

1.Vijico Vs. The State Represented By

1.Vijico Vs. The State Represented By

SooperKanoon Citation : sooperkanoon.com/9066

Court : Chennai

Decided On : Nov-25-2014

Judge : The Honourable Ms.Justice R.Mala

Appellant : 1.Vijico

Respondent : The State Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 25.11.2014 CORAM THE HONOURABLE Ms.JUSTICE R.MALA Criminal Appeal (Md.Nos.400 of 2007 and 576 of 2007 1.Vijico ..Appellant/A1 in C.A.576/2007 2.Ponraj ..Appellant/A2 in C.A.400/2007 Vs The State represented by The Inspector of Police, North Police Station, Thoothukudi Thoothukudi District Crime No.162 of 2004 ..Respondent in both appeals Common Prayer: Criminal appeal filed under Section 374 Cr.P.C., to set aside the judgment of conviction and sentence dated 09.07.2007 made in S.C.No.259 of 2006 on the file of the Additional District and Sessions Judge cum Fast Track Court No.II, Thoothukudi.

!For appellants : Mr.R.Anand ^For Respondent : Mrs.S.Prabha, G.A.(Crl.

Side) :COMMON

JUDGMENT

The Criminal Appeals are directed against the judgment of conviction and sentence dated 09.07.2007 made in S.C.No.259 of 2006 on the file of the

Additional District and Sessions Judge cum Fast Track Court No.II, Thoothukudi, wherein, the appellants/A1 and A2 were convicted and sentenced as follows:

Name of Accused	Charges	Finding	Sentence
A1.Vijico	Secs.307 and 506(ii) of I.P.C.	Found guilty under Secs.307 and 506(ii) of I.P.C.	307 : 7 years R.I.and fine of Rs.1,000/- in default six months S.I.506(ii).3 years R.I.and fine of Rs.1,000/- in default six months S.I.
A2.Ponraj	Secs.3 and 4 of Explosives Substance Act and Section 307 read with 34 of I.P.C.and 506(ii) I.P.C.	Found guilty under Sec.3 of Explosive Substance Act and Section 506(ii) of I.P.C.	3 of E.S.Act :7 years R.I.and fine of Rs.1,000/- in default six months S.I.506(ii).3 years R.I.and fine of Rs.1,000/- in default six months S.I.

2.The case of prosecution briefly is as follows: (i)Both P.W.1 Devakumar and P.W.2 Murugavel are brothers and running an Idly shop near Nallathambi hospital at Alagesapuram main road.

They know the accused persons.

P.W.3 Rajaram is an Auto driver.

While, on 02.04.2004 Friday at 10.00 p.m.P.W.3 parked his auto bearing registration No.TN69F0229in front of the tea shop of A2 which was situated in the opposite of Idly shop of A1 and returning from his house, both the accused entered into the Auto as shouted ?.whose auto is this?.On seeing this, P.W.3 came there and asked them as to who they were and a quarrel has been started between them.

On seeing the same, P.Ws.1 and 2 came out of their shops and asked them as to why they were shouting and at that time, A1 took the knife from his hip and tried to attack P.W.1 on his chest by saying ?.eP ahh; jhnahHp> eP capnuhoUf;ff; TlhJ?.

and ?.j;njhL bjhiye;J ngh?.

and since P.W.1 move aside, the attack was inflicted on his right rib and caused blood injury and on seeing the same, the adjacent shop owners viz., Raja, Manikandan and Kutty @ Balakrishnan were scolded them.

At that time, A2 throw the bomb towards P.W.1 and since he made bend it was fallen on the ground and bursted.

Even though all were panic, they tried to catch them, the accused criminally intimidated them by saying ? .ahuhtJ fpl;l te;jhy; ,d;bdhU jlit btoFz;il tPrptpLnthk;?.

and ran away from the scene of occurrence.

P.W.2 took P.W.1 to the Government Hospital through the Auto of P.W.3.

(ii)On 02.04.2004, at about 10.30 p.m., P.W.9 Dr.Alexander, treated P.W.1, who was brought by his friend Rajaram and issued Ex.P10, A.R.Copy and at 11.20 p.m., on his own wish, he gone to private hospital.

