

Babu and Another Vs. The State by, The Inspector of Police, Salem District

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Court : Chennai

Decided On : Apr-25-2016

Judge : M. Jaichandren & S. Nagamuthu

Appeal No. : CrI.A.No. 797 of 2013

Appellant : Babu and Another

Respondent : The State by, The Inspector of Police, Salem District

Judgement :

(Prayer: Appeal filed under section 374(2) Cr.P.C., challenging the judgment dated 22.11.2013 passed in SC.No.119/2011 on the file of the learned III Additional District and Sessions Judge, Salem.)

S. Nagamuthu, J.

1. The appellants are A1 and A2 in SC.No.119/2011 on the file of the learned III Additional District and Sessions Judge, Salem District. A1 stood charged for the offence u/s.302 IPC and A2 stood charged for the offence u/s.302 read with 34 IPC. By judgment dated 22.11.2013, the Trial Court convicted them for the aforesaid offences and sentenced each of the accused to undergo imprisonment for life and to pay a fine of Rs.1,500/-, in default, to undergo rigorous imprisonment for 6 months. 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.Saravanan. P.W.1 and P.W.2 are the brother and wife of the deceased respectively. The deceased was residing at Thadhakapatti village in Salem District. Both the accused also hail from the same village. It came to the knowledge of A1 that the deceased had illicit relationship with the wife of A1. On account of the same, there arose frequent quarrels. This is stated to be the motive.

[B] On 10.10.2010 at about 17.30 hrs., the deceased was proceeding towards the Ambal Lake at Thadhakapatti. P.Ws.1 and 6 and few others, also had gone there. It was their usual practice to go there to answer the nature's call. When the deceased was nearing the lake, it is alleged that these two accused suddenly emerged there. A1 was having a knife in his hand. On reaching the deceased, A2 said to have caught hold of the deceased and A1 stabbed him on his neck. P.Ws.1 and 6 and others rushed towards them. On seeing them, the accused fled away from the scene of occurrence. P.Ws.1 and 6 and others found the deceased dead. Thereafter, P.W.1 immediately went to Annadanapatty Police Station and made a complaint under Ex.P.1.

[C] P.W.13, the then Sub-Inspector of Police attached to the said Police Station, on receipt of the complaint from P.W.1 under Ex.P.1 on 10.10.2010 at 18.30 hrs., registered a case in Cr.No.1192/2010 for the offences u/s.341 and 302 IPC. Ex.P.13 is the FIR. He did not even mention the participation of A2 in the occurrence. Therefore, based on the complaint, the case was registered only against A1. He forwarded both the documents to the Court concerned, which were received by the learned Magistrate at 23.30 hrs on the same day. In the complaint, P.W.1 did not make any allegation against A2.

[D] P.W.15, the then Inspector of Police, took up the case for investigation and proceeded to the scene of occurrence on 10.10.2010 and prepared the Observation Mahazar [Ex.P.2] and also prepared a Rough Sketch [Ex.P.15] in the presence of P.W.7 and another witness. He held inquest on the dead body of the deceased in the presence of Panchayatdhars and other witnesses. Ex.P.16 is the Inquest Report. P.W.15 also recovered the blood stained earth [M.O.7] and

sample earth [M.O.8] from the scene of crime. He examined P.Ws.1, 2, 3 and 5 and few more witnesses and recorded their statements. He sent the dead body of the deceased for postmortem.

[E] P.W.12, Dr.G.Panneerselvam, the Assistant Professor in the Department of Forensic Medicine, attached to the Government Mohan Kumaramangalam Medical College and Hospital, Salem, conducted autopsy on the body of the deceased on 11.10.2010 at 10.05 hrs. He found the following injuries:-

Injuries:- Abrasions Dark Reddish Brown in Colour:-

Abrasion over left front of chest 1cm above nipple M-2.5x0.5 cm.

7x2cms over left side flanks.

6.5x1.5cms over front of middle 3rd of right leg.

3.5x0.25cms over epigastric region.

1.5x1cm over right hypochondrial region.

2x1cm over back of right elbow.

