

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 08.09.2017

CORAM:

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THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRIMINAL APPEAL(MD)No.147 of 2013**and M.P(MD)No.1 of 2014**

1.Rajendran
2.Kumaravel

... Appellants/Accused Nos.1 & 2

vs.

State,
Rep. By the Inspector of Police,
Athirampattinam Police Station,
Thanjavur District.
(Crime No.54 of 2010)

... Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, 1973, against the Judgment and conviction, dated 19.03.2013 passed in Sessions Case No.284 of 2010 by the Third Additional District and Sessions Judge, Thanjavur at Pattukkottai.

For Appellants	: Mr.P.Ganapathi Subramanian
For Respondent	: Mr.K.S.Durai Pandian, Additional Public Prosecutor.

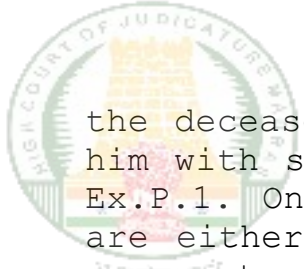
JUDGMENT(Judgment of the Court was delivered by **M.M.SUNDRESH, J**)

The appellants are accused Nos.1 and 2 in Sessions Case No.284 of 2010, on the file of the Third Additional District and Sessions Judge, Thanjavur at Pattukkottai. The first appellant has been convicted for the offence under 302 I.P.C and the second appellant has been convicted for the offences under Sections 341, 302 I.P.C read with Section 109 I.P.C. Challenging the same, the present Criminal Appeal has been filed.

2.The case of the prosecution in a nut-shell, is as follows:-

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(1) The first appellant is the father and the second appellant is the son. On 03.03.2010, in pursuant to a water dispute, when



the deceased was returning from his land, the appellants attacked him with slipper. Thereafter, the deceased gave a complaint under Ex.P.1. On the next day, in the presence of P.W.1 to P.W.6, who are either close relatives or family members of the deceased and nearer to their house, the appellants and A.3 and A.4 picked up a quarrel with reference to the complaint given on 03.03.2010. Thereafter, the first appellant took M.O.1 and stabbed the deceased. The second appellant is stated to have caught hold of the deceased. The third accused attacked P.W.1 on the head. Thereafter, the second appellant took the knife from the first appellant and tried to attack the deceased, but before that the crowd has gathered and on seeing the same, all the accused ran away from the place. Ex.P.3 is the complaint given by P.W.1 on 04.03.2010 at about 10.30 hours. Thereafter, P.W.1 called ambulance, but the ambulance did not come, however, arranged for a taxi for taking the deceased to the hospital.

(ii) P.W.1 to 6 are the eye witnesses and they are either family members of the deceased or close relatives of the deceased. P.W.2 is the wife of P.W.1. P.W.2 has stated that she did not remember as to whether any statement has been made that the second appellant, after removing the knife from the first appellant, tried to attack the deceased. P.W.3 is the wife of the deceased. P.W.4 and P.W.5 are the close relatives of the deceased. P.W.6 is the mother of the deceased.

(iii) Though all the witnesses have stated about the occurrence with specific overt act attributed against all the accused, P.W.6 has stated that when she reached the place of occurrence, she found the deceased lying in a pool of blood. P.W.7 is the driver, who took the deceased along with P.W.1 and thereafter, he dropped them in the hospital. P.W.9 is the Village Administrative Office, who speaks about the confession of A.1 to A.3. P.W.11 is the Chief Medical Officer, who speaks about the examination of the body of the deceased. He registered the Accident Register and thereafter, sent the body to Mortuary. He also says that the deceased was brought by P.W.1 and he further states that P.W.1 has stated that he was attacked by two persons. He further states about the presence of P.W.2 and the injuries sustained by her in her little finger.

(iv) Ex.P.4 is the Observation Mahazar. Ex.P.5 and Ex.P.7 are the seizure mahazar. Ex.A.8 and Ex.A.9 are the Accident Register pertaining to P.W.1 and P.W.2. Ex.P.10 is the Accident Register report of the deceased. Ex.P.19 is the sketch drawn on 04.03.2010 and Ex.P.20 is the inquest report.

