

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.11.2019

Date of Verdict: 07.11.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN

CrI.A.No. 62 of 2018

G.Sivakumar

...Appellant

-vs-

State Rep by
Inspector of Police
Madathukulam Police Station
Coimbatore District.

... Respondent

PRAYER: Appeal filed under Section 374(2) Cr.P.C. to call for the records in connection with judgment dated 09.07.2019 in S.C.No.238 of 2012 on the file of I Additional District and Sessions Court, Tiruppur, Tiruppur District and set-aside the same and acquit the appellant from the charge leveled against him.

For Appellant : Mr.C.Sivakumar

For Respondent : Mr.K.Prabhakar
: Addl. Public Prosecutor

JUDGMENT

M.M.SUNDRESH, J

The appellant is the sole accused in S.C.No.238 of 2012. He is charged for the offence punishable under Sections 302, 307 and 309 IPC. The trial Court, after trial, convicted the appellant for the offence punishable under Sections 302 and 307 IPC, while acquitting him for the offence punishable under Section 309 IPC. Challenging the same, the present appeal is before us.

PROSECUTION CASE IN BRIEF:

2.1. The appellant was having an affair with P.W.4. After promising to marry him, P.W.4 did not do so. Enraged, the appellant went to her house on 15.10.2011 at about 01.30 a.m., picked up a quarrel and tried to stab her. The deceased, who was the mother of P.W.4, tried to intervene. She was attacked by the appellant, resulting in death. Thereafter, P.W.3, who is the minor son of P.W.4, was attacked by the appellant by slicing his neck with blade. After doing so, the appellant tried to commit suicide by cutting his left wrist with blade.

2.2. P.W.1 is the husband of P.W.4. He is the author of the complaint under Ex.P1 registered in Ex.P.17 by P.W.12. The complaint was given at about 6.15 p.m. which was received by the Court on 17.10.2011. P.W.1 has stated that he saw the deceased lying down. He also saw the appellant on the floor after attempting to commit suicide. Thereafter, he took the deceased and P.W.4 to the hospital.

2.3. P.W.2 is the minor son of P.W.4. He had deposed after the Court was satisfied with his understanding capacity. It is his evidence that the appellant attacked the deceased and thereafter ran away. He also attacked P.W.3, namely, the brother of P.W.2. It is his evidence that the appellant tried to commit suicide.

2.4. P.W.3 is another minor son of P.W.4 and also the injured witness. It is his evidence that the appellant took him away and cut his neck. Even with his evidence, the trial Court was satisfied with his mental capacity. He also identified M.O.2 - Blade.

2.5. P.W.4 is also one of the eye witnesses. She has deposed that the appellant after the occurrence kept the knife - M.O.1 on the fence.

2.6. P.W.5 is the mahazar and recovery witness. He speaks about the recovery of M.Os.1, 3 and 4 and acknowledged signing Ex.P3, mahazar.

2.7. P.W.6 is the Doctor, who conducted the post-mortem. The gist of the post-mortem report is extracted below:-

"1. Penetrating injury seen over the centre of abdomen left side, 2 cms from midline, in the ambilical quadrant, placed obliquely from above downwards towards left Ilial fossa 3.5 cms x 1.5 cms x 7 cms depth,

margins well defined on deep dissection of the wound peritoneum found torn with bowels protruding out through the gap.

2. Cut injury seen over right hand little finger 1.5 cms x 0.5 cms x bone depth. On opening of thorax no rib.

3. Heart weight 300 gms, pale, contains 5 ml of fluid blood lungs right side 450 gms, left side 420 gms, pale, hyoid bone intact. On opening of abdomen, abdominal cavity contains about 2000 ml of fluid blood, small Intestine mesentery and left lobe of liver found punctured, liver weight 1300 gms, pale, spleen 150 gms pale stomach contains 50 ml of brown coloured fluid, Kidneys each 130 gms weight, pale Uterus atrophic bladder empty. On opening the skull, membrane intact. Brain weight 1000 gms pale, all viscera and blood preserved and sent for chemical analysis."

This witness has also stated that the appellant, who was also treated, was under the influence of alcohol. The aforesaid statement has been made based upon the Accident Register Report authored by Dr.B.Saravanapriya.

2.8. P.W.8 is the Doctor, who examined and treated P.W.3, the minor son of P.W.4. He is also the author of Ex.P9 - Accident Register.

2.9. P.W.10 is the witness who signed the Observation Mahazar under Ex.P13. P.W.11 is the Constable who took the body for post-mortem. P.W.12 is the Sub-Inspector who registered FIR under Ex.P.17 on 15.10.2011 at about 6.15 a.m., based on the complaint received from P.W.1.

