

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.09.2017

CORAM

THE HON'BLE Mr.JUSTICE A.SELVAM
and
THE HON'BLE Mr.JUSTICE P.KALAIYARASAN

Criminal Appeal No.127 of 2017
and Criminal M.P.No.3579 of 2017

1.Ramesh
2.Sudhan

... Appellants

Vs.

The State rep. by its
The Inspector of Police,
Thiruvarur Town Police Station,
Thiruvarur District.
[Cr.No.191/2015]

... Respondent

Criminal Appeal filed under Section 374 [2] of Cr.P.C., to set aside the convictions and sentences imposed upon the appellants by the learned District and Sessions Judge, Thiruvarur, in S.C.No.138 of 2015, dated 06.01.2017.

For Appellants : Ms.Greetha Senthilkumar
For Respondent : Mr.V.M.R.Rajentren,
Additional Public Prosecutor

J U D G M E N T

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

Challenge in this Criminal Appeal is to the convictions and sentences dated 06.01.2017 passed in S.C.No.138 of 2015 by the District and Sessions Court, Thiruvarur.

2. The epitome of the case of the prosecution is that the first accused is the father of the second accused. The deceased and accused have lived in the same street and prior to six months from the date of occurrence, during festival of Mariamman temple, the deceased Loganathan in sozzle mood, has made a tussle with some persons. One Neelakandan and first accused have compromised the deceased and subsequently, attacked him and due to that, a criminal case has been registered against the said Neelakandan and first accused and due to that, an animosity has been in existence between the deceased and accused. Very often, the deceased has used to meet the wife of the first accused and told her that he is going to murder her husband viz., first accused. On 18.04.2015 at about 12.15 p.m. in Thiruvarur, near ARC Parcel Service and also near a tea shop, both the accused armed with deadly weapons, have unlawfully deterred the deceased and indiscriminately attacked him and thereby, caused fatal injuries. During the course of occurrence, one Anbumani has tried to deter both the accused, but the first accused has threatened him. Due to the overtacts of both the accused, the deceased has passed away. After occurrence, the said Anbumani has given a complaint and the same has been registered in Crime No.191 of 2015. The complaint alleged to have been given by the said Anbumani has been marked as Ex.P1.

3. On receipt of Ex.P1, the Investigating Officer viz., PW19 has taken up investigation, examined all connected witnesses, conducted inquest and also made arrangements to conduct autopsy and accordingly, the doctor by name K.A.Ashraf Hussain [PW11] has conducted postmortem and he found the following injuries:

"Antemortem injuries noted

- 1. 32cm length, 25cm breadth and 8cms maximum depth [cervical bone deep] heavy cut injury seen on the upper part of left side of front side, back of neck. Margins showed clean cut. Underlying muscles common carotid and internal jugular vessels found cut at site. It lies 5cm below the left ear. In this cut portion, underlying cut portion of trachea was found.*
- 2. Cut injury 15x4x5cm found 1cm above injury no.1 in left part of neck.*
- 3. 20x8x4cm cut injury found over the left arm with damage to underlying muscles, vessels.*
- 4. 15x5x3cm cut injury found over the left parietal region.*
- 5. Cut injury of size 10x2x2cm over the forehead.*
- 6. Cut injury of size 10x5x4cm over the right shoulder.*
- 7. Cut injury of size 10x5x4cm over left axilla.*
- 8. Cut injury of size 5x4x2cm over left thumb.*
- 9. Cut injury of size 10x5x4cm over left knee joint on dissection, underlying fracture of lower end of femur and patella is seen"*

The postmortem certificate has been marked as Ex.P5. The Investigating Officer [PW19] has continued investigation. After completing the same, laid a final report on the file of the Judicial Magistrate Court, Thiruvapur and the same has been taken on file in PRC.No.33 of 2015.

4. The Judicial Magistrate, Thiruvapur, after considering the facts that the offences alleged to have been committed by both the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Thiruvapur division and the same has been taken on file in Sessions Case No.138 of 2015 and subsequently made over to the trial Court.

