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Mansur Ali Vs. State

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Court : Chennai

Decided On : Dec-23-2011

Judge : M.Jaichandren; S.Nagamuthu, Jj.

Acts : Indian Penal Code (IPC) - Sections 302, 34, 377, 366, 364

Appeal No. : Criminal Appeal(MD)No.407 of 2010 and Criminal Appeal(MD)No.435 of 2010 and Criminal Appeal(MD)No.173 of 2011

Appellant : Mansur Ali

Respondent : State

Advocate for Def. : Mr.C.Ramesh, Adv.

Advocate for Pet/Ap. : Mr.N.S.Ponnaiah, Adv.

Judgement :

The appellant in Crl.A.(MD)No.173 of 2011 is the first accused, the appellant in Crl.A.(MD)No.435 of 2010 is the second accused, and the appellant in Crl.A.(MD)No.407 of 2010 is the third accused, in S.C. No.41 of 2009, on the file of the learned Sessions Judge, Karur.

2.By judgment dated 16.09.2010, the Trial Court has convicted the first accused under Section 302 r/w 34 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo further R.I. for two months.

The accused 2 and 3, have been convicted under Sections 377 and 302 r/w 34 IPC. For the offence under Section 302 r/w 34 IPC, the accused 2 and 3 have been sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- each, in default to undergo further R.I. for two months. For offence under Section 377 IPC, the accused 2 and 3 have been sentenced to undergo 5 years R.I. and to pay a fine of Rs.1,000/- each, in default to undergo further R.I. for two months. The sentences have been ordered to run concurrently.

3.Challenging the conviction and sentence imposed by the Trial Court, the present Criminal Appeals have been filed by the appellants / accused.

4.The case of the prosecution in brief is as follows:- (a)The deceased in this case was one Faizur Rahman, aged about 8 years. P.W.1 is his father. The deceased was staying with his father at Aravakurichi Village in Karur Taluk. P.W.4 is the brother-in-law of P.W.1. P.W.1 and P.W.4 were doing partnership business. One Ramu @ Madan was working under them. Ramu @ Madan was then a juvenile, in conflict with law. According to the case of the prosecution, on 02.03.2008, at 4.30 p.m., these three accused along with Ramu, abducted the deceased to a place known as Sukkankarai Thottam. In that place, these three accused had unnatural sex with the deceased. Then, the second accused dropped a big stone on the head of Faizur Rahman. Out of the injuries sustained, he succumbed forthwith. The other accused helped him to do so. Then they put the dead body in a gunny bag and concealed it in a garden at Jeeva Nagar.

(b)According to P.W.1, from 04.30 p.m. on 02.03.2008, the deceased was not found. The deceased was wearing a gold chain, when he lastly went out. On 03.03.2008, on hearing that there was a dead body of a boy in a gunny bag in the garden at Jeeva Nagar, P.W.1 rushed to the spot. He ascertained that it was the dead body of Falzur Rahman. But the gold chain was not found on the dead body. Thereafter, he proceeded to Aravakurichi Police Station at 6.00 p.m. He preferred a complaint under Ex.P1. P.W.19 was the then Sub-Inspector of Police of Aravakurichi Police Station. On receiving the said complaint, he registered a case in Crime No.68 of 2008 under Sections 366 and 302 IPC under Ex.P44. Then he forwarded Ex.P1 and Ex.P44 to the jurisdictional of the Magistrate and then

handed over the case diary to the Inspector of Police, for investigation.

(c)Taking up the case for investigation, P.W.20, the then Inspector of Police, attached to Aravakurichi Police Station, proceeded to the place of occurrence forthwith. He arranged for photographing the place of occurrence and the dead body. Then he recovered blood-stained earth and sample earth from the place of occurrence under Ex.P4 in the presence of P.W.9 and another witness. Since it was dark, according to him, he could not prepare Observation Mahazar and Rough Sketch forthwith. On the next day, he prepared an Observation Mahazar in the presence of the same witnesses. On the same day, at 11.30 a.m., the juvenile accused Ramu was produced by P.W.4 and others. P.W.20 arrested him at the Police Station. On such arrest, he gave a voluntary confession in which he had disclosed that he would identify where he has concealed a stone, as well as a lungi and shirt.

(d)Then on 04.03.2008, at 4.30 a.m., P.W.20 arrested the first accused in the presence of P.W.9 and another witness. On such arrest, he gave a voluntary confession in which he had disclosed that he would identify the place where he had hiden the cycle. In pursuance of the same, he took the police and P.W.9 to his house and produced M.O.14-cycle, which was recovered under Ex.P6. Then he returned to the Police Station.

