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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 04.08.2017

Delivered on : 11.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Criminal Appeal (MD) No.452 of 2016

and CrI.M.P.(MD) No.11702 of 2016

Sorimuthu

.. Appellant/Accused

vs.

State represented by
The Inspector of Police,
Alangulam Police Station,
Tirunelveli District.
(Crime No.380 of 2012)

.. Respondent/Complainant

Criminal appeals are filed under Section 374(2) of Criminal Procedure Code against the judgment and conviction dated 18.10.2016, by the learned III Additional Sessions Judge, Tirunelveli in S.C.No.92 of 2015.

For Appellant

: Mr.V.Kathirvelu

Senior Counsel for M/s.K.Prabhu

For respondent

: Mr.K.S.Duraipandian

Additional Public Prosecutor

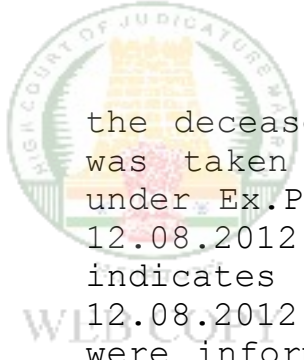
JUDGMENT

(Judgment of the Court was delivered by

M.M.SUNDRESH, J)

The accused No.1 in S.C.No.92 of 2015 on the file of III Additional Sessions Judge, Tirunelveli is the appellant before us. He along with accused No.2 was charged for the offences under Sections 506(ii), 341, 294(b), 302 and 302 r/w 34 I.P.C. The accused No.2 was acquitted of all the charges. The appellant was convicted for offence under Section 302 I.P.C., while acquitted under Sections 506(ii), 341 and 294(b) I.P.C. Challenging the same, the present appeal has been filed.

2.The case of the prosecution is that, the deceased was having an affair with the sister of A1 and A2. The appellant being A1 is the brother of A2. The affair was objected by the appellant. The deceased refused to mend his ways. There was a wordy quarrel between the appellant, A2 on the one side and the deceased on the other side. The date of occurrence i.e., 12.08.2012. Thereafter, at about 1.45 p.m. in the place where P.W.5 was running a chicken stall, the appellant took a knife belonging to P.W.5 and attacked



the deceased who was coming along with P.Ws.1 and 4. The deceased was taken to the hospital from which a statement was obtained under Ex.P.1. The complaint was registered at about 3.00 p.m. on 12.08.2012. Ex.P.11 is the death intimation of the hospital which indicates that the deceased was brought dead to hospital on 12.08.2012 at about 2.45 p.m. It also states that the relatives were informed thereafter. The appellant was arrested in the early morning hours on 13.08.2012 by P.W.31, who was the station house officer. He gave a confession statement under Ex.A.6, pursuant to which the recovery was made. Ex.A17 is the Inquest Report made by P.W.31. Ex.P.13 is the viscera report dated 17.08.2012. Ex.P.14 is the Observation Mahazaar dated 12.08.2012 along with Sketch Ex.A15. Finally, on completing the investigation, P.W.31 laid the charge sheet against the accused under Sections 506(ii), 341, 294 (b), 302 and 302 r/w 34 I.P.C.

3.Prosecution Witnesses:

(i) P.W.1 is the father of the deceased. According to him, he along with the deceased and P.W.4 were coming together when the occurrence took place. He has stated that they went to see a person at a sawmill. He also stated that the place of occurrence is a crowded place. The deceased did not have any drinking habit. He was taken in a ambulance though he did not know who made arrangement for the same. All the 3 persons left the house together and were together till the occurrence. He admits that it would take about 1 1/2 hours to reach the hospital.

(ii) P.W.4 is the brother-in-law of the deceased. According to him all the three went to purchase cloth. He also denies the drinking habit of the deceased. He did not inform P.Ws.2 and 3 about the occurrence.

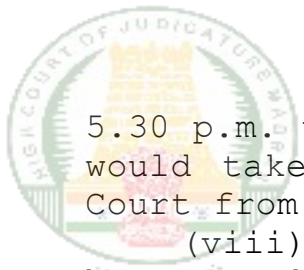
(iii) P.Ws.2 and 3. P.W.2 and 3 are the mother and sister of the deceased. According to them, they got information through the unknown source about the occurrence. They reached the place of occurrence and saw the body. They also deny the fact that deceased was having drinking habit.

(iv) P.Ws.5 to 22 and 25 turned hostile. P.W.5 denied the fact that the deceased took the knives from his shop. P.W.6 also made statement to that effect. P.W.7, who signed the witness Mahazar turned hostile and has deposed that he did not know the inspection by the police.

(v) P.W.8 is the one who signed as a witness in the Observation Mahazar. He states that he did not aware what was written therein.

(vi) P.W.23 is the Village Administrative Officer, who signed as a witness to Ex.P.6 confession statement. However, he has stated that such a statement was given only by A2. He was also not clear in identifying the recovery of two shirts. He has further stated that blood stains were found in both the knives.

