



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal(MD)No.143 of 2016

Pandiaraja

... Appellant/A.1

Vs.

The Inspector of Police,
Usilampatti Town Police Station,
Usilampatti Circle,
Madurai District.
(Crime No.168/2014)

.. Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C to set aside the Judgment, dated 25.01.2016, made in S.C.No.384 of 2014, on the file of the learned V Additional District and Sessions Judge, Madurai and allow the above criminal appeal.

For Petitioner : Mr.Veerakathiravan
Senior Counsel for
Mr.C.Jeganathan

For Respondent : Mr.C.Ramesh
Assistant Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by M.V.MURALIDARAN, J)

The appellant is the 1st accused in S.C.No:384/14 on the file of the learned V Additional District and Sessions Judge, Madurai. He stood charged for the offence under Sections 294(b), 341, 302 r/w 34 IPC. By Judgment dated 25.01.16, the Trial Court found guilty, convicted him under section 302 IPC and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- and in default, to undergo rigorous imprisonment for 3 months. The 1st accused was found not guilty of other offences under sections 294(b), 341 and acquitted u/s.235(i) Cr.P.C. Challenging the said conviction and sentence, the appellant is

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

The appellant is a resident of Usilampatti Town. The deceased Mayandi is the father of the 1st accused and the father-in-law of the 2nd accused. There is a dispute between the deceased and the accused relating to the residence. Due to this, the accused developed enmity against the deceased with common intention to murder him. While so, on 16.05.2014 at about 2.30 p.m, in front of the house of the deceased Mayandi, the 2nd accused told her husband/1st accused by looking the deceased Mayandi that only if he is killed they can live peacefully in that house. Hearing the same, the 1st accused wrongfully restrained the deceased and stabbed him with knife on the left side of his stomach and then stabbed him on the right upper arm. After the said incident, the father of the 1st accused Mayandi admitted in the Government Hospital, Usilampatti, where he was given first aid by PW-10 Dr.Balamurali, who issued Ex-P6 Accident Register copy and he was referred to Government Rajaji Hospital, Madurai, for further treatment. After the deceased was admitted into Government Hospital, Madurai. PW-15, the Learned Judicial Magistrate V, Madurai recorded dying declaration Ex-P9. Later, on 19.05.2014 he left the Government Hospital, Madurai, without any intimation to the Hospital authority and got admitted at Bala Hospital, Usilampatti and on 21.05.2014 at about 03.00 p.m, he succumbed due to his injuries at Bala Hospital, Usilampatti. The corpus was sent to mortuary and PW-12 Dr.Gangadevi conducted postmortem and issued Ex-P.8, Postmortem Certificate. Thereafter, the respondent police has altered the case originally registered in Cr.No.168/2014 under section 307 I.P.C into 302 r/w 34 of I.P.C.

3. After final report, the Learned District Munsif-cum-Judicial Magistrate No.I, Usilampatti, committed the above said case in P.R.C.No.28 of 2014 to the Principal Sessions Court, Madurai. The Principal District and Sessions Judge, Madurai, took up the above case on file in S.C.No.384 of 2014 and made over the same to the V Additional Sessions Judge, Madurai, on 31.10.2014 for trial and disposal. The Learned V Additional Sessions Judge, Madurai, after full fledged trial, has acquitted the 2nd accused with all the charges and convicted the 1st accused/Appellant herein under Section 302 of I.P.C., and sentenced him to undergo Rigorous Imprisonment for life and to pay a fine of Rs. 10,000/- (Rupees Ten Thousand) and in default in payment of fine to undergo 3 months simple imprisonment under section 302 of I.P.C by Judgment, dated 25.01.2016. The 1st accused is found not guilty of offence punishable under Sections 294(b), 341 r/w 34 of IPC.

4. We have heard the learned Senior Counsel for the appellant and the learned Additional Public Prosecutor and we have also perused the records carefully.

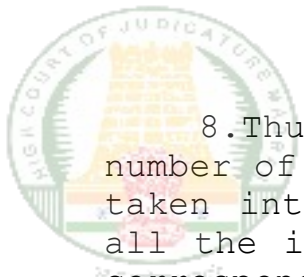




5. This is a case of patricide based on eye witnesses. But the eye witnesses PW1 to PW3 turned hostile. Contradictorily, though the learned trial judge has recorded the fact of the PWs 1 to 3 turned hostile, he has relied on their evidence and recorded conviction upon the 1st accused /appellant herein on the basis of the evidence of PW1, PW2, PW-12 to PW15 and Ex-P6, Ex-P9, Ex-P10 & Ex-P11. Now we have to analyze the evidence available on record to find whether the prosecution has proved the charge against the accused.

6. It is found from the records that the appellant herein is convicted by the court below on having reliance upon the oral evidence of PW1 and PW2 and Exhibits P6, P9, P10 and P11, wherein the witnesses referred above are hostile witnesses and the Ex-P6 is the Accident Register Copy issued by PW-10 at Government Hospital, Usilampatti. Ex-P9 is the dying declaration, Ex-P10 is the Complaint lodged by the Deceased and Ex-P11, is the First Information Report. Firstly, taking into account of the oral evidence adduced by the PW1 and PW2, there is nothing is available in support of the case of the prosecution, since both the PW1 and PW2 deposed that they have no knowledge about the alleged occurrence. So they have been turned as hostile. However, the Court below chosen to convict the 1st accused holding that the witness PW1 and PW2 deposed that the 1st accused and the deceased were living under the same roof and hence, the accused is responsible for the death of his father. As far as the criminal cases are concerned, it is a well settled legal position that the conviction cannot be based on presumption.

