
(2016) 06 MAD CK 0085

In the Madras High Court

Case No : Criminal Appeal Nos. 456, 476 and 484 of 2014. (These Criminal Appeals have been preferred to set aside the conviction and sentence imposed by judgment dated 12.08.2014 made in S.C. No. 154 of 2012 on the file of the I Additional District and Sessions Jud

Sureshkumar

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

Date of Decision : 21-06-2016

Acts Referred:

Evidence Act, 1872 — Section 8

Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307, 341

Citation : (2016) 2 MadWNCri 512 : (2016) 4 MLJCriminal 164

Hon'ble Judges : S. Nagamuthu and V. Bharathidasan, JJ.

Bench : Division Bench

Advocate : Mr. V. Paarthiban for Mr. S. Srinivasa Narayanan, Advocates, for the Appellant; Mr. M. Maharaja Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—The appellant in Cr. A. No. 476 of 2014 is the first accused; the appellant in Cr. A. No. 484 of 2014 is the second accused and the appellants in Cr. A. No. 456 of 2014 are the accused 3 to 5 in S.C. No. 154 of 2012 on the file of the First Additional District and Sessions Judge, Salem. They stood charged for the offences as detailed hereunder:-

Sl. No.

Accused

Section of law

1.

A.1

120-B, 148, 341, 307 r/w 149, 307 r/w 120-B, 302, 302 r/w 120-B

2.

A.2

148, 341, 307, 302 r/w.149

3.

A.3

120-B, 147, 341,307 r/w 149, 307 r/w 120-B, 302 r/w.149, 302 r/w 120-B

4.

A.4

120-B,147, 341,307 r/w 149, 307 r/w 120-B, 302 r/w.149, 302 r/w 120-B

5.

A.5

120-B,147, 341,307 r/w 149, 307 r/w 120-B, 302 r/w.149, 302 r/w 120-B

6.

A.6

120-B, 307 r/w 120-B, 302 r/w.149, 302 r/w 120-B

2. By judgment dated 12.08.2014, the trial Court acquitted the 6th accused and convicted and sentenced Accused 1 to 5 as detailed below:-

Accused

Section of law

Sentence

A.3 to A.5

147 I.P.C.,

Rigorous imprisonment for one year each.

A.1 and A2

148 I.P.C.

Rigorous imprisonment for one year each

A.1 to A.5

341 I.P.C.

Simple Imprisonment for one month each

A.1

302 I.P.C.

To undergo Life Imprisonment and to pay a fine of Rs.5,000/- and in default to undergo simple Imprisonment for six months

A.2 to A.5

302 r/w 149 IPC

Each of the accused to undergo life imprisonment and to pay a fine of Rs.5000/- and in default, to undergo Simple imprisonment for six months

A.2

307 I.P.C.,

To undergo 5 years rigorous imprisonment and to pay a fine of Rs.5000/- and in default to undergo 6 months simple imprisonment

A.1, A.3 to A.5

307 r/w 149 I.P.C.,

Each of the accused to undergo 5 years rigorous imprisonment and to pay a fine of Rs.5000/- and in default to undergo 6 months simple imprisonment

3. The Accused 2 and 3 are the brothers of one Mrs. Anuradha (P.W.9). The 4th accused is the husband of Mrs. Anuradha. The 5th accused is the brother of 4th accused and the brother-in-law of P.W.9. The first accused is a close relative of the second accused. They were all residing at Chinnakollapatti Village in Salem District. P.W.9 married the 4th accused few year before the occurrence. P.W.1 - Mr. Viswanathan was residing at Chinnakollapatti village for some time. During that period, Accused 2 and 3 became his friends. On account of the same, he used to visit the house of Accused 2 and 3. In that process, P.W.1 met P.W.9, who was already married and developed intimacy with her. Then, P.W.1 eloped with P.W.9 to Bangalore and stayed there for about a months" time. The 4th accused went in search of P.W.9. At last, he found her in Bangalore along with P.W.1 and brought her back to the village. After this incident, P.W.1 shifted his family to Vellandivalasu near Edappadi. For about 6 years, he did not visit Chinnakollapatti at all, because of the above incident. However, Accused 1 to 5 had developed grudges against P.W.1. The deceased in this case was one Mr.Elango. He was a friend of P.W.1. On 05.12.2010, P.W.1 informed the deceased viz., Mr.Elango that he was visiting Chinnakollapatti Village. Mr.Elango was also a resident of Chinnakollapatti Village. As told by P.W.1, the deceased came to Gorimedu in Chinnakollapatti village. Around 1.30 p.m., P.W.1 reached the said place in his motor cycle (M.O.1). P.W.1 met the deceased and after some time, via Mariamman Koil temple, in order to purchase mortar trowel, they went together towards bazaar. At that time, the second accused was taking water in the public tap near the temple. On seeing P.W.1, the second accused got wild. He intercepted P.W.1 and questioned him as to how dare he had come to

