

(2010) 04 MAD CK 0326

In the Madras High Court

Case No : Criminal Appeal (MD) No. 193 of 2008

Ramadoss and Others

APPELLANT

Vs

The Inspector of Police

RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 341

Citation : (2010) 04 MAD CK 0326

Hon'ble Judges : T. Mathivanan, J;M. Chockalingam, J

Bench : Division Bench

Advocate : Shanmugavelayutham for T. Lajapathi Roy, in Criminal A. No. 193 of 2008 and T. Lajapathi Roy, in Criminal A. No. 119 of 2010, for the Appellant; Isaac Manuel, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—This judgment shall govern two appeals, viz. CrI.A. Nos. 193 of 2008 and 119 of 2010, the former filed by A-1, A-4, A-7, A-8 and A-9, while the latter filed by A-5. Both these appeals concentrate on challenging the judgment of the learned Additional Sessions Court, Fast Track Court No. 1, Thanjavur, dated 14.02.2008, made in S.C. No. 59 of 2006, whereby the accused/appellants along with others, stood charged, tried, found guilty and awarded punishment as under.

Accused

Charges under Section

Finding

Punishment

A1 to A5 and A7 to A9

148 IPC

A1, A4, A5, A7 to A9 found guilty

A1, A4, A5, A7 to A9 were sentenced to undergo 6 months imprisonment each.

A1 to A5 and A7 to A9

341 IPC

A1, A4, A5, A7 to A9 found guilty

A1, A4, A5, A7 to A9 were sentenced to undergo 1 month S.I. each.

A1 to A5 and A7 to A9

342 IPC

Not found guilty

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A1 to A5 and A7 to A9

302 r/w 149 IPC

A1, A4, A5, A7 to A9 found guilty

A1, A4, A5, A7 to A9 were sentenced to undergo life imprisonment each and to pay a fine of Rs. 500/- each in default to undergo 1 month S.I. each.

2. Pending the appeal, A-6 died, and hence, the charges framed against him stood abated. The Trial Court acquitted A-2 and A-3 of the charges levelled against them.

3. The short facts necessary for the disposal of these appeals can be stated as follows:

(i) P.Ws.1, 2 and 3 were all residing at Pookara Subramaniaswamy Koil Street, Thanjavur. P.W.1 was doing flower business opposite to the temple. A-1, A-4, A-5, A-7, A-8 and A-9 were residing in Pookara Subramaniaswamy Koil Street, A-2 was residing in Fathima Nagar and A-3 was residing in Burma Colony. In the past, between the families of A-1 on the one side and the family of the deceased Balakrishnan on the other, there was a land dispute. On a previous occasion, there was a quarrel between the parties for which a case has been registered and they all came out on bail.

(ii) On 21.03.2003, at about 10.30 a.m., P.Ws.1, 2 and 3 along with the deceased were proceeding towards river side for taking bath. At the time when they were crossing nearby the place of occurrence, A-1 to A-9 sprang from the Association Building situate nearby. A-2 was having a knife and all others were armed with aruvals. On seeing the deceased, A-1 made an utterance about the person responsible for the dispute. After uttering the words, A-1 first cut the deceased with aruval on his head, A-3 and A-4 cut him on the different parts of the body, A-2 also cut him on the stomach and A-5, 6 and 7 cut him on the

hands, which was witnessed by P.Ws.1 to 3. On seeing the attack, P.Ws.1 to 3 made a distressing cry, but the accused criminally intimidated them. Out of fear, they did not go nearby. On hearing the distressing cry, P.Ws.4, 5, 6 and 7 came to the spot immediately.

(iii) P.W.4, who is the wife of the deceased, along with others took the deceased to the Government Hospital, where the Doctor declared him dead. Immediately, P.W.1 proceeded to Thanjavur South Police Station where he gave Ex.P1-Complaint at about 11.45 a.m.

(iv) P.W.18-Sub-Inspector of Police, on the strength of Ex.P1, registered a case in Crime No. 86 of 2003 under Sections 147, 148, 341 and 302 IPC and prepared Ex.P23-First Information Report. Thereafter, Ex.P23 was despatched to the Court. P.W.19 took up investigation. He proceeded to the scene of occurrence at 12.30 hours, made inspection and prepared Ex.P5-Observation Mahazar and Ex.P24-Rough Sketch. Thereafter he conducted inquest over the dead body of the deceased in the presence of witnesses and Panchayatars and prepared Ex.P25-Inquest Report.

(v) The dead body was sent for post mortem. P.W.11, the Doctor, conducted post mortem on the dead body and issued Ex.P2-Post Mortem Report, wherein it is opined that the deceased died of shock and haemorrhage due to the multiple cut injuries involving many of the vital structures.

