



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **24.01.2020**
CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI
CRIMINAL APPEAL (MD) .No. 92 of 2018

Mohamed Ibrahim : Appellant/Pw1
Vs.

1.State rep. by
the Inspector of Police,
Panayapatti Police station
Pudukottai District
In Crime No.14/2010 : Respondent/Complainant

2.Sethuraman
3.Nagarajan @ Palaniyappan : Respondents 2,3/Accused 1,2

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the judgment dated 28.01.2013 in S.C.No.118 of 2011 by the Additional District & Sessions Judge, Pudukottai.

For Appellant : Mr.N.Ananthapadmanaban
Amicus Curiae
Mr.S.Prasanth
For Respondent : Mr.R.Anandharaj for R1
Additional Public Prosecutor
Mr.M.A.Karunanidhi for R2 & R3

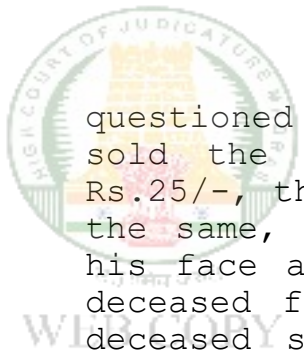
JUDGMENT

(Judgment of the Court was delivered by T.RAJA, J.)

The de-fact complainant is the appellant. The respondents 2 and 3 are the accused in S.C.No.118 of 2011 on the file of the Additional District and Sessions Judge, Pudukottai. The accused were charged under Section 302 IPC. The trial Court, by judgment dated 28.01.2013, acquitted all the accused. Challenging the same, the de-facto complainant has come up with this criminal appeal.

2. The case of the prosecution in brief is as follows:-

The deceased Noor Mohamed is running a Petty shop. On 28.02.2010, both the accused persons came to the shop of the deceased and bought a cigarette packet, which was sold by the deceased at the rate of Rs.27/-. When the accused persons



questioned the hike in price, by saying that as to why the deceased sold the cigarette packet at the rate of Rs.27/-, instead of Rs.25/-, the deceased said to have scolded the accused. Enraged over the same, the accused persons attacked the deceased with hands on his face and head and pushed him down, as a result of which, the deceased fell on a stone and sustained injuries. Thereafter, the deceased said to have laid down on the pial of Vanakaran (not examined). On the next day, he was taken to his house and he succumbed to the injuries on 01.03.2010 at 10.00 a.m.

2.1. Rajesh Khan (P.W.-2) and Zahir Hussain (not examined) informed about the injury sustained by the deceased to P.W.-1, who is the son of the deceased. On hearing the same, P.W.-1 came to the house of the deceased and found the deceased lying dead. Subsequently, he preferred a complaint (Ex.P-1) before the Panayapatti Police Station. The Sub Inspector of Police (P.W.-14) registered the said complaint in Crime No.14/2010 under Section 174 Cr.P.C.

2.2. On receipt of the information regarding the registration of the FIR (Ex.P-7), the Inspector of Police, (P.W.-16), took up the investigation and visited the place of occurrence and prepared the observation mahazar (Ex.P-10) and rough sketch (Ex.P.-11) in the presence of witnesses. He conducted inquest over the body of the deceased in the presence of Panchayatdars and prepared the inquest report, (Ex.P-12). Thereafter, the body was sent to postmortem through the Head Constable (P.W.-12).

2.3. Dr.Gomathi (P.W.15) conducted the postmortem on the body of the deceased. She found the following injuries:

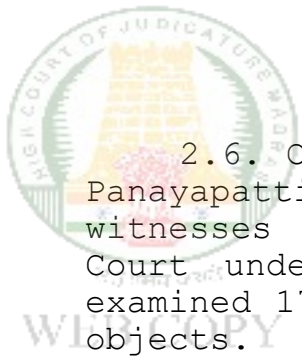
"There was extradural hemorrhage found near right side just above right ear near occipital & parietal region. On opening the skull, intracerebral hemorrhage found on both hemispheres more on right side with clots occupying parietal and temporal region."

