



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A[MD].No.166 of 2016

1.Bala @ Balamurugan

2.Jeyakumar

: Appellants/Accused nos.1&2

Vs.

State rep by

The Inspector of Police,

B3 Theppakulam (Law and Order),

Police Station, (Crime No.365 of 2014),

Madurai District.

: Respondent/complainant

PRAYER: Appeal is filed under Section 374 (2) of the Code of Criminal Procedure against the Judgment and conviction dated 31.03.2016 made in S.C.No.274 of 2015, on the file of the learned Fifth Additional District and Sessions Judge, Madurai.

For Appellant

: Mr.V.Kathirvel

Senior Counsel

For Mr.K.Prabhu

For Respondent

: Mr.K.S.Duraipandian

Additional Public Prosecutor

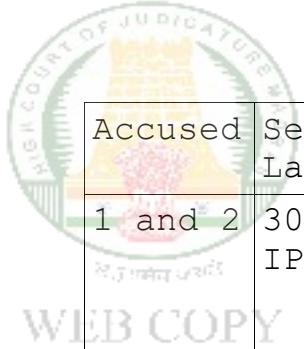
JUDGMENT

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

The appellants are the accused Nos.1 and 2 in S.C.No.274 of 2015, on the file of the learned Fifth Additional District and Sessions Judge, Madurai. The Trial Court framed as many as three charges against the accused, as detailed below.

Charge	Accused	Penal Provisions
1	1 and 2	341 IPC
2	1 and 2	302 r/w 34 IPC
3	1 and 2	506(ii) IPC

2.By Judgment dated 31.03.2016, the Trial Court acquitted both the accused from the charges under Sections 341 and 506(ii) of the Indian Penal Code, however, convicted the accused, as detailed below:-



Accused	Section of Law	Sentence	Fine amount
1 and 2	302 r/w 34 IPC	To undergo imprisonment for life.	Rs.5,000/- in default to undergo simple imprisonment for one month.

Challenging the said conviction and sentence, the appellants have come up with this Criminal Appeal.

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

The deceased, in this case, was one Mr.Manikandan @ Abbas Mani. PW-1 is his brother-in-law. He was residing at Koodal Nagar in Sokkalingapuram in Madurai City. On an earlier occasion, due to some motive, these two accused, along with one Mr.Chellapandi, had attempted to kill the deceased. But, the deceased escaped. Thereafter, on 24.04.2014, around 08.00 PM, PW-1 and the deceased had gone to the Broiler Shop at Melaanuppanadi Main Road. At that time, these two accused and the said Mr.Chellapandi suddenly emerged there. Mr.Chellapandi was having an aruval and these two accused had knives. On surrounding the deceased, all the three attacked the deceased indiscriminately. The deceased fell down and died instantaneously. According to the case of the prosecution, PW-1 to PW-4 witnessed the occurrence. The accused fled away from the scene of occurrence.

3.1. It is alleged that PW-1 went to B-3 Theppakulam Police Station and made a complaint, at 09.00 PM, on 24.04.2014. PW-17, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.365 of 2014, under Sections 341, 302 and 506(ii) of the Indian Penal Code. EX-P1 is the complaint and EX-P10 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

3.2. Taking up the case for investigation, at 09.45 PM, on 24.04.2014, PW-20 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of the witnesses. He recovered bloodstained earth and sample earth from the place of occurrence. Then, he conducted inquest on the body of the deceased. EX-P16 is the inquest report. Then, he forwarded the dead body for postmortem.

3.3. PW-18 - Dr.G.Natarajan conducted autopsy on the body of the deceased. EX-P11 is the postmortem certificate. He noticed the following injuries:-

1. An oblique cut injury measuring 15cm x 2cm x brain deep noted on left mid parieto, right occipital region.



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On dissection: The wound found cutting underlying skull bone measuring 14cm x 0.5cm x through and through and the underlying parieto occipital lobe of brain measuring 12cm x 0.5cm x 1cm.

2. A transversely oblique cut injury measuring 8cm x 2cm x bone deep noted on upper part of left side of neck.

On dissection: The wound found cutting underlying muscles, vessels, nerves and partially cutting the underlying C2 cervical vertebrae with surrounding bruising noted.

