

State Vs. Raja Alias Jacob and anr.

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Court : Chennai

Decided On : Mar-03-2008

Reported in : 2008CriLJ2728

Judge : P.D. Dinakaran and ;R. Regupathi, JJ.

Acts : Indian Penal Code (IPC) - Sections 34, 201, 302 and 341; Code of Criminal Procedure (CrPC) - Sections 174, 235(1) and 313

Appeal No. : Cri. Appeal No. 743 of 2005

Appellant : State

Respondent : Raja Alias Jacob and anr.

Advocate for Def. : R. Sankarasubbu and ;P.R. Dineshkumar, Advs.

Advocate for Pet/Ap. : N.R. Elango, Addl. Public Prosecutor

Disposition : Appeal dismissed

Judgement :

R. Regupathi, J.

1. The appellant/accused were tried by the learned Additional District Judge, Fast Track Court-II, Kancheepuram, for charges under Sections 341, 302 read with 34 and 201 read with 34 IPC. The learned trial Judge, finding that the prosecution

failed to prove the charges against the accused beyond all reasonable doubts, acquitted them under Section 235(1) Cr. P.C. by giving benefit of doubt. As against the order of acquittal passed by the trial Court, the State has preferred the present Criminal Appeal.

2. On 12-10-2003 at 10 P. M., the accused, suspecting the deceased to be a thief came there to commit theft of cattle, questioned him and when he did not answer properly, tied him to a tree with a sari; thereby, the first charge for wrongful restraint under Section 341 IPC, had been framed.

In the course of the same transaction, the first accused by kicking with folded knee and pricking with stick, caused injuries on the private part of the deceased and also dashed his head against the tree to which he was tied. The second accused assaulted the deceased with stick on the neck, shoulder and private part. As a result of the same, the deceased sustained bleeding injuries and succumbed to death; thereby both the accused were charged for the offence under Section 302 read with 34 IPC.

Further, both the accused, for the purpose of screening the offence, dragged the body of the deceased and left it on the cart track; thereby, charge under Section 201 read with 34 IPC. was framed.

3. Before the trial Court, in order to substantiate its case, the prosecution examined PWs-1 to 18, marked Exs. P1 to P31 and produced MOs 1 to 12.

4. The prosecution case, as divulged by its witnesses, is concisely narrated hereunder:

(a) PW-1 is the wife of the deceased. According to her, the deceased did not turn up after leaving the home on 12-10-2003 at 5 p.m., and therefore, she searched for him and, on the next day morning, his dead body was brought to the residence by her relatives and they informed that her husband died due to consumption of poison. One Louis Samy asked PW-1 not to inform the same to the police. However, PW-1, after noticing external injuries on the body of the deceased and blood oozing out from private part, reported the matter to the police, and the

complaint is Ex. P1.

(b) PW-3 is the wife of PW-2 and their land situated next to the lands of the accused. Both the witnesses have been examined by the prosecution as eye witnesses to the occurrence. It is their evidence that, at about 11 P. M., on information by their daughter-in-law PW-4, they visited the scene of occurrence and found both the accused assaulting the deceased and when questioned, the accused threatened them. Again, on the next day morning, PWs-2 and 3 visited the occurrence place, when the accused informed them that the deceased was done to death and that the dead body was thrown on the cart track. Both these witnesses further stated that they did not inform anyone about the incident, however, it was divulged to the police after three weeks when they were examined.

(c) PW-4 is the daughter-in-law of PWs 2 and 3. In her evidence, she has stated that, on coming to know about the assault on the deceased through one Victoria, who is the wife of the first accused, at about 5.30 A.M., she visited the scene of occurrence and found the deceased dead.

(d) PW-5 is also a neighbour, who was informed by Victoria that the accused assaulted the deceased and, in spite of the objection made by PWs-2 and 3, the accused continued to assault him and thereafter, the dead body was thrown on the cart track.

(e) PW-6 is the Vice President of the Panchayat and, in his evidence, he has stated that he does not know the reason for the death of the deceased.

(f) PW-7 informed the death of the deceased to the maternal uncle of the deceased. On his request, PW-7 shifted the body and placed the same in front of the residence of PW-1.

(g) PW-8 has stated that in evening of the previous day, he saw the deceased coming; in front of him under the influence of alcohol and on the next day, he saw his dead body being taken in a cart.

(h) PW-9, a neighbouring land owner, after coming to know the assault by the accused on the deceased through Victoria, reached the scene of occurrence and, in spite of his objection, the accused continued to assault, however, he did not support the case of the prosecution, therefore, he has been treated hostile.

(i) PW-10 has deposed that he was informed about the assault on the deceased through PW-9.

(j) PW-11 has been examined as a mahazar witness for preparation of Exs. P11 and P12/observation mahazars and his signatures therein are Ex. P2 and P3.

(k) PW-12 has been examined to speak about the arrest of the accused. He attested the confession statements of the accused recorded in his presence under Exs. P19 and P20 and his signatures therein are Exs. P4 and P5. He also attested the seizure mahazars Exs. P21 and P22 in respect of MOs-1 to 4 and the signatures therein are Exs. P6 and P7.

