

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 12.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Crl.A.No.722 of 2016
and
Crl.M.P.No.293 of 2017

Kumaresan Appellant

vs.

State, rep.by
The Inspector of Police,
Vriddhachalam Police Station,
Vriddhachalam,
Cuddalore District Respondent
Crime No.662 of 2014

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 01.09.2016, made in SC No 43/2015,
passed by the Mahila Court (District and Sessions Judge),
Cuddalore.

For Appellant : Mr.C.Munusamy

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGMENT

(Judgement of the Court was delivered by S.Nagamuthu,J.)

The first appellant is the first accused in S.C.No.43 of 2015, on the file of the District Mahila Sessions Court, Cuddalore. There were three other accused by name Krishnan @ Krishnamurthy, Chakravarthy and Poomai @ Balamurugan, who were arrayed as accused 2 to 4 before the lower Court. The trial Court framed as many as seven charges against the accused as detailed below:

Sl. No.	Charges (Section of law)	accused
1.	U/s.294(b) of the Indian Penal Code	A1
2.	U/s.302 of the Indian Penal Code	A1
3.	U/s.307 of the Indian Penal Code	A1
4.	U/s.307 of the Indian Penal Code	A2 & A3
5.	U/s.307 IPC	A4
6.	U/s.323 of the Indian Penal Code	A3
7.	U/s.302 r/w.34 IPC	A2 to A4

By judgement dated 01.09.2016, the trial Court acquitted the accused 2 to 4; however convicted the appellant/first accused alone for offences under sections 294(b), 307 and 302 IPC and sentenced him to undergo three months simple imprisonment for the offence under Section 294(b) IPC; to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1000/-, in default, to under rigorous imprisonment for one year for offence under Section 307 IPC., and to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo one year rigorous imprisonment. Challenging the said conviction and sentences, the appellant is before this Court with this appeal.

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

(a) P.W.1, Mr.Shanmugham is a resident of Mahatma Gandhi Street, Mettu Colony, Virudhachalam. The deceased Mrs.Sakunthala was his mother. She was also residing with P.W.1. These four accused also belong to the same village. The accused 1 to 3 are brothers and the accused No.4 is their relative. It is alleged that some time before the occurrence, there was an occurrence, in which, the first accused had attacked P.W.1 and one Mr.Udayakumar, who is a relative of P.W.1, with bottle. In respect of the said occurrence, on a case registered, the first accused was arrested by the police and later on he was released on bail by the Court. Thus, the first accused was in jail for some. This developed further grudges in the mind of the first accused against P.W.1 and his family members. This is stated to be the motive for the occurrence.

(b) On 24.10.2014, at around 8.00 p.m., P.W.1 and his other family members participated in the funeral of their grandfather, who died on 23.10.2014. When they were returning home, it is alleged that the accused 1 and 4 scolded them in filthy language. P.W.1 and others simply returned home without showing any resistance. After that, the maternal uncle of P.W.1, Mr.Murugan and P.W.7, the brother of P.W.1, were returning via,

the house of the accused. The first accused and the fourth accused scolded them also. This resulted in a quarrel. It is alleged that on hearing the alarm raised, P.W.1 and the deceased had also gone to the said place. In the said quarrel, it is alleged that the first accused abused the prosecution party. Then, the first accused attacked the deceased Mrs.Sakunthala with wooden log. She fell down sustaining serious injuries. In the same occurrence, the first accused instigated the others to attack and he himself again attacked P.W.1 with wooden log. He sustained injury on his head. In the same occurrence, the accused 2 and 3 attacked P.W.2 with wooden logs and caused injuries in an attempt to kill him. Similarly, the fourth accused attacked P.W.3 with wooden log in an attempt to kill him. The third accused attacked P.W.4 with leg and caused simple hurt. Then, all the accused ran away from the scene of occurrence. P.Ws.1 to 4 and the deceased Sakunthala had sustained serious injuries. Immediately, they were all taken to the Government hospital at Virudhachalam. The Doctor declared the deceased dead. P.W.1 underwent treatment in the hospital.

(c) On receiving intimation from the hospital, P.W.12, the then Sub Inspector of Police, Virudhachalam, went to the hospital, recorded the statement of P.W.1 and on returning to the police Station at 11.45 p.m., on 24.10.2014, he registered a case in Crime 662 of 2014, under Sections 294-b, 323, 307 and 302 IPC against all the four accused. Ex.P1 is the complaint and Ex.P18 is the FIR.

