
(2016) 04 MAD CK 0167
In the Madras High Court
Case No : CRL.A. No. 690 of 2012

M. Thirambal

APPELLANT

Vs

State by the Inspector of Police

RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2016) 3 MLJCriminal 559

Hon'ble Judges : Mr. M. Jaichandren and Mr. S. Nagamuthu, JJ.

Bench : Division Bench

Advocate : Mr. A. Thiyagarajan, Advocate, for the Appellant; Mr. M. Maharaja, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Mr. S. Nagamuthu, J.—The appellant is arrayed as the first accused in SC.No.138/2011 on the file of the learned II Additional District and Sessions Judge, Erode. Totally there are three accused. A1 and A2 stood charged for the offence under section 302 IPC and A3 stood charged for the offence under section 302 read with 34 IPC. By judgment dated 07.09.2012, the Trial Court acquitted A2 and A3 and convicted A1 for the offence under section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs. 100/-, in default, to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the appellant/A1 is before this Court with this appeal.

2. The case of the prosecution, in brief, is as follows:-

(A) The deceased in this case, was one Mr. Manickamoorthy. He hailed from Sengapalli village in Erode District. He was owning a motorcycle, bearing Registration No.TN-39-AZ-7116. There is a road from Sengapalli leading to Coimbatore. By the side of the said road, there was a Hotel, known as "Rajasthan Dhaba" Hotel. It was the usual practise of the North Indian travellers and passengers to park their vehicles in front of the said Hotel and to have food

in the said Hotel. North Indian food was mostly served in the said Hotel. All the three accused herein hail from Rajasthan State. They knew to speak only Hindi and they did not know to speak either Tamil or English.

(B) According to the case of the prosecution, A1 was the driver and the other two accused accompanied A1 in the Container Lorry, bearing Registration No.HR-55-K-4813. The said lorry was proceeding to Rajasthan. En-route, at about 22.30 hrs to 23.00 hrs., on 10.03.2011, all the three accused parked the lorry by the side of the road, in front of the above Hotel. The deceased came in his motorcycle. On noticing that the lorry, driven by A1, was parked just in front of the Hotel preventing the movement into the Hotel, the deceased wanted all the three accused to remove the vehicle from the said place. This resulted in a quarrel between the deceased and A1. It is alleged that A1 slapped the deceased. After the quarrel was over, all the three accused went away with the lorry, driven by A1. The lorry was proceeding towards East. The deceased, started his motorcycle and followed the said lorry, probably because he was provoked by the slapping made by A1. It is further alleged that P.W.1 also took his TVS-50 motorcycle and followed the deceased. P.W.4 travelled in the same TVS-50 motorcycle as a pillion rider. When the lorry was nearing an arch, the deceased overtook the lorry, came in front of the lorry and stopped it. The lorry was stopped. The deceased questioned A1 as to why he attacked him. When he was so quarreling, it is alleged that A2 induced A1 in Hindi language to start the vehicle and dash it against the deceased. So getting induced, it is alleged that A1 started the lorry so suddenly and dashed it against the deceased. The deceased was dragged to a distance of about 100 feet. Then the deceased fell down by the side of the road. Without stopping the lorry, the accused fled away from the scene of crime with the vehicle. This occurrence was witnessed by P.Ws.1 and 4.

(C) Leaving P.W.4 at the place of occurrence, P.W.1 immediately rush to the house of the deceased and informed P.W.6, the wife of the deceased. P.W.6, in turn, informed the other relatives. Then, all of them went to the place of occurrence again. They found the deceased lying in a pool of blood and dead. Thereafter, P.W.1 went to Utthukuli Police Station and made a complaint to P.W.14 under Ex.P.1 on 11.03.2011 at 03.00 hrs.

(D) P.W.14, the then Special Sub-Inspector of Police attached to Utthukuli Police Station, received the said complaint and registered a case in Cr.No.427/2011 under section 302 IPC. Ex.P.1 is the complaint and Ex.P.17 is the FIR. He forwarded both the documents to his higher officials and also to the Court concerned which were received by the learned Magistrate at 07.10 hrs on 11.03.2011.

(E) The case was taken up for investigation by P.W.16, the then Inspector of Police attached to the said Station. He proceeded to the scene of occurrence at about 04.00 hrs on 11.03.2011 and prepared the Observation Mahazar [Ex.P.3] in the presence of P.W.7 and another witness and also prepared a Rough Sketch [Ex.P.19]. He also summoned the services of P.W.10-photographer, to take

photographs at the place of occurrence from various angles. Between 05.15 hrs and 08.00 hrs, he also held inquest on the dead body of the deceased in the presence of Panchayatdars and witnesses and prepared Ex.P.20 [Inquest Report]. He sent the dead body of the deceased for postmortem.

