

K. Senthil Kumar Vs. State by The Asst.Commissioner of Police (Law and Order), Ammapettai Police Station, Salem and Another

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Court : Chennai

Decided On : Dec-21-2016

Judge : S. Nagamuthu & N. Authinathan

Appeal No. : CRL.A.No. 533 of 2016

Appellant : K. Senthil Kumar

Respondent : State by The Asst.Commissioner of Police (Law and Order), Ammapettai Police Station, Salem and Another

Judgement :

(Prayer: Appeal filed u/s.372 Cr.P.C., against the Judgment of conviction and sentence passed by the learned III Additional District and Sessions Judge, Salem in SC No.80 of 2011 dated 12.02.2016)

S. Nagamuthu, J.

1. This is an appeal against acquittal of the second respondent herein, who is the sole accused in S.C.No.80 of 2011 on the file of III Additional District and Sessions Judge, Salem, from the charges under Secs.302 and 201 IPC.

2. (a) The appellant belongs to Masinayakkan pattu Vettikadu in Salem District. The deceased Palaniammal was his mother. She was also residing along with the appellant. They were all coolies by profession. The second respondent/accused S. Vaitheeswaran was also a resident of the same village. P.W.1 and the deceased used to go for coolie work under the respondent/accused. A sum of Rs.2,10,000/- was due from the accused to P.W.1 and his mother in this regard. They were demanding the accused to pay the same, but he was evasive.

(b) On 19.04.2010 around 6.15 p.m, P.W.1 and the deceased had gone to the house of the accused and requested him to pay the arrears. At that time, the accused was sitting just in front of his house. When the deceased requested him to pay the amount, the accused started abusing the deceased and blamed the deceased and P.W.1 that they were defaming him by making adverse remarks against him in the village as though he was refusing to pay the amount due to them. He further shouted that the act of the deceased and the P.W.1 had brought shame to the accused and has caused serious damage to his family prestige. The deceased, in turn, shouted at the accused and started cursing that he would not live long after cheating her. The accused got further infuriated by the above act of the accused and having lost his temper, took out a crowbar lying in the house and attempted to attack the deceased. The deceased started running, but the accused reached her, and attacked her with crow bar repeatedly. P.W.1 tried to rescue the deceased. But by that time, having received blows and having sustained extensive injuries, the deceased fell down. Out of fear, P.W.1 rushed to the nearby bush and hid himself. The accused dragged the dead body of the deceased to yet another bush and left the dead body there. The accused then ran away from the scene of occurrence.

After the accused left the place, P.W.1 went to the place, where the deceased was lying. He found that the deceased had expired. He raised alarm and on hearing the same, the villagers rushed to the place of occurrence. Thereafter, P.W.1 went to Ammapettai Police Station and made a complaint at 11.30 p.m on 19.04.2010. Based on the complaint, P.W.17, the then Sub Inspector of Police, registered a case in Cr.No.476 of 2010 against the accused for the offence punishable under Sec.302 IPC. Ex.P.15 is the First Information Report. He forwarded both the

documents to the Court, which was received by the learned Magistrate at 3.00 a.m on 20.04.2010.

(d) P.W.19 took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch from the place of occurrence. Then he conducted inquest on the dead body of the deceased at 10.15 a.m and forwarded the body for postmortem.

(e) P.W.10 Dr.Paneer Selvam, conducted autopsy on the body of the deceased on 20.04.2010 at 1.45 p.m. He found the following injuries:

INJURIES: ABRASIONS DARK REDDISH BROWN IN COLOUR:

1. 5x4cms over DORSUM of LEFT WRIST
2. 7x1.5cms over inner aspect left elbow
3. Stretched abrasion reddish brown in colour seen over in front of abdomen extends from right lower part of breast M-28x27 cms
4. Stretched abrasion over lateral wall of left side of chest and upper part of abdomen M-17x12cms
5. Stretched abrasion over upper part of left gluteal region M-18x15cms
6. A crush injury involving left side face extends upto left frontal region with disfigurement of left side face with fracture involving zygomatic and orbital bones, left side maxillary bones M-16x9 cms and the wound is situated 133CMS above left foot and 28 CMS above occipital protrudence.
7. Abrasion 2x1, 1x1 cms over right forehead
8. Both eyes, Black eyes seen.

FINDINGS:

O/D Head: Scalp contusion over left fronto parieto tempero region with left temporals muscle contused dura membrane-intact cranial vault depressed fracture

involving left temporal bone M-7x6cms brain-a diffused Sub arachnoid and sub dural haemorrhage seen over both cerebral hemispheres of brain, base of skull fracture extends from left temporal bone to left middle cranial fossam M-7.5cms long.

