

Anand and Another Vs. State, rep.by The Inspector of Police, Coimbatore District

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Court : Chennai

Decided On : Jun-01-2016

Judge : S. Nagamuthu & V. Bharathidasan

Appeal No. : Crl.Appeal Nos. 571 of 2013 & 335 of 2015

Appellant : Anand and Another

Respondent : State, rep.by The Inspector of Police, Coimbatore District

Judgement :

(Prayer: Appeals against the judgment, dated 09.04.2013, made in S.C.No.272 of 2011 on the file of I Additional Sessions Judge, Tiruppur.)

V. Bharathidasan, J.

1. Appellants are the accused 1 and 2 in S.C.No.272 of 2011 on the file of I Additional Sessions Court, Tiruppur. Both of them stood charged for an offence punishable under Section 302 of IPC. By judgment, dated 09.04.2013, the trial Court found both the appellants guilty under Section 302 IPC and sentenced them to undergo life imprisonment and also to pay a fine of Rs.2,000/- each and, in default of payment of fine, to undergo simple imprisonment for a further period of six months. Challenging the said conviction and sentence, the present appeals

have been filed.

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

2.1. The deceased in this case was one Murugesan working as a mason in Tiruppur town. Both the deceased and the accused had no permanent residence. The deceased and A-2 used to sleep under a tamarind tree near Thirumuruganpoondi Temple and also utilise the public toilet, situated nearby to the temple. A-1 is a friend of A-2. On 01.05.2010, at about 08.30 p.m., both A-1 and A-2 were shouting between themselves, after consuming liquor near the public toilet, hence the deceased Murugesan scolded the accused, using vulgar language, and also kicked A-1 and beaten him, then, the accused 1 and 2 went away, threatening the deceased, to kill him.

2.2. In the given situation, on the intervening night of 01.05.2010 and 02.05.2010, at 12.30 a.m., while the deceased Murugesan was sleeping under the tree, A-1 dropped a big stone on his head, A-2 also took the same stone again dropped it on the head of the deceased. By way of abundant caution, A-1, once again, took the stone and dropped it on the head of the deceased. In the impact, the deceased Murugesan died on the spot, due to shock and haemorrhage, on account of the head injury.

2.3. P.W.1, who was maintaining the public toilet, situated nearer to the scene of occurrence, is said to have witnessed the occurrence, while he was sitting in front of the toilet. On 02.05.2010, he gave a complaint, Ex.P-1, to the respondent police at about 07.00 a.m. and P.W.9, Sub-Inspector of Police, attached to Anupparpalayam Police Station, registered a case in Crime No.2766 of 2010 under Section 302 of IPC and sent the FIR, Ex.P-9, to Judicial Magistrate No.I, Tiruppur. P.W.11, Inspector of Police, after the receipt of the FIR, took up the investigation, visited the scene of occurrence at about 08.00 a.m., and prepared the Observation Mahazar under Ex.P-2 and Rough Sketch, showing the place of occurrence, under Ex.P-13, in the presence of P.W.4, and recovered the blood stained stone M.O.1, blood stained earth M.O.2, sample earth M.O.3, and blood stained mat M.O.4, under Ex.P-3 mahazar, in the presence of P.W.4 and other witnesses. P.W.11 conducted inquest at the scene of occurrence from 09.30 a.m.

to 12.00 Noon, examined the witnesses, recorded their statements, sent the dead body for post-mortem through P.W.6, Head Constable, attached to the respondent police and received M.O.5 dhoti, M.O.6 full handed shirt and M.O.7 underwear of the deceased from P.W.6 and sent a request for chemical examination. In the meantime, on 03.05.2010, the accused appeared before P.W.5 V.A.O. of Rakiapalayam Village and voluntarily gave confession, admitting the guilt. He recorded the statements of the accused under Ex.P-4 and produced the accused before P.W.11, who arrested them. On such arrest, the accused voluntarily gave confession and thereafter they were remanded to judicial custody. P.W.10, doctor, attached to Government Hospital, Tiruppur, conducted post-mortem on the body of the deceased on 02.05.2010 and found the following injuries :

INJURIES : 1. Lacerated injury over the left eye 8 x 3 x Bone depth. 2. Black contusion 8 x 6 cm over the Rt.Eye. 3. Contusion around the Left Eye Ball 4x5 cms. 4. Blood clothes and stains on the front and lateral sides of the face. Bleeding from both nostrils and Lt.Ear present. On exposing the wound No.1 the underlying Bone got fractured 6 x cms, with underlying blood clot about 150 mg. and Intra cerebral bleed about 100 mg. INTERNAL FINDINGS :HEAD and NECK : Hyoid Bone INTACT. Brain- Lacerated in the Left Frontal Residuary 6x3x1/2 cms. THORAX :- Lungs and Heart congested Ribs No Injury. ABDOMEN :- Stomach contained about 100 mg of partially digested food particles. Alcohol Smell Lungs, Kidney. VISCERA BLOOD SAMPLES PRESERVED."

P.W.10 gave his final opinion Ex.P-11, opining that the deceased would appear to have died of shock and haemorrhage, due to head injury. After completion of investigation, P.W.11 filed a final report before the Judicial Magistrate on 17.06.2010.

