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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.02.2022

DELIVERED ON : 01.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.A.(MD)No.114 of 2019

State represented by
The Public Prosecutor,
High Court, Madras - 104.
(Viralimalai Police Station,
Crime No.20 of 2012) ...Appellant /Complainant

Vs.

1.Karthick
2.Manikandan
3.Shanmugam ... Respondents / Accused Nos.1 to 3

PRAYER: Criminal Appeal filed under Section 378(i) of Cr.P.C. against the judgment of acquittal passed by the Additional District and Sessions Court, Pudukottai made in S.C.No.50 of 2012 dated 05.05.2017.

For Appellant : Mr.T.Senthil Kumar
Additional Public Prosecutor.
For Respondents : Mr.K.P.S.Palanivelrajan - RR2 & 3
Amicus Curiae
(R1 - died)

JUDGMENT

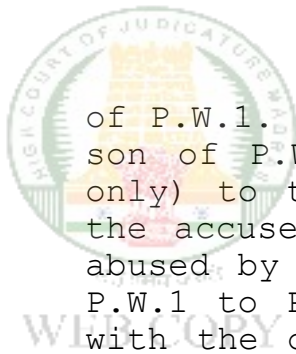
R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

We have heard Mr.T.Senthil Kumar, learned Additional Public Prosecutor appearing for the appellant and Mr.K.P.S.Palanivelrajan, Amicus Curiae appearing for the respondents 2 & 3/accused Nos.2 & 3.

2. Challenge in this Criminal Appeal is to the acquittal of the accused, namely, in S.C.No.50 of 2012, a case registered under Sections 302 (two counts) of IPC.

3. The brief facts of the prosecution case is as follows:

<https://hcservices.ecourts.gov.in/hcservices> The Complainant is one Neelakandan, who is the cousin



of P.W.1. P.W.2 and P.W.3 are his friends. The said Neelakandan is son of P.W.4. He lent a sum of Rs.1,000/- (Rupees One Thousand only) to the accused No.1. On 22.01.2012, when Neelakandan asked the accused No.1 to return the amount, at about 7.30 p.m., he was abused by accused No.1. The said Neelakandan informed the same to P.W.1 to P.W.3, who were in the car stand. P.W.1 to P.W.3 along with the deceased went near the accused's house. When both the deceased-D1 and D2, namely, Iyyappan and Ramesh demanded amount from the accused No.1 and the deceased-D1, Iyyappan met the accused No.2. Immediately, the accused No.1 caused stab injuries on both the deceased. At that time, accused No.2 caught-hold the deceased Iyyappan and accused No.3 caught-hold the deceased Ramesh. Thereafter, Neelakandan has lodged a complaint marked under Ex.P.1.

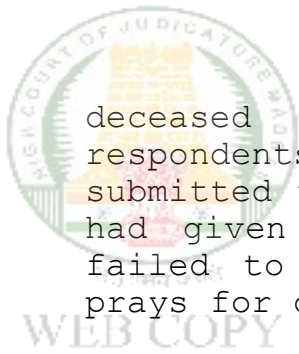
(ii) P.W.16, received the complaint and registered a case in Crime No.20 of 2012 for the offence under Section 302 of IPC (two counts) under Ex.P.13-First Information Report (FIR) and forwarded the complaint to the Court. P.W.20 the Investigation Officer took up the investigation and went to the place of occurrence and prepared the observation mahazar, rough sketch-Ex.P.21, conducted an inquest, prepared the inquest report Exs.P.22 & 23 and sent the dead bodies for post-mortem with a requisition for conducting autopsy over the dead bodies. After completing the investigation, the Investigation Officer laid a final report.

4. Before the Trial Court, the prosecution, in order to bring home the guilt of the accused, examined as many as 20 witnesses as P.W.1 to P.W.20, marked 23 documents as Exs.P1 to P23 and 21 material objects as M.O.1 to M.O.21. After analyzing both oral and documentary evidence, the trial Court has acquitted the accused. Assailing the same, the present appeal is filed by the State.

5. It is submitted by the learned Additional Public Prosecutor that the accused No.1 died during the pendency of the appeal. Hence, charge against him stands abated. Now the appeal remains only against the accused Nos.2 and 3.

6. The learned Additional Public Prosecutor submitted that P.W.1 to P.W.3's evidence clearly demonstrates that the accused Nos.2 and 3 caught-hold both the deceased, which facilitated the accused No.1 to cause stab injuries. But, the trial Court has not considered the evidence properly and First Information Report (FIR) is also lodged promptly and submitted that the involvement of the accused in the crime under Section 302 r/w.34 has been clearly established.

7. The learned counsel for the respondents/accused submitted that the entire prosecution case is unbelievable. The trial Court appreciating the entire evidence and the manner in which the case is to be registered is also doubtful and both the



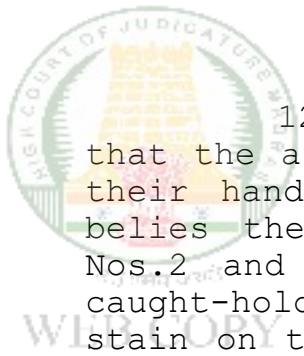
deceased died in some other circumstances and these respondents/accused are implicated unnecessary. It is also submitted that the trial Court after analyzing the entire evidence, had given the benefit of doubt. Therefore, the prosecution has failed to establish the case beyond reasonable doubt and hence, prays for dismissal of this appeal.