(l) PW-13 is the Vice President of Kandigai and he has stated that he came to know from Victoria that the deceased came drunk to the land of the accused, whereupon, the accused assaulted him with stick and thereafter, threw his body on the road.

(m) PW-14 is the Photographer, who has taken photographs of the dead body of the deceased and MOs-5 and 6 series are the photographs and negatives.

(n) PW-15 is the Head Constable who received the complaint from PW-1 on 13-10-2003 at 11 A. M. and registered a case in Crime No. 647 of 2003 under Section 174 Cr. P.C. and informed the same to his superior officials.

(o) PW-16 is another Head Constable who took the body of the deceased for postmortem and thereafter, he entrusted the dead body to the relatives after recovering the clothing found on the deceased.

(p) PW-17 is the Doctor, who conducted post mortem on the body of the deceased and issued Ex. P9 post mortem certificate, wherein, the following injuries have been noticed:

1. Linear abrasion reddish brown in colour seen on right ear lobe 4 cm x 2 cm.
2. Linear abrasion reddish brown in colour seen on front of right side of neck 7 cm x 3 cms.
3. Linear abrasion seen reddish brown in colour seen on medial end of right clavicle 5 cm x 2 cm.
- (4) Curvilinear abrasions reddish brown in colour seen on nape of neck 2 cm x 2 cm., 2 cm x 1 cm. respectively.
- (5) Three linear abrasions reddish brown in colour seen on front of right forearm one below another 3 cm x 2 cm., 4 cm. x 3 cm., 4 cm. x 2cm. respectively.
- (6) Diffuse contusion reddish brown in colour around the neck. O/D Diffuse contusion seen on the underlying soft tissues, muscles and cartilages. Hyoid Bone - Intact, contusion seen on the mucos of trachea and oesophagus (neck region).
- (7) Fracture of thyroid cartilage seen with surrounding areas of contusion.

After receiving the chemical analysis report, the Doctor opined that the deceased would appear to have died of constriction force to the region of neck.

(g) PW-18 is the Inspector of Police, who conducted the investigation. On receipt of the information, he reached the residence of the deceased and prepared observation mahazar marked as Ex. P. 11 and another observation mahazar Ex. P12 at the place where the body was found. He prepared rough sketch under Ex. P13 and recovered bloodstained earth MO7 and sample earth MO8. He conducted inquest over the dead body in the presence of witnesses and Ex.P15 is the inquest report. He caused photographs of the deceased to be taken, examined the witnesses who were present and received the dress materials of the deceased after post-mortem. On 22-10-2003, he came to know that the accused were absconding and on 2-11-2003, he examined PW-5 and recorded her statement. On the same day, he recorded the statements of PWs-2 and 3 and, after altering the offence as one under Section 302 IPC, despatched the altered report under Ex. P18 to the Judicial Magistrate. On the same day, he arrested the accused and

after recording their voluntary statement, effected recovery of Mos-1 to 4 viz., stick, bloodstained slack, rope and another stick respectively. After examining the witnesses and receiving medical and forensic opinions, he filed final report on 20-1-2004 for offences under Sections 341, 302 and 201 IPC.

(r) Both the accused were questioned under Section 313 Cr.P.C. with reference to the incriminating materials put forth by the prosecution for which they pleaded innocence. Neither oral nor documentary evidence was adduced on the side of the defence. Learned trial Judge, after hearing the arguments put forth by the prosecution and the defence, acquitted the accused of all the charges and aggrieved against the same, the present appeal has been preferred by the State.

5. Learned Additional Public Prosecutor appearing on behalf of the State submits that based on the statement of the eye witnesses viz., PWs-2 and 3, and other corroborative materials put forth on the side of the prosecution, the accused would have been convicted; that being so, the reasons assigned by the learned trial Judge for acquitting the accused are unsustainable in law. The evidence of other witnesses viz., PWs-4, 5 and 9, who were residing near the scene of occurrence, has not been properly considered. After the arrest of the accused, recoveries of material objects have been effected at their instance, and the opinion of the post-mortem Doctor is to the effect that the death is due to homicidal violence. According to him, it is a fit case for conviction and the trial Court has erroneously acquitted the accused.

6. Per contra, learned Counsel for the respondents/accused submitted that the reasons given by the trial Court are well founded and the prosecution has not established its case beyond reasonable doubt and that is the reason why benefit of doubt was given in favour of the accused. The occurrence took place on 12-10-2003 and though it is claimed that PWs-2 and 3 are eye witnesses, they were examined by the police only on 2-11-2003; hence, the trial Court rightly rejected their evidence. If the evidence of the eye witnesses is eschewed from consideration, the foundation of the prosecution case is destroyed. Further, the evidence of other witnesses relied on by the prosecution is not so strong enough to base conviction against the accused. Taking note of all such aspects, the trial

Court rightly acquitted the accused and the order passed by it does not call for interference by this Court.

