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Court : Chennai

Decided On : Aug-01-2012

Judge : K.N.Basha &Amp; P.Devadass

Appeal No. : Crl.A.No.418 of 2012

Appellant : Ganesh

Respondent : The State By, Inspector of Police, Coimbatore

Advocate for Pet/Ap. : For the Appellant: N.Manokaran, Advocate. For the Respondent: V.M.R.Rajendran, Addl. Public Prosecutor.

Judgement :

(Criminal Appeal filed under Section 374(2) of Cr.P.C., to call for the records relating to the judgment dated 11.11.2010 made in S.C.No.18 of 2010 on the file of learned Sessions Judge for Bomb Blast Cases, Coimbatore and set aside the same by allowing the appeal.)

P.DEVADASS, J.,

The appellant is A2 in the Sessions Case in S.C.No.18 of 2010, on the file of Sessions Court for Trial of Bomb Blast Cases at Coimbatore.

2. A2, Ganesh and A1 Ramesh were prosecuted in the said Court, on the allegation that on 17.08.2009, at about 6.30 p.m., they have trespassed into Door

No.1, Tamil Nadu Housing Board, situate in New Sidhapudhur, Gandhipuram, Coimbatore and A2 strangulated her, while A1 smoothered her with a pillow, thus caused her death and thereafter stolen her wrist-watch, cell phone, gold ear-stud and bangles.

3. Both were tried together for charges under Sections 449, 302 and 380 IPC.

4. The prosecution case is entirely based on circumstantial evidence consisting of motive, last scene theory, Report of Test Identification Parade conducted by a Judicial Magistrate, Section 27 Evidence Act recoveries and Finger Print Evidence.

5. To substantiate the charges, prosecution examined P.Ws.1 to 17, marked Exs.1 to 23 and exhibited M.Os.1 to 33.

6. When examined on the incriminating aspects appearing against them, A1 and A2 have denied their complicity in this case and they have not produced any evidence on their side.

7. Appreciating the said evidence, on 11.11.2010, the Trial Court concluded that all the circumstances projected against them have been established and the proved circumstances unerringly proceed towards the accused pointing out that they have committed this murder for gain.

8. Ultimately, the Trial Court convicted and sentenced them as under:-

Accused	Conviction	Sentence

A1	(i) u/s 449 IPC (ii) u/s. 302 IPC (iii) u/s. 380 IPC	Life imprisonment and fine Rs.10,000/- in default 6 months rigorous imprisonment. Life imprisonment and fine Rs.15,000/- in default 9 months rigorous imprisonment. 5 years rigorous imprisonment and fine Rs.5,000/- in default 3 months rigorous imprisonment.
A2	(i) u/s 449 IPC (ii) u/s. 302 IPC (iii) u/s. 380 IPC	Life imprisonment and fine Rs.10,000/- in default 6 months rigorous imprisonment. Life imprisonment and fine Rs.15,000/- in default 9 months rigorous imprisonment. 5 years rigorous imprisonment and fine Rs.5,000/- in default 3 months rigorous imprisonment.

The learned Judge directed their sentences to run concurrently.

9. Earlier, challenging his conviction and sentences, A1 directed Criminal Appeal No.725 of 2010 to this Court.

10. On 24.02.2011, a Division Bench of this Court allowed the said appeal, acquitted A1 after holding as under:-

“This Court after careful and thorough scrutiny of the oral and documentary evidence and other materials and by applying its mind independently to the said materials, is of the considered opinion that the circumstances projected by the prosecution as to the guilt of the accused have not been proved beyond

reasonable doubt as there are many missing links in the chain of circumstances. Hence, the benefit of doubt shall enure in favour of the appellant/A1."

11. The said judgment of the Division Bench is reported in 2011(1)MWN (Cr.)416 (DB.)

12. Now, in the present Criminal Appeal, A2, Ganesh, who had not earlier appealed challenges his conviction and sentences sated supra.

13. The learned counsel for the appellant contends that the basis of the charges and the evidence as against both are same, already, the Division Bench disbelieved the entire prosecution case based on the circumstantial evidence. In the circumstances, the benefit of the order of acquittal rendered earlier, enure to this appellant also.