8. The trial Court appreciated the evidence and acquitted the accused. Therefore, the burden on the prosecution is more. Apart from proving the prosecution, it has also to get over the findings of the trial Court. The charge against the accused Nos.2 and 3 are under Section 302 r/w 34 of IPC. The prosecution case itself indicates that no specific over-tact has been attributed, except the alleged caught-hold theory by accused Nos.2 and 3. All the accused are brothers.

9. We have also gone through the evidence of P.W.1 to P.W.3, who are said to be the eyewitnesses. Their evidence indicate that the occurrence said to have taken place in front of Accused No.1's house, where the deceased attacked accused No.2, which provoked the accused No.1 to stab both the deceased. The injuries sustained by accused No.2 is also clearly established by records. The medical officer who was examined in this regard, P.W.12 has clearly spoken about the head injury sustained by accused No.2.

10. The very evidence of P.W.1 to P.W.3 itself clearly shows that the deceased Iyyappan beat the accused No.2 in front of their house. The evidence of all the eyewitness shows that the witness P.W.1 to P.W.3 and both the deceased went to the home of the accused and beat the accused No.2, who is the brother of accused No.1. At that stage, there was a quarrel between the parties. The evidence further shows that there was a quarrel for about half-an-hour.

11. The only allegation against the present accused is that each one of the accused caught-hold, both the deceased separately. It is the specific case of the prosecution that accused No.2 caught-hold of one Iyyappan-deceased No.1 and accused No.3 caught-hold the deceased No.2 back-side. Thereafter, accused No.1 caused stab injury. The evidence of P.W.1 to P.W.3 when carefully perused, indicates that the deceased had consumed alcohol at the relevant point of time, which has been substantiated by the medical officer's evidence. The post-mortem certificate established the fact that both the deceased were fully drunk. Further evidence also shows the area where accused No.1 house is situated is known for some other illegal purpose where prostitution and other activities are common and many people made frequent visit to that place. The deceased and others went to the accused No.1's house and beat one of the accused that itself clearly shows that they were the aggressors.



12. Be that as it may, the contention of the prosecution is that the accused Nos.2 and 3 caught-hold each of the deceased with their hands folded behind. The evidence of the medical officer belies the theory projected by the prosecution that the accused Nos.2 and 3 held the deceased from behind. If the person was caught-hold from the behind at least there should have been blood-stain on the body of the accused. The medical officer's evidence clearly shows that there were stab injuries on the back of the abdomen and chest of both the deceased. Such injuries are highly impossible when the injured was held from back by the accused. Therefore, the theory of caught-hold by these accused is highly improbable.

13. Further, it is also admitted by one of the witness that accused No.2 was injured and other accused is a disabled person. Therefore, both the accused holding both the deceased from the back is also improbable. Further, we have also gone through the evidence of P.W.1 to P.W.3 and their evidence indicates that as if the blood-stained clothes of the accused were handed over to the police immediately. But the Investigation Officer has not seized any such material and this is one of the ground which creates doubt about the presence of P.W.1 to P.W.3 in the place of occurrence.

14. Even assuming that only accused No.1 has caused some stab injury on both the deceased, the fact remains that such act was provoked due to injuries caused on accused No.2, who is the brother of accused No.1 by the deceased. Evidence also indicates that they were in a fully drunken stage at the relevant point of time and there were quarrel between them for half-an-hour. Therefore, the theory of these accused sharing the common intention by holding the deceased is unbelievable. Even their presence in the place of occurrence cannot be construed to mean that they had a common intention and pre-meeting mind with accused No.1. Their presence in front of their house is quite normal. It is the deceased and other witness who had gone there and created the problem. Therefore, their presence, in the view of this Court, can never be construed as a participation in executing a common intention or sharing a common intention with the other accused.

15. In such view of the matter, we do not find any material to reverse the findings of the trial Court as against accused Nos.2 and 3. The charge as against accused No.1 has already abated. Hence, the benefit of doubt extended by the Trial Court in favour of the respondents/ accused need not be interfered with. These factors along with contradictions in the scene of occurrence as per the evidence of the eye witnesses lead us to conclude that the judgment of the trial Court need not be interfered with. The criminal appeal, therefore, fails.

16. In the result, the Criminal Appeal stands dismissed.

<https://hcservices.ecourts.gov.in/hcservlets/> The judgment was pronounced on 05.05.2017, made in S.C.No.50 of 2012 on the file



of the Additional District and Sessions Court, Pudukottai is confirmed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Additional District and Sessions Court,
Pudukottai.
- 2.The Inspector of Police,
Viralimalai Police Station,
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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Madurai Bench of Madras High Court,
Madurai

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