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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.06.2019

Delivered on : 20.06.2019

CORAM

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

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.660 of 2017

Ravi (M-51 years)
S/o Sampath Pillai,
110, Bajanai Koil Street,
Madura Mottur,
Singadivakkam Village,
Kancheepuram.

... Appellant/Accused (A1)

Vs.

State by
The Inspector of Police,
B5, Walajahbad Police Station,
Kancheepuram District.
(Crime No.202/2014)

... Respondent/complainant

Criminal Appeal is filed under Section 374 of Criminal Procedure Code to set aside the judgment and conviction passed by the District Sessions Judge No.2, Kancheepuram in S.C.No.133 of 2014 dated 19.04.2017 for the alleged offence under Section 302 of IPC for life imprisonment and also imposed a fine of Rs.5000/- and in default of fine to undergo six months RI and consequently acquit the appellant from all the charges.

For Appellant : Mr.T.Shanmugaboopathi

For respondent : Mr.R.Prathap Kumar,
Additional Public Prosecutor

JUDGMENT

M.M.SUNDRESH, J.

The appellant, who is arrayed as A1, challenging the conviction and sentence rendered in S.C.No.133 of 2014 on the file of District and Sessions Judge-II, Kancheepuram, for the offence punishable under Section 302 IPC has filed the above



criminal appeal.

2. Brief Facts:

2.1. The appellant and Accused No.2 are father and son. P.W.1-Murugan, appellant-Ravi, and the deceased-Varadhan are brothers. The appellant obtained loan from one Kollapuri. Dispute arose between the appellant and the deceased-Varadhan, over the non payment of loan amount. A complaint was given earlier by the deceased-Varadhan against the appellant on 22.05.2014 under Ex.P6. The appellant along with his son-Venkatesan/A2 went to the place of occurrence and attacked the deceased with wooden reaper. P.Ws.1, 3 and 4 are the eye witnesses. These witnesses turned hostile. P.W.2-Parameshwari is the wife of the deceased and thus sister-in-law of the appellant. She came to the scene of occurrence after the death. The deceased was taken to the Government Hospital, Kancheepuram in an Ambulance.

2.2. P.W.1 is the author of the complaint given under Ex.P1 dated 25.05.2014. The occurrence was about 7.00 p.m. P.W.11, who is the Sub Inspector of Police, has registered the complaint under Ex.P11. P.W.13 is the Inspector of Police, who conducted the investigation. The appellant along with A2 was arrested by P.W.13 and confession statements were given by them to P.W.6-Village Administrative Officer, in pursuant to which, recovery of material objects including M.Os.1 and 2/wooden reapers, were recovered. P.W.10 is the Doctor, who conducted the post-mortem, certified that the deceased died of head injury.

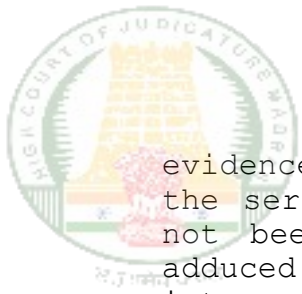
2.3. P.Ws.5 and 7 are the witnesses to the observation and seizure mahazars. All the eye witnesses along with P.Ws.5 and 7 turned hostile.

2.4. The prosecution in toto examined 13 witnesses and marked Exs.P1 to P19 and M.Os.1 to 7.

2.5. The accused were questioned under Section 313 of the Criminal Procedure Code. Accordingly they denied the charges.

2.6. The Court below, placing reliance upon the evidence of eye witnesses coupled with the medical evidence, convicted the appellant under Section 302 of I.P.C., and sentenced to undergo life imprisonment and also imposed a fine of Rs.5000/-, in default to undergo six months RI while acquitting A2. Aggrieved by the same, the appellant is before us.

3. The learned counsel appearing for the appellant would submit that the prosecution has not proved its case beyond reasonable doubt. The Court below has wrongly relied upon the



evidence adduced on behalf of the prosecution notwithstanding the serious discrepancies involved. The evidence of P.W.11 has not been taken into consideration probably. The evidence adduced by the witnesses, who turned hostile, have been taken into consideration. Recovery has not been proved by the prosecution. P.Ws.2 and 3 have clearly stated that P.W.1 was not present at the time of occurrence and therefore, the very case of prosecution cannot be sustained. The Police was present at the place of occurrence immediately thereafter. Thus, the appeal has to be allowed.