(vi) Pending the investigation, A-1, 5 and 6 were arrested on 25.03.2003. A-1, A-5 and A-6 gave confessional statements voluntarily and the same were recorded in the presence of witnesses. The admissible portion of the confessional statements of A-1, A-5 and A-6 are Ex.P13, 14 and 15, respectively. On the basis of the confessional statements recorded by the Investigating Officer, aruvals were recovered under a cover of independent mahazars and they were all sent for judicial remand. Pending investigation, on 27.03.2003, A-3, A-4 and A-9 were arrested and they also gave confessional statements. The admissible portion of the confessional statements of A-3, A-4 and A-9 are Ex.P17, 16 and 18, respectively. On the basis of the confessional statements of A-3, A-4 and A-9, aruvals were recovered under the cover of individual mahazars and they were sent for judicial remand. Pending investigation, A-8 was arrested when he was undergoing treatment in Government Hospital on 28.03.2003 and he was also sent for judicial remand.

(vii) On completion of the investigation, the Investigating Officer filed Final Report. The case was committed to the Court of Sessions and necessary charges were framed against the accused.

4. In order to substantiate the charges levelled against the accused, the prosecution examined 19 witnesses and relied on 28 exhibits and 11 M.Os. On completion of the evidence on the side of the prosecution, the accused were questioned u/s 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses, which were denied by the accused. On

the side of the defence, 1 witness was examined and 6 exhibits were marked. The Trial Court after hearing the arguments advanced on either side and considering the materials available on record, took the view that the prosecution has proved the case beyond reasonable doubt, in respect of A-1, A-4, A-5, A-6, A-7, A-8 and A-9. Pending the trial, A-6 died and hence insofar as A-6, the charges levelled against him stood abated. The Trial Judge has made an order acquitting A-2 and A-3 and thus the appeals arise at the instance of the appellants herein.

5. Advancing arguments on behalf of the accused/appellants, the learned Senior Counsel, Mr. Shanmugavelayutham appearing for the appellants in CrI.A. No. 193 of 2008 and the learned Counsel Mr. T. Lajapathi Roy in CrI.A. No. 119 of 2010, would submit that in the instant case, according to the prosecution the occurrence took place at about 10.30 a.m. on 21.03.2003 and the prosecution has marched 3 witnesses, i.e. P.Ws.1, 2 and 3 as eye-witnesses. The counsel pointed out that the evidence of P.W.7 would show that these three witnesses, i.e. P.Ws.1 to 3 could not have been present at the time of occurrence at all. P.Ws.1 to 3 are actually interested witnesses and they are also relations. Evidence of P.W.5 would clearly indicate that these persons could not have been in the place of occurrence at all. Insofar as scene of occurrence is concerned, 3 versions were put forth before the Trial Court, one near the Railway track, second near the Pallathu Street and the third between the house of one Ramachandran and Amuthan. Because of these three versions, the prosecution is unable to fix the place of occurrence and hence the prosecution has failed to prove the case. Insofar the occurrence part is concerned, the evidence of eye-witnesses are not reliable. Added further the counsel that A-8 was injured and he got blood injury and the witnesses have admitted that they were running from the spot, for which the prosecution has not given any explanation whatsoever. The prosecution has also not given any explanation as to the injury found on A-8, which occurred at the time of occurrence in the same transaction. Even the Investigator has admitted that A-8 was arrested when he was actually taking treatment in the hospital and apart from that, on his complaint a case came to be registered and investigation was on, and hence the F.I.R. relating to that particular case should have been produced and joint trial should have been conducted, but the prosecution has failed to do so.

6. Added further the counsel that P.Ws.1 to 3 have claimed that they actually lifted the body of the deceased and took it to the Government Hospital and hence one would expect that all of their clothes should have been stained with blood, but the Investigating Officer had not recovered the material objects said to have been blood-stained and the same were not sent for analysis. Though the Investigator claimed that all the weapons were recovered from the accused on the basis of their confessional statements, they were not sent for analysis.

7. The learned Counsel for the appellants would further submit that insofar as the recovery of weapons is concerned, the witnesses were not examined and in

such circumstance, the only evidence available for the recovery was that of Investigating Officer, which cannot be relied upon. The non-examination of the witnesses for the alleged recovery coupled with the fact that the weapons recovered were not subjected to analysis, would clearly indicate that, the prosecution's evidence is rejectionable.

8. Added further the counsel that, in the instant case, A-2 and A-3 have been acquitted since the Trial Judge was ready to disbelieve the evidence of the so-called witnesses, the same factum are relevant and should have been followed for the other accused also. With regard to acquittal of A-2 and A-3, having not accepted the evidence of eye-witnesses, viz. P.Ws.1 to 3, the Trial Judge should have disbelieved the other part of the evidence and hence the Trial Judge has committed an error in the judgment. Hence, the counsel stressed that all these lacuna and infirmities were actually noticed, but even then, the Trial Court has taken an erroneous view and hence, the judgment of the Trial Court has got to be set aside and the accused/appellants are entitled for acquittal in the hands of this Court.

9. This Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made and also scrutinised the materials available.

10. It is not in controversy that Balakrishnan, husband of P.W.4 was done to death in an incident that had taken place at about 10.30 a.m. on 21.03.2003. Following the inquest made by the Investigator, the dead body was shifted by P.Ws.1 to 3. The post mortem was conducted by P.W.11 who issued Ex.P2-Post Mortem Report. As per the contents of Ex.P2, the prosecution has proved that the deceased Balakrishnan died due to injuries, and the cause of death put forth by the prosecution, has been never disputed by the appellants before the Trial Court or before this Court and in such circumstance, the Trial Court did not have any impediment in recording so.

