

1.Antony Raj Vs. State Represented By

1.Antony Raj Vs. State Represented By

SooperKanoon Citation : sooperkanoon.com/10779

Court : Chennai

Decided On : Dec-15-2014

Judge : A.Selvam

Appellant : 1.Antony Raj

Respondent : State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 15.12.2014 CORAM THE HONOURABLE MR.JUSTICE A.SELVAM and THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL(MD)No.30 of 2014 and M.P(MD)No.2 of 2014 1.Antony Raj 2.Muthu .Appellants/ Accused 3 and 4 versus State represented by The Inspector of Police, Arumuganeri Police Station.

(Crime No.233 of 2010).Respondent/ Complainant Criminal appeal is filed under Section 374(ii) of the Code of Criminal Procedure, 1973, against the Judgment dated 16.12.2013 passed in Sessions Case No.191 of 2013 by the Second Additional District and Sessions Court, Thoothukudi.

!For Appellants : Mr.S.I.A.K.Bagadur Sha, ^For Respondent : Mr.C.Ramesh, Addl.

Public Prosecutor.

:

JUDGMENT

(Judgment of the Court was made by A.SELVAM, J.The conviction and sentence dated 16.12.2013 passed in Sessions Case No.191 of 2013 by the Second Additional District and Sessions Court, Thoothukudi are being challenged in the present Criminal Appeal.

2.The case of the prosecution is that due to previous animosity in between the accused and deceased by name Uthasuriyan, with intention to murder him, the accused have hatched conspiracy on 02.06.2010 in Veerakaliamman Temple and in pursuance of their conspiracy, on 15.06.2010, at about 04.30 p.m., in Arumuganeri, while the deceased Uthasuriyan after finishing his work in D.C.W.Company, has waited for alighting bus in bus stop, at that time the accused 1 and 2 and deceased accused Sathiya have indiscriminately attacked on the person of the deceased and due to overtacts committed by them, he has passed away and after occurrence, the de facto complainant by name Ramakrishnan (P.W.13) has given a complaint and the same has been registered by the Sub Inspector of Police (P.W.17) in Crime No.233 of 2010 and the same has been marked as Ex.P.5.

3.On receipt of Ex.P.5, P.W.19, the Inspector of Police has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy and the same has been done by Dr.Jasmine Punitha (P.W.12) and she has found the following external and internal injuries on the person of the deceased: ?1.A gapping incised wound of size 9cms x 3cms x bone deep seen in the right parietal region.

2.A gapping incised wound of size 7cms x 3 cms x bone deep seen in the occipital region.

3.A gapping incised wound of size 3 cms x 2 cms x bone deep seen in the root of nose.

4.A gapping incised wound of size 3 cms x 2 cms x bone deep seen in the right orbit.

5.A gapping incised wound of size 3 cms x 2 cms x bone deep seen in the right side of upper lip.

6.A gapping incised wound of size 4 cms x 2 cms x bone deep seen in the right upper part of neck.

7.A gapping incised wound of size 4 cms x 2 cms x bone deep seen over the right collar bone.

8.A gapping incised wound of size 6 cms x 3 cms x bone deep seen in the right shoulder.

9.A gapping incised wound of size 15 cms x 4 cms x bone deep seen in the lower aspect of right arm.

Bone found exposed.

10.A gapping transverse incised wound of size 4 cms x 3 cms x bone deep seen in the right arm.

11.A gapping incised wound of size 4 cms x 2 cms x bone deep seen in the right wrist.

12.A gapping stab wound of size 8 cms x 3 cms x cavity deep seen in the upper abdomen.

7 cms long large bowel exposed.

13.A gapping stab wound of size 7 cms x 3 cms x cavity deep seen in the right side of abdomen.

14.A gapping stab wound of size 6 cms x 3 cms x bone deep seen in the right thigh.

15.A gapping stab wound of size 7 cms x 3 cms x cavity deep seen in the left side of abdomen.

16.Three gapping stab wounds of each measuring 4 cms x 3 cms x cavity deep, 5 cms x 3 cms x cavity deep and 4 cms x 3 cms x cavity deep seen in the left upper chest.

17.Two gapping stab wounds of each measuring 4 cms x 2 cms x cavity deep and 4 cms x 2 cms x cavity deep seen in the left chest 5 cms below the injury No.15.

18.A gapping incised wound of size 4 cms x 2 cms x bone deep seen in the left axilla.

19.Two gapping incised wounds of size 4 cms x 1+ cm x bone deep and 4 cms x 1 cm x bone deep seen in the right side of back.

20.A gapping incised wound of size 3 cms x 2 cms x 1 cm seen in the chin.

21.A gapping stab wound of size 5 cms x 4 cms x 3 cms seen in the upper lobe of left lung and left lung found collapsed.

22.Two gapping stab wounds measuring 3 cms x 2 cms x 2 cms and 5 cms x 4 cms x 3 cms seen in the base of liver.

23.A gapping incised wound of size 2 cms x 1 cm x bone deep seen in the right index finger.

One end of the above said injuries is blunt and other end is sharp.

The margin of the wounds is clean cut?.The Postmortem Report has been marked as Ex.P.3.

After completing investigation, the Investigating Officer has laid a final report on the file of the Judicial Magistrate's Court, Tiruchendur and the same has been taken on file in P.R.C.No.9 of 2012.

4.The Judicial Magistrate, Tiruchendur after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Tuticorin Division and the same has been taken on file in Sessions Case No.191 of 2013.

5.The trial Court after hearing both sides and upon perusing relevant records has framed fiRs.charge against all the accused under Sections 302 read with 120-B of the Indian Penal Code and second charge against accused 1 and 2 under Section 302 of the Indian Penal Code and the same have been read over and explained to them.

