

THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23..01..2017

Coram:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

AND

THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.778 of 2016

Natarajan ...Appellant/Sole Accused

-Versus-

State Rep. by its
Inspector of Police,
Perambalur Police Station,
Perambalur District.
[Crime No.289 of 2014] ... Respondent/Complainant

Appeal filed under Section 374(3) of Cr.P.C. challenging the judgement of conviction and sentence dated 29.02.2016 made by the learned Principal District Sessions Judge, Perambalur, Perambalur District, in S.C.No.34 of 2014.

For Appellant : Mr.R.Ganesh

For Respondent : Mr.P.Govindarajan

JUDGEMENT

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

The appellant is the sole accused in S.C.No.34 of 2014 on the file of the learned Sessions Judge, Perambalur, Perambalur District. He stood charged for offences under Sections 294(b), 324 [Two counts], 506(ii) and 302 of IPC. The trial court, by judgement dated 29.02.2016, acquitted the appellant from the charge under Section 506(ii) of IPC, however, convicted him for offences under Sections 294(b), 324 (Two counts) and 302 of IPC and sentenced him to undergo simple imprisonment for two months for offence under Section 294(b) of IPC; to undergo simple imprisonment for four months for each count for offence under Section 324 of IPC [Two counts]; and to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for six months for offence under Section 302 of IPC. The above sentences were ordered to run concurrently.

Challenging the above said conviction and sentences, the accused is before this court.

2. The case of the prosecution in brief is as follows:- The appellant is a resident of Nochiyam village. The deceased in this case was one Mr.Sasikumar. P.W.1 is his wife. The deceased and P.W.1 along with their two children were residing in the same village, but, in the neighboring street. The accused had also owned a vacant site near the house of the deceased in the said street. There, he had a heap of sand to be used for construction purpose. The children of the deceased had gone to the vacant site of the accused to play and they played on the heap of sand. On seeing the same, the accused shouted at the children. It is alleged that the accused used filthy language at the children of the deceased. This happened around 02.30 p.m. on 23.04.2013.

3. On having come to know about the above incident, P.W.1 and the deceased went to the house of the accused. They questioned the accused as to why he shouted at their children in filthy language. The accused, in response, scolded P.W.1 in filthy language. The deceased intervened. He questioned the accused as to why he was quarreling with his wife and children using filthy language. This resulted in further quarrel. It is alleged that in the midst of such quarrel, suddenly, the accused rushed into his house came out with a soori knife and stabbed the deceased thrice. When P.W.1 and P.W.2 [the paternal uncle of the deceased] intercepted, they were also attacked by the accused with the same knife. P.Ws.1 and 2 raised alarm. However, the accused ran away from the scene of occurrence with weapon.

4. Immediately, thereafter, P.Ws.1 and 2 and the deceased were taken to Government Hospital at Perambalur and admitted there as inpatient. On receiving the intimation from the hospital, the Sub Inspector of Police (P.W.13), went to the hospital, recorded the statement of the deceased. On returning to the police station, he registered a case at 07.00 p.m. on 25.04.2014 in Crime No.289 of 2014 under Sections 294(b), 324 and 506(2) of IPC. Ex.P.1 is the complaint and Ex.P.14 is the FIR. He forwarded both the Ex.P.1 and Ex.P.14 to the court which were received by the learned Magistrate at 06.55 p.m. on 03.05.2014. In the mean time, he handed over the case diary to the Inspector of Police(P.W.16) for investigation.

5. P.W.16, taking up the case for investigation, visited the place of occurrence, prepared an observation mahazar (Ex.P.2), a rough sketch (Ex.P.23) at the place of occurrence in the presence of P.W.4 and another witness. He rushed to the hospital, examined P.Ws.1 and 2 and recorded their statements. The deceased, who was undergoing treatment in the hospital, died at 05.00 p.m. on 03.05.2014. P.W.16, therefore, altered the

case into one under Section 302 of IPC and submitted an alteration report (Ex.P.19) to the Magistrate. He held inquest on the body of the deceased and prepared an inquest report (Ex.P.20). Thereafter, he forwarded the dead body to the Government Hospital for postmortem.

6. P.W.12, Dr.Renugadevi, conducted autopsy on the body of the deceased at 11.35 a.m. on 04.05.2014. She found the following injuries.

"Wounds:

1.Intercostal drainage wound on the side aspect of left side of the chest - surgical treatment.

2.An oblique sutured wound 3 cm in length on the side aspect of left side of the chest. On removal of the sutures, edges are regular, 1 cm breadth x cavity deep.

3.A gaping wound with evidence of suturing 16 cm x 7 cm x cavity deep on the front of centre of abdomen, 5 cm from the xiphisternum above, 13 cm from the pubic symphysis below. O/D Bruising of fundus of stomach - Dark red. Bruising of omentum, mesentery - dark red. A transverse stab wound, 2 cm x 1 cm x 1 cm on the left lobe of liver. Peritoneal cavity contains fluid blood.

4.Bruising of anterior chest wall - dark red.

5.Contusion on the back of left elbow. O/D the underlying soft tissues bruising - dark red.