14. Mr.V.M.R.Rajendran, learned Additional Public Prosecutor submitted that the case against A1, who was acquitted earlier and the case against the present appellant is also based on the very same circumstantial evidence.

15. Now, the short question is whether based on the order of acquittal rendered earlier, the present appellant also have to be acquitted.

16. In this connection, it is apposite here to notice certain decisions rendered on the point.

17. In **RAJA RAM Vs. STATE OF M.P. (1994 SCC (Cri) 573)** it was held that when the case of the accused, who was earlier acquitted is not distinguishable from the case of the co-accused, who had subsequently appealed, the benefit of the Judgment rendered earlier should be extended to the subsequently appealed co-accused.

18. In **BIJOY SINGH Vs. STATE OF BIHAR (2003 SCC (Cri) 1093)** it was held that, when on evaluation of the evidence, if the Court reaches the conclusion that no conviction of any accused is possible, the benefit of that decision must be extended to the co-accused, similarly situated, though he has not challenged his conviction earlier.

19. In **SAHADEVAN Vs. STATE OF TAMIL NADU (2012 (6) SCC 403)** it was held that, when the Court finds the entire prosecution suffers from material contradictions, the most crucial evidence is not reliable, there are definite and material flaws in the prosecution case and the entire prosecution case has been found to be unreliable and the prosecution, as a whole failed to prove its case beyond reasonable doubts then the benefit of this finding should accrue to all the accused including the accused, who had not appealed earlier.

20. It was also held in **SAHADEVAN** (supra) when the case against all the accused including the accused, who had not earlier appealed, is based on circumstantial evidence and none of the circumstances have been found to be established and the entire prosecution case suffers wholly, then the conviction of the Trial Court as a whole against all the accused suffers from infirmity and the guilt alleged against all the accused becomes not established beyond all reasonable doubts and benefit of that shall be given to all the accused including the co-accused, who had appealed subsequently.

21. In **SAHADEVAN** (supra) it was also held as under:-

“If, for compelling and inevitable reasons, like lack of finance, absence of any person to pursue his remedy and lack of proper assistance in the jail, an accused is unable to file appeal, then it would amount to denial of access to justice to such accused. The concept of fair trial would take within its ambit the right to be heard by the appellate court. It is hardly possible to believe that an accused would, out of choice, give up his right of appeal, especially in a crime where a sentence of imprisonment for life is prescribed and awarded.”

22. In **PAWAN KUMAR Vs. STATE OF HARYANA (2004 SCC (Cri) 109)** it was held that, when the Court while considering the appeal of one of the accused came to the conclusion that the conviction of the appealing as well as the non-appealing accused was unwarranted, further detention of the non-appealing accused by virtue of the Judgment rendered earlier, infringes the personal liberty of the non-appealing accused guaranteed to him under Article 21 of the Constitution of India.

23. In **MADHU Vs. STATE OF KERALA (2012 (1) SCC (Cri) 892**, the Hon'ble Supreme Court reiterated PAWAN KUMAR (supra).

24. On perusal of the entire evidence on record and the Trial Court's judgment, it is seen that A1 and A2 were proceeded on the same footing and on the same allegation, the prosecution case was also entirely based on circumstantial evidence against both and the very same evidence has been let in as against them and they were convicted. However, on appeal by A1, on reappraisal of the entire evidence, a Division Bench of this Court came to the conclusion that the said circumstances projected as against the accused were not proved beyond reasonable doubt and acquitted A1. Had the present appellant also appealed earlier along with A1, he would have also been acquitted.

25. Considering the above aspects and the principles laid down in the various decisions seen above, the benefit of the earlier judgment of the Division Bench enure to the present appellant also and consequently, he has to be acquitted.

26. In the result, this Criminal Appeal is allowed. The conviction and sentences imposed upon the appellant by the Trial Court on 11.11.2010 are set aside. The appellant is acquitted of all the charges. He shall be released from jail, if his further custody is no longer required in connection with any other case. Fine amount, if paid already, shall be refunded.

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