

State By Vs. 1.Veldurai

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Court : Chennai

Decided On : Dec-09-2014

Judge : A.Selvam

Appellant : State By

Respondent : 1.Veldurai

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 09.12.2014 CORAM THE HONOURABLE MR.JUSTICE A.SELVAM and THE HONOURABLE MR.JUSTICE V.S.RAVI CRIMINAL APPEAL(MD)No.106 of 2005 State by The Inspector of Police, Athur Police Station.

(Crime No.142 of 2002).Appellant/ Complainant versus 1.Veldurai 2.Ganesan 3.Ponraj (died) 4.Perumal Nadar 5.Sakthivel .Respondents/ Accused Criminal appeal is filed under Section 378 of the Code of Criminal Procedure, 1973, against the Judgment dated 24.09.2004 passed in Sessions Case No.115 of 2003 by the Additional District and Sessions Court/Fast Track Court No.I, Tuticorin.

!For Appellant : Mr.C.Mayilvahan Rajendran, Addl.

Public Prosecutor.

^For Respondents: Mr.A.Joseph Jawahar 1,2,4 and 5 :

JUDGMENT

(Judgment of the Court was made by A.SELVAM, J.The order of acquittal dated 24.09.2004 passed in Sessions Case No.115 of 2003 by the Additional District and Sessions Court/Fast Track Court No.I, Tuticorin is being challenged in the present Criminal Appeal.

2.The case of the prosecution is that on 03.07.2002 at about 09.00 p.m.at Kolvainallur in front of Kamarajar Ikkiya Sangam, all the accused contrived themselves to murder the deceased by name Rajadurai.

In pursuance of their conspiracy, the accused 1 to 4 have deterred the deceased and subsequently all the accused have attacked him by using deadly weapons.

The deceased has had instantaneous death.

After occurrence, the father of the deceased by name Ganesa Nadar has given complaint, marked as Ex.P.1, to P.W.15 and the same has been registered in Crime No.142 of 2002 under Sections 147, 148, 341 and 302 of the Indian Penal Code.

The FiRs.Information Report has been marked as Ex.P.16.

3.On receipt of Ex.P.1, the Inspector of Police, has taken up investigation and examined connected witnesses and he has also made arrangements to conduct autopsy on the body of the deceased and P.W.10, Doctor Tmt.Asika Begum has conducted autopsy and she found the following external and internal injuries on the person of the deceased: ?1.Lacerated (Torn) 4 c.m.x 1+ inch (torn) left angle of mouth to left ear with loss of left ear lobule.

2.Obliquely upwards extending lacerated wound of 5 c.m.x 3 c.m.x 2 c.m.starting from just above left corner of mouth to 1cm lateral to left eye.

3.1 c.m.above left eyebrow oblique lacerated wound extending downwards joining wound No.(2) and forming a square of 2 c.m.x 2 c.m.x 2 c.m.4.A semi circular lacerated wound extending both sides of tip of Nos.left side to left eye inner cavity and right side extending from tip of Nos.to right cheek, exposing the cheek mussels just below right eye of 12 c.m.x 4 c.m.x 2+ c.m.middle part exposing the

whole nose.

Both nostril severed and hanging around upper lip.

5. Left frontal region oblique lacerated wound of 4 c.m.x 2 c.m.x bone depth exposing the skull bone.

6. In right side of neck oblique lacerated wound of 6 c.m.x 4 x 1/2 inch from right mandible middle part for 1cm below chin cutting of right 1/3 mandible losh and exposing right neck muscles obliquely.

7. Big lacerated wound from 2 c.m. below left side of chin involving left part of neck upto nape of neck exposing the whole neck muscles and left neck vessels of huge 12 c.m.x 4 c.m.x 3 c.m. 8. 2 c.m. above wound No.(7) lacerated wound of 10cm x 3cm x 1 inch from chin to below left ear, joining with wound No.(7) at middle.

9. 4 c.m. above right anterior axillary line transverse lacerated wound of 3 c.m.x 2 c.m.x 1 inch.

10. 4cm above and lateral to wound No.(9) lacerated wound obliquely 5 c.m.x 3 c.m.x 1 inch.

11. 4 c.m. inner and parallel to wound No.(10) linear wound of 5 c.m.x 3 c.m.x 1+ inch cutting the right clavicle outer aspect.

12. Left shoulder anterior aspect oblique lacerated wound extending 7 c.m.x 3 c.m.x 1 inch.

13. Posterior to left shoulder oblique lacerated wound extending to middle 10 c.m.x 2 c.m.x 2 c.m. 14.

Left forearm 5cm below left elbow elliptical lacerated wound of 8 c.m.x 4 c.m.x 1+ c.m. exposing left arm muscles and bone.

15. Left hand torn completely from left forearm at left wrist.

16. 1 inch proximal to wound No.(15) left forearm almost hanging from rest of left forearm circular encircling wound of arm huge 4 c.m.x 2 c.m.x 1 c.m. 17. Right palm

dorsal aspect oblique lacerated wound from outer to inner aspect of huge 5 c.m.x 2 c.m.x + c.m.exposing and cutting the tendons.

18.Right index finger terminal phalanx cut open and hanging from rest of the finger.

19.

