

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CrI.A.No.24 of 2018

1.R.Sathishkumar
2.S.Harikrishnan

Appellants/accused 1 & 2

Vs.

The State
Rep.by the Inspector of Police,
E-3, Saravanampatti Police Station,
Coimbatore.
[Cr.No.222 of 2016]

Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment passed in C.C.No.122 of 2017 dated 06.11.2017 by II Additional Sessions Court cum Special Sessions Court for Bomb Blast Cases, Coimbatore, thereby acquit the accused.

For Appellant : Mr. Padmanabhan
Senior Counsel for
Mr.S.B.Viswanathan

For Respondent : Ms.M. Prabhavathi,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by N.SATHISH KUMAR, J.,]

Originally, the appellants/accused were convicted for the offences u/s.364 and 302 IPC in S.C.No.122 of 2017 on the file of the learned II Additional Sessions-cum-Special Sessions Judge for Bomb Blast Cases, Coimbatore under judgment dated 06.11.2017 and were sentenced as follows:-

Appellant/Accused	Conviction under section	Sentence Awarded
A1 & A2	364	sentenced to undergo rigorous imprisonment for TEN YEARS each and a fine of Rs.1,000/- each, with a default sentence of three months simple imprisonment each.
	302 IPC	sentenced to undergo imprisonment for LIFE each and a fine of Rs.1,000/- each, with a default sentence of three months simple imprisonment each.

The Trial Court ordered all the sentences to run concurrently and the detention period already undergone by the appellants/accused were ordered to be set off u/s 428 Cr.P.C. Aggrieved over the above conviction and sentences the present appeal came to be filed by the appellants.

2. The prosecution case in nutshell is as follows:

2.(a) The deceased is the husband of P.W.1 and brother of P.W.2. They were residents of 4th Street, Saravanampatti. The deceased and his brother P.W.2 were jointly running a hotel. In the same complex, one Haseema, wife of A1 was working in a furniture shop. The deceased and Haseema developed illegal contact, which was objected by P.W.1. Due to hike of rent, the deceased closed hotel and went for work in another hotel as Parotta Master. When the matter stood thus, two months prior to the occurrence, while P.W.1 was in her house along with her sister Banumathi, A1 came and introduced himself as husband of Haseema and warned P.W.1's husband for moving with his wife and also said that if her husband will not mend his way, he will be ready to even go to jail by murdering him. At that time, P.W.3 and P.W.5 were also present. P.W.5 informed A1 not to speak with a woman, he may discuss with the deceased. Thereafter, on 10.4.2016 while P.W.1 and her husband/deceased were in their house, at about 1.15 p.m., A1 knocked the door and the same was opened by the deceased, A1 was talking with him and thereafter both of them proceeded to main road after discussing. Despite P.W.1 requested to discuss in the house they went to main road. Immediately, P.W.1 informed to P.W.2 over phone and followed A1 and deceased. When the deceased and A1 reached 4th Street near Susoori hospital, A2 also present there, A1 removed the knife M.O.1 from his waist and stabbed the deceased on the right side back and hip. Similarly, A2 also stabbed the deceased on the back and hip. Immediately, the deceased fell down. Despite P.W.1 alarmed to leave him, A1 at that time again stabbed the

deceased twice on the face. Thereafter both the accused fled away from the place of occurrence in a bike.

2.(b) P.W.2 brother of the deceased also reached the spot at the relevant point of time and witnessed both the accused stabbed the deceased. Thereafter P.W.1 and 2 brought the deceased to their house. On hearing the cry of P.W.1 , P.W.5 Ravi and one Rajkumar came there. They also tied the deceased with wet cloth after that P.W.5 and Rajkumar took the deceased in their motor cycle to C.M.C.Hospital, Coimbatore. P.W.1 and P.W.2 followed them in an another bike. However, the deceased was declared dead in the hospital. Thereafter, police, on intimation, came to the hospital and recorded the statement of P.W.1 under Ex.P.1. P.W.3, a resident of the same locality, who came in a motor cycle on 10.4.2016 at about 1.30 p.m. along with one Santhoshkumar, saw the deceased going with A1 towards main road. P.W.3 asked the deceased was there any problem, for which the deceased said that there was no problem. Thereafter, after hearing the cry of P.W.1 they found the deceased with pool of blood. The deceased was taken to hospital by the neighbours. P.W.4 on 10.04.2016 at about 12.00 to 1.00 p.m. while he was in the bus stand, two persons came in a bike among one was A1 and they were discussing themselves that they should kill the deceased. On 10.4.2016 at about 2.00 pm. P.W.5 seen the deceased with injury and brought to the house by P.Ws.1 and 2 and they tied wet cloth on the injuries to arrest the blood. Thereafter, P.W.5 and one Rajkumar took the deceased to the hospital. When enquired P.W.1 informed that A1 stabbed the deceased.

