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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on	07.03.2018
Orders Pronounced on	19.03.2018

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

CrI.A.(MD) No.383 of 2017
and
CrI.M.P.(MD) No.8672 of 2017

1. Ravi @ Ravichandran
2. Ilayaraja
3. Alagendran @ Malayalam

... Appellants/A1 to A3

-vs-

State through Inspector of Police,
Oomatchikulam Circle,
Appanthiruppathi P.S.,
Madurai - Madurai District.
(in Crime No.520 of 2017)

... Respondent

Prayer: Appeal filed under Section 374(2) of Cr.P.C. to call for the records in S.C.No.307 of 2014 on the file of the V Additional District and Sessions Court, Madurai and set aside the conviction and sentence passed against the appellants dated 28.07.2017 and allow this appeal and thus render justice.

For Appellant : Mr.Abudu Kumar Rajarathinam
For Mr.V.Lakshmanan

For Respondent : Mr.R.Anandharaj
Addl. Public Prosecutor

J U D G M E N T

S.VIMALA, J

The appellants are the accused 1 to 3, who have been convicted and sentenced to undergo life imprisonment in respect of the charge under Section 302 r/w 34 IPC.

The prosecution case in brief:

i) The deceased and the accused persons were in inimical terms, because of the pathway dispute between them; on 14.11.2007 at about 09:30pm, A1 & A2 went to the house of PW3 / Malairaja and



thereafter, they jointly went to TASMACH Shop at Appan Tirupathi Village; in the TASMACH shop, there was a wordy quarrel between the deceased and A1 / Ravi @ Ravichandran; A1 is alleged to have beaten the deceased on the head; after quarrel, A1 and A2 threatened the deceased saying that they will do away with the life of the deceased. Thereafter, the deceased accompanied PW3 / Malairaja and were returning in a bike at about 11:00pm, where the appellants 1 to 3 joined together, indiscriminately cut the body of the deceased with Aruval, threw the body into a canal and then ran away, thus caused the death of the deceased.

ii) The prosecution examined 28 witnesses, marked 35 documents and exhibited 11 Material Objects. Through the cross examination of the Investigation Officer, the statement of Head Constable / Robinson has been marked as Ex.D1.

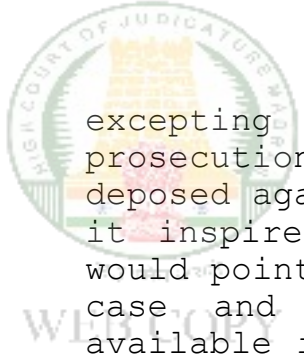
iii) The Trial Court relied upon the evidence of PW1 and recovery of Aruval from A1 to A3 and has found the accused persons guilty under Section 302 r/w 34 IPC and sentenced them accordingly. The conviction and sentence as against these accused persons are under challenge in this appeal.

2. The Trial Court relied upon the decision of the Hon'ble Supreme Court rendered in the case of Puran Singh vs. State of Punjab, reported in 1995 Supp. (3) SCC 665, where-under it has been held that the recovery of blood stained Kirpan on the basis of the disclosure statement made by the accused can be used to corroborate the prosecution evidence against the accused.

2.1. The Trial Court also relied upon the decision of the Hon'ble Supreme Court rendered in the case of Sucha Singh vs. State of Haryana, reported in 2013 (14) SCC (552) where-under, the recovery of articles pursuant to the disclosure statement made by the accused was held to point out the guilt of the appellant therein.

3. With regard to legal proposition, there cannot be any dispute. But, the question is whether the recovery of material objects have been proved in this case. The Trial Court relied upon Ex.Ps.30 to 32, which are the admissible portions in the confession statement of each of the accused, which are claimed to have resulted in recovery of the material objects, namely, M.Os.9 to 11 respectively. But, none of the witnesses have supported the theory of confession and consequent recovery from the accused persons. Those witnesses have been treated as hostile and only the signature in the confession statement of the accused persons and signature in the recovery mahazar alone has been marked in this case. Therefore, the availability of material objects did not establish the link with the accused.

4. The next issue is, whether the Trial Court is justified in relying upon the evidence of P.W.1. The fact remains that excepting the evidence of P.W.1, none of the other witnesses,



excepting the official witnesses, have supported the case of the prosecution. Needless to state that even if a single witness has deposed against the accused persons, it can be relied upon, provided it inspires confidence. But, the learned counsel for the accused would point out that P.W.1 could not have been an eyewitness in this case and there are unimpeachable circumstances and documents available in this case to show that the prosecution witness (P.W.1) could not have been the eyewitness to the occurrence and therefore, the accused persons are entitled to be acquitted.

5. So far as this case is concerned, the motive for the occurrence, manner of occurrence and place of occurrence have been made doubtful, because of the evidence of P.W.1. The prosecution, instead of proving the case has created opportunities for the defence to raise the plea of "disproof" and has in fact placed unbelievable and inconsistent evidence.

