



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **18.01.2019**

Pronounced on : **16.06.2020**

CORAM :

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

Crl.R.C.(MD)No.365 of 2015

A.Shakeela

... Petitioner/Respondent/P.W.3-
Wife of the deceased

Vs.

1.Zahir Hussain

2.Rashik Razed

3.Madhina Begam

4.Anz

5.Inspector of Police,
Thallakulam Police Station,
Madurai

Crime No.1060 of 2007

... Respondents/Respondents

PRAYER: Criminal Revision is filed under Section 372 of Cr.P.C to call for the records in S.C.No.25 of 2008 on the file of the Additional Sessions Judge cum Fast Track Court No.II, Madurai and set-aside the judgment of acquittal dated 28.04.2008 thereby allow the appeal by convicting the accused for the charges framed against them.

For Petitioner : Mr.Antony S.Prabhakar

For R1 to R4 : Mr.S.M.A.Jinnah

For R5 : Mr.M.Chandrasekar

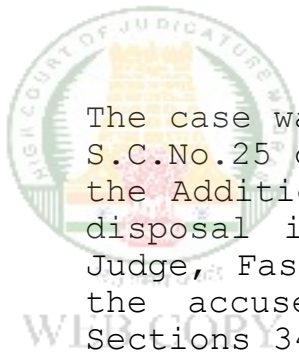
Additional Public Prosecutor

O R D E R

This Criminal Revision has been filed challenging the judgment of acquittal dated 28.04.2008 passed by the learned Additional District and Sessions Judge, Fast Track Court No.II, Madurai.

2. The revision petitioner was examined as P.W.3 in the present case and she is the wife of the deceased. The respondents 1 to 4 are arrayed as accused and the fifth respondent-Inspector of Police, Thallakulam Police Station, Madurai, is the complainant, before whom a complaint has been lodged by the defacto complainant.

3.Initially, a case in Crime No.100 of 2007 was registered for the offences under Sections 341, 307 r/w 109 IPC. During the pendency of investigation, since the injured died, the fifth respondent police has altered the case into Sections 341, 302 r/w 109 IPC. After such alteration, the fifth respondent police investigated the matter and laid charge sheet before the learned Judicial Magistrate No.2, Madurai. The charge sheet was taken on file and numbered as P.R.C.No.56 of 2007. After completing formalities, since the offences were exclusively triable by the Sessions Judge, the learned Judicial Magistrate No.2, Madurai, has committed the case to the learned Principal District Judge, Madurai.



The case was taken on the file of the Sessions Court and numbered as S.C.No.25 of 2008. Thereafter, the same was made over to the file of the Additional District Judge, Fast Track Court No.II, Madurai, for disposal in accordance with law. The learned Additional District Judge, Fast Track Court No.II, Madurai, has framed charges against the accused/respondents 1 to 4 herein for the offences under Sections 341, 302 r/w 109 IPC.

4. In order to prove the case, the prosecution has examined 13 witnesses as P.W.1 to P.W.13, marked 29 documents as Ex.P.1 to Ex.P.29 and marked 7 material objects as M.O.1 to M.O.7. When the trial court examined the accused under Section 313 of the Code of Criminal Procedure in respect of incriminating evidences available against them, they denied the same as false. On the side of the accused/respondents 1 to 4, two witnesses were examined as D.W.1 and D.W.2 and one document was marked as ExD.1.

5. After completing the trial and hearing the arguments made on either side, the learned Additional District and Sessions Judge, Fast Track Court No.II, Madurai, found that the prosecution has failed to prove the case beyond reasonable doubt and acquitted all the accused.

6. Challenging the said judgment of acquittal passed by the learned Additional District and Sessions Judge, Fast Track Court No.II, Madurai, in S.C.No.25 of 2008, the wife of the deceased/P.W.3 has filed the present revision petition before this Court.

