



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 07.11.2019

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THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. A. (MD) NO. 27 OF 2015

M.MURUGESAN

.. Appellant

- Vs -

1. State of Tamil Nadu
rep. by Inspector of Police
Aruppukottai Town Police Station
Virudhunagar District.

2. Ponraj .. Respondents

Appeal filed u/s 374 of the Code of Criminal Procedure, against the judgment dated 26.10.2010, passed by the learned Assistant Sessions Judge, Asst. Sessions Court, Aruppukottai, in S.C. No.15/2009.

For Appellant : No Appearance

For Respondents : Mr. V.Neelakandan, APP for R-1
Mr. M.Jothi Basu for R-2

JUDGMENT

The 2nd respondent herein was charged and tried before the learned Asst. Sessions Judge, Assistant Sessions Court, Aruppukottai, in S.C. No.15/2009, for the offences u/s 341 and 307 IPC and vide order dated 26.10.2010, and he was acquitted of the charges. Aggrieved by the said order of acquittal, the appellant/defacto complainant has preferred the present appeal.

2. The facts, shorn of unnecessary details, are briefly stated hereunder :-

P.W.1 is the defacto complainant and the 2nd respondent is his brother. There was no love lost between them due to property dispute. At about 07.00 p.m., on 15.7.08, when P.W.1 was proceeding in his bicycle, the 2nd respondent waylaid him and abused



him in filthy language and poured the Nitric Acid that he was carrying with him on the right chest, right shoulder, right and left thigh and caused grievous injuries on the person of P.W.1. Thereafter, the 2nd respondent fled away from the scene of occurrence in his motorcycle.

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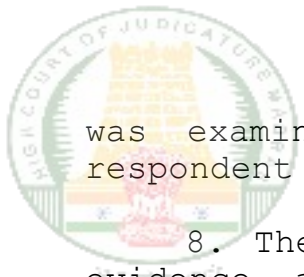
3. P.W.s 2 and 3, who were near the scene of occurrence, took P.W.1 to the Government Hospital, Aruppukottai, where P.W.10, the doctor, examined P.W.1 and issued Ex.P-11, Accident Register. Thereafter, P.W.1 was referred to Government Rajaji Hospital for speciality medical treatment.

4. On receipt of intimation from the hospital, P.W.13, the Head Constable, went to the hospital and obtained the complaint from P.W.1 and after returning to the police station, registered a case in Crime No.467/08 for the offences u/s 341, 294 (b) and 307 IPC and prepared Fir, Ex.P-13. The printed FIR was forwarded to the jurisdictional court as also the higher officials.

5. P.W.15, the Inspector of Police, on receipt of the printed FIR, took up investigation. He went to the scene of occurrence and prepared the observation mahazar, Ex.P-2 and drew the rough sketch, Ex.P-15 in the presence of witnesses, P.W.s 6 and 9. P.W.15 also seized the acid strewn tar road, M.O.4, and sample tar road, M.O.5 and also the green colour cycle under the cover of mahazar. He examined the witnesses and recorded their statements. P.W.15 arrested the 2nd respondent on 16.7.08 at about 6.00 a.m., near Aruppukottai-Tuticorin road near the Kasi Petrol Bunk in the presence of P.W.s 7 and 8 and at that time, the 2nd respondent came forward and voluntarily gave a confession statement, Ex.P-19, in the presence of witnesses based on which the motorcycle bearing Regn. No.TN-67-H-6957 was recovered. Based on the confession statement of the 2nd respondent, from the thorny bush, the plastic bottle and plastic bag were recovered under the cover of mahazar. P.W.15 examined the doctors, P.W.s 10 and 11, who treated P.W.1 and issued the accident register, Ex.P-11 and wound certificate Ex.P-12. P.W.15 obtained the chemical analysis report, Ex.P-14, which was issued by P.W.14 certifying that the chemical found in the bottle was Nitric Acid. After completing the investigation, P.W.15 filed the final report against the 2nd respondent/accused u/s 341, 294 (b) and 307 IPC.

6. On the appearance of the accused/2nd respondent, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session.

7. To prove the case, the prosecution examined P.W.s 1 to 15, marked Exs.P-1 to P-20 and M.O.s 1 to 6. When the accused/2nd respondent was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same. No witness



was examined nor any document marked on the side of the 2nd respondent herein.