2.(c) P.W.13 Sub-Inspector of Police on 10.04.2016 at about 16.10 hours received intimation from the hospital, went to the Government Hospital, Coimbatore, and recorded the statement of P.W.1 and registered the crime in Cr.No.222/2016 under Section 302 I.P.C. Under Ex.P.13 and forwarded the F.I.R. to the Court and copy to the Inspector of Police. P.W.16, Inspector of Police, took up the case for investigation, went to the place of occurrence and prepared Observation Mahazar Ex.P.2 at 8.00 a.m. in the presence of P.W.6 and one Gagan, drawn Rough Sketch Ex.P.20 and also collected bloodstained tar slab and ordinary slab under Ex.P.3 Mahazar and recorded the statement of witnesses. Thereafter, on 11.4.2016 he conducted Inquest over the dead body in the presence of witnesses and prepared Inquest Report Ex.P.21. P.W.15 Assistant Professor and H.O.D. of Forensic Medicine, attached to the Coimbatore Medical College & hospital, on receipt of the requisition from the P.W.16, conducted autopsy over the dead body and found the following:

“The ante mortem external and internal injuries
seen over
the body:

- 1) Horizontal cut wound 10 x 2 cm x bone deep noted over middle of left side cheek extending from 4 cm in front of left ear up to 1 cm just above angle of mouth on left side. The tailing noted over medial end of the wound. On dissection the wound cutting the muscle, vessels, nerves and partially cutting the maxillary bone.
- 2) Horizontallly oblique cut wound 11 x 1 cm x muscle deep noted over left side lower half of the face extending from 4 cm infero medial to left ear lobe and ends at 2 cm left lateral to chin, the lateral end is 1 cm below to the wound no.1. On dissection the wound cutting the muscle, vessels and nerves.
- 3) Horizontal stab wound 4 x 2 cm x pleural cavity deep noted over left lower chest at the level of 7th inter costal space along the anterior axillary line. The medial end is blunt and the lateral end is sharp. The margins are regular. On dissection the wound passes inwards, medially cutting the underlying muscle, vessels, nerves and enter into the left pleural cavity. Left side Pleural cavity contains about 100 ml of fluid blood.
- 4) Horizontal stab wound 5 x 2 cm x peritoneal cavity deep noted over lateral aspect of left lower chest at the level of 9th inter costal space along the posterior axillary line. The lateral end is sharp and the medial end is blunt. The margins are regular. On dissection the wound passes inwards, downwards, medially cutting the underlying muscle, vessels, nerves, enter into the peritoneal cavity and piercing the spleen in to two pieces. Peritoneal cavity contains about 1000 ml of fluid blood.
- 5) Vertically oblique stab wound 3 x 1 cm x peritoneal deep noted over back of right lower chest at the level of 9th inter costal space along the posterior axillary line. The upper blunt end is 6 cm below to scapular border and lower sharp end is at the level of posterior axillary line. On dissection the wound passes inwards, medially, cutting the underlying muscle, vessel, nerves, enter into the

peritoneal cavity deep and piercing the right lobe of liver measuring 5 x 1 x 4 cm.

- 6) Vertically oblique stab wound 3 x 1.5 cm x peritoneal cavity deep noted lateral aspect of middle of right side abdomen. The upper blunt end is 6 cm below to the wound no.5 and the lower sharp end is 5 cm above to the right ileac crest. On dissection the wound passes inwards, downwards, piercing the underlying muscle, vessels nerves and enters into the peritoneal cavity.
- 7) A vulsion type of laceration 7 x 2 cm x muscle deep noted over medial aspect of left great toe and foot, the nail found absent.
- 8) A vulsion type of laceration 3 x 1 cm x muscle deep seen over right great toe.
- 9) Reddish abrasion 4 x 2 to 1 cm noted over right forearm in its posterior aspect just below elbow."