3. Based on the above materials, the trial Court framed charges. During trial, on the side of the prosecution, as many as 18 witnesses were examined and 20 documents were exhibited and 8 Material Objects. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false.



4.The trial Court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, convicted the first accused under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.5,000/-, in default to undergo three months simple imprisonment; second accused under Section 341 I.P.C and sentenced him to undergo one month simple imprisonment and also imposed a fine of Rs.500/-, in default to undergo one week simple imprisonment and also under Section 302 r/w 109 I.P.C and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.5,000/-, in default to undergo three months simple imprisonment; third accused under Section 324 (2 counts) I.P.C and sentenced him to undergo one year rigorous imprisonment for each count and imposed a fine of Rs.1,000/-, in default to undergo one month simple imprisonment and the fourth accused under Section 341 I.P.C and sentenced him to undergo one month simple imprisonment and also imposed a fine of Rs.500/-, in default to undergo one week simple imprisonment and also under Section 341 I.P.C and sentenced him to undergo one month simple imprisonment and also imposed a fine of Rs.500/-, in default to undergo one week simple imprisonment. Against the conviction and sentence passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the accused Nos.1 and 2 as appellants 1 and 2.

5.The trial Court convicted the appellants on the basis of the evidence adduced by P.W.1 to 6 and the trial Court has also taken into consideration of the fact that P.W.1 and P.W.2 are the injured witnesses.

6.The learned counsel appearing for the appellants would submit that the presence of P.W.1 to P.W.4 is doubtful. All the witnesses speak about the occurrence nearer to the house of the deceased and P.W.1, whereas Ex.P.19-rough sketch clearly states that the occurrence has taken place at Vadakarai road. There is a serious doubt over the recovery. P.W.9 is a total stranger and she is not the Village Administrative Officer of Karungkulam. The cross-examination of her would show that the police has informed P.W.9, after arrest. The confession statement was written by the police. The evidence of P.W.1 to P.W.6 cannot be accepted and they are interested witnesses. P.W.1, who went along with the deceased to give the earlier complaint.

7.The learned counsel appearing for the appellants further submitted that insofar as A.2, namely the second appellant, is concerned, there is no evidence to believe the case of the prosecution that he has caught hold of the deceased. Even Ex.P.10 only supports the fact that the assault by one known person. Therefore, the appellants are entitled for the benefit of doubt.



8. The learned Additional Public Prosecutor appearing for the respondent would submit that it is a case, in which, there are six eye witnesses. All of them speak about the occurrence and the overt act of the appellants. The motive part has also been established. Merely because the witnesses are either the family members or the close relatives of the deceased, their evidence cannot be eschewed. Ex.P.19 has to be seen in tune with the other evidence available. The occurrence happened in a Village and there is not much distance between the house of one person to another and therefore, no interference is required. Considering Ex.P.19, wherein it was stated that in view of the evidence adduced that the occurrence has taken place nearer to the house of P.W.1, the contention raised by the learned counsel for the appellants cannot be accepted and the appellants have not produced any contra evidence as against the case of the prosecution. P.W.1 to P.W.6 though being the family members or relatives of the deceased, they have clearly spoken about the role played by the first appellant. They have clearly stated that the first appellant stabbed the deceased two times. The evidence of P.W.1 to P.W.6 is corroborated by the Doctor's evidence, namely P.W.13. Ex.P.12 is also in tune with the evidence of P.W.12. Recovery was also made in pursuant to the confession statement by the first appellant. It is true that P.W.9 has stated that he was not the Village Administrative Officer of Karungkulam. The said statement by itself cannot be a ground to doubt the recovery. The statement made in chief examination by P.W.9 is also corroborate by P.W.10, who is the Assistant.