The postmortem certificate is marked as Ex.P.-8. The Doctor has opined that the deceased would appear to have died of head injury more than 24 hrs prior to postmortem. The final opinion is marked as Ex.P.-9.

2.4. On coming to know about the cause of death, the offence has been altered into one under Section 302 IPC. The altered FIR has been marked as Ex.P.-13.

2.5. Continuing with the investigation, he arrested the 1st accused on 04.03.2010 at 8.30 a.m. He made a voluntary confession statement, based on which, the second accused was arrested on 14.03.2010 at about 10.00 a.m. and they have been subsequently

<https://hcservices.cercl.gov.in/hcservices> social custody.



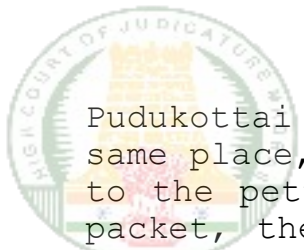
2.6. Continuing the investigation, P.W.-17 Inspector of Police, Panayapatti Police station recorded the statements from the witnesses and thereafter filed final report before the concerned Court under Section 302 IPC. During trial, the prosecution has examined 17 witnesses and marked 13 documents besides five material objects. When the incriminating circumstances were put to the accused under Section 313 (i)(b) of the Code of Criminal Procedure, they denied the same as false. On their side, Ex.D-1 to Ex.D-4 have been marked.

2.7. Out of the 17 witnesses, P.W.-1 is the son of the deceased, who gave complaint, (Ex.P.-1). P.W.-2 is the friend of P.W.-1, who informed about the condition of the deceased to P.W.-1. P.W.-3, P.W.-4 and P.W.-5, who are the residents of the village, where the deceased family was residing. They turned hostile and they have not supported the case of the prosecution. P.W.-6 is the Scientific Assistant, who speaks about the chemical analysis report. P.W.-7 is also a neighbour of the deceased. She has stated that on the date of occurrence, when she was in her house, the deceased shouted by stating that somebody is beating me and cried for help. P.W.-8 is the brother-in-law of the deceased. He has stated that on 01.03.2010, on hearing that the deceased was not well, at about 8.30 a.m., he visited the house of the deceased and found the deceased lying with contusions in his face. When he enquired the neighbours, he was informed about the attack made on the deceased. While so, A-2 came and gave Rs.1,000/- to P.W.-8 to meet the medical expenses of the deceased, however, he has denied. Thereafter, when they lifted the deceased to an Auto, he was found dead. P.W.-9 is the Village Administrative Officer, who has identified the accused persons to the Investigating Officer. P.W.-10 is the Photographer. P.W.-11 is the postmortem Doctor. P.W.-12 is the Head Constable, who sent the body for postmortem. P.W.-13 is the Head Constable. P.W.-14 is the Sub Inspector of Police, who registered the FIR under Section 174 Cr.P.C. P.W.-15 and P.W.-16 are the Investigating Officers.

3. In conclusion of the trial, finding that there are no incriminating circumstances proved as against the accused persons and since the prosecution has miserably failed to prove its case beyond reasonable doubts, giving the benefit of doubt, the trial Court acquitted the accused. As against the said acquittal, the de-facto complainant/P.W.-1 is before this Court with this appeal.

4. When the criminal appeal was taken up for hearing, since this Court feels that the matter needs better assistance from some learned counsel, we requested Mr.N.Anantha Padmanaban, who was present in the Court, to assist the Court as 'Amicus Curiae', he has also readily agreed to argue the case.