(e)Leaving both the accused in the lock-up, P.W.20 proceeded to the hospital and conducted inquest on the body of the deceased at 7.00 a.m. on 04.03.2008. Ex.P47 is the Inquest Report. During the inquest, he examined few more witnesses. Thereafter, he forwarded the dead body for post mortem. P.W.14, Dr.Gokila, conducted autopsy on the body of the deceased on 04.03.2008 at 9.50 a.m. During the post mortem, she found the following injuries:- “1)6x6 cm dark coloured contusion of about 3 days old over the right side of the face.

2)In the right eye, contusion present.

3)Lacerated injury of 4x3x2 cm over the right Pareto-occipital region seen. Oozing from the wound present. Lacerated injury of 3x2x2cm over the left parietal region seen.

4)Abrasion over the right knee 6x3cm Abrasion over left knee 5x3cm seen. Ant bite marks seen. Skin pealed here & there.

Examination of Anus: Triangular laceration 1x1cm present over the 12'O Clock position of the anus. Anus dilated and patulous without radial folds. Retal mucosa seen. O/D. of skull:

1) multiple depressed fracture over the middle of the skull seen.

2)Depressed fracture over the right parieto occipital region seen.

3)Brain pale. 100 gm. of clotted blood present over the back of the skull.

4)Hyoid Bone intact.

5)Ribs normal.

6)Heart chamber empty. Thoracic cavity contain 250 gms of clotted blood and Blood sample taken.

7)Stomach contain 250 gms of digested food particle.

8)All other inner organs pale. Bowel distended with gas." She had sent the stomach and its contents, a portion of the intestine, a portion of the liver, kidneys and Ano-rectal swab for chemical analysis. As per the report of the chemical analyst, there was no poison detected in the body of the deceased. The smear taken from Ano Rectal swab showed spermatozoa. Based on the post mortem findings and the opinion of the Chemical Analyst, she gave an opinion that the deceased would appeared to have died of head injury. She also opined that the deceased would have been subjected to unnatural sexual attempt (sodomy).

(f)Turning back to the investigation done by P.W.20, on 04.03.2008 at 10.30 a.m. in the presence of P.W.9 and another witness, he prepared an Observation Mahazar and Rough Sketch. At 11.00 a.m., the juvenile accused Ramu identified the place where he had hidden the stone and produced the same. They were all recovered in the presence of P.W.9 and another witness under a mahazar. At 1.00 p.m., he recovered a lungi and shirt which were produced by the juvenile accused

Ramu. Then he forwarded the juvenile accused Ramu and first accused Kumar to the Court for judicial remand. Then he examined P.Ws.1 to 5 and few more witnesses and recorded their statements. On 05.03.2008 at 6.00 a.m., he arrested the second accused in the presence of two witnesses. On such arrest, he gave voluntary confession, in which he disclosed that he would identify the place where he had hidden the Hero Honda motorcycle. At the same time, the third accused-Mansur Ali was also arrested. He also gave voluntary confession. In the said confession, he disclosed that he would identify the place where he had hidden the gold chain. In pursuance of the said disclosure statement made by the second accused, he identified the place where he had hidden the Hero Honda motorcycle and produced the same at 8.30 a.m. Similarly, the third accused produced the gold chain (M.O.1). They were all recovered under respective mahazars. Then, P.W.20 returned to the Police Station with the accused and with the properties seized. In the Police Station, during the body search, from the second accused, a cell phone (M.O.19) and SIM card (M.O.20) were recovered. Thereafter, accused were sent for judicial remand. He made a request to forward the material objects for chemical examination.

(g)On 06.03.2008, P.W.20 gave a requisition to the Learned Judicial Magistrate No.II, Karur, to forward juvenile accused Ramu and the 1st accused Kumar for potency test and for DNA test to compare the Recto Ano Swab taken from the deceased with that of the accused. (Ex.P-40 is the requisition). Similarly, on 30.03.2008, P.W.20 gave a requisition to the Learned Judicial Magistrate No.II, Karur, to forward the other accused Nattu @ Nataraj (A-2) and Mansur Ali (A-3) for conducting such examination. Accordingly, P.W.13, the Scientific Assistant, DNA Division,Forensic Lab, Chennai, conducted DNA Examination. For the said purpose, the juvenile accused Ramu and the accused in the present case Nattu @ Nataraj, Kumar and Mansur Ali, were all produced before P.W.13. Blood was drawn from them for the purpose of DNA Examination. DNA drawn from the respective blood of the accused, including the juvenile accused, was compared with the DNA drawn from the Recto Ano Swab taken from the dead body of the deceased. According to P.W.13, the DNA found in the spermatozoa on the body of the deceased tallied with that of juvenile accused Ramu and the accused Nos.2 and 3. Ex.P-28 is the report submitted by P.W.13.

