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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:01.11.2016
CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRL.A[MD].No.244 of 2015

Satyaraj : Appellant

Vs.

The Inspector of Police,
Vayyampatti Police Station,
Trichy District
(Crime No.271 of 2011). : Respondent

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure praying to set aside the Judgment dated 24.03.2014, made in S.C.No.187 of 2012, on the file of the learned III Additional District and Sessions Judge, Tiruchirapalli and allow this criminal Appeal.

For Appellant : Mr.B.Jameel Arasu
For Respondent : Mr.C.Ramesh,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by J.NISHA BANU,J]

The appellant is the sole accused in S.C.No.187 of 2012 on the file of the learned III Additional District and Sessions Judge, Trichy. He stood charged for the offences punishable under Sections 449, 302 and 307 of the Indian Penal Code. After trial, the trial Court, by judgment dated 24.03.2014, convicted the accused under Sections 449, 324 and 302 of the Indian Penal Code and under Section 449 I.P.C. sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for six months; under Section 302 of the Indian Penal Code sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for six months; and under Section 324 of the Indian Penal Code sentenced him to undergo three years rigorous imprisonment and pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for six months; Challenging the said conviction and sentence, the accused is before this Court with this appeal.



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

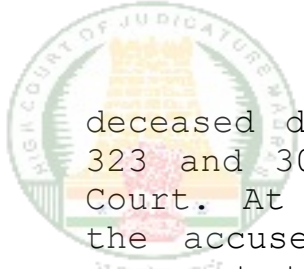
2.1. The deceased in this case was one Ganeshamoorthy. He is the son of P.W.1's brother-in-law. P.W.1, after the death of her husband was residing in the house of the deceased. During the life time of her husband, there was some illegal intimacy between P.W.1 and the appellant/accused.

2.2. After the death of her husband, the appellant/accused was giving trouble to P.W.1, by inviting her to live with him and thinking that the deceased was a hindrance for his illegal intimacy with P.W.1, the appellant/accused decided to eliminate the deceased from this world. With this motive on 28.10.2011, in the wee hours, i.e. at 1.00 a.m, he trespassed into the house of the deceased, sat on his chest and stabbed on his abdomen and chest with a knife and when P.W.1 attempted to prevent the attack, the accused attacked P.W.1 also with a wooden log. When P.W.1 raised alarm, the brothers of the deceased, namely, Natesan and Muthukumar (P.W.2 and 3) came there and on seeing them, the accused ran away from the scene of occurrence. Immediately, they took both the deceased and P.W.1 to the Government Hospital, Manapparai.

2.3. The deceased as well as P.W.1 were initially admitted in the Government Hospital, Manapparai and from there, they were shifted to the Government Hospital, Tiruchirappalli. P.W.7-Doctor, Mahalakshmi gave treatment and found a number of injuries on the deceased. Ex.P.5 is the accident register issued to the deceased and Ex.P.6 is the accident register issued to P.W.1.

2.4. Thereafter, P.W.11, the then Sub-Inspector of Police Station, Vaiyampatti Police Station, on receipt of intimation from the Government Hospital, rushed to Trichy Government Hospital, on 28.10.2011 at about 10.30 a.m. Since the deceased was not in speaking condition, he enquired P.W.1 and recorded her statement. On returning to the police station, he registered a case in Crime No.271 of 2011 under Sections 448, 323 and 307 IPC and prepared Ex.P.14, the First Information Report and thereafter, he sent both the compliant and the First Information Report to the jurisdictional Magistrate Court and copies thereof to the higher police officials.

2.5. P.W.12, the then Inspector of Police, Vaiyampatti Police Station, on receipt of First Information Report, at about 1.30 p.m at 28.10.2011, visited the house of the deceased and prepared an observation mahazar (Ex.P.7) in the presence of P.W.8 and he also prepared a rough sketch (Ex.P.15). He examined the ~~complaint and the First Information Report~~ and recorded their statements. Thereafter, he visited the Trichy Government Hospital and enquired P.W.1 and recorded her statement. At 2.45 p.m, on receiving the intimation that the



deceased died, he altered the case into one under Sections 448, 323 and 302 IPC and sent the alteration report Ex.P.14, to the Court. At 4.30 p.m, near Avarampatti Bus stand, P.W.12 arrested the accused, who voluntarily gave a confessional statement and pursuant to which, he took the police and the witnesses to the place of hide out and produced the knife-M.O.1. P.W.12 recovered the same, under a cover of (Ex.P.4). Thereafter, P.W.12 sent the accused to the Court for remand.