(F) P.W.15, Dr. Jeyasingh, the Head of the Forensic Medicine, Government Hospital, Coimbatore, conducted autopsy on the body of the deceased on 12.03.2011 at 10.30 hrs. He found the following injuries:-

"Antemortem Injuries:-

(1) Abrasions noted on the following regions:-

5x2cm, 3x0.5cm on right cheek, 2x0.5cm on tip of nose, 5x4cm noted on outer aspect of right upper arm, 4x3cm on outer aspect of right middle arm, 6x4 cm on back of right elbow, 10x2-3cm on back of right forearm, 2x1cm on back right hand, multiple graze abrasion over the area of 30x5cm over back of left lower arm, elbow and upper forearm, 5x2 cm on top of left shoulder, 18x4cm over inner aspect of right upper thigh, 10x6 cm over inner aspect of right knee. 12x5cm on inner aspect of right upper leg, 6x5cm on front of right ankle joint. Multiple graze abrasion noted over front, back and inner aspect of left upper thigh over an area of 15x10cm, 7x4cm on inner aspect of left lower leg. Graze abrasion 30x11 cm over left side back of chest and abdomen, 8x4cm over right lower back of abdomen. Multiple graze abrasions 30x10 cm noted over front of anterior chest and upper abdomen.

(2) Lacerations seen over the following regions:-

4x2cmxbone deep on right occipital region, 2x2cmxbone deep noted over left parietal prominence.

Crushing type of laceration noted over front of neck which was found partially amputated. On dissection the underlying muscles, vessels, neck structures and both clavicles found crush through which both lungs and heart found exteriorised.

Crushing type of laceration over an area of 40x30 cm x cavity deep noted on lower abdomen both groins and both upper thighs including genital region. On dissection, the underlying abdomincal contents, tissues and bones of pelvis, upper part of both femurs found crush into multiple pieces. Entire small intestine and part of large intestine found exteriorized through the laceration.

8x1cmxmuscled deep noted on inner aspect of left ankle joint, 7x1cmxmuscled deep noted on left foot.

(3) Deformity noted over the right arm-on dissection the underlying humerus found fractured with surrounding tissue contusion. Deformity of left leg seen-on dissection fracture of both bone legs at lower one third level.

On dissection of Scalp, skull and Dura-Sub scalp contusion 4x3cm noted over right occipital region. Diffuse sub-dural and sub-arachnoid hemorrhages, noted

on both cerebral hemisphere.

On dissection of thorax and Abdomen:- All ribs found fractured on both anterior and postero lateral aspects. Liver and spleen found lacerated into multiple pieces and found pushed inside the thoracic cavity. Stomach found partially lacerated-10x1xcavity deep at the lesser curvature, mucosa pale and empty. Pelvisboth iliac and public bones show communitied fractures at various levels. Fractures noted at various levels from C3 to C7 spine. Underlying spinal cord found partially contused.

Other findings:-

Pleural cavities empty.

Heard 4x1cmxcavity deep noted over the lateral wall of left ventricle. Contusion of size 2x1cm over anterior wall of right ventricle. ? Hyoid bone intact.

Small intestine contains 20 ml of bile stained fluid. No specific smell, mucosa pale. Blood sample preserved."

Ex.P.18 is the Postmortem Certificate. He opined that the death of the deceased was due to shock and hemorrhage due to the multiple injuries found on the body of the deceased. He further opined that the said injuries could have been caused by running over by a vehicle like lorry.

(G) During the course of investigation, P.W.16 examined the witnesses and recorded their statements. He collected the blood stained cloth from the body of the deceased under a Mahazar. On 13.03.2011 at about 06.00 hrs, in the presence of P.W.9 and another witness, he arrested all the three accused at Naduppatti village near Chettipalayam. With the help of one Mr. Nadheem [P.W.5], who knows both Tamil and Hindi, P.W.16 examined all the three accused. A1 gave a voluntary confession in Hindi, which was translated into Tamil by P.W.5. In that confession, A1 disclosed the place where he had hidden the container lorry. In pursuance of the same, he took the police and the witnesses to the place of hide out, viz., Thanneerthottipalayam, where he identified the Container Lorry [M.O.11] bearing Regn.No. HR-55-K-4813, which was found parked. P.W.16 recovered the same under a Mahazar. Then he forwarded all the accused to the Court for judicial remand. He found blood stains on the lorry. With the help of a Forensic Expert, he took swab of the blood stains from the lorry and forwarded them to Court. At his request, all the material objects were sent for chemical examination, which revealed that there was human blood found almost on all the material objects, except two swabs taken from the lorry. But the grouping of blood stains in the swabs remained inconclusive. On the orders of the learned Chief Judicial Magistrate, Erode, the learned Judicial Magistrate, Bhavani, conducted the Test Identification Parade on 24.03.2011 in the Central Prison, Coimbatore. P.Ws.1 and 4 identified all the three accused. On completion of the investigation, he laid the charge-sheet against the accused on 07.04.2011.

