



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2016

CORAM:

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

CRIMINAL APPEAL (MD).No. 207 of 2013

G. Angammal : Appellant
Vs.

1.State represented by
Revenue Divisional Officer,
Usilampatti,
Madurai District : Respondent/
Complainant

2.M.P.Mahalingam

3.A.Gunasekaran

4.C.Singalan

5.C.Gunabalan

6.M.Dhanushkodi (died)

7.Ramasamy

8.S.Sankar

9.Ganeshkumar

10.Jeyaraj : Respondents 2 to 10/
Accused 1 to 9

PRAYER: Appeal is filed under Section 372 of the Code of Criminal Procedure against the judgment passed by the Additional District Judge, Fast Track Court No.3, Madurai, in S.C.No.129 of 2007 dated 24.04.2012.

For Appellant : Mr.Gopalakrishna Lakshmana Raju
senior counsel for
Mr.Antony S.Prabahar

For Respondent : Mr.C.Mayil Vahana Rajendran
Additional Public Prosecutor for R1
Mr.N.Anandkumar for R2



Mr.C.Jeganathan for R3
Mr.P.Anbuchejian for R4, R5 & R8
Mr.M.Michael Bharathy for R7
Mr.S.Kanagarajan for R9 & R10

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Judgment

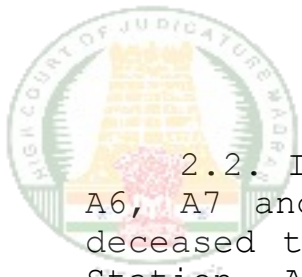
(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The respondents 2 to 10 were the accused in S.C.No.129/2007 on the file of the learned Additional District & Sessions Judge, Fast Track Court NO.III, Madurai. The trial Court framed charges under Sections 342 and 304(ii) IPC against all the accused, in addition, Section 325 IPC against the 1st accused and 325 read with Section 34 IPC(2 counts) against the accused Nos.2 to 8 and lastly under Section 354 IPC against the accused 6 to 9. By judgment dated 24.04.2012, the trial Court acquitted all the accused from all the charges. The appellant is an injured victim. She was P.W.1 in the case. Aggrieved over the acquittal of the respondents 2 to 10, the appellant has come up with this criminal appeal.

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

The respondents 2 to 10 are all police men. (For the sake of convenience, these respondents 2 to 10 shall be referred to as accused 1 to 9 in the order as arrayed before the trial Court). The 1st accused was the Inspector of Police of Elumalai Police Station. The 2nd accused was a Constable attached to Oomachikulam Police Station in Madurai District. The 3rd and 4th accused are the Police Constables attached to Usilampatti Police Station. The 5th accused was a Police Constable attached to Saptur Police Station. The 6th, 7th and 8th accused are the Police Constables attached to Karuppayurani Police Station. A9 was a Police Constable attached to Silaiman Police Station in Madurai District.

2.1. According to the case of the prosecution, on 27.07.1998, early in the morning, around 7.00 a.m., P.W.1/appellant was in her house at T.Krishnapuram. It is alleged that the accused 3 to 5 came to the house of P.W.1 and by force, took P.W.1 to Oomachikulam Police Station. She was detained in the said police station illegally till 6.00 a.m. on 28.07.1998. On 28.07.1998, around 11 a.m., it is alleged that the deceased Guruvaiah (hereinafter referred to as 'the deceased') was also brought to Oomachikulam Police Station by one Constable by name Gnanasekaran and the 2nd accused Mr.Mahalingam. While the deceased was in the illegal custody at the police station, it is alleged that the 2nd accused attacked the deceased on his foot with a stick. The accused 3 and 4 attacked the deceased with sticks on his hands and also on his back.



2.2. It is further alleged that on 28.07.1998, around 12 noon, A6, A7 and A8 came from Karuppayurani Police Station, took the deceased to Karuppayurani Police Station from Oomachikulam Police Station. At Karuppayurani Police Station, it is alleged that the deceased was tortured by spraying chilly powder on his face and eyes.

