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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED : 15.11.2017

PRONOUNCED : 06.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.A[MD].No.263 of 2016

and

CRL.(MP).No.5875 of 2017

Murugaiah : Appellant

Vs.

State through
The Inspector of Police,
Puliyampatti Police Station,
Puliyampatti, Thoothukudi District,
Crime No.37 of 2014. : Respondent

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 10.02.2016 made in S.C.No.188 of 2015, on the file of the Second Additional District Sessions Court, Thoothukudi.

For Appellant : Mr.M.Daniel Manoharan

For Respondent : Mr.C.Mayil Vahana Rajendran
Additional Public Prosecutor

JUDGMENT

R.SUBBIAH, J.

The appellant is the sole accused in S.C.No.188 of 2015, on the file of the Second Additional District Sessions Court, Thoothukudi. He stood charged for the offence punishable under Section 302 of the Indian Penal Code. By Judgment dated 10.02.2016, the Trial Court has convicted the accused and sentenced him, as detailed below:-

Section of Law	Sentence of imprisonment	Fine amount
302 IPC	To undergo imprisonment for life.	Rs.1,000/- in default to undergo simple imprisonment for one year.

<https://hcservices.ecourts.gov.in/hcservices/>

Challenging the said conviction and sentence, the appellant has



come up with this Criminal Appeal.

2. The case of the prosecution, as put forth by its witnesses, is consciously narrated below:-

The deceased, in this case, was one Mrs. Saravanam. The accused is her husband. PW-1 is the father of the deceased. PW-1 is a resident of Ulakudi Village. The deceased was given in marriage to the accused twenty years prior to the occurrence. Due to the wedlock, they were blessed with two children. PW-1 was owning two acres of land at the northern side of Pattarankovil. The accused was owning five acres of land, just adjacent to the western side of the land of PW-1. The accused was leading a wayward life without any work. The deceased questioned the accused as to why he did not go for any work. This resulted in frequent quarrels between them. That apart, the accused was harassing the deceased by doubting her fidelity.

2.2. While so, on 21.03.2014, at about 09.00 AM, PW-1, his brother's son, [PW-9] and the deceased went to the field of PW-1. After leaving the deceased in the field of the accused, PW-1 and PW-9 went to the field of PW-1. Thus, the deceased, who was in the field of the accused, was carrying on some work in front of pumpset. At that time, the accused came there and indulged in a wordy quarrel. At the end of the quarrel, the accused took out an axe and cut the deceased on her neck and shoulder indiscriminately. The deceased raised a hue and cry. On hearing the alarm raised by the deceased, PW-1 came there. The deceased fell down and died instantaneously. PW-1, immediately, went to the Puliampatti Police Station and made a complaint. PW-12, on receipt of complaint from PW-1, registered a case in Crime No.37 of 2014, under Section 302 of the Indian Penal Code. PW-9 signed the complaint as the attester. EX-P1 is the complaint and EX-P14 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

2.3. Taking up the case for investigation, at 12.45 AM, on 21.03.2014, PW-13 proceeded to the place of occurrence, prepared an Observation Mahazer [EX-P2] and a Rough Sketch [EX-P15], showing the place of occurrence in the presence of PW-5 and another witness. He recovered bloodstained earth [MO-2] and sample earth [MO-3] from the place of occurrence. He also recovered a small size silver plate [MO-4] and a small size vessel [MO-5] from the place of occurrence. Then, he conducted inquest on the body of the deceased. EX-P16 is the inquest report. Then, he forwarded the dead body for postmortem.

2.4. PW-10 - Dr. R. Sudaimuthu conducted autopsy on the body of the deceased. EX-P9 is the postmortem certificate. He noticed the following injuries:-

"1) Oblique gapping incised wound of size 3X1 CM X



muscle deep seen right side of upper part of back of neck 5 CM below and behind right mastoid.

2). Horizontal gaping incised wound [chop wound] of size 2 X 1 CM X cervical vertebra bone deep seen over front of lower part of neck surrounded by abraded [Impact Abrasion] contusion of size 7 CM X 0.2 CM to 1 CM. Underlying muscle, vessels, nerves, wind pipe, food pipe and left side of body of 4th cervical vertebrae found cut at site.

3). Horizontal gaping incised wound [chop wound] of size 2 X 1 X muscle deep seen over front of upper part of chest surrounded by abraded [Impact Abrasion] contusion of size 8 CM X 0.5 to 1.5 CM. The chop wound was situated at the level of supra sternal notch 1 CM left to the anterior midline. Underlying muscles, vessels, nerves found cut at site.

4). Horizontal gaping incised wound [chop wound] of size 3 X 2 CM X bone deep seen over left side of upper part of front of chest over left collar bone area surrounded by abraded [Impact Abrasion] contusion of size 11 CM X 0.5 CM to 1.2 CM. The chop wound was situated 8 CM above left nipple. Underlying muscle, vessels, nerves and left collar bone found cut at site.