2.4. Based on the above materials, the trial Court framed the lone charge under Section 302 of IPC against the accused, who denied the charge.

2.5. In order to prove its case, the prosecution examined P.Ws.1 to 11 and marked Exs.P-1 to P-17 and M.Os.1 to 7.

2.6. Out of eleven witnesses examined by the prosecution, P.W.1 is the sole eye witness, who spoke about the occurrence, stating that he was maintaining toilet and bath room and on the date of occurrence at about 12.30 a.m., while he was sitting in front of the toilet, he saw the accused A-1 carrying a stone in his hand and A-2 also followed him and he stood near the wall at the temple. After some time, A-1 dropped the stone on the deceased and A-2 also took the stone and put it again on the head of the deceased. After the occurrence, both the accused were sitting in the same place and, out of fear, he went to the bath room and sat inside. P.W.2 is the daughter of the deceased, who visited the scene of occurrence, after receipt of information from her brother. P.W.3 is the co-brother of the deceased. He also went to the scene, after the occurrence. P.W.4 is the attesting witness to Ex.P-2, Observation Mahazar. P.W.5 is the Village Administrative Officer, before whom the accused have given extra-judicial confessions. P.W.6 is the Head Constable, who took the body of the deceased for post-mortem. P.W.7 is the Chemical Analyst, who spoke about the conduct of the viscera test. P.W.8, who is a member of Thirumuruganpoondi Town Panchayat, is a hearsay witness. P.W.9 is the Sub-Inspector of Police, who registered the F.I.R. P.W.10 is the doctor, who conducted autopsy on the body of the deceased. P.W.11 is the Inspector of Police in the respondent police station, who conducted investigation and filed chargesheet.

3. When the accused were questioned under Section 313 Cr.P.C. as to the incriminating materials found by the prosecution, they denied the same as false, but, they did not choose to examine any witness nor mark any document.

4. Having considered all the above, the trial Court found the appellants/accused guilty and convicted them accordingly. Challenging the same, the appellants are before this Court with these appeals.

5. Learned counsel for the appellants would contend that the presence of P.W.1 at the scene of occurrence at the odd hour of 12.30 a.m. cannot be believed and, even as per his evidence, apart from P.W.1, more than 25 persons were sleeping near the place of occurrence and that he was sitting at a considerable distance, away from the scene of occurrence. He would further contend that except P.W.1,

none of the said 25 persons was examined by the prosecution. According to the learned counsel, as per the evidence of P.W.1, one Palraj also used to sleep at the place of occurrence, but he was not examined by the prosecution. Therefore, the learned counsel would submit that the prosecution did not come forward with the correct facts and failed to produce the clinching evidence, to substantiate its case. Accordingly, the learned counsel would submit that the case of the prosecution is bristled with infirmities and cannot be sustained.

6. Rebutting the above contentions of the learned counsel for the appellants, the learned Additional Public Prosecutor would submit that the evidence of P.W.1 is reliable and cannot be disbelieved, as he has witnessed the occurrence both at 08.30 p.m., and on the intervening night of 01.05.2010 and 02.05.2010 at 12.30 a.m., and he is not an interested witness. Accordingly, the learned Additional Public Prosecutor would submit that the evidence of P.W.1 cannot be brushed aside and that the conviction of the appellants handed down by the Court below does not require any interference by this Court.

7. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor for the respondent and carefully perused the records.

8. P.W.1 is the sole eye-witness to the occurrence, who is said to have been maintaining the public toilet and bath room near the temple. In his evidence, he has deposed that at the time of occurrence, there were nearly 25 persons sleeping near the scene, but he did not raise any alarm after the occurrence, and the reason stated is that, out of fear, he went inside the bath room. The conduct of P.W.1 is quite unnatural and would create a doubt regarding his presence at the scene of occurrence. Apart from that, even though the occurrence is said to have taken place at 12.30 a.m., P.W.1 did not take any steps to inform the police immediately, but, only at 07.00 a.m. on 02.05.2010, he filed a complaint before the police. There is no explanation for the delay in filing the complaint, which also creates a doubt regarding the presence of P.W.1 at the scene of occurrence. Besides, as per the evidence of P.W.1, there were nearly 25 persons sleeping at the scene of occurrence and one Palraj, a ragpicker, was also present and he also heard the noise and also enquired P.W.1 about the occurrence, but, none of the

persons said to have been present at the place of occurrence, was examined by the prosecution, which also creates a doubt in the prosecution case. In the above circumstances, it is highly unsafe to convict the accused based on the evidence of P.W.1 alone. Except P.W.1, there is no other credible evidence placed by the prosecution to support the case. Therefore, the conviction and sentence imposed by the trial Court based on the evidence of P.W.1 cannot be sustained, in the absence of any other corroborative evidence, to establish the guilt of the accused.

9. In the result, these appeals are allowed. The conviction and sentence imposed on the appellants by the trial Court are set aside and the appellants are acquitted of the charges. The appellants are directed to be set at liberty, unless their detention is required in connection with any other case. Fine amount, if any, paid shall be refunded and the Bail Bonds executed by the appellants shall stand cancelled.

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