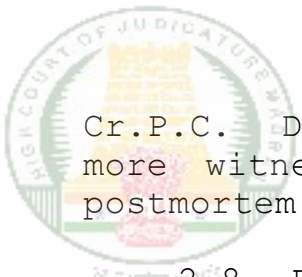
2.3. It is further alleged that on 28.07.1998 around 6.00 pm., A6, A7 and A8 took the deceased to Oomachikulam Police Station again and A6 attacked the deceased with an iron rod and harassed him. A6, A7 and 2 other police constables attacked the deceased on his buttocks. When P.W.1 intervened, they pushed her down. It is further alleged that the police men undressed P.W.1 and by keeping her under threat in nude position, the police men, squeezed her chest and also attacked on her private parts. The 6th accused attacked P.W.1 on her buttocks with stick. The accused No.7 and few more constables including A6, A8 and A9 attacked P.W.1. They made the deceased also nude and attacked him till 1 a.m.

2.4. It is further alleged on 29.07.1998, the deceased was again taken to Oomachikulam Police Station, where the 1st accused again attacked the deceased with a lash (Saattai). He also attacked P.W.1.

2.5. It is further alleged that on 30.07.1998, the 6th accused took the deceased in a police vehicle to M.Kallupatti and attacked him, compelling him to admit that he has sold 10 sovereigns of gold to M.Kallupatti jewelry.

2.6. It is further alleged that on 01.08.1998, around 5.30 p.m., A3 and two other constables, A4 and A5 and another constable came to Oomachikulam Police Station and A6, A7 and another constable and A8 took the deceased for treatment. At that time, when P.W.1 wanted to accompany the deceased to the hospital, they kicked her down. On 02.08.1998, at 9.00 am., the 6th accused returned to Oomachikulam Police Station and told P.W.1 that the deceased was alright in the hospital. It is finally alleged that on 02.08.1998, around 1 p.m., the deceased succumbed to the injuries at the hospital run by one Dr.C.R.Subramanian around 5.30 p.m. Thus, according to the case, the death of the deceased was caused by the indiscriminate attack made by the accused 1 to 9. When the deceased was in their illegal custody, they wrongfully restrained him, they outraged the modesty of P.W.1, caused grievous hurt and also simple hurt. These are the accusation against the accused.

2.7. After the death of the deceased, on a complaint made by P.W.1, a case in Crime No.529/1998 was registered under Section 174 of Cr.P.C. Since the death of the deceased was alleged to be while in police custody, an enquiry was held by the Revenue Divisional Officer, Usilampatti, as provided under Section 174



Cr.P.C. During the course of the same, he examined P.W.1 and few more witnesses, held inquest and forwarded the dead body for postmortem.

2.8. P.W.10 - Dr.Radhakrishnan conducted autopsy on the body of the deceased on 03.08.1998. He found the following injuries:

1.Lacerated injury over left buttock 15 cm x 10 cm x 1 cm contusion of same size present.

2.Lacerated injury over right buttock 15 cm x 10 cm x 1 cm contusion of same size present.

3.Contusion over middle of right upper arm 6 x 4 cm.

4.Contusion over left middle of upper arm 3 x 4 cm.

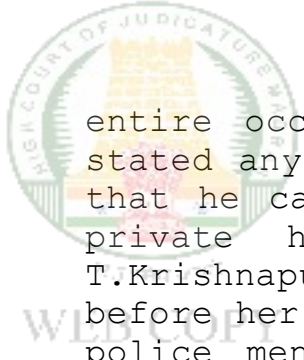
5.Swelling over left scrotum and penis oedematous and perineal region oedematous.

Ex.P17 is the postmortem certificate and Ex.P18 is his final opinion regarding cause of death. According to him, the death of the deceased was due to shock and hemorrhage due to the multiple injuries found on the body of the deceased. He further opined that the injuries 1 and 2 could have been caused by a weapon like stick and the injuries 3 and 4 could have been caused by attack made on the deceased, while he was hanging.