(h)P.W.12 - Mrs.Radhika Balachandran was working as Scientific Assistant at the Government Forensic Lab, Chennai. From the Medical Officer (P.W.14), she received a slide with white smear, on 17.03.2008, for the purpose of examination to find out whether there was spermatozoa. On such examination, she found that there was spermatozoa in the smear on the slide. Ex.P-20 is her report. From the evidence of P.Ws.12 and 13 and their respective reports, the prosecution has stated that the deceased had been subjected to unnatural offence.

(i)According to the further evidence of P.W.12, out of 11 items sent for chemical examination, she detected blood on Items 1, and 3 to 10. (The prosecution has failed to correlate these items with reference to the material objects).

(j)P.W.21, who conducted further investigation, collected the above reports, examined few more witnesses, including the Scientific Assistants - P.Ws.12 and 13 and finally laid charge sheet against the accused. In respect of the juvenile accused Ramu, he has filed a separate charge sheet.

5.Based on the above materials, the Trial Court framed the charges as follows:

The first charge is under Section 364 IPC against all the three accused. The second charge is under Section 377 IPC against all the three accused. The third charge is under Section 302 r/w 34 IPC against the second accused. The fourth charge is under Section 302 r/w 114 IPC against the accused 1 and 3. The fifth charge is under Section 201 IPC against all the three accused.

6.Since the accused denied the charges and pleaded innocence, they were all put on trial. During the trial, on the side of the prosecution, as many as 21 witnesses were examined, and 65 documents were exhibited and as many as 21 material objects were marked. When the accused were questioned in respect of incriminating circumstances, they denied the same as false. Thereafter, on the side of the accused, 3 witnesses were examined as D.Ws.1 to 3 and 4 documents were exhibited, viz. Exs.D1 to D4. Having considered the above materials, the Trial Court acquitted the first accused from the charges under Sections 364, 377 and 201 IPC, and the accused 2 and 3 from the charges under Sections 364 and 201 IPC. The Trial Court convicted all the three accused for the other charges

framed against them respectively, as detailed in the second paragraph of this judgment. That is how the appellants are before this Court with these appeals.

7.We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing on behalf of the State and also perused the records carefully.

8.At the outset, we have to state that this is a case which entirely depends upon circumstantial evidence. The circumstances projected by the prosecution are as follows:

(i)The deceased-Faizur Rahman, aged 8 years was not seen from 4.30 p.m. on 02.03.2008 onwards. The dead body of the deceased was found by P.W.1 in a garden at Jeeva Nagar t 4.45 p.m. on 03.03.2008 . The gold chain worn by the deceased was found missing.

(ii) P.W.3 had lastly seen the deceased in the company of the juvenile accused Ramu at 5.30 p.m. when they were together proceeding in a cycle. After sometime, the juvenile accused Ramu alone returned in the cycle and at that time, according to P.W.2, there were blood stains on his shirt. When she enquired him, he told that due to goaring by a bull, he sustained injury. (iii)P.W.3 enquired the juvenile accused Ramu at 5.00 p.m. on 02.03.2008 regarding the blood stains on his shirt, for which he told that it was due to goaring by a bull.

(iv)The juvenile accused Ramu gave Extra Judicial Confession to P.W.4 on 03.03.2008 confessing thereby that he along with these three accused, had sodomy with the deceased and killed him, and thereafter the body was concealed in a gunny bag.

(v)P.W.5 had seen these accused in the company of Ramu and proceeded towards the garden in Jeeva Nagar. P.W.6 had seen the juvenile accused Ramu somewhere near the place of occurrence and when he enquired him, he told that he had come to catch the parrot.

(vi))According to the Doctor, the death was due to the injury on the head which would have been caused by a stone. The Doctor had found spermatozoa on the

anus of the deceased. Therefore, the attempt for sodomy, according to the prosecution, has been proved.