<https://hcservices.econline.gov.in/Hcservices> P.W.28 is the constable, who brought the Ex.P.1 along with documents to the Judicial Magistrate, Tenkasi in the early morning of 13th August, 2012, after receiving the same at about



5.30 p.m. the previous day. In his evidence, he has stated that it would take only 45 minutes to reach Tenkasi Judicial Magistrate Court from Alangulam.

(viii) P.W.29 is the officer, who registered the complaint. He has stated in clear terms that the intimation was received by him from the Tirunelveli Medical College Hospital at about 1.45 p.m. There was no information prior to that. He also accepted that as per Ex.A.11, the deceased was brought to the hospital at about 2.45 p.m. on 12.08.2012.

(ix) P.W.30 is the forensic department personnel, who speaks in support of Ex.P.13, which is the viscera report. In his evidence, he states that the deceased was found consumed alcohol and as it was found in excess he would have taken it 10 to 15 minutes prior to death.

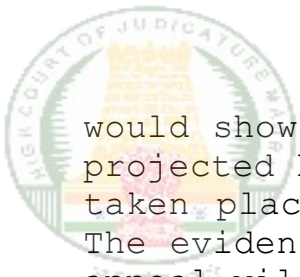
(x) In tune with this statement and Ex.P.13, P.W.26 the Doctor who conducted the postmortem has also opined that the body of the deceased contained alcohol.

(xi) P.W.31 is the investigating officer. He speaks about the arrest, the recovery, preparation of observation mahazar and sketch followed by examination of the said witnesses. He also states that the place of occurrence is a crowded one. In tune with the evidence of P.W.29, he confirms that the information was received at 1.45 p.m. He also states that it would take 45 minutes to reach the Tirunelveli Medical College Hospital. It is his further case that the death intimation was received at 3.00 p.m. as per the record under Ex.P.11.

4. Based on the above materials, the Trial Court framed charges as detailed earlier in this judgment. During the trial on the side of the prosecution, as many as 31 witnesses were examined and 22 documents were exhibited, besides 12 Material Objects. When the above incriminating materials were put to the accused under Section 313 Cr.P.C, they denied the same as false.

5. The trial Court acquitted the appellant for the offences under Sections 506(ii), 341 and 294(b) I.P.C., and rendered conviction for the offence under Section 302 I.P.C. The trial Court has placed reliance on the evidence of P.Ws.1 and 4. It also took the view that there was no delay in the F.I.R. reaching the Court as P.W.13 went to Sivagiri Court first and thereafter to Tenkasi Court.

6. The learned counsel for the appellant would submit that there is a suppression of facts involved. The prosecution case is not true. There is a material contradiction between the evidence of P.Ws.1 and 2. They were not present at the time of alleged occurrence. The occurrence is said to have taken place at about 1.45 p.m. The body was brought to the hospital at 2.45 p.m. Therefore, it is impossible for the police to receive intimation at 4.45 p.m. The deceased was found to have consumed liquor, which falsifies the evidence of P.Ws.1 to 4. There is no evidence to connect Material Objects 1 and 2 with P.W.5. The medical evidence



would show the the food was partly digested. Therefore, the timing projected by the prosecution is not correct. If the occurrence has taken place in a crowded place, there must be several witnesses. The evidence of P.W.23 does not inspire confidence. Therefore, the appeal will have to be allowed.

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7.The learned Additional Public Prosecutor would submit that P.Ws.1 and 4 being the eyewitnesses, the trial Court has rightly taken into consideration of the same. Motive has been established as the deceased was having affair with the sister of A1 and A2 and hence the conviction rendered by the Court below have to be confirmed.

8. We have considered the rival submissions and perused the evidence available on record.

Discussion:

9.It is the specific case of the prosecution that the alleged occurrence has taken place at about 1.45 p.m. on 12.08.2012. Ex.P.11 clearly states that the deceased was brought dead at about 2.45 p.m. It also states that the relatives have been informed. Curiously no accident register was marked. The evidence of P.W.31 is to the effect that the intimation has been received at about 1.45 p.m. Similarly, P.W.29 also states about the said fact. He also states that nobody gave information before that. Therefore, it is rather strange as to how an intimation given from the hospital to the police at 1.45 p.m. This material contradiction coupled with non-marking of the accident report causes serious doubt on the genesis of the case as projected by the prosecution.

10.It is to be noted that it is also the specific case of the prosecution that for the first time the intimation has been received from the hospital through mike at about 1.45 p.m. Secondly, Ex.P.11 says that intimation was given to the relatives. This document throws great suspicion on the evidence of P.Ws.1 and 4 of their presence at the time of occurrence. P.W.1 says that all the three, including P.W.4 and the deceased went to see a person at the sawmill. He also states that the place is crowded one and there were number of persons present. However, P.W.4 says that they went to buy clothes. The deceased, P.Ws.1 and 4 left the house at about 12.00 noon and were seen together till the occurrence. If P.W.1 had accompanied the deceased, travelled in the ambulance then his name would have been mentioned under Ex.P.11. Similarly P.W.4 though accompanied the deceased have not chosen to give a complaint. Therefore, we are not able to accept the evidence of P.Ws.1 and 4 as trustworthy.

