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Court : Chennai

Decided On : Jun-23-2016

Judge : S. Nagamuthu &Amp; V. Bharathidasan

Appeal No. : CRL. Appeal Nos. 296 of 2013 & 451 of 2016

Appellant : Suresh

Respondent : State, by Inspector of Police, O.T.Police Station, Cuddalore, Cuddalore District and Others

Judgement :

(Prayer: Appeals against the judgment, dated 06.04.2013, made in S.C.No.124 of 2012 on the file of I Additional Sessions Court, Cuddalore.)

1. The appellants in Criminal Appeal No.296 of 2013 are the accused 2 and 3 in S.C.No.124 of 2012 on the file of I Additional Sessions Court, Cuddalore. By judgment, dated 06.04.2013, the trial Court convicted these two appellants/accused 2 and 3 for the offence under Section 302 IPC and sentenced them to undergo imprisonment for life and pay fine of Rs.10,000/- each; in default, to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, they have come up with Criminal Appeal No.296 of 2013.

2. In the above case, including the appellants in Criminal Appeal No.296 of 2013, there were totally six accused. The trial Court framed as many as six charges against all the six accused, as detailed below :

Sl.No	Accused	Section of law
1	A.1	294 (B), 148, 307 and 302 r/w 149 IPC
2	A.2	294 (B), 148, 302 and 307 r/w 149 IPC
3	A.3	294 (B), 148, 302 and 307 r/w 149 IPC
4	A.4	294 (B), 148, 302 and 307 r/w 149 IPC
5	A.5	294 (B), 148, 307 and 302 r/w 149 IPC
6	A.6	294 (B), 148, 307 and 302 r/w 149 IPC

3. The trial Court acquitted accused 1,4,5 and 6 of all the charges and also acquitted accused 2 and 3 of all the charges except the charge under Section 302 IPC. Challenging the said acquittal, the wife of the deceased filed Criminal Revision Case No.829 of 2013 and when the said Criminal Revision Case came up before this Bench for hearing, we noticed that the said revision was not maintainable, in view of the proviso added to Section 372 Cr.P.C., by means of an amendment, which came into force with effect from 31.12.2009. Therefore, this Bench directed the Registry to convert the said Revision into a Criminal Appeal. The leave to appeal petition filed by the revision petitioner was also allowed. That is how, the Criminal Revision Case No.829 of 2013 has been converted into a Criminal Appeal and the same has been numbered as Criminal Appeal No.451 of 2016. Thus, the Criminal Appeal No.296 of 2013 filed by the accused 2 and 3 against conviction and the Criminal Appeal No.451 of 2016 filed by the wife of the deceased against acquittal are before us for disposal.

4. The case of the prosecution, in brief, is as follows :

4.1. The deceased in this case was one Mr.Ayyappan. P.W.1 is his wife. They were residing at Sedapalayam village. In the local body election, held a few months before the occurrence, the deceased contested for the post of Ward Member. The first accused contested against him. The accused 2 to 6 supported the first accused in the said election. Ultimately, the deceased won the election, defeating the first accused. On account of the said win, the accused 1 to 6 had developed enmity against the deceased. This is stated to be the motive for the occurrence.

4.2. A few months before the said election, the brother-in-law of the deceased, by name, Senthilkumar (P.W.3), had paid money to the third accused for supplying labourers, for cutting sugarcane. The third accused received the amount, but he did not send the workers. P.W.3 was demanding the return of the said amount from the third accused. On 12.11.2011, around 12.00 Noon, the third accused informed P.W.3 that money was ready with him and he wanted P.W.3 to come and collect it. Accordingly, P.W.3 went to the house of the third accused, but, till 03.00 p.m., the third accused did not pay the money, as promised. This resulted in a quarrel. The other accused gathered there. All the six accused were armed with iron pipes. On seeing the commotion, P.W.1, her father-in-law, and the deceased went to the house of A-3. By that time, all had come in front of the house of A-4. On reaching the said place, the deceased questioned the third accused as to why he was refusing to pay the amount and as to why all were armed with weapons and surrounding P.W.3. Immediately, the first accused shouted at the deceased as to how dare the deceased was to come to them as a mediator. The first accused directed other accused to attack the deceased and kill him. The second accused, with iron pipe, attacked the deceased on his head. P.W.3 questioned them. He told that when the matter was under discussion, why the accused got infuriated and attacked the deceased. Suddenly, the third accused, with iron pipe, attacked P.W.3 on his head. Again, the deceased questioned the accused as to whether where was any justification for them to behave in such a rude manner. Immediately, the third accused attacked the deceased with iron pipe on his head. With that blow, the deceased fell down and became unconscious. The fourth accused attacked the deceased with iron pipe on occipital region of the head. The first accused attacked P.W.3 again with iron pipe. The fifth accused also attacked