(vii)On the arrest of the juvenile accused, he gave a voluntary confession out of which, the stone and cycle were recovered. (viii)On the disclosure statement made by the second accused, a motorcycle was recovered and on the disclosure statement made by the third accused on 05.03.2008, M.O.1-Gold chain was recovered, which according to the prosecution, belonged to the deceased.

(ix)The recto anal swab taken from taken from the body of the deceased, during chemical examination, disclosed that there was spermatozoa (vide the evidence of P.W.12).

(x)The spermatozoa found on the body of the deceased tallied with the spermatozoa of the juvenile accused Ramu and the accused Nos.2 and 3 (vide DNA Examination and the evidence of P.W.13).

9.According to the learned Additional Public Prosecutor, the prosecution has proved all the above stated circumstances, and from these proved circumstances, the prosecution has established the guilt of the accused.

10.But the learned counsel appearing for the appellants would submit that none of the circumstances have been proved by the prosecution, and absolutely there is no evidence to connect the accused with the alleged crime and therefore, they are entitled for acquittal.

11.We have considered the rival submissions. Insofar as the fact that the deceased was found missing from 04.30 p.m. on 02.03.2008 onwards, there can be no difficulty in believing the evidence of P.W.1. Similarly, in the evidence of P.W.2, it is stated that the deceased was found in the company of the juvenile accused Ramu. This cannot be an incriminating circumstance, against these accused at all. The evidence of P.W.2 would only go to show that the deceased was seen alive at 5.30 p.m. on 02.03.2008. Further, the evidence of P.W.2 is that after sometime, Ramu alone returned and at that time, there were blood stains on his dress. From this, it can only be inferred that the deceased would have been

done to death somewhere around 5.30 p.m. on 02.03.2008. But even this inference cannot be made use of against these accused.

12.Then comes the evidence of P.W.3. He has only stated that there were bloodstains on the dress of the juvenile accused Ramu when he saw him on 02.03.2008 at 5.00 p.m. This is also not an incriminating evidence against these accused in any manner.

13.Then comes the evidence of P.W.4 to whom the juvenile accused Ramu confessed to the entire guilt. The Trial Court has erroneously placed reliance on the same. In our considered opinion, the said confession said to have been made by the juvenile accused Ramu to P.W.4 is not at all admissible against these accused in view of Section 30 of the Evidence Act. Under Section 30 of the Evidence Act, in order to hold a confession of a co-accused relevant, and to admit the same in evidence, one of the prerequisites is that there should be a joint trial of the co-accused who had given confession along with the other accused against whom it is sought to be used. In this case, the juvenile accused Ramu, who is stated to have given confession to P.W.4, was not jointly tried and therefore, the said extra judicial confession of Ramu cannot be made use of against these accused at all. Thus the evidence of P.W.4 also does not go to improve the case of the prosecution in any manner.

14..The prosecution mainly relies on the discoveries made out of the disclosure statement by Ramu to the police, on his arrest. As we have already stated, since Ramu was not tried jointly, the so-called disclosure statement made by Ramu and the consequential recovery of the stone and cycle from his custody are not relevant and so, they are not admissible in evidence.

15.Nextly, the prosecution relies on the evidences of P.Ws.5 and 6. According to them, these three accused were found in the company of the deceased and the juvenile accused Ramu at 4.30 p.m. on 02.03.2008, somewhere near the place where the dead body was found later on. The learned counsel for the appellants would submit that these two witnesses cannot be believed at all, as there are contradictions in their evidences. During cross-examination, P.W.5 has stated that on the same date, when he saw P.W.1, he told him about his witnessing these

accused in the company of the deceased. Similarly, P.W.6 has also stated that he told P.W.1 about the same. Though these two witnesses have been cross-examined in length, nothing has been brought on record to discredit their evidences. Therefore, we are of the view that there can be no difficulty in giving credence to the evidences of these witnesses.

16.Next comes, the arrest, the confessions and consequential recoveries of the material objects. So far as the 2nd accused Nattu @ Nataraj is concerned, he was arrested n 05.03.2008 and in pursuance of his confession, a Hero Honda Motor Cycle was recovered. Since the connection between the said Motor Cycle and the crime has not been established by the prosecution, in our considered opinion, the disclosure statement made by the 2nd accused is not admissible and consequently recovery of the Motor Cycle is of no use for the prosecution.