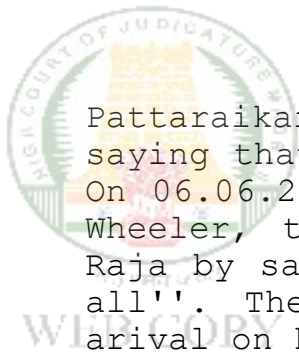
7. The brief facts of the case are as follows:

The third respondent namely, Madhina Begam was the wife of the deceased Akbar Raja. She gave birth to 2 sons and 1 daughter through him. After 20 years, the said Akbar Raja divorced the third respondent Madhina Begam by pronouncing triple 'Thalak'. After divorce, he married P.W.3 Shakeela and through her, one son and one daughter born. The respondents 1 and 2 are the sons of the deceased Akbar Raja through the third respondent namely, Madhina Begam. The fourth respondent is the wife of the first respondent.

7(ii) P.W.1 Mohamed Hussain is the son of Akbar Raja through P.W.3-Shakeela and P.W.2 is the brother of P.W.3. P.W.3 is the wife of Akbar Raja. After divorcing the third respondent-Madhina Begam, he married P.W.3. P.W.4 is the daughter of Akbar Raja through P.W.3.

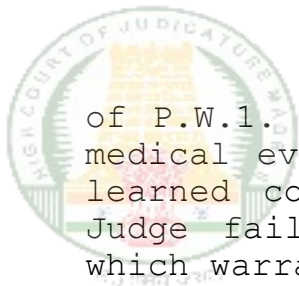
7(iii) The respondents 1 to 4/accused demanded more property and quarreled with the deceased Akbar Raja. On 04.04.2007, the third respondent and her children came to the house of the deceased and quarreled with the deceased, for which, a complaint was given by the deceased to the fifth respondent police. Another proceedings before the Revenue Divisional Office was also pending.

<https://hcservices.ecourts.gov.in/CaseDetails.aspx?CaseNo=2015-06-05>, at 09.00 a.m when P.W.1 was working in



Pattaraikara Street, the respondents 1 to 4 threatened P.W.1 by saying that P.W.1 did not give property since his father was alive. On 06.06.2007 at 08.00 a.m, while the deceased was coming in a Two Wheeler, the first and second accused waylaid the deceased Akbar Raja by saying that ''since you did not give property, go once for all''. Thereafter, the first accused attacked the deceased with arival on his head and the second accused attacked the deceased with arival on the backside of the neck and thereafter, both of them attacked the deceased one after other with arival. When the deceased prevented the attacks with his hands, there are injuries in both hands. Due to that, the right hand of the deceased was swinging and the deceased fell down from the Two Wheeler on the ground at the spot itself. The respondents 1 and 2/the first and second accused ran away from the place of occurrence after seeing P.W.1. Thereafter P.W.3 followed P.W.1. P.W.1 and P.W.3 brought the injured Akbar Raja to the Government Rajaji Hospital, Madurai and admitted him in the hospital. After getting intimation from the hospital authorities, the fifth respondent police went to the hospital and recorded statement from P.W.1 and registered the case. The fifth respondent police has completed investigation and filed a charge sheet before the learned Judicial Magistrate No.2, Madurai. The learned Magistrate committed the case to the Sessions Court. After conducting trial, the Additional District Judge, Fast Track Court No.II, Madurai, had acquitted the accused/the respondents 1 to 4 herein. Though the prosecution has not filed any appeal, the wife of the deceased has filed the present revision.