5. The case of the prosecution is that the deceased Noor Mohamed was running a petty shop in Muslim Street in Sevalur in

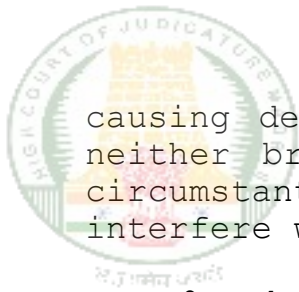


Pudukottai District. While the accused were also residing in the same place, on 28.02.2010 at about 11.00 p.m., when the accused came to the petty shop of Noor Mohamed to purchase the Filter cigarette packet, the deceased said to have demanded Rs.27/-, for which, the accused replied that in all other shops it was sold for Rs.25/-. Thereupon, the deceased replied that if the accused wanted to purchase for Rs.25/-, they can go and purchase the same from other shop. Aggrieved with the disrespect spoke of the deceased, both the accused with an intention to murder him, assaulted him with hands on his face, head and pushed him down by the back of his head and as a result, he fell down against a pegged stone and he sustained injuries in his forehead, eyes, cheek, lips, below the left eye and above the right ear. Before leaving the place, the accused threatened that if anybody speak about the same, they would meet dire consequences. On the next day, the villagers took him to his house. But he succumbed to the injuries on 01.03.2010 at 10.00 a.m. The defacto complainant Mohamed Ibrahim/P.W.1, who is the son of the deceased Noor Mohamed, on receipt of the telephonic message that his father was beaten by the accused and he was in serious condition, came to Sevalur and saw his father dead. By 05.00 p.m., he went to the police station and lodged the complaint.

6. Regrettably all the witnesses turned hostile except P.W.8, who deposed that A2 offered Rs.1,000/- to meet out the medical expenses of the deceased. Moreover, P.W.8 did not implicate A2. However, there was no eye witness and there was no circumstantial evidence adduced. Learned Trial Judge, finding the sufficient evidence, giving the benefit of doubt, acquitted both the accused.

7. Learned Amicus Curiae argued that when P.W.-2 to 5 turned hostile, the Trial Court came to the conclusion only on the unacceptable and unsafe evidence adduced by P.W.8 that he was offered by Rs.1,000/- by A2 to meet out the medical expenses of the deceased, which cannot be sufficient to hold him guilty. Therefore, when there was no substance in the prosecution case, the trial Court rightly came to the conclusion that the prosecution failed to establish the case against the accused beyond reasonable doubt for the simple reason that evidence of P.W.8 also would not inspire the confidence of the Court, inasmuch as P.W.8 deposed that A2 offered a sum of Rs.1,000/- to meet out the medical expenses of the deceased and thereafter he also failed to speak about the occurrence. This apart, when P.W.1 was informed by Zahir Hussain about the alleged assault made by the accused, as a result, the deceased was in a serious condition, ironically the prosecution failed to even examine Zakir Hussain. Even P.W.2, who was examined to support the prosecution case, also turned hostile.

8. Therefore, as rightly canvassed by the Amicus Curiae, when P.W.-1 son of the deceased on receipt of the news from Zahir Hussain and Rajesh Khan P.W.-2, came to the place of occurrence on the next day, they were not able to throw sufficient light on the person



causing death of his father. Therefore, when the prosecution has neither brought on record any witness to the occurrence nor any circumstantial evidence to prove their case, we find it difficult to interfere with the impugned order of acquittal.

9. The Apex Court in one of its recent judgments, in the case of Mohd. Akhtar v. State of Bihar (2019 (2) SCC 513), following the ratio laid down by the Apex Court in the case of Muralidhar v. State of Karnataka (2014 (5) SCC 730), has held that the Appellate Court, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Trial Court. Further the Apex Court has held that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the Trial Court.

10. Keeping in mind these guidelines, we are of the view that when the Trial Court has disbelieved the evidence of prosecution witness, namely, P.W.1 to P.W.7, who have turned hostile and P.W.8 also failed to throw any light in support of the case of the prosecution and there was no justification on the part of the prosecution for not taking any step to examine Zakir Hussain, we do not find any error in the impugned order of acquittal. As there was no evidence, the Trial Court has rightly dismissed the prosecution case. Therefore, the Criminal Appeal fails and the same is dismissed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

RR/VGA

To

1. The Additional District & Sessions Judge,
Pudukottai.

2. The Inspector of Police,
Panayapatti Police station
Pudukottai District

<https://hcservices.ecourts.gov.in/hcservices/>



3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:
The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai(2 copies)

+1 CC to M/s.K.BAALASUNDHARAM, Advocate (SR-2969[F] dated
24/01/2020)

JUDGMENT MADE
CRIMINAL APPEAL No. (MD) .No.92 of 2018
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MK (11.06.2020) 6P 7C