

State Rep. by Vs. 1.Rajamani,

State Rep. by Vs. 1.Rajamani,

SooperKanoon Citation : sooperkanoon.com/964913

Court : Chennai

Decided On : Jan-29-2013

Judge : M.Jaichandren

Appellant : State Rep. by

Respondent : 1.Rajamani,

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

29. 01/2013 CORAM THE HONOURABLE MR.JUSTICE M.JAICHANDREN and THE HONOURABLE MR.JUSTICE S.NAGAMUTHU Criminal Appeal (MD).No.11 of 2007 State Rep. By The Inspector of Police, Uthumalai Police Station, Tirunelveli District. .. Appellant vs. 1.Rajamani, 2.Rajaiah Nadar 3.Thangadurai. .. Respondents Criminal appeal is filed under Section 378 of Criminal Procedure Code to allow this appeal and set aside the judgment of acquittal passed by the Honorable lower Court in S.C.No.120/2005, dated 23.01.2006 on the file of the learned Principal Sessions Judge, Tirunelveli, convict the respondents/accused for the offences as charged, pass sentence against them in accordance with law. !For appellant ... Mr.A.Ramar Additional Public Prosecutor ^For respondents... Mr.V.Kathirvelu Senior Counsel for Mr.K.Prabhu :JUDGMENT (Judgment of the Court was delivered by S.NAGAMUTHU, J) This is an appeal against acquittal. The State is the appellant. The respondents are the accused A1 to A3 in S.C.No.120 of 2005 on the file of the learned Principal Sessions Judge, Tirunelveli. They stood charged for the offences under Sections 341, 294(b) and

302 IPC and 302 r/w 34 IPC (as against A1 Section 302 IPC and as against A2 and A3 Section 302 r/w 34 IPC). By Judgment, dated 23.01.2006, the Trial Court acquitted the respondents. The State is aggrieved by the same. That is how the State is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Selvaraj. There was a long standing enmity between the deceased and the first accused, on account of money dealing. The second accused is the maternal uncle of the first accused and the third accused is their close relative. It is alleged that on 16.10.2004 at 06.00 a.m. the deceased and his wife (PW1) were proceeding towards their pumpset which is situated on the north side of their house. When they were nearing Sandhana Mariamman Temple, all the three accused suddenly appeared. The first accused was armed with an aruval and the third accused was armed with a knife. On seeing the deceased, the first accused shouted at him saying as to how he could make a complaint against him after having borrowed money from him. Suddenly, the second accused caught hold the deceased and prevented him from further moving. Pws2 and 3 incidentally came to the place of occurrence. They shouted at the accused and warned them not to do any harm to the deceased. But, the first accused cut the deceased on his neck, on the left side of the neck and again on the right side of the neck with aruval. The third accused stabbed him on the abdomen with knife. The deceased fell down in a pool of blood. The occurrence was witnessed by Pws1 to 3. Then, the accused fled away from the scene of occurrence with the weapons. PW1 raised alarm. PWs 4 and 5 and one Kutti rushed to the place of occurrence. They enquired PW1 as to what had happened. PW1 narrated the incident to them.

3. Then, Pws1 and 2 on walk went to Uthumalai Police Station and preferred an oral complaint. PW10, was the Sub Inspector of Police attached to Surandai Police Station. He was also incharge of Uthumalai Police Station. On 06.10.2004 at 08.30 a.m. PWs1 and 2 appeared before him and PW1 preferred oral complaint. PW10 reduced the same into writing. Ex.P1 is the complaint. Based on the same, he registered a case in Cr.No.245 of 2004 under Sections 341, 294(b) and 302 IPC. Ex.P8 is the First Information Report. Then, he forwarded Ex.P1 and Ex.P8 to the Court through PW11. PW11 handed over the same to the learned Magistrate at

Thenkasi at 02.45 p.m. vide endorsement on Ex.P8.

4. PW10, then handed over the case diary for further investigation to PW15, who was the then Inspector of Police took up the case for further investigation on 06.10.2004 at 09.15 a.m. He proceeded to the place of occurrence and prepared an Observation Mahazar in the presence of PW6 and another witness at 10.15 a.m. He prepared a rough sketch showing the place of occurrence. Then, he arranged for taking photographs of the dead body in the place of occurrence. Between 10.30 a.m. and 12.30 p.m., he conducted inquest on the body of the deceased. During which, he examined Pws 1 to 3 and recorded their statements. Ex.P18 is the inquest report. Then, he sent the body for postmortem.