2.10. P.W.13 is the Bench-Clerk working in the jurisdictional Court. He has deposed about the receipt of the materials, including the documents sent to the Court.

2.11. P.W.14 is the Investigating Officer who prepared Observation Mahazar and Rough Sketch and conducted inquest under Ex.P19. He arrested the appellant at about 12.15 p.m. and prepared Ex.P3 Seizure Mahazar. After examining the witnesses, he completed the investigation on 31.05.2012 and filed the final report.

2.12. The trial Court, after framing of the charges, put them before the appellant, who denied it. In all, fourteen witnesses have been examined and twenty documents have been

marked by the prosecution. The appellant did not choose to examine anybody.

2.13. All the incriminating materials were put to the appellant under Section 313 Cr.P.C. The appellant while accepting the fact that he was in relationship with P.W.4 and under the intoxication of liquor completely, nevertheless denied the charges. However, he further accepted that he was present in the scene of occurrence.

2.14. The trial Court, taking note of the evidence adduced by the prosecution, convicted the appellant for the offence punishable under Sections 302 and 307 IPC, while acquitting him under Section 309 IPC.

SUBMISSION OF THE APPELLANT'S COUNSEL:

3. The learned counsel appearing for the appellant submitted that there is delay in filing the complaint. Therefore, the case of the prosecution creates doubt. There was no independent witness examined to corroborate the evidence adduced by the prosecution witnesses. The trial Court ought not to have relied upon the evidence of P.Ws 2 and 3, being child witnesses. The recovery has not been proved in view of the evidence of P.W.4 that the knife (M.O.1) was kept inside the fence. There is a delay in receiving the material objects and other records by the Court. In any case, even the evidence of P.W.7 was to the effect that the appellant was not in a position to answer the questions as he was completely under the control of alcohol. This was also supported by the Accident Register Report under Ex.P.8. Therefore, either the appellant is entitled to acquittal or punishable under Section 302 Part (II) IPC. It is his further submission that there was no intention to murder the deceased, as the dispute, if any, was between the appellant and P.W.4.

SUBMISSION OF THE STATE: सत्यमेव जयते

4. The learned Additional Public Prosecutor appearing for the State submitted that there is sufficient evidence in the form of eye witnesses, including two child eye witnesses. The scene of occurrence was in the house of P.W.1, in which the deceased resided, and the appellant did not deny the fact that he was present in the house. He also accepted the relationship with P.W.4. It is also his case that he was fully drunk. The aforesaid statement has been made by him even in his statement given under Section 313 Cr.P.C. There is no delay in registering FIR. P.W.1 himself has stated that the deceased was taken to the

hospital and therefore the delay. The evidence of P.W.3 has to be seen in the light of the records. The records would show that all the material documents and objects were sent immediately. They were returned and thereafter re-presented. Thus, there is no prejudice that would be caused to the appellant. The recovery of knife is not very relevant. In any case, there was an interregnum between the occurrence and the arrest, followed by recovery. The appellant could have kept M.O.1 in a different place after occurrence. The trial Court considered all these aspects while convicting the appellant. Therefore, the appeal will have to be dismissed.

DISCUSSION AND FINDING:

5. We have plenty of eye witnesses available in the form of P.Ws 1 to 4. They cannot be called as interested witnesses. An interested witness is the one who is interested in the conviction. Merely because P.Ws 1 to 4 are the members of the family of the deceased, their testimony cannot be brushed aside. After all, the occurrence took place in the house of P.W.1. The appellant also accepted in his statement given under Section 313 of Cr.P.C that he was inside the house, fully drunk. Further, he accepted the relationship with P.W.4.

6. P.W.3 is the injured witness. The trial Court satisfied itself on the mental capacity of P.Ws.2 and 3. These two children clearly deposed implicating the appellant. We may note that even the appellant was injured and Ex.P8 Accident Register report is admittedly true. The Doctor who recorded Ex.P8 has clearly stated that the appellant was fully drunk, which is also his case. It is not as if the appellant was made to drunk. Therefore, the appellant is not entitled to the benefit of Section 85 of IPC.

7. All the eye witnesses have deposed that the appellant consciously attacked the deceased and committed the offence. Even if the appellant's intention was to kill P.W.4, the charge under Section 302 IPC would be made out by the homicide of the deceased.

