

(2015) 09 MAD CK 0298

In the Madras High Court

Case No : Criminal Appeal No. 1428 of 2004

Gajendiran and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 07-09-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 304(2), 34

Citation : (2015) 09 MAD CK 0298

Hon'ble Judges : A. Selvam, J

Bench : Single Bench

Advocate : R. Sankarasubbu for G. Vijayakumar, for the Appellant; P. Govindarajan, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

A. Selvam, J—The convictions and sentences dated 16th day of December, 2004 passed in Sessions Case No. 680 of 2004 by the Additional District and Sessions Court, Fast Track Court No. 1, Chennai are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the defacto complainant is one of the friends of deceased Balaji and P.W.2-Kannan is also their friends. On 02.11.2004, at about 23.30 hours, all of them have been in Gowri Shankar Marriage Hall, which situates at Vadapalani, in connection with a marriage reception and all of them have taken liquor at the upstairs of the said Marriage Hall. At that time, the first accused, by name Gajendiran has broken a beer bottle and the same has been questioned by the deceased Balaji and due to that, a tussle has arisen in between him and the first accused and all of a sudden, all the accused has attacked the said Balaji and they also attacked others and after occurrence, on 03.11.2004, the then injured Balaji has been taken to Royapettah Government Hospital, where he succumbed to injuries. On the same day, at about 4 p.m., the defacto complainant, by name, Murali has given the complaint in question and

the same has been marked as Ex.P.1.

3. On receipt of Ex.P.1, P.W.6, the Investigating Officer has registered the same in Crime No. 855/2004 and taken up investigation. He examined the connected witnesses and also made arrangements for conducting autopsy and accordingly, Doctor, by name, Baskar-P.W.5 has conducted autopsy and he found the following external and internal injuries:-

"Injuries:-

Abrasions:

(1) 2.5 x 1 cms seen over the middle 1/3rd of right foot. (2) 3 x 1 cms over right foot over the root of 2nd and 4th toes.

(3) 1.5 x 1.5 cms over back of right elbow.

On dissection:-

The injuries are Ante-Mortem in Nature. Bruising of scalp seen over front of left side of head 3 x 3 cms and over left side of head 4 x 2.5 cms and over right side of head 10 x 8 cms. Fissured fracture of skull seen over right side of head 10 cms in length involving right temporal and adjacent frontal and parietal bones with fissured extension on to the base. Epidural haemorrhage seen over left frontal and temporal regions. Subarachnoid haemorrhage seen over left side of frontal and temporal regions. Brain tissue grossly appear normal. Fracture base of skull seen involving the right middle cranial fossa and right side of posterior cranial fossa. "

The Post Mortem Certificate has been marked as Ex.P.7.

4. After completing the investigation, P.W.6 has laid a final report before the 17th Metropolitan Magistrate, Saidapet and the same has been taken on file in P.R.C. No. 191/2004.

5. The 17th Metropolitan Magistrate, Saidapet, after considering the facts that the offences alleged to have been committed by all the accused are triable by sessions court has committed the case to the court of sessions and the same has been taken on file in Sessions Case No. 680 of 2004 and thereafter made over to the trial court.

6. The trial court, after hearing both sides and upon perusing relevant documents has framed a charge against all the accused under Sections 302 read with 34 of the Indian Penal Code (hereinafter called as "IPC") and the same has been read over and explained to them. The accused have denied the charge and claimed to be tried.

7. On the side of the prosecution, P.Ws.1 to 6 have been examined, Exhibits P.1 to P.11 and Material Objects 1 and 2 have been marked.

8. When the accused have been questioned under Section 313 of the Code of

Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been let in on the side of the accused.

9. The trial court, after hearing the arguments of both sides and upon appraising the available evidence on record has found the accused guilty under Section 304(2) of the IPC and sentenced him to undergo 7 years Rigorous Imprisonment and also imposed a fine of Rs. 2,000/- upon each of them with usual default clause. Against the convictions and sentences passed by the trial court, the present Criminal Appeal has been preferred at the instance of the accused as appellants.

10. The learned counsel appearing for the appellants/accused has raised the following points, so as to set aside the convictions and sentences passed by the trial court.

