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Court : Chennai Madurai

Decided On : Oct-24-2016

Judge : S. Nagamuthu &Amp; M. Govindaraj

Appeal No. : Crl. A. [MD]. No. 212 of 2015

Appellant : Chockkiah and Others

Respondent : State Rep. by the Deputy Superintendent of Police, Theni District

Judgement :

(Prayer:Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment, dated 17.03.2015, made in Spl.S.C.No.6 of 2008, by the learned Principal District and Sessions Judge, Theni.)

S. Nagamuthu, J.

1. The appellants are the accused 1 to 4 in Special S.C.No.6 of 2008 on the file of the Principal District and Sessions Judge, Theni. They stood charged for the offences under Sections 341, 302 r/w 34, 506(ii) IPC and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. By judgment dated 17.03.2015, the trial Court acquitted all the four accused from the charge under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, however, convicted them under Sections 341, 506(ii) and 302 r/w 34 IPC and sentenced them to undergo simple imprisonment for one month for the offence under Section 341 IPC; to undergo simple imprisonment for one year for the offence under Section 506(ii) IPC; and to undergo imprisonment for life and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for a further period of six months for the offence under Section 302 r/w 34 IPC. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

2. The case of the prosecution in brief is as follows;

(a) The deceased in this case was one Mr.Ilangovan. PW1 is the father of the deceased. PW6 is the mother of the deceased. They were residing at Church Street, Bodinayakanaur, Theni District. The deceased was running an electronic workshop at Sowdamman Kovil Street, Bodinayakanaur. The first accused has a sister by name Shanthi and his father is one Mr.Pownraj @ Kalimuthu. It is alleged that the deceased had fallen in love with Shanthi and abducted her. The father of the first accused made a complaint, in this regard, to the Police. The same was enquired into by the Inspector of Police, Bodinayakanaur Town Police Station. In connection with the enquiry into the said complaint, PW1 and the deceased were summoned to the Police Station. They attended enquiry on 08.06.2002. But, as the Inspector of Police was not available, the Sub Inspector of Police wanted PW1 and the deceased to come for enquiry on different date. Therefore, PW1 and the deceased were returning to their house via., the workshop of the deceased. When they were passing through Keelaraja Street in Bodinayakanaur, it was 7.30 p.m. At that time, suddenly the first accused, along with three other persons, emerged at the place of occurrence (Those three persons were, later on, identified as the accused 2 to 4 herein). All the four accused were armed with one knife each. They surrounded the deceased and started mounting attack on him with knife. PW1 tried to rescue the deceased. The accused 2 to 4 criminally intimidated him. Therefore, out of fear, he did not go near the deceased. The deceased fell down in a pool of blood. The accused ran away with their weapons.

(b)Immediately, PW1 took the deceased in an auto to the Government Hospital at Bodinayakanaur. After examining him, the Doctor declared him dead. On receiving intimation from the hospital, PW23, the then Sub Inspector of Police, went to the Government Hospital at 8.15 p.m. He recorded the statement of PW1 at 8.30 p.m. at the hospital (vide Ex.P1) and on returning to the Police Station at 9.30 p.m., he registered a case in Crime No.258 of 2002 under Section 302 IPC. Ex.P1 is the FIR. In the complaint, PW1 had named the first accused as one of the assailants and three others were not named. The case was taken up for investigation by PW24, the then Inspector of Police. He went to the place of occurrence at 10.40 p.m. and prepared an observation mahazar and a rough sketch in the presence of PW13 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. On going over to the hospital, he conducted inquest on the body of the deceased and forwarded the body for postmortem.

(c) PW19 - Dr.Anbusezhian conducted autopsy on the body of the deceased on 09.06.2002 at 8.40 a.m. He found the following injuries:

External Injuries:

1. Penetrating injury (P.I) over the front of neck in the midline. 2 cm below the Thyroid Cartilage 3 cm x 1.5 cm x entering into the trachea injury the Tracheal cartilager.

2. P.I.over the Rt. Side of Neck adjacent to the previous wound 3x1.5x2cms injury the major vessels.

3. P.I.over the Rt.Supraclavicular fossa about 3x1.5x2cms entering into the thoracic cavity.

4. P.I.over the Manubrium Sternal region 3x2x2cms.

5. Incised wound Lt. Supranoclavicular joint 2x1x1cms.

6. Incised wound below the Rt. Sternoclavicular joint 2x1x1cms.

7. P.I. Over the Rt. Pectoral region 4cmx2cmxpenetrating into the Rt. Pleural cavity.

8. P.I. Two in no on the epigestrium, one on the Rt. Hypochondrium each measuring 3cmx2cmxentering into the abdominal cavity.