1 c.m.x 1 c.m.pointed lacerated wound at front of left part of chest?.The Postmortem Report has been marked as Ex.P.3.

After completing investigation, the Investigating Officer has laid a final report on the file of the District Munsif cum Judicial Magistrate's Court, Tiruchendur and the same has been taken on file in P.R.C.No.37 of 2002.

4.The District Munsif cum Judicial Magistrate, Tiruchendur after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the same to the Court of Sessions, Tuticorin Division and the same has been taken on file in Sessions Case No.115 of 2003.

5.The trial Court after hearing both sides and upon perusing the relevant records has framed fiRs.charge against all the accused under Section 120-B of the Indian Penal Code, second charge against the accused 1 to 4 under Section 341 of the Indian Penal Code and third charge against the accused 1 to 4 under Section 302 read with 34 of the Indian Penal Code and the same have been read over and explained to them.

The accused have denied the charges and claimed to be tried.

6.On the side of the prosecution, P.W.s.1 to 21 have been examined and Exs.P.1 to P.28 and M.Os.1 to 14 have been marked.

7.When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied her complicity in the crime.

On the side of the accused, D.Ws.1 and 2 have been examined and Exs.D.1 to 3 and M.Os.1 to 6 have been marked.

8.The trial Court, after evaluating the available evidence on record, has found all the accused not guilty under the Sections mentioned in the charges and ultimately acquitted them.

Against the order of acquittal passed by the trial Court, the present Criminal Appeal has been preferred at the instance of the Investigating Officer as appellant.

9.During pendency of the present Criminal Appeal, the third appellant/third accused has passed away and therefore the charges framed against him are abated.

10.The learned Additional Public Prosecutor has contended that in the instant case the father of the deceased by name Ganesa Nadar has been examined as P.W.1 and the maternal uncle of the deceased by name Amarsingh has been examined as P.W.19 and both of them have clearly stated in their evidence that all of them had travelled in a bus (Route No.136) and alighted in a place by name Mela Athur and proceeded towards their native place by name Athur by walk and at about 12 O' Clock, the accused have deterred the deceased and the deceased has run away and all the accused have chased him and subsequently murdered him, but the trial Court without considering the evidence given by P.Ws.1 and 19 have erroneously acquitted all the accused and therefore the order of acquittal passed by the trial Court is liable to be set aside and all the accused are liable to be punished.

11.Per contra, the learned counsel appearing for the respondents 1,2,4 and 5/accused 1,2,4 and 5 has contended that in the instant case, on the side of defence it has been clearly established that the concerned bus has reached the place of alighting at about 10.15 p.m.and further the prosecution has failed to establish that P.Ws.1 and 19 have travelled along with the deceased and further P.Ws.1 and 19 would not have seen the occurrence from the place, where they stood and the trial Court after considering the material lapses on the part of the prosecution has rightly acquitted all the accused and therefore the order of

acquittal passed by the trial Court does not require any interference.

12.The specific case putforth on the side of the prosecution is that before occurrence during night houRs.P.Ws.1, 19 and deceased have travelled together in a bus bearing Route No.136 and alighted in a place by name Mela Aathur and proceeded towards their native place by name Aathur.

In fact the prosecution has not at all established the alleged fact that P.Ws.1 and 19 and deceased have travelled together.

If really, such occurrence has takenplace, definitely, the Investigating Officer would have seized bus tickets either from P.W.1 or from P.W.19.

Therefore, the genesis of the case of the prosecution has not been established on its side.

13.The second part of defence taken on the side of the respondents 1,2,4 and 5/accused 1,2,4 and 5 is that the concerned bus has reached the place of alighting at about 10.15 p.m.by way of examining D.W.2.

With regard to the said aspect, no convincing evidence has been putforth on the side of the prosecution.

Further P.W.19 has stated in his evidence that they have travelled in a bus bearing Route No.136-B whereas P.W.1 has stated in his evidence that they have travelled in a bus bearing Route No.136.

14.It has already been pointed out that the prosecution has failed to establish the genesis of its case by way of marking bus tickets and that itself would be sufficient to disbelieve the case of the prosecution.

Since the prosecution has failed to establish that P.Ws.1 and 19 have travelled alongwith the deceased, the remaining portions of evidence given by them with regard to details of occurrence cannot be believed in.

15.The trial Court after considering the vital infirmities found on the side of the prosecution has rightly acquitted all the accused and in view of the discussion

made earlier, this Court has not found any acceptable force in the contentions put forth on the side of the appellant and altogether the present Criminal Appeal deserves to be dismissed.

16. In fine, this Criminal Appeal deserves dismissal and accordingly is dismissed and the order of acquittal passed in Sessions Case No.115 of 2003 by the Additional District and Sessions Court/Fast Track Court No.I, Tuticorin is confirmed.

[A.S.,J.].[V.S.R.,J.].09.12.2014 Index:Yes/No Internet:Yes/No.smn To 1.The Additional District and Sessions Court/ Fast Track Court No.I, Tuticorin.

2.The Inspector of Police, Athur Police Station.

3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

A.SELVAM, J.

and V.S.RAVI, J.

Judgment made in CrI.A(MD)No.106 of 2005 09.12.2014

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