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Court : Chennai

Decided On : Apr-05-2016

Judge : M. Jaichandren & S. Nagamuthu

Appeal No. : Criminal Appeal No. 595 of 2012

Appellant : Ramasamy and Another

Respondent : State rep by The Inspector of Police, Tirupur

Judgement :

(Prayer: Appeal is filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned II Additional District and Sessions Judge, Tirupur in S.C.No.141 of 2010 dated 24.08.2012.)

S. Nagamuthu, J.

1. The appellants are the accused 1 and 2 in S.C.No.141 of 2010 on the file of the learned II Additional District and Sessions Judge, Tirupur. Including these appellants there were totally four accused in the case. The first accused stood charged for offences under Sections 449, 302 (2 counts) and 307 I.P.C. and the accused 2 to 4 stood charged for the offences under Sections 449, 302 (2 counts) and 307 r/w Section 34 I.P.C. By judgment dated 24.08.2012, the trial Court acquitted the accused 3 and 4 but convicted the accused 1 and 2 and sentenced the first accused to undergo rigorous imprisonment for ten years and pay a fine of

Rs.1000 and in default to undergo rigorous imprisonment for six months for offence under Section 449 I.P.C.; to undergo imprisonment for life and pay a fine of Rs.2000 (for each count) and in default to undergo rigorous imprisonment for six months for offence under Section 302 (2 counts) I.P.C and to undergo rigorous imprisonment for seven years and pay a fine of Rs.1000 in default to undergo rigorous imprisonment for six months for the offence under Section 307 I.P.C. The second accused was sentenced to undergo rigorous imprisonment for ten years and pay a fine of Rs.1000 and in default to undergo rigorous imprisonment for six months for offence under Section 449 I.P.C.; to undergo imprisonment for life and pay a fine of Rs.1000 (for each count) and in default to undergo rigorous imprisonment for six months for offence under Section 302 (2 counts) r/w Section 34 I.P.C. and to undergo rigorous imprisonment for seven years and pay a fine of Rs.1000 in default to undergo rigorous imprisonment for six months for the offence under Section 307 I.P.C. r/w Section 34 I.P.C. Challenging the said conviction and sentence, the appellants / accused 1 and 2 are before this Court with this appeal.

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

2.1. The appellants are husband and wife respectively. The accused 3 and 4 are the mother-in-law and father-in-law respectively of the first accused. There are two deceased in this case. The deceased Krishnan hereinafter referred to as D1 was the brother of the 4th accused. There was a long standing irrigation dispute between the 4th accused and D1. Thus, there was enmity between the two families. Since the accused 1 and 2 supported the 4th accused, they also had enmity with D1.

2.2. The second deceased, hereinafter referred to as D2, Mrs.Leelavathi was the wife of D1. P.W.2 Ms.Dharani is the daughter of D1 and D2. D1, D2 and P.W.2 were residing at Senjeriputhur village in Tirupur District. The accused 3 and 4 are the neighbours of the deceased.

2.3. It is alleged that on account of the said enmity, on 24.08.2006 at 08.00 p.m. when D1, D2 and P.W.2 were in their house, all the four accused trespassed into their house. The first accused who was armed with a wooden log, attacked D1 and caused his death. The accused 2 to 4 held D2 and the first accused attacked her

with iron pipe and caused her death. In the same transaction, the first accused attacked P.W.2 and caused grievous hurt. P.W.2 was unconscious.

2.4. P.W.1 is the brother of the deceased. On 26.08.2008 early in the morning, in a casual manner, P.W.1 tried to contact D1 over phone. Though the telephone bell rang, nobody picked up the phone. Suspecting some foul play, immediately, P.W.1 rushed to the house of the deceased at 09.00 a.m. He found the doors slightly kept open. When he entered into the house, he found D1 and D2 in a pool of blood in two different places inside the house with injuries. P.W.2 was found lying unconscious with injuries. Immediately, P.W.1 took P.W.2 to the Pallavan Government hospital, from where, she was taken to KMC Hospital, Coimbatore.

2.5. P.W.1 thereafter went to Kamanayakanpalayam Police Station and made a complaint under Ex.P1. P.W.26, the then Head Constable attached to the said police station on receipt of Ex.P1, registered a case in Crime No.243 of 2008 under Section 302 and 307 I.P.C. against the accused 1 and 2 alone. P.W.1 in the complaint had mentioned the names of the accused 1 and 2 as suspected assailants. P.W.26 forwarded Ex.P1 complaint and Ex.P18 F.I.R. to the Court and the same was received by the learned Magistrate at 01.00 p.m. on 26.08.2008.