9.Incised wound over the Ltd. Infra auxillary region 3x2xentering into pleural cavity.

10. Incised wounds over the 10 Lt. Chest wall in 7^{th} space 3x2cmsxinto thoracic.

11. Lt lateral wall of axilla 3x2xbone depth.

12. Lt. Upper arm 5x2x1bone depth.

13. Lt. Forearm 3x2x2cm.

14. Over the hypogastrium 2x1.5x2cm.

15. Shaft of penis 1x0.5x0.5cms.

16. Over the upper end of rt tibia thoracic cavity.

17. Over the rt. Scapula 3x2xbone depth.

18. Over the back on rt side 5x2xthoracic cavity.

19. Over the back in midline 4x2cmxbone depth.

20. Over the Rt. Popliteal fossa 5x2xbone depth.

21. Over the Lt. Popliteal fossa 5x2xbone depth.

22. Lt. gluteal margin 5x2cm x muscle depth.

23. Peretraty injury Rt. Umber region 5x2.5cm into abd. cavity.

He opined that these injuries could have been caused by a weapon like knife. He further opined that the death of the deceased was due to shock and haemorrhage due to multiple injuries found on the body of the deceased. Ex.P15 is the postmortem certificate.

(d) During the course of investigation, PW24 recovered the bloodstained clothes from the body of the deceased. On 11.06.2002 at 8.30 p.m. he arrested the first accused in the presence of PW14 and PW15. On such arrest, the first accused gave a voluntary confession in which he disclosed the place where he had hidden a knife. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the knife. PW24 recovered the same under a mahazar. On returning to the Police Station, he forwarded the accused to the Court for judicial remand and also handed over the material objects to the Court. The accused 2 and 3 surrendered before the learned Judicial Magistrate, Usilampatti. On a request made by PW24, the Police custody of these two persons were given by the learned Magistrate on 26.02.2002. While in Police custody, the accused 2 and 3 made voluntary confession one after the other. In the confession, the second accused disclosed the place where he had hidden a knife and a bloodstained shirt. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the said material objects. PW24 recovered the same under a mahazar. In his confession, the third accused disclosed the place where he had hidden a knife. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the knife. PW24 recovered the same under a mahazar. The 4th accused also had surrendered before the Court on 27.06.2002. PW24 took the Police custody of the 4th accused on the orders of the learned Magistrate. On 28.06.2002 at 8.00 a.m., while in police custody, he made a voluntary confession, in which he disclosed the place where he had hidden a knife. In pursuance of the same, he took the police and witnesses to the place of hide out and produced the said knife. PW24 recovered the same under a mahazar. Then, he forwarded the accused 2 to 4 to the Court for judicial remand and handed over the material objects also to the Court.

(e) At the request of PW24, the material objects were sent by the learned Magistrate to the Forensic Laboratory for chemical examination. The report revealed that there were human bloodstains on all the material objects. At the request of PW24, the test identification parade was conducted for A2 to A4. During the test identification parade, PW1 identified the accused 2 and 3, but not the 4th accused. He wrongly identified the persons, who were put up in the test identification parade as shadow accused, as assailants. PW2 identified the

accused 2 and 3, but not the 4th accused. The other eyewitnesses viz., PWs.4 and 5 were not sent for test identification parade. Since the offence under Section 3(2)(v) of SC/ST Act was also included during the course of investigation, PW25 the then Deputy Superintendent of Police took up the case for investigation on 08.08.2002 and he examined few more witnesses including the Doctor and on completing the investigation, he laid charge sheet against all the four accused.

(f) Based on the above materials, the trial Court framed charges against the accused, as detailed in the first paragraph of this Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 28 witnesses were examined and 26 documents and 12 material objects were marked.

(g) Out of the said witnesses, PWs.1, 2, 4 and 5 were examined as eyewitnesses to the occurrence. PW2 has turned hostile and he has not stated anything about the occurrence. PW1, the father of the deceased, PW4, a close relative of the deceased and PW5, another close relative of the deceased, have spoken about the involvement of these four accused in the occurrence. PW1 has further stated that immediately after the occurrence, he took the deceased to the hospital, where the Doctor declared him dead. PW1 has further stated about the complaint made by him. PW6, the mother of the deceased, has spoken only about the motive of the first accused. PW7 has spoken about the hearsay information and he has not stated anything incriminating. PW8 has spoken about the preparation of the observation mahazar and rough sketch and recovery of material objects. PW9 has spoken about the hearsay information. PW10 has spoken about the recovery of bloodstained clothes from the body of the deceased. PW11 has turned hostile and he has not supported the case of the prosecution in any manner.