2.6. From the place of occurrence, P.W.12 recovered M.O.2-shirt, M.O.3-Dhoti, M.O.4-bloodstained earth and M.O.5-sample earth, under Ex.P.8 Mahazar in the presence of P.W.8. P.W.12 proceeded to the Government Hospital, Trichy and conducted an inquest on the body of the deceased and prepared an inquest report, under Ex.P.17. He sent the body for post-mortem, through P.W.9 Constable.

2.7. P.W.10, Doctor, conducted autopsy on the body of the deceased and found the following injuries:-

"1.A Vertical sutured wound, 3 cm x 0.5 cm x bone deep on the outer angle of right eye.

2. Multiple incised wounds of varying dimensions on the right side of forehead, left side of forehead, front of right side of chest, back of right elbow.

3. An incised wound, 2cm x 0.5 cm x muscle deep on the outer angle of right eye.

4. Dark brown colour abrasions: On the left temple, 1 cm x 1 cm inner aspect of upper third of right leg, 6 cm x 0.5 cm.

5. A sutured wound, 1 cm in length on the side aspect of left side of the chest. On removal of the sutures, edges are regular, 0.5 cm breadth and cavity deep - Inter costal drainage wound - surgical treatment.

6. A vertical sutured wound, 5 cm in length on the front of left side of abdomen. On removal of the sutures, edges are regular, 2 cm in breadth and cavity deep.

7. A sutured wound, 4 cm in length of the front of left side of the chest. On removal of the sutures, edges are regular, 2 cm in breadth and cavity deep. Cut fracture of 7th rib at the attachment of xiphisternum. A stab wound on the lower lobe of left lung, 3 cm x 2 cm x 1 cm. O/E. Left lung collapsed. Fluid blood present in the pleural cavity.

8. A vertical sutured wound on the front of centre of abdomen, 27 cm in length 3 cm from the xiphisternum above, 11 cm from the pubic symphysis below. On removal of the suture, edges are regular, 6 cm breadth and cavity deep. A sutured wound on the omentum present.

9. Omentum and mesentery - Dark red. Fluid blood present in the peritoneal cavity. Spleen and left kidney are missing. A sutured wound on the splenic flexure of



large intestine present.

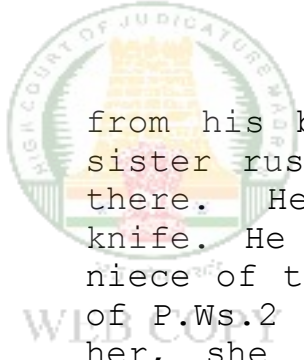
9.Colostomy wound on the front of left side of abdomen - Surgical treatment.

10.Bruising of right frontal, right side of occipital regions of the scalp - Dark red, Sub dural haemorrhage and sub arachnoid haemorrhage on the right occipital lobe of cerebral hemisphere. Fracture base of skull - right anterior cranial fossa present.

Ex.P.10, is the post-mortem Certificate issued by P.W.10. She also opined that the deceased would have died on account of multiple injuries sustained by him. P.W.12 examined some more witnesses and recorded their statements. He examined P.W.10, the doctor who conducted post-mortem and recorded her statement. He sent the material objects to the Court and after completion of the investigation, he laid charge sheet against the accused under Sections 449, 307 and 302 IPC.

2.8. Based on the above-materials, the trial Court framed charges against the appellant/accused as detailed in the first paragraph of this judgment. When the accused was questioned in respect of the charges, he denied the same and pleaded innocence. In order to prove the charges, on the side of the prosecution, as many as 12 witnesses were examined, 21 documents and 5 material objects were marked. However, he did not choose to examine any witness nor to exhibit any document.

