

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-06-2015

CORAM

THE HON'BLE MR.JUSTICE P.DEVADASS

Crl.A.Nos.244 of 2006 and 419 of 2007

Ananthan ...A-1/Appellant in Crl.A.No.244/2006

Mahesh ...A-2/Appellant in Crl.A.No.419/2007

Vs.

State by Inspector of Police,
Porayar Police,
Nagapattinam District

...Respondent in both appeals

These Criminal Appeals are filed under Section 374 of Cr.P.C., to set aside the JUDGMENT passed in S.C.No.10 of 2005 on 3.2.2006 by the Sessions Judge, Nagapattinam.

For Appellant in Crl.A.244/2006 : Mr.S.Sivakumar,
Advocate for
M/s.K.M.Vijayan Associates,
Advocates.

For Appellant in Crl.A.419/2007 : Mrs.S.S.Jothivani,
Advocate.

For Respondent in both the Appeals: Mr.Govindarajan,
Additional Public Prosecutor.

COMMON JUDGMENT

Since both the Criminal Appeals are directed as against the same judgment and are connected on facts and evidence common arguments have been heard and thus this common judgment is being rendered.

2. A-1 in the Sessions case in S.C.No.10 of 2005 on the file of the learned Sessions Judge, Nagapattinam directed Crl.A.No.244 of 2006, while A-2 in the said case directed Crl.A.No.419 of 2007 as against their conviction and sentence passed against them. For the sake of convenience, throughout this judgment, let us call them as A-1 and A-2 respectively.

3. A-1 was prosecuted under Sections 451 and 302 I.P.C., while A-2 was prosecuted under Section 302 I.P.C. Ultimately, the learned Sessions Judge convicted and sentenced them as under:

Accused	Conviction	Sentence
A-1	(i) 451 I.P.C. (ii) 304(ii) I.P.C.	One year R.I. and fine Rs.500/- i/d 3 months R.I. 7 years R.I. Both the sentences were directed to run concurrently.
A-2	304(ii) I.P.C.	7 years R.I.

4. The case of the prosecution runs as under:

(i) Deceased Gobi is husband of PW-2 Rani. He is elder brother of PWs-1 and 4 Venkatesan and Nagaraj. They are sons of one Krishnaveni. They are all residing in Porayar in Nagapattinam District. A-1 and A-2 are residing near their house. All are known to each other.

(ii) On 17/18.10.2003, at about 3 a.m., A-1 entered Gobi's house to misbehave with PW-2. She raised alarm. A-1 ran. Gobi and PW-2 chased him. Near Mala Indane Gas Agency, A-1 and A-2 had beaten Gobi. They dragged him to the Railway Line. A-1 assaulted Gobi with a stone on his face repeatedly. A-2 also assaulted him. This occurrence was witnessed by PWs-1 to 5 viz., Venkatesan, Rani, Kasinathan, Nagaraj and Saravanan. Gobi was bleeding on his face. A-1 and A-2 ran away.

(iii) PWs.1 to 4 took Gobi to the Government Hospital, Porayar. Then he was taken to Government Medical College Hospital, Thanjavur. On intimation received from the hospital, on 18.10.2003, at about 2.55 p.m., PW-15 Danapal, S.I. of Police, Porayar Police Station visited the hospital. He recorded Ex.P-1 statement from PW-1. At about 6.45 p.m., at the Porayar Police Station, he registered this case for offences under Sections 448, 324 and 307 of I.P.C. (Ex.P-9 F.I.R.). He sent the express F.I.R. through PW-16 Govindaraj, Head Constable to the Court. Copies of the same were also sent to superior Police Officers.

(iv) On receipt of a copy of the F.I.R., PW-19 Murugesan, Inspector, Porayar Police Station took up his investigation. On 18.10.2003, at about 7.30 p.m., he visited the scene place. In the presence of PW-10 Maran and one Vaduvambal, he prepared Ex.P-2 Observation Mahazar. He drew Ex.P-11 Rough sketch of the scene place. He took MO-2 blood stained earth and MO-3 ordinary earth. Krishnaveni identified to him MO-4 (series) stones. In the presence of the said witnesses, PW-19 seized MOs-2 to 4 under Ex.P-3 Mahazar.

(v) On 20.10.2003, at about 7 a.m., at the Thanjavur Medical College Hospital, PW-19 examined PWs-1 and 2 and recorded their statement. At about 12 Noon, near A.R.L. Marriage Hall in Olugaimangalam, PW-19 arrested A-1 and A-2 and sent them to Court for judicial custody. He examined further witnesses and recorded their statement.

(vi) PW-18 Dr. Ilangovan, Neuro Surgeon treated Gobi. On 29.10.2003, at about 9 p.m., Gobi passed away at the hospital. Ex.P-6 death intimation was received by PW-19. He altered the section of law to Section 302 I.P.C. and sent Ex.P-12 alteration report to the Court through PW-16.