He issued Ex.P.17 Post Mortem Certificate and opined that the deceased would appear to have died of shock and hemorrhage due to multiple stab injuries and its corresponding internal injuries. He also preserved Viscera and sent for chemical examination and after receipt of Chemical Analysis Report Ex.P.18 he issued his final opinion Ex.P.19 stating that the cause of death is as already given in Post Mortem Certificate. He also opined that the viscera does not contain any poison.

2.(d) P.W.14 Medical Officer attached to the Coimbatore Medical College Hospital issued Accident Register Ex.P.14. Since the deceased was not alive when he was taken to the hospital, P.W.14 immediately sent intimation Ex.P.15 to the Hospital Outpost Police Station. P.W.16 in continuation of his investigation, arrested both the accused at 2.00 p.m. on 11.4.2016 in the presence of P.W.7 and one Manikandan and recorded their confession. The confession statement of the 1st accused is Ex.P.7 and the confession statement of the 2nd accused is Ex.P.8. Pursuant to the same, he seized M.O.1 knife, M.O.6 bloodstained pant, M.O.7 bloodstained shirt under Mahazar Ex.P.5. Similarly he has also seized M.O.2 bloodstained knife and M.O.8 shirt under Mahazar. Thereafter, he brought the accused and properties to the police station and sent the accused to the Court. He has also taken photographs of the place of occurrence and also seized the dresses of the deceased handed over by P.W.9, Gr.I Police Constable after post mortem

and after completing the investigation, he filed charge sheet under Section 302 I.P.C.

3. The accused were put on trial. In order to establish the case, the prosecution examined P.Ws.1 to 16 and marked Exs.P.1 to Ex.P.22 and M.Os.1 to 11. After the examination of prosecution witnesses the accused were questioned under Section 313 Cr.P.C. with regard to the incriminating circumstances for which they denied the complicity. The Trial Court, after analyzing the evidence on record, convicted and handed down the sentences on the accused as stated above. Aggrieved over the same, the appellants/accused have preferred the present appeal.

4. Learned counsel appearing for the Appellants would submit that the version of the eye witnesses P.Ws.1 and 2 are unreliable and the motive projected by the prosecution is also doubtful. Though it is the case of prosecution that after the deceased sustained injuries, he was brought to his house and P.Ws.1 and 2 informed P.W.5 and one Rajkumar that the accused caused stab injuries, the fact remains that P.W.5 who stated to have taken the deceased in a bike has not whispered anything about the occurrence before the Court. Accident Register Ex.P.14 gives a different version about the occurrence. In fact A.R. copy issued by P.W.14 shows that it was reported to the Medical Officer that the deceased sustained injuries by unknown person with unknown weapon at his residence. If really P.Ws.1 and 2 witnessed the occurrence and informed the same to P.W.5 and one Rajkumar, the same should have been reflected in the Accident Register Ex.P.14. This fact create serious doubt about the evidence of P.Ws.1 and 2.

5. Further, the alleged bloodstained clothes of P.W.1 and P.W.2 or the persons stated to have admitted the deceased in the hospital were not seized by the prosecution. F.I.R. was registered only at 16.30 hours and despatched to the Court at 8.30 p.m. This delay also creates serious doubt about the prosecution case. One of the persons who took the deceased and admitted in the hospital was also not examined by the prosecution. The Investigating Officer visited the place of occurrence only at 8.30 p.m. which clearly shows that the F.I.R. was registered later. The evidence of P.Ws.1 and 2 about the occurrence is highly doubtful and hence submitted that the prosecution version is highly doubtful and the accused are entitled to the benefit of doubt. Therefore, he argued that the conviction and sentences imposed by the trial court is liable to be set aside.

6. The learned Additional Public Prosecutor submitted that P.Ws.1 and 2 are eye witnesses. They clearly spoken about the specific role of accused causing injuries on the deceased. Merely because there is a delay in F.I.R. to the Court cannot be

fatal to the prosecution. Apart from P.Ws.1 and 2, P.Ws.3 and 5 also supported the prosecution version. The medical officer's evidence clearly shows that the deceased died due to multiple stab injuries and hence homicidal violence also clearly established and therefore prayed for dismissal of the appeal.

7. In the light of the above submissions, now the point for consideration in this appeal is, "Whether the prosecution has established the charges framed against the accused beyond all reasonable doubts?"