(d) The case was taken up for investigation by P.W.13, the then Inspector of Police. He went to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of witnesses. He recovered wooden logs-M.Os.2 to 5, found at the place of occurrence. On going over to the hospital, he conducted inquest on the body of the deceased, during which, he examined number of witnesses, including P.Ws.1 to 4, and then forwarded the body for postmortem. P.W.8, Dr.Kulothungacholan conducted autopsy on the body of the deceased on 25.4.2014, at 11.00 a.m., he found the following injuries.

"Contusion of 8 x 6 cm over the (Rt) frontal of parietal area of the scalp, with otherwise normal scalp, closed eyelids, closed mouth and tongue within the mouth, teeth intact blood serum present in the nose with intact extremities, with distended abdomen, intact peritoneal cavities, # 5,6 throbs (lt) side intact, lungs contusion. 50 ml of blood. Hyoid bone preserved. Heart, lungs, spleen, kidney intact and pate, stomach contusion 250 ml of undigested food particles. Intestine normal. There is a depressed fracture of skull in the RT. parietal and temporal bone with 100 ml of

blood clot present in parietal and temporal area, vasculature normal, 50ml blood not present beneath scalp contusion. Spine normal, stomach, intestine with contents."

Ex.P4 is the postmortem certificate. He opined that the death of the deceased was due to shock and haemorrhage due to head injury. P.W.13, during the course of investigation, recovered the blood stained clothes from the body of the deceased and forwarded the same to the court.

(e) On 26.10.2014, at 5.45 a.m., P.W.13 arrested A3, in the presence of witnesses. On 27.10.2014, P.W.13 also arrested the accused 1 and 2, in the presence of witnesses. On such arrest, the first accused gave a voluntary confession, in which he disclosed the place where he had hidden the wooden logs. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced two wooden logs. P.W.13 recovered the same vide-M.O.7. On 3.11.2014, at 6.30 p.m., he arrested the fourth accused, in the presence of witnesses and forwarded him to the Court for judicial remand. On completing the investigation, he laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed charges against the accused, as already elaborated. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined, 20 documents were marked, besides 8 material objects. Out of the said witnesses, P.Ws.1 to 4 are injured witnesses to the occurrence. They have vividly spoken about the injuries sustained by them as well as the injuries caused on the deceased. But they have not stated anything about the injuries sustained by the accused. P.W.5, Dr.Geethanjali, has stated that she examined the hyoid bone of the deceased and found that there was no fracture. P.W.6, the Forensic Expert, has stated that he examined the visceral organs of the deceased, which proved that there was no alcohol or poison in the same. P.W.7 has spoken as an eyewitness. He is the brother of P.W.1. He has also stated vividly about the entire occurrence as eyewitness. P.W.8-Dr.Kulothungacholan has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.9, the Village Administrative Officer, has spoken about the arrest of the accused 1 and 2, the confession made by the first accused and the consequential recovery of material objects. P.W.10, the Village Administrative Officer, has spoken about the arrest of the third accused, the confession made by him and the consequential recovery of a wooden log from his possession. P.W.11-Dr.Mahendran has stated that he examined P.W.2 at the Government Hospital, Virudhachalam, on 24.10.2014. P.W.2 told the doctor that he was attacked by four known persons with hands and knives and also by wooden logs. On examination, he found

the following injuries on him.

The lacerated injury measuring 5 x 1 x 1 c.m. on the middle of the head. Another lacerated injury measuring 3 x 1 c.m. on the right index finger.