Chinnakollapatti Village. The deceased intervened and tried to persuade the second accused to forget the past event, which had happened many years before. The deceased and P.W.1 managed to leave the said place in the Motor Cycle. Again, they reached Gorimedu. They purchased liquor and drank. Around 6.30 p.m, again P.W.1 and the deceased proceeded to the bazaar to purchase mortar trowel. P.W.1 drove the motor cycle and the deceased was travelling as a pillion rider. When they were nearing a place known as Varma Garden, the Accused 1 to 5 came in two motor cycles. They intercepted P.W.1 and the deceased. They pushed P.W.1 and the deceased from the motor cycle. Then the third accused fisted on the right cheek of the deceased. The 4th accused held the neck of P.W.1. P.W.1 tried to escape. The second accused shouted at P.W.1 and with an aruval cut him on the right side of the chest. When he attempted to make another cut on the chest, P.W.1 prevented the same with his right hand. He sustained an injury on the right hand also. The deceased tried to pacify them. But the first accused suddenly stabbed the deceased with Suri knife on his chest. Then both the accused ran away from the scene of occurrence. It is alleged that when the first accused stabbed the deceased, the fifth accused held the hands of the deceased. P.W.1 and the deceased ran into Varma Garden. Within a short distance, the deceased fell down. P.W.1 ran some more distance and concealed himself behind the bush. At that time, incidentally, P.W.3 came to the place of occurrence in an auto. P.W.1 through his cell phone contacted his sister P.W.5 and informed her about the occurrence. Within a short while, P.W.5 and P.W.1s brother Muralikrishnan (P.W.4) came to the spot. They found the deceased lying dead. Then they took P.W.1 to the Salem Government Hospital.

4. P.W.16 Dr.Sudhaselvi, examined P.W.1 at about 7.30 p.m on 05.12.2010 at the Government Mohan Kumaramangalam Medical College Hospital, Salem. At that time, P.W.1 was conscious. He told P.W.16 that he was stabbed by 3 known persons around 6.30 p.m. on 05.12.2010 at Chinnakollapatti village near Varma Garden. P.W.16 found that P.W.1 was fully drunk. On examination, she found the following injuries on him:

A Lacerated wound measuring 5 x 4 cm above the right elbow.

A lacerated wound measuring 3 x 1 cm above the right elbow

A lacerated wound measuring 4 x 2 cm at the right side of the chest.

5. P.W.16 admitted him as inpatient. Ex.P16 is the accident register. She gave intimation to the Police about the occurrence. On receiving the said intimation, P.W.22, the then Sub-Inspector of Police, Kannankurichi Police station went to the hospital and recorded the statement of P.W.1 . On returning to the Police Station at 9.30 p.m. on 05.12.2010, he registered a case in crime No.1161 of 2010 under Sections 147, 148 307 and 302 IPC against Accused 1 to 5. Ex.P28 is the FIR. He forwarded both the documents to the Court, which were received by the learned magistrate at 11.50 p.m on 05.12.2010.

6. P.W.24 took up the case for investigation. He went to the place of occurrence

at 11.00 p.m. and prepared an Observation Mahazar and a rough sketch in the presence of P.W.21 and another witness. He recovered blood stained earth and sample earth from the place of occurrence in the presence of the same witnesses. He arranged for a photographer to take photos at the place of occurrence. He examined P.W.1 in the hospital and also examined few more witnesses. After conducting inquest on the body of the deceased, he forwarded the same for post-mortem.

7. P.W.23 -Dr. Panneerselvam, conducted autopsy on the body of the deceased on 06.12.2010 at 11.15 a.m. He found the following injuries:-

"A stab injury over lateral wall of right side chest the edges are clean cut with acute angle M-5x1.5x Cavity deep and it is situated 6.5 cms lateral to the right nipple and 131 cms from right foot and 20 cms below acromian process."