the deceased with iron pipe. The sixth accused attacked P.W.3 with iron pipe. The injured as well as others cried for help. All the accused ran away from the scene of occurrence with iron pipes. Immediately, the deceased was taken on motorcycle to the Government Hospital, Cuddalore. P.W.9, Dr.Sudhakar, examined P.W.3 at 08.25 p.m., on 12.11.2011. P.W.3 told him that he was attacked by ten known persons at Sedapalayam village, with knife, iron pipe and wooden logs. P.W.9 found a lacerated injury, measuring 2x3x1 cm., on the head of P.W.3. Ex.P-8 is the Accident Register. The said injury was simple in nature. P.W.9 admitted him as inpatient. On the same day, at 06.00 p.m., P.W.9 examined the deceased. He was brought by one Rajkumar. Since the deceased was unconscious, Mr.Rajkumar told him that at 05.00 p.m., on 12.11.2011, he was attacked by five known persons. Ex.P-9 is the Accident Register. In the same occurrence, the fourth accused also sustained injuries. He was taken to Government Hospital, Cuddalore. P.W.9 examined him at 05.55 p.m., on 12.11.2011. He was brought by one Suresh. At that time, he told the doctor that he was attacked by three known persons with iron pipes. He found the following injuries on the fourth accused :

1. A lacerated injury, measuring 3x2x1 c.m., on the head.

2. A contusion, measuring 2x2 c.m., on the elbow.

Ex.P-10 is the Wound Certificate, pertaining to A-4. P.W.9 sent the intimation to the police. P.W.10, the then S.I.of Police, Cuddalore O.T.Police Station, rushed to the hospital, recorded the statement of P.W.1 Ramya and, on return to the Police Station, at 09.30 p.m., he registered a case in Crime No.669 of 2011 under Sections 147, 148, 294-B, 324 and 307 IPC. Ex.P-13 is the F.I.R. Since P.W.3 had already been taken to Jipmer Hospital, P.W.10 could not record any statement from him. Exs.P-1 to P-4. were received by the learned Judicial Magistrate at 09.30 a.m. on 12.11.2011. The case was taken up for investigation by P.W.11. On 12.11.2011, the deceased was taken to Jipmer Hospital and he died at 11.15 p.m. Therefore, P.W.11 altered the case into one under Section 302 IPC and forwarded the alteration report to the Court. On the same day, P.W.11 went to the place of occurrence, prepared observation mahazar and rough sketch in the presence of witnesses. Then, he conducted inquest on the body of the deceased and

forwarded the dead body for post-mortem. P.W.2, Dr.Ambrose, conducted autopsy on the body of the deceased on 13.11.2011. He found the following injuries : "(a) A sutured laceration was present antero-posteriorly placed in the left parietal region of the scalp. On cutting open the sutured, it was a lacerated wound measuring 4.7 x 2.7 cms bone deep, with surrounding contusion mainly in the posterior aspect, for a diameter of 8.7 cms.

(b) An abrasion measuring 1.4 x 1.1 cms in the dorsum of the right great toe.

(c) An abrasion measuring 1.5 x 0.9 cms was present in the dorsum of the left great toe."

Ex.P-4 is the Post-mortem Certificate. The doctor opined that the injuries on the deceased would have been caused by an iron pipe. He further opined that the death of the deceased was due to shock and haemorrhage, due to head injuries.

4.3. During the course of investigation, P.W.11 arrested A-1, A-3, A-4 and A-6 in the presence of P.W.7 and another witness. The first accused gave voluntary confession, in which, he disclosed the place, where he had hidden four iron pipes. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced M.O.1 series. On the same day, at 02.00 p.m., P.W.11 arrested the accused 2 and 5 in the presence of the same witnesses. On their confession and the disclosure statement made, two iron pipes were recovered. Then, he forwarded the accused to the Court for judicial remand and handed over the material objects also. He examined a few more witnesses, recorded their statements and collelcted medical records and, finally, investigation was taken over by P.W.12 on 24.02.2012. On completing investigation, he laid chargesheet against the accused. 5. Based on the above materials, the trial Court framed the charges as detailed in first paragraph of its judgment, as stated hereinabove. The accused denied the same.6. In order to prove the case, on the side of prosecution, as many as 12 witnesses were examined and 20 documents were marked, besides six material objects, marked as M.O.1 series.

