

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2019

Coram

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

Crl. A. No. 436 of 2017

R.Sivakumar

...Appellant

-vs-

1.Somasundharam

2.State Rep by
Sub-Inspector of Police,
Kullanchavadi Police Station,
Cuddalore District.

... Respondents

Prayer: Crl Appeal filed against the judgment of acquittal passed by the Court of Session, Cuddalore District, Cuddalore in S.C.No.304 of 2008 dated 05.01.2010.

For Appellant : Mr.A.Kumaraguru

For Respondents : Mr.M.Rajkumar for R1

Mr.K.Prabakar
: Addl. Public Prosecutor for
R2

JUDGMENT
(Delivered by M.M.SUNDRESH)

This appeal is preferred against the judgment rendered in S.C.No. 304 of 2008, acquitting the sole accused, namely, the first respondent, for the major offence charged and punishable under Sections 341, 294(b) and 302 IPC. The appellant herein is the son of the deceased and examined as P.W.1 before the trial Court.

2.CASE OF THE PROSECUTION:

2.1. The first respondent is the senior paternal uncle of P.W.3, who is the son-in-law of the deceased. There was a dispute over partition between the first respondent and P.W.3. P.W.3 settled the family properties in the name of his wife which was questioned by the first respondent. When attempts were made to plant teak wood saplings, it was accordingly objected to by the first respondent, pursuant to which, they were uprooted.

2.2. When the deceased was proceeding to Malaipillaiyar Temple at about 4.30 p.m. on 17.01.2018, the first respondent waylaid him and picked up quarrel and attacked him with M.O.1 - Wooden Reaper on his face. P.W.4 and P.W.5 are the eye witnesses. It is the further case of the prosecution that P.W.1, namely, the appellant, was informed about the occurrence over phone by P.W.4. Thereafter, P.W.1 and P.W.2 came to the place of occurrence, took the deceased and admitted him at the Government Head Quarters Hospital, Cuddalore while carrying M.O.1 with them.

2.3. Within forty five minutes, the nearby people came to the place of occurrence. From the Government Head Quarters Hospital, Cuddalore, the deceased was taken to JIPMER, Puducherry. Thereafter, P.W.1 gave a complaint under Ex.P1 to P.W.10 - Sub-Inspector of Police. P.W.10 took up the investigation and registered the complaint for the offence punishable under Section 325 IPC.

2.4. The deceased died on 19.01.2008 at about 9.00 p.m in the hospital. Thereafter, further investigation was taken over by P.W.11 - Inspector of Police. After investigation, P.W.11 filed the final report. The learned Judicial Magistrate committed the case to the Principal Sessions Judge, Cuddalore. After framing the charges, the first respondent was put to question. On his refusal, the trial Court proceeded with.

3. The prosecution has examined P.W.1 to P.W.11 while marking Exs.P.1 to P.11. There is only one Material Object with the recovery of Wooden Reaper. On behalf of the first respondent, there was no evidence adduced. After, completing the requirement under Section 313 (a) of Cr.P.C, the arguments were heard and the first respondent was accordingly acquitted.

4. Though the second respondent - State has not preferred the appeal, P.W.1, who is the son of the deceased as aforesaid, has filed the present appeal before us.

5. The trial Court acquitted the first respondent, inter alia, holding that there are material contradictions in the

evidence of P.W.4 and P.W.5 - eye witnesses. P.W.1 has admitted that he was in conversation with P.W.5 in the courtyard of one Annamalai, which is situated at reasonably far away place behind the main road. It is further admitted that he found the deceased lying in the junction of the main road. He saw the deceased after hearing his cries. The house of Annamalai is away from the main road and there were trees in between the place of occurrence and the house. He was also suffering from renal disease and, therefore, he could not run fast. He was also a close relative of the deceased. Inasmuch as the date of occurrence was the day meant for preparing non-veg and P.W.1 was working in mutton shop, it is not probable that he would have been present at the place of occurrence. Thus, the presence of P.W.4 creates suspicion.