6.Healed abrasion on the back of right elbow.

7.Drainage wound on the front of right side of abdomen - surgical treatment.

According to her, the above mentioned wounds were ante-mortem injuries. Ex.P.11 is the post-mortem certificate and Ex.P.12 is her final opinion regarding the cause of death of the deceased. According to her, the death was due to multiple injuries.

7. After the post-mortem was over, P.W.16 recovered the blood stained cloth [a dhoti] from the body of the deceased. He forwarded all the material objects [dhoti and knife] to the court with a request to forward the same to the Forensic Science Lab for chemical examination. The chemical analysis report revealed that there were human blood on both the material objects. On completing the investigation, he laid charge sheet against the accused.

8. Based on the above materials, the trial court framed as many as four charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the

case, on the side of the prosecution, as many as 16 witnesses were examined, 23 documents and 2 material objects were marked.

9. Out of the said witnesses, P.Ws.1, 2 and 3 are the eye witnesses to the occurrence. P.Ws.1 and 2 are the injured eye witnesses. They have vividly spoken about the entire occurrence. P.W.4 has spoken about the preparation of the observation mahazar and the rough sketch by the police at the place of occurrence. P.W.5 has spoken about the arrest of the accused on 05.05.2014, his disclosure statement and the consequential recovery of knife (M.O.1) from the possession of the accused. P.W.6 has stated that he handed over the FIR to the Magistrate as instructed by the Sub Inspector of Police. P.W.7 has stated that he took the dead body of the deceased and handed over the same to the doctor for postmortem. P.W.8 has also spoken about the same fact. P.W.9 has spoken about the treatment given to P.W.2. According to him, on 23.04.2014 at 03.20 p.m P.W.2 came to the Government Hospital at Perambalur for treatment. He found a lacerated injury measuring 1 x 0.5 cm on P.W.2. Ex.P.7 is the accident register. Further, according to her, on the same day, at 03.30 p.m., P.W.1 came to the hospital for treatment. He found a lacerated injury measuring 2 x 1 cm over right little finger and a lacerated injury measuring 1 x 1 cm over the right right ring finger and another lacerated injury measuring 4 x 3 cm over the forehead. Ex.P.8 is the accident register. He has further stated that on the same day at 03.30 pm. he examined the deceased. He found a lacerated injury measuring 5 cm x 5 cm on the right shoulder; a lacerated injury measuring 2 x 1 on the left side of the shoulder. Ex.P.9 is the accident register. P.W.10, the Village Assistant, has spoken about the arrest of the accused and the consequential recovery of material object.

10. P.W.11, Dr.Prabhu, has stated that he examined the deceased and treated him at Trichirappalli Mahatma Gandhi Memorial Government Hospital. P.W.12 has spoken about the post-mortem conducted and his final opinion regarding the cause of death of the deceased. P.W.13 has spoken about the registration of the case. P.W.14 has stated about the chemical examination conducted on M.Os.1 and her report. P.W.15 has spoken about the treatment given to the deceased at Trichirappalli Mahatma Gandhi Memorial Government Hospital. He has stated that the deceased died in the hospital at 05.00 p.m. on 03.05.2014. P.W.16 has spoken about the investigation done by him in this case and the filing of charge sheet against the accused.

11. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. he denied the same as false. However, he did not choose to examine any witness nor did he mark any document on his side. His defence was a total denial.

12. Having considered all the above, the trial court convicted the appellant/accused for the charges under Sections 294(b), 324 (Two counts) and 302 of IPC and accordingly sentenced him as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, the accused is now before this Court with the present criminal appeal.

13. We have heard the learned counsel appearing for the appellant/accused and the learned Additional Public Prosecutor appearing for the respondent/State and we have also perused the records carefully.

14. The learned counsel for the appellant would submit that in the instant case, the prosecution has suppressed the true version of the case and that they have come forward with a concocted version. The learned counsel would point out that admittedly in the same occurrence, the accused sustained injuries and he under went treatment at hospital for many days. He would further submit that on the complaint made by him, a case in Crime No.290 of 2014 under Sections 294(b), 324, 506(2) of IPC was registered against P.Ws.1 and 2 and the deceased on the same day. But, the same was not investigated properly. The learned counsel would further point out that the injuries sustained by the accused has not been explained away by the prosecution.

15. We find force in the said argument. P.W.16 has admitted that in respect of the same occurrence, relating to the injuries sustained by the accused, the accused made a complaint upon which a case in Crime No.290 of 2014 was registered. But, unfortunately, none of the documents such as complaint, FIR, medical records pertaining to the treatment given to the accused and the other evidences collected during investigation, have been brought on record. All these material documents have been completely suppressed by the prosecution. P.W.16 has not stated anything in chief examination about the case in Crime No.294 of 2014. Thus, he was not fair enough to speak the truth in court. Only during cross examination, the fact that the case in crime No.290 of 2014 was registered and the same was also investigated has been brought on record. Even after that the prosecution has not chosen to produce the documents pertaining to the case in Crime No.290 of 2014 as mentioned hereinabove. Thus, the prosecution has not come forward with true version of the occurrence. The occurrence had taken place at the house of the accused. Admittedly, P.Ws.1, 2 and the deceased had gone from their house to the next street to the house of the accused and developed quarrel which resulted in the occurrence. The trial court has further held that the accused was the aggressor. This conclusion of the trial court is based on the evidence of