8. The motive projected by the prosecution in this case is that the deceased has developed intimacy with A1's wife. Therefore, A1, two months prior to the occurrence came and warned P.W.1 in her house in the presence of P.W.1's sister. At that time P.W.5 also present. P.W.1's sister one Banumathi said to have present at the relevant time was not examined. Thereafter, on 10.4.2016 at about 1.15 p.m. when P.W.1 and her husband were in their house, A1 came to the house. When her husband opened the door they had a discussion and both of them proceeded to the main road. Immediately P.W.1 informed the same to P.W.2 over the phone and also followed the accused and her husband. When A1 and her husband went to the 4th Street, near the place of occurrence A2 was there, both the accused stabbed the deceased on the back and hip. It is the evidence of P.W.1 that both the accused stabbed on the back and hip. After her husband fell down A1 again caused 2 stab injuries on the face. P.W.2 by that time reached the place of occurrence. He has also seen both the accused stabbed on the back and hip and A1 stabbed on the deceased on the face. Thereafter both P.W.1 and 2 brought the deceased to their residence and tied wet cloth over the injuries and P.W.5 and one Rajkumar also helped them and both P.W.5 and Rajkumar took the deceased to the hospital in a motor cycle.

9. No doubt, P.W.1 and P.W.2 are the wife and brother of the deceased. Their evidence cannot be rejected merely on the ground that they are relatives. The relatives normally would not spare the real culprits. But at the same time their evidence require careful scanning. It is the evidence of P.W.1 that she has followed her husband and A1 till the place of occurrence. In this regard P.W.3 was examined to show that as if A1 and deceased were going together at the relevant time. But P.W.3 in his evidence never stated that he saw the P.W.1 or P.W.2 following them. This fact creates some doubt about P.Ws.1 and 2 witnessing the occurrence as spoken by them. This doubt is further fortified by the materials available on record. It is to be noted that it is the specific evidence of P.W.1 and P.W.2 that they saw both the accused stabbing the deceased on the right side back and left side back, besides A1 stabbing twice on

the face. Immediately, the accused fled away from the scene of occurrence. Thereafter they brought the deceased to their house. At that time P.W.5 and one Mr.Rajkumar also came there and they took the deceased to the hospital in their motor cycle. P.W.1 in his cross examination has stated that P.W.5 and one Rajkumar came to the rescue; P.W.1 informed both of them about the accused caused injury to the deceased. Whereas P.W.5 in his evidence has stated that at about 2.00 p.m. on 10.4.2016 he saw the deceased with injuries; when enquired about the same P.W.1 informed P.W.5 that Haseema's husband stabbed the deceased. Whereas P.W.1's specific evidence is that she informed P.W.5 and one Rajkumar about the act of both the accused. Though this may be a minor contradiction, it cannot be ignored for the simple reason that there is no explanation for non-examination of the said Mr.Rajkuamr, by the prosecution.

10. It is specific case of the prosecution that P.W.5 and one Rajkumar took the deceased in a motor cycle to the hospital and the deceased was in fact bleeding. In the back ground, the specific evidence of P.W.14 Medical Officer clearly shows that the deceased was brought dead by Rajkumar and at the time of admission in the hospital. It was reported to P.W.14 by Rajkumar that the deceased was attacked on 10.4.2016 in his residence by unknown persons with unknown weapon. Ex.P.14 A.R. Copy issued by P.W.14 when seen, the same shows that Mr.Rajkumar, neighbour, reported to the doctor that the alleged assault by unknown person with unknown weapon at his residence. This aspect create serious doubt about the entire prosecution version. It is the version of P.Ws.1 and 2 that they have informed P.W.5 and Rajkumar about the injury caused by the accused. Having known the above fact, the said Rajkumar given a different version before the doctor, which creates serious doubt about the prosecution. Similarly, P.W.5 who is said to have accompanied the said Rajkumar in the hospital, the said Rajkumar has not been examined by the prosecution as witness. P.W.5's evidence is also asserted that he only informed the doctor about the incident. P.W.5 having already informed about the accused, his conduct in giving different version before the Medical Officer also makes his version is unbelievable.