8. In this connection, we may fruitfully refer the judgment of Hon'ble Supreme Court in Jagpal Singh v. State of Punjab, 1991 Supp (1) SCC 549 : AIR 1991 SC 982 wherein, it has been held as follows:-

"3. On going through the entire evidence and other connected records placed before us, we are fortified in holding that appellant 1, Jagpal Singh shot at Surjit Kaur even though he aimed at only Kapur Singh. Therefore, under the doctrine of

transfer of malice as contemplated under Section 301 of the IPC, Jagpal Singh has made himself punishable under Section 302 IPC (simpliciter). So far as the rest of the appellants are concerned, the allegations are omibus. On a careful analysis of the entire evidence particularly of Udham Singh, we are of the opinion that it is not safe to convict the other two appellants, namely, Baldev Singh and Gurmel Singh s/o Chanan Singh."

In the light of the said decision, the above contention even accepted as true, would attract the theory of transferred malice.

9. As rightly submitted by the learned Additional Public Prosecutor, we need not go into the question regarding the recovery of M.O.1. The recoveries have been made in the presence of eye witnesses. Eye witnesses have clearly stated about the offence committed by the appellant. The blood stain found in M.O.1 also tallies with that of the deceased. We have also verified the evidence of P.W.13 with records. As rightly submitted by the learned Additional Public Prosecutor, all the materials were sent to the Court within a reasonable time, however, they were returned to be present thereafter, which was done. From the above, we do not find any reason to hold that the same would vitiate the case of the prosecution.

10. The occurrence is said to have happened at about 1.30 a.m., and the complaint was registered at 6.15 a.m. P.W.1 has also stated that he was conscious to save the deceased and, therefore, the complaint was given few hours later. We find that the evidence of P.W.1 is quite natural and thus there is no delay.

11. The trial Court considered all these aspects for rendering conviction. As stated, there is no basis to doubt the presence of P.Ws.1 to 4. In fact, P.W.3 has also identified M.O.2 - Blade used to attack him.

CONCLUSION:

12. Accordingly, we do not find any merit in this appeal and the criminal appeal stands dismissed.

Sd/-

Assistant Registrar (CS-IV)

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Sub Assistant Registrar

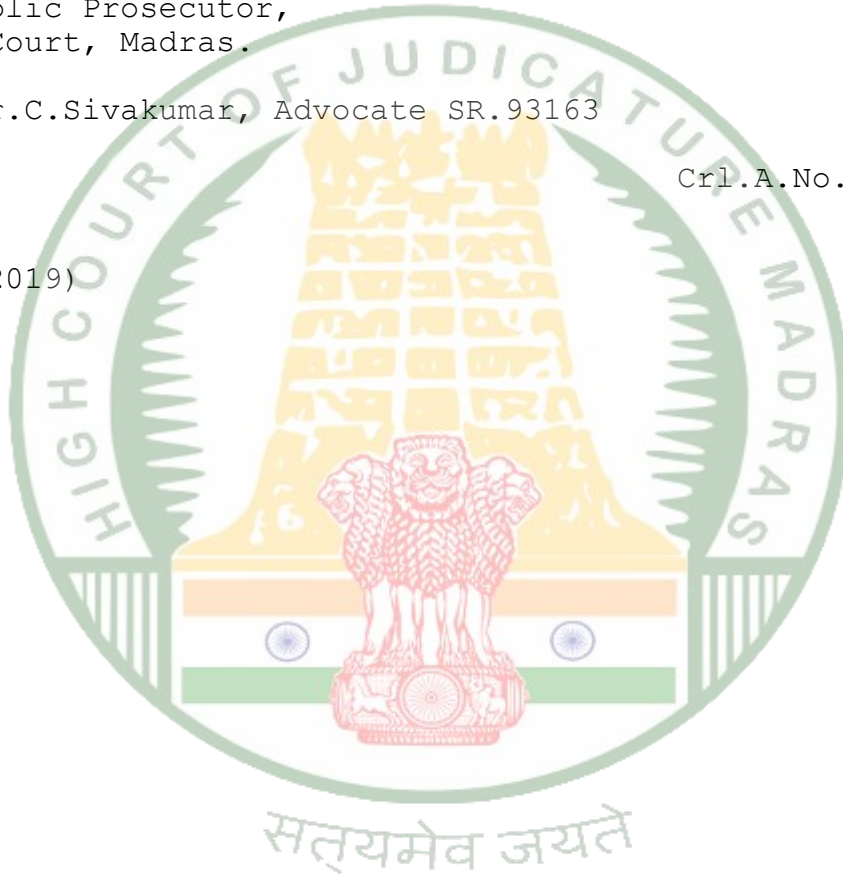
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To

1. The First Additional District and Sessions Judge
Tiruppur, Tiruppur District.
 2. The Inspector of Police
Madathukulam Police Station
Coimbatore District.
 3. The Public Prosecutor,
High Court, Madras.
- +1cc to Mr.C.Sivakumar, Advocate SR.93163

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CB(09/12/2019)



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