

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.09.2017

CORAM

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

Criminal Appeal No.238 of 2017
and Criminal M.P.No.5912 of 2017

Pichandi
S/o.Murugan

... Appellant

Vs.

State by
Inspector of Police,
Latheri Police Station
[Cr.No.124/2014]

... Respondent

Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment dated 1st March 2017 of the Additional District Judge (Fast Track Court), Vellore District, Vellore, in S.C.No.17 of 2016, convicting the appellant for an offence under Section 302 IPC and sentencing him to undergo imprisonment for life and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for 6 months.

For Appellant : Mr.D.Baskar
For Respondent : Mr.V.M.R.Rajentren,
Additional Public Prosecutor.

JUDGMENT

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

The conviction and sentence dated 01.03.2017 passed in S.C.No.17 of 2016 by the Additional District and Sessions Court, Vellore are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the deceased Duraimurugan has married the elder sister of the accused and subsequently she passed away leaving behind her children and due to that, an animosity has been in existence between the accused and deceased Duraimurugan. On 06.07.2014, at about 05.30pm, in the place of occurrence, the accused has stated that the deceased is the sole cause for the demise of his elder sister and due to that, a tussle has arisen. The accused has taken a blade and caused injuries on the person of the deceased. During the course of occurrence, the brother of the deceased has alighted from a bus and tried to deter the accused from attacking the deceased. The accused has also threatened him. After the occurrence, the then injured (deceased) has been taken to Government Hospital, Vellore, where he succumbed to injuries on the same day at about 07.20pm. The brother of the deceased viz., Krishnamoorthy has given a complaint and the same has been registered in Crime No.124 of 2014. The complaint alleged to have been given by the said Krishnamoorthy has been marked as Ex.P1.

3. On receipt of Ex.P1, the Investigating Officer viz., PW17 has taken up investigation, examined material witnesses and also made arrangements to conduct autopsy and accordingly, the doctor by name Selvaraj (PW16) has conducted postmortem and he found the following injuries:

" Cut injury front of neck 13 cm x 5 cm x food pipe depth. All the major blood vessels, Wind pipe and food clean cut. No other injury."

The postmortem certificate has been marked as Ex.P12. The Investigating Officer has continued investigation. After completing the same, laid a final report on the file of the Judicial Magistrate Court, Katpadi and the same has been taken on file in PRC.No.1 of 2015.

4. The Judicial Magistrate, Katpadi, after considering the fact that the offences alleged to have been committed by the accused are triable by the Sessions Court, has committed the case to the Court of Sessions, Vellore division and the same has been taken on file in Sessions Case No.17 of 2016 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 the first charge against the accused under Section 302 of the Indian Penal Code and second charge against him under Section 506(ii) of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws 1 to 17 have been examined and Exs.P1 to P18 and M.Os.1 to 6 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. However, no oral evidence has been let in 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 accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and imposed a fine of Rs.1000/- with usual default clause. The trial Court has acquitted the accused from the charge framed under Section 506(ii) of the Indian Penal Code. Against the conviction and sentence passed by the trial Court, the present criminal appeal has been preferred, at the instance of the accused, as appellant.

9. The consistent case put forth on the side of the prosecution is that the deceased Duraimurugan, has married the elder sister of the accused. After giving birth of two children, the elder sister of the accused has passed away and subsequently the deceased has married second wife. Since the deceased has tortured the children of the elder sister of the accused, an animosity has been in existence between the accused and deceased. On 06.07.2014, at about 05.30 pm, in the place of occurrence, a tussle has arisen between them. During the

course of occurrence, the accused, by using a blade, has indiscriminately cut the neck of the deceased and subsequently he has been taken to hospital where he succumbed to injuries.