Ex. P30 is the Post-mortem certificate and Ex.P31 is his final opinion regarding the cause of death. He opined that the injuries on the deceased could have been caused by a weapon like Suri Knife. He further opined that the death of the deceased was due to the shock and haemorrhage and due to the injuries on the chest.

8. During the course of investigation, P.W.24 arrested the second accused at 3.00 p.m on 06.12.2010 in the presence of P.W.21 and another witness. On such arrest, he produced the Motor cycle, in which he was travelling. He also produced the case sheet relating to the treatment given to him in the Government Hospital at Salem. On such arrest, the second accused gave a voluntary confession, in which, he disclosed the place where he had hidden the Aruval. In pursuance of the same, he took the Police and the witness to the place of hide out and produced M.O.2 Aruval. On returning to the Police Station, P.W.24 forwarded the second accused to the Court for judicial remand and handed over M.O.2 and other material objects also to the Court. P.W.24 recovered the blood stained cloth owned by the second accused and forwarded the same to Court. On 08.12.2010 at about 8.30 p.m., P.W.24 arrested the Accused 1,3,4 and 5 in the presence of P.W.14 and another witness. On such arrest, the first accused gave voluntary confession. He produced the Motor Cycle bearing registration No.TN 30 J 0860. P.W.24 recovered the same. In his confession, he disclosed the place, where he had hidden the knife and blood stained cloth. The 5th accused also gave voluntary confession, in which he disclosed the place, where he had hidden the blood stained cloth. In pursuance of the these disclosure statements, M.O.5 to M.O.11 were recovered. On returning to the Police Station, he forwarded the Accused 1,3,4 and 5 to the Court for judicial remand. He arrested the 6th accused on 16.12.2010 at 3.00 p.m in the presence of P.W.15. He disclosed the place, where he had hidden the knife. In pursuance of the same, he took the Police and the witnesses to the place where he had hidden M.O.12 knife. He forwarded the 6th accused to the Court. He handed over all the material objects to the Court. On his request, Material Objects were sent for chemical examination. The report revealed that there were blood stains on all the material

objects including Bill hook. He collected the medical records and examined the Doctor. On completing the investigation, he laid charge sheet against all the six accused.

9. Based on the above materials, the trial Court framed charges against the accused as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 24 witnesses were examined and 45 documents were exhibited; besides 18 Material Objects were marked.

10. Out of the said witnesses, P.W.1 is the only eye witness to the occurrence. He has spoken about the motive and the entire occurrence commencing from 1.30 p.m and till the deceased was killed. P.W.2 is the sister of the deceased. She has also spoken about the motive. She has further stated that on hearing about the occurrence, she rushed to the place of occurrence, where she found the deceased lying dead. P.W.3 - the husband of P.W.2 has also stated about the same facts. P.W.4 is the brother of P.W.1 and P.W.5 is the sister of P.W.1. They have stated that P.W.1 has contacted P.W.5 through cell phone and informed her about the occurrence and then P.Ws.5 and 4 rushed to the place of occurrence and took P.W.1 to the hospital. P.W.6 has spoken about the treatment given to P.W.1 at 7.30 p.m. at Salem Government Mohan Kumaramangalam Medical College and Hospital. P.W.6 has stated that she examined P.W.1 and found that there was a fracture on his right hand. P.W.7 is the Assistant in the Forensic Lab and she has stated that she examined the visceral organs of the dead body of the deceased and the viscera report revealed that alcohol or poison was not detected. P.W.8 - Scientific Assistant in the Forensic Lab, Salem has stated that he examined Material Objects and found human blood on all the Material Objects including Aruval. P.W.9 has turned hostile and she has not supported the case of the prosecution. P.W.10 has spoken on the basis of hearsay information. She has not stated anything incriminating against the accused. P.W.11 has stated that P.W.24 examined P.W.1 in the hospital and in his very presence, blood stained cloth of P.W.1 was recovered by P.W.24. P.W.12 is the photographer, who has taken photos at the place of occurrence, as requested by P.W.24. P.W.13 has stated that after the occurrence, he saw all the six accused together standing elsewhere. At that time, accused 1 to 5 told the 6th accused that they had already finished the job. P.W.14 - the then Village Administrative Officer has spoken about the arrest of the accused 1, 3 4 and 5 on 08.12.2010 by P.W.24 and the consequential recovery of Material objects on their disclosure statements. P.W.15 has spoken about the arrest of 6th accused on 16.12.2010 and the disclosure statement made by him resulting in the recovery of knife from his possession. P.W.17 Head Constable has stated that on receiving intimation from Salem Government Hospital that A2 had been admitted with injuries on the date of occurrence, he visited the hospital, but A2 had already absconded from the Hospital along with records. P.W.18 has stated that he handed over the FIR to the Magistrate. P.W.19 has stated that he handed over the dead body to the Doctor for Postmortem. P.W.20 has stated that during the relevant time, he was