2.9. On completing the enquiry, the Revenue Divisional Officer submitted a report vide proceedings in Na.Ka.No.6004/98 dated 03.08.1998 to the District Collector, Madurai. The District Collector, Madurai, in turn, forwarded the said report to the Government. On considering the same, the Government issued an order directing the Revenue Divisional Officer cum Executive Magistrate to file a private complaint before the jurisdictional Magistrate on the basis of his report. Accordingly, P.W.15 - the then Revenue Divisional Officer filed a private complaint before the Judicial Magistrate and District Munsif at Usilampatti on 27.09.1999. Having considered the private complaint and the material filed along with the same, the learned Judicial Magistrate took cognizance and since some of the offences alleged were exclusively triable by the Court of Sessions, he committed the case to the Court of Sessions for trial. That is how the case was tried by the learned Additional Sessions Judge, Fast Track Court No.3, Madurai. The 6th accused died during the pendency of the trial and thus, the charges against him stood abated.

3. In order to prove the charges against the accused, as detailed in the first paragraph of this judgment, on the side of the prosecution as many as 15 witnesses were examined, 40 documents were exhibited and one material object, namely, photographs of the deceased were marked. On the side of the defence, the chemical examiners report, Madurai, Ex.D1 was marked.

4. Out of the said witnesses, P.W.1, the wife of the deceased and the alleged victim of the occurrence, has spoken about the

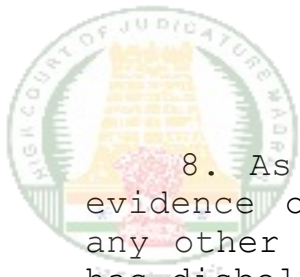


entire occurrence, as we have already narrated. P.W.2 has not stated anything incriminating against the accused. He has stated that he came to know that on 02.08.1998, the deceased died in a private hospital at Usilampatti. P.W.3 is a resident of T.Krishnapuram. She has stated that on one occasion, 13 years before her deposition, she was taken to the police station by some police men. She has further stated that the deceased was also taken by some police men. She has not stated as to who are all the police men, who took her as well as the deceased to the police station. In other words, she has not stated anything against these accused. P.Ws.4, 5, 6 and 7 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.8 - Dr.C.R.Subramanian has stated that the deceased was brought by some police men on 02.08.1998 to his private hospital known as Senthil Hospital, at Usilampatti. He gave treatment to him. However, the deceased died in the hospital. Ex.P15 is the certificate issued by him.

5. P.W.9 has turned hostile and he has not stated anything incriminating against the accused in the chief examination. P.W.10 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.11 was a Doctor at the Government Hospital at Usilampatti. He has stated that he examined P.W.1 on 17.11.2011 and has stated that the medical records pertaining to Guruvaiah, namely, the deceased and P.W.1 maintained at the Government Hospital, Usilampatti were found missing. P.W.12 Dr.Mukundharajan has stated that on 13.08.1998, he treated P.W.1 at the Meenakshi Mission hospital, Madurai. Ex.P.22 is his report. P.W.13 - Dr.Deenadhayaparan has stated that he treated P.W.1 on 12.08.1998 at 3.45 p.m. at the Meenakshi Mission Hospital at Madurai. Ex.P23 is the Accident Register. He took 3 x-rays, from and out of that he found that there was a fracture of ulna bone of the left hand of P.W.1. P.W.14 - the Deputy Superintendent of Central Prison, Madurai, has stated that on 04.09.1998, one Kasimayan (P.W.9) was admitted to prison. There were injuries on him. P.W.15 - the Revenue Divisional Officer has spoken about the enquiry held by him and the private complaint filed on the directions of the Government.

6. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witnesses on their side nor marked any documents. Having considered all the above, the trial Court acquitted the accused. Since the 6th accused died during the pendency of the trial, as we have already pointed out the charges against him stood abated. Aggrieved over the acquittal of the accused, the appellant has come up with this appeal.