17.On the same date, the 3rd accused Mansur Ali, on arrest, gave a confession. Out of the said confession, it is stated that the gold chain (M.O. 1) was seized. The said gold chain has been identified to be that of the deceased, which was lastly worn by him. This is projected as one of the very strong pieces of evidence against the accused. But, the learned counsel for the accused has taken us through the evidence of P.W.1, who has stated, during cross-examination, that on 04.03.2008 itself, the jewel, namely M.O.1 gold chain, was shown by P.W.20 at the Police Station at 10.00 a.m. He has further stated, during cross-examination, that all these accused were brought to the police station on 04.03.2008 at 10.00 a.m. and kept in the police station. P.W.5 has also stated that on 04.03.2008 at 1.00 a.m., he saw all the three accused in police custody at the police station, where he identified them to the police. From these evidences, the defence has established, the learned counsel contended, that all these three accused were kept in the police station from 04.03.2008 onwards and M.O.1 gold chin was also in the custody of the police. Therefore, the story projected by P.W.20 that these two accused were arrested only on 05.03.2008 and on their confessions, the material objects were recovered cannot be believed, he contended.

18.We find force in the said argument of the learned counsel for the accused. The evidences of P.Ws.1 and 5 in this regard has not been disputed by the prosecution

at all by treating them as hostile witnesses. Therefore, we hold, from the evidence of P.Ws.1 and 5 that these two accused (A2 and A3) were taken into custody as early as on 04.03.2008 itself and they were kept in the police station. Therefore, the prosecution case that these accused were arrested only on 05.03.2008 and the material objects, including the gold chain, were recovered from them on 05.03.2008 cannot be believed. To this extent, the prosecution case is to be rejected.

19.The next circumstance relied on by the prosecution is that the dress materials recovered from these accused contained bloodstains, which tallied with the blood group of the deceased. Unfortunately, during trial, the material objects have not been correlated to the report (Ex.P-22) of P.W.12. Above all, since we do not believe the arrest of the accused Nos.2 and 3 on 05.03.2008 and since we do not believe the consequential recoveries of dress materials from them, we hold that the evidence of P.W.12 cannot be made use of against these accused at all, in any manner. Thus, the prosecution has lost this circumstance also.

20.Lastly, the prosecution relies on the presence of spermatozoa on the anus of the deceased. P.W.12 has found spermatozoa on the slide sent to her by the Medical Officer (P.W.14). According to P.W.12, the slide contained spermatozoa. Apart from that, according to P.W.14, there was a triangular shape lacerated wound on the anus of the deceased. P.W.12 has opined that the deceased would have been subjected to sodomy. The presence of this injury cannot be disputed at all by the defence. From the injury on the anus and from the spermatozoa found on the anus, as has been spoken to by P.W.12, the prosecution clearly proved that the deceased was subjected to sodomy and thereafter he was killed.

21.Now, as it has been projected by the prosecution, whether these three accused had committed sodomy and killed the deceased. As we have already stated, the recto anal swab taken from the deceased was compared to the DNA drawn from the blood of all these three accused and that of the juvenile accused Ramu. Her further evidence is that the DNA of the 1st accused Kumar did not tally. Thus, this evidence does not connect the 1st accused with the crime. But, so far as the 2nd and 3rd accused are concerned, according to P.W.13, the DNA comparison

proved that the spermatozoa found on the body of the deceased was that of these two accused (A-2 and A-3) and that of the juvenile accused. The accused Nos.2 and 3 have not explained the same. Thus, from this scientific evidence, the prosecution has clearly established that the accused Nos.2 and 3 had sodomy with the deceased. From the circumstances available, there can be no difficulty in concluding that the persons who committed sodomy would have killed the deceased, by dropping a stone on his head. Therefore, it can be safely concluded that the accused Nos.2 and 3 had committed sodomy and killed the deceased.

22.But, the learned counsel appearing for accused 2 and 3 would submit that since the arrest, as projected by the prosecution on 05.03.2008, itself has been found to be false, the entire case of the prosecution should be disbelieved. For a moment, we are not able to persuade ourselves to accept the said argument. Because, we have found some falsity in the case of the prosecution, it does not require that the entire case of the prosecution should be rejected. If the court is able to separate the grain from the chaff, there can be no legal impediment for this Court to act upon the grain and to go ahead on the basis of the proved facts.