2.6. The case was taken up for investigation by P.W.27. He proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.7 and another witnesses. Then he conducted inquest on the bodies of both the deceased and forwarded the same for postmortem.

2.7. P.W.17 Dr.T.Jeyasingh conducted autopsy on the body of D1 on 27.08.2008 at 10.35 a.m.. He found the following injuries on the body of the deceased:

1) Laceration 8 x2 cm x cavity deep noted on the right parieto-temporal region, the lower end is 4 cm above to upper part of right ear lobe and upper end is 3 cm right to midline. On dissection of scalp, skull and dura: Sub scalp contusion 20x16 cms noted on right temporo parieto occipital region and 15 x 10 cm noted on left occipital region. Communitated fracture 12x10 cm noted on both postero parietal bones. 50 grams of epidural clot noted on right temporal region. Diffuse subdural and subarachnoid hemorrhage noted over pulpy brain matter. Skull base fracture

noted on right middle cranial fossa measuring 4 cms in length.

Other findings:

Pleural and Peritoneal cavities contains few cc of decomposing fluid. Pericardium contains 15 ml of straw coloured decomposing fluid. Heart flabby and showed decomposition changes. Lungs, liver, kidneys and spleen identifiable, cut section shows decomposition changes. Stomach contains 200 grams of partially digested cooked rice particles; no specific smell, mucosa decomposed, small intestine contains 15 ml of bile stained fluid. No specific smell, mucosa decomposed. Urinary bladder empty.

Ex.P7 is the postmortem certificate. He gave opinion that the death of the deceased D1 was due to shock and hemorrhage due to the injuries found on the body of the deceased.

2.8. Then he conducted autopsy on the body of D2 on 27.08.2008 at 11.35 a.m. He found the following injuries:

- 1) Laceration 5x1.5 cm x bone deep noted on left mid parietal region 4 cm left to midline and lower end is 9 cm above to upper part of left ear lobe.
- 2) Laceration 3x0.5 cm x cavity deep noted on left posterior parietal region 3 cm left to midline lower end is 9 cm above and back of upper part left ear lobe.
- 3) laceration 3 x 1 cm x bone deep noted on left posterior parietal region 8 cm left to mid line, lower end is 5 cm above to upper part left ear lobe.

On dissection of scalp, skull and dura: Sub scalp contusion 30x10 cms noted on left fronto parieto temporal occipital region and another sub scalp contusion 10 x 6 cms noted right fronto parieto temporal occipital regions. Comminuted fracture 18x8 cms x cavity deep noted on left fronto parieto temporo occipital bones and from it extends a fissured fractured fracture 20x0.5 cm x cavity deep noted on occipital bones and right temporal bone, the fractures found to separate the top of skull from the skull base 30 grams of epidural clot noted on left temporal parietal regions. Diffuse subdural and subarachnoid hemorrhage noted over pulpy brain

matter. Multiple skull base fracture noted on both middle cranial fossa and posterior cranial fossa.

Other findings:

pleural and peritoneal cavities contains few cc of decomposing fluid. Pericardium contains 15 ml of straw coloured decomposing fluid. Hyoid bone intact. Heart flabby and showed decomposition changes. Lungs, liver, kidneys and spleen identifiable, cut section shows decomposition changes. Stomach contains 20 ml off mucus fluid; no specific smell mucosa shows decomposition changes. Small intestine contains 15 ml of bile stained fluid. No specific smell, mucosa shows decomposition changes, urinary bladder empty, Uterus normal size, cut section empty.

Ex.P10 is the postmortem certificate. He gave opinion that the death of deceased D2 was due to shock and hemorrhage due to the injuries found on the body of the deceased.

2.9. P.W.27 recovered the bloodstained earth and sample earth from the place of occurrence under a mahazar. He also recovered the blood stained clothes from the body of the deceased after postmortem was over. He recovered bloodstained clothes of P.W.2 (M.Os.1 to 4) under a mahazar. On 24.09.2008, at 06.00 a.m. he examined P.W.2 and recorded her statement and examined many more witnesses and recorded their statements.

2.10. On 24.09.2008 at 06.00 a.m. he arrested the first accused in the presence of P.W.11 and another witness. On such arrest, he made a voluntary confession, in which, he disclosed the place where he had hidden the iron pipe. In pursuance of the same, he took the police and the witnesses to the garden of A4 and produced the iron pipe (M.O.5). On the same day at 08.00 a.m. he arrested the accused 2 and 3. On returning to the police station, he forwarded the accused 1 to 3 to Court for judicial remand. On his request, the learned Judicial Magistrate (P.W.23) recorded the statement of P.W.2 and on his request the material objects were sent for chemical examination and the report revealed that there were human bloodstains on all the material objects including the clothing and bloodstained

earth recovered from the place of occurrence. On completing the investigation, he laid the chargesheet against the accused.