1.O D NECK: All neck structures-Intact, hyoid bone intact

2. O D Thorax: No ribs fracture heart normal in size chambers contained fluid blood, coronaries patent, Myocardium normal, Lungs c/s congested.

3. O D Abdomen: Stomach contains 225 cms of partly digested cooked rice particles with no specific odour. Mucosa congested liver spleen both kidneys c/s congested bladder empty uterus normal, pelvisintact. O D Spinal column: Intact

Viscera preserved and sent for chemical analysis

OOPINION:

1. DIED OF SHOCK and HAEMORRHAGE DUE TO HEAD INJURIES.

2. TIME SINCE DEATH: 16 HOURS +_ 1 HOUR

PRIOR TO AUTOPSY

(f) Ex.P.8 is the Post Mortem Certificate and Ex.P.9 is the final opinion. He opined that the injuries found on the body of the deceased could have been caused by Crowbar and the death of the deceased was due to shock and hemorrhage due to the said injuries.

(g) P.W.19, during the course of investigation, recovered blood stained clothes from the body of the deceased. On 22.04.2010, he arrested the accused around 1.00 p.m in the presence of witnesses. While in the police custody, the accused made voluntary confession, in which, he disclosed the place where he had hidden the blood stained crow bar. In pursuance of the same, he took the police and witnesses to the place of occurrence and produced M.O.1-crow bar. P.W.19 recovered the same under a Mahazar. On returning to the Police Station, he forwarded the accused to Court for judicial remand and sent the material objects to

the Court. He recovered the call details of the cell phone of the accused and that of the deceased. At his request, the material objects were sent for chemical examination. The report revealed that there were human blood stains on all the material objects, including the crowbar, recovered from the accused. After completing the investigation, P.W.19 laid charge sheet against the accused.

2. Based on the above materials, the Trial Court framed charges for the offence punishable under Secs.302 and 201 IPC. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 19 witnesses were examined and 30 documents and 11 material objects were also marked. On the side of the accused two photographs were marked as Exs D.1 and D.2.

3. Out of the said witnesses, P.W.1, the son of the deceased has spoken about the entire occurrence as eyewitness. He has stated that he had accompanied the deceased to the house of the accused, where the occurrence had taken place. He has further spoken about the complaint made to the police.

4. P.W.2 is the brother of the deceased. He has spoken about the amount due from the accused to the deceased. He has stated that on one occasion, he went along with the deceased to the house of the accused to persuade the accused to pay the amount. The accused promised to pay the amount on 19.04.2010.

5. P.Ws.3, 4, 6 and 7 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.5 has spoken about the motive. P.W.8 has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence. P.W.9 has spoken about the arrest of the accused and the confession made and the consequential recovery of M.O.1-crow Bar. P.W.10 has spoken about the post mortem conducted and the final opinion regarding the cause of death. P.W.11-Scientific Officer of Forensic Lab has stated that he examined the material objects and found blood stains on all material objects, including the crow bar. P.W.12, a villager, has spoken about the occurrence. P.W.13, an employee of the Tamil Nadu Electricity Board has stated that on the crucial date of occurrence, there was no electricity failure in the village. P.W.14 has spoken about the handing over of first information report to the learned Magistrate. P.W.15 Constable has stated that he took the dead body of the

deceased from the place of occurrence and handed over to doctor for postmortem. P.W.16 has spoken about the photographs taken on the place of occurrence. P.W.17 has spoken about the registration of the case on the complaint of P.W.1. P.W.18 the learned Judicial Magistrate has stated that she recorded the statement of witnesses under Sec.164 of Code of Criminal Procedure. P.W.19 has spoken about the entire investigation and the final report filed.

6. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness on his side. Having considered all the above, the Trial Court acquitted the accused. Challenging the acquittal, the appellant, who is the son of the deceased, is before this court .

7. We have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. Today, as directed by this Court, the accused made appearance.

9. The learned counsel appearing for the appellant submitted that in the instant case, from the evidence of P.Ws.1 and 5 the motive for the occurrence has been clearly established. He further submitted that the evidence of P.W.1, would clearly go to show that this accused alone attacked the deceased and caused her death. He would further point out that there was no delay on the part of P.W.1 in making complaint to the police and the first information report had reached at the hands of the learned Magistrate without any delay. He further pointed out that the arrest of the accused and the disclosure statement made by him, upon which the crow bar has been recovered, would further strengthen the case of the prosecution. The learned counsel further stated that the trial Court has overlooked these evidences and acquitted the accused on erroneous grounds.