5). Horizontal gaping incised wound [chop wound] of size 9X3 CM X muscle deep seen over back of upper part of left side of neck and left side of back of neck, extending from 3 CM below left ear lobule to midline over back of upper part of neck. Underlying muscle, vessels nerves found cut at site. Margins were regular.

6). Gapping incised wound [chop wound] of size 7 X 3 CM X muscle deep seen over right collar bone area. Underlying right collar bone found fractured with surrounding bruise.

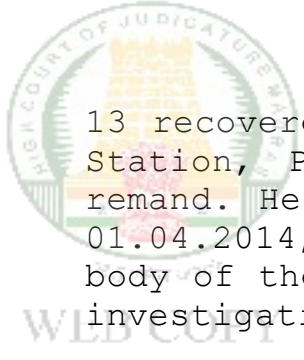
7). Gapping incised wound [chop wound] of size 5 X 2 X 1 CM seen over back of right shoulder.

8). Abraded contusions seen over following areas, 7 X 0.5 CM outer aspect of right shoulder, 4 X 0.5 CM to of right shoulder and 7 X 0.5 CM back of right shoulder.

9). Abraded contusion of size 10 X 3 CM seen over lower part of right side of back of chest".

He gave an opinion that the deceased would appear to have died of shock and hemorrhage due to chop injuries to the region of neck and chest.

2.5. At 04.00 PM, on 21.03.2014, PW-13 arrested the accused at Singathakurichi Bus Stand. On such arrest, the accused gave a confession, in which he disclosed the place, where he had hidden the axe. In pursuance of the same, the accused took the police and the witnesses to the hide out and produced the axe. PW-



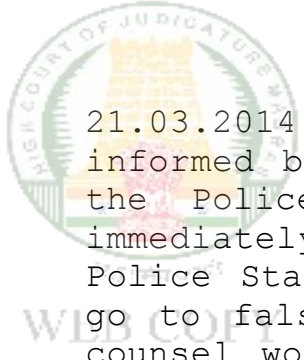
13 recovered the same under a mahazer. On returning to the Police Station, PW-13 forwarded the accused to the Court for judicial remand. He also handed over the material objects to the Court. On 01.04.2014, he examined the doctor, who conducted autopsy on the body of the deceased and recorded his statement. On completing the investigation, he laid charge sheet against the accused.

2.6. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on the side of the prosecution, 13 witnesses were examined, 16 documents and six material objects were marked.

2.7. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. However, he neither choose to examine any witness nor to exhibit any document. His defence was a total denial. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

3. The learned counsel appearing for the appellant would submit that in order to prove the alleged offence, the prosecution mainly relies on the evidence of PW-1, the father of the deceased. According to him, PW-1 is the only solitary eye-witness to the occurrence, but, highly interested. In such a situation, since PW-1 was a chance witness and highly interested, the prosecution should explain to the satisfaction of the Court as to what was the occasion for him to be present at the place of occurrence. Moreover, no independent witness was examined to speak about the occurrence. The evidence of PW-1 is not corroborated by any other independent source. Thus, according to the learned counsel, the solitary eye-witness account of PW-1 ought not to have been relied upon by the Trial Court. Moreover, PW-9, who signed in the complaint as attester, has turned hostile and he has not supported the case of the prosecution in any manner.

4. The learned counsel appearing for the appellant would further submit that there is an inordinate delay in preferring the complaint and forwarding the First Information Report to the Court. The alleged occurrence was at 09.00 AM, on 21.03.2014. The complaint was made at 11.30 AM and the First Information Report was registered at 12.45 PM, which has reached the learned Judicial Magistrate No.I, Kovilpatti, at 06.25 PM. Thus, there is delay of six hours in forwarding the First Information Report to the Court, <https://hccservices.courts.gov.in/hccservices/> doubt in the case of the prosecution. Furthermore, according to the learned counsel, PW-1, during cross-examination, has stated that he went to the Police Station at 03.00 PM, on



21.03.2014 and made the complaint and at that time, he was informed by the police officials that the accused was present in the Police Station at 02.00 PM, whereas according to PW-1, immediately after the occurrence at 10.00 AM, he went to the Police Station at 11.30 AM and lodged the complaint, which would go to falsify the earlier statement given by PW-1. The learned counsel would also submit that if really PW-1 was present at the time of occurrence, he would have prevented the accused from cutting further and after the cut was over, PW-1, being the father of the deceased, would have carried her and cried. If he carried her, there must be bloodstain on his dress. However, during cross-examination, PW-1 has stated that when he carried the deceased, there was no blood oozing out and the blood had clotted immediately. Thus, according to the learned counsel, the evidence given by PW-1 would go to show that he was not at all present at the time of occurrence and he would have rushed to the place of occurrence subsequently and thereafter only, he went to the Police Station at 03.00 PM, as deposed by him during cross-examination and thereafter only, EX-P14 came into existence, whereas, according to the case of the prosecution, EX-P14 was registered at 12.45 PM. Thus, the Trial Court, according to the learned counsel, without considering the above aspects, has convicted the accused and sentenced him to undergo imprisonment for life. Referring to the above grounds, the learned counsel has prayed for acquittal of the accused.

5. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal. According to him, the accused is none other than the son-in-law of PW-1 and the deceased was given in marriage to his own sister's son. PW-1 has stated in his evidence that he had questioned the accused as to why he was leading a wayward life, without any work. This resulted in a quarrel between them. On one occasion, the accused slapped PW-1. In fact, PW-1 has stated so about the same during chief-examination also. The learned Additional Public Prosecutor would further submit that on 29.10.2015, PW-1 was examined in chief. Though PW-1 was cross-examined at length on the same day, nothing has been brought on record so as to disbelieve his version. Subsequently, after a lapse of one month, viz., on 01.12.2015, PW-1 was recalled, on a recall petition filed by the accused and cross-examined. At that time, PW-1 has stated that on account of poor eye sight, he could not even identify the number of persons present in the Court. PW-1, during cross-examination, has further stated that at the time of occurrence, since the accused stamped him, he fell down and therefore, he could not prevent the accused from cutting further and thereafter, when he carried the deceased, there was no blood oozing out and the blood had clotted. Since the cross-examination was conducted nearly after lapse of one month, PW-1, on account of <https://hcservices.ecbts.gov.in/hcserv/cas>, could, perhaps, have lost his memory power and gave such a vague statement. Thus, the learned Additional Public Prosecutor would submit that though there are certain small



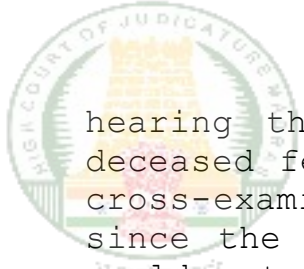
contradictions, they cannot be taken into consideration, as they are not at all contradictions in legal parlance.

6. The learned Additional Public Prosecutor would further submit that the occurrence was at 09.00 AM, on 21.03.2014 and the First Information Report was registered at 11.30 AM, which has reached the learned Judicial Magistrate, No.I, Kovilpatti, at 06.25 PM. The distance between the Police Station and the place of occurrence is six kilometers and the prosecution has explained the delay to the satisfaction of the Court. Thus, there is no delay either in preferring the complaint or forwarding the First Information Report to the Court. According to him, the prosecution has clearly proved the case with cogent and convincing evidence. Under such circumstances, no infirmity can be found on the conviction and sentence recorded by the Trial Court. Thus, the learned Additional Public Prosecutor prayed for dismissal of the Criminal Appeal.

7. We have given our anxious consideration to the submissions made by the learned counsel appearing for the appellant as well as the learned Additional Public Prosecutor appearing for the State and perused the materials available on record.

8. In order to prove the alleged occurrence, the prosecution mainly relies on the evidence of PW-1 alone. Except PW-1, there is no other evidence to corroborate the evidence of PW-1. We are conscious of the legal proposition that it is not quantity of the evidence, but, the quality that matters. In a case of this nature, when the prosecution relies only on the evidence of solitary witness, if the evidence of the said witness inspires the fullest confidence of the Court, then, there is no legal impediment for the Court to act upon the said solitary evidence and to convict the accused. Keeping the above legal principle in mind, let us go into the case of the prosecution.

9. In the case on hand, according to the learned counsel appearing for the appellant, the presence of PW-1, at the time of occurrence and his evidence that he witnessed the occurrence cannot be believed. We have gone through the evidence of PW-1. We do find that the presence of PW-1, at the time of occurrence, is highly doubtful. PW-1 is the father of the deceased. The alleged occurrence has not occurred anywhere near either the house of the deceased or PW-1. According to the case of the prosecution, on 21.03.2014, at about 09.00 AM, PW-1, his brother's son, [PW-9] and the deceased went to the field of PW-1. After leaving the deceased in the field of the accused, they went to the field of PW-1. The deceased was in the field of the accused, carrying on some work in front of pumpset. At that time, the accused came there and <https://hcservices.gov.in/hcservices/> wordy quarrel. At the end of the quarrel, the accused took out an axe and cut the deceased on her neck and shoulder indiscriminately. The deceased raised a hue and cry. On



hearing the alarm raised by the deceased, PW-1 came there. The deceased fell down and died instantaneously. However, PW-1, during cross-examination, has stated that at the time of occurrence, since the accused stamped on him, he fell down and therefore, he could not prevent the accused from cutting further and there was no blood oozing out from the body of the deceased and thereafter, when he carried the deceased, the blood had clotted immediately. The Version of P.W.1 is highly doubtful and unbelievable.