7. Now on perusal of the Exhibits relied on by the Trial Court, viz., Exhibits P6, P9, P10 and P11, insofar as Ex-P6, the Accident Register is concerned, there is no say about the pulse rate and other vital information relating to the physical and mental condition of the deceased. Even the doctor, who admitted the deceased into hospital and registered the Accident Register Ex-P6, did not mention the pulse rate and blood pressure. He has admitted that at the time of admitting the deceased into hospital, he did not note down the physical condition of the deceased. It has to be taken into consideration very carefully, as admittedly all the eye witnesses of this case have turned into hostile. Further in the report, it is categorically stated that the total number of injuries sustained by the deceased Mayandi is Two in number, one stab injury over the left side anterior abdomen wall and the other a cut injury over the four arm. Whereas on perusal of the Ex-P8, the postmortem certificate of Mayandi, the total number of injuries is noted as 8, out of which, 5 are independent and 3 are surgical injuries respectively.



8. Thus, there is a vital contradiction in respect of the number of injuries inflicted upon the deceased. Here it is to be, taken into account that the postmortem doctor did not say that all the injuries found in the dead-body of the deceased are not corresponding in nature. However, he has pointed out that the injuries numbers 4, 6 8 are surgical in nature and others are independent injuries. There is absolutely no explanation made by the prosecution for the said discrepancies in Ex-P6 as against the Ex-P8 (Post Mortem Certificate). The Trial Court has failed to consider the evidence of PW-10, PW-12, Ex-P6 86 P8. Though the learned trial Judge has reliance upon the Judgment rendered by the Hon'ble Supreme Court in State of Rajasthan -Vs- Dhool Singh reported in AIR 2004 S.01264 and came to a conclusion that the number of injuries is irrelevant. However, it is relevant to point out here that this is the case of resting upon the medical evidence. So each and every injury is to be explained as to how it was inflicted upon the deceased. Here absolutely no evidence and explanation as to how the injuries other than found in the Accident Register and Surgical in nature were inflicted upon the deceased. So, the failure of the prosecution in this regard would create considerable doubt over the case of the prosecution. In this connection the learned senior counsel has vehemently contended that the above said discrepancies in Ex-P6, 8, 5 are vital factor and the prosecution had failed to establish the said discrepancies beyond reasonable doubt. Therefore this Court is of the view that the Court below is erred in convicting the appellant on having reliance upon Ex-P6, as it is not tallied with the postmortem report Ex-P8.

9. On perusal of Ex-P9, the dying declaration of the deceased Mayandi recorded by PW-15, learned Magistrate on 16.05.2014 at about 05.50 p.m, and Ex-P10 complaint being registered by the complainant police on the same day i.e., 16.05.2014 at about 4 p.m. There exist two contradictory statements made by the deceased Mayandi. In Ex-P10, the reason for the alleged occurrence was stated that the occurrence took place out of the quarrel relating to eviction of the deceased Mayandi from the residential house, whereas the reason stated in Ex-P9 is relating to the quarrel arisen to look after the deceased Mayandi as he is an elderly person. It is apparent that there is two contradictory versions are put forth by the prosecution in respect of motive. Significantly and admittedly the prosecution has not produced any witness to speak about the motive. In fact, the attempt of prosecution in examining the daughter of the deceased PW-7 has not fetched any even remote ground in respect of motive. So the available evidence with regard to motive is the dying declaration of the deceased alone. Under these circumstances, in the absence of independence evidence in respect of motive, the veracity of the dying declaration is to be scrutinized with judicial conscience.



10. Admittedly two versions are given in respect of the cause of death. Further both the versions of the deceased Mayandi remain unproved by the prosecution, such that the doctor witnessed and attested the dying declaration was not examined by the prosecution, provided in a circumstance that the Learned Magistrate has obtained the Thumb impression of the deceased who used to put his signature in the normal course. Further the learned Additional Public Prosecutor failed to answer question that who has brought the deceased to the Government Hospital, Usilampatti. The prosecution has not collected the blood stains of the deceased. In view of the foregoing discussions, we have no hesitation to hold that the prosecution has not proved the charge beyond all reasonable doubts. Consequently the conviction and sentences passed against the appellant herein must go.

11. In the result, the criminal appeal is allowed and conviction and sentence imposed on the appellant are hereby set aside and the appellant is acquitted and he is directed to be set at liberty forthwith unless his presence is required in connection with any other case. Fine amount paid by the appellant shall be refunded to him.

Sd/
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar.

To

- 1 THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE NO.I, USILAMPATTI.
 - 2 THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, MADURAI
 - 3 THE CHIEF JUDICIAL MAGISTRATE, MADURAI.
 - 4 THE DISTRICT COLLECTOR, MADURAI.
 - 5 THE SUPERINTENDENT OF POLICE, MADURAI.
 - 6 THE DIRECTOR GENERAL OF POLICE, CHENNAI-4
 - 7 THE INSPECTOR GENERAL OF PRISONS, CHENNAI-8
 - 8 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
 - 9 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
 10. THE INSPECTOR OF POLICE, USILAMPATTI TOWN POLICE STATION,
USILAMPATTI CIRCLE, MADURAI DISTRICT.
- +1CC to M/S.Veera Associates, SR.No. 74863.

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