8. The learned counsel appearing on behalf of the revision petitioner would submit that though P.W.1 is an eye witness, the trial court disbelieved the evidence of P.W.1. P.W.1 has clearly narrated the events and medical evidence is also corroborated the same. Without any valid reason, the trial court discarded the evidence of P.W.1. Further he would submit that initially the said Akbar Raja was admitted in the hospital and during treatment, the fifth respondent police had taken steps to record dying declaration of the said Akbar Raja. P.W.10 the learned Judicial Magistrate No.6, Madurai went to the Government Rajaji Hospital. In the presence of the duty Doctor, the learned Magistrate has recorded dying declaration. The learned trial Judge failed to consider the evidence of P.W.10 the Judicial Magistrate No.6, Madurai. The trial Judge has not accepted the dying declaration recorded by the learned Magistrate. P.W.11 is one who has conducted postmortem of the dead body of the said Akbar Raja and without any record, P.W.11 has given some information. The trial court has given weight to his evidence, which is not acceptable. There is no reason stated for disbelieving the evidence of P.W.1-eye witness and for rejecting the dying declaration recorded by the learned Magistrate. Though other witnesses have turned hostile, the evidence of P.W.1 is very clear and dying declaration recorded by the learned Magistrate under Ex.P.9 is also corroborated with the medical evidence. The injuries

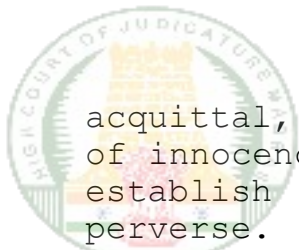


of P.W.1. Therefore the evidence of P.W.1 is corroborated with the medical evidence and also with dying declaration. According to the learned counsel appearing for the revision petitioner, the trial Judge failed to give much importance to the important evidence, which warrants interference by this Court.

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9. The learned counsel for the respondents 1 to 4/accused would submit that P.W.1 could not be an eye witness and there is no corroboration of the evidence of P.W.3. P.W.3 has stated before the Investigating Officer that she has seen the occurrence and she is an eye witness, whereas before the Court, she has stated that she has not seen the occurrence directly. She followed her son after seeing the respondents 1 to 4 left the place. Though P.W.2 is none other than the son-in-law of P.W.3, he has stated that as if he has seen the occurrence and he is also eye witness in this case. P.W.1 and P.W.3 have not stated that they have seen P.W.2 in the place of occurrence. Therefore, the evidence of P.W.2 cannot be accepted and they could not have been eye witnesses. Though confession statements have been recorded from the first and second respondents, they have not been proved in the manner known to law. Witnesses have turned hostile and they have not supported the case of the prosecution. Mahazar witness has not been supported the case of the prosecution and the medical evidence is not tallied with eye witnesses and the evidence of P.W.1 has not been corroborated by any other witnesses. Therefore, uncorroborated witnesses cannot be relied on for convicting the accused. Dying declaration has not been obtained in the procedure established by law. P.W.10 the learned Magistrate himself has stated that at the time of recording of dying declaration, the said Akbar Raja suffered with blood vomit. Due to blood vomiting, he could not speak. Though the Doctor certified that till giving dying declaration the said Akbar Raja was in sound state of mind, the Doctor has not been examined before the trial court. P.W.11, who has conducted autopsy on the body of the deceased has also stated that at the time of recording dying declaration, the said Akbar Raja could not have been in sound mind to give dying declaration. The material objects have not been proved. Forensic lab has not confirmed that the blood stain found in the Material Objects is the blood stain of the deceased Akbar Raja. At any angle, prosecution has failed to prove its case beyond reasonable doubt. The trial court has rightly not believed the case of prosecution. P.W.1 to P.W.3 are only interested witnesses and there is no independent witness to corroborate the evidence of P.W.1. Therefore, the trial court extended benefit of doubt to the respondents 1 to 4/accused and acquitted them. Therefore, the judgment of the trial court need not be interfered with by this Court.

10. It is further submission of the learned counsel for the respondents 1 to 4/accused that while dealing Criminal Revision case, this Court cannot re-appreciate the evidences as the lower Appellate Court. This Court has to see as to whether there is any



acquittal, the accused are having double benefit. One is presumption of innocence. Secondly, it is the duty of the revision petitioner to establish as to how appreciation of evidence by the trial court is perverse. In this case, there is no perversity in appreciation of evidence. When two views are possible the benefit of doubt has to be extended in favour of the accused. The trial court has rightly appreciated the evidences and acquitted the accused. There is no merit in this revision and prosecution has not filed any appeal. One of the prosecution witnesses(P.W.3) has filed the present revision and therefore, the same may be dismissed.

