

State by Vs. 1.Govindaraj

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Court : Chennai

Decided On : Nov-18-2014

Judge : A.Selvam

Appellant : State by

Respondent : 1.Govindaraj

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 18.11.2014 CORAM THE HONOURABLE MR.JUSTICE A.SELVAM and THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL(MD)No.370 of 2010 State by The Inspector of Police, Thanjavur East Police Station, Thanjavur District.

(Crime No.832 of 2007).Appellant/ Complainant versus 1.Govindaraj 2.Gopinath 3.Baskar 4.Saraboji 5.Gopi @ Karuppu Gopi 6.Mathi @ Mathiazhagan .Respondents/ Accused 1 to 6 Criminal appeal is filed under Section 378 of the Code of Criminal Procedure, 1973, against the Judgment dated 30.06.2010 passed in Sessions Case No.222 of 2009 by the Additional District and Sessions Court/Special Court for Essential Commodities Act, Thanjavur.

!For Appellant : Mr.C.Mayilvahana Rajendran, Addl.

Public Prosecutor.

^For Respondents: Mr.A.Thiruvadikumar :

JUDGMENT

(Judgment of the Court was made by A.SELVAM, J.The order of acquittal dated 30.06.2010 passed in Sessions Case No.222 of 2009 by the Additional District and Sessions Court/Special Court for Essential Commodities Act, Thanjavur is being challenged in the present Criminal Appeal.

2.The case of the prosecution is that the accused 1 and 2 are father and son.

The remaining accused 3 to 6 are their relatives and due to previous animosity that existed in between the deceased Victor and accused, they decided to murder him and to that extent they contrived themselves a conspiracy and in pursuance of the same on 22.10.2007 at about 07.30 p.m.in Palli Agraharam near Nondi Nadar shop, all the accused have formed an unlawful assembly.

On the same day all the accused with deadly weapons have followed the deceased Victor while he has driven a two wheeler and the fiRs.accused has attacked him by using a deadly weapon and thereby caused fatal injuries and subsequently he passed away.

At the time of attacking the deceased by the fiRs.accused, the remaining accused 2 to 6 are also present.

After occurrence, the brother of the deceased by name Lawrence has given Ex.P.1, the complaint and the same has been registered by the Sub Inspector of Police in Crime No.832 of 2007.

3.On receipt of Ex.P.1, P.W.20, Investigating Officer has taken up investigation, examined connected witnesses and made all arrangements for conducting autopsy and P.W.17, Dr.Senthilkumar has conducted autopsy and he found the following external and internal injuries on the body of the deceased: ?
External injuries:- 1.Mud and clay particles found obstructing both nostrils, oral cavity and in both eyes.

2.A curved bone deep chop wound over the right side occipital region of scalp measuring 6 c.m.x 4 c.m.x Bone deep with cut fracture of the underlying bone.

3.A linear curved cut wound over left side Temporo-occipital region of scalp measuring 10 c.m.x 4 c.m.x bone deep with cut fracture of the underlying bones through which the lacerated Brain matter was found coming outside.

4.A vertically oblique bone deep cut wound over the left temporal region of scalp found extending on to left cheek measuring 6 c.m.x 2 c.m.x bone deep with cut fracture of the underlying bones.

5.A cut wound over the upper part of left ear measuring 4 c.m.x 1 c.m.x bone deep with cut fracture of the underlying bone.

6.A wide gaping transversely placed cut wound over the whole of lower part of back of neck and occipital region of scalp over an area of 18 c.m.x 6 c.m.x vertebral column deep exposing the cut fractured c4 c5 cervical vertebrae along with the cut spinal cord underneath.

All the muscles, vessels, nerves and soft-tissues were also found cut and exposed outside.

7.A transverse cut wound just below the above wound No.6 measuring 8 c.m.x 2 c.m.x bone deep.

8.A wide gaping transversely placed cut wound 2 c.m.below the above wound No.7 measuring 16 c.m.x 5 c.m.x vertebral column deep with cut fracture of body of C6 C7 cervical vertebrae.