8. The trial Court, on the basis of the oral and documentary evidence, acquitted the accused/2nd respondent herein and challenging the legality of the said conviction and sentence, the present appeal has been filed by the appellant/defacto complainant.

9. When the matter is listed today, there is no representation for the appellant. The matter pertains to the year 2015. Even on the earlier occasion, I.e., on 25.10.2019, adjournment was sought for by the learned counsel for the appellant, which was granted and the matter is listed today. Since there is no representation for the appellant, this Court proceeds to analyse the materials available on record.

10. The main grounds raised by the appellant/defacto complainant is that the evidence of P.W.s 2 and 3 have not been properly appreciated though they were eye witnesses to the occurrence and have spoken clearly about the overt acts of the 2nd respondent. It is the further stand of the defacto complainant/appellant that the decision arrived at by the court below is based on surmises and conjectures and not on the basis of the materials available on record. It is the further stand of the defacto complainant that the motive aspect having been proved beyond any doubt, the facts have not been appreciated in proper perspective and, therefore, the judgment of the court below warrants interference.

11. No appeal has been filed by the State/1st respondent against the order of acquittal of the 2nd respondent. Learned counsel appearing for the 2nd respondent/accused submitted that the court below has appreciated the evidence in proper perspective and has rendered a finding that it is wholly unsafe to rely on the evidence of the eye witnesses, whose testimonies galore with contradictions and, therefore, it would be wholly unsafe to rely on their testimonies to return a verdict of conviction. The court below has appreciated the materials and evidence in proper perspective and, therefore, no interference is called for with the order of acquittal.

12. This Court bestowed its best attention to the contentions advanced by the learned counsel for the appellant and the learned counsel for the 2nd respondent and also perused the evidence and the material portions of the evidence to which its attention was drawn.

13. The motive for the occurrence has been spoken to by the prosecution through the testimonies of P.W.s 1, 4 and 5. It is further not disputed that there exists property dispute between P.W.1 and the 2nd respondent herein. Therefore, there exists a



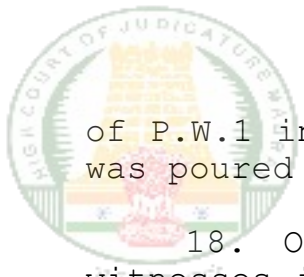
motive, as projected by the prosecution. However, whether the testimonies of the witnesses strengthen the motive, as projected by the prosecution, to set aside the order of acquittal is the question that falls for consideration of this Court.

14. P.W.s 2 and 3, who are projected to be eye witnesses to the occurrence, speak about the act of the 2nd respondent in throwing acid on P.W.1. However, their said evidence falls short of being inspiring for the simple reason that the place from which P.W.2 saw the occurrence has not been established properly by the prosecution. Even the evidence of P.W.2 regarding the place from which he saw the occurrence is at variance in his chief and cross examination. Further, the evidence of P.W.2 does not reveal as to how he happened to be at the scene of occurrence to have witnessed it. Though P.W.2 says that he came in the Scooty moped, however, his evidence as to where he parked the vehicle and witnessed the occurrence has not been spoken to clearly by him.

15. The testimony of P.W.3 with regard to the overt act of the 2nd respondent/accused in throwing acid on P.W.1 and the parts of the body in which P.W.1 suffered acid burns have not been clearly spoken to by P.W.3. The testimony of P.W.3 is in variance to the accident register, Ex.P-11, and the injuries found in the accident register does not corroborate with the testimony of P.W.3.

16. One other crucial piece of evidence, which falls short of acceptance is the manner in which P.W.1 is said to have reached the hospital. While P.W.1, in his testimony, as well as in the complaint, Ex.P-1, which is the earliest document, has stated that he boarded an auto and went to the hospital, but he does not speak about the presence of P.W.s 2 and 3 at the scene of occurrence at the time of occurrence. Further, P.W.1 also does not speak about P.W.s 2 and 3 accompanying P.W.1 to the hospital in the auto. However, the above evidence of P.W.1 is not corroborated by P.W.s 2 and 3. P.W.s 2 and 3, in their testimonies, have categorically deposed that they accompanied P.W.1 to the hospital in the auto, which does not stand corroborated by P.W.1. The contradiction in the above evidence of P.W.s 2 and 3 with the evidence of P.W.1 casts a serious doubt on the presence of P.W.s 2 and 3 at the scene of occurrence. Once the presence of P.W.s 2 and 3 at the scene of occurrence is doubted, then their evidence as eye witnesses to the occurrence cannot at all be accepted as their very presence is doubtful and their testimony that they witnessed the occurrence cannot be accepted.

