

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.07.2019

Delivered on : 02.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No. 40 of 2018

P.Manikandan Appellant

vs

1.The State, represented by
The Inspector of Police,
Kallakurichi Police Station,
Villupuram District.
(Crime No.453 of 2016)

2.M.Selvamurthy

3.S.Indhira

4.M.Manickam Respondents

Criminal Appeal is filed under Section 372 of Criminal Procedure Code as against the order of acquittal passed by the learned III Additional District-cum-Sessions Judge, Kallakurichi in S.C.No.100 of 2017 dated 20.11.2017 acquitting the respondents 2 to 4 herein against the offences under Sections 294(b), 323 (against R3 and R4), 302 (against R2), 302 read with 34 (against R3 & R4) IPC.

For Appellant : Mr.K.Thilageswaran

For Respondent : Mr.R.Prathap Kumar
Addl. Public Prosecutor for
R1
Mr.S.Saravanakumar
for R2 to R4

J U D G M E N T

M.M.SUNDRESH, J.

The appellant, being P.W.1, has come forward to file this appeal, challenging the judgment rendered by the III Additional District-cum-Sessions Judge, Kallakurichi acquitting respondents 2 to 4 for the offences charged under Section 294(b), 323(against R2 and R3), 302 (against R2) and 302 r/w 34 IPC (against R3 & R4).

2. The sum and substance of the prosecution case against respondents 2 to 4 aforesaid is that, pursuant to the oral threat exerted, they attacked the deceased and caused death stating as to how the tiles of the second respondent's house could be damaged.

3. Ex.P.11 is the complaint registered by P.W.12 (Special Sub-Inspector) on receipt of the information that the deceased was taking treatment at Kallakurichi Hospital as in-patient. Accordingly, he received the complaint under Ex.P.11. After recording the statement and affixing the signature of the deceased, the complaint was registered under Ex.P.12 for the offence punishable under Sections 294 (b), 323, 324, 307 IPC. Thereafter, the investigation was taken up by P.W.14 - Investigating Officer, on the very same day. In the presence of the witnesses, the observation mahazar and the rough sketch was prepared under Ex.P.13. Respondents 2 and 3 were arrested on 13.08.2016 and the confession statements were recorded, followed by recovery. The deceased died on 14.08.2016 at about 20.30 hours at the Government Hospital, Salem. On getting the information, the offence charged was altered to the major offence under Section 302 IPC, 302 r/w 34 IPC under Ex.P.14. The inquest report was prepared by P.W.14 on 15.08.2016 under Ex.P.15. The body of the deceased was sent for post-mortem through P.W.13.

4. The trial Court framed charges which were put to the respondents 2 to 4. They denied the charges put against them. The prosecution examined fourteen witnesses in support of the charges framed. It also marked Ex.P.1 to Ex.P.15. On behalf of the defence, only one document has been marked under Ex.R1, dated 12.08.2016, which is the Accident Register pertaining to the second respondent, while no witness has been examined. One material object, i.e., iron rod, has been marked as M.O.1.

5. P.W.1, namely, the appellant is the eye witness to the occurrence. He has stated that respondents 2 to 4 attacked the deceased. Due to the attack, the deceased fell down. P.W.1 is the son of the deceased. He also spoke about the deceased being taken to the hospital and the subsequent treatment given.

6. P.W.2 is another eye witness. It is his evidence that the second respondent attacked the deceased on the head. However, in his cross-examination, he has stated that he did not know what happened at the place of occurrence as he only saw the deceased lying on the floor.

7. P.W.3, though arrayed as eye witness, has deposed that he did not know the occurrence; P.W.4 is the witness, who signed the observation mahazar under Ex.P3. He also spoke that the third respondent attacked the deceased. P.W.5 is the witness who signed the recovery. He deposed against the case of the prosecution. P.W.6 is the witness, who has spoken about the incident. He further acknowledges Ex.P.4 and Ex.P.5. Similarly, he acknowledged Ex.P.6 and Ex.P.3. P.W.7 also has stated that pursuant to the wordy quarrel, respondents 2 to 4 attacked the deceased and committed the offence. P.W.8 has re-deposed that the second respondent attacked the deceased on the head and thereafter he was taken to the hospital. P.W.9 is the Scientific Expert, who is the author of Ex.P.7. P.W.10 is the Doctor, who conducted the post-mortem. He has deposed that the skull was found to be fractured. He is the author of Exs.P.8 and P.9. P.W.11 is the Doctor, who treated the deceased. He has stated that at the time of initial treatment, the deceased was conscious and he informed him that he was attacked by three persons. He also speaks about Ex.P.1 - Accident Register. P.W.12 is the Police Officer who received the complaint, P.W.13 is the Police Officer who took the body for examination and P.W.14 is the Investigating Officer who investigated the case and prepared the final report.

8. The prosecution marked the admitted portion of the confession given by respondents 2 to 4, dated 13.08.2016, observation mahazar, recovery mahazar, viscera report, post-mortem report, accident register, complaint, F.I.R, rough sketch, inquest report and alteration of charges report. As stated, respondents 2 to 4 marked Ex.R1 which is Accident Report of the second respondent.

