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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.03.2017

CORAM

THE HONOURABLE MR. JUSTICE A.SELVAM
and
THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Cr1.A.(MD)No.140 of 2016

Vasanthi

.. Appellant/Defacto Complainant

Vs.

1.State rep.by

The Inspector of Police,
Narikudi Circle Police Station,
(Kattanoor Police Station
Crime No.23 of 2013

.. 1st Respondent/Complainant

2.Kalidoss

3.Bose

4.Thangam

.. Respondents 2 to 4/Accused 1 to 3

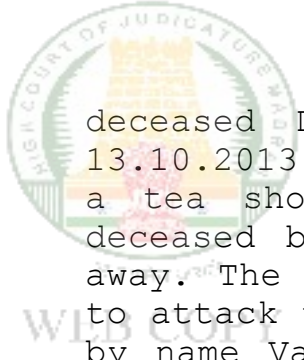
Criminal appeal filed under Section 372 of Cr.P.C. against the order of acquittal dated 25.01.2016 passed in Sessions Case No.180 of 2014 by the Additional District and Sessions Judge, Virudhunagar.

For Appellant : Mr.K.P.S.Palanivel Rajan
For R - 1 : Mr.A.Ramar
Additional Public Prosecutor
For RR - 2 to 4 : Mr.G.Marimuthu

JUDGMENT

(Judgment of the Court was made by A.SELVAM, J.)

The order of acquittal passed in Sessions Case No.180 of 2014 by the Additional District and Sessions Court, Virudhunagar District is being challenged in the present Criminal Appeal.



deceased Deivendran and with an intention to murder him, on 13.10.2013 at about 06.30 pm., in Uluthimadai village, in front of a tea shop of one Sekar, the first accused has attacked the deceased by using a cudgel and due to his overtacts, he passed away. The accused 2 and 3 have also instigated the first accused to attack the deceased. After occurrence, the wife of the deceased by name Vasanthi (defacto complainant) has given a complaint and the same has been registered in Crime No.23 of 2013. The complaint alleged to have been given by the defacto complainant has been marked as Ex.P1.

3.On receipt of Ex.P1, the Investigating Officer viz., PW20 has taken up investigation, examined connected witnesses and made arrangements to conduct necropsy on the body of the deceased and accordingly, Dr.Ragava Ganesan (PW19) has conducted postmortem and he found the following external and internal injuries:

Ante mortem injuries:

- (i)sutured lacerated injury 5 cm x 1 cm x bone deep noted on right parietal region.
- (ii)sutured lacerated injury 6cm x 1 cm x bone deep noted on left parietal region.
- (iii)contusion 7 cm x 4 cm noted on front of right side of abdomen.

On dissection of scalp, skull and dura:

Contusion scalp 15 cm x 10 cm noted on bi frontal region. Fracture of skull bone 5 cm and 6cm in length noted on right and left parietal region respectively. Diffused subdural haemorrhage & subarachnoid haemorrhage noted over both the cerebral hemispheres. Laceration 4 cm x 1 cm x 1 cm and 5 cm x 1 cm noted on right and left parietal region respectively. Cut section brain congested and edematous. Cerebro spinal fluid was increased in volume and was blood stained.

On dissection chest & abdomen:

Peritoneal cavity contains 100 ml of fluid blood with clots. Laceration of liver 4 cm x 2 cm x 1 cm noted on right lobe of liver, cut section liver congested.

4.The post-mortem certificate has been marked as Ex.P15. After transfer of PW20, his successor in office viz., PW21 has continued investigation and after completing the same, laid a final report on the file of the Judicial Magistrate Court, Aruppukottai and the same has been taken on file in PRC No.36 of 2014.

5.The Judicial Magistrate Court, Aruppukottai after



considering the fact that the offences alleged to have been committed by all the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Virudhunagar District and taken on file in Sessions Case No.180 of 2014.

6.The trial Court after hearing arguments of both sides and also after perusing relevant records has framed a charge against the first accused under Section 302 of the Indian Penal Code. Likewise, against the accused 2 and 3, framed charges under Sections 302 r/w 109 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.

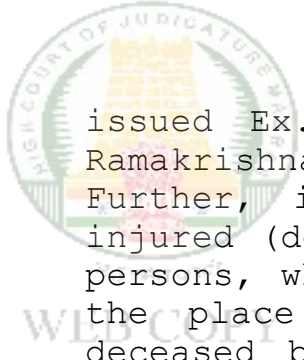
7. On the side of the prosecution PWs.1 to 21 have been examined and Exs.P1 to P17 and M.Os.1 to 4 have been marked.

8.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. No oral and documentary evidence have been adduced on the side of the accused.

9.The trial Court after hearing arguments of both sides and upon perusing relevant evidence available on record has found all the accused not guilty under the sections mentioned in the charges and ultimately acquitted them. Against the order of acquittal, the present Appeal has been preferred at the instance of PW1 (defacto complainant).

10.The learned counsel appearing for the appellant has contended to the effect that in the instant case, occurrence has taken place in front of a tea shop of one Sekar (PW8) and at the time of occurrence, PWs.1 to 3 have witnessed the same and in fact PWs.1 to 3 have given picturesque evidence with regard to overtacts alleged to have been done by the first accused as well as accused 2 and 3. But the trial Court without considering their evidence, simply on the basis of relationship between them and accused, has erroneously acquitted all the accused and therefore, the order of acquittal passed by the trial Court is liable to be set aside and all the accused are liable to be punished in accordance with the charges framed against the them.