10. The learned Additional Public Prosecutor endorsed the arguments of the counsel for the appellant.

11. Mr.S. Ashok Kumar, the learned Senior Counsel, appearing for the accused, would vehemently oppose the contentions of the counsel for the appellant. He submitted that the presence of P.W.1 on the place of occurrence is highly doubtful. He would further submit that had it been true that P.W.1 was also present at the place of occurrence, he would not have been spared by the accused. Thus, the presence of P.W.1 cannot be believed and his evidence that the accused attacked the deceased is false. He would further submit that the motive, as spoken by P.Ws.1, 2 and 5 is so trivial in nature. He would further submit that the recovery of crowbar, allegedly on the information furnished by the accused, cannot be believed. At any rate, according to the learned Senior Counsel, the view taken by the Court cannot be interfered with by this Court as per the settled law.

12. At the outset, we should state that it is well settled that the initial presumption of innocence of the accused gets doubled by the acquittal recorded by the trial court. Unless the appellant is able to show any perversity in the judgment of the trial court acquitting the accused and unless the appellant is able to rebut the above stated presumption by making out a very strong case, it is not possible to interfere with the acquittal of the accused. In other words, if there are two views, which are equally possible, the view taken by the trial court cannot be disturbed so as to convict the accused by adopting the other view, which is also equally possible.

13. As guaranteed under Article 21 of the Constitution of India, the life and liberty of an individual could be deprived of only by following the procedure established by law. The said procedure denotes a fair procedure where the proof of guilt should be made beyond any reasonable doubt. In other words, the Court cannot afford to convict an individual on mere surmises or suspicion. Keeping these principles in mind, let us go into the facts of the present case.

14. As we have already pointed out, to prove the motive, P.Ws.1, 2 and 5 have been examined by the prosecution. All these witnesses have stated that P.W.1 and the deceased were working as Coolies under the accused. There remained a sum of Rs.2,10,000/- as arrears to be paid by the accused, which was not paid. According to P.W.2, few days before the occurrence, he went along with the

deceased to the house of the accused to persuade him to pay the amount. The accused promised to pay the amount on 19.04.2010, but did not pay the same. These facts, in our view, would either constitute sufficient motive for the accused or that there was no love lost between the accused and the deceased.

15. Now turning to the actual occurrence, as we have already pointed out, the prosecution mainly relies on the eyewitness account of P.W.1. He has stated that he accompanied the deceased to the house of the accused to request him to pay the amount due. He has further stated that when the deceased demanded the money, the accused shouted alleging that by spreading news everywhere in the village that the accused was cheating them without paying the money due to them, P.W.1 and the deceased had brought shame to his family and himself. The deceased, in turn, shouted and cursed that the accused would not live long if he decided to cheat her. It was only in that quarrel it was stated that the accused took a crowbar and attacked her.

16. P.W.1 has stated that since the accused, after assaulting the deceased, also threatened to attack him, he rushed towards the bush and concealed himself. Immediately after the occurrence, he had gone to the police station and made a complaint and the complaint reached the hands of the learned Judicial Magistrate at 3.00 a.m on 20.04.2010. Thus, there was no delay in making the complaint or the first information report reaching the hands of the Court. Though P.W.1 had been cross examined, we find nothing elicited by the defence so as to cast doubt on the evidence of P.W.1. Thus, we are of the view that the evidence of P.W.1 carries credence.

17. It is not the law that the evidence of a solitary witness should always be viewed with suspicion and the same cannot be the sole foundation for conviction. It is not the quantity but the quality of evidence that matters. In assessing the evidence of a solitary witness, prudence requires that the said evidence must inspire the confidence of the court. If on the other hand, there is any doubt, the Court normally looks for corroboration from any other independent source. Here in this case, as we have already pointed out, the evidence of P.W.1 inspires the fullest confidence of the court and therefore, the said evidence, by itself, would be sufficient to

convict the accused.

18. The trial Court has disbelieved the evidence of P.W.1 on two counts. The first one is, as stated by the trial Court, that the motive stated by P.W.1 is different from the motive stated by the accused in the confession, recorded under Sec.25 of the Evidence Act. In our considered view, it is illegal on the part of the trial court to have relied on the confession of the accused made under Sec.25 of the Evidence Act ignoring the bar contained. The trial Court ought not to have extracted the confession of the accused and to have made any reliance on the same. Above all, the motive alleged by the accused cannot be used to contradict the motive alleged by P.W.1. Thus, the first ground upon which, the trial court rejected the evidence of P.W.1 is not at all well founded.