(vii) On 30.11.2003, at the Mortuary, in Thanjavur Medical College Hospital, between 9.30 a.m. and 12.00 Noon, in the presence of Panchayathars, PW-19 held inquest over the dead body of Gobi. Ex.P-13 is his inquest report. He gave Ex.P-7 requisition to the hospital authorities to conduct post-mortem on the dead body of Gobi.

(viii) On 30.10.2003, at about 3 p.m., at the Mortuary PW-14 Dr. Vijayalakshmi conducted post-mortem and found the following:
External injuries:

- 1) Sub conjunctival haemorrhage in the right eye
- 2) Multiple healed abrasions with fallen scabs of various sizes noted over the whole of the both sides of face, whole of both ears, forehead, upper part of both sides of neck and shoulder region and chin.
- 3) Partially healed abrasions of various sizes noted over the front of left knee, back of both elbows, left side front of chest above the costal margin below the nipple and back of both forearm.
- 4) Partially healed laceration over the inner aspect of left side lower gum margin in between the left canine and left first premolar tooth near the angle of mandible measuring 4 x 3 x 1 cm with complete fracture separation of whole of left side angle of mandible and the adjoining alveolar margins.
- 5) Two partially healed lacerations just above the lateral end of

right eyebrow each measuring 1.5 cm x ½ cm

- 6) A partially healed laceration over the upper part of right ear pinna measuring 1 x ½ x ¼ cm
- 7) Contusion around the medial aspect of right elbow over an area of 3 x 3 cm found partially resolving.
- 8) Surgically made I.V. cut down wound noted over the front and medial aspect of right ankle region.
- 9) Bed sore over the sacral region of back over an area of 10 x 6 cm

Internal injuries:

- 10) On reflecting the scalp skin sub scalp contusion noted over the whole of left side of scalp occipital region, right side whole of frontal and temporal regions. On opening the vault of the skull sub arachnoid haemorrhage noted over both sides cerebral hemispheres. Intra cerebral haemorrhage in both sides. Contusion over the whole both sides cerebellum. C.S.F. was found to be turbid and bloodstained. Brain was pale and oedematous.

- 11) On dissection of neck contusion of both sides neck muscles more over the upper half noted.

All the injuries are ante mortem in nature.

(ix) PW-14 opined that the deceased would appear to have died due to the effects and complications of head and face injuries involving vital organ viz., brain. Ex.P-8 post-mortem certificate has been issued by her.

(x) After receiving Exs.P-18 to 20 viz., chemical, serology and blood grouping test reports from the Forensic Science Lab PW-19 concluded his investigation and filed the final report before the Committal Court for offences under Sections 450,448, 302 of I.P.C.

5. After complying the requirement under Section 207 Cr.P.C., the learned Magistrate committed the case to the Court of Sessions, Nagapattinam under Section 209 Cr.P.C.

6. The learned Sessions Judge after hearing both sides and on perusal of the case-records framed charges under Sections 450 and 302 of I.P.C. as against A-1 and under Section 302 I.P.C. as against

A-2. The accused have pleaded not guilty to the charges.

7. To substantiate the charges, prosecution examined PWs-1 to 19, marked Exs.P-1 to P-20 and exhibited MOs-1 to 4.

8. On the incriminating aspects in the prosecution evidence, the trial Court examined the accused under Section 313 Cr.P.C. They denied the offence. They have marked the Arrest card as Ex.D-1. They did not examine any witness on their side.

9. Appreciating the said evidence and the arguments of both sides, the trial Court convicted and sentenced them as already stated in paragraph No.3.

10. According to the learned counsel for A-1, prosecution has not established the charges levelled against A-1 beyond all reasonable doubts. The deceased is a drunkard. He was found with injuries near the Railway Line. This has also been probablised by the evidence of PWs-1 and 3 and Exs.P-1 and Ex.P-14. The weapon of offence has not been established. There is material contradictions with regard to the weapon of offence in Ex.P1 and in the evidence of PWs-1 and 2. The conduct of PWs-1 to 5 is quite unnatural that they could not save the deceased from the accused and simply witnessed the occurrence. It shakes their credence.

11. The learned counsel for A-1 further contended that there should not be any delay in registering the F.I.R. However, in this case, Porayar Police Station is very near to the place of occurrence. However, F.I.R. was registered with unreasonable delay. The delay was also not explained. The delay has given much scope for the prosecution to introduce embellished version in the F.I.R.