3. A transversely oblique cut injury measuring 13cm x 2cm x cervical bone deep noted on middle of right side of neck, 7cm below external occipital protuberance.

On dissection: The wound found cutting underlying muscles, vessels, nerves and partially cutting the underlying body of C4 cervical vertebrae and the underlying spinal cord partially.

4. An oblique cut injury measuring 10cm x 1cm x bone deep noted, on right occipital region.

5. An oblique cut injury measuring 6cm x 1cm x bone deep noted on mid occipital region.

6. An oblique cut injury measuring 6cm x 1cm x bone deep noted on left occipital region.

7. An oblique cut injury measuring 6cm x 1cm x bone deep noted on lower part of occipital region.

8. A transversely oblique cut injury measuring 7cm x 1 cm x muscle deep noted on upper, part of back of neck.

9. A Stab injury measuring 5cm x 1cm x 2cm along the muscle plane noted on the back Of, upper part of right side of neck.

10. Two stab injuries each measuring 2cm x 1cm x muscle deep 5cm apart noted over the back of left side of upper chest.

11. A Cut injury measuring 5cm x 1cm x cartilage deep noted on pinna of right ear.

12. A Cut injury measuring 4cm x 2cm x muscle deep noted on back of left elbow.



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On dissection. of Scalp, Skull and Dura:

Contusion Scalp measuring 15cm x 8cm noted on left parieto and entire occipital region Old craniotomy wound noted on right parietal region. Diffuse subdural hemorrhage 8.: subarachnoid hemorrhage noted over both the cerebral hemispheres. Brain cut section congested".

He gave opinion that the deceased would appear to have died of cumulative effect of multiple injuries. He further opined that the injuries could have been caused by weapons, like aruval and knife.

3.4. PW-20 recovered the bloodstained cloth from the body of the deceased and forwarded the same to the Court with a request to forward the same for chemical examination. During the course of investigation, PW-20 arrested Mr.Chellapandi and the first accused at Madurai Mattuthavani Bus Stand. On such arrest, the first accused gave a voluntary confession, in which he disclosed the place, where he had hidden the knife. Mr.Chellapandi, in his confession, disclosed the place, where he had hidden the aruval. In pursuance of the same, Mr.Chellapandi took the police and the witnesses to the hide out and produced the knife. PW-20 recovered the same under a mahazer.

3.5. On 27.04.2014, PW-20 arrested the second accused. On such arrest, the second accused gave a voluntary confession, in which he disclosed the place, where he had hidden the knife. In pursuance of the same, he took the police and the witnesses to the hide out and produced the knife. PW-20 recovered the same under a mahazer. At his request, the material objects were sent for chemical examination. The report revealed that there were human bloodstains on all the material objects, including the dagger and billhook. But, no bloodstain was found on the knife recovered. On completing the investigation, he laid charge sheet against the accused.

3.6. 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, 20 witnesses were examined, 22 documents and 10 material objects were marked.

3.7. Out of the said 20 witnesses, PW-1 to PW-10 have turned hostile and they have not supported the case of the prosecution in any manner. PW-11, a Head Constable, has stated that he handed over the complaint and the First Information Report to the Court, at 03.30 AM, on 24.04.2014. PW-12 and PW-13 have turned hostile and they have not supported the case of the prosecution in any manner. PW-14 and PW-15, the Head Constables, have stated that they have assisted the Investigating Officer in the matter of



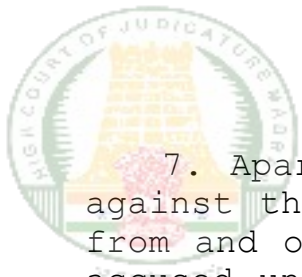
investigation. They have further stated that they handed over the dead body to the hospital for postmortem. PW-16, a Scientific Analyst, has stated that he conducted chemical examination on the material objects. PW-17 has spoken about the registration of the case, on the complaint made by PW-1. PW-18 has spoken about the autopsy conducted by him and his final opinion regarding the cause of death. PW-19 has turned hostile and he has not supported the case of the prosecution in any manner. PW-20 has spoken about the investigation conducted by him and the filing of final report.