Contusion over left side clavicular regions with dark brown abrasion M-2.5x0.5cms

An incised like laceration over web between right thumb and index finger M-5x1xbone deep.

Lacerated injury over inner aspect of index, Middle ring and little finger M-1x1xbone deep. Middle finger M-1x1xbone deep with underlying bone cut fracture, ring finger 1.5x1xbone deep and severance of ligaments over little finger 1x0.5x0.5 cms.

Lacerated injury over distal phalanges of left index finger M-1.5x0.5xbone deep.

An oblique incised wound over left upper part of neck M-4.5x0.5x0.25cms and it is situated 153 cms above left foot and 5cms below left mastoid process. Both edges are acute angled, slightly everted with clean cut margins.

An oblique incised wound over left side of neck towards midline M-4.5x2xmuscle deep and it is situated 2 cms midline to previous injury and 162 cms above left foot. Both edges are acute angled, slightly everted with clean cut margins.

An oblique incised lacerated injury over front of neck extend to right side upper part of neck M-8x3xbone deep and cut throat at the level above the thyroid cartilage with severence of right side carotid artery and right sterno mastoid muscle and ribbon muscles and it is situated 7cms above supra sternal notch and 6cms below mid chin and 0.5 cms medial to the previous injury. Both edges are acute angled, slightly everted with clean cut margins.

Other Findings:-

O/D Head:- Scalp-normal. Cranial Vault-intact, dura membrane-intact, Brain C/s. Pale. Base of the skull-intact.

O/D Neck:- contusion over both sides of pre and para vertebral muscles of cervical C2 to C4 vertebrae M-7x3x0.25cms contused haematoma seen over posterior aspect of trachea M-4x0.75x0.75cms. Hyoid Bone-fracture of right side greater horn with surrounding soft tissue contused.

O/D Thorax:- No ribs fracture. Lungs-C/s.Pale. Heart-Normal in size. Chambers empty. Valves and coronaries-normal.

O/D Abdomen- Stomach-contains 35ml of Brownish black coloured fluid with no specific smell. Mucosa C/s pale. Liver, Spleen and Kidneys-C/s. Pale. Bladder-contains 20ml of urine. Genitalia no injuries made out. Pelvis and spinal column-intact.

Ex.P.9 is the Postmortem Certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage due to cut injury in the throat. He further opined that the death occurred 18 to 24 hours prior to autopsy.

[F] P.W.15, during the course of investigation, arrested A1 on 11.10.2010 at 17.00 hrs near Seelanaickenpatti-Athur Bypass Road, in the presence of P.W.7 and another witness. P.W.15 also made a formal arrest of A1 in connection with the

Cr.No.1193/2010 on the file of the Annadanapatti Police Station for the offences u/s.341, 394 read with 397, 427 and 506[ii] IPC. On such arrest, A1 gave a voluntary confession [the admissible part of which is marked as Ex.P.4], in which, he disclosed the place where he had hidden the knife and the blood stained shirt. In pursuance of the same, he took the police and the witnesses to his house and from the place of hide out, he produced M.O.1 [knife] and blood stained shirt [M.O.2]. P.W.15 recovered the same under a Mahazar [Ex.P.17] in the presence of the same witnesses. Thereafter, he returned to the Police Station and forwarded the accused for judicial remand and also handed over the material objects to the Court. On 12.10.2010 at 17.00 hrs., he effected the arrest of A2 behind the K.N.Theatre, in the presence of P.W.9 and another witness. On such arrest, A2 gave a voluntary confession [the admissible part of which is marked as Ex.P.19], in which, he disclosed the place where he had hidden the blood stained shirt. In pursuance of the same, he took the police and the witnesses to his house and from the place of hide out, he produced the blood stained shirt [M.O.6]. P.W.15 recovered the same under a Mahazar [Ex.P.20] in the presence of the same witnesses. A2 was also sent to the Court for judicial remand and the material objects were also sent under Form-95. On his request, the material objects were sent for chemical examination, which revealed that all the material objects including the knife, are tainted with human blood of AB Group. He also examined the doctor who conducted the postmortem and also few other witnesses and recorded their statements. On completion of the investigation, he laid the charge-sheet against the accused.