5. PW13 was an Assistant Surgeon attached to the Government Hospital at Sankarankovil. He conducted autopsy on the body of the deceased on 06.10.2004 at 3.30 p.m. He noticed the following injuries.

1. A transverse cut injury starting from a point at the centre of the right entry border of 5 CM crosses the neck just below thyroid cartilage and end of the point of centre of left 5 cm. 18 cms length 6 cm width. Up to the entry border of C4 vertebra. About 50 ml of blood clot seen in the injury. On dissection trachea cut in to two/at the level carotid cartilage. The strap muscles are also cut into 2. All the carotid vessels cut into 2 on both sides.

2. An oblique cut injury starting from left angle of mouth and run around the left cm 4 X 2 X 2 cm 3. A transverse cut injury starting from centre of chin runs left head 4 x 2 x 2 cm. Both injuries 2 and 3 having tailing toward left side.

4. Incised injury (...) present 5 cm below right costal margin in the right line 6 cm x 2 cm X 3 cm Ex.P12 is the postmortem certificate. He opined that the injury numbers 1 to 3 would have been caused by cut with aruval and injury number 4 would have been caused by a knife.

6. PW15 recovered bloodstain earth and sample earth Mos.6 and 7 respectively and a pair of chappels (MO8) belonging to the deceased from the place of occurrence in the presence of same witnesses. Then, he examined few more

witnesses. On 07.10.2004, the accused 1 and 3 had surrendered before the learned Judicial Magistrate NO.I, Tirunelveli. On request made by PW15, the Jurisdictional Magistrate ordered for police custody of the accused 1 and 3. Accordingly, on 14.10.2004 he took the accused 1 and 3 into his custody. While in the police station at 06.30 p.m. on the same day, the first accused gave a voluntary confession. PW15 recorded the same in the presence of PW7 and another witness. In pursuance of the confession, A1 disclosed the place, where he had hidden the aruval. Then at 07.00 p.m. the second accused gave a confession voluntarily, in which he had disclosed the place where he had hidden the knife. In pursuance of the disclosure statement made by the first accused, he took the police and the witnesses to Kalamman Temple Tank and from a bush, he took the aruval and produced the same. Similarly, the second accused took the police and witnesses to Keela Kalangal and produced the knife. PW15 recovered the same under a mahazar in the presence of witnesses.

7. On returning to the police station, PW15 sent the accused for judicial remand and handed over the material objects to the Court. Then, he recovered the dress materials found on the dead body and forwarded the same to the Court. Then, on his request, material objects were sent for chemical examination. He collected the First Information Report in Cr.No.14 of 2004 relating to the motive occurrence. Ex.P19, is the First Information Report in the said case. Ex.P20 is the charge sheet in the said case. The material objects were sent for chemical analysis. Ex.P16 is the chemical analyst report. According to the same, human blood of 'B' group was found in the earth recovered from the place of occurrence and on the dress materials of the deceased. But, no bloodstain was found on the knife and aruval. On completing the investigation, he laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed appropriate charges as narrated in the earlier paragraph of the judgment. The accused pleaded innocence and therefore, they were put on trial. In order to prove the charges, the prosecution has examined as many as 15 witnesses and marked 20 documents besides 11 material objects.

9. Out of the said witnesses examined, PWs1 to 3 are eyewitnesses to the occurrence. These three witnesses have spoken about the occurrence. When the above incriminating materials were put to the accused under Section 313 Cr.P.C, they denied the same as false. However, they did not choose to examine any witness on their side or to exhibit any document.

10. Having considered the above, the trial Court acquitted all the three accused. The State is aggrieved by the same. That is how the State is before us with this appeal.

11. We have heard the learned Additional Public Prosecutor for the appellant and the learned Senior Counsel for the respondents and perused the records carefully.

12. The learned Additional Public Prosecutor submitted that Pws1 to 3 are eyewitnesses to the occurrence and the Court ought not to have rejected their evidence. He would further submit that their evidence is duly corroborated by the medical evidence. The learned Additional Public Prosecutor would further submit that the recovery of aruval and knife at the instance of the accused 1 and 3 respectively would further go to strengthen the case of the prosecution. He would further add that the lower Court has rejected the evidence of Pws1 to 3 on untenable grounds. Contending so, the learned Additional Public Prosecutor has taken us through the evidence of Pws1 to 3 and that of other witnesses also. In conclusion, the learned Additional Public Prosecutor prays for reverse of the judgment of the trial Court and for imposition of appropriate punishment under all the charges against the accused.