6. The trial Court further held that P.W.5 has given two contradictory statements with respect to his relationship with the deceased. He also says that he saw the deceased lying after hearing the noise. Therefore, he could not have been the eye witness.

7. Thus, it was accordingly held that as seen from the Doctor's evidence under Ex.P5 that the deceased would have died of acute myocardial infraction. There was no teeth found in the place of occurrence as deposed by the prosecution witnesses nor there were injuries found correspondingly under Ex.P2 - Accident Register and Ex.P4 - Post - Mortem Certificate. Under Ex.P5, it has been stated that the deceased was attacked by sickle by a neighbour which is also against the case of the prosecution. Thus, the medical record under Ex.P5 goes against the case of the prosecution version. P.W.1 has admitted that he gave an earlier complaint and there was delay in registering the F.I.R. Accordingly, based upon the aforesaid discussion, the trial Court acquitted the first respondent. Challenging the same, the present appeal has been filed.

8. The learned counsel appearing for the appellant would submit that there are eye witnesses in the form of P.W.4 and P.W.5. Merely because the witnesses are relatives to the deceased, their evidence cannot be eschewed. There are small discrepancies, which ought not to have been taken note of. The role of the Court is to find out the truth. The defective prosecution shall not enure to the benefit of the accused. The evidence of P.W.4 and P.W.5 will have to be seen along with the evidence of P.W. 1 to P.W.3. The prosecution has established the motive. Therefore, the appeal will have to be allowed.

9. The learned counsel appearing for the first respondent would submit that the trial Court considered the relevant materials while rendering the order of acquittal. There is a

double presumption in favour of the accused. There is no perversity involved and the Court should be slow in interfering with the well merited judgment rendered by the trial Court. The evidence of P.Ws.1,4 and 5 would show that there are material contradictions among them. There was no teeth found as deposed by P.W.1. The recovery made is also doubtful. The earlier version given has been suppressed. There is an inordinate delay in not only filing the F.I.R but also sending the documents and statements recorded in the form of evidence to the jurisdictional Magistrate Court. P.W.3 has also stated that P.W.1 was examined on the very same date of the occurrence. However, the complaint was registered only at 1.00 p.m. on 18.01.2008. He also saw the police when he went to the village. Therefore, the evidence of P.W.3 cannot be relied upon.

10. The learned counsel appearing for the first respondent further submitted that P.W.10 and P.W.11, namely the Sub-Inspector of Police and Inspector of Police, have clearly stated that the statements recorded were sent belatedly. In fact, the evidence recorded along with the documents were only sent by P.W.11 along with the final report. Therefore, these factors would create very serious doubt on the version of the prosecution. The trial Court has also rightly held that the deceased would have died of acute myocardial infraction. The recovery of M.O.1 - Wooden Reaper cannot be true. The so-called blood stain in M.O.1 has not been compared with the deceased. Thus, the appeal will have to be dismissed.

11. The learned Additional Public Prosecutor appearing for the State tried to support the prosecution version though no appeal has been filed. He submitted that the trial Court has not considered the evidence of P.W.4 and P.W.5 which are the eye witnesses in correct perspective coupled with the documentary evidence produced. Therefore, the appeal will have to be allowed by setting aside the judgment rendered by the trial Court.

12. We have heard the learned counsel appearing for the appellant, learned counsel appearing for the first respondent and the learned Additional Public Prosecutor appearing for the second respondent/State.

13.DISCUSSION:

13.1. Courts are required to go slow in upsetting the acquittal rendered by the trial Court on analysing the evidence placed before both oral and documentary. Double presumption would arise in such cases in favour of the accused. The trial Court has given elaborate reasons by considering the evidence of P.W.4 and P.W.5 coupled with P.Ws.10 and 11. The material contradictions in the evidence of the aforesaid witnesses were taken note of. Keeping the aforesaid position in mind, let us

consider the submissions made.

13.2. P.W.1, namely, the appellant is not an eye witness to the occurrence and so also P.W.2, who is the brother. It is the case of P.W.1 that he has been informed over phone about the occurrence by P.W.4. Though there is evidence to show that within one hour some persons have gathered in the place of occurrence but complaint was given only on the next day at about 1.00 p.m. P.W.1 has also stated that he gave complaint earlier. No body knew about the fact of the first complaint.