(a) The specific case of the prosecution is that in the course of occurrence, all the accused with common intention have attacked the deceased, by name Balaji and due to their attack, he has become unconscious; but the defacto complainant and others have not taken him to hospital immediately, but he has been admitted in hospital on 03.11.2004 and no explanation has been given on the side of the prosecution.

(b) The occurrence has taken place on 02.11.2004 at 11.30 p.m., whereas Ex.P.1-complaint has been given on 03.11.2004 at 4 p.m.,. No acceptable explanation has been given on the side of the prosecution.

(c) The specific evidence given by P.W.1 is that during the course of occurrence, all the accused have attacked some friends of Balaji and they sustained injuries, but they have not been examined as Prosecution Witnesses.

11. In order to sustain the convictions and sentences passed by the trial court, the learned Additional Public Prosecutor has contended that in the instant case, the defacto complainant, by name Murali has been examined as P.W.1 and another eye-witness viz., Kannan has been examined as P.W.2; both of them have clearly spoken about the occurrence and the manner of attacks alleged to have been made by the accused on the deceased; the doctor, who conducted autopsy has been examined as P.W.5 and his specific evidence is that the deceased would have died only due to head injury; the trial court, after considering the overall evidence available on record has rightly found all the accused guilty under Section 304(2) of the IPC and therefore, the convictions and sentences passed by the trial court do not warrant interference.

12. The specific case of the prosecution is that on 02.11.2004, at about 11.30 hours, at the time of taking liquor, the first accused has broken a beer bottle and the same has been questioned by the deceased Balaji and all of a sudden, all the accused with common intention have attacked the said Balaji and friends and immediately after occurrence, the said Balaji has become unconscious.

13. The entire case of the prosecution is based upon Ex.P.1- Complaint, wherein, it is stated that immediately after occurrence the said Balaji has become unconscious. The author of Ex.P.1 as P.W.1 has also stated in his evidence to the effect that immediately after occurrence, the said Balaji has become unconscious. If really such occurrence has taken place, P.W.1 and his friends, who witnessed the same, definitely would not have left the said Balaji in the lurch, without admitting him in hospital immediately.

14. It is seen from the records that even though the occurrence has taken place on 02.11.2004 at 11.30 p.m., the then injured Balaji has been admitted in hospital next day at about 6 a.m. Further P.W.1 has given Ex.P.1 on the same day at about 4 p.m.

15. As rightly pointed out on the side of the appellants/accused, no explanation has been given on the side of the prosecution with regard to failure on the part of P.Ws.1 and 2 and others in taking the then injured to hospital. Likewise, the prosecution has failed to explain as to why a huge delay has occurred in giving Ex.P.1.

16. Further, it is seen from the records that two friends of the deceased have taken the then injured Balaji to the doctor, by name Parthasarathy-P.W.3 and his specific evidence is that they reported to the effect during previous night after taking liquor, the said Balaji has become unconscious.

17. In fact, this court has scanned the entire evidence given by P.W.3. No where, it is stated as to why the Balaji has sustained head injury. If really, as spoken by the prosecution the occurrence has taken place, the friends of Balaji, who have taken him to P.W.3 might have stated the reason as to how the said Balaji has sustained injuries. With regard to that aspect also, the prosecution remains silent.

18. Further, the prosecution has not examined some injured persons as witnesses. Failure on the part of the prosecution has also militated the case of the prosecution.

19. It has already been pointed out that the prosecution has failed to explain as to why the then injured has not been taken to hospital immediately. Further, the prosecution has not given proper explanation with regard to the delay in giving Ex.P.1. Since the said aspects have not been explained on the side of the prosecution, this Court is of the considered view that the prosecution has not proved the charge framed against the appellants/accused. The trial court, without considering the vital infirmities on the side of the prosecution has simply relied upon the evidence given by P.Ws.1, 2 and 5.

20. In view of the discussion made earlier, this court has found considerable acceptable force in the contention put forth on the side of the appellants/accused and therefore, the present Criminal Appeal is liable to be allowed.

In fine, this Criminal Appeal is allowed and the convictions and sentences passed by the trial court in Sessions Case No. 680 of 2004 are set aside.

The appellants/accused are acquitted. Bail bonds, if any executed by them stand cancelled. Fine amounts paid by them are ordered to be returned forthwith.