He admitted him as an inpatient. Ex.P.13 is the accident register. The injuries are simple in nature. On the same day, at 9.15 p.m., he examined P.W.3 in the same hospital. He told him that he was attacked by four known persons with hands and knives and wooden logs. On examination, P.W.11 found a lacerated injury measuring 16 x 1 x 1 c.m. on the left side of the head. Ex.P.14 is the accident register. The injury is simple in nature. On the same day, at 9.20 p.m. he examined the deceased. He found that she was no more. He declared her death. Ex.P.15 is the accident register. On the same day, at 9.30 p.m., he examined P.W.1. P.W.1 also told that he was attacked by four known persons with hands, knives and wooden logs. On examination, he found a lacerated injury measuring 3 x 1 x 1 c.m. on the left side of the head. Ex.P.16 is the accident register. The injury is simple in nature. On the same day at 11.10 p.m., he examined P.W.4. She also told that she was attacked by four known persons with legs. She only complained, but there was no injuries found on her. Ex.P.17 is the accident register. P.W.12 has spoken about the registration of case and P.W.13 has spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness nor mark any document. Their defence was that the prosecution party was the aggressors. They came to their house in aggressive manner and attacked accused 1 and 2 and caused serious injury. It is their further case that in connection with the attack made on them and the injuries sustained, on a complaint made, a case was registered in Crime No.664 of 2014 against the prosecution party. There was no investigation done in the said case. Thus, according to the accused, they are innocence. Having considered all the above, the trial Court convicted the first accused alone. That is how he is before this Court.

5. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the State and we have also perused the records carefully.

6. The learned counsel for the appellant would submit that the prosecution has not come forward with true version of the occurrence, inasmuch as the prosecution has suppressed the case registered, in Crime No.664 of 2014, against the prosecution party, in respect of the injuries sustained by accused 1 and 2.

7. The learned Additional Public Prosecutor would submit that it is true that a case in Crime No.664 of 2014 was registered, but he had no answer as to what had happened to the said case. P.W.13 was extensively cross-examined on this aspect. He has admitted that it is true that when accused 1 and 2 were arrested he found injuries on them and they were taken to the hospital and admitted. He has further stated that on the complaint made by the first accused, a case was registered in Crime No.664 of 2014, against the prosecution party. He has further stated that the occurrence mentioned in Crime No.664 of 2014 and the occurrence in the present case, took place at the same place and time. Thus, he has admitted that both the cases are cases in counter, but, unfortunately, he did not investigate the case in Crime No.664 of 2014 at all. He has further admitted that he did not know as to what had happened to the said case. From these admissions made by P.W.13, it is crystal clear that the investigating officer had partisan attitude and had investigated the case against the accused alone and not investigated the case against the prosecution party, which is a counter case.

8. It is a settled law that when there are cases in counter, both the cases should be investigated by the same investigating officer; the truth should be found out and accordingly final report should be filed. But in this case, the said course has not been adopted. In our considered view, on the ground that since the prosecution has not approached this Court with the true version of the occurrence, the accused is entitled for acquittal. Apart from that, the injuries sustained by the accused have not been explained. As held by the Hon'ble Supreme Court, in Lakshmi Singh Vs. State of Bihar (AIR 1976 SC 2263), the failure of the prosecution witnesses to explain the injuries sustained by the accused would give rise to a presumption that the prosecution party is suppressing an important part of the occurrence and thus, they have rendered themselves unbelievable. Applying the same yardstick to the present case, we have to necessarily hold that though P.Ws.1 to 4 are injured witnesses, since they have not whispered anything about the injuries sustained by the accused, we cannot give full credence to their evidences. There is no other independent witness also. For these reasons, we are of the view that the accused is entitled for acquittal, more particularly because the prosecution has not come forward with the true version of occurrence. In such view of the matter, the appeal deserves to be allowed and the accused is entitled for acquittal.

9. In the result, this criminal appeal is allowed; the conviction and sentence imposed as against the appellant are set

aside. The appellant/accused is acquitted. Fine amount, if any, paid by him shall be refunded to him forthwith. Connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS-VIII)

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police,
Vriddhachalam Police Station,
Vriddhachalam,
Cuddalore District.
2. The Mahila Court (District and Sessions Judge),
Cuddalore.
3. The Public Prosecutor,
High Court, Madras
4. -Do- Thro The Principal Sessions Judge
Cuddalore
5. The Judicial Magistrate No I,
Virudhachalam
6. -Do- Thro The Chief Judicial Magistrate, Cuddalore
7. The Superintendent, Central Prison, cuddalore
8. The District Collector, Cuddalore District
9. The Director General of Police, Mylapore, Chennai
- +1 CC to Mr. C. Munusamy, Advocate sr 3192

Cr1.A.No.722 of 2016

PA (CO)
sp/27/3