On 02.04.2004 at 11.50 p.m., P.W.7 Dr.Thangamani, who was working in A.V.M.Hospital, has treated P.W.1 and took C.T.Scan and he issued Ex.P8 wound certificate and opined that the injury is grievous in nature.

(iii)P.W.10, Ganesh Kumar, Sub Inspector of Police, Tuticorin North Police Station received an intimation from the Government Hoispital and rushed there and recorded the statement of P.W.1, who was taking treatment there and obtained a signature from P.W.12 and recovered M.O.2 bloodstained shirt and M.O.3 bloodstained white dhoti, which was produced by P.W.1 in the presence of P.W.5 Thangapandi under Ex.P5 seizure mahazer.

Thereafter, he came to the police station and registered a case in crime No.162 of 2004 for the offence under Section 307 and 506(ii) of I.P.C.and Section 3 and 4 of Explosives Substance Act and prepared Ex.P11, FiRs.Information Report and despatched he same to the Court and the Inspector of Police.

(iv)P.W.11, Ramarajan, Inspector of Police took up the investigation and gone to the place of occurrence on 03.04.2004 at 4.15 a.m.And prepared M.O.3 observation , M.O.12, rough sketc.in the presence of P.W.4 Murugan and recovered M.O.4 threads, M.O.5, burnt cloth with sulfur smell, M.O.6 burnt nails, M.O.7 glass pieces and M.O.8, pebbles under Ex.P4 seizure mahazer.

Thereafter, on 03.04.2004, he arrested the accused and recorded Ex.P.6, voluntary confession statement of A1, on the basis of which, he recovered M.O.1 knife under Ex.P7 seizure mahazer.

He gave a requisition Ex.P13, to send M.Os.4 to 8 for chemical examination and as per Ex.P14, court letter the same were sent for chemical examination and he received Ex.P15chemical report.

On 10.10.2004, he sent the file to the District Collector for obtaining permission prosecute the accused for the offence under Explosives Substance Act and the District Collector issued Ex.P9, permission to prosecute the accused under Explosives Act and after due completion of investigation, he filed charge sheet against the accused.

3 .The learned trial Judge, after following the procedures, framed necessary charges against the accused.

Since the accused pleaded not guilty, to prove the charges, P.Ws.1 to 11 were examined and Exs.P1 to P15 and M.Os.1 to 8 were marked.

Accused were questioned under Section 313 Cr.P.C.about the incriminating evidence and circumstances.

Accused denied the same in toto and stated that a false case has been foisted against them.

No defence witness was examined on the side of the accused.

4.On considering the oral and documentary evidence, the learned Sessions Judge found the fiRs.appellant/A1 guilty for the offence under Section 307 of I.P.C.and convicted and sentence to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months simple imprisonment and found the second appellant/A2 guilty for the offence under Section 3 of Explosives Substance Act and convicted and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months simple imprisonment and found the appellants/A1 and A2 guilty for the offence under Section 506(ii) of I.P.C.and both of them convicted and sentenced to undergo 3 years rigorous imprisonment each and to pay a fine of Rs.1,000/- each in default to undergo six months and two months simple imprisonment respectively and the trial Court found the second appellant not guilty for the offence under

Section 307 read with 34 of I.P.C. and Section 4 of Explosives Substance Act and acquitted him.

Against the said conviction and sentence, A1 filed C.A.(Md.No.576 of 2007 and A2 filed C.A.(Md.No.400 of 2007.

5.Challenging the said conviction and sentence passed by the trial Court, the learned counsel for the appellants would submit that the fiRs.information report is doubtful and the earlier version of the complaint of P.W.1 was suppressed.

He would further submit that the District Collector, who sanctioned permission to prosecute the accused for the offence under Explosives Act was not examined and the recovery of M.O.Knife was not proved by the independent witnesses.

Hence, he prayed for setting aside the conviction and sentence.

6.Resisting the same, the learned Government Advocate (criminal side) would submit that the sanction is not necessary and as per Section 7 of the Explosives Act, consent given by the Statement Government is a sufficient and to prove Ex.P9, P.W.8 Krishnan was examined and so, the entire proceeding is not vitiated.