10. The evidence given by PW-1, in our considered view, would go to show that he was not at all present at the time of occurrence. It is common knowledge that after the injury is sustained, immediately, blood will not be drained and it will, normally, take sometime to clot. Thus, the evidence of PW-1 that immediately after the occurrence was over, when he carried the deceased, the blood had drained and thus, his dress was not tainted with bloodstain creates doubt in the case of the prosecution. That was the main reason why, the dress worn by PW-1, at the time of occurrence, was not at all recovered by the Investigating Officer.

11. Further, PW-1, during cross-examination, has stated that he went to the Police Station at 03.00 PM and made the complaint and at that time, he was informed by the police officials that the accused was present in the Police Station at 02.00 PM, on 21.03.2014, whereas, according to the case of the prosecution, PW-1 went to the Police Station at 11.30 AM and made the complaint and thereafter, at 12.45 PM, the First Information Report was registered. When PW-1 went to the Police Station at 03.00 PM and made the complaint, it is not at all possible for the police to register the First Information Report at 12.45 PM. Thus, the existence of First Information Report also creates doubt in the case of the prosecution. Moreover, though it is stated by PW-1, during cross-examination, that the deceased made a complaint against the accused at Murappanadu and Tuticorin alleging harassment at the hands of the accused, copy of the complaint has not been exhibited. Furthermore, when a specific question was posed to PW-1 relating to his vision, he has stated that on account of poor eye sight, he could not even identify the number of persons present in the Court and he was suffering from poor eye sight for the past 2 to 3 years. Thus, we are of the view that the presence of PW-1, at the time of occurrence, is highly doubtful and the evidence of PW-1 is not free from doubt. Except the evidence of PW-1, there is no other evidence available to support the case of the prosecution. Though PW-2 and PW-9 have been examined to speak about the occurrence, they have turned hostile and they have not supported the case of the prosecution in any manner. The contradictions, as pointed out above, in our

<https://hcservices.in/hcservices/> create doubt in the case of the prosecution.

12. But, it is the specific contention of the learned



Additional Public Prosecutor appearing for the State that the chief examination was conducted on 29.10.2015 and thereafter, after a lapse of one month, viz., on 01.12.2015, PW-1 was cross-examined and thus, PW-1 would have been won over by the other side. In this regard, the learned Additional Public Prosecutor makes reliance on a Judgment of a Division Bench of this Court in Dharmaraj Vs. The Inspector of Police, reported in 2015 (2) LW (Crl) 458, wherein it has been held that in a criminal proceedings, if a witness has been cross-examined after a long interval from the date of chief-examination, circumstances are available for the purpose of believing that he or she might have been won over by other side and such evidence can be disregarded/eschewed.

13. Though the above submission is attractive, it has no substance, since, in the above referred to case, the witness was a third party to the accused, whereas, in the case on hand, PW-1 is the father of the deceased and thus, the question of winning over by the other side does not arise at all. Therefore, the dictum laid down by the Division Bench is not applicable to the case on hand.

14. For the reasons stated above, we find no option, except to acquit the accused giving benefit of doubt, thereby holding that the prosecution has failed to prove the case beyond reasonable doubt against the accused and thus, the accused is entitled for acquittal.

15. In the result,

- this Criminal Appeal is allowed.
 - The conviction and sentence imposed on the appellant by Judgment, dated 10.02.2016 made in S.C.No.188 of 2015, on the file of the Second Additional District Sessions Court, Thoothukudi, is set aside and the appellant is acquitted.
 - Fine amount, if any, paid by the appellant shall be refunded to him.
 - Since the Appellant is in jail, he is directed to be set at liberty forthwith, unless his detention is required in connection with any other case.

Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

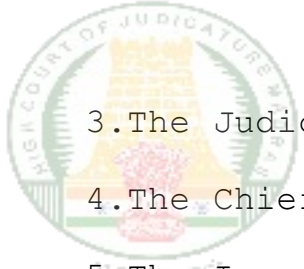
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Sub Assistant Registrar

To

1.The Second Additional District Sessions Court, Thoothukudi.

<https://hccourtsonline.org/Services/Download.aspx?CaseNo=188&Page=1> Sessions Judge,
Tuticorin.



3.The Judicial Magistrate No.I,Kovilpatti.

4.The Chief Judicial Magistrate, Tuticorin.

5.The Inspector of Police,
Puliyampatti Police Station,
Puliyampatti, Thoothukudi District.

6.The Superintendent,
Central Prison, Palayamkottai.

7.The District Collectorate,
Thoothukudi.

8.The Director General of Police, Chennai-4.

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

10.The Record Keeper,
Vernacular Section, Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.ALAGUMANI,Advocate,SR. 91822

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