2.11. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, which the accused denied. In order to prove the case, on the side of the prosecution, as many as 27 witnesses were examined, 25 documents and 14 material objects were marked.

2.12. Out of the said witnesses, P.W.1 is not an eyewitness to the occurrence. According to him, on the morning of 26.08.2008, 4th accused informed him over phone that water was overflowing in the house of the deceased. When he tried to contact D1, over phone, there was no response. Therefore, he went to the house and found the deceased 1 and 2 in a pool of blood and P.W.2 was unconscious. He has further stated that he took P.W.2 to the hospital and also made complaint to the police. P.W.2 is the injured eyewitness to the occurrence. She has turned hostile. She has stated that on 24.08.2008 at around 08.00 p.m. she was staying with her parents viz., D1 and D2 and they were all watching television. At that time, 5 to 6 unknown persons entered into the house and indiscriminately attacked the deceased 1 and 2 and also attacked her. When she was called upon to identify the assailants, she said in the chief examination itself that the accused were not the assailants. P.W.3 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.4 is a relative of the deceased and he has stated that he heard about the occurrence and he went to the place of occurrence and found the dead bodies. P.W.5 has turned hostile and has not supported the case of the prosecution in any manner. P.W.6 has stated that he went to the place of occurrence on hearing about the same. P.W.7 has spoken about the preparation of the observation mahazar and the rough sketch and about the recovery of the material objects. P.Ws.8 and 9 have stated that they heard about the occurrence. P.Ws.11, 12 and 13 have turned hostile and they have not supported the case of the prosecution in any manner. P.Ws.14 and 15 have spoken on the hearsay information. P.W.16 has stated that he examined P.W.2 on 26.08.2008 at 11.00 a.m. and at that time, she was unconscious. He has spoken about the treatment given to P.W.2. P.W.17 has spoken about the postmortem conducted on the body of the deceased and his final opinion regarding the case of death of D1 and D2.

P.W.18 has stated that he carried the dead body to the hospital and handed over the same to the doctor for postmortem. P.W.19 has stated that he handed over the bloodstained cloths of P.W.2 to the police for the purpose of investigation. P.W.20 has also spoken about the same fact. P.W.21 has spoken that he witnessed the recovery of these material objects. P.W.22 has stated that at KMC Hospital, Coimbatore he treated P.W.2. P.W.23 the learned Judicial Magistrate has stated that he recorded the statement of P.W.2 under Section 164 Cr.P.C. P.W.24 has again spoken about the treatment given to P.W.2. P.W.25 the head constable attached to the respondent police station has spoken about the recovery of the bloodstained cloths from the body of the deceased and handed over the same to the inspector of police for further investigation. P.W.26 has spoken about the registration of the case and P.W.27 has spoken about the investigation done and the final report filed.

2.13. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor mark any document on their side. Having considered all the above, the trial Court convicted accused 1 and 2 as detailed in the first paragraph of this judgment and that is how, they are before this Court with this appeal.

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

4. Admittedly, the occurrence had taken place inside the house of the deceased at 08.00 p.m. and apart from the deceased 1 and 2 the only other person in the house at the time of occurrence was P.W.2. P.W.2 has sustained injuries in the very same occurrence. But unfortunately, P.W.2 has turned hostile and she has stated that unknown persons numbering about 5 to 6 trespassed into the house and attacked D1 and D2 and her also. When she was called upon to identify the accused, she told the Court that the accused were not the assailants. But the trial Court convicted these two accused based on the statement of P.W.2 recorded under Section 164 Cr.P.C. by the learned Judicial Magistrate. It is an elementary

principle of law that a statement given by a witness under Section 164 Cr.P.C. being a former statement can be used either to contradict the maker of the statement as provided under Section 145 of the Evidence Act, by the adverse party or to use the same to corroborate the evidence of the maker of the statement as provided in Section 157 of the Evidence Act. Such former statement can never be treated as substantive evidence. But the trial Court has erroneously relied on the said statement and convicted these two accused, this is illegal. Therefore, apart from this, there is no other evidence at all in this case to prove the guilt of the accused. Therefore, we hold that the appellants are entitled for acquittal.

5. In the result,

(i) The appeal is allowed and the conviction and sentence imposed on the appellants by the learned II Additional District and Sessions Judge, Tirupur in S.C.No.141 of 2010 dated 24.08.2012 is set aside and the appellants are acquitted.

(ii) The fine amount, if any paid, shall be refunded to them.

(iii) The bail bond, if any executed, by the appellants / accused, shall stand discharged.

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