11. The Post mortem report when carefully seen, there are two severe cut injuries on the face and six stab injuries and a vulsion type of laceration 7 x 2 cm x muscle deep noted over medial aspect of left great toe and foot. Similarly 3 x 1 cm muscle deep seen over the right great toe and 4 x 2 x 1 cm abrasion on the right forearm. The nature of the injuries noted by the Medical Officer, first injury itself shows that the injury extended upto maxillary bone and 2nd and 3rd injuries cutting the muscles, vessels, nerves and enter into the left pleural cavity. Similarly injury Nos.4 and 5 are entered upto

peritoneal cavity deep and entered the spleen and the spleens were cut into two pieces. Similarly the stab wound noted over lateral aspect of middle of right side abdomen passes inwards downwards piercing underlying muscle, vessel, nerves and enters into the peritoneal cavity. The nature of injuries noted by the Medical Officer clearly suggested that the death must have been immediate one and there is no choice of survival of person. Therefore, the injuries sustained by the deceased show that he should have died instantaneously. Therefore, the prosecution version that P.W.1 brought the deceased by holding him alive to their residence, thereafter, P.W.5 and one Rajkumar took him alive to the hospital by bike is highly improbable. Therefore, the version of the prosecution witnesses that the deceased was alive and took him to the hospital in a bike is also improbable and creates serious doubt about their version.

12. Further, the Investigating Officer has not even seized any bloodstained dresses either from P.W.1 or P.W.2. As per their version, their dresses also got bloodstained. There was no reason whatsoever for the prosecution for not collecting the alleged bloodstained clothes from P.Ws.1 and 2. Similarly P.W.5 and one Rajkumar who stated to have carried the deceased to the hospital by bike, their dresses also not seized by the prosecution. All these facts create serious doubt about P.Ws.1 and 2 evidence with regard to the occurrence by the accused. It is further to be noted that the deceased was brought to the hospital at 3.00 p.m. from the place of occurrence. According to P.W.1, immediately after the occurrence at about 1.45 p.m. the deceased was taken to the hospital. It is the common knowledge that one could reach the Coimbatore Medical College Hospital within 15 minutes from Saravanampatti, that too in a two wheeler. Whereas, the deceased was taken to the hospital at 3.00 p.m. This delay also cannot be ignored altogether. Similarly, F.I.R. came to be registered only at 6.30 p.m. on 10.04.2016, though the intimation was received from the hospital at 4.00 p.m. and F.I.R. was sent to the Court at 8.30 p.m. Though, this delay appears to be very small, the same cannot be ignored altogether, which has not been explained properly by the prosecution. Though the prosecution has relied upon the arrest, seizure of weapons, the serology report goes to the effect that the seized items of bloodstained knife, shirt and trouser seized from A1, contain 'A' group human blood, to rely upon such evidence, it must be established by the prosecution that the accused was arrested and M.O. was seized by them. It is the evidence of P.W.16 Investigating Officer that on 11.4.2016 both the accused were arrested on identification of P.W.7 and one Manikandan. It the specific case of the P.W.16 that only P.W.7 and Manikandan identified the accused, he effected arrest. Whereas P.W.7 in his evidence stated that the police has requested him only be as a witness for recording confession.

P.W.7 never stated that he only identified the accused to the police. Therefore, the theory of arrest projected by the Investigating Officer creates serious doubt. The Investigating Officer did not even know the accused identity and P.W.7 who said to have identified the accused also given a contra evidence, the arrest projected by the Investigating Officer creates serious suspicion. In view of serious infirmities, discrepancies and delay in First Information Report and doubtful version of the prosecution, we are of the view that the prosecution has not established the guilt of the accused beyond all reasonable doubt. Hence, we have no other option except to hold that the prosecution has failed to bring home the guilt of the accused beyond all reasonable doubt. In view of the same the appeal is liable to be allowed. The point is answered accordingly.

13. In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellants/accused 1 and 2 by the trial Court vide impugned Judgment in S.C.No.122 of 2013 dated 06.11.2017 are set aside and they are acquitted of all charges levelled against them. The appellants are set at liberty forthwith, if their custody is no longer required in any other case. M.O.5 Two wheeler (Splender Plus TN-66-Q-1445) seized from A2 shall be returned to him after the appeal time. The disposal of the other material objects shall be in accordance with the directions of the trial Court. The fine amount, if any, paid by the appellants shall be refunded to them.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

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To

1. The II Additional District Judge (CBI Cases)
Coimbatore.
2. The Inspector of Police,
E-3, Saravanampatti Police Station,
Coimbatore.
3. The Public Prosecutor,
High Court, Madras.

4.The Judicial Magistrate No. II,
Coimbatore.

5.Do Thro The Chief Judicial Magistrate,
Coimbatore.

6. The Superintendent,
Central Prison,Coimbatore.

7.The Director General of Police,
Mylapore, Chennai.

8.The District Collector
Coimbatore.

Crl.A.No.24 of 2018

RJI (CO)
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