He would further submit that the evidence of P.W.1, who was injured has been corroborated by P.W.3 Auto Driver and P.W.9 Dr.Alexander and the trial Court has rightly convicted them and hence, she prayed for the dismissal of the appeal.

7.Considering the rival submissions made on either side and on perusal of the typed set of papers.the fiRs.point to be decided is once the charge sheet has been filed for the offence under Sections 3 and 4 of Explosives Substance Act, whether the non examination of the sanctioning authorities is fatal to case of prosecution.

8.It is appropriate to consider Section 7 of Explosives Act, wherein it was specifically mentioned that only a consent is necessary.

But, here P.W.8 Krishnan, who was working as C4 clerk in the Collectorate, has been examined and through him, Ex.P9 has been marked.

In such circumstances, I am of the view that since in Section 7 of the Explosives Substance Act,, it was stated only a consent is necessary, I am of the view that the State Government has given consent to prosecute against the accused for the offence under Explosives Act, because the power has been conferred to the District Collector.

Hence, the non examination of District Collector is not fatal to the case of prosecution.

Hence the argument of the learned counsel for the appellants that the non examination of the District Collector, who gave consent is fatal to the case of prosecution does not merit acceptance.

9.Now, this Court has to decide the oral eye witnesses of P.Ws.1 to 3.

As per the case of prosecution, P.Ws.1 to 3 are the eye witnesses.

P.W.2 is the brother of P.W.1 and P.W.1 was running Idly shop and P.W.2 was having tea shop opposite to Nallathambi hospital.

P.W.3 is Auto Driver, who has taken the injured to the hospital after the accident.

He has also turned hostile.

Considering the evidence of P.Ws.1 to 3, P.W.1 in his chief examination himself has deposed as to how the occurrence taken place and after sometime, when he was cross examination, he was stated that he did not know the accused.

It is pertinent to note that the chief examination has been conducted one day and the cross examination has been commenced another day after sometime.

P.W.3 Rajaraman is alleged to be an eye witness.

He has also deposed that since the matter had been compromised, he has given a contra evidence to the chief examination.

It is well settled dictum of this Court the evidence of hostile witness also has to be looked into, if it is supported the case of prosecution or the defence.

Admittedly, in the chief examination, the evidence of P.Ws.1 and 2 are corroborating each other and that factum was considered by the trial Court and convicted the appellants/accused.

10.The learned counsel appearing for the appellants would submit that P.W.1 has given one statement in his chief examination at one point of time and he has given another statement in his cross examination at another point of time and hence, his evidence cannot be looked into, which is not wholly reliable, which needs corroboration.

It has been held by the Apex Court that the conviction can be based on the sole testimony of the victim, if found to be worthy of credence and reliable and for that no corroboration is required.

It has often been said that oral testimony can be classified into three categories, viz., (I) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable.

In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration.

Therefore, this Court has to scrutinize the evidence of P.W.1 with great care and caution and to decide whether the evidence of P.W.1 is reliable?.11.Admittedly, in the chief examination, on 21.12.2006, P.w.1 has narrated the facts as to how the occurrence has been taken place and when he was cross examined on 22.06.2007, after 6 months later, he has given a contra evidence and hence, he was treated as hostile and hence, I am of the view that his evidence is not wholly reliable and it is only partly reliable and hence, as per the dictum of the Apex Court, his evidence needs corroboration.

Therefore, this Court has to consider as to whether the evidence of P.W.1 has been corroborated by other witnesses.

12.P.W.2 is none other than the brother of P.W.1.

The learned counsel for the appellants would submit that if really P.W.2 was available in the place of occurrence, his name has been found place in A.R.Copy.

But, P.W.1 was brought by only P.W.1, Auto Driver Rajaraman and hence, the presence of P.W.2 in the place of occurrence is doubtful.

Considering his chief and cross examination, even though, a suggestion was posed to him that he was not available in the place of occurrence, he denied that suggestion, whereas, on perusal of A.R.Copy his name has not been found place.

In such circumstances, his presence in the occurrence place is doubtful and his evidence is not reliable.

13.P.W.3 Auto Driver Rajaraman, has entirely given a difference statement during cross examination from his earlier chief examination and so, his evidence is also not reliable and hence, I am of the view that the evidence of P.W.1 has not been corroborated with any other evidence.

