

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND
THE HONOURABLE MR.JUSTICE C.T.SELVAM

CrI.A. No.642 of 2014
and M.P.No.1 of 2014

Kumar

... Appellant

-v-

State by
The Inspector of Police,
M-3, Puzhal Police Station,
Thiruvallur District.

... Respondent

Appeal filed under Section 374(2) of Cr.P.C. against the conviction and sentence imposed in judgment dated 31.10.2014 made in S.C. No.168 of 2013 on the file of the learned I Additional District and Sessions Judge, Thiruvallur.

For appellant : Mr.Shahjahan for
Mr.Ganesh Rajan

For Respondent : Mr.V.M.R.Rajentren,
Addl. Public Prosecutor

JUDGMENT

(Judgment of the Court delivered by S.TAMILVANAN,J.)

The appeal is directed against the Judgment of conviction and sentence, dated 31.10.2014 made in S.C. No.168 of 2013 on the file of the learned I Additional District and Sessions Judge, Thiruvallur.

2. The appellant stands convicted for the offence under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.2000/-, in default to undergo further period of six months simple imprisonment. Aggrieved by the said conviction and sentence, the appellant / accused has preferred this criminal appeal.

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

There was a dispute between the appellant/accused and his wife Rukmani (PW7). The deceased Muthukumar @ Muthukumaran was residing in a portion of the property belongs to PW7. Whenever there was a dispute between the accused and his wife, the deceased Muthukumar used to intervene between them. Hence, the

appellant/accused warned the deceased to vacate the house. However, the deceased refused to vacate the house. On 06.04.2011 at about 11.00 p.m., the appellant stabbed the deceased with a pen knife, when he was taking dinner in one Muthu Tiffin Centre, at Surappattu Main Road, Mugambigai Nagar. Immediately, P.W.4-Balaji, took the deceased in Two Wheeler to one Kumaran Hospital. As the said Kumaran Hospital refused to provide treatment, the deceased was taken to Government General Hospital, Chennai, through 108 Ambulance, however, on the way to the hospital, the deceased was found dead.

3.1. After the occurrence on 06.04.2011, PW1-Muthuraman, who is running the Muthu Tiffin Centre had lodged a complaint before the Inspector of Police - PW.13, Puzhal Police Station and on 07.04.2011 at 1.15 a.m. PW13 registered the case in Crime No.281/2013 under Section 302 IPC and the First Information Report was marked as Ex.P12. P.W13 went to the place of occurrence and prepared Observation Mahazar Ex.P13 in the presence of PW.5 and also prepared the rough sketch Ex.P14. On 07.04.2011 at 6.30 a.m., he obtained blood stained mud, i.e.M.Os.7 and 8 in the presence of the same witnesses under Ex.P15. Thereafter, he prepared inquest report Ex.P.16 in the presence of Panchayatars, Kamarudhin, Subramani, Somasundaram, Loganathan and Ravichandran and thereafter, he sent the dead body for postmortem through one Sakthivel, constable. In the place of occurrence, he investigated the case, examined witnesses Muthuraman, Nirmala, Rajesh, Udhayakumar, Balaji, Sriam, Sathishkumar, Rukmani, Rani, Baburaj and recorded their statements. PW9, Dr.Selvakumar conducted postmortem on 08.04.2011 and for which, Sakthivel, Constable 3421, had identified the body of the deceased Muthukumar. On 09.04.2011 PW13-Inspector arrested the appellant / accused at 1.00 p.m. in the presence of witnesses Rabert and Manikandan and recorded confession statement of the appellant.

3.2.In order to establish the case, the prosecution has examined P.Ws. 1 to 13; marked Exs.P1 to 23 and produced material objects M.Os.1 to 10. It is seen that no witness was examined and no document was marked on the side of the defence.

3.3.The Trial Court, after analysing the oral and documentary evidence, convicted and sentenced the accused as already stated above.

3.4.Mr.Shahjahan, learned counsel appearing for the appellant submitted that the prosecution has not established the guilt against the appellant beyond reasonable doubt and according to him, the prosecution case suffers from serious infirmities and inconsistencies. Learned counsel for the appellant / accused would contend that the case is foisted against the appellant. He further contended that there are material contradictions in the evidence of PWs.1 to 3 and 6 and that the entire case rests on the circumstantial evidence, which

is not sufficient to prove the alleged guilt against the appellant beyond reasonable doubt.