P.W.16. P.W.16 is not an eye witness to the occurrence. His evidence is hit by hear-say rule. Neither P.W.1 nor P.W.2 has stated that the accused was the aggressor. The very fact that the occurrence had taken place at the house of the accused and the deceased, P.Ws.1 and 2 had gone to the house of the accused would go to indicate that the aggressors were only the deceased party. At any rate, there was no investigation done at all by P.W.16 to find out as to who were the aggressors. In the absence of any explanation as to why the vital evidences collected during investigation in Crime No.290 of 2014 have not been proved in evidence, naturally, the presumption which could be raised under Section 114 of The Evidence Act, would be that if produced such evidences would go against the prosecution and that is the reason why, they have been suppressed. It is the settled law that the prosecution is bound to explain the injuries sustained by the accused. In the instant case, P.Ws.1 and 2 have not at all stated anything about the injuries sustained by the accused. Absolutely, there is no explanation. It is not as though the accused sustained minor injuries. The accused was in the hospital for many days as inpatient. When that be so, non explanation of the injuries sustained by the accused in the same occurrence would also give an inference that the prosecution has suppressed a vital part of the occurrence and thus, the prosecution has not come forward with true version of the occurrence. For these reasons, though P.Ws.1 and 2 happened to be the injured eye witnesses, we are unable to give any weightage for their evidences. We, therefore, hold that the prosecution has not come forward with the true version of the occurrence and thus, the accused is entitled for acquittal.

16. In the result, the criminal appeal is allowed; the conviction and sentences imposed on the appellant/accused by judgement dated 29.02.2016 in S.C.No.34 of 2014 by the trial court are hereby set aside and he is acquitted from all the charges. Fine amount already paid, if any, shall be refunded to him. The appellant/accused is directed to be set at liberty forthwith unless and otherwise his presence is required in connection with any other case.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

1.The Principal District Sessions Judge,
Perambalur, Perambalur District.

2.The Inspector of Police, Perambalur Police Station,
Perambalur District.

3.The Judicial Magistrate, Perambalur.

4.do thro'The Chief Judicial Magistrate, perambalur.

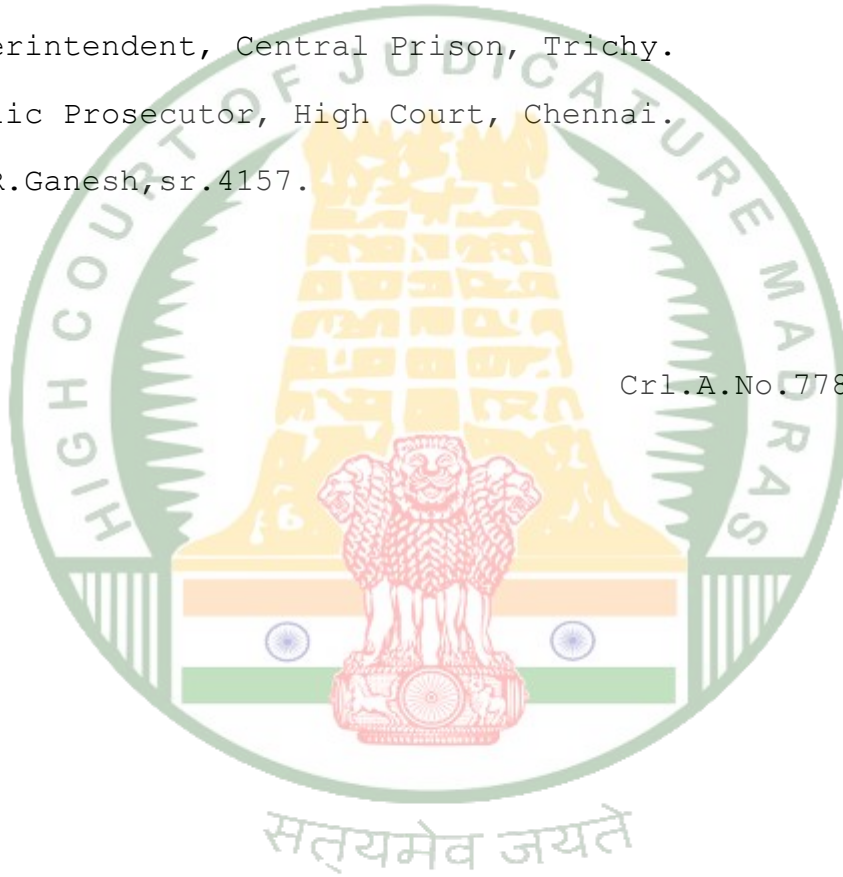
5.The Superintendent, Central Prison, Trichy.

6.The Public Prosecutor, High Court, Chennai.

+1 cc to R.Ganesh,sr.4157.

gj(co)
krd 28/3

Crl.A.No.778 of 2016



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