7. We have perused the materials available on record with reference to the submissions made on either side. In the light of the factual scenario and the evidentiary backdrop, before proceeding to discuss and give our decision on the acceptability or otherwise of the order passed by the trial Court, we deem it relevant and necessary to observe here that generally, an order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted particularly when the credibility and vigour of the evidence of the prosecution witnesses is doubtful and feeble. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. It is settled principle that a miscarriage of justice which may arise from acquittal of the guilt is no less than from the conviction of an innocent.

8. In that perspective, we proceed to examine as to whether the impugned judgment is clearly unreasonable, and cogent and convincing materials have been unjustifiably eliminated in the process, thereby creating compelling necessity for interference.

9. PW-1 is the wife of the deceased. On perusal of her evidence, it is seen that the dead body was brought to her residence on the next day viz., on 13-10-2003. It is narrated that on the body of her husband being brought to her residence, she was informed that the death was due to consumption of poison and that since injuries were seen on his body, the matter was reported to the police. On the contrary, in the F. I. R. a different version is given by stating that PW-1 was searching for the deceased on the previous day, and after coming to know about the deceased lying dead on the road near Manamathi Kandigai, she reached that place, found the deceased dead with injuries, shifted the dead body to her residence with the assistance of some persons, and thereafter, at 11 P.M., went to the police station

and gave a complaint resulting in registration of the case. Thus, the earliest statement of PW-1 is totally contradictory to what has been deposed by her before Court. PWs 2 and 3, residing next to the land of the accused, have been put forth by the prosecution as star witnesses for witnessing the occurrence. After hearing the message of assault on the deceased by the accused through PW-4, both PWs-2 and 3 went there and had seen the assault. According to them, since the accused threatened them, they returned back. Again on the next day morning, they visited the scene of occurrence and it was informed by the accused that the dead body was shifted from the scene of occurrence to the cart track. It is also stated that earlier they had advised the accused not to beat the deceased and instead hand him over to the custody of the headman of the village, for which, the accused threatened them. Thereafter, they did not inform anybody and were examined by the police on 2-11-2003. The narration of the occurrence as well as the conduct of PWs-2 and 3 creates doubt that they would not have witnessed the occurrence.

While PW-2 states that on the next day morning at about 4 A. M. when he again visited the scene place, the deceased was not there, according to PW-3, she along with PW-2 went at 6 A. M. and found the deceased dead and saw blood oozing from nose. It is quite unnatural that PW-2, having been threatened by the accused at 4 A. M., goes along with his wife PW3 at 6 A. M. to the land of the accused. The other important aspect to be noted is that though PW-2 came to know about the incident at 11 P.M. through his daughter-in-law PW-4, her evidence is that she was informed by Victoria in the morning by 5 A. M., at which time, the deceased was found dead. Thus, the source from which they got information is rather rambling and the conduct of the so-called star witnesses of the prosecution is quite unnatural and suffers from contradictions. Taking note of the same, the trial Court rightly disbelieved their testimonies.

10. PW-9 is also another eye witness and he was also examined by the police after examination of PWs-2 and 3. However, he did not support the case of the prosecution. PWs-4 and 5 are not direct witnesses and their evidence is based on hearsay materials. Evidence of PW-6 and 10 also does not in any way advance the case of the prosecution. Others are only formal witnesses. Though it has been

substantiated that the deceased died due to homicidal violence, unless there are positive materials to directly connect the respondents/accused with the crime, conviction cannot be ordered, where the allegation/case of the prosecution against the appellants/accused relates to a crime of grave nature. Though PW2 was courageous enough to take his wife PW-3 to the scene of occurrence/land of the accused at 6 A. M. after having been threatened earlier by the accused at 4 A. M., it is unfortunate and quite unnatural that the said star witnesses of the prosecution did not come forward to whisper anything about the occurrence and kept quite for about three weeks. We are unable to place any reliance on their testimonies.

11. Curiously, during cross examination, the Investigating Officer had stated that though PWs-2 and 3 are residing nearby, he did not examine them and the nearby residents on the occurrence day. The other aspect which stares at the case of the prosecution is that even the eye witnesses/PWs-2 and 3 could get the information of the deceased being dealt with by the accused through PW-4, who was informed by the wife of the first accused by name Victoria, and that PWs-4, 9 and 13 have also stated that Victoria informed them of the incident; however, the said Victoria was neither examined during the course of investigation nor cited as a witness before Court. It is also seen that, at the time of cross examination, PW. 1 stated that there was dispute between the deceased and one Sebastian, an arrack seller.

12. In this case, as it is not feasible to separate truth from falsehood and grain and chaff are so inextricably mixed up in the process of separation, an absolutely new cause would be reconstructed by divorcing essential details presented by the prosecution completely from the context and background against which they are made; thus, the only available course to be made is to discard the evidence of the prosecution in toto. Considering the contradiction between the F.I.R. registered on the complaint of PW-1 and the evidence tendered by her before Court, the unnatural conduct and contradictory versions of PWs-2 and 3, non examination of vital witnesses, callous attitude of the investigating agency etc. In the light of the principles as highlighted by us above, we hold that the prosecution has miserably failed to prove its case beyond reasonable doubts.

13. The conclusion reached by the trial Court is well founded and we find no substantial ground to interfere with the well Considered order of the trial Court.

14. Criminal Appeal fails and the same is dismissed.

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