2.9. Out of the witnesses, P.W.1 was examined as an injured witness. She has stated that after the death of her husband, she was residing in the house of the deceased with her children. She has further stated that she had illegal intimacy with the appellant/accused and there was a panchayat in this regard. Even then, the accused was giving trouble to her. Two days prior to the occurrence, the appellant/accused made a call to P.W.1 and stated that he would do away with the person, who was giving protection to her. While so, on 28.10.2011, when she went to the house of the deceased, she heard a noise and when she went there, she saw the appellant/accused stabbing the deceased and when she attempted to prevent the same, the appellant/accused attacked P.W.1 with wooden log and when she raised alarm, P.W.3 and his brother came there and on seeing them, the appellant/accused fled away from the scene of occurrence and immediately, P.W.1 and the deceased were taken to the Government hospital, Manaparai. P.W.2 is the brother of the deceased and he has stated that upon hearing the alarm, he rushed to the brother's house. Some other neighbours also came there. At that time, he saw the accused stabbing the deceased and thereafter, the appellant/accused fled the scene of occurrence. He made service request for 108 ambulance for taking treatment for P.W.1 and the deceased. P.W.3 is the another brother of the deceased. He has stated that on 28.10.2011, at 12.45 a.m, he heard some noise



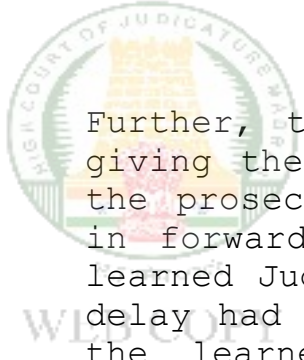
from his brother. Immediately, he, along with his brother and sister rushed there and he saw the presence of P.W.2 and others there. He also witnesses the accused stabbing the deceased with knife. He also accompanied P.W.2 to the hospital. P.W.4 is the niece of the deceased. Her evidence is in the same lines as that of P.Ws.2 and 3. P.W.5 is the wife of the deceased. According to her, she was in her mother's house. At about 3.00 a.m, she received a phone call from P.W.2 about the death of her husband and rushed to the hospital and saw the deceased with injuries. P.W.6 is a witness to the arrest of the accused and recovery of M.O.1-Knife. P.W.7 is the Doctor, who gave treatment to both the deceased and P.W.1 in the Government Hospital, Trichy and issued Ex.P.5 and 6, accident registers. P.W.8 is the Observation Mahazar and Rough Sketch and Recovery of M.Os.2 to 5. P.W.9 is the Head Constable who took the body for post-mortem. P.W.10 is the Doctor, who conducted the post-mortem on the body of the deceased and spoken about the post-mortem done by her and issued Post-mortem Certificate, in which, she opined that the deceased would have died on account of multiple injuries sustained by him. P.W.11 is the Sub-Inspector of Police, who has spoken about the registration of the case and recorded statements of P.W.1 and accident register in this case. P.W.12 is the Investigating Officer who has spoken about the investigation conducted by him and filing of charge sheet.

3. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. However, he did not choose to examine any witness nor to exhibit any document. His evidence was a total denial.

4. Considering the above, the trial Court found the appellant/accused guilty under Sections 449, 324 and 302 IPC and sentenced him as detailed in the first paragraph of this judgment. That is how the appellant is before this Court with this criminal appeal.

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

6. Learned Counsel appearing for the appellant would point out that the prosecution mainly relies on the eye witness account of P.Ws.1 to 4 to prove the guilt of the accused. According to the learned Counsel appearing for the accused, the eye-witnesses as claimed by the prosecution would not have seen the occurrence at all. Further, they are very closely related to the deceased and they are interested witnesses. Therefore, on the basis of their evidences, the trial Judge should not have convicted the appellant/accused. In other words, he would submit that the evidences of P.Ws.1 to 4 should be, in toto, rejected.

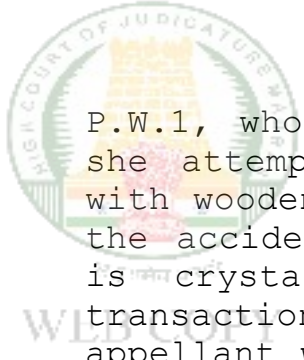


Further, there is an inordinate delay of more than 10 hours in giving the complaint and no proper explanation has been given by the prosecution and similarly, there is also an inordinate delay in forwarding the First Information Report to the Court of the learned Judicial magistrate concerned, in which, two and half hour delay had occurred. That apart, it is the further submission of the learned Counsel for the appellant that at the time of occurrence both P.W.1 and the deceased sustained injuries, but, the accident register of Manaparai Government Hospital was not marked by the prosecution for the reasons best known to the prosecution. Hence, there is a serious flaw in the prosecution, which creates doubts in the prosecution case, he contended. Lastly, he would submit that no independent witness has been examined in this case, which also creates doubt in the case of the prosecution. Hence, he prays for setting aside the judgment of the Court below.