11. I have given my anxious consideration to the submissions made by the learned counsel appearing on behalf of the revision petitioner, the learned Additional Public Prosecutor appearing on behalf of the fifth respondent and the learned counsel appearing on behalf the respondents 1 to 4. I have carefully perused the entire materials available on record.

12. The case of the prosecution is that one Akbar Raja married the third respondent Madhina Begam and they were blessed with two sons and one daughter. The respondents 1 and 2 are the sons of Akbar Raja through the third respondent Madhina Begam. The fourth respondent is the wife of the first respondent. 20 years back, Akbar Raja divorced the third respondent by pronouncing triple ''Thalak''. Thereafter, he married P.W.3 Shakeela and they blessed with one son and one daughter. Even at the time of divorce, Akbar Raja gave property to the respondents 1 to 3. While so, the respondents 1 to 4 always quarreled with the deceased Akbar Raja and also demanded more properties. On 04.04.2007, the third respondent and her children came to the house of the deceased and entered into the house, for which the deceased gave a complaint before the fifth respondent police. A case was registered in Crime No.548 of 2007 for the offences under Sections 448, 506(ii) IPC. A complaint was given before the Revenue Divisional Officer. Based on the same, another complaint was lodged before Tallakulam Police Station in Crime No.692 of 2007 under Section 145 Cr.P.C.

13. While so, on 05.06.2007 at about 9.00 a.m the accused threatened P.W.1 and subsequently on 06.06.2007 at about 08.00 a.m when the deceased Akbar Raja proceeded from Pudur to Pattaraikara Street, the respondents 1 and 2, at the instigation of the respondents 3 and 4, waylaid him with deadly weapons. The first respondent attacked the said Akbar Raja with arival on the backside of the head and the second respondent attacked with arival on the backside of the neck. When the said Akbar Raja tried to prevent the attacks with his hands, the first accused brutally attacked him on the forehead. He sustained grievous injuries. After seeing P.W.1, the respondents 1 and 2 ran away from the scene of occurrence. P.W.1 took the said Akbar Raja to the hospital and the statement of P.W.1 was recorded by the fifth respondent police. The police investigated the case and filed the said charge sheet.



14. The son of the deceased through P.W.3, namely Mohamed Hussain was examined as P.W.1. He has been cited as an eye witness. Based on his statement only, the fifth respondent police has registered the case against the respondents 1 to 4.

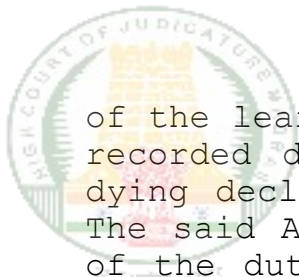
15. P.W.1 has deposed that he is the son of the deceased Akbar Raja and his mother is Shakeela and he was residing with his parents. On 06.06.2007, his father namely Akbar Raja went to Pudur in his Two Wheeler and he was coming back to his house. When his father Akar Raja came to Goripalayam, the respondents 1 and 2 waylaid him with deadly weapons and said that would you not give property and go once for all. By saying that, the first respondent attacked the said Akbar Raja on his head and the second respondent attacked with arival on the backside of the neck. P.W.1 has further deposed that even two months prior to the occurrence i.e on 04.04.2007, his family members including himself went outside and at that time, the respondents 1 to 4 forcibly entered into his house. When the same was questioned, the said respondents threatened his father on showing knife. A complaint was lodged before Tallakulam Police Station. On 05.06.2007 at 09.00 a.m the respondents 1 to 4 threatened P.W.1.

16. P.W.1 has further deposed that when his father returned from the Commissioner's Office on 06.06.2007 at 8.00 a.m, the first and second respondent waylaid his father and attacked him with deadly weapons. They caused grievous injuries. Due to that, he fell in pool of blood. He went to the spot and took his father to the hospital, where the fifth respondent was informed. The official of the fifth respondent came to the hospital and he gave statement. Based on his statement, case was registered. P.W.1 would further depose that P.W.3 is his mother. Soon after P.W.1 reached to the spot, P.W.3 also followed him.