the Special Sub Inspector of Traffic Investigation Wing, Salem. He has further stated that on 07.10.2010, on receiving intimation from the hospital that the second accused had been admitted, he went to the hospital and found the second accused taking treatment in the hospital. P.W.21 -the Village Administrative Officer has spoken about the preparation of the Observation Mahazar and rough sketch. P.W.22 has spoken about the registration of the case. P.W.23 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.24 has spoken about the investigation done and the final report filed.

11. 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 witnesses on their side. Their defence was a total denial.

12. Having considered all the above, the trial Court acquitted the 6th accused. However, convicted the Accused 1 to 5 as detailed in the first paragraph of this judgment and that is how the appellants are before this Court with these appeals.

13. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

14. As we have already pointed out, in this case, P.W.1 is the only eye witness to the occurrence. The family members of P.W.1 and the deceased have spoken only about the previous motive. The motive is, P.W.1 had earlier eloped with P.W.9 - the sister of the Accused 2 and 3 and the wife of 4th accused. This fact is not very seriously disputed. Though P.W.9 has turned hostile, on that score, the evidence of other witnesses that P.W.9 had eloped with P.W.1; stayed in Bangalore for one month and thereafter, the 4th accused rescued her cannot be disbelieved. Quite naturally, the Accused 2 to 5 would have had some grudges against P.W.1. But the deceased had nothing to do with the above incident at all. It is not the case of the prosecution that the accused had any motive or any ill feeling against the deceased.

15. Now turning to the occurrence, it is alleged that P.W.1 had come to the occurrence village and met the deceased. Both of them proceeded to the bazaar around 1.30 p.m. At that time, the second accused intercepted them and questioned P.W.1 as to how dare he was to come to the occurrence village. This resulted in a quarrel. Thereafter, P.W.1 and the deceased left the place in their motorcycle. Then they purchased liquor and drank and again at 6.30 p.m., they were proceeding towards the bazaar. It is alleged that at that time, suddenly the Accused 1 to 5 came there in two Motorcycles and intercepted them and that is how the occurrence had taken place. Now according to P.W.1, Accused 1 to 5 pushed the deceased and P.W.1 down. P.W.1 has spoken about the individual overt act of Accused 1 to 5.

16. Now the question is whether the evidence of P.W.1 is fully believable. We are conscious of the legal position that the evidence of a solitary witness can be

safely acted upon, provided, it inspires the fullest confidence of the Court. On the contrary, if there are doubts in the evidence of a solitary witness, prudence requires that the Court should look for corroboration from independent sources on material particulars. Keeping this broad principle in our mind, let us now analyse the evidence of P.W.1.

17. It is the admitted case of the prosecution that the second accused was admitted in the hospital for certain injuries sustained by him. P.Ws.17 and 20 Head Constable and Special Sub-Inspector of Traffic Investigation Wing, Salem City have spoken about the same. P.W.24 has stated that at the time when he arrested the second accused, he was in possession of the case sheet relating to the treatment given to him in the Government Mohankumaramangalam Medical College Hospital at Salem. But the recovery of Accident Register and other medical records pertaining to the treatment given to A2 have not been produced in evidence. Further, the Doctor who treated the second accused was also not examined. P.W.1 has not stated anything about the injuries sustained by the second accused. But the case sheet which was recovered from the second accused in Ex.P25 would reveal that the second accused was admitted as inpatient in the hospital for the injuries sustained by him around 6.00 p.m. on 05.12.2010. But absolutely, there was no investigation done in respect of the said injuries sustained by him. This creates some doubt in the case of the prosecution.

