SUPREME COURT OF NDIA

Arumugam

Vs.

State Rep. by Insp. of Police

Crl.A.No.879 of 2010

(Swatanter Kumar and Fakkir Mohamed Ibrahim Kalifulla, JJ.)

24.07.2012

JUDGMENT

Fakkir Mohamed Ibrahim Kalifulla, J.

1. This appeal, at the instance of accused No.1 is directed against the judgment of the Division Bench of the Madras High Court dated 12.12.2008 in Criminal Appeal 1089 of 2001 by which the High Court while confirming the conviction and sentence imposed on appellant-accused No.1 (A-1), set aside the conviction and sentence as against accused-6 (A-6) and acquitted him of the charges.

2. The case of the prosecution as projected before the Court below was that Murugesan (PW-1) and Sankar (deceased) were brothers and were native of a place called Sooriyur. As is the practice in their village, in the month of Markazhi (Tamil month), there used to be a game called Manju Virattu also called as Jalli Kattu in which bulls brought from other villages would be confined in an enclosure and then the bulls would be allowed to run, throwing a challenge to the youngsters to tame them and whosoever controls such bulls, used to get a reward in the function. It is stated that on 09.01.2000 which was in the Tamil month of Markazhi, the bull belonging to the appellant, who belonged to the place called Thiruvalarchipatti participated in the function. The deceased stated to have controlled the said bull and the appellant was stated to have been aggrieved by the so-called heroism of the deceased which resulted in alleged threat to the deceased. Twelve days prior to the murder of the deceased, six persons including the appellant stated to have quarreled and also assaulted the deceased which, according to PW-1 was reported by the deceased to him (PW-1). PW-1 appeared to have consoled the deceased by stating that they can report the conduct of the appellant and others to the local Panchayat. On 04.02.2000 at 10.30 a.m., when the deceased along with PW-1 was waiting at the bus stand which place was known as Manthai, the appellant and other accused chased the deceased and caught hold of the deceased at Mamundi temple. While the appellant inflicted cut injuries in the left arm of the deceased with the

weapon called aruval, the other accused stated to have inflicted certain other injuries on the head, leg and the buttocks of the deceased. On sustaining the injuries, the deceased stated to have fallen down. He was carried by PW-1 to his residence and from there, after arranging taxi from nearby town called Thiruvaramboor shifted him to Trichy Government Hospital around 01.30 p.m. The deceased was examined by Dr. Saminathan (PW-8) to whom the deceased informed that he was assaulted by six known persons. However, it is stated that the deceased did not survive and breathed his last around 2 p.m. Based on the information given by PW-1, a case was registered by sub-Inspector Ethiraj (PW-9) as crime No.20/2000 in the Navalpattu Police Station for offences under Sections 147, 148, 341 and 302, Indian Penal Code (for short 'IPC'). Inspector Kailasanathan (PW-12) stated to have simultaneously gone to the place of occurrence. He prepared the observation Mahazar in the presence of witnesses and also prepared a model sketch Exhibit P-6. The statements of witnesses were also recorded by him and then he went to the Government hospital, Trichy and prepared an inquest report Exhibit P-18. He also stated to have examined other witnesses including PW-1. The body of the deceased was sent for post mortem on the same day. On 05.02.2000, he enquired other witnesses and on 06.02.2000 at 4 p.m. Sakthivel (A-6) was arrested and based on the admissible portion of his statement five aruvals were stated to have been recovered from the thorn bush at 5.30 p.m. near a place called Koonavayil adjacent to Sulingu which were recovered in the presence of witnesses under Exhibit P-20. The post mortem was conducted by Dr. Karthikeyan (PW-11) and the post mortem certificate was marked as Exhibit P-15. The post mortem report disclosed as many as five injuries and the doctor opined that the deceased appeared to have died of shock and hemorrhage due to injury Nos.4 and 5.

3. All the accused were tried before the trial Court wherein the prosecution examined PWs-1 to 12, marked Exhibit P-1 to 20 and M.O.s 1 to 10. While M.O. 1 to 5 were the weapons, namely, aruval, M.O.6 was blood stained polyester lungi, M.O.-7 was blood stained Kasi towel, M.O.8 was blood stained sand, M.O.-9 was unstained sand and M.O.-10 was yellow and blue colour mixed lungi seized from the deceased.

4. PW-1 to 3 were examined as eye witnesses. However, in the course of the examination PW-2 and 3 turned hostile and PW-1 alone supported the case of the prosecution. After the 313 questioning in which all the accused denied their participation in the crime, the trial court analysed the materials placed before it and reached a conclusion that except A-1 and A- 6, guilt was not made out as against others, namely, A-2, A-3, A-4 and A-5. In the appeal preferred by the appellant-A- 1 and A-6, the High Court set aside the conviction and sentence imposed on A-6 and confirmed the conviction and sentence imposed upon the appellant (A-1) herein.