[G] Based on the above materials, the Trial Court framed charges against the accused as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case on the side of the prosecution, as many as 15 witnesses were examined, 24 documents and 8 material objects were also marked.

[H] Out of the said witnesses, P.Ws.1 and 6 have spoken about the entire occurrence as the eyewitnesses. P.W.2, the wife of the deceased has stated that she heard about the occurrence, rushed to the scene of crime and found the dead body of the deceased. P.Ws.3 to 5 who were examined as the eyewitnesses, have

turned hostile and they have not supported the case of the prosecution in any manner. P.W.7 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of crime. P.W.8 has spoken about the arrest of A1 on 15.03.2012 at 06.15 a.m. and the consequential recovery of M.Os.1 and 2 on the disclosure statement made by him. P.W.9 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.10 is the police constable, who carried the FIR and the complaint to the Court and handed over the same to the learned Magistrate concerned. P.W.11 has spoken about the fact that he took the dead body from the place of occurrence and handed over the same to the doctor for postmortem. P.W.12 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.13 has spoken about the registration of the case on the complaint of P.W.1. P.W.14, the Head Clerk of the Court has spoken about the forwarding of the material objects for chemical examination on the orders of the learned Magistrate. He has further stated that according to the report received from the Forensic Lab, human blood was found on all the material objects including the knife recovered from A1. P.W.15 has spoken about the investigation done by him and the filing of the final report.

3. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not chose to examine any witness nor marked any documents, on their side.

4. Having considered all the above, the Trial Court convicted and sentenced the appellants/A1 and A2 as detailed in the first paragraph of this judgment. That is how the appellants are before this Court with this appeal.

5. We have heard Mr.N.Sudharsan, learned counsel appearing for A1 and Mr.B.Vasudevan, learned counsel appearing for A2 and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6. As we have already pointed out, the prosecution relies mainly on the eyewitness account of P.Ws.1 and 6. P.Ws.1 and 6 have stated that A2 caught hold the

deceased while A1 stabbed him to death. Learned counsel would submit that in the First Information Report, the name of A2 does not find a place at all. According to the earliest information as per Ex.P.1, A2 was nowhere in the place of occurrence. He did not participate in the occurrence at all. According to the complaint [Ex.P.1] it was only A1 who emerged at the place of occurrence ; caught hold the deceased and stabbed him. Ex.P.1 has been used to contradict the evidence of P.W.1. P.W.1 has got no explanation to offer. It is only an improvement made by P.Ws.1 and 6 to implicate A2 as one of the assailants. In the absence of any explanation as to why the presence and participation of A2 has not been mentioned in Ex.P.1 and in the absence of any explanation for the said contradiction, we have to hold that there is no truth in the case of the prosecution that A2 had participated in the occurrence. Therefore, we are inclined to acquit A2.

7. So far as A1 is concerned, it is the contention of the learned counsel that though P.Ws.1 and 6 have stated about the presence and participation of both the accused, since their evidences are rejected in part as against A2, it becomes necessary to reject their entire evidence. But, we are not persuaded by the said argument. The principle *falsus in uno, falsus in omnibus*, has not been recognised by Indian Courts. It is the law that if the Court is able to separate the grain from the chaff, then, there should be no legal impediment for the Court to act upon the grain. Here, in the instant case, though P.Ws.1 and 6 have stated that A2 was also present at the place of occurrence, though we reject the evidences of P.Ws.1 and 6 as against A2, on that score, we cannot reject the entire case of the prosecution, applying the above said principle. In the instant case, at the earliest point of time, in Ex.P.1, the presence and participation of A1 alone has been mentioned. In other words, we are able to separate the truth from the falsehood. We have no doubt in our mind that it was A1 who caused the death of the deceased, which is evident from the evidences of P.Ws.1 and 6.

