

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :27.10.2017

Pronounced on:18.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.386 of 2012

State rep. by,

The Deputy Superintendent of Police,
Madhavaram Sub Division,
Chennai-600 099.
(Cr.No 835/2001)

... Appellant/Complainant

Vs.

- 1.Kasturi
- 2.Parthiban
- 3.Kuppan
- 4.Baskar
- 5.Ezhumalai
- 6.Karna @ Karuna
- 7.Sampathkumar @ Sambandam
- 8.Sheik Babu @ Kullaraja @ Babu
- 9.Kaja Mohideen
- 10.Govindasamy
- 11.Abubakker
- 12.Anantharaman
- 13.Mekkaram Chowdri
- 14.Thiraviyam
- 15.Arjunan
- 16.Neethipathi
- 17.Umapathy
- 18.Sel Victor
- 19.Eganathan

... Respondents/Accused

PRAYER: This Criminal Appeal is filed under Section 378 of Cr.P.C to allow the appeal, set aside the Judgment of acquittal passed by the learned Additional District and Sessions Judge, Fast Track Court No.4, Ponneri, in S.C.No.126 of 2006 dated 31.05.2011, convict and sentence the respondents.

For Appellant : Mr.J.Karuppiah
Additional Public Prosecutor

For Respondent : Mr.A.Ilangovan (for R1, R3 to R11)
for C.Samuel
(Legal Aid counsel)

DR.R.Sampathkumar (for R15 & R18)

Mr.L.Mahendran (for R12, 13, 16, 17 & R19)

Mr.K.Selvaraj (for R14)

R2 - Expired.

JUDGMENT

The instant appeal is preferred by the State of Tamil Nadu through the Deputy Superintendent of Police, Madhavaram Sub-division as against the judgment of acquittal passed in Sessions Case No.126 of 2006 on the file of the Additional District and Sessions Judge (Fast Tract Court No.IV), Ponneri.

2.In the instant case originally 21 persons were arrayed as Accused and at the time of framing the charge, the 4th and 21st Accused were died. However, as far as the Accused No.1 to 3 and 5 to 8 were charged for the offence under sections 304(2) of IPC (35 counts) and 4(ii) of Poison Act, 1990 r/w 4 of Tamil Nadu Poison Rules were framed. Further, as against the Accused No.1 to 3 and 5 to 8 charge under section 328 of IPC (53 counts) and 4 of Poison Act, 1990 r/w 4 of Tamil Nadu Poison Rules were also framed. As against the Accused No.9 to 14 charge under section 304(2), 328, r/w 109 of IPC section 4(2) of Poison Act, 1990 r/w 4 of Tamil Nadu Poison Rules. As against the Accused Nos.15 to 20 charge under section 304(2) and 328, r/w 109 of IPC were framed and as against the Accused No.15 to 20 charge under section 213 r/w 34 of IPC was framed. All the Accused denied the charges hence witnesses were examined by the prosecution.

3.To prove the case of the prosecution totally 82 witnesses were examined, Exhibits P-1 to P-216 were marked apart from the production of material objects M.O. Nos.1 to 21. At the end of the trial the Learned Additional District Judge, Fast Tract Court No.IV, Ponneri by his judgment dated 31.05.2011 acquitted all the accused under section 235(1) of Cr.P.C as the prosecution failed to prove the charges beyond reasonable doubt. Feeling aggrieved over the judgment of acquittal the State has preferred the instant appeal, to set-aside the judgment of acquittal.

4.The learned Additional Public Prosecutor has contended that the trial Court had failed to take into consideration the relevancy of the statement made by the witnesses regarding the death of the victims. Further, he also urged that the trial

Court failed to consider Section 32 of Evidence Act which deals with the relevancy of statement made by death person. Further, in the instant case most of the affected persons stated that they consumed the liquor supplied by the 1st Accused namely Kasthuri. So, the non-consideration of the statement of the death person would definitely require judicial intervention of this Hon'ble Court, otherwise, the maxim "Truth Alone Would Triumph" will become meaningless. Apart from that the learned Trial Court also had failed to consider the relevancy of the statements recorded under section 164 of Cr.P.C., that is the evidence of PW-47 and 48 before the learned Judicial Magistrate, Thiruvotriyur which was ascertain by PW-79. Apart from that the learned Government Advocate Criminal side would rely upon the evidence of PW-21 and vehemently contended that the learned trial Court also failed to consider the confessional statement given by Accused No.1 which led the recovery of spurious liquor in her premises. So, he prayed that the judgment of the learned Trial Court is to be set-aside and further prayed for the conviction of the Respondents/Accused herein as per the charges framed against them.

5. Before parting with the facts and circumstances of the instant case, it is the compelling necessity for this Court to record its deepest concern over the gruesome menace of consumption of liquor in the republic India. Further, in the instant case 35 human lives were lost and it is created serious doubt in the mind of the Court as to whether the State Government machineries were properly functioned in their true spirit. Apart from that legislation were also made to curb such a menace but it is doubtful as to whether the legislations are properly enforced by the responsible authorities concerned. Though taking action as against the law breakers is a kind of action, but in the considered opinion of this Court is that this kind of occurrences would not recur in the future in any manner. With painful heart this Court remembers the family members of the persons who lost their lives even in their prime age. It cannot be defined here that who are the victims whether the dead persons or their young children or wives or parents. One thing is very clear that the victims are made as scape-goat for the greediness of the culprits who actually involved in the commission of the offence and who failed to prevent this kind of menace. Further it is to be ascertained that the objects and reasons of the legislation are achieved or not, but in total the responsible officials concerned ought to have recollected their recklessness and they ought to have cried to get the pardon of their conscience.