13. The learned Senior Counsel appearing for the respondents would stoutly oppose this appeal. According to him, Ex.P1 is a doubtful document. Though the occurrence was at 06.00 a.m. the First Information report has reached the learned Judicial Magistrate only at 02.45 p.m. He would further submit that there is no explanation for the said delay. This is one of the grounds upon which the trial Court has doubted the case of the prosecution. The learned Senior Counsel would further submit that the medical evidence also does not corroborate the eyewitnesses account of Pws1 to 3.

14. Nextly, the learned Senior Counsel would submit that there are lot of contradictions in respect of overtact attributed to A2. In respect of PWs1 to 3, the learned Senior Counsel would submit that they are chance witnesses and their presence has not been duly explained away. The learned Senior Counsel would further submit that the lower Court has taken the view that the prosecution has failed to prove the case beyond reasonable doubt for the reasons stated above. The learned Senior Counsel concluded his argument by saying that the Judgment of the trial Court cannot be stated to be perverse, so as to interfere with the same. Thus, he prays for dismissal of the appeal.

15. We have considered the above submissions. Admittedly, according to the case of the prosecution, the alleged occurrence was at 06.00 a.m. 06.10.2004 and it is stated that a complaint was preferred at 08.30 a.m. and the case was registered, but the First Information Report has reached the Court only at 2.45 p.m. on the same day. PW11 is the Police Constable who carried the First Information Report from the Police Station to the Court of learned Judicial Magistrate, Thenkasi. He has stated that the distance between the Police Station and the Court is hardly 40 kms and at the most, it would take only 2 hrs to travel from the police station to the Court of learned Magistrate. But, in this case, the First Information Report has reached the Court only at 2.45 p.m. As we have already pointed out, PW11 has not offered any explanation as to why it took more than 5 hrs for him to hand over the First Information Report to the Court concerned. It is the contention of the learned Senior Counsel that from this delay, it could be infer that the First Information Report would not come into being at 08.30 a.m., but the same would be come into being only at 1.30 p.m. We find some force in the arguments of the learned Senior Counsel. This creates initial doubt in the case of the prosecution.

16. Next comes the medical evidence. According to Pws1 to 3, the first accused cut thrice with aruval on the neck and the third accused stabbed on the abdomen. But, according to the medical evidence, all the four injuries found on the body were all cut injuries. Not even a single stab wound was found on the body of the deceased. This has been taken note of by the trial Court to hold that the medical evidence contradicts eyewitness accounts.

17. Nextly, according to the case of the prosecution, A2 caught hold of the deceased. It was only at that time, both the accused 1 and 3 attacked the deceased with formidable weapons. The first cut injury found on the neck is so deep and it would reach upto spinal cord. This shows the force with which the injury has been caused. In our considered opinion, when a person is forcibly caught hold by another person, this injury would not have been caused. Similarly, the other injuries found in the neck and in the abdomen. PW1 would say that A2 caught hold the deceased from front side. PW2 would say that A2 caught hold the deceased from back side. PW3 would say that A2 caught hold the deceased by his hand. These are all the material contradictions taken note of by the trial Court. As we already pointed out, it is highly unbelievable that A2 caught hold the deceased and two persons would have caused the above four injuries by formidable weapons.

18. Apart from that, the trial Court has not believed the evidence of Pws1 to 3 on yet another ground, namely on the ground that they are chance witnesses. PW1 has stated that she accompanied the deceased and PW3. As to what for they had come to the place of occurrence has not been spoken to and thus, their presence at the crucial time of occurrence has not been explained at all. The occurrence was not in any way near the occurrence, it is far off from the place of occurrence as it is alleged. It is highly doubtful whether Pws1 to 3 would have present at the time of occurrence.

19. Nextly, coming to the recovery of the material objects. We find that no weightage could be attached. The weapons were subjected to chemical analysis, which has proved that there was no bloodstain at all on the weapons. There is no link especially between the weapons and the crime and thus, the recovery of the weapons allegedly on the confession of the accused 1 and 3 also did not strengthen the case of the prosecution.

20. In an appeal against acquittal, if two views are equally possible, unless the view taken by the trial Court is an impossible view, it is not permissible for this Court to retract his view from the view taken by the trial Court. Here in this case, the trial Court has disbelieved the evidence of Pws.1 to 3 holding that their

presence is highly unbelievable and the First Information Report is also doubtful. We do not find any reason to take a different view from that of the view taken by the trial Court.

21. In view of the above, we are in concurrence of the finding of the trial Court. The appeal fails and the same is dismissed. The acquittal of the respondents by the trial Court is hereby confirmed. jkr To 1.The Inspector of Police, Uthumalai Police Station, Tirunelveli District. 2.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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