in Pillaiyar Kovil Street and indiscriminately attacked the deceased by using an aruval and due to his overtacts she passed away and during the course of occurrence the accused has also attacked P.W.8 viz., Periyasamy and thereby attempted to murder him.

<https://hcservices.courts.gov.in/hcservices/> 10.Even though on the side of the prosecution as many as 18 witnesses have been examined, the mother of the deceased and her sister and other related witnesses have become hostile.



11.The Trial Court has believed the evidence given by P.W.8 viz., Periyasamy, injured witness and invited convictions and sentences against the appellant/accused. Under the said circumstances the Court has to meticulously analyse as to whether the prosecution has established the guilt of the accused punishable under Sections 447, 302 and 307 of the Indian Penal Code?

12.The learned senior counsel appearing for the appellant/accused has raised the following points:

(i)The mother of the deceased and her sister have been examined as P.W.1 and P.W.2 and both of them have not stated in their initial evidence to the effect that at the time of occurrence P.W.8 has been present in the place of occurrence.

(ii)Ex.P.3 is nothing, but a copy of Accident Register, wherein it is stated to the effect that the occurrence has takenplace in Pillaiyar Kovil Street, but the prosecution has completely changed the place of occurrence.

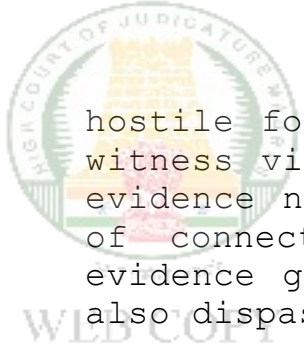
(iii)The Investigating Officer has examined P.W.8 after four days from the date of occurrence.

(iv)The First Information Report has reached the Court after seven hours from the time of its registration.

(v)P.W.8 has already involved in several criminal cases and in fact P.W.8 has not sustained injuries during the course of occurrence.

13.In order to rebut the contentions putforth on the side of the appellant/accused, the learned Additional Public Prosecutor has also contended that in the instant case an injured witness viz., Periyasamy has been examined as P.W.8 and he has given picturesque evidence with regard to occurrence and also as to how he sustained injuries and apart from his evidence on the side of the prosecution other documentary evidence is available for the purpose of connecting the accused with the crime and the Trial Court after considering the replete evidence available on record has rightly found the appellant/accused guilty under Sections 447, 302 and 307 of the Indian Penal Code and therefore the convictions and sentences passed by the Trial Court do not require any interference.

14.As adverted to earlier, the specific case of the prosecution is that the entire occurrence has takenplace inside the compound of P.W.8 viz., Periyasamy which situates in Pillaiyar Kovil Street. The further case of the prosecution is that during the course of occurrence the accused has indiscriminately attacked the deceased by using an aruval and thereby caused fatal injuries to him. Further he has also attacked P.W.8 with intention to murder him and thereby caused injuries on his person. It is true that most of the vital witnesses in the instant case have become



hostile for the reasons best known to them. However the injured witness viz., Periyasamy has been examined as P.W.8. Except his evidence no other piece of evidence is available for the purpose of connecting the accused with the crime and therefore the evidence given by P.W.8 has to be scrutinized very carefully and also dispassionately.

15. In fact this Court has closely perused the entire evidence given by P.W.8 and his specific evidence is that during the course of occurrence the accused has attacked his daughter viz., Prema and decollated her head and thrown the same in a thicket and he also attacked on his person.

16. Since P.W.8 is an injured eye witnesses, much credence can be given and further the evidence given by him is nothing, but trustworthy.

17. It is true that in Ex.P.3, it is mentioned that the occurrence has taken place in Pillaiyar Kovil Street. It is an admitted fact that the house of P.W.8 is situate in Pillaiyar Kovil Street. Under the said circumstances in Ex.P.3, the said street has been mentioned and the same would not affect nor militate the case of the prosecution. Further the evidence given by P.W.8 has been clearly corroborated by P.W.9, Dr.Nalini.