4. The learned Additional Public Prosecutor appearing for the State would submit that merely because A2 has been acquitted, the same benefit cannot be extended to the appellant. The trial Court took into consideration the evidence of P.W.3 during the investigation. The evidence adduced by the witnesses corroborates with that of the exhibits marked. The recovery has been proved. There is nothing discredit the evidence of P.W.6-Village Administrative Officer. The trial Court has considered the relevant materials and convicted the appellant. The prosecution has also established the motive. Thus, the appeal has to be dismissed.

5. The point for consideration is as to whether the prosecution has proved its case beyond reasonable doubt or not?

6. P.W.1, as stated before, is the brother of the appellant. He is also the author of the First Information Report. He has not stated anything about the presence of the other eye witnesses. He deposed that he came to the scene of occurrence after the death of the deceased. At that time, 1000 persons gathered there. The Ambulance was stationed in the place of occurrence. The police came at 8.00p.m. Thereafter, all of them went to the police station. M.Os.1 and 2-wooden reapers were found in the place of occurrence, which were taken by the police. As P.W.1 has turned hostile, not much reliance can be made by the prosecution.

7. P.W.2 is the sister-in-law of the appellant and thus, the wife of the deceased. She has also stated that she was informed about wooden reapers at the place of occurrence. She further states that the Ambulance was brought in and the deceased was taken to the Government Hospital at Kancheepuram, where the deceased was declared dead. It is also her evidence that P.W.1 came only at a later point of time and that too after her arrival. P.W.2 further states that the earlier occurrence has taken place one month before. Thus, the evidence produced by her goes against prosecution only.

8. P.W.3 is an old man of 80 years. He also turned hostile



insofar as A2 is concerned. However, even in the chief examination, he has stated that the deceased was taken to the hospital. Though he had stated that the appellant hit the deceased with a wooden log by a single blow on the head, in the cross examination, he has stated that he was the only person who saw the occurrence. It is the deposition of P.W.3 that he saw the occurrence from about 50 feet and he was having ailment. There was a street light and he was wearing spectacles for both long and short sight. P.W.3 further stated that P.W.1 came only before the arrival of the Ambulance. Thus, P.W.3 corroborates the statement of P.W.1. He further states the presence of the police. The Material Objects viz., M.Os.1 and 2- wooden reapers were recovered from the scene of occurrence on that day itself.

9. From the above, we are of the view that it would not be safe to rely upon the evidence of P.W.3 by undertaking a process of removing chaff from the grain. Though we are conscious of the legal position of non application of the principle "falsus in uno falsus in Omnibus". P.W.3 has further stated that he has not seen A2. When once he had stated about the presence of the police and the recovery of M.Os 1 and 2, relying a portion of his evidence in the chief examination, would rather be not safe. We may note with caution that no other witnesses speak about the presence of P.W.3. Even the Investigating Officer has stated about this fact. Even during the investigation, nobody has stated about the presence of P.W.3. Therefore, in view of the serious discrepancies in the statement of P.W.3, we are not able to rely upon it as a sole basis to convict the appellant especially in view of the statement about the presence of the police, absence of P.W.1 at the time of occurrence and the recovery made. When P.W.3 speaks that P.W.1 came into the picture after the occurrence, no reliance can be made on the case of the prosecution as such. This throws serious doubt on the circumstances under which the complaint under Ex.P1 was given.

10. P.W.4 being an eye witness turned hostile. Even he did not make any mention about the existence of P.W.1.

11. P.Ws.5 and 7 are the witnesses who signed the observation and seizure mahazars. They have turned hostile and therefore, they do not help the prosecution case.