5. We have heard Mr. Nagendra Rai, learned senior counsel for the appellant and Mr. B. Balaji, learned counsel for the respondent State. Mr. Rai, learned senior counsel raised three contentions. He contended that there was delay in preferring the complaint and the registration of the FIR and, therefore, on that ground the case of the prosecution should fail. It was then contended that as per the evidence of post mortem doctor (PW-11) injury Nos. 4 and 5 were fatal to the death of the deceased and those injuries were not attributed to the appellant -accused No.1 and when the other accused persons were released, the conviction and sentence imposed on the appellant cannot be sustained. In support of the said submission, learned counsel relied upon the deposition of PW-1 himself. Lastly, it was contended that even if the entire case is accepted, the case would fall under Section 304 Part II, IPC, and the appellant, having remained in jail for five years, no further punishment need be imposed.

6. As against the above submissions, Mr. Balaji, learned counsel for the State contended that there were enough evidence placed before the Court to hold that injury No.4 was caused at the instance of the appellant, that the said injury as described in the post mortem certificate was so grave in nature and the post mortem doctor (PW-11) having opined that the said injury as well as injury No.5 were the cause of death of the deceased, the appellant was rightly convicted by the courts below. Learned counsel further pointed out that the deceased was examined by Dr. Saminathan (PW-8) when he was alive. He also noted the injuries in Exhibit P-8 which tallied with the post mortem report Exhibit P-15 prepared by PW-11, that PW-1 who witnessed the occurrence categorically stated that injury No.4 was inflicted by the appellant, that there is no reason to disbelieve the said version of PW-1. Learned counsel, therefore, contended that the case of the prosecution as against the appellant in inflicting injury No.4 on the deceased was consistent with Exhibit P-1 as well as the ocular evidence of PW-1 and, therefore, no ground was made out for the acquittal of the appellant. The learned counsel also contended that apart from the above, there is evidence to show that the deceased was threatened earlier also by the appellant and other accused, followed by which on 04.02.2000 he was murdered and, therefore, there is no question of invoking Section 304 part II, IPC to reduce the rigour of the offence found proved against the appellant.

7. Having heard learned counsel for the appellant as well as the respondent State, we are also convinced that the appeal does not merit any consideration. It is true that the whole case depends on the evidence of PW-1, the sole eye witness to the occurrence. It is also true that he is the brother of the deceased. It was not argued before us that since because he is the brother of the deceased, his version is liable to be thrown out. In this context, it will be worthwhile to refer to the recent decision of this Court reported as *Jaisy @ Jayaseelan v. State Rep. by Inspector of Police*[1]. That was also a case where there were more than one witnesses and ultimately except PW-1 in that case, the other eye witnesses turned hostile. PW-1 was also the brother of the deceased. This Court, while holding that on that ground

alone his evidence could not be discarded, reiterated the law laid down by this Court in the decision reported as *Sucha Singh Another v. State of Punjab*[2]which has been extracted in para 9 of the Jaisy's (supra) judgment. The same can be usefully referred to hereunder.

> "9. As stated by this Court in Sarwan Singh v. State of Punjab and Sucha Singh v. State of Punjab it is not the law that:
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> "10. ... the evidence of an interested witness should be equated with that of a tainted witness or that of an approver so as to require corroboration as a matter of necessity. The evidence of an interested witness does not suffer from any infirmity as such, but the courts require as a rule of prudence, not as a rule of law, that the evidence of such witnesses should be scrutinised with a little care. Once that approach is made and the court is satisfied that the evidence of the interested witness has a ring of truth such evidence could be relied upon even without corroboration."[emphasis added] This submission of the learned counsel is, therefore, rejected."

8. Keeping the above legal perception in mind, when we examine the submission of learned counsel for the appellant, the contention that there was delay in registering the FIR does not cause any serious dent in the case of the prosecution. Such submission was dealt with by the trial Court itself in a detailed manner wherein it was noted that immediately after the occurrence, noting the condition of the deceased, PW-1 took him to his house, arranged for a taxi to shift him to the hospital by which time it was 1.30 p.m. Since the deceased was in a serious condition, it was quite apparent that PW-1 as his brother had to stay along with him in the hospital and as was expected, despite the treatment given to the deceased, he died in the hospital around 2 O'Clock. The only other person who was available with him was his mother Govindammal (PW-4). The avocation of PW- 1 is agriculture. The deceased himself was working as a mason. Having regard to the unfortunate occurrence to his deceased brother, he would have only concentrated in staying at the hospital to support his mother and for taking required other steps to deal with the dead body of the deceased. Moreover, according to Ethiraj (PW-9) sub Inspector attached with the Navalpattu police station, he received information from the Trichy Government hospital at 13.45 hours and that he went to the hospital by 14.45 hours where he recorded the statement of Murugesan (PW-1) and he registered the crime as Crime No.20/2000 under Sections 147, 148, 341 and 302, IPC and recorded First Information Report and the express report- Exhibit P-9 was also forwarded to the Court through head constable 234. Noting such sequence of events, from the time of the occurrence till the registration of the FIR, we do not find any substance in the plea of the appellant that there was delay in the registration of the FIR. The said submission, therefore, stands rejected.