12. The learned counsel for A-1 also submitted that the F.I.R. should reach the Court with least delay to prevent inclusion of story-telling and concoction in the F.I.R. In this connection, the learned counsel for A-1 cited the following decisions:

- 1) Arjun Marik and others vs. State of Bihar (1994 Supp (2) SCC 372)
- 2) Meharaj Singh (L/Nk.) vs. State of U.P. (1994(5) SCC 188)
- 3) State of Rajasthan vs. Teja Singh and others (2001(3) SCC 147)
- 4) Thanedar Singh vs State of M.P. (2002(1) SCC 487)

13. The learned counsel for A-1 submitted that the F.I.R. in this case was sent to the Court belatedly. There was no explanation for the delay. Further, the statement recorded under Section 161 Cr.P.C., from the witnesses including the eye witnesses were sent to the Court only on 19.1.2004 along with final report.

Further, arrest was effected on 19.10.2003. However, F.I.R. was sent to the Court only thereafter on 20.10.2003. All goes to show that the eye-witnesses are got-up witnesses and they were subsequent additions.

14. The learned counsel for A-2 reiterated the submissions of the learned counsel for A-1. She also contended that there is no motive as between A-2 and the deceased. A-2 is a known person. No rhyme or reason for A-2 to assault the deceased. Because A-2 is a friend of A-1 he has also been implicated in this case. There is material contradictions as between the version in the F.I.R. and in the evidence of PWs-1, 2 and 5 with regard to the overt act alleged as against A-2.

15. The learned Additional Public Prosecutor contended that this case is based on the evidence of eye witnesses. The witnesses have clearly spoken about the overt acts alleged as against A-1 and A-2 that they have stoned the deceased and caused his death. There is no confusion with regard to the place of occurrence in this case. The dealy has been explained. Prosecution established its case beyond all reasonable doubts and thus they were rightly convicted and punished.

16. I have anxiously considered the rival submissions, perused the impugned judgment, entire materials on record and the decisions cited by the learned counsel for A-1.

17. Now, the question is whether beyond all reasonable doubts prosecution has established that A-1 is guilty under Section 451 and under Section 304(ii) I.P.C. and A-2 is guilty under Section 304(ii) I.P.C.

18. On 17/18.10.2003, at about 3 a.m., near the Railway Road, in Porayar, intending to outrage PW-2, A-1 had trespassed into PW-2's house, she raised alarm, she and her husband Gobi chased him, thereafter, A-2 joined with A-1 and A-1 and A-2 have beaten Gobi with MO-4 (series) stones, later Gobi died of mortal wounds. The occurrence was witnessed by PWs-1 to 5. F.I.R. Ex.P-9 [= P-1] has been given by PW-1 who is brother of deceased Gobi.

19. As per the allegations in the F.I.R., the occurrence is said to have taken place near a Gas agency situate on the Railway Road. However, in his cross examination, PW-1 admits that he told the Doctor that he found his brother near the Railway Line with injuries. In her cross examination, PW-2 also stated so. PW-4, a brother of deceased Gobi also stated so in his evidence. There is variance as to the place of occurrence as between the version in the F.I.R. and in

the evidence of eye witnesses. It is seen that the prosecution has not established the place of occurrence clearly.

20. In Ex.P-1 complaint PW-1 has stated that A-1 and A-2 have assaulted Gobi indiscriminately with stones. However, in his evidence, he implicated A-1 only and excluded A-2. However, PW-2 implicated both A-1 and A-2. PW-2 had also stated that each used one stone to assault her husband. In her cross examination, she pleaded ignorance about A-2 because of the darkness. In his cross examination, PW-5 stated that A-2 has not assaulted Gobi. PW-1 has stated that first A-2 had assaulted Gobi. However, PW-2 says the reverse. PW-3 an eye witness stated that Gobi was found with injuries on his face near the Railway Gate. He did not implicate either A-1 or A-2. It is seen that there is material contradictions as to the overt acts alleged as against A-1 and A-2 in the F.I.R. and in the evidence of eye witnesses.

21. In this case, the weapon of offence is MO-4 (series) two stones. One is a small and another one is a big stone. As per the allegations in the F.I.R., each accused used one stone. In his evidence, PW-1 stated that A-1 alone had used stone. When PW-2 was in the witness box MO-4 (series) were shown to her, she pleaded no knowledge about them.

22. As per the allegations in the F.I.R. at the time of occurrence PWs-1, 4 brothers of Gobi, PW-2 wife of Gobi, their mother Krishnaveni, wives of PWs-1 and 4 their neighbours PWs-3 and 5 were all present. They admit that when A-1 assaulted Gobi they did not venture to save him. In her evidence, PW-2 has stated that they were threatened by A-1, so they could not intervene and she had stated this also to the Investigating Officer PW-19. However, PW-19 controverted this. The conduct of the said eye witnesses having not raised their little finger to save deceased Gobi from the clutches of accused exhibits certain unnatural conduct on them tending to shake their credibility.