9.Multiple linear Transversely placed skin deep incised wounds above and below the above wound No.6 each measuring 4 c.m.x 1 c.m.10.An elliptical cut wound over the back of left shoulder measuring 6 c.m.x 2 c.m.x bone deep with cut fracture of the scapula bone and with a linear scratch abrasion of 4 c.m.in length from its lower end.

11.An oblique muscle deep cut wound over the upper outer quadrant of left gluteal region measuring 6 c.m.x 4 c.m.12.An oblique muscle deep cut wound over the middle of left gluteal region measuring 5 c.m.x 3 c.m.13.An elliptical wide cut wound over the right side posterior axillary line measuring 10 c.m.x 4 c.m.x bone

deep with cut fracture of lateral border of scapula bone.

14. An elliptical cut wound over the middle of right scapular area measuring 5 c.m.x 2 c.m.x bone deep with cut fracture of body of scapula with a linear scratch abrasion of 4 c.m. length from its lower end.

15. A wide curved chop wound over the middle of back of left forearm over an area of 14 c.m.x 8 c.m.x bone deep with avulsion of skin exposing the cut fractured both bones of left forearm outside along with the lacerated muscles, vessels, nerves and tendons.

16. An oblique cut wound over the middle of right cheek measuring 8 c.m.x 2 c.m.x bone deep with cut fracture of body of maxilla bone.

17. Three bone deep cut wounds over the right shoulder region each measuring 4 c.m.x 2 c.m.x bone deep with multiple cut fractures of Head of Humerus and Acromian process.

18. Two bone deep curved cut wounds one below the other over the front of right upper arm each measuring 4 c.m.x 2 c.m.x bone deep with cut fracture of humerus bone.

19. Avulsion type of bone deep chop wound over the front and medial aspect of right upper arm measuring 10 c.m.x 10 c.m. with cut fracture of shaft of Humerus bone.

20. Multiple bone deep defence cut wounds noted over both palms of various sizes with cut fractures of meta carpal bones.

21. Base of right thumb was found cut and traumatically amputated.

22. Multiple linear scratch abrasions over the dorsum of both hands, back of chest, back of both forearms and front of chest.

23. A punctured wound over the middle of dorsum of right hand measuring 2 c.m.x 1 c.m.x bone deep with cut fracture of 4th and 5th metacarpal bones.

24.A wide Transverse.elliptical thoracic cavity deep cut wound over the front of upper part of right side of chest measuring 10 c.m.x 3 c.m.with oblique cut fracture of 2nd, 3rd, 4th ribs.

25.A wide bone deep chop wound over left frontal, temporal and parietal regions of scalp over an area of 14 c.m.x 4 c.m.found extending on to left cheek with cut fracture of the underlying bones through which the cut lacerated Brain matter was found coming out side.

26.On reflecting the scalp skin ?.

sub scalp contusion noted over the whole of scalp with cut fractures of vault of skull bones as noted above corresponding to the cut wounds.

On opening the vault of skull-bilateral subdural, sub arachnoid and intracerebral haemorrhages.

Cut laceration of whole of left side cerebral hemisphere with complete softening and blood clots.

Multiple comminuted fractures of all the cranial fossae of base of skull.

Brain was pale.

27.On dissection of chest ?.

Thoracic cavity contained 800 ml of fluid blood.

Upper lobe of medial border of right lung was found cut corresponding to the above wound No.24 and further pericardium of Heart also was found punctured.

Pericardial cavity contained 450 ml of fluid blood.

Extremities .Very pale.

Heart .Normal in size.

All the chambers contained fluid blood.

Valves .Normal.

Coronary vessels ?.

patent.

Great vessels ?.

Normal.

Lungs .C/s both pale.

Larynx and hyoid bone .Intact.

Stomach .Contained 200 ml of dull grey coloured clay particles with no specific smell.

Mucosa-pale.

Oesophagus .Contained 20 ml of dull grey coloured clay particles including the pharynx, Tracheal lumen also.

Liver,spleen, kidneys .c/s pale.

Small intestine .Empty Mucosa ?.

pale.

No specific smell made out.

Bladder .Empty.

Pelvis ?.

intact?.The Postmortem Report has been marked as Ex.P.6.