12. P.W.6 is the Village Administrative Officer, before whom both the accused arrested and given their statements leading to recovery. As discussed above, the evidence of the other witnesses would clearly show that recovery was made much before. The evidence of P.W.6 is also unreliable in view of the evidence of P.W.11, which we would discuss later. We are dealing with a



case where arrest was stated to have been made on 26.05.2014 by P.W.13-Investigating Officer and thereafter, the accused were brought before P.W.6. P.W.6 further stated that at the time of writing the confession statements, 20 persons were present. As P.Ws.5 and 7 turned hostile and in view of clear statements given by P.Ws.3 and 11, we

are constrained to reject the evidence of P.W.6 even with respect to the arrest, statement followed by recovery.

13. Coming to the evidence of P.W.10-Doctor who conducted the post mortem, has stated that he has not seen the Chemical Report. He has further stated that it would be possible to sustain injuries by falling from the bike.

14. P.W.11 is the Sub Inspector of Police, then Special Assistant, has registered Ex.P11-First Information Report. He has clearly deposed that the accused were arrested on the date of occurrence itself. On the next day morning, i.e. 26.05.2014 at 8.00a.m., the accused were handed over to the investigating officer. This evidence of P.W.11 has not been assailed. He has in fact given the evidence. If we assess the evidence of P.W.11, it is in tune with the evidence given by the other prosecution witnesses, who had clearly deposed about the presence of the police immediately after the occurrence.

15. P.W.13 is the Investigating Officer, who is alleged to have arrested the accused. According to him, he got the information at the late

night on 25.04.2014 and arrested the accused at 11.30 p.m., on that day itself. He has admitted that none of the witnesses spoke about the presence of P.W.3 nor anything stated in the complaint. He has not seen the Chemical Examination Report. Though he has denied that he was present in the place of occurrence at about 8.30 p.m., on 25.05.2014, in the evidence adduced by P.W.11, it has been stated that the appellant visited the police station by 11 p.m. and by night 7 p.m., the accused was remanded. Therefore, not much importance can be attached to that of PW.13. He has also not stated anything about the Ambulance, which took the deceased to the Hospital and what happened thereafter.

16. The Court below placed reliance on the evidence of P.W.3 coupled with the motive while convicting the appellant. Reliance was also made on the evidence of P.Ws.1 and 2. When P.W.1 has turned hostile and P.Ws.2 and 3 uniformly say that they came thereafter, the very basis of the complaint itself goes. Though P.W.3 has stated about the presence of the accused and the attack made by him, he has further stated that the



police were not immediately present after the occurrence and no recovery was made. Therefore, the case of the prosecution, as projected with respect to the arrest and recovery, cannot be sustained. The evidence of

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P.W.11 as discussed above assumes greater importance. He has clearly stated about the registration of First Information Report followed by arrest of the accused on the same day. The witnesses also speak about the existence of M.Os.1 and 2 and recovery made. Strangely, nothing has been stated by the prosecution about the presence of the Ambulance, travelling of the deceased to the Kancheepuram Government Hospital and declaration of the death of the deceased. If we believe the evidence of P.W.11, the evidence given by the P.W.13 would fall to the ground. P.W.3 has never stated the presence of P.W.1 at the place of occurrence. On the contrary, he and P.W.2 have clearly stated that PW1 came to the picture at a later point. In those circumstance, the evidence given on the non availability of A2 also assumes greater significance. In such view of the matter, in our considered view, the conviction and sentence imposed by the trial Court against the appellant/A-1 cannot be sustained in the eye of law. Accordingly, we hold that the prosecution has failed to prove the case beyond reasonable doubt. As such, the conviction and sentence imposed on the appellant in S.C.No.133 of 2014 on the file of District and Sessions Judge No.2, Kancheepuram are set aside and this Criminal Appeal is allowed. The appellant/A1 is acquitted of the charges under Section 302 I.P.C., and the fine amount, if any paid, shall be refunded to

him. The appellant/A1-Ravi is directed to be released forthwith, unless his custody is required in connection with any other case.

Sd/-

Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Inspector of Police,
B5, Walajahbad Police Station,
Kancheepuram District.



2.The Additional Public Prosecutor,
High Court, Chennai.

3. The Superintendent,
Central Prison, Vellore.

4. The District Sessions Judge No.2,
Kancheepuram.

+1 cc to M/s.T.Shanmuga Boopathi, Advocate, Sr.No. 50319

Judgment in
Criminal Appeal No.660 of 2017

GP(CO)
CSL/02.08.2019