7. We have heard the learned senior counsel for the appellant, the learned counsel for the respondents/accused 2 to 10 and the learned Additional Public Prosecutor for the 1st respondent State.



8. As we have already pointed out, in this case, except the evidence of P.W.1, the prosecution does not have the benefit of any other witness to speak about the occurrence. The trial Court has disbelieved the evidence of P.W.1 and acquitted the accused.

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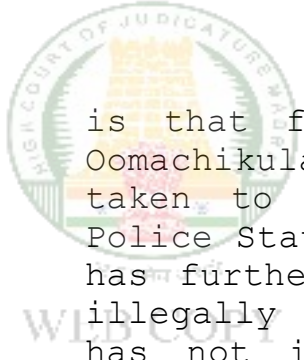
9. The learned senior counsel for the appellant would submit that the evidence of P.W.9 - Mr.Kasimayan should have been given weightage of. P.W.9 - Mr.Kasimayan in the chief examination has stated that he did not know anything about the occurrence at all. He was treated as a hostile by the learned Public Prosecutor and cross examined. During such cross examination, for the leading questions put by the learned Public Prosecutor, he had simply nodded his head. The learned counsel would submit that weightage should be given to such answers elicited from P.W.9 by the learned Public Prosecutor. But we find it very difficult to agree with the said submission made by the learned senior counsel. The witness on his own statement has rendered himself as unbelievable, because in the chief examination, he has categorically stated that he did not know about the occurrence. Simply because, some answers have been elicited by putting leading questions to the said witness, the said evidence cannot be given any weightage of.

10. A perusal of the cross examination would go to show that the said witness has simply nodded his head to all the questions made by the learned Public Prosecutor in a casual manner. Therefore, we are unable to attach any importance to the evidence of P.W.9. The trial Court has rightly rejected the evidence of P.W.9.

11. Thus, the prosecution has to rely only on the evidence of P.W.1. P.W.1 in chief examination has stated that when she was at her house, some police men came and took her to M.Kallupatti Police Station. At the M.Kallupatti Police Station, the deceased, the 5th accused and another constable enquired her as to where the house of her mother-in-law was situated. But it is not at all the case of the prosecution that P.W.1 was taken to M.Kallupatti Police Station. It is a new story introduced by P.W.1 during her evidence. She has next stated that she was again taken to Usilampatti Police Station from M.Kallupatti Police Station. She has not stated as to who took her from M.Kallupatti Police Station to Usilampatti Police Station. It needs to be mentioned that it is not at all the case of the prosecution that P.W.1 was taken to M.Kallupatti Police Station from Usilampatti Police Station. Assuming that she was taken to Usilampatti Police Station, she has not stated as to who took her actually to the Usilampatti Police Station. She has stated in a general term that police men took her to Usilampatti Police Station.

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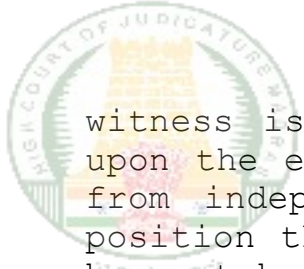
12. She has further stated that from Usilampatti Police Station, she was taken to Oomachikulam Police Station. The charge



is that from her house, she was straight away taken only to Oomachikulam Police Station. But her evidence is that she was taken to M.Kallupatti Police Station and then to Usilampatti Police Station and from where to Oomachikulam Police Station. She has further stated that at Oomachikulam Police Station, she was illegally detained over the whole night by the police men. She has not identified the police men, who actually took her to Oomachikulam Police Station and kept her. She has, in a vague manner, stated that the 4th accused was in the Jeep, which took her to Oomachikulam Police Station. She has further stated that in Oomachikulam Police Station, the accused 3, 4 and 5 attacked her. But, according to the charge, a different story has been projected by the prosecution. It is stated that at Oomachikulam Police Station, A3, A4 and many other police men including A2 attacked her. It is not known, which are the other police stations, where she has been allegedly attacked. Thus, the evidence of P.W.1 is quite contrary to the charges framed.