9. The trial Court acquitted respondents 2 to 4 holding that there were discrepancies in the evidence adduced and, therefore, the prosecution has not proved its case beyond reasonable doubt. Challenging the same, the present appeal has been filed.

10. The learned counsel appearing for the appellant raised a substantial contention on the judgment rendered by the trial Court. The learned counsel submitted that though number of witnesses have been examined along with the documents, there was no discussion at all in acquitting respondents 2 to 4. The trial Court has shirked the duty cast on it in finding out the truth. A mere observation that there is material contradiction in the evidence adduced cannot be sufficient. Therefore, the learned counsel submitted that either this Court can go into the merits of the case by reassessing the evidence available on record or remit the matter to the trial Court for re-consideration.

11. The learned counsel appearing for respondents 2 to 4 has submitted that the trial Court considered the material as it has recorded the evidence adduced by the parties. It has to be presumed that the trial Court has considered all the relevant materials while acquitting respondents 2 to 4. Therefore, there is no infirmity in the judgment rendered and hence, the appeal will have to be dismissed.

12. The learned Additional Public Prosecutor appearing for the first respondent has submitted that though the decision was made to file an appeal, the same was not done awaiting administrative orders. The learned Additional Public Prosecutor also submitted that it is a fit case where the judgment of the trial Court will have to be set aside and remitted for fresh consideration.

13. We have heard the learned counsel appearing for the parties and perused the entire records and the judgment rendered in detail. On such perusal, we are not able to find any substantial reasons assigned for acquittal. The trial Court recorded the statements made and noted the documents marked. However, no finding has been rendered on the evidentiary value of the statements of the witnesses and the documents marked. The trial Court, after narrating the facts and evidence adduced along with the documents, merely quoted some judgments and came to a conclusion that

respondents 2 to 4 are entitled to the benefit of doubt. Despite repeated reading, we are unable to find any reasons attached for such a decision made. After all, every case involves a journey towards truth. It is a primary responsibility of the Court to find out the truth. In order to find the truth, the Court has to analyze the evidence placed before it. Such an analysis can only be seen by the discussion in writing. Nobody can predict what the Court has kept in mind.

14. Reasoning is the heart and soul of any judgment. A decision of the Court is judicial one. Such a decision will have to be supported by reasons. Any decision made without reasoning cannot stand the scrutiny of law. It might also lead to arbitrary exercise of powers.

15. In the case on hand, the prosecution has produced eye witnesses and the statement recorded from the deceased which should be treated as a dying declaration. There are several documents marked. The evidentiary value of the statements made along with the documents marked has to be necessarily considered by the trial Court. There is an element of sanctity attached to the appreciation of evidence by the trial Court. It is the trial Court which has the benefit of seeing the witness in-person. We are afraid that the trial Court has miserably failed to undertake the said exercise.

16. A judgment cannot be quoted in vacuum. It has to be applied to the facts of the case. The judgment is a statement of law expressed by a Court and it has to be applied to the facts of the case. Thus, it cannot be read like a statute. Unfortunately, the trial Court has failed to take note of this aspect while mechanically relying upon the judgment rendered. We do not like to say anything further. Though we could have dealt with the matter on merit by re-appreciating the materials available on record, we refrain from doing so particularly when the trial Court has not done its exercise.

17. In such view of the matter, we deem it appropriate to set aside the judgment rendered in S.C.No. 100 of 2017 by remitting the matter to the file of the learned III Additional District-cum-Sessions Judge, Kallakurichi to decide the matter on merits and in accordance with law by duly assessing the materials available on record, including the one produced by respondents 2 to 4 and thereafter arrive at a conclusion. We make it clear that we have not

expressed anything on merit and, therefore, the trial Court is at liberty to consider the case without being influenced by any of the observations made by us. Since what is required to be done by the trial Court is to hear the counsel appearing for the prosecution and the defence, we expect the trial Court to complete the process within a period of six months from the date of receipt of a copy of this judgment.

18. Accordingly, the appeal is allowed and the judgment rendered in S.C.No. 100 of 2017 on the file of III Additional District-cum-Sessions Judge, Kallakurichi is set aside and the matter stands remitted for fresh adjudication as aforesaid. Registry is directed to send the records to the III Additional District-cum-Sessions Judge, Kallakurichi.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//
Sub Assistant Registrar

ssm

To:-

- 1.The Inspector of Police,
Kallakurichi Police Station,
Villupuram District.
- 2.the Judicial Magistrate Court, kallakurichi
3. Do thro the Chief Judicial Magistrate, villupuram
- 4 The III Additional District-cum-Sessions Judge,
Kallakurichi
5. The Public Prosecutor,
Madras High Court.

+1cc to Mr.K.Thilageswaran , Advocate SR.No. 66464

+1cc to Mr.S.Saravanakumar , Advocate SR.No. 66388

Cr1.A.No. 40 of 2018

A.SK(06/09/2019)