10. The prosecution has set the law in motion only on the basis of ExP1-complaint alleged to have been given by Krishnamoorthy (PW1), brother of the deceased. The author of Ex.P1 has been examined as PW1. The auto driver, who is said to have taken the then injured (deceased) to hospital with PW1 has been examined as PW13. The doctor, who admitted the then injured (deceased) by name Kalimulla, has been examined as PW15. The doctor, who conducted autopsy, has been examined as PW16. On the basis of evidence given by witnesses mentioned supra, the trial Court has found the accused guilty under Section 302 of Indian Penal Code and imposed sentence as mentioned supra.

11. The learned counsel appearing for the appellant / accused has raised the following points:-

i) The entire case of the prosecution revolves upon the sole testimony of PW1 viz., Krishnamoorthy, but PW1 is not at all an eyewitness and even as per his evidence, the Court can easily come to a conclusion that he is not a witness to the occurrence and the trial Court has failed to look into his evidence properly;

ii) The consistent case of the prosecution is that the occurrence has been taken place on 06.07.2014 at about 05.30pm. After occurrence, the accused has run away from the place of occurrence and the alleged extra-judicial confession has been marked as Ex.P4, wherein it is stated that the deponent / accused has murdered the deceased, whereas Ex.P1, the complaint, has been registered on the same day at about 10.30 pm and therefore, Ex.P4 is nothing but a concocted document; and

iii) The specific case of the prosecution is that immediately after occurrence, the then injured (deceased) has been taken to Government Hospital, Vellore and PW15-Dr.Kalimulla has admitted the deceased in hospital and a copy of Accident Register has been marked as Ex.P10, wherein it is clearly stated that one auto driver has admitted the then injured (deceased). The said fact has not been looked into by the trial Court.

12. In order to remonstrate the contentions put forth on the side of the appellant/accused, the learned Additional Public Prosecutor has contended to the effect that in the instant case, PW1 is the brother of the deceased and brother-in-law of the accused and during the course of occurrence. he alighted from a bus and also tried to deter the accused from attacking the deceased. The accused has also threatened him. After occurrence, the accused has scooted from the place of occurrence and thereafter, with the assistance of PW13, auto

driver, he has taken his brother (deceased) to Government Hospital, Vellore. In fact, PW1 and PW13 has given clear evidence. The trial Court, after considering the evidence of PW1 and PW13 has rightly convicted the appellant/accused under Section 302 of Indian Penal Code and therefore, the said conviction and sentence passed by the trial Court do not warrant any interference.

13. On the basis of the divergent submissions made on either side, the Court has to meticulously analyse as to whether PW1 is an eyewitness to the occurrence.

14. As stated earlier, the entire case of the prosecution hinges upon Ex.P1, the complaint. It is an admitted fact that the occurrence has taken place on 06.07.2014 at about 05.30 pm, whereas Ex.P1 has been registered on the same day at about 10.30 pm. The then injured (deceased) has been admitted in Government Hospital, Vellore by PW13 on the same day at about 07.10 pm.

15. The specific defence taken on the side of the appellant / accused is that the role of PW1 has been subsequently secured.

16. As narrated earlier, the occurrence has taken place on 06.07.2014 at about 05.30 pm. The then injured (deceased) has been admitted in Government Hospital, Vellore by PW13 on the same day at about 07.10pm.

17. At this juncture, the Court has to meticulously analyse the evidence given by PW1 and PW2. The specific evidence given by PW1 is that on the date of occurrence at 07.30 pm, the police have come to Government Hospital, Vellore. Likewise PW2, a cousin of PW1, has stated to the effect that the police have come to the place of occurrence on the same day at about 08.00pm.

18. It is an admitted fact that after receipt of death information, PW1 has given Ex.P1-complaint at 10.30 pm.

19. If really, PW1 has been in Government Hospital, Vellore at 07.30pm, definitely the police would have received a statement from him. In the instant case, no piece of evidence is available with regard to the said aspect.