(H) Based on the above materials, the Trial Court framed appropriate charges

against the accused as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case on the side of the prosecution, as many as 16 witnesses were examined, 24 documents and 15 material objects were also marked. Exs.C1 to C3 were marked as Court documents.

(I) Out of the said witnesses, P.Ws.1 and 4 are the alleged eyewitnesses to the occurrence. They have stated that they followed the deceased in a TVS-50 motorcycle to the place of occurrence and they would further state that on the instigation of A2, A1 drove the lorry against the deceased and killed him. P.W.1 has also spoken about the complaint made by him to the police, upon which, the case was registered. P.W.2 is the Motor Vehicle Inspector, who examined the Container Lorry after the same was seized. She has stated that there was no mechanical defect in the lorry. P.W.3 is the Forensic Expert who has stated that he took the blood stains by means of swabs from the lorry and he examined the same and also the other material objects for detecting blood stains. He found blood stains on all the material objects except two swabs taken from the lorry. He has further opined that it was human blood ; but the grouping was inconclusive. P.W.5, the one who allegedly translated the statements made by the accused, which led to the recovery of the lorry, has turned hostile and he has not supported the case of the prosecution in any manner. P.W.6 is the wife of the deceased and she has stated that around 23.30 hrs, P.W.1 rush to her house and informed her that the deceased had met with an accident. Immediately, she rush to the place of occurrence and found the deceased lying dead. P.W.7 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of crime. P.W.8, the learned Judicial Magistrate, Bhavani, has stated that as requested by the Investigating Officer, he conducted Test Identification Parade, in which all the three accused were put up for the Test Identification Parade. P.Ws.1 and 4 participated in the same and they have identified all the three accused correctly. P.W.9 is the witness to speak about the recovery of the lorry, on the confession made by A1. He has supported the case of the prosecution. P.W.10 has spoken about the photographs taken by him at the place of occurrence. P.W.11 is the Head Clerk of the Court, who has stated that he has forwarded all the material objects for Chemical Analysis. P.W.12 is the expert who has also spoken about the chemical analysis conducted on the material objects. P.W.14 has stated about the registration of the case on the complaint made by P.W.1. P.W.15 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.16 has spoken about the investigation done by him and the filing of the final report.

3. 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 chose to examine any witness nor marked any documents, on their side.

4. Having considered all the above, the Trial Court acquitted A2 and A3 and convicted and sentenced the appellant/A1 alone as detailed in the first paragraph

of this judgment. That is how the appellant/A1 is before this Court with this appeal.

5. We have heard Mr. A. Thiyagarajan, learned counsel appearing for the appellant and Mr. M. Maharaja, learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6. The learned Counsel for the Appellant would submit that the evidences of P.Ws.1 and 4 cannot be believed for, they would not have witnessed the occurrence at all. He further submitted that Ex.P.1, the complaint itself, is a fabricated document. To substantiate the said contention, the learned counsel has taken us through Ex.P.1 and Ex.C1 to C3, wherein there are lot of corrections in respect to the time of the registration of the case. He would further submit that there is no explanation as to how the names of the accused could find a place in FIR itself. He would take us through the evidences of P.Ws.1 and 4 and point out the material contradictions and improbabilities which would make their evidences unbelievable.

7. The learned Additional Public Prosecutor would vehemently oppose this appeal. According to him, there can be no doubt regarding the origin of the FIR in this case. He would further submit that the presence of P.Ws.1 and 4 had been duly explained by them. Therefore, there is no reason to reject their evidences.