5. The trial Court, after hearing arguments of both sides and upon perusing the relevant records, has framed charges against the first accused under Sections 341, 294[b], 302 and 506[ii] of the Indian Penal Code and charges against the second accused under Sections 341 and 302 of the Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws 1 to 19 have been examined and Exs.P1 to P27 and M.Os.1 to 10 have been marked.

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

8. The trial Court, after hearing arguments of both sides and upon perusing the material evidence available on record, has found the first accused guilty under Section 341 of the Indian Penal Code and imposed a fine of Rs.100/- with usual default clause. He has also been found guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and imposed a fine of Rs.5000/- with usual default clause. Further, he has been found guilty under Section 506[ii] of the Indian Penal Code and sentenced him to undergo one year rigorous imprisonment and imposed a fine of Rs.1000/- with usual default clause. The trial Court has found the second accused guilty under Section 341 of the Indian Penal Code and imposed a fine of Rs.100/- with usual default clause. Further, he has been found guilty under Section 302 and sentenced him to undergo imprisonment for life and imposed a fine of Rs.5000/- with usual default clause. Against the convictions and sentences passed by the trial Court, the present criminal appeal has been filed, at the instance of the accused, as appellants.

9. The consistent case of the prosecution is that the accused and deceased Loganathan have resided in the same street. Prior to six months from the date of occurrence, during festival of Mariamman temple, the deceased Loganathan in sozzle mood has tried to create nuisance. Under the said circumstances, the first accused and one Neelakandan have tried to compromise him and subsequently, attacked him and due to attack made by them on the person of the deceased, a criminal case has been registered and due to that, an animosity has been in existence between the accused and deceased. Very often, the deceased has used to meet the wife of the first accused and told her that he is going to murder her husband viz., first accused. On 18.04.2015 at about 12.15 p.m. in the place of occurrence, both the accused armed with deadly weapons have unlawfully deterred the deceased and indiscriminately attacked him and thereby, caused fatal injuries and one Anbumani has tried to deter them from attacking the deceased. But, the first accused had also threatened him.

10. The prosecution has set the law in motion only on the basis of ExP1, complaint, registered by PW2, Sub Inspector of Police in Crime No.191 of 2015. On the side of the prosecution, the alleged eyewitnesses, namely, Anbumani, Neelakandan, Raghavan and Sivakumar have been examined as PW1, PW3, PW5 and PW6. But unfortunately, except PW1 and PW6, the remaining eyewitnesses

have become hostile. The trial Court, after considering the evidence given by PWs 1 and 6, has found the accused guilty as per Sections mentioned supra.

11. The learned counsel appearing for the appellants/accused has raised the following points so as to topsy-turvy the convictions and sentences passed by the trial Court against the appellants/accused :

- i. It is an admitted fact that the occurrence has taken place on 18.04.2015 at about 12.15 pm, whereas Ex.P1 has been registered on the same day at 12.45 pm. But the numbers 15 have been subsequently altered into number 45 and therefore, Ex.P1 is nothing but a concocted document;
- ii. On the side of the prosecution, copy of the Accident Register has been marked as Ex.P23, but the author of the same has not been examined;
- iii. Inquest report has been marked as Ex.P17 and most of the places are left blank; and
- iv. PWs 1 and 6 are nothing but close relatives of the accused and therefore, their evidence cannot be believed in.

12. To controvert the contentions put forth on the side of the appellants/accused, the learned Additional Public Prosecutor has contended to the effect that in the instant case, eyewitnesses, namely, Anbumani and Sivakumar have given clear evidence to the effect that in the place of occurrence, both the accused have indiscriminately attacked the deceased with

deadly weapons and thereby, caused fatal injuries. Further, the doctor, who conducted autopsy, has also clearly opined that the death has occurred due to multiple injuries sustained by the deceased. The trial Court, after considering the overwhelming evidence available on the side of the prosecution, has rightly found the accused guilty as mentioned in the judgment and therefore, the convictions and sentences passed by the trial Court do not require any interference.