11.Per contra, the learned counsel appearing for the respondents 2 to 4 has sparingly contended to the effect that in the instant case, after occurrence, initially, the then injured (deceased) has been taken to primary health centre, Narikudi and to that extent PW14, Mallika has been examined. No where she has stated to the effect that as to who has brought the then injured (deceased) to the hospital and subsequently, the then injured (deceased) has been referred to Aruppukottai Government Hospital and to that extent, PW13, Dr.Chandramouli has been examined and he



issued Ex.P6, wherein it has been clearly mentioned that one Ramakrishnan has brought the then injured (deceased) to hospital. Further, in Ex.P6, it has been clearly stated that the then injured (deceased) has been attacked by using aruval by two known persons, whereas, the specific case of the prosecution is that in the place of occurrence, the first accused has attacked the deceased by using cudgel and further, the occurrence has taken place on 13.10.2013 at about 06.30 pm., whereas, Ex.P1, complaint has been given on 14.10.2013 at about 07.00 am., Further the First Information Report has reached Court on the same day at about 11.00 pm., and further PWs.1 to 3 and deceased are inter-related to each other. Considering the vital lapses and also infirmities found on the side of the prosecution, the trial Court has rightly acquitted all the accused and therefore, the order of acquittal passed by the trial Court does not call for any interference.

12.The specific case of the prosecution is that the occurrence has taken place on 13.10.2013 at about 06.30 pm., in front of the tea shop of one Sekar. The said Sekar has been examined as PW8. But for the reasons best known to him, he has become a hostile witness.

13.The entire case of the prosecution hinges upon Ex.P1, complaint. The defacto complainant has been examined as PW1 and her specific evidence is that she is not known to read and write and as per her direction, PW7 (Karthikeyan) has written Ex.P1. But he has disowned Ex.P1.

14.It is an admitted fact that the occurrence has taken place on 13.10.2013 at about 06.30 pm., But Ex.P1 has been given on 14.10.2013 at about 07.00 am., and the same reached Court on 11.00 pm., The prosecution has not given proper explanation with regard to huge delay in giving Ex.P1.

15.As rightly pointed out on the side of the respondents 2 to 4, after occurrence, initially, the then injured (deceased) has been taken to Primary Health Centre, Narikudi and to that extent, PW14, Mallika has been examined and she marked Ex.P7. In Ex.P7, no mention has been made by whom the then injured (deceased) has been brought to hospital. Further it is mentioned in Ex.P7 that the then injured (deceased) has been referred to Government hospital and accordingly he has been referred to Government hospital, Aruppukottai and to that extent, Dr.Chandramouli (PW13) has been examined and he has given Ex.P6, wherein it has been clinchingly stated that the deceased has been attacked by two known persons by using aruval. As rightly pointed out on the side of the respondents 2 to 4, the specific case of the prosecution is that in the place of occurrence, the first accused has attacked the deceased by using a cudgel. Therefore, it is quite clear that on the side of the prosecution so many vital infirmities are available. Further, the prosecution has not given proper



explanation as to why Ex.P1 has been given very belatedly.

16.It is also an admitted fact that PWs.1 to 3 and deceased are inter-related to each other. If really PWs.1 to 3 have actually seen the occurrence, definitely, they would have given a complaint as early as possible. Since Ex.P1 has been given on 14.10.2013 at about 07.00 am., and no explanation has been given for inordinate delay in giving Ex.P1, it is needless to say that the prosecution has not virtually proved the charges framed against the accused.

17.The trial Court after considering the lapses found on the side of the prosecution and also vital infirmities, has rightly acquitted all the accused. In view of the discussion made earlier, this Court has not found any force in the contention put forth on the side of the appellant.

18.The learned counsel appearing for the appellant has contended to the effect that the defacto complainant, wife of the deceased is doing coolie work and she is not having sufficient means to maintain herself. Under the said circumstances, as per Section 357-A of the Code of Criminal Procedure, the Government of Tamil Nadu can give adequate compensation and to that extent, he relied upon the decision reported in **(2015) 2 Supreme Court Cases 227 [Suresh and another Vs. State of Haryana]** wherein it is held that "*object of Section 357-A is to pay compensation to victims, where compensation paid under Section 357-A Cr.P.C., is not adequate or where the case ended in acquittal or discharge and where the victim is required to be rehabilitated.*"

19.Since PW1 has been doing coolie work, as per the decision referred earlier, this Court can make recommendation to the State Government to provide adequate compensation to PW1.

20.In fine, this Criminal Appeal is dismissed. The order of acquittal passed in Sessions Case No.180 of 2014 by the Additional District and Sessions Court, Virudhunagar District is confirmed. However, this Court recommends the State Government to provide adequate compensation to PW1 as early as possible as per Section 357-A of the Code of Criminal Procedure, 1973.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar



To

1. The Additional District and Sessions Judge,
Virudhunagar.

WEB COPY

2. The Inspector of Police,
Narikudi Circle Police Station,
Kattanoor Police Station.

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

+ 1 CC TO Mr.G.MARIMUTHU, ADVOCATE IN SR No. 13805

MJ

TE/RR/SAR-II : 16/03/2017 : 6P/5C

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