20. During the course of cross-examination, PW1 has stated to the effect that after reaching hospital, he has gone to obtain OP chit and due to that, PW13 has admitted the then injured (deceased) in hospital. In fact, this Court has analysed the entire statements given by him under Section 161(3) of the Code of Criminal Procedure, 1973, wherein no materials are available to the effect that after reaching the hospital he has gone to the place where OP chit is being issued. Therefore, the said portion of evidence has been subsequently given by PW1 and no credence could be attached to.

21. It is an admitted fact that in Ex.P10, it has been clearly mentioned that the then injured (deceased) has been admitted in hospital by an auto driver, who has been examined as PW13. If really PW1 has taken the then injured (deceased) by using the auto of PW13 for the purpose of saving life of his brother, definitely he would have admitted him in Government Hospital, Vellore. But even the document (Ex.P10) filed on the side of the prosecution proves otherwise. Therefore, in the light of the discussion made earlier, it is made clear that this Court is of the considered view that PW1 is not at all an eyewitness.

22. The second point urged on the side of the appellant/accused is that Ex.P4-Extra-judicial confession is nothing but a concocted document.

23. Even the case of the prosecution is that the then injured (deceased) has been admitted in Government Hospital, Vellore at 07.10 pm and subsequently, the death intimation has been issued to PW1, wherein it is stated to the effect that the deceased has passed away at 07.20 pm. Further, the specific case of the prosecution is that after occurrence, the accused has scooted from the place of occurrence, whereas as rightly pointed out on the side of the appellant/accused in Ex.P4-extra-judicial confession, it is stated that the accused has voluntarily given a statement in respect of a murder case. Further, as mentioned supra, Ex.P1 has been registered on the date of occurrence at about

10.30 pm, whereas Ex.P4 has been recorded on the same day at about 09.00pm. Therefore, it is quite clear that before registering Ex.P1 at 10.30 pm, there is no explanation on the side of the prosecution as to how in Ex.P4 it is mentioned that in respect of a murder, the accused has decided to give a statement. Therefore, it is needless to state that Ex.P4 has been obtained only after arrest of the accused. Under the said circumstances, Ex.P4 is a concocted document and the same is not having any evidenciary value.

24. The third point urged on the side of the appellant/accused has been discussed in detail supra. Even at the risk of repetition, the Court would like to point out that the entire case of the prosecution is based upon Ex.P1 and also the oral evidence given by PW1 and PW13. It has already been discussed in detail that PW1 is not at all an eyewitness and further, the evidence given by PW13 to the effect that PW1 has also accompanied with him while taking the then injured (deceased) to the hospital is highly artificial. If really, PW1 has accompanied with PW13 to the hospital, definitely he would have admitted the then injured (deceased) in the hospital. But with regard to that aspect, no acceptable/trustworthy witness is available on the side of the prosecution.

25. Since the role alleged to have been played by PW1 is not believable virtually, in the instant case no eyewitness is available with regard to the factum of occurrence so as to point out the guilt of the accused punishable under Section 302 of the Indian Penal Code.

26. The trial Court, without considering the vital infirmities found on the side of the prosecution on the basis of evidence given by Pws 1, 2, 13 and also Exs.P1, P4 and other connected documents, has erroneously found the appellant/accused guilty under Section 302 of the Indian Penal Code. The conviction and sentence passed by the trial Court are factually not sustainable and therefore, the same are liable to be set aside.

In fine, the Criminal Appeal is allowed. The conviction and sentence passed in S.C.No.17 of 2016 by the learned Additional District and Sessions Court, Vellore are set aside. The appellant/accused is acquitted and directed to set him at liberty forthwith unless he is required to be incarcerated in any other case. Fine amount, if any, paid by the appellant/accused, is ordered to be refunded forthwith. Connected miscellaneous petition is dismissed.

[A.S., J.] [P.K., J.]
06.09.2017

Internet:Yes/No

Index:Yes/No
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To

1.The Inspector of Police,
Latheri Police Station

2. The Additional District Judge (Fast Track Court),
Vellore District, Vellore

3.The Public Prosecutor,
High Court, Madras



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A.SELVAM, J.
and
P.KALAIYARASAN, J.

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