9. We have considered the rival submissions and perused the materials available on record.

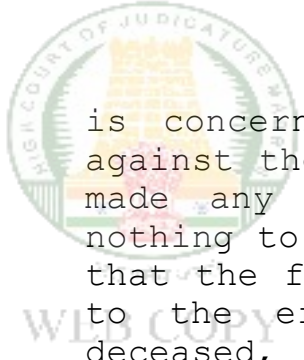
Discussion:-

10. It is the specific case of P.W.9 and P.W.10 that when investigation was done by the police, they were present. However, they have clearly stated that the confession statement has been given before them, pursuant to which, recovery has been made from the first appellant. So, the contention of the learned counsel for the appellants in this regard cannot be accepted.

(ii) Coming to Ex.P.19 as against the statement made by P.W.1 to P.W.6, as rightly held by the trial Court, occurrence happened in the Village. It is not clear with respect to the actual distance between the place of occurrence marked under Ex.P.9 and the house of the deceased, even otherwise, it cannot be a ground to doubt the case of the prosecution, especially, from the evidence adduced by P.W.1 to P.W.6.

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(iii) However, we find some force in the argument of the learned counsel for the appellants insofar as the second appellant



is concerned. The evidence of P.W.1 to P.W.6 is primarily as against the first appellant. It is not as if the second appellant made any statement as against the first appellant. There is nothing to suggest that the second appellant was aware of the fact that the first appellant was carrying a knife. The evidence given to the effect that the second appellant tried to stab the deceased, after taking the knife from the first appellant, but could not do so itself would show that he has caught hold of the deceased while the first appellant stabbed him cannot be true. The said statement is also contrary to the First Information Report. It is to be noted that under Ex.P.3, it is stated that the second appellant also attacked the deceased with knife. Strangely it was substituted with an attempt to attack, perhaps after taking note of Exs.P.10 and P.12 which are Accident Report and Post Mortem Report respectively, which speak of only two external injuries. P.W.2 also states that she was not aware as to whether a statement has been given that the second appellant tried to stab the deceased. Ex.P.8 is the Accident Register registered pertaining to P.W.1. In that, he has stated that he was assaulted by two known persons. Even as per the evidence of P.W.1, he was not attacked by the second appellant. In Ex.P.9 it is stated that P.W.2 is alleged to have been assaulted by a known person in knife. Even as per the evidence, it was not done by the second appellant. Coming to Ex.P.10, which is referable to the deceased, the deceased was brought by P.W.1, even here it has been stated that the deceased was assaulted by a known person. It is also to be noted that P.W.6 in his cross-examination has stated that she has only seen the deceased on the ground lying in a pool of blood.

(iv) Therefore, in the light of the above discussions, we are of the view that the conviction rendered against the second appellant is liable to be set aside, as the prosecution has not proved its case. However, in the light of the evidence available especially P.W.1 to P.W.5, we hold that the appeal deserves to be dismissed insofar as the first appellant is concerned.

(v) In the result, this Criminal Appeal is allowed in part and the conviction and sentence passed by the Third Additional District and Sessions Judge, Thanjavur at Pattukkottai made in Sessions Case No.284 of 2010 are confirmed in respect of the first appellant/A.1.

(vi) The order of conviction and sentence passed by the Third Additional District and Sessions Judge, Thanjavur at Pattukkottai made in Sessions Case No.284 of 2010, are set aside in respect of the second appellant/A.2. The second appellant/A.2 is acquitted of all the charges. The second appellant/A.2 is now undergoing sentence in the Central Prison, Trichy. In view of this Judgment <https://hccases.courts.mys.in/hccases/> 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 second appellant/A.2. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(Crl.Side)

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/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Pattukkottai.
2. The Chief Judicial Magistrate, Pattukkottai.
3. The Third Additional District and Sessions Judge,
Thanjavur at Pattukkottai.
4. The District Collector, Thanjavur.
5. The Director General of Police, Mylapore, Chennai.
6. The Inspector of Police,
Athirampattinam Police Station,
Thanjavur District.
7. The Superintendent, Central Prison, Tiruchrapalli.
8. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
Crl.A(MD)No.147 of 2013 and M.P(MD)No.1 of 2014
08.09.2017

ps

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