17. P.W.2 is the brother-in-law of P.W.1 and the son-in-law of P.W.3 as well as the deceased Akbar Raja. P.W.2 deposed that on 06.06.2007 he went to North Gate Hotel to drink Tea and when he came back from there, his father-in-law Akbar Raja was going in a Two Wheeler. At that time, the first and second respondent waylaid the said Akbar Raja with deadly weapons and attacked him. P.W.2 further deposed that P.W.1, who is his brother-in-law came to the scene of occurrence. After seeing P.W.1, the first and second respondent came towards the place, where he was standing. On seeing them, P.W.2 ran away through the opposite street. Thereafter, P.W.2 came to the scene of occurrence and came to know that his father-in-law was brought to the hospital.

18. Mahazar witnesses were turned hostile.

19. One of the main witness is P.W.10 the learned Judicial Magistrate in Madurai. P.W.10 deposed that as per the direction



of the learned Chief Judicial Magistrate he went to the hospital and recorded dying declaration. He also deposed that he has recorded dying declaration of Akbar Raja without any threat or inducements. The said Akbar Raja had freely given his statement in the presence of the duty Doctor. Prior to that, the duty Doctor certified that the said Akbar Raja was in sound state of mind to give statement. P.W.10 raised preliminary questions to confirm that the said Akbar Raja was in sound state of mind. He answered all the preliminary questions rightly and after confirming that he was in sound state of mind to give dying declaration, P.W.10 started to record dying declaration. Initially P.W. 10 put a question that where, when and how he got those wounds. He replied that his son Jahir Hussain cut him. Thereafter, he said that the deceased could not speak. Even when he was replying, he got breathing trouble and obstruction in his vocal. Subsequently, P.W.10 could not record dying declaration further.

20. P.W.11 is the Doctor, who conducted autopsy of the dead body of the deceased Akbar Raja. P.W. 11 is an important witness. Postmortem certificate issued by P.W.11 has been marked as Ex.A.10, which reads as follows:

Appearance found at the postmortem:

Moderately nourished body of a male, aged about 56 years. Finger and toe nails blue.

The following antemortem injuries are noted on the body:

1.A vertically oblique a cut injury 10 X 8 cms X bone deep is noted on the left occipital region, producing a flap of skin @ bone piece.

On dissection: The injury is directed obliquely downwards and inwards cutting the scalp and left occipital bone and underlying and left occipital lobe of brain measuring 7 X 1 X 2 cms.

2. An oblique cut injury 8 cms X 3 cms X muscle deep, is noted on the back of left side of the neck.

On dissection, the wound is directed downwards, forwards and medially cutting the underlying muscles, vessels and nerves.

3.An oblique cut injury 8 cms X 6 cms X bone deep, is noted on the back of middle 1/3rd of forearm. (Defence wound). On dissection, the wound is directed upwards and forwards cutting the muscles and both the forearm bones through and through.

4. An oblique cut injury 8 cms X 3 cms X bone deep, is noted on the first web space of left hand resulting into separations of the left thumb from the hand.

5.A vertically oblique cut injury 15 cms X 8 cms X muscle deep is noted on the front of upper 2/3rd of left forearm.

On dissection, the wound is directed upwards and cutting the skin and underlying muscles



producing a flap.

6.As oblique cut injury 5 cms X 2 cms X muscle deep is noted on the cutter aspect of left shoulder.

Note:

The margins of the above wounds are regular.

Opinion:

"The deceased would appear to have died of external injury No.1 & 2 and its corresponding internal injuries and the cumulative effect of all other injuries".