8. We have considered the above submissions.

9. Admittedly, the accused were not previously known to P.Ws.1 and 4. They were total strangers to them. It is the case that on the day of occurrence, the lorry was parked in front of the Hotel. The deceased came in his motorcycle and wanted the driver of the lorry to move the same. It is alleged that at that time, A1 slapped the deceased. Thereafter, the accused went away. P.Ws.1 and 4 would state that when the deceased followed the lorry in his motorcycle, they also followed the deceased in their TVS-50 motorcycle. The occurrence had not taken place anywhere near the Hotel. The puncture shop of P.W.1 is situated only by the side of the Hotel and not near the place of occurrence. Undoubtedly, P.Ws.1 and 4 are interested witnesses. With this factual background, we need to scrutinise their evidences carefully.

10. According to the case of the prosecution, after hitting the deceased, the lorry went away. Thereafter, P.W.1 came to the house of P.W.6, the wife of the deceased and informed her about the occurrence and then, P.W.1 went to the Police Station along with the wife of the deceased. It is not known as to how the names of all the three accused and the fact that they hailed from Rajasthan, could be mentioned in the complaint. A perusal of the FIR would go to show that not only the names of these three accused ; but also the fact that they hail from Rajasthan State, has also been vividly mentioned. Absolutely, there is no explanation for the same. The learned Counsel for the Appellant would submit that the deceased died in an accident and it was a hit and run case by some unknown vehicle. But out of suspicion, the Container Lorry in question was

seized and these three accused have been falsely implicated in the case. This theory propounded by the accused cannot be outright rejected as baseless. In the absence of any explanation as to how the names of all the three accused and the fact that they hail from Rajasthan State could be mentioned in the FIR, we have to doubt the entire case of the prosecution including the presence of P.Ws.1 and 4 at the place of occurrence.

11. P.W.5, though turned hostile, has stated that the lorry was found in the Police Station on 11.03.2011 itself. Apart from that, at the place of occurrence, it is not clear as to who drove the vehicle. Even according to the prosecution case, there were 3 people in the cabin of the lorry. P.Ws.1 and 4 have admitted that there was no light in the cabin. When that be so, whether it was this appellant or anyone among the other two persons, drove the vehicle, is not known. The trip sheet and other records pertaining to the lorry, have not been seized and marked as evidence. When it was so dark in the cabin, it is not known as to how P.Ws.1 and 4 could claim that it was this accused who drove the vehicle. Above all, the Trial Court itself has rejected the evidences of P.Ws.1 and 4 as against A2 and A3. It is the case of the prosecution that it was only A2 who instigated A1 in Hindi to drive the vehicle and dash it against the deceased. It is not known as to how P.Ws.1 and 4 could understand as to what was spoken by A2 to A1, was an inducement. P.W.4 has not stated that he knows Hindi. P.W.1 has stated that though he does not know to read and write Hindi, he could understand Hindi to some extent. But, relying on this part of the evidence, the learned Additional Public Prosecutor submitted that out of this limited knowledge in Hindi, P.W.1 could have understood as to what was stated by A2 to A1. But, the learned Counsel for the Appellant pointed out that this is only an improvement because P.W.1 has not stated during investigation that he knows Hindi. Therefore, no weightage could be attached to this improved version of P.W.1. At any rate, since we have every doubt in the presence of P.Ws.1 and 4 in the place of occurrence at that odd hours, which is a lonely place and since the FIR itself creates doubt in the case of the prosecution, we find it difficult to sustain the conviction of the appellant, more particularly, because the Trial Court itself has rejected the case as against A2 and A3.

12. The learned Counsel for the Appellant would point out that there was a long tyre mark on the road indicating that before hitting the deceased, the vehicle which involved in the accident, would have come in a great speed. It is common knowledge, if the vehicle, as it is projected by the prosecution, had been started by A1 and dashed against the deceased, there would have been no occasion or chance for any such tyre mark on the road. This also creates doubts in the prosecution case. Further, the learned counsel pointed out that in Ex.P.15, the request given by the Investigating Officer to the doctor for conducting postmortem, the name of the owner of the vehicle, viz., "ICM Logistics Private Limited", has been mentioned. It is also not explained as to from where the Investigating Officer got to know this fact when the lorry had fled away from the scene of occurrence and no witness had noticed this address. This would only

probablise that the vehicle was very much in the custody of the police on 11.08.2011 itself. For all these reasons, we hold that the prosecution has failed to prove the case beyond reasonable doubts.

13. In the result, the criminal appeal is allowed. The conviction and sentence imposed by the Trial Court on the appellant for the offence under section 302 IPC in SC.No.138/2011 vide judgment dated 07.09.2012, are hereby set aside and he is acquitted of all the charges levelled against him. The bail bonds executed by him, shall stand discharged. Fine amount, if any paid, shall be refunded to him.