

Azraf Ali and Others Vs. State by The Inspector of Police, Vellore South (landO) Police Station, Vellore District.

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Court : Chennai

Decided On : Jun-29-2016

Judge : S. Nagamuthu & V. Bharathidasan

Appeal No. : CRL. Appeal No. 288 of 2015

Appellant : Azraf Ali and Others

Respondent : State by The Inspector of Police, Vellore South (landO) Police Station, Vellore District.

Judgement :

S. Nagamuthu,J.

1. The appellants are accused 1 to 5 in S.C.No.138 of 2012 on the file of I Additional Sessions Court, Vellore. The first accused stood charged for the offences under Section 120-B and 302 read with 109 IPC. The accused 2, 3 and 5 stood charged for the offence under Sections 120-B, 341 and 302 IPC. The fourth accused stood charged for the offences under Sections 120-B, 341, 302 and 324 IPC. The trial Court, by judgment, dated 11.03.2015, convicted and sentenced all the accused, as detailed below :

Accused	Section of law	Sentence
A.1 to A.5	120-B I.P.C.	Life imprisonment each and to pay of Rs.2,000/- each; in default, to undergo rigorous imprisonment for three months.
A.1	302 r/w.109 I.P.C.	Life imprisonment and to pay of Rs.3,000/-; in default, to undergo rigorous imprisonment for six months.
A.2 to A.5	341 I.P.C.	Rigorous imprisonment for six months each.
A.2 to A.5	302 I.P.C.	Life imprisonment each and to pay of Rs.3,000/- each; in default, to undergo rigorous imprisonment for six months each.
A.4	324 I.P.C.	Rigorous Imprisonment for one year.

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 :

2.1. The deceased in this case was one Mr.Absar Basha. He was running a furniture shop in Vellore. P.W.2 was employed under him, as a carpenter. There was a longstanding enmity between the accused and the deceased. It is alleged that on account of the said enmity the first accused decided to kill the deceased.

The second accused is a friend of the first accused. According to the prosecution, the first accused requested the second accused to help him to complete his target. The second accused agreed for the same. Then, he engaged the accused 3 to 5, who were hirelings. The accused 2 to 5 agreed to kill the deceased. A sum of Rs.1,50,000/- was agreed to be paid by the first accused to the accused 2 to 5 for the said purpose, as consideration. A sum of Rs.40,000/- was paid as advance.

2.2. It is further alleged that on 02.11.2011, the deceased was at his house. P.W.2 was in the furniture shop of the deceased. Around 08.00 to 09.00 a.m., the deceased came to the furniture shop on his Hero Honda motorcycle bearing registration No.TN 23 AB 9481. He wanted P.W.2 to come with him to purchase wood. The second accused had come to the shop and he told the deceased that he would take him to the place, where wood was available for sale. Thus, on the motorcycle, the deceased, P.W.2 and the second accused travelled. When they were nearing Poonthottam Odai, the accused 3 to 5 were already standing there. They intercepted the motorcycle. The third accused questioned the deceased as to where he was proceeding. The deceased told that he was proceeding to purchase wood. Then, the third accused abused and attacked the deceased with a broken bottle on his head. He stabbed the deceased with a knife on his chest. The second accused also took out a knife and stabbed the deceased on his head. P.W.2 tried to rescue the deceased. The fifth accused cut P.W.2 with a knife on his left hand. Then, the accused 2 to 5 fled away from the scene of occurrence, abandoning the deceased and P.W.2. P.W.2 cried for help. He went to a nearby place and brought the people to the place of occurrence. He found the deceased dead. Then, P.W.1, the brother of the deceased, on hearing the occurrence, rushed to the place of occurrence and after ascertaining the facts, he went to Vellore South Police Station and lodged a complaint at 01.30 p.m. In the complaint, he stated that the assailants were known persons. P.W.15, the then Inspector of Police, on receipt of the said complaint, registered a case in Crime No.1239 of 2011, for the offences under Sections 341, 324 and 302 IPC. Ex.P-23 is the F.I.R. He forwarded both the documents to the learned Judicial Magistrate and he received the same at 08.00 p.m. on 02.11.2011. P.W.15 took up the investigation, proceeded to the place of occurrence and prepared observation mahazar and rough sketch in the presence of P.W.4 and another witness. He

recovered blood stained earth and sample earth from the place of occurrence and also the motorcycle. Then, he conducted inquest on the body of the deceased between 03.30 p.m. and 06.00 p.m., and forwarded the body for post-mortem. P.W.13, Dr.K.Selvaraj, conducted autopsy on the body of the deceased on 03.11.2011 at 10.55 a.m. He found the following injuries :