11.P.Ws.2 and 3 are not eyewitnesses. They have not been informed about the occurrence by P.W.1 or P.W.4. It is not known
<https://hcservices.ecm.hispania.int/hcservices/> whether they got the information. They have stated that it would take 20 minutes to reach the place of occurrence from their residence. Further P.Ws.1 to 4 have not stated as to who made



arrangement for the ambulance.

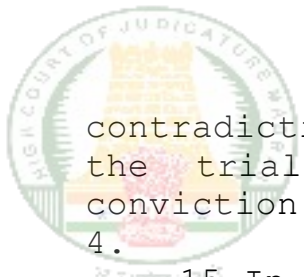
12.Ex.P.13 is the viscera report. The relevant portion of the said report is extracted hereunder:

"1.Stomach and contents : Detected one thousand seven hundred and ninety four (1794.0) milligrams of ethyl alcohol and not other poison.
2. Intestine and contents : Detected nine hundred and fourteen (914.0) milligrams of ethyl alcohol and not other poison.
3. Liver and Kidney : Detected one thousand one hundred and ninety six (1196.0) milligrams of ethyl alcohol and not other poison.
4.Blood : Detected two hundred and fifty three (253.0) milligrams % W/v of ethyl alcohol and not other poison.
5.Preservative : Did not detect Ethyl alcohol or other poison."

In tune with Ex.P.13, P.W.30 has given evidence. P.W.24 also based upon postmortem certificate has agreement with this. Therefore, the deceased was under the influence of alcohol prior to his death. Opinion of P.W.30 is that the deceased would have taken it 10 to 15 minutes before death, by taking into consideration of the quantum of consumption. Therefore, we have to hold that the deceased had consumed alcohol. However, according to P.Ws.1 & 4, the deceased was not in the habit of drinking alcohol. Further, the deceased was found in the company of P.Ws.1 and 4 between 12.00 noon and the occurrence. Then how could the deceased consumed alcohol. This factor would clearly show that the prosecution as projected through P.Ws.1 and 4 cannot be true.

13.Coming to recovery, the evidence of P.W.23 does not inspire confidence. In his examination, he has stated that only A2 had given the confession statement. He has also changed his version with respect to the identification of material objects. Even as per the version of P.Ws.1 and 4 it is the appellant who stabbed the deceased, whereas P.W.23 stated that he found blood stains in both the knives. Thus, we are of the view that the evidence of P.W.23 created serious doubt and therefore, it cannot be relied upon.

14.From the above, we are constrained to state that the prosecution has not proved the case beyond reasonable doubt. The very genesis of the occurrence itself has not been established clearly by the prosecution. Therefore, the very foundation of the case as projected by the prosecution itself is very shaky and doubtful. Perhaps there must have been an earlier first information which also lent credence in not marking the accident register. We may also add that in this case almost all other witnesses have turned hostile. There is no link between recovery of the items, door lock, etc. said to have been used by the accused with the specific ownership of P.W.5. The learned trial Judge has not considered the evidence in its perspective. The inherent



contradictions as indicated above have not been taken note of by the trial Court. Therefore, we are unable to sustain the conviction rendered merely based upon the evidence of P.Ws.1 and 4.

15. In the result, the Criminal Appeal is allowed and the order of conviction and sentence passed by the learned III Additional Sessions Judge, Tirunelveli made in S.C.No.92 of 2015 dated 18.10.2016, are set aside. The appellant is acquitted of all the charges. The appellant is now undergoing sentence in the Central Prison, Palayamkottai. In view of this judgement acquitting him, the jail authorities are directed to set him at liberty forthwith, if he is not required in connection with any other case or proceedings. Fine amount, if any, paid shall be refunded to the appellant. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-II)

/Truecopy/

Sub Assistant Registrar

To

1. The III Additional Sessions Judge, Tirunelveli.
 2. The Superintendent of Prison,
Palayamkottai Central Prison, Tirunelveli.
 3. The Inspector of Police,
Alangulam Police Station, Tirunelveli District.
 4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
 5. Do thro' The Principal District Judge, Tirunelveli.
 6. The Judicial Magistrate, Tenkasi.
 7. Do thro' The Chief Judicial Magistrate, Tirunelveli.
 8. The Director General of Police, Mylapore, Chennai.
 9. The District Collector, Tirunelveli District.
- +1cc to M/S.K.PRABHU, Advocate SR.No.72110
sj
MAS/SV-MMS/SAR2:23.08.2017:6P-11C

order in
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