13. Before contemplating the rival submissions made on either side, the Court has to meticulously analyse, as to whether both PW1 and PW6 are the real eyewitnesses.

14. In fact, this Court has closely analysed the evidence given by PW1 and PW6 and both of them have consistently stated in their evidence that in the place of occurrence, both the accused have indiscriminately attacked the deceased by using deadly weapons and thereby, caused fatal injuries on the person of the deceased. Further, the specific case of the prosecution is that prior to occurrence, a motive has been in existence between the accused and the deceased. For the purpose of proving the motive, a replete evidence is available on the side of the prosecution. Further, it is not an adulation to say that PW1 viz., Anbumani has given picturesque evidence, with regard to details of attack

made by both the accused on the deceased and his evidence clearly corroborated the evidence given by PW6. In fact, the trial Court has rightly believed the evidence given by PWs 1 and 6.

15. The first and foremost attack made on the side of the appellants/accused is that in Ex.P1, complaint, numbers 15 have been subsequently, altered into numbers 45.

16. It is an admitted fact that the occurrence has taken place on 18.04.2015 at 12.15 p.m. It is seen from Ex.P1 that the same has been registered on the same day at about 12.45 p.m. Probably, the police official, who registered Ex.P1, has erroneously written as 12.15 instead of 12.45 and subsequently, such correction has been made and the same would not militate the evidence given by PWs 1 and 6. Therefore, the first point raised on the side of the appellants/accused is sans merit.

17. The second point put forth on the side of the appellants/accused is that the author of Ex.P23, copy of the Accident Register has not been examined. It is nothing but a flimsy mistake on the part of the prosecution and the same would not affect the case of the prosecution. Therefore, the second point put forth on the side of the appellants/accused also goes without merit.

18. The third point put forth on the side of the appellants/accused is that in Ex.P17, Inquest Report, so many places have not been filled up. That is also a flimsy mistake on the part of the Investigating Officer and the same would not affect the case of the prosecution.

19. The fourth point urged on the side of the appellants/accused is that both PWs 1 and 6 are interrelated to the deceased.

20. Of course, it is true that PWs 1 and 6 and deceased are interrelated to each other. Both PWs 1 and 6 have adduced consistent evidence with regard to motive and also the details of attack made by both the accused on the person of the deceased in the place of occurrence.

21. Further, it is an archaic principle of law that the evidence of related witnesses need not be discarded merely on the basis of relationship. Since there is no inhibition or embargo in law for accepting the evidence of close relatives, the fourth contention put forth on the side of the appellants/accused is also sans merit.

22. Learned counsel appearing for the appellants/accused has also made an abortive attempt by way of contending that the appellants/accused have not

committed the crime and some other person have committed the same. But, the trial Court has failed to look into it.

23. It has been already been pointed out that both PWs 1 and 6 have given clear/cogent evidence with regard to details of attack made by both the accused on the person of the deceased in the place of occurrence. Further, it is not an exaggeration to say that there is no infirmities or contradictions in the evidence given by them and at the said circumstances, the contention put forth on the side of the appellants/accused cannot be accepted.

24. The trial Court, after considering the evidence given by both PWs 1 and 6, has rightly found the accused guilty of offences as mentioned supra. In view of the foregoing enunciation of both factual and legal aspects, this Court has not found any error or illegality in the convictions and sentences passed by the trial Court and altogether, the present Criminal Appeal deserves to be dismissed.

In fine, this Criminal Appeal is dismissed. The convictions and sentences passed in S.C.No.138 of 2015 by the District and Sessions Court, Thiruvavarur are confirmed. Connected miscellaneous petition is dismissed.

[A.S., J.] [P.K., J.]
07.09.2017

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To

1.The Inspector of Police,
Thiruvavarur Town Police Station,
Thiruvavarur District.

2.The District and Sessions Court,
Thiruvavarur.

3.The Public Prosecutor,
High Court, Madras



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P.KALAIYARASAN, J.

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