Furthermore, there are contradictions between the oral evidence of P.W.1 and A.R.Copy, wherein, it was stated that P.W.1 was assaulted by two unknown persons, whereas, in his evidence, he has stated that he was assaulted by two known persons.

Hence, his evidence cannot be relied without any corroboration.

14.Furthermore, in the A.R.Copy, it was specifically mentioned that P.W.1 was brought by P.W.3 Rajaram and he was seen at 10.20 p.m.and it was alleged that P.W.1 was attacked by knife by two unknown persons at 10.00 p.m.at opposite to Nallathambi hospital and he sustained by one stab injury.

Admittedly, in the chief examination, P.W.1 has stated that he know the accused persons, since they are residing in S.S.Pillai Street and Ponnagaram and they used to come to his shop, whereas, in the hospital, when he was examined by doctor, he has stated that he was assaulted by two unknown persons.

Furthermore, it is appropriate to consider the evidence of P.W.9, Dr.Alexander.

In his cross examination, he has admitted that there are corrections in A.R.Copy and hence, I am of the view that there are contradictions between the medical evidence and ocular evidence.

15.Moreover, perusal evidence of P.W.10 Ganeshkumar, Sub Inspector of Police would show that he has gone to the Government Hospital and recorded the statement.

But, in column No.14 of Ex.P.11, fiRs.information report, it has been stated that since he recorded the statement at A.V.M.Hospital, he did not obtain the signature of P.W.1 and hence, there are contradictions in giving the complaint and that has not been clarified by P.W.10.

It is true the defective investigation will be a reason for acquittal of the accused.

But, here, P.Ws.1 and 3, who are alleged to be eye witnesses have given one statement at the time of chief examination and have given another statement at the time of cross examination.

In his cross examination, P.W.3 has fairly conceded that since the matter was compromised between themselves, he has given contra evidence.

In such circumstances, I am of the view that it is not safe to convict the accused on the basis of partly reliable evidence of P.W.1, which was not corroborated by other witnesses.

16.In respect of A2 is concerned, it was alleged that he has possessed country made bomb and thrown the same on the floor and it was exploded.

As per the evidence of P.W.4 Murugan, attestor, Ex.P3 observation mahazer has been prepared and materials objects have been seized.

P.W.5 Thangapandi, in his evidence has stated that M.Os.2 and 3 have been seized in his presence.

Even though material objects have been seized from the place of occurrence and the same had been sent for chemical analysis, report of the chemical analysis

would show that the constituents detected in the material objects are the explosion residues of improvised explosive device (country bomb) and it is a low explosive and the country bomb when exploded may endanger human life.

But, to prove the same, no one was examined viz., the author of Ex.P15, chemical analysis report.

In such circumstances, even though the evidence of P.Ws.4 and 5 have been proved that M.Os.2 and 3 have been seized in their presence, since no one was examined to prove Ex.P15, I am of the view that the prosecution has not proved that the material objects seized from the scene of occurrence only was used by A2 and since other witnesses were available, they were not examined and the prosecution has not proved the guilt of the appellants/accused beyond all reasonable doubt and the trial Court has not considered the factum and convicted the accused and hence, the benefit of doubt shall be given in favour of A1 and A2 and they are liable to be acquitted.

17.In fine, The Criminal Appeals are allowed.

Judgment of conviction and sentence dated 09.07.2007 passed in S.C.No.259 of 2006 on the file of the Additional District and Sessions Judge cum Fast Track Court No.II, Thoothukudi., is hereby set aside.

R.MALA, J.

Arul The appellants/A1 and A2 are acquitted from all the charges levelled against them.

The fine amount already paid by the appellants/A1 and A2, if any, is ordered to be refunded.

The bail bonds, if any executed by the appellants, shall stand cancelled.

25.11.2014 Index : Yes/No website: Yes/No Arul To 1.The Inspector of Police, North Police Station, Thoothukudi, Thoothukudi District.

2.The Additional District and Sessions Judge cum Fast Track Court No.II, Thoothukudi.

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

Crl.A.(MD)No.400 & 576 of 2007

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com