3.5. The learned counsel further submit that there is an unexplained and inordinate delay in lodging the complaint and registering FIR, though the occurrence was said to have taken place on 06.04.2011 at about 11.00 p.m, since the complaint was lodged on 07.04.2011 at 1.15 p.m. He would further submit that PWs 3 and 6 are close relatives of the deceased and they are interested witnesses in this case and there are self contradictions on their evidence, which would go to the root of the prosecution case.

3.6. Learned counsel further submitted that even the medical evidence is not supporting the prosecution case and that the chain of events of the circumstantial evidence are not completed to connect the alleged offence against the accused beyond all reasonable doubt and he prays for allowing the appeal.

4. Per contra, Mr.V.M.R.Rajentren, learned Additional Public Prosecutor contended that the prosecution has established its case beyond all reasonable doubt and the minor discrepancies found in the evidence of the prosecution witnesses would not affect the prosecution case in its entirety. The learned Additional Public Prosecutor would submit that merely on the fact that the defence has pointed out certain discrepancies, the whole version of PW4 and PW7, who turned hostile, cannot be rejected. Hence, he prays for dismissal of the appeal.

5. We have carefully considered the contentions and the rival submissions put forward by either side and perused the impugned judgment of conviction and other material evidence available on record.

6. Learned counsel for the appellant drew the attention of this Court to the complaint given by PW1. As per the FIR, the occurrence was said to have been taken place on 06.04.2011 at about 11.00 p.m., and the FIR was registered based on the complaint given by PW1 on 07.04.2011 at 1.15 a.m. However, it is seen that FIR was placed before the concerned Magistrate on 07.04.2011 at 1.15 p.m, and the verification of the original FIR reveals the same.

7. As per the Code of Criminal Procedure, it is the duty of the prosecution to record and register the case and the prosecution is not empowered to register the case, after collecting evidence, to suit their convenience, as argued by Mr.Shajahan. In the instant case, it is crystal clear that the case is not registered on the date of occurrence that is on 06.04.2011.

8. According to the learned Additional Public Prosecutor, the distance between the Police Station and the residence of the Magistrate was only 20 k.m. However, there is no reason for the delay of 12 hours. Had the FIR been registered in the morning hours or at least before 10.00 a.m., it could have been reached the learned Magistrate on the same day. In addition to that, it is strange to know that the Accident Register relating to the case was not marked as a document, for the reasons best known to the prosecution. Hence, we called for the production of the Accident Register, wherein it is seen that an unknown injured person had been admitted in the hospital on 07.04.2011 at 12.05 a.m. It is also seen that the time is wrongly written as p.m, even according to the learned Additional Public Prosecutor. In the original Accident Register, it is stated as an "unknown person" and subsequently the name is inserted as Muthukumar by way of making an insertion. It is also relevant that as per the prosecution, the occurrence had taken place in Tiffin Centre run by PW1 and the deceased was immediately taken to Kumaran Private Hospital by PW1. It is seen that no witness has been examined to establish the fact that the deceased had been taken to the said Hospital. It is also not disputed by the learned Additional Public Prosecutor that as per the prosecution case, the deceased was taken to Government General Hospital, Chennai in 108 Ambulance from Madhavaram and the evidence of PW1 also to that effect. However, as per the Accident Register, which was not marked, but called for by us, it is seen that the person was brought dead to the Hospital.

9. In the Accident Register, the injuries were stated as follows:

Alleged h/o. f Assault and Patient found injured in Red Hills, Kumaran Hospital Opposite, Patient only shooked leg when taken up by MRP Laceration of size 10 x 4 cm in the (R) Chest

18 x 2 cm in (L) side of face

18 x 4 cm in (R) abdomen

18 x 5 cm in (L) forearm

18 x 6 cm in (L) Upper arm

However, as per the evidence, the deceased was brought dead. In this regard, for the vital self contradiction, there is no satisfactory explanation from the prosecution. The deceased was stated as an injured person, as if he was alive and then the body was sent to mortuary. However, the other version of the prosecution is that the deceased was 'brought dead' to the Hospital and in this regard, the driver of the Ambulance was also not examined for the reasons best known to the prosecution.