(h) PW12, an official of the Tamil Nadu Electricity Board, has stated that on the date of the occurrence, at the place of the occurrence, there was no electricity failure and there was enough light at the place of occurrence. PW13 has spoken about the preparation of observation mahazar and rough sketch and recovery of bloodstained earth from the place of occurrence. PW14 has spoken about the arrest of the first accused, the disclosure statement made by him and the

consequential recovery of a knife - MO.6. PW15 has also spoken about the same facts. He has further spoken about the disclosure statements made by the accused 2 to 3 and consequential recovery of weapons and bloodstained clothes. PW16 has turned hostile and he has not supported the case of the prosecution in any manner. PW17 has spoken about the confession statement made by the fourth accused and the consequential recovery made out of the disclosure statement. PW18 Dr.Balasubramani has stated that while he was on duty in Government Hospital, Bodinayakanur at 8.00 p.m. on 08.06.2002, the deceased was brought for treatment and after examining him, he declared him dead. He has further stated that then, he gave intimation to the Police.

(i) PW19 has spoken about the postmortem conducted and his final opinion regarding the cause of the death of the deceased. PW20, a Head Constable, has stated that he received the FIR and the complaint from the Sub Inspector of Police at 10.15 p.m. on 08.06.2002 and handed over the same to the learned Magistrate at 01.00 a.m. on 09.06.2002. PW21, another Head Constable, has stated that he took the dead body and handed over the same to the Doctor for postmortem as directed by PW24. PW22, the then Tahsildar, has spoken about the community certificate issued to the deceased. According to him, the deceased belonged to the scheduled caste. PW23 has spoken about the registration of the case. PW24 and PW25 have spoken about the investigation done and the final report filed. PW26 has turned hostile and he has not stated anything incriminating. PW27, a scientific Assistant from the Forensic Laboratory, has stated that he examined the material objects and found human blood on all the material objects. PW28, the then Judicial Magistrate, Andipatti, has spoken about the test identification parade conducted.

(j) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor to mark any document on their side. The defence of the accused was total denial. Having considered all the above, the trial Court convicted them, as detailed in the first paragraph of this judgment. That is how they are before this Court with this appeal.

3. We have heard the learned senior counsel for the appellants and the learned Additional Public Prosecutor appearing for the respondent. We have also perused the records carefully.

4. The learned senior counsel appearing for the appellants would begin his argument contending that there was inordinate delay in making the complaint to the Police and also handing over the same to the learned Magistrate. According to him, the said delay has not been explained away and the same creates enormous doubts in the case of the prosecution. This is very seriously disputed by the learned Additional Public Prosecutor. According to him, virtually there was no delay either in making the complaint or in forwarding the same to the Court. The learned senior counsel appearing for the appellants/accused would further submit that the original complaint had been suppressed and Ex.P1 has been substituted after due deliberation. Therefore, according to the learned senior counsel, the prosecution has not come forward with clean hands.

5. We have considered the above submission meticulously. It is the positive case of the prosecution that the alleged occurrence happened at 07.30 p.m. on 08.06.2002 at Bodinayakanur. After the occurrence, the deceased was taken to the Government Hospital, at Bodinayakanur. PW18 Dr.Balasubramani has stated that he declared the deceased dead at 8.00 p.m. and then, immediately he gave intimation to the Police. According to PW23, on receipt of the said intimation, he went to the hospital and recorded the statement of PW1 at 8.30 p.m. and on returning to the Police Station at 9.30 p.m. he registered the case. Thus, absolutely, in our considered view, there is no delay in making the complaint. PW1, who was placed in such a shocking condition, would have concerned only to take the deceased to the hospital to save. After the demise of the deceased, within half an hour the Police arrived at the hospital and obtained the complaint. Thus, virtually, there is no delay in making the complaint.

6. The case was registered at 9.30 p.m. The distance between the Police Station and the Court is very short which could be covered within 15 minutes time. This has been admitted by PW23. But, the same had reached the hands of the learned Magistrate only at 01.00 a.m. on 09.06.2002. Thus, virtually there was 3-1/2 hours

delay in forwarding the FIR to the Court. Absolutely, there is no explanation for this delay. In the case of this nature, where there are multiple number of accused, the non explanation of such kind of delay creates initial doubt in the case of the prosecution.

7. As rightly contended by the learned senior counsel for the appellants, the said unexplained delay creates further doubt regarding the emergence of Ex.P1, at the time as it is projected by the prosecution. PW1 has stated during cross examination that before the occurrence, he was not aware of the names of all the four accused and he came to know about the names of the accused by a friend, after the investigation is started. This statement made by PW1 would go to prove that at the time when he made the complaint to the Police, he was not aware of the names of any of the accused. But, quite strangely, in Ex.P1 the name of the first accused has been mentioned as one of the assailants. This has not been explained away by the prosecution.