"1.Abrasions back of left elbow

2. Stab injury left side of chest 4 cm above the nipple, close to sternum 5 cm x 2 cm x 8 cm depth.

3. Another stab injury upper part of left side of chest 8 cm below the left collarbone, 5 cm x 2 cm x 4 cm depth.

4. Stab injury 5 cm x 2 cm x 2 cm depth front of left elbow.

5. Stab injury inner aspect of right arm 5 cm x 2 cm x 2 cm depth.

6. Stab injury upper part of left side of abdomen 5 x 2 cm x 4 cm depth.

7. Three stab injuries on the back of chest (left side) each measuring 5x2 cm x 3 cm depth.

8. Stab injury 5x2 cm x 4 cm depth on the back (left side) above the hip.

9. Stab injury back of chest, right side, 5x2 cm x 3 cm depth.

10. Stab injury right side of neck 3 cm below the right mastoid 5x2 cm x 4 cm. The greater vessels of the neck on the right side severed.

11. Stab injury back of shoulder right side 5x2 cm x 1 cm depth.

12. Stab injury base of right index finger (Palmar aspect) 5x2 cm x 1 cm depth."

Ex.P-20 is the Post-mortem Certificate and Ex.P-21 is the Final Opinion, regarding the cause of death. The doctor opined that the injuries found on the body of the deceased were caused by stabbing with knife. He further opined that the death of the deceased was due to shock and hemorrhage due to the injuries. P.W.15

examined P.Ws.1 to 4 and recorded their statements.

2.3. During the course of investigation, on 04.11.2011, at 01.00 p.m., P.W.15 arrested the second accused in the presence of P.W.9 and another witness. On such arrest, the second accused disclosed the place where he had hidden the knife and the blood stained full shirt. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced the same. P.W.15 recovered the same under a mahazar. Then, the second accused identified the accused 3 and 4 and P.W.15 arrested them. On such arrest, the third accused gave a voluntary confession, in the presence of the same witnesses, in which he disclosed the place where he had hidden two knives and a full hand white coloured shirt and another shirt. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced the same. On the same day, P.W.15 arrested the first accused at 05.45 p.m., in the presence of the same witnesses. On such arrest, the first accused produced the cell phone, which was recovered under a mahazar. On 06.11.2011, P.W.15 arrested the fifth accused. On returning to the police station, P.W.15 forwarded all the accused to the Court for judicial remand. He made a request to the learned jurisdictional Magistrate to hold a test identification parade for the accused 2 to 5. The learned Judicial Magistrate (P.W.7) conducted test identification parade on 15.11.2011 in the prison. P.W.2, at the first instance, identified the second accused alone. At the second instance, he identified A-2,A-3 and A-4. At the third instance, he identified all the co-accused correctly. P.W.15 examined the doctor and collected the medical records. On his request, the material objects were sent for chemical examination. In the report, it is found that there was human blood on all the material objects, including the material objects recovered from the accused. On completing investigation, he laid chargesheet against the accused.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of its judgment and the accused denied the same.

4. In order to prove the case, on the side of prosecution, as many as 15 witnesses were examined, 25 documents and 20 material objects were marked.