18. P.W.1 in his evidence has further stated that the third accused with all force fisted the deceased on his right cheek. But there were no injuries noticed by the Doctor who conducted post-mortem. It is further alleged that the 4th accused strangled P.W.1. But correspondingly, there was no injury found on him like any contusion or abrasion. It is stated that the second accused attacked P.W.1 with Veecharuval. Correspondingly, there are no injuries on P.W.1. The first accused stabbed the deceased with Suri Knife on his chest. Correspondingly, there is injury. P.W.1 in our considered view has not come forward with true version. On that score, we cannot reject the entire case. Though there is no other evidences to corroborate the evidence of P.W.1 and material particulars, on that score, we are not able to reject the evidence of P.W.2. As we have already pointed out, if it is possible to separate the grain from the chaff, there will be no legal impediment for us to act upon the evidence of P.W.1. even in the absence of any corroboration from independent sources. A close scrutiny of the evidence of P.W.1 would go to show that we can believe him only to the extent that the first accused stabbed the deceased and the second accused cut P.W.1. In the light of the improbabilities in the evidence of P.W.1 as against accused 3 to 5, we find it difficult to sustain their conviction. The possibility of false implication cannot be ruled out. For these reasons, the evidence of P.W.1 requires very close scrutiny and doing the said exercise, we find that we can believe him only to hold that the first accused stabbed the deceased and the second accused cut P.W.1 with aruval. Therefore, Accused 3 to 5 are entitled for acquittal.

19. Having come to the above conclusion, now we have to examine as to what was the offence that was committed by Accused 1 and 2. There was no enmity between accused 1 and 2 on one part and the deceased on the other side. Except the fact that the deceased was the friend of P.W.1, there was nothing against the deceased on the part of the accused. The accused had taken exception for returning of P.W.1 to the Village. Though P.W.1 has not stated anything about as to what preceded the actual stabbing incident, going by natural human conduct, we are able to presume that there should have been a quarrel between P.W.1 and the Accused 1 and 2 and only in that quarrel, the first Accused and then the second accused had attacked P.W.1. By all means, the deceased would have intervened to save P.W.1. In that process, the first accused had stabbed the deceased also. Certainly, these two accused would have had no intention at all to kill the deceased, as absolutely, there was no motive against him. Therefore, so far as the killing of the deceased is concerned, the act of the first accused would squarely fall within the first exception to Section 300 IPC and therefore, he is liable to be punished for offence under Section 304(i) IPC as the act would fall under 3rd limb of Section 300 IPC. At the same time, so far as the second accused is concerned, since the occurrence was not a pre-meditated one and since there was no intention to cause the death of the deceased, certainly, there would have been no common intention for A1 and A2 to do away with the deceased,. Therefore, for causing of the death by the first accused, the second accused cannot be punished in any manner. So far as the causing of injury on P.W.1 is concerned, the fact that they came together and intercepted would go to prove that they had a common intention to kill P.W.1. Certainly, the second accused, out of strong motive had made an attempt to kill him. The attempt was stopped at the intervention of the deceased. Therefore, the first and the second accused are liable to be punished for offence under Section 307 r/w 34 IPC.

20. Now turning to the quantum of punishment, Accused 1 and 2 are middle aged men having big family to take care of them. They have also no bad antecedents and there are lot of chances for reformation. Having regard to the above mitigating and aggravating circumstances, we are of the view that sentencing the first accused for the offence under Section 304(i) IPC to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for six weeks and for the offence under Section 307 r/w 34 IPC to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.5000/- in default to undergo rigorous imprisonment for 4 weeks would meet the ends of justice. Similarly, sentencing the second accused for the offence under Section 307 r/w 34 IPC and to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for four weeks would meet the ends of justice.

21. In the result:-

(a) CrI. A. No. 456 of 2014 is allowed and the conviction and sentence imposed on the Accused 3 to 5 are set aside and they are acquitted from all the charges.

(b) Crl. A. Nos. 476 and 484 of 2014 are partly allowed in the following terms:-

(i) The conviction and sentence imposed by the Trial Court on the first accused (appellant in Crl.A.No.476/2014) is set aside and instead he is convicted under Section 304(i) IPC and Section 307 r/w 34 IPC and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for 6 weeks for the offence under Section 304(i) IPC and to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.5000/- in default to undergo rigorous imprisonment for 4 weeks for offence under Section 307 r/w Section 34 IPC.

(ii) The conviction and sentence imposed by the Trial Court on the second accused (appellant in Crl.A.No.484/2014) is set aside and instead he is convicted under Section 307 r/w 34 IPC and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for four weeks.

(iii) Accused 1 and 2 are acquitted from the other charges. It is directed that the sentences imposed herein on the first accused would run concurrently and the period of sentence already undergone by the Accused 1 and 2 shall be given set off, as required under Section 428 Cr.P.C.