9. As far as the second submission, namely, that there was no evidence to connect the appellant to any of the injuries sustained by the deceased, here again as rightly contended by learned counsel for the State, we find that the said submission is not borne out by records. While examining the said contention, we feel it appropriate to refer to injury No.1 as described by PW-8 the doctor who attended on the deceased immediately after his admission to the hospital at which point of time the deceased was alive. The said injury was noted as first injury and was mentioned as an incised would measuring 10 x 5 cm x bone deep over dorsal aspect of left elbow exposing elbow joint".

10. In the post mortem report Exhibit P-15, the said injury has been noted as under:-

> "(4) A transverse chop wound, 9cm x 4cm exposing the underlying structures on the back of upper third of left forearm, 4cm below the elbow joint with marginal bruising dark red, O/E, the edges are clean cut. The underlying tendons, muscles, blood vessels, nerves are found completely cut. Diffusion of blood into the surrounding tissues present. The portion of the left forearm distal to the wound is found attached by the skin on the front aspect."

11. The post mortem doctor PW-11 in his evidence which is in vernacular (Tamil), while describing the injury, made it clear that the tissues, the blood vessels, the nerves and the bones were completely cut and the front forearm was just hanging with the attached skin. As far as the said injury was concerned, as pointed out by the counsel for the State, in Exhibit P-1, it was reported by PW-1 that at the time of occurrence, when his brother attended a telephonic call and was returning back near the bus stand, he was chased by A-1 to A-6 who were armed with aruvals. His brother was cornered by them in front of Mamundi temple and while A-2 Vijay Kumar held his brother, A-1 caused a cut injury on the left elbow of his brother and that his brother fell down to the left side. Before the Court also, PW-1 reiterated the said version as against the appellant. Therefore, it is too late in the day for the appellant to contend that he was not responsible for causing any fatal injury and that there was no evidence to the effect that he caused a fatal injury.

12. At the risk of repetition, it will have to be stated that PW-11, the post mortem doctor in his opinion made it clear that the death of the deceased was caused by injury Nos.4 and 5. The High Court in para 11 of its judgment has only referred to the trial Court's judgment in para 25 insofar as it related to the other accused and in particular relating to A- 6 where the trial Court observed as regards others that when several persons were involved in an occurrence, it was not possible to say which accused caused which injury. The said observation made by the trial Court and referred to by the High Court cannot be cited out of context when there was direct evidence against the appellant connecting his part of inflicting

injury No.4 on the deceased and the nature of injury was so grave. The post mortem doctor PW-11 clearly opined that the said injury along with injury No.5 was the cause of the death of the deceased.

13. In such circumstances, there is no scope to compare the extent of involvement of the appellant in the crime vis-à-vis the other accused to countenance the submission of learned senior counsel for the appellant to treat him on par with the other accused persons who were acquitted. With this, when we come to the last of the submissions made by the learned senior counsel, namely, that at best the conviction can only fall under Section 304 Part II, IPC, here again we are not in a position to accede to such submission . It is not as if the appellant had no intention to cause the death of the deceased or to cause such bodily injury with such a lack of intention. In that context, as rightly pointed out by the learned counsel for the state, about twelve days prior to the occurrence, when the deceased was returning from his work and got down at the bus stop, the accused apprehended him and stated to have also assaulted him. On that occasion, the deceased stated to have escaped and reported the said incident to PW-1. PW-1, along with the deceased, stated to have reported the incident to the village Panchayat President who advised them to prefer a police complaint since the accused were not amenable to any Panchayat proceedings. It is, however, stated that no police complaint was lodged with reference to the said incident. PW-1 reiterated the said fact in his oral evidence before the Court. In the cross examination he further stated that he did not report the said incident to the police as he felt that it can be sorted out at the level of Panchayat. PW-5, who is a local prominent person, in his evidence also supported the above version of PW-1. PW-4 the mother of the deceased also supported the said version of PW-1 that the same was reported to the Panchayat's President who advised them to lodge a complaint to the police.

14. When the said piece of evidence is analysed along with the alleged occurrence that took place on 04.02.2000, it is crystal clear that the appellant had an axe to grind against the deceased which he got fulfilled by executing the same by inflicting a fatal injury, namely, injury No.4 on the deceased and that caused the death of the deceased. When such is the clear evidence available on record, there is no scope to apply Section 304 part II, IPC or by way of mitigatory factor to dilute the rigour of the criminal act committed by the appellant. We, therefore, do not find any scope to alter the sentence as pleaded on behalf of the appellant. We find no merit in the appeal and the same is dismissed.

Judgment Referred

[1]2012 *1 SCC 0529*
[2]2003 7 SCC 0643