5. Out of the said witnesses, P.W.1, the brother of the deceased, has stated that on 02.11.2011, at around 11.30 a.m., he heard about the occurrence, went to the place of occurrence, saw the deceased and verified the facts. He has also spoken about the complaint made to the police. P.W.2 is the sole eye witness to the occurrence. He has vividly spoken about the entire occurrence, including the overt acts attributed against the accused 2 to 5. He has not stated anything about the first accused. He has also spoken about the identification made by him on the accused 2 to 5, during the test identification parade. P.W.3 has stated that he heard about the occurrence, went to the place of occurrence and found the deceased lying dead. At that time, according to him, P.W.2 narrated the entire occurrence to him. P.W.4 has spoken about the preparation of observation mahazar and rough sketch at the place of occurrence. P.W.5 has turned hostile and he has not supported the prosecution case in any manner. P.W.6 has stated about the arrest of the first accused and the disclosure statement made by him, including the consequential recovery of material objects. P.W.7 is the learned Judicial Magistrate, who conducted test identification parade. She has stated elaborately about the same. P.W.8 has spoken about the chemical analysis conducted on the material objects. P.W.9 has spoken about the arrest of the accused and consequential recovery of material objects. P.W.10 is the head of sniffer dogs squad. According to him, the sniffer dog, which was brought to the place of occurrence, did not yield any result. P.W.11 has spoken about the photographs taken at the place of occurrence. P.W.12 has spoken about the fact that he handed over the dead body to the doctor for post-mortem. P.W.13 has spoken about the post-mortem conducted by him and his final opinion regarding the cause of death. P.W.14, Dr. Joseph Stalin, has stated that on 02.11.2011, at 02.30 p.m., P.W.2 came to him, for treatment. At that time, he told that he was attacked by four known persons with knives. He found a cut injury measuring 5x0.5 cm on the right forearm. Ex.P-22 is the Accident Register. P.W.15 has spoken about the investigation done and the final report filed.

6. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness on their side. They marked a certified copy of the deposition of P.W.6 in C.C.No.161 of 2012 on the file of learned Judicial Magistrate No.I, Vellore, as Ex.D-1. Their

defence was one of total denial.

7. Having considered all the above, the trial Court convicted all the accused as detailed in the first paragraph of this judgment. That is how, they are before this Court with this appeal.

8. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the materials carefully.

9. Learned counsel appearing for the appellants would submit that absolutely there is no evidence to prove the conspiracy against any of the accused.

10. According to the charge, as requested by the first accused, the second accused, with accused 3 to 5 as hirelings, conspired to do away with the deceased for a consideration of Rs.1,50,000/-. The charge further reads that a sum of Rs.40,000/- was already paid by the first accused to the other accused. But, there is no evidence at all available on record to prove this charge. We are conscious of the fact that conspiracy is generally hatched in secrecy. Therefore, direct evidence to prove the conspiracy will not be forthcoming in all cases invariably. In a case where conspiracy is hatched in secrecy, the same could be proved only by means of circumstantial evidence. In the instant case, even to infer such kind of conspiracy, absolutely, there is no evidence. In fact, there is no evidence against A-1 at all from any witness, except the evidence of P.W.1, who has stated about the enmity between the first accused and the deceased. Thus, we find that there is no evidence at all to prove the conspiracy and, therefore, all the accused are entitled for acquittal from the charge under Section 120-B IPC.

11. Turning to the actual occurrence, the second accused accompanied the deceased and P.W.2 on the motorcycle. The second accused, as a matter of fact, under the false pretext of showing wood for the deceased to purchase it, had taken them on the motorcycle. As planned, the accused 3 to 5 were standing near the Odai, already armed with weapons. The fact that the second accused caught hold the deceased, enabling the other accused to attack the deceased, would clearly go prove that there was a premeditation among the accused 2 to 5. P.W.2 has clearly spoken about the overt acts of each accused, namely, accused 2 to 5.

12. The learned counsel for the appellants would submit that the evidence of P.W.2, the sole eye witness to the occurrence, cannot be believed. According to the learned counsel, in the test identification parade held at the first instance, P.W.2 identified only one accused. In the second instance, he identified A-2, A-3 and A-4. At the third instance, he identified all the four accused. Referring to this, learned counsel for the appellants would submit that P.W.2 was not able to identify the assailants properly on all the three occasions in the test identification parade and, therefore, the identification made by him for the first time in Court cannot be believed. Though attractive, we find no force in the argument at all. The second accused had gone along with the deceased and P.W.2 on the motorcycle. Therefore, there would have been no difficulty for P.W.2 to identify the second accused. In the absence of any test identification parade, the identification made by P.W.2 in Court could be believed. The identification made by P.W.2 in the test identification parade of the second accused is only an additional strength to the prosecution case, as the same is a corroborative piece of evidence. Of course, P.W.2 had seen the accused 3 to 5 for the first time at the place of occurrence. In the test identification parade, because of some tension, he would not have been in a position to identify the accused 3 to 5 on all the three occasions. Anyhow, he was able to identify them, at last. Therefore, on the ground that he was not able to identify some of the accused at the first and second instances, we cannot hold that the identification of the accused 2 to 5 made by P.W.2 in Court cannot be given any weightage.