7. Out of the said witnesses, P.W.1 is the wife of the deceased, who has spoken about the motive as well as the entire occurrence. P.W.2 has spoken about the

post-mortem conducted and his final opinion, regarding the cause of death. P.Ws.3,4,5 and 6 are the eye witnesses to the occurrence and they have spoken about the same. P.W.7 has spoken about the preparation of observation mahazar and rough sketch. P.W.8 has spoken about the arrest of the second accused and consequential recovery of the material objects. P.W.9 has spoken about the treatment given to the deceased, P.W.3 and the fourth accused. P.W.10 has spoken about the registration of the case, on the complaint of P.W.1. P.Ws.11 and 12 have spoken about the investigation done and the final report filed.8. When the above incriminating materials were put to the accused, they denied the same as false. However on their side, they examined three witnesses as D.Ws.1 to 3. D.W.1 was a doctor at Government Hospital, Cuddalore. According to him, on 15.06.2011, the deceased came to him for treatment and told that he was attacked with wooden logs at 02.30 p.m., on the same day. The deceased disappeared from the hospital on 17.06.2016 around 08.00 a.m. D.W.2 is yet another doctor in the Government Hospital at Cuddalore. He has spoken about the treatment given to the daughter-in-law of A-4. According to him, she told him that she was attacked by four known persons at 05.30 p.m., in front of her house with iron pipes. He did not find any external injury. D.W.3 is the daughter-in-law of A-4. She has stated that the accused party attacked her at the time of occurrence.

9. Based on the above materials, the trial Court convicted the accused 2 and 3 alone for murder and acquitted all other accused. That is how, these two appeals are before us, challenging the conviction as well as acquittal, respectively.

10. We have heard the learned counsel for the appellants; learned Additional Public Prosecutor, appearing for the State; and also perused the materials carefully.11. In this case, P.W.3 is the injured eye witness. P.Ws.1,3,4,5 and 6 are eye witnesses to the occurrence and they have not spoken about the individual overt acts on the accused. The fact remains that the village was factious, on account of panchayat board election enmity. All the accused belonged to one faction and the deceased and P.Ws.1 to 6 belonged to the other faction. P.Ws.1 to 6 are also interested witnesses. In such a situation, we should carefully scrutinise the evidence of these eye witnesses. Admittedly, in this case, the occurrence had taken place, just in front of the house of the fourth accused. The fourth accused

sustained injury in the very same occurrence. D.W.3, daughter-in-law of A-4, also sustained injury in the same occurrence. They were taken to hospital and admitted in Government Hospital, for treatment. In the same occurrence, the deceased and P.W.3 also sustained injuries and they were also taken to the hospital and admitted for treatment. Thus, there were two persons on the side of prosecution party and two persons on the side of accused party, who sustained injuries. Though intimation in respect of admission of A-4 and his daughter-in-law was passed on to the police, the police did not choose to record the statement of either A-4 or his daughter-in-law and register a case so as to do fair investigation. Instead, the S.I.of Police had recorded the statement of P.W.1 and registered a case against the accused alone. The investigating officer investigated the said case, registered on the complaint of P.W.1 alone. A statement was obtained from one Palaniammal, the daughter-in-law of A-4, only on 21.11.2011 and then a case was registered in Crime No.690 of 2011 in respect of the injuries sustained by the accused. This would only go to indicate that the respondent police was not impartial and they obviously decided to favour the prosecution party. In the absence of any explanation as to why no statement was recorded from A-4 though he was in hospital from 12.11.2011 and in the absence of any explanation as to why the case was registered only on 21.11.2011, we have to presume that the respondent police determined to favour the prosecution party. This creates initial doubt in the case of the prosecution.12. The fact that A-4 and his daughter-in-law sustained injuries just in front of their house and all the accused had gone to the house of A-4 is an indication that the aggressors are the deceased party. But, none of the eye witnesses, including P.W.3, has explained the injuries sustained by the fourth accused and his daughter-in-law (D.W.3). Thus, the eye witnesses have suppressed an important part of the occurrence, as it is inconvenient to them. In similar circumstances, in Lakshmi Singh and Others v. State of Bihar, (1976) 4 SCC 394, the Hon'ble Supreme Court has held that the natural inference arising out of such suppression of the vital facts is that the eye witnesses have not come forward with true version of the occurrence and they are lying on an important part of the occurrence. Applying the same to the present case, we have to hold that the non-explanation of the injuries sustained by A-4 and his daughter-in-law in the very same occurrence would give enormous doubt in the case of the

prosecution. Apart from that, the medical evidence also does not corroborate the eye witness account. P.W.1 and other eye witnesses have stated that almost all the accused attacked the deceased and some of them attacked P.W.3. But, P.W.3 had only one lacerated injury and the deceased also had suffered only one injury on his head. Thus, the medical evidence is quite contrary to the eye witness account. In view of these anomalies and inconsistencies in the case of the prosecution and in view of the fact that the prosecution has not come forward with clean hands inasmuch as the prosecution has suppressed the injuries sustained by the accused, we have to hold that the accused are entitled for acquittal. Accordingly, we hold that the prosecution has failed to prove the case beyond all reasonable doubts.13. In view of the above discussion, Criminal Appeal No.451 of 2016 is dismissed and Criminal Appeal No.296 of 2013 is allowed. The appellants/accused 2 and 3 are acquitted of all the charges. Bail Bonds, if any executed by them, shall stand cancelled and the fine amount, if any paid, shall be refunded.

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