13.3. We find that there is material contradiction with respect to the intimation given to P.W.1 while P.W.4 says that it is P.W.5, who informed P.W.1 but P.W.5 says otherwise. Thus, we find that the trial Court has rightly disbelieved the evidence adduced.

13.4. P.W.3, who is the brother-in-law of P.W.1 and P.W.2 has stated that he saw the deceased on the date of occurrence at about 9.00 p.m. He has further stated that P.W.10 came to the Hospital at Puducherry and examined him and P.Ws.1 & 2. This is the very contradiction to the case as projected by the prosecution. The trial Court has rightly declined to believe the evidence of P.W.4 and P.W.5. There are various material discrepancies in the evidence adduced. These witnesses in the cross-examination say that they saw the deceased lying from a distance. In fact, they came out only after hearing the noise. The trial Court has given a finding that there are standing trees in between and it would not have been possible to see the occurrence even otherwise. The falling of the teeth having found as per the evidence adduced both in the place of occurrence coupled with the existence of blood stain in M.O.-1 are not proved.

13.5. On considering the medical evidence under Ex.P5, the trial Court has found that the records would suggest that the deceased was attacked by a sickle. This is contrary to the case of the prosecution. It is the case of prosecution that the deceased was attacked by the first respondent with M.O.1 - Wooden Reaper. There was no attempt to examine the blood stain available in the Wooden Reaper by comparing with that of the deceased.

13.6. From the evidence of P.W.6 and P.W.7 coupled with Exs. P2, P4 and P5, the injuries suffered in the mouth and the loss of teeth, particularly the loss of teeth has not been proved. Ex.P4 - Post-Mortem Certificate, also does not specifically say anything about it. The evidence of P.W.8 - Doctor, who gave the treatment to the deceased prior to his death also to the effect that the acute myocardial infraction

occur in people aged about 60 and above. There were stones found at the place occurrence, as the surface was very rough. There is no explanation with respect to the statement given by P.W.1 on the first complaint. It is the evidence of P.W.10 that at about 8.00 p.m. on 17.01.2018, the Police came to know about the occurrence. However, the complaint has been registered only at about 1.00 p.m. on the next day. P.W.10 and P.W.11 have categorically admitted that the evidence collected during the investigation were sent on 12.02.2008 along with the final report by them respectively. To make this position clear, we have checked the records. Except the complaint under Ex.P1, most of the evidence collected during the investigation including the statements given under Section 161 Cr.P.C. though obtained on 18.01.2008, were received by the Court on 12.02.2008.

13.7. After the alteration of charges, P.W.11 took over the investigation. Strangely, he did not then send the materials collected to the Court but filed them along with the final report. This is a very serious infraction leading to serious doubt on the case of the prosecution. In fact, P.W.11 has also admitted the aforesaid procedure adopted. P.W.11 also admitted that P.W.1 in his examination has not stated that M.O.1 - Wooden Reaper was kept in the place from which it is recovered. Similarly, P.W.10 also made a statement on the aforesaid opinion not being told by P.W.1 to him during inquiry.

13.8. It is the case of P.W.10 that he saw the deceased in the morning hours on 18.01.2008, there is no need for receiving complaint in the Hospital in the afternoon. Even assuming, P.W.1 was not available, he could have got the complaint registered from the others present. His evidence is also contrary to the evidence of P.W.1 on the earlier complaint.

14. The trial Court took into consideration all those materials in giving the benefit of doubt to the first respondent. Thus, in the light of the discussion made above, we do not find any reason to reverse the well merited judgment of the trial Court rendered after analyzing the evidence placed before it.

15. In the result, the criminal appeal stands dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Sub-Inspector of Police,
Kullanchavadi Police Station,
Cuddalore District.

2.The Principal Sessions Judge,
Cuddalore.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Rajkumar , Advocate SR.No. 83301

Cr1. A.No. 436 of 2017

mr (CO)
A.SK(04/12/2019)