The remaining part of investigation has been done by P.W.21 and after completing investigation, P.W.21 has laid a final report on the file of the Judicial Magistrate's Court No.I, Thanjavur and the same has been taken on file in P.R.C.No.7 of 2008.

4.The Judicial Magistrate No.I, Thanjavur after perusing relevant records has found that the offences alleged to have been committed by all the accused are triable by Sessions Court, committed the case to the Court of Sessions and the same has been taken on file in Sessions Case No.222 of 2009.

5.The trial Court after hearing both sides and also after considering available materials on record has framed fiRs.charge against all the accused under Section 120(b) of the Indian Penal Code, second charge against all the accused under Section 148 of the Indian Penal Code, third charge against the fiRs.accused under Section 302 of the Indian Penal Code and fourth charge against accused 2 to 6 under Section 302 read with 149 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.W.s.1 to 21 have been examined and Exs.P.1 to P.19 and M.Os.1 to 12 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.

However, no oral and documentary evidence have been let in on the side of the accused.

8.The trial Court after evaluating the available evidence on record, has found all the accused not guilty of the charges framed against them and ultimately acquitted them under Section 235(1) of the Code of Criminal Procedure, 1973.

Against the order of acquittal passed by the trial Court, the present Criminal Appeal has been filed by the Investigating Officer as appellant.

9.The learned Additional Public Prosecutor has vehemently contended that in the instant case one Robert, who is brother-in-law of the deceased has given picturesque evidence with regard to occurrence and also manner of attacks alleged to have been made by the accused and the trial Court without considering

the evidence given by him has erroneously acquitted all the accused and therefore the order of acquittal passed by the trial Court is liable to be set aside and all the accused are liable to be punished in accordance with the charges framed against them.

10.Per contra, the learned counsel appearing for the respondents/accused has contended that in the instant case no eye-witness has been examined and even the evidence given by P.W.3 cannot be believed in and the trial Court after considering the real situation and also credibility of the evidence given by P.W.3 has rightly acquitted all the accused and therefore the order of acquittal passed by the trial Court does not require any interference.

11.The specific case of the prosecution is that the occurrence has takenplace on 22.10.2007 at about 07.30 p.m.It is an admitted fact that the occurrence has takenplace in an agricultural land near Palli Agraharam.

12.The prosecution has set the law in motion only on the basis of Ex.P.1, alleged to have been given by the brother of the deceased, who has been examined as P.W.1.

In fact this Court has analyzed the evidence given by P.W.1.

Except motive, the evidence given by P.W.1 is not at all sufficient for coming to a conclusion that the accused have involved in the commission of crime.

13.The entire argument putforth on the side of the appellant is that P.W.3 has given clear evidence with regard to occurrence.

14.It is an admitted fact that P.W.3, Robert has married the sister of P.W.1 and deceased.

During the couRs.of chief examination, he would say that he has seen the occurrence.

But during the couRs.of cross- examination, he stated to the effect that he has not stated anything to the police with regard to occurrence.

Considering the fact that P.W.3 is not a reliable evidence, his testimony cannot be accepted.

Further he has given only fragile and rickety type of evidence and the same cannot be a basis for inviting conviction and sentence against the accused.

15. On the side of the prosecution so many witnesses have been examined for the purpose of establishing the motive and also occurrence.

But unfortunately none of them has supported the case of the prosecution.

Under the said circumstances virtually the prosecution has not adduced even an iota of evidence so as to point out the guilt of the accused punishable under the Sections mentioned in the charges.

16. The trial Court after analyzing the total infirmities found on the side of the prosecution has rightly acquitted all the accused and in view of the discussion made earlier, this Court has not found any material so as to set aside the order of acquittal passed by the trial Court.

17. In fine, this Criminal Appeal deserves dismissal and accordingly is dismissed and the order of acquittal passed in Sessions Case No.222 of 2009 by the Additional District and Sessions Court/Special Court for Essential Commodities Act, Thanjavur is confirmed.

To 1. The Additional District and Sessions Court/ Special Court for Essential Commodities Act, Thanjavur.

2. The Inspector of Police, Thanjavur East Police Station, Thanjavur District.

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

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