10. We are of the view that the delay of twelve hours in lodging the complaint in this case is also creating a serious suspicion on the prosecution case. It is well settled by the Hon'ble Apex Court that unexplained delay is fatal to the prosecution case. In support of his arguments, that the delay in lodging complaint as fatal to the prosecution case, learned counsel for the appellant relied upon the following decisions:

1. Ramachandran v. State by Inspector of Police, Tirupur North Police Station, Tirupur, 2012 (3) MWN (Cr1) 266 (DB)
2. Kumar @ Thambi and others v. State by Inspector of Police, Dindigul Taluk Police Station, (2012 (2) MLJ (Cr1) 494)

11. In State of Andhra Pradesh Vs. M. Madhusudhan Rao, reported in (2008) 15 SCC 582, the Hon'ble Apex Court has held as follows :

"Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety."

12. In Kumar @ Thambi and others v. State by Inspector of Police, Dindigul Taluk Police Station, reported in (2012) (2) MLJ (Cr1) 494, this Court has held that though FIR is not a substantial piece of evidence in a criminal case, it is an important document, as it sets the criminal law into motion. It contains the first, earliest version, information concerning the commission of a cognizable offence, in view of Section 154 Cr.P.C. So much is the importance attached to such a piece of document in a criminal case. That is how it has been repeatedly held by the Hon'ble Apex Court and this Court that it must reach the Law Enforcing Authorities as well as the Court with quickest possible time. Every delay of it must be accounted for and explained. It is with a view to exclude, in the meanwhile, script writing by prosecution implicating innocent persons, making additions and deletions. Fabrication in the FIR will tell upon the prosecution version.

13. When the delay in registering a case causes serious doubt on the prosecution case and non-marking of vital documents, in order to avoid contradiction or confusion by the prosecution would make the prosecution case itself unreliable to convict the accused in a case. In the instant case, admittedly there is a delay in registering the case. As per one version of the prosecution case, the deceased was taken to the Hospital as an injured, but as per the another version of the prosecution case, it was informed that the deceased was brought reported dead by the Doctors. In that circumstances, the evidence of the Ambulance Driver is important, however, for the reasons best known to the prosecution, he was not examined and copy of the Accident Register maintained by the Hospital was not marked before the trial court, only in order to avoid the self-contradictory version of the prosecution, which is not legally

permitted. It is the duty of the prosecution to bring all the factual aspects without suppressing any material facts. In this case, the suppression of the factual aspects with regard to the treatment given or refusal of the private hospital in providing treatment and subsequently the deceased being taken to the Government Hospital, either alive or dead creates serious doubt on the version of the prosecution. However, it is crystal clear that there is suppression of material facts by the prosecution, in order to avoid the self-contradictory version of the prosecution case, which would go to the root of the prosecution case.

14. Carefully considering the facts and circumstances of the case and also considering the submission made by the learned counsel for the appellant, we are of the clear view that the alleged guilt against the appellant / accused has not been proved beyond reasonable doubt by the prosecution. Therefore, we find it just and reasonable to allow the appeal.

15. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed by judgment, dated 31.10.2014 made in S.C. No.168 of 2013 on the file of the learned I Additional District and Sessions Judge, Thiruvallur, is set aside. The appellant / accused is acquitted of all the charges and he is directed to be released forthwith, if his custody is not required in connection with any other case. Fine amount, if any paid, shall be refunded. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

kal / tsvn

To

1. The Inspector of Police,
M-3, Puzhal Police Station,
Thiruvallur District.

2. The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

3. The Judicial Magistrate, Thiruvallur.

4.-do- Through The Chief Judicial Magistrate, Thiruvallur.

5. The I Additional District and Sessions Judge, Thiruvallur.
- 6.-do- Through The Principal Sessions Judge, Thiruvallur.
7. The Superintendent , Central Prison, Puzhal, Chennai.
8. The District Collector, Chennai.
9. The Director General of Police, Mylapore, Chennai.4.

Crl.A. No.642 of 2014

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