8. Apart from that, PW1 has stated that Ex.P1 was prepared only at the Police Station and signed by him there. Whereas, according to PW23, Ex.P1 was reduced into writing only in the hospital, where PW1 signed the same. PW1 has further stated that even before Ex.P1 was prepared and signed, the Police went to the place of occurrence and after holding enquiry, they returned to the Police Station. He has further admitted during the cross examination that he signed Ex.P1 only at the Police Station. Thus, there is doubt as to whether Ex.P1 could be the earliest information. If it is true that the complaint was obtained only at the hospital, the same would not have contained the names of any of the accused, because PW1 has admitted that he was not aware of the names of any of the accused before making the complaint. The very fact that the Police have gone to the place of the occurrence and returned to the Police Station and then, Ex.P1 was prepared, which contains the name of the first accused as well as the assailants, would go to show that Ex.P1 has been prepared after due deliberation. If once it is held that in a case of this nature, where there are multiple number of accused, it is found that the FIR is doubtful and an attempt has been made to implicate as many number of persons as accused, then the prosecution should fall on the ground that the prosecution has not come forward with clean hands.

9. As stated earlier, PW1 in Ex.P1 has mentioned the name of the first accused and not the names of the accused 2 to 4. So far as the accused 2 to 4 are concerned, he told, during investigation, that he could identify the assailants numbering 3, who accompanied the first accused. Therefore, he was put up for identification parade, but, during the test identification parade, he was not able to identify the 4th accused at all. Though he identified the accused 2 and 3, he identified different persons also as the assailants, who were put up in the test identification parade as shadow accused. He has admitted, during cross examination, that before the occurrence, he did not have any occasion even to see the first accused. It is not known as to why the first accused was not put up for test identification parade. Had it been the case that the first accused was already known, it is not explained to the Court as to why PW1 admitted during cross examination that he was not aware of the name of the first accused and he had no occasion even to see the first accused before the occurrence. Thus, in our considered view, the presence of PW1 at the place of occurrence itself is doubtful.

10. As we have already pointed out, PW2 has turned hostile and though, during the test identification parade, he identified the accused 2 and 3, since the identification made during test identification parade is not a substantive evidence, we cannot give any weightage for the same. So far as his evidence is concerned, he has stated that he did not witness the occurrence and therefore, his evidence is of no use for the prosecution. Though the eyewitnesses PWs.4 and 5 are closely related to the deceased, they have admitted, during the cross examination, that none of the accused was previously known to them. More specifically they have stated that they were not even aware of the names of any of the accused. When that be so, these two witnesses also should have been put up for test identification parade. But, unfortunately, they were not put up for test identification parade. Thus, they have identified the accused for the first time in the Court. For want of test identification parade, in our considered view, the identification of these accused made for the first time in the Court by these two witnesses cannot be given any weightage of. Therefore, the evidences of PWs.4 and 5 also deserve rejection.

11. If these eyewitnesses are rejected, what remains for the prosecution for placing reliance is only the recovery of the material objects. It is stated that the first accused was arrested by PW24 on 11.06.2002 at 8.30 p.m. and on such arrest, he made disclosure statement, out of which the bloodstained knife was recovered. But, PW1, during the cross examination, has stated that at the time when he gave complaint to the police and when he was present at the Police Station, the first accused was found in the custody of the Police at the Police Station. There is no reason for rejecting this part of the evidence of PW1. If this is accepted, then, as a corollary, we have to reject the case of the prosecution that the first accused was arrested only on 11.06.2002 and on his confession, a knife was recovered. So far as the other accused are concerned, they were taken into Police custody and it is stated that while in custody, out of their disclosure statements, the material objects were recovered. We find it difficult to believe the recovery of the material objects on the alleged disclosure statement made by the accused 2 to 4. Assuming that some recoveries were made on the disclosure statements by the accused 2 to 4, that itself would not be sufficient to hold them guilty.

12. In view of the foregoing discussions, we find that it is difficult to believe the case of the prosecution. There are enormous doubts in the case of the prosecution which are very reasonable. Giving the benefit of doubts to the accused, we hold that the prosecution failed to prove the case beyond reasonable doubts.

13. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused in Spl.S.C.No.6 of 2008 is set aside and they are acquitted from all the charges. The bail bond, if any, executed by the appellants shall stand terminated. Fine amount, if any, paid shall be refunded to the appellants.

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