7. The learned Additional Public Prosecutor would vehemently opposes this appeal. According to him, the presence of P.Ws.1 to 4 at the place of occurrence cannot be doubted, as they are all residing near the deceased's house. So far as the delay in sending the First Information Report is concerned, it has been properly explained by the prosecution. He would further submit that non-examination of independent witnesses, would not create any dent in the case of the prosecution. He would further submit that P.Ws.1 to 4 have got no grudge against the accused to falsely implicate him. Thus, according to the learned Additional Public Prosecutor, the evidences of P.Ws.1 to 4, which draws adequate corroboration from the medical evidences, clearly would prove the guilt of the accused. Hence, he prays for dismissal of this Criminal Appeal.

8. We have considered the above submissions.

9. It is true that the prosecution mainly relies upon the evidences of P.Ws.1 to 4 who claimed to have witnessed the occurrence. However, it is the contention of the learned Counsel for the appellant that those witnesses would not have presence in the scene of occurrence and further, they are closely related to the deceased and they are interested witnesses too and therefore, he submits that on such account, their evidences should be discarded. The said contention cannot be accepted, for the simple reason that merely, those witnesses are closely related to the deceased, their evidences cannot be brushed aside on that score. If their evidence inspires the confidence of this Court, this Court can rely upon such evidence. In the case on hand, P.Ws.1 to 4 have categorically narrated the incident in one voice stating that upon hearing the alarm, they rushed to the spot and found the appellant/accused was stabbing the deceased indiscriminately and they have seen the appellant/accused fleeing away from the scene of occurrence. Further, it is the evidence of



P.W.1, who was inside the house, at the time of occurrence, when she attempted to prevent the occurrence, she was also attacked with wooden log, in which, she sustained injuries also, for which, the accident register (Ex.P.6) was given by the Doctor. Thus, it is crystal clear that P.W.1 sustained injury in the same transaction. In this regard, learned Counsel appearing for the appellant would contend that, if it is true, the accident register pertaining to P.W.1 from Manapparai Government Hospital should have been marked by the prosecution. However, this Court is of the view that non-marking of such accident register would not derail the prosecution in any way, when the evidences of P.Ws.1 to 4 are clinching and trust-worthy. The trial Court also found that it is an omission by the investigating officer in not marking the document during the course of trial and the same does not affect the case of the prosecution in any manner.

9.1. The further contention of the learned Counsel for the appellant is that no independent witness was examined on the side of the prosecution. It is true that no independent witness was examined. As already pointed out, the evidences of P.Ws.1 to 4, which also draw corroboration from the medical evidence, would be suffice and non-examination of the independent witness is not fatal. Hence, the said contention is also rejected by this Court.

9.2. Coming to the point of delay in giving complaint is concerned, after the occurrence initially the eye witnesses had rushed the injured to Government Hospital, Manaparai, from there, they took them to the Government Hospital, Tiruchi and therefore, the delay had occurred. Apart from that, as regards the delay in forwarding the First Information Report is concerned, in our considered view, there is no delay at all. Even according to P.W.11, complainant was given at 12.30 p.m and case was registered at 12.50 p.m. and the same reached the Court 3.00 p.m. Between the place of occurrence and the Police Station, the distances is said to be 15 kms. In such circumstances, it cannot be stated there is an inordinate delay. Therefore, the said contention is also rejected.

10. Thus, from the evidence of P.Ws.1 to 4 corroborated by the medical evidence, it stands proved that this accused, on the fateful day, trespassed into the house of the deceased and attacked him with knife and caused his death and in that process, attacked P.W.1 also. The said occurrence has been amply proved by the prosecution beyond all reasonable doubt.

11. In view of the above, we are of the view that there is no reason to interfere with the well considered judgment in <https://hcservices.courts.mg/hcservices/> appellant and sentencing him under Sections 449, 324 and 302 I.P.C. and this Criminal Appeal is liable to be rejected.



12. Accordingly, this Criminal Appeal is dismissed confirming the judgment of the trial Court in convicting and sentencing the appellant.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

1. III Additional District and Sessions Judge,
Tiruchirapalli.
- 2.The Judicial Magistrate,
Manapparai.
- 3.Do Through The Chief Judicial Magistrat,
Trichy.
- 4.The Inspector of Police,
Vayyampatti Police Station,
Trichy District.
5. The Superintendent, Central Prison, Trichy.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.B.Jameel Arasu,Advocate Sr.No. 64882

Judgment made in
CRL.A[MD].No.244 of 2015
Dated:01.11.2016

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