18. Considering the fact that P.W.8 has given a picturesque evidence with regard to occurrence and his evidence is clearly corroborated by P.W.9, this Court is of the view that P.W.8 is a believable witness and his evidence can be a sole basis for inviting convictions and sentences against the appellant/accused.

19. At this juncture, an inert attempt has been made on the side of the appellant/accused to the effect that the evidence given by P.W.8 has not been corroborated by any other prosecution witness. It has already been pointed out that the vital witnesses viz., P.W.1 and P.W.2 have become hostile witnesses. Since P.W.1 and P.W.2 have become hostile witnesses and since P.W.8 is an injured witness, his evidence need not be corroborated and his evidence itself would be sufficient for coming to a conclusion that the accused has committed the crime.

20. The first and foremost point urged on the side of the appellant/ accused is that P.W.1 and P.W.2 have not spoken about the presence of P.W.8 at the time of occurrence.

21. As adverted to earlier, P.W.1 and P.W.2 have become hostile for the reasons best known to them. Under the said circumstances, omission on the part of P.W.1 and P.W.2 with regard to presence of P.W.8 is nothing, but an injured eye witness.



22.The second point urged on the side of the appellant/accused has already been dealt with.

23.The third point urged on the side of the appellant/accused is that after four days from the date of occurrence the Investigating Officer has examined P.W.8. It is nothing, but a flimsy mistake on the part of the Investigating Officer in examining P.W.8 and that itself would not affect the evidence given by P.W.8.

24.The fourth point urged on the side of the appellant/accused is that after seven hours, the First Information Report has reached the concerned Magistrate's Court.

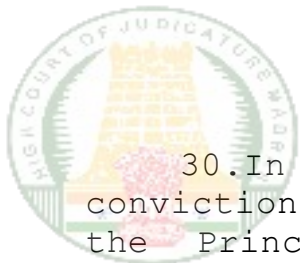
25.It is a well settled principle of law that mere delay in submitting records or sending material objects to the concerned Magistrate's Court itself would not affect the case of the prosecution, provided on the side of the prosecution sufficient evidence is available so as to point out the guilt of the accused.

26.The residual point urged on the side of the appellant/accused is that P.W.8 has already involved in so many criminal cases and therefore the injuries sustained by him are not occurred in the place of occurrence.

27.As stated in many places, the evidence given by P.W.8 can be believed in. considering the fact that the evidence given by P.W.8 can be believed in, the residual point urged on the side of the appellant/accused cannot be accepted.

28.It has already been pointed out that P.W.8 has given clinching and cogent evidence with regard to occurrence and details of attack on the persons of the deceased as well as on his person. Further on the side of the prosecution on the basis of confession alleged to have been given by the accused, M.O.1 and M.O.2 have been recovered and the same have been subjected to Serological Examination and ultimately found bloodstains and the same belong to blood group 'A' tallied with the blood group of the deceased. Therefore, on the side of the prosecution acceptable/trustworthy evidence is available for the purpose of coming to a conclusion that the accused has committed offences punishable under Sections 447, 302 and 307 of the Indian Penal Code. Further it is not an exaggeration to say that there is no scope for disbelieving the evidence available on record.

29.The Trial Court after evaluating the available evidence on record has rightly invited convictions and sentences against the appellant/accused and altogether the present Criminal Appeal deserves to be dismissed.



30. In fine, this Criminal Appeal is dismissed and the convictions and sentences passed in Sessions Case No.86 of 2014 by the Principal District and Sessions Court, Tirunelveli are confirmed.

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Sd/-
Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Tenkasi
2. -do-thro The Chief Judicial Magistrate, Tirunelveli
3. The Principal District and Sessions Judge,
Tirunelveli, Tirunelveli District.
4. The Superintendent, Central Prison,
Palayamkottai, Tirunelveli.
5. The Inspector of Police,
Alangulam Police Station,
Tirunelveli District.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.T.Sekar, Advocate SR.No.81326/16

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JUDGMENT MADE IN
Cr1.A(MD)No.168 of 2015
16.12.2016