3.8. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the evidences of PW-14 to PW-18 and PW-20, they denied the same as false. However, they did not choose to examine any witness nor to exhibit any document. Having considered the evidences of PW-14 to PW-18 and PW-20, the Trial Court convicted the appellants, as detailed in the first paragraph of this Judgment and punished them accordingly. That is how, the appellants are now before this Court with this Criminal Appeal.

4. We have heard the learned Senior Counsel appearing for the appellants, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

5. During trial, Mr. Chellapandi passed away. Hence, the charges as against him stood abated. This is a case of no evidence, because PW-1 to PW-4, who were examined as eye-witnesses, have not stated anything incriminating against the accused. But, the Trial Court has relied on the evidence of PW-20, the Investigating Officer. In his evidence, PW-20 has spoken about the arrest of the accused and the recoveries of MO-1 to MO-8 respectively from the accused. The Trial Court had misdirected itself as though the recoveries of these material objects, on the disclosure statements made by the accused, would make their statements relevant under Section 27 of the Indian Evidence Act, 1872.

6. It is the law that it is not as though discovery of every fact is relevant for the purpose of Section 27 of the Indian Evidence Act, 1872. To make such a statement admissible in evidence under Section 27 of the Indian Evidence Act, 1872, the link between the discovered fact and the crime or the accused should be established by the prosecution. In other words, unless the relevancy between the fact discovered and the crime is established, the statement of the accused cannot be admitted in evidence as provided under Section 27 of the Indian Evidence Act, 1872. Assuming that the evidence of PW-20 could be believed that on the arrest of these accused and on the disclosure statements made by them, MO-1 to MO-8 were recovered, on that score, their disclosure statements would not be admissible in evidence under Section 27 of the Indian Evidence Act, 1872.



7. Apart from the above, there is no other evidence available against the accused. But, unfortunately, the Trial Court has held from and out of the evidence of PW-20 that the charge against the accused under Section 302 r/w Section 34 of the Indian Penal Code stands proved. [Vide Paragraph No.40 of the Judgment of the Trial Court]. This would go to show that the learned Fifth Additional District and Sessions Judge had not applied her mind at all into the factual as well as the legal issues involved in this case, before concluding that the charge against the accused stood proved.

8. Article 21 of the Constitution of India guarantees life and personal liberty to every citizen of this Country as well as non-citizens. Such guaranteed life and personal liberty could be deprived of, only by following the procedure established by law. The said procedure as enshrined in Article 21 of the Constitution of India further directs fair trial to the accused, to the prosecution as well as to the society at large. In our system, unless the guilt of the accused is proved beyond reasonable doubts, his life and personal liberty cannot be deprived of on mere surmise and assumption. The Courts cannot be allowed to be swayed by emotions and sentiments.

9. In the instant case, a perusal of the Judgment of the Trial Court would go to show that the Trial Court had allowed itself to be swayed by the sensation involved in the case and had convicted the accused on mere surmise. Such conviction recorded on the basis of mere surmise is certainly illegal. We only expect the Trial Court to be aware of these constitutional guaranteed fundamental rights, including fair trial to the accused.

10. In the result, this Criminal Appeal is allowed; the conviction and sentence imposed on the appellants/the accused, by Judgment dated 31.03.2016, made in S.C.No.274 of 2015, on the file of the learned Fifth Additional District and Sessions Judge, Madurai, is set aside and the appellants/accused are acquitted. Fine amount, if any, paid by the appellants/accused shall be refunded to them. Bail bond executed by the appellants and the sureties shall stand terminated.

Sd/-
Deputy Registrar(Admn).

/True Copy/

Sub Assistant Registrar



To

1.The Fifth Additional District and Sessions Judge, Madurai.

2.The Inspector of Police,
B3 Theppakulam Law and Order,
Police Station, Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Record Keeper,
Criminal Section, Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr. K.Prabhu, Advocate S.R.No.72577.

JUDGMENT MADE IN
CRL.A[MD].No.166 of 2016
24.11.2016

SM: SKN: SAR1: 7P/6C