23. Early registration of F.I.R. under section 154 Cr.P.C. by police with reference to a cognizable offence is very important in a criminal case. Now, in this case, the alleged occurrence was on 17/18.10.2003 at about 3 a.m. Ex.P-1 statement is stated to have been recorded from PW-1 at the Government Medical College Hospital, Thanjavur by PW-15 from Porayar Police Station on 18.10.2003 at about 2.45 p.m. He registered Ex.P-9 F.I.R. at 7 p.m.

24. The distance between the place of occurrence and the Porayar Police Station is mentioned as 1 K.M. in the F.I.R. In his

cross examination, PW-1 stated that the distance as between the Government Hospital, Porayar and Porayar Police Station and their house is 500 yards. PW-1 also admit in his cross examination that they have crossed the Police Station and took his brother Gobi to Government Hospital, Porayar. Again, they have brought Gobi near their house and waited for one hour and thereafter only took him in a van to Government Medical College Hospital, Thanjavur. However, immediately he did not give complaint to the Porayar Police Station, which is very nearby. He did not inform about the occurrence to the Police Station which is very near to his house and also to the place of occurrence. There is perceptible delay in lodging the F.I.R. However, there was no acceptable or plausible explanation as to this delay from the prosecution.

25. As per section 157 Cr.P.C., F.I.R. has to be submitted to the Court 'forthwith'. The importance of sending the F.I.R. so fastly has been highlighted by the Hon'ble Supreme Court in Arjun Marik and others vs. State of Bihar (1994 Supp (2) SCC 372) as under:

"24. The matter does not stop here. There is yet another serious infirmity which further deepens the suspicion and casts cloud on the credibility of the entire prosecution story and which has also been lost sight of by the trial court as well as the High Court and it is with regard to the sending of occurrence report (FIR) to the Magistrate concerned on 22-7-1985 i.e. on the 3rd day of the occurrence. Section 157 of the Code of Criminal Procedure mandates that if, from information received or otherwise, an officer in charge of police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence upon a police report. Section 157, CrPC thus in other words directs the sending of the report forthwith i.e. without any delay and immediately. Further, Section 159 CrPC envisages that on receiving such report, the Magistrate may direct an investigation or, if he thinks fit, to proceed at once or depute any other Magistrate subordinate to him to proceed to hold a preliminary inquiry into the case in the manner provided in the Code of Criminal Procedure. The forwarding of the occurrence report is

indispensable and absolute and it has to be forwarded with earliest despatch which intention is implicit with the use of the word "forthwith" occurring in Section 157, which means promptly and without any undue delay. The purpose and object is so obvious which is spelt out from the combined reading of Sections 157 and 159 CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation.'

(Emphasis supplied)

26. In this case, the F.I.R. has been registered belatedly on 18.10.2003 at 6.30 p.m. The accused were arrested on 19.10.2003 at 12 Noon and were sent to Court (see Ex.D-1 Arrest card). Only thereafter, Ex.P-9 F.I.R. has been submitted to the Court in Mayiladuthurai on 20.10.2003 at 8 p.m. The distance between Porayar and Mayiladuthurai is not so long to be covered by more than two days. It would be less than an hour's journey. Prosecution has not offered any explanation as to this unreasonable delay in sending the express F.I.R. to the Court.

27. Further, the statement of eye witnesses recorded under section 161 Cr.P.C. has been submitted along with the final report to the Court only on 19.1.2004. For this delay also, there is no explanation from the prosecution.

28. In the circumstances, these infirmities in the prosecution case throws serious doubt and suspicion on the credibility of the eye-witnesses.

29. In the light of the above, I am of the considered view that the prosecution has not established its case beyond all reasonable doubts and the accused are entitled to the benefit of doubt.

30. In the result, these Criminal Appeals are allowed. The conviction of A-1 under Section 451 and under Section 304(ii) I.P.C. and the conviction of A-2 under Section 304(ii) I.P.C. and the sentences imposed upon them by the learned Sessions Judge, Nagapattinam in S.C. No.10 of 2005 on 3.2.2006 are set aside. Fine amount paid by A-1 shall be refunded to him. The Superintendent, Central Prison, Cuddalore shall release the Appellants/A-1 and A-2

from jail forthwith, if their further custody is no longer required for in connection with any other case/ proceedings.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

vaan/svn

To

1.The Principal District Sessions Judge,
Nagapattinam.

2.The Sessions Judge,
Nagapattinam.

3.The Superintendent,
Central Prison, Cuddalore.

4.The Inspector of Police,
Porayar Police Station,
Nagai District.

5.The District Collector,
Nagapattinam.

6.The Director General of Police,
Chennai.

7.The Public Prosecutor,
High Court, Madras.

1 CC to K.M.Vijayan Associates, Advocate SR.No. 29432

1 CC to Mrs.S.S.Jothivani, Advocate SR.No. 29407

Cr1.A.No.244 of 2006 and 419 of 2007

RSI (CO)
PSI (24.06.2015)