The accused have denied the charges and claimed to be tried.

6.On the side of the prosecution, P.Ws.1 to 19 have been examined and Exs.P.1 to P.22 and M.Os.1 to 15 have been marked.

7.When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime.

No oral and documentary evidence have been let in on the side of the accused.

8.The trial Court, after evaluating the evidence available on record, has found all the accused guilty under Sections 302 read with 120-B of the Indian Penal Code and sentenced them to undergo imprisonment for life and also imposed a fine of Rs.1,000/- with usual default clause upon each of them.

Against the conviction and sentence passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the accused 3 and 4 as appellants.

9.The fiRs.and foremost charge framed against these accused and other accused is that on 02.06.2010 all of them have hatched conspiracy so as to murder the deceased Uthasuriyan in Veerakaliamman Temple.

10.The learned counsel appearing for the appellants/accused 3 and 4 has befittingly contended that the specific charge framed against these accused is that on 02.06.2010, these accused have also takenpart in the alleged conspiracy in Veerakaliamman Temple and no prosecution witness has been examined to that effect and one Sekar has been examined as P.W.11 and his specific evidence is that the alleged conspiracy among the accused has takenplace near his house

and further he has stated in his evidence that Veerakaliamman Temple is situate just 1+ Kilometres away from his house and absolutely there is no evidence so as to point out the alleged guilt of the accused 3 and 4 with regard to fiRs.charge and the trial Court without considering lack of evidence has erroneously found these accused guilty under Sections 302 read with 120-B of the Indian Penal Code and therefore the conviction and sentence passed by the trial Court against these accused are liable to be set aside.

11.The learned Additional Public Prosecutor has contended that in the instant case, the prosecution has adduced trustworthy evidence so as to prove the alleged conspiracy which has takenplace among all the accused in Veerakaliamman Temple and in pursuance of their conspiracy the accused 1 and 2 and deceased accused by name Sathiya have indiscriminately attacked the deceased in the place of occurrence and the trial Court after considering the overwhelming evidence available on record has rightly found these accused guilty under Sections 302 read with 120-B of the Indian Penal Code and therefore the conviction and sentence passed by the trial Court are not liable to be interfered with.

12.As pointed out earlier, the fiRs.and foremost charge framed against all the accused is that due to previous animosity on 02.06.2010 at about 08.00 p.m.in Veerakaliamman Temple all the accused have contrived themselves to slay the deceased by name Uthasuriyan.

13.As rightly pointed out on the side of the appellants/accused 3 and 4, on the side of the prosecution one Sekar has been examined as P.W.11 and his specific evidence is that on 14.06.2010, the third accused and others have hatched a plan to murder the deceased near his house.

In fact, the evidence given by P.W.11 is totally contra to the fiRs.charge framed against all the accused.

In the fiRs.charge, it has been specifically stated that due to previous animosity on 02.06.2010, at about 08.00 p.m., all the accused have joined together in Veerakaliamman Temple and contrived themselves to murder the deceased

Uthasuriyan.

But P.W.11 has given contra evidence.

Further this Court has groped the entire evidence available on record and ultimately found that no witness has given specific evidence to the effect that all the accused have contrived to murder the deceased by way of joining together in Veerakaliamman Temple on 02.06.2010 at about 08.00 p.m. Therefore it is quite clear that absolutely there is no evidence on the part of the prosecution for the purpose of proving the alleged conspiracy which has taken place on 02.06.2010 at about 08.00 p.m. in Veerakaliamman Temple, wherein the appellants/accused 3 and 4 have also taken part.

14. The second charge framed is that in pursuance of the conspiracy mentioned in the fiRs. charge, the accused 1 and 2 and deceased accused Sathiya have indiscriminately attacked the deceased in the place of occurrence on 15.06.2010.

Since these accused are concerned with only the fiRs. charge in the present Criminal Appeal, the second charge need not be decided.

15. It has already been pointed out that with regard to involvement of these accused in the alleged criminal conspiracy, absolutely there is no evidence on the side of the prosecution.

The evidence given by prosecution by way of examining P.W.11 has not supported the fiRs. charge.

Under the said circumstances the contention put forth on the side of the appellants/accused 3 and 4 is really having merit.

The trial Court without considering the contents of the fiRs. charge and also without looking into the fact that P.W.11 has not virtually supported the case of the prosecution, purely on surmise has invited conviction and sentence against these appellants/ accused 3 and 4.

Therefore viewing from any angle, the conviction and sentence passed by the trial Court against these appellants/ accused 3 and 4 are not factually and legally

sustainable and therefore the present Criminal Appeal is liable to be allowed.

16. In fine, this Criminal Appeal is allowed and the conviction and sentence passed against these appellants/accused 3 and 4 under Sections 302 read with 120-B of the Indian Penal Code in Sessions Case No.191 of 2013 by the Second Additional District and Sessions Court, Thoothukudi are set aside.

The appellants/accused 3 and 4 are acquitted.

Fine amounts if any paid by them are ordered to be refunded forthwith.

Consequently, connected Miscellaneous Petition is closed.

[A.S.,J.].[V.S.R.,J.].15.12.2014 Index:Yes/No Internet:Yes/No.smn To 1.The Second Additional District and Sessions Court, Thoothukudi.

2.The Inspector of Police, Arumuganeri Police Station.

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

A.SELVAM, J.

and V.S.RAVI, J.

Judgment made in Crl.A(MD)No.30 of 2014 and M.P(MD)No.2 of 2014 15.12.2014

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com