17. Further, Exs.P-11, accident register and Ex.P-12, wound certificate, though disclose that P.W.1 had suffered grievous injuries due to acid burns, however, the place in which the burns are said to be found does not stand corroborated with the testimony



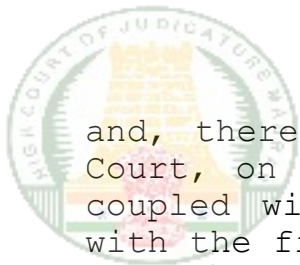
of P.W.1 in which he has stated the parts of the body on which acid was poured by the 2nd respondent.

18. One other glaring discrepancy in the testimony of the witnesses is that though P.W.s 2 and 3 have deposed that after they brought P.W.1 to the hospital they informed P.W.s 4 and 5, the wife and daughter of P.W.1, who came to the hospital, however, P.W.10, the doctor, who examined P.W.1 at the earliest point of time and issued Ex.P-11, accident register, has informed P.W.15, the investigating officer and also deposed that P.W.1 informed him that he was brought to the hospital by P.W.4. This fact is also evidenced from Ex.P-11, the accident register, where it is clearly shown that P.W.1 was brought to the hospital by one Kaleeswari. Therefore, not only the presence of P.W.s 2 and 3 at the scene of occurrence becomes doubtful, equally doubtful is the fact that their bringing P.W.1 to the hospital.

19. The testimony of P.W.10, the doctor, who attended on P.W.1 at the earliest point of time reveals that acid burn was found on the body of P.W.1. It is to be noted that even according to the prosecution, the 2nd respondent had thrown acid on P.W.1. If that be the case, on many parts of the body, there would be acid burns and it would not be located at a particular spot. However, a perusal of Ex.P-11, accident register, shows that burn injuries due to acid are found in the right arm and further the testimony of P.W.10 shows that acid burn injuries are found only in certain places on the body and P.W.10 has opined that if acid had been thrown on the person of P.W.1, injuries would be found on various parts of the body. Further P.W.11, the doctor, who treated P.W.12 and issued wound certificate, Ex.P-12, in cross examination has testified that the injuries suffered by P.W.1 could have happened if acid accidentally falls on the person. Such being the case, the evidence of P.W.1 that the 2nd respondent threw acid on his person is far from believable.

20. Not only the above testimonies galore with contradictions and is far from believable, even the evidence of the mahazar witnesses and the witness, who was present when the material objects were seized are far from acceptable as P.W.6, who is said to be the son-in-law of P.W.1, has not even disclosed about his relationship with P.W.1 to P.W.15. Further the seizure of the cycle, spoken to by P.W.15, is not corroborated by the mahazar witnesses, P.W.s 8 and 9.

21. On an overall appreciation of the evidence placed, the court below has appreciated the same in proper perspective and rendered a finding that accepting the version projected by the prosecution, in the absence of corroboration and the testimonies falling short on all aspects, it would be wholly unsafe to accept the prosecution version to bring home the charge against the accused



and, therefore, thought it fit to acquit the 2nd respondent. This Court, on an entire analysis of the materials available on record, coupled with the testimonies of the witnesses, is in concurrence with the finding arrived at by the court below and the same does not warrant any interference at the hands of this Court.

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22. For the reasons aforesaid, this criminal appeal fails and the same is dismissed confirming the judgment dated 26.10.2010, passed by the learned Assistant Sessions Judge, Asst. Sessions Court, Aruppukottai, in S.C. No.15/2009.

Sd/-

Assistant Registrar(CRL SIDE)

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Sub Assistant Registrar(CS)

GLN

To

1) The Assistant Sessions Judge, Aruppukottai.

2) The Addl. Public Prosecutor,
Madurai Bench of Madras High Court, Madurai

3) The Inspector of Police,
Aruppukottai Town Police Station,
Virudhunagar Dt.

COPY TO

The Section Officer,
Criminal records,

Madurai Bench of Madras High Court, Madurai. (2 copies)

+1CC TO MR.G.M.LAW OFFICE, Advocate Sr. No. 96613

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