19. The next ground based on which the trial court acquitted the accused is that, according to the trial court, the failure of P.W.1/appellant to call any one for his help and his failure to inform his relatives immediately after the occurrence makes his evidence doubtful. We are not persuaded by these reasons stated by the trial court. P.W.1 had not exhibited any unnatural conduct. He has stated that he tried to rescue his mother and since the accused made an attempt to even assault him, he rushed to a nearby bush and concealed himself and after the accused left the place, he went near the body of the deceased and found that the deceased was no more. The trial court has found fault with P.W.1 stating that for 30 minutes he would not have kept silent as projected by him. In our considered view, the time gap stated by P.W.1 cannot be calculated meticulously, as after all P.W.1 is a villager and an illiterate man. He would not have understood the correct presumption of time. Therefore, his evidence that he waited for 30 minutes cannot be taken to mean as though he was waiting really for 30 minutes. This reason stated by the trial court is also not at all tenable.

20. The trial Court has further held that P.W.1 has admitted, during the cross examination he made, his signature in Ex.P.1 alone, whereas, his signature is found in Form 95 also which was just prepared when the clothes of the deceased were recovered from the dead body after the postmortem was over. The trial Court has stated that there is no explanation from P.W.1 regarding his signature in Form

95. In our considered view it is not a ground at all to reject the evidence of P.W.1. The trial court further has held that there is some discrepancy as to who drafted Ex.P.1 complaint. It is also not so material to reject the evidence of P.W.1.

21. The evidence of P.W.1 stands corroborated by the recovery of crow bar, upon which, human blood stain was found. In our considered view that these evidences would conclusively prove that it was this accused, who attacked the deceased, which resulted in the death of the deceased.

22. Having coming to the said conclusion that the death of the deceased was caused by the accused, we have to examine what was the offence that was committed by the accused.

23. As we have already narrated, P.W.1 himself has admitted that the deceased demanded money and at that time, the accused shouted and told that the deceased had brought disrepute to him and his family members, by spreading news that the accused was cheating the deceased. In retaliation the deceased used provocative words and she shouted at the accused cursing that he would not live long if he decided to cheat her. In this fashion, quarrel was going on for some time. In that quarrel, the accused had taken the crowbar and attacked the deceased. Thus, the act of the accused was not pre-meditated. He would not have had an intention to kill the deceased at all. The occurrence had taken place at the spur of the moment on account of the sudden provocation. Thus the Act of the accused in causing the death of the deceased would squarely fall within the fourth limb of Section 300 of IPC and also would fall under Exception I to Section 300 IPC. Therefore, for causing the death of the deceased, the accused is liable to be punished for the offence punishable under Sec.304 Part II IPC.

24. We questioned the accused, who appeared before us, today in respect of the quantum of punishment that could be imposed on him. We explained to the accused about our conclusion that he had committed the offence punishable under Sec.304 Part II IPC. The accused maintained that he was innocent.

25. Mr.S. Ashok Kumar, the learned Senior Counsel, appearing for the accused submitted that the accused has got children, old mother and having a big family to

take care of. The learned Senior Counsel further submitted that he has no bad antecedents.

26. Having regard to the above submissions and also having regard to the fact that his act was not premeditated, the accused was not already armed with weapons and only at the spur of the moment and due to the sudden provocation caused by the deceased he had inflicted injuries on the deceased and also having regard to aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for four years and directing him to pay a sum of Rs.50,000/- , in default, to undergo rigorous imprisonment for six weeks would meet ends of justice.

30. In the result,

(i) The appeal is allowed, the acquittal of the second respondent / accused recorded by the III Additional District and Sessions Court, Salem in SC No.80 of 2011 dated 12.02.2016 is hereby set aside and the second respondent/accused is convicted for the offence punishable under Sec.304 Part II IPC and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.50,000/- (Rupees fifty thousand only), in default, to undergo rigorous imprisonment for six weeks. The period of sentence already undergone by the accused shall be set off under Section 428 Cr,P.C.

(ii) The entire fine amount, after it is realised, shall be paid to P.W.1, as compensation and the trial Court shall disburse the same without further reference to this Court.

(iii) The learned Senior Counsel appearing for the accused submitted that the accused may be given time to pay the fine amount and to surrender before the trial court.

(iv) Considering the request, we grant time to the accused till 19.01.2017 for paying the fine amount and he shall surrender before the trial Court on or before 20.01.2017. On such surrender, the trial Court shall commit him to Prison to undergo the remaining period of sentence.

(v) If the accused fails to surrender before the trial Court on or before 20.01.2017, the trial Court shall take steps to secure him and to commit him in prison to undergo the remaining period of sentence.

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