13. According to P.W.1, the deceased was brought to Usilampatti Police Station, where he was also attacked by the police. She has not clearly stated as to who attacked the deceased. She has only stated that four police men attacked him. It is her further evidence that from Usilampatti Police Station, he was taken to Karuppayurani Police Station by the police men, where the accused, 6, 7 and 8 attacked the deceased as well as P.W.1. But, in her evidence, she has not stated so. She has mentioned only about A5. She has further stated that P.W.9 was also attacked at the police station along with the deceased and P.W.9 has turned hostile. P.W.1 has further stated that some police men outraged her modesty and attacked her. She has not identified any of the accused. She has further stated that from Oomachikulam Police Station, the deceased was taken to Karuppayurani Police Station and thereafter, he was taken to the hospital. Thus, a perusal of the evidence of P.W.1 would go to show that she has not stated anything specifically about any of these accused. In a very vague manner that too with lot of inconsistencies, she has stated that she was attacked by police men. From her evidence, it is inferable that she was illegally detained and her husband was also illegally detained by the police, which, in the absence of any specific evidence, as to who were the police men, who took her, illegally detained and also attacked the deceased, it is difficult to convict the accused. From the evidences available on record, we find that no test identification parade was also conducted. For these reasons, the trial Court has acquitted all these accused.

14. We are conscious of the legal position that the evidence of a solitary witness, if inspires the confidence of the Court, ~~the same cannot be the sole foundation for conviction, even in the absence any corroboration from independent sources on material particulars.~~ But, at the same time, if the evidence of a solitary



witness is shrouded with doubts, it would not be prudent to act upon the evidence of such witness in the absence of corroboration from independent sources. We are also conscious of the legal position that the principle of 'falsus in uno falsus in omni bus' has not been recognized by Indian Courts. In the Indian scenerio, if the Court is able to separate the grain from the chaff, there can be no difficulty in acting upon the grain. But, in the instant case, as we have already narrated, the evidence of P.W.1 - the solitary witness is full of inconsistencies and contradictions.

15. The evidence of P.W.1 is not in tune with the charges framed against these accused. Absolutely, there is no evidence to connect these accused either with the death of the deceased or with the injuries on P.W.1. At the most, it may only be said that the prosecution has established suspicion against these accused. Suspicion, however strong it may be, cannot take the place of truth. Above all, the presumption of innocence of the accused in criminal trial in the system adopted by us is inbuilt in the fair trial be afforded to the accused under Article 21 of the Constitution of India. The said presumption of innocence gets doubled by the acquittal of the accused by the trial Court. Therefore, in an appeal against acquittal, unless the said presumption is rebutted by the appellant by making out a very strong case, it would not be possible for this Court to interfere with the acquittal of these accused. In our considered view, the trial Court has considered all the evidences meticulously and has rightly come to the conclusion that the prosecution has failed to prove the case against the accused beyond reasonable doubts. In such view of the matter, we do not find any merit at all in this appeal.

16. In the result, the appeal fails and the same is dismissed and the acquittal of the accused by the trial Court is hereby confirmed.

Sd/-

Assistant Registrar(Crl.side)

/True copy/

Sub Assistant Registrar

To

1. THE ADDITIONAL DISTRICT JUDGE,
FAST TRACK COURT NO.III, MADURAI.

2.The Revenue Divisional Officer,

<https://hcservicescourtservices/>

Madurai District



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

+5cc to Mr.I.Suthakaran, Advocate SR.No.53998
+2cc to Mr.S.Kanagarajan, Advocate SR.No.54547
+1cc to Mr.C.Jeganathan, Advocate SR.No.54073
+1cc to Mr.V.Sasikumar, Advocate SR.No.54012

RR

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judgment made in
Crl.A.(MD).No.207 of 2013
20.09.2016