6. Now, let this Court take this case on hand for discussion. One Bhakthavatchalam, Panchayat President of Theerthangaraiyampattu gave a complaint statement that on

05.10.2001 when he was in his residence, the people of his village gathered in front of his house and he was informed by one Rani that his husband was died and several other persons also died in the village. So, he contacted Redhills Police Station through phone and in response to his call, the Inspector and the Sub-Inspector of police came to the place of occurrence and found that several persons were vomiting unconscious and were suffered with unclear vision that is diplopia. So, the victims were sent to the hospital but every day 4 or 5 persons were reported dead. In this regard, he gave statement and put his signature in a white paper and his signature was marked as Exhibit P-1. However, as he did not support the prosecution case he was treated as hostile and was subjected for cross examination by the prosecution. As such PWS.2, 3, 4, 5, 7, 8, 9, 10,11,12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 were turned and treated as hostile. However, PW6 and PW23 were not turned as hostile, but their evidence have not supported the case of the prosecution.

7.However, PW-34, is the Government doctor, he deposed that one Anbalagan was brought to the Government Stanly Hospital by his wife namely Nirmala on 05.10.2001 at about 3.00 p.m., from his residence. On diagnosis he was found unconscious and was admitted in the intensive care unit as in-patient. On the same day, one Murugan was brought to the hospital by his wife for first aid but he was found dead. Through the said doctor Exhibits P-7 and P-8 Accident Registers were marked. Further, PW-35 is another doctor of Stanley Hospital, Chennai and had given first aid to one Arumugam, Kaliappan, Arjunan, Murugesan, Ravi another Arumugam, Annadurai, Muthu, Gangadharan, Ganesan with the complaint that they consumed liquor on 05.10.2001. After the first aid they were admitted in the intensive care unit. Moreover, PW-37, 38 are the chemical analysts and PW-37 is the officer attached with Forensic Department, Chennai. PWs-39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52 were turned as hostile, PW-53 is the Retired Head Clerk of Judicial Magistrate Court, Thiruthani. PW-54 was turned as hostile. PW-55, 56 are the doctors. PWs-57, 58, 59 are also doctors who treated the victims PWs-60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73 are attached with Police Department and performed various duties in connection with the instant case. PWs-74, 75, 76 are the doctors conducted postmortem upon the victims, PWs-77, 78 are served as police officers and arrested some of the absconding Accused. PW-79 is the Judicial Magistrate. PWs-80, 81 and 82 are attached with the police department and investigated the case and submitted the final report.

8.The available evidence of the case and other exhibits marked before the learned Trial Court would show that 35 persons of the aforesaid village consumed illicit arrack and lost their

lives. However, the allegation of the prosecution is that A-1 is the mother of A-2, A-3 to A-8 were extending their assistance to A-1 and A-2 in selling illicit arrack. A-9 and A-10 are the sellers of methanol, poisonous substances. A-11 received the aforesaid chemical substance and used to supply the same to A-1 and A-2. As such A-13, and A-14 are used to supply the poisonous substance and A-15 to A-20 are serving in the Police department and A-21 is the seller of Chemical substance. The further allegation of the prosecution is that on 05.10.2010 A-1 and A-2 supplied the liquor which contained methanol a spurious and adulterated substances, knowing the fact that the same will harm to the life of a human being as it is edible. The victims consumed the illicit and poisonous arrack and they died. However, to prove the prosecution case witnesses were examined, exhibits were marked as stated above but their evidence has not sufficient to link the Accused/Respondents into the commission of the crime. Though, it is the fact that 35 human beings were lost their lives, the evidence available are not sufficient to hold that the prosecution has proved the offence beyond reasonable doubt. As far as in criminal jurisprudence, though the offence is heinous in nature that cannot be alone will be the criteria to hold that the same is proved. The prosecution must prove all the charges by way of legally acceptable evidence to connect the accused with the commission of offence. Here, no witness would speak about the role played by any of the accused in the commission of offence.

9. Though, the learned Additional Public Prosecutor would submit that the statements given by the victims are relevant to link the accused into the commission of the offence. But, it cannot be relied upon for the simple reason that the same is inadmissible in evidence. It is the duty of the prosecution to prove the guilt not based on the statement given before the police during the investigation as the same is inadmissible. So, the arguments advanced by the Learned Government Advocate Criminal side in this regard is unacceptable.

10. Apart from that it is also pointed out by the learned Additional Public Prosecutor that the statements recorded under Section 164 of the evidence act is to be relied upon as the prosecution has proved the offence. This also is unacceptable for the reason that the statement recorded under Section 164 of Cr.P.C. can be used only for the purpose of either corroborating or contradicting the witness concerned. So, the argument advanced on the side of appellant is of having no legal backing and the same is unacceptable to hold that the Accused/Respondents were involved in the commission of crime.

11.For the foregoing discussion this Court is not able to accept the case of the appellant to record conviction by interfering into the finding of the learned Trial Judge and unfortunately this Court has no option except to dismiss the criminal appeal filed by the State. So appeal fails and dismissed accordingly.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

vs

To

1. The Additional District and Sessions Judge,
Fast Track Court No.4, Ponneri.
 2. The Deputy Superintendent of Police,
Madhavaram Sub Division,
Chennai-600 099.
 3. The Public Prosecutor
High Court, Madras.
- +1 CC to Mr.A. Ilangovan, Advocate sr 4131.
+1 CC to Mr.C. Samuvel, Advocate sr 4214.
+1 CC to Mr.L. Mahendran, Advocate sr 3826.

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MR(CO)
SP(02/02/2018)

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