8. The learned counsel would submit that the presence of P.Ws.1 and 6 is highly doubtful. It is true that they claim that they were present at the place of occurrence by chance. But, it is not the law that the evidence of a chance witness should be rejected on that score. Prudence requires that the evidence of a chance witness who also happens to be an interested witness, requires only a close scrutiny. It is

also necessary for the chance witness to explain to the satisfaction of the Court as to what was the occasion which made him to be present at the place of occurrence. Here in this case, P.Ws.1 and 6 have stated that it was their usual practice to go to the Lake to answer the nature's call. Only as per the usual practice, the deceased had gone to the lake followed by P.Ws.1 and 6. Thus, P.Ws.1 and 6 have clearly explained about their presence at the place of occurrence. Therefore, we have no reason to reject their evidences. When once their presence is believed, we have to then examine whether they can be believed. In other words, we have to test the veracity of P.Ws.1 and 6. As we have already pointed out, though P.Ws.1 and 6 are not fully believable, their evidences as against A1 is certainly believable. From these two evidences, in our considered view, the prosecution has clearly established that it was A1 who caused the fatal blow on the deceased and there was nobody else who assisted him.

9. Now, having come to the conclusion that it was A1 who caused the death of the deceased, we have to examine as to what was the offence, A1 had committed by his conduct. The motive for the occurrence has been spoken by P.W.2, the wife of the deceased, about which, there is no much dispute. Thus, motivated by the enmity, according to the learned Additional Public Prosecutor, A1 had stabbed the deceased and thus, according to him, A1 is liable to be punished u/s.302 IPC. But, we find it difficult to agree with this argument. The ill feeling between the deceased and A1 was that the deceased had developed illicit relationship with the wife of A1. There were frequent quarrels. Going by the natural human conduct, we are able to presume that on the day of occurrence, there would have been some wordy quarrel between the deceased and A1, which would not have been noticed by P.Ws.1 and 6 because they came some time late to the place of occurrence, that too, at the time when A1 stabbed the deceased. They would not have heard as to what was the quarrel between A1 and the deceased. It is the law that the Courts cannot act upon mere surmise or assumption. But, the Court is empowered to presume certain facts, on proof of certain fundamental facts, more particularly, the natural human conduct as enshrined u/s.114 of the Evidence Act. In the instant case, going by the ill-feeling between A1 and the deceased on account of the illicit relationship between the wife of A1 and the deceased and going by the surrounding circumstances and also going by the natural human conduct, we

presume that there should have been a quarrel between the deceased and A1 and only in that quarrel, A1 had stabbed the deceased once on his neck. We are also able to presume that consequent upon the quarrel, there would have been a fight and in that fight only, A1 had stabbed the deceased. In our considered view, the act of the accused, would, therefore, squarely fall within the fourth exception to section 300 IPC, though his act would fall within the third limb of section 300 IPC. Since it falls under the fourth exception to section 300 IPC, he is liable to be punished u/s.304[Part I] IPC.

10. Now turning to the quantum of punishment, A1 is a middle aged man. The occurrence was not premeditated. He is also a poor man, having a family to take care of. He has got no bad antecedent. After the occurrence also, he has not shown any deviance from law. Having regard to these mitigating and also the aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5000/-, in default, to undergo four weeks rigorous imprisonment, would meet the ends of justice.

11. In the result, the criminal appeal is partly allowed in the following terms:-

[a] The conviction and sentence imposed on A2/2nd appellant by the Trial Court for the offence u/s.302 read with 34 IPC in SC.No.119/2011, vide judgment dated 22.11.2013, are hereby set aside. He is acquitted of the charge levelled against him. Since, it is reported that he is on bail, the bail bonds executed by him, shall stand discharged. Fine amount, if any paid, shall be refunded to him.

[b] The conviction and sentence imposed on A1/1st appellant for the offence u/s.302 IPC are hereby set aside and instead, he is convicted for the offence u/s.304 [Part I] IPC and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.5000/-, in default, to undergo four weeks rigorous imprisonment. Since it is reported that A1 is in jail, he is directed to undergo the sentence now imposed by this Court. The period already undergone by him, shall be given set off u/s.428 Cr.P.C.