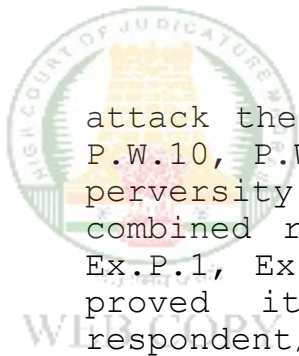
21. Ex.A.29 is the report of the Forensic Sciences Department. After obtaining main biology report, it is found that blood was human blood. But the result of grouping test is inconclusive.

22. P.W.1 is eye witness. He has clearly stated that he has seen the occurrence. P.W.2 has also seen that. But P.W.2 has clearly stated that he has gone to the place of occurrence and before that he has left the place due to fear. That is the reason P.W.1 and P.W.3 have not seen P.W.2. But the trial court disbelieved the evidence of P.W.1 for the reason that P.W.1 has not stated that P.W.2 was present at the time of occurrence. Further, the trial court has concluded that P.W.1 could not have seen the occurrence directly. The trial court gave much importance to the immaterial contradictions and the discrepancies as noted down from the evidence of P.W.1. The trial court has not given sound reason for disbelieving the evidence of P.W.1. In the evidence of P.W.1, he has narrated the events and also established the previous enmity with documentary evidence. Though the trial court has disbelieved the evidence of P.W.1, in cross-examination here and there he has stated more than 20 times that they attacked with arivals.

23. On a careful reading of the evidence of P.W.1 it is further seen that they attacked with arival on backside of head and on the backside of neck and they attacked repeatedly several times. But the deceased Akbar Raja prevented by his hand. Since he prevented by his hands, all other blows fell in other 20 different places of his body. So that prime injuries sustained by the deceased as stated by P.W.1 were corroborated with medical evidence Ex.P.3 and postmortem report Ex.P.11 and evidence of the Doctor P.W.11. Even otherwise, when comparing the discrepancies with ocular evidence and medical evidence, ocular evidence will prevail over.

24. The trial court has disbelieved the evidence of P.W.10, the learned Judicial Magistrate No.6, Madurai. The Magistrate could not record the entire dying declaration due to inability of the deceased to speak. But the Magistrate has clearly stated that at the time of giving dying declaration the deceased was very conscious and understood the events and he named the first respondent.

25. Therefore, though there is no materials to show that the
<https://hcservices.mca.gov.in/hcservices/> and 4 induced the first and second respondent to



attack the deceased, on a reading of the evidence of P.W.1, P.W.2, P.W.10, P.W.11 and Ex.P.8 and Ex.P.9, this Court finds that there is perversity in appreciation of evidence by the trial court. A combined reading of evidence of P.W.1, P.W.2, P.W.10, P.W.11 and Ex.P.1, Ex.P.7, Ex.P.9, Ex.P.10 would show that the prosecution has proved its case beyond reasonable doubt against the first respondent/A1.

26. This Court finds that prosecution has not proved its case against respondents beyond reasonable doubt. This Court has not found any perversity in appreciation of evidence against the respondents 2 to 4. Hence, benefit of doubt is extended to the respondents 2 to 4.

27. In view of the above, the judgment of acquittal passed by the learned Additional District and Sessions Judge (FTC-II), Madurai in S.C.No.25 of 2008 dated 28.04.2008 against the first respondent/A1 is set aside. The matter is remanded back to the trial court. On receipt of the records, the learned Additional District and Sessions Judge (FTC-II), Madurai, is directed to call upon the first respondent/A1 and convict him in accordance with law. As far as the respondents 2 to 4/A2 to A4 are concerned, the judgment of acquittal passed by the learned Additional District and Sessions Judge (FTC-II), Madurai in S.C.No.25 of 2008 dated 28.04.2008 is confirmed.

28. In fine, this Criminal Revision is partly allowed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

CM

To,

1.The Additional Sessions Judge
cum Fast Track Court No.II, Madurai.

2.The Inspector of Police,
Thallakulam Police Station, Madurai.

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

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

CrI.R.C. (MD) No.365 of 2015

16.06.2020

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