13. P.W.2 is an injured eye witness, who sustained injury in the very same occurrence. He had enough time to notice the physical features of the assailants. Thus, he was able to identify these accused in the test identification parade as well as in Court. Therefore, in our considered view, from the evidence of P.W.2, prosecution has clearly established the participation of accused 2 to 5 in the occurrence.

14. The learned counsel for the appellants would submit that the evidence of P.W.2 alone cannot be sufficient to sustain the conviction. In this regard, we have to state that in a criminal trial, it is not the quantity of evidence, but the quality that matters. It is not the law that the evidence of a solitary witness needs

corroboration under all circumstances invariably. It all depends upon the quality of the evidence. In a given case, if the Court is able to find that the evidence of a solitary witness is cogent and convincing, there can be no legal impediment to rely upon the said solitary evidence. Therefore, even in the absence of any corroborative evidence, we are of the view that the conviction of the accused 2 to 5 for the offence under Section 302 IPC could be confirmed.

15. The recovery of the material objects at the instance of the accused in pursuance of their disclosure statement also lends further support to the case of the prosecution. The medical evidence duly corroborates the eye witness account. From these evidences, we hold that the prosecution has proved beyond all reasonable doubts that the accused 2 to 5 had caused the death of the deceased by stabbing him with knives repeatedly. The medical evidence has proved that the death was due to the cumulative effect of all the injuries. The intention of the accused 2 to 5 was only to cause the death of the deceased. They ensured that the deceased was dead and then only they left the place. Therefore, we have no hesitation to hold that the act of the accused 2 to 5 in causing the death of the deceased would squarely fall within the first limb of Section 300 IPC and, therefore, they are liable to be punished under Section 302 IPC.

16. Similarly, turning to the conviction of the fourth accused for the offence under Section 324 IPC, there is evidence that the fourth accused cut P.W.2 with a knife and caused simple injury. Therefore, the trial Court was right in convicting the fourth accused for the offence under Section 324 IPC. At the time of occurrence, the accused 3 to 5 restrained the deceased from proceeding further on his motorcycle and then the second accused held the deceased and all the accused attacked him. Thus, they are liable for punishment under Section 341 IPC also.

17. Turning to the conviction of the fourth accused for the offence under Section 324 IPC, there is evidence that the fourth accused cut P.W.2 with a knife and caused simple hurt. Therefore, the trial Court was right in convicting him for the offence under Section 324 IPC. Accordingly, the conviction and sentence of the fourth accused for the offence under Section 324 IPC are confirmed.

18. Now, turning to the quantum of punishment, the trial Court has imposed only a proportionate punishment and, therefore, the quantum of punishment also does not require any interference by this Court.

19. As we have already concluded, all the accused are entitled for acquittal from the charge of 120-B IPC and the first accused is entitled for acquittal of all the charges, as, absolutely, there is no evidence against him.

20. In the result, this Criminal Appeal is partly allowed, with the following directions :

(1) The conviction and sentence imposed on the first appellant/first accused are set aside and he is acquitted of all the charges. Bail Bonds executed by him shall stand cancelled and the fine amount, if any paid by him, shall be refunded.

(2) The conviction and sentence imposed on the accused 2 to 5 for the offences under Sections 302 and 341 IPC are confirmed. (3) The conviction and sentence imposed on the fourth accused for the offence under Section 324 IPC are confirmed.

(4) The conviction and sentence of the accused 2 to 5 for the offence under Section 120-B IPC are hereby set aside.

(5) The trial Court is directed to take steps to secure custody of the appellants 2 to 5 to undergo the remaining period of sentence and the sentence of imprisonment already undergone by them shall be set off under Section 428 Cr.P.C.

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