6. It is contended that the complaint and the First Information Report, which are the basic documents are abundant in improbabilities, inconsistencies and unreliable averments and therefore, those documents and the investigation, which is based on those documents are not worthy of acceptance. In the complaint of P.W.1 / father of the deceased, it is stated that there had been civil dispute between his sons and his brother's sons and that was settled. In the complaint, it is also stated that on 14.11.2007 at about 11:00pm, the accused Ilayaraja came to his house and he was shouting that Raja must be done to death, as Raja had beaten him at Appan Thirupathi and thereafter, both of his brothers joined him and all the three ran on the road and that while the deceased was returning along with Malairaja in a motor cycle, all the three of them caused fatal injuries to him. But, in the evidence, P.W.1 would state that the accused Nos.1 and 2 came along with an unknown person and caused those injuries. When it is stated in the evidence that when an unknown person accompanied A1 and A2, the earlier complaint implicating A1 to A3 becomes unbelievable.

6.1. The learned counsel for the accused would point out that in the chief examination, when the witness has stated that the injury was caused by A1 & A2 apart from an unknown person, then there is no explanation as to who was that unknown person and what is the investigation regarding that and why there is discrepancy between the complaint and the evidence even with regard to a known person, i.e., A3 and hence, the prosecution case cannot be accepted. This contention is acceptable.

7. Moreover, even though, it is alleged by P.W.1 himself that the deceased at the time of death was with Malairaja / PW3 and the 164 statement of PW3, which was omitted to be marked did not read that P.W.1 was the witness to the occurrence. Therefore, as rightly contended by the defence, P.W.1 could not have been the eyewitness to the occurrence. It is relevant to point out that P.W.3 has been treated as hostile witness by the prosecution itself.



8. It is also pointed out that the evidence of P.W.1 is vague and the evidence did not give details regarding, time and place of the occurrence and that it is devoid of details regarding the time at which the injury could have been caused.

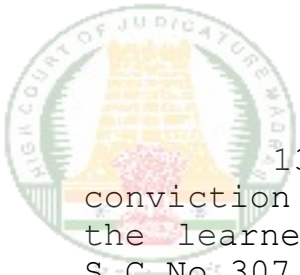
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9. The learned counsel for the appellants / accused also contended that when the inquest report speaks about the injury on the body of the accused, with the bites of fish and crabs, the postmortem report is silent about that and that the postmortem report itself is unreliable. We are really shocked to note that the postmortem report did not speak about the bloated condition of the dead body and the omission of the bite marks of fish and crabs. However, it is only the cause of death that is more important, but even though the cause of death is spoken by the Doctor, the prosecution has failed to prove that it is only these accused persons, who caused those fatal injuries.

10. The veracity of the complaint is put to test by cross examining the retired Sub-Inspector of Police / PW17, where he would state that the complaint was given orally and thereafter, he reduced it into writing and registered a case in Crime No.520 of 2007 under Ex.P6. But, P.W.1 would state that he gave the complaint in his own handwriting. This circumstance has created space for the defence to contend that the earlier complaint preferred by P.W.1 has been suppressed and the subsequent complaint had been brought into existence to suit the case of the prosecution thereby implicating these three accused persons.

11. The learned counsel for the appellants / accused has also pointed out the material contradictions in the evidence of P.W.1 along with the earlier averments made in the complaint and the evidence given in the cross examination and contended that certainly, P.W.1 could not have been the eyewitness and therefore, when the substratum of the prosecution case (complaint) itself is false, then the Court cannot place reliance upon the materials collected during investigation and therefore, the accused persons are entitled to acquittal. As it has been pointed out earlier, the way in which the occurrence is said to have taken place, i.e., the father of the deceased aged about 65 years, running after these accused persons at about 11:00pm in the midnight and seeing the occurrence, which is stated to have taken place near Pattaiyan Kovil, is inherently improbable and that it has been made unbelievable on account of the earlier statement of P.W.3 before the Judicial Magistrate, wherein there is nothing to show that P.W.1 was witness to the occurrence. That is the reason why, the 164 statement has been deliberately omitted to be brought on record.

12. Under the circumstances, when the genesis of occurrence is suppressed, the evidence adduced by the prosecution is unreliable, this Court has no other option, but to set aside the conviction and sentence imposed on the appellants / accused.



13. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed as against appellants / A1 to A3 by the learned V Additional District and Sessions Court, Madurai in S.C.No.307 of 2014 dated 28.07.2017 is set aside and A1 to A3 are ordered to be acquitted of the charges under Section 302 r/w 34 IPC and they are ordered to be acquitted, if not wanted in any other case. The bail bonds, if any executed by them shall stand cancelled; fine amount, if any paid shall be refunded and the case properties in M.Os.1 to 6 and 9 to 11 are ordered to be destroyed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub-Assistant Registrar

To:

- 1.The V Additional District and Sessions Judge,
Madurai.
- 2.The Judicial Magistrate No.II, Madurai
- 3.Do through The Chief Judicial Magistrate, Madurai
- 4.The Superintendent, Central Prison, Madurai
- 5.The District Collector, Madurai
- 6.The Director General of Police, Chennai
- 7.The Inspector of Police,
Oomatchikulam Circle,
Appanthiruppathi Police Station
Madurai - Madurai District,
- 8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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+One cc to M/s.K.Malathi, Advocate, SR.No.56050

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