11. In order to substantiate that, in furtherance of the common object, the accused persons, armed with deadly weapons came to the spot and attacked the deceased Balakrishnan and caused his death instantaneously, the prosecution has marshalled three witnesses, i.e. P.Ws.1 to 3 as eye-witnesses. When the witnesses are interested and they are related, the law does not say that merely because of the relationship of the witnesses to the deceased, their evidence should not be accepted, but the Court has to apply the test and the Court can satisfy itself, if the evidence are cogent and acceptable and inspire confidence of the Court. P.Ws.1 to 3 have categorically stated that before the time of occurrence, all of them were present along with the deceased to take bath at the banks of the river and when they were just proceeding, all the accused persons, armed with deadly weapons, sprang from the nearby place and attacked the deceased indiscriminately. The eye-witnesses have given clear and cogent evidence as to the overt act attributed by the accused/appellants and also the conduct of those witnesses, who are closely related and interested.

12. Learned Counsel for the appellants have submitted that even though the eye-witnesses are relatives, they did not come forward to rescue the deceased and hence there is a doubt in the evidence. The Court is unable to agree with the above contention put forth by the learned Counsel for the appellants. In a situation, and that too, in the instant case, when 9 persons armed with deadly weapons were attacking a single person, if one of them has gone nearby, he will also meet the same fate. The prosecution witnesses have also spoken to the fact that all of them have been intimidated by the accused and hence the contention of the learned Counsel for the appellants in this respect, cannot be accepted.

13. Insofar as the place of occurrence is concerned, in the sketch, it has been mentioned that the occurrence took place between the house of one Ramachandran and Amudhan and it is actually near to the railway track and also Pallathu Street. Therefore the contention of the learned Counsel for the appellants that the witnesses have falsely mentioned the place of occurrence and that the prosecution has commenced with the false story, are not correct and hence, the discrepancy as put forth by the counsel for the appellants with regard to the place of occurrence, cannot be countenanced.

14. It is true that the material objects were not sent for analysis. It is an irregularity committed by the Investigating Officer. When the eye-witnesses are available and they have spoken about the occurrence, this Court is of the considered opinion that much weight cannot be attached over this aspect.

15. Insofar as the recovery of weapons are concerned, the prosecution claimed that following the confessional statements, they have been recovered. It is true that the witnesses were not examined as to the recovery of weapons and the prosecution was unable to bring those facts as to the recovery of weapons.

16. A comment is made that A-2 and A-3 were acquitted by the Trial Court on the same evidence and same witnesses and hence the same could be applied in the instant case. It is well settled principle of law that in a case consisting of number of witnesses in respect of the same transaction, the Court of law shall decide which part of the evidence can be relied on and the judgment can be rendered. In the instant case, according to the Investigator, A-8 was arrested on 28.03.2003 when he was taking treatment at the Government Hospital. It is quite clear even from the Investigating Officer a complaint was given by him only on his arrest on 28.03.2003 when he was injured in the same transaction. A case was also registered and enquiry also has been conducted and in the instant case, A-8 sustained blood injuries but they have not been explained by the prosecution, because the nature of injuries sustained by A-8-Ravi remained unknown. It is settled principle of law that in every case, the prosecution is not duty bound to explain the injuries sustained. Even in case where there is superficial injury or simple injury, the prosecution need not prove the same. The Court is of the opinion that in the instant case, the comment made cannot be countenanced for the reason that P.W.1 has categorically stated that when all the persons were taking bath, injuries were sustained by A-8 in the process. Also, no

suggestion was put to the prosecution witnesses whether the deceased was armed with any weapon at all and hence the injuries could not have been caused by any of the witnesses or by the deceased. Under such circumstances the comment made that the prosecution has not explained the injuries sustained by A-8 cannot be accepted at all.

17. Another comment was made that P.Ws.1 to 3 have spoken to the effect that when they were proceeding for taking bath, no materials were recovered from the place of occurrence and no suggestion was made to any of the witnesses as regards the recovery of materials from the place of occurrence. Even assuming that they had such materials, the non-recovery of those materials would not go to the root of the case. In the instant case, there was a previous incident in which there were altercations due to which certain criminal proceedings were initiated and the accused have come out on bail. These all would clearly indicate that some of the witnesses had got grievance against some of the accused, but not all. In the instant case the prosecution was able to show that all of them came together which would indicate that all the persons joined together and they are all associated. The occurrence had taken place at about 10.30 a.m. in a public place and all the persons were armed with deadly weapons and have caused injuries and death. These all would clearly indicate the fact that they have proceeded and caused the death of the deceased. Hence the Trial Judge is correct in convicting the appellants guilty and awarding punishment.

18. In view of the above stated reasons, this Court is unable to find out any reason either factually or legally to reject the findings of the Trial Court. Therefore, the conviction and sentence imposed by the Trial Court on the accused/appellants are liable to be confirmed and accordingly confirmed and the Criminal Appeals are dismissed.