23.The learned counsel would further submit that after the arrest of the accused, while they were in the illegal custody of P.W.20, semen was drawn from them, by force, and the same was sprinkled on the body of the deceased and thereafter swab was taken. In our considered opinion, this argument is not only far fetched but, it is a pigment of imagination. Had it been true these accused, when they were produced before the Magistrate, would have told the Magistrate about the same. But, they did not do so. Apart from that, it has not even been suggested to P.W.20 and P.W.21 that they drew semen from the accused for the purpose of using the same for staining the body of the deceased so as to create evidence in that regard. Even in their statements under Section 313 Cr.P.C., these accused have not stated so. Therefore, this argument is only an after thought and, therefore, the same cannot be accepted.

24.Nextly, the learned counsel for the accused would submit that though the postmortem was conducted by P.W.14, P.W.15 was also present at that time. He would further point out that P.W.15 is closely related to the deceased. Therefore,

with the help of P.W.14 and P.W.15, the semen of the accused was stained on the body of the deceased and thereafter swab was taken. We have given our anxious consideration to the said argument. During cross- examination, P.W.15 has stated that the fact that the deceased was distantly related to him came to his knowledge only subsequently and on the date when postmortem was conducted, he did not know anything about the said relationship. He has further stated that as per the request made by the police, he examined the 1st accused Kumar and issued Ex.P-32 certificate. It is not even suggested to him that he helped the family of the deceased to cook up a case by staining the body of the deceased with the semen of these accused. Thus, the argument of the learned counsel that with the help of P.W.15, semen of the accused was stained on the body of the deceased and this is the reason why the recto ano swab taken tallied with the DNA of the accused cannot be countenanced at all.

25.As it is often stated, men may lie but, circumstances will not lie, in this case, though, several circumstances projected by the prosecution through men have been disbelieved by us, we are prepared to believe the circumstances, namely, the presence of spermatozoa on accused 2 and 3 on the anus of the deceased, coupled with the injury found on the anus of the deceased, establishing sodomy. From this circumstance, coupled with the evidences of P.Ws.5 and 6, who had seen these two accused in the company of the deceased lastly, we hold that the prosecution has conclusively proved that the accused Nos.2 and 3 have committed sodomy and murdered the deceased.

26.So far as the 1st accused is concerned, except the evidence of P.Ws.5 and 6, there is no other evidence to connect him with the crime. In our considered opinion, based on the said evidence alone and in the light of the evidence that spermatozoa found on the body of the deceased did not tally with the spermatozoa of the 1st accused, we are of the view that it may not be safe to sustain the conviction of the 1st accused.

27.The learned counsel appearing for accused 2 and 3 would submit that the accused Ramu has not been secured so far. From the evidence of P.W.20, it is clear that he was arrested and subjected to medical examination and against him

there is a proceeding pending before the Juvenile Justice Board. The learned counsel for accused Nos.2 and 3 seriously disputes the same. A perusal of the evidence of P.W.17, the Head Clerk of Judicial Magistrate Court No.II, Karur, would go to show that for the purpose of holding DNA examination for the juvenile accused Ramu, he forwarded Ex.P-42 letter. Accordingly, Ramu was sent to the Forensic Lab at Chennai for examination. under Ex.P-43. From the evidence of P.W.17, it is crystal clear that the juvenile accused Ramu was secured during investigation. The learned Additional Public Prosecutor would submit that the case is pending against him but, he is absconding. In view of the same, the last argument of the learned counsel in this regard also deserves to be rejected.

28.In view of all the above, we hold that the prosecution has proved the case against the accused Nos.2 and 3 and accordingly, we are inclined to sustain the conviction against them. So far as the 1st accused is concerned, the prosecution has not proved the case beyond reasonable doubt and therefore he is entitled for acquittal.

29.In the result,

(a) Criminal Appeal (MD)Nos.407 and 435 of 2010 are dismissed and consequently the conviction and sentence imposed on accused Nos.2 and 3 in S.C.No.41 of 2009, on the file of the learned Sessions Judge, Karur, are confirmed. It is represented that the 2nd accused Nattu @ Nataraj is on bail. The bail bonds executed by him shall stand cancelled. The trial court is directed to take necessary steps to secure the 2nd accused and commit him to jail to undergo the sentence imposed on him.

(b)Criminal Appeal (MD) No.173 of 2011 is allowed and the conviction and sentence imposed on the 1st accused Kumar are set aside and he is acquitted of all the charges levelled against him. It is reported that he is on bail. The bail bonds executed by him shall stand discharged. Fine, if any, paid by him shall be returned to him.

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