

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.10.2015

CORAM

THE HONOURABLE DR.JUSTICE **S.TAMILVANAN**
AND

THE HONOURABLE MR.JUSTICE **C.T.SELVAM**

Crl.R.C.No.873 of 2009 & Crl.A. No.78 of 2010

Crl.R.C.No.873 of 2009:

J.Ravikumar

... Petitioner/
Defacto Complainant

-v-

1.Mathiazhagan

2.The Inspector of Police
Mannarkudi Police Station,
Mannarkudi,
Thiruvarur District.

...Respondents

Cr.A.No.78 of 2010:

State by
The Inspector of Police,
Mannargudi Police Station,
Thalaiyamangalam Police Station (i/c),
Tiruvarur District,
(Crime No.16/2007)

... Appellant/
Complainant

vs

Mathiyalagan

... Respondent/
Accused

Prayer in Revision: Criminal Revision preferred under Sections 397 and 401 of the Code of Criminal Procedure against the order of the learned Sessions Judge, Tiruvarur dated 31.07.2009 in S.C.No.29 of 2008 acquitting the accused therein.

Prayer in Appeal: Appeal filed under Section 378 of Cr.P.C. against the judgment of acquittal dated 31.07.2009 made in S.C.No.29 of 2008 on the file of the learned Sessions Judge, Tiruvarur and to set aside the same, consequently convict the respondent/accused.

For appellant in Crl.A.No.78/2010
& 2nd Respondent in
Crl.R.C.No.873/2009

:Mr.V.M.R.Rajentren
Addl. Public Prosecutor

For Petitioner in Crl.R.C.No.873/2009:No appearance

JUDGMENT

(Judgment of the Court was made by **S.TAMILVANAN, J.**)

Both the revision and the appeal have been preferred against the judgment dated 31.07.2009 made in S.C.No.29 of 2008 on the file of the learned Sessions Judge, Tiruvarur and to set aside the judgment of acquittal and convict the respondent/accused. The defacto-complainant is the petitioner in the criminal revision and the State being the complainant is the appellant in the Criminal Appeal.

2. The case of the prosecution is that PW1, Ravikumar and the accused were living in Ethakudi Colony Street. A water tap was situated near the house of the accused and there was frequent quarrel between the accused and PW1. While getting water from the tap, on 14.04.2007, at about 7.00 a.m. PW1 went to fetch water in the tap, saw the accused making some repair work and thereafter, no water was available in the tap. Aggrieved by the same, there was a wordy

quarrel between PW1 and the accused and then PW1 returned home without getting water. At about 7.30 a.m., the accused armed with spade entered into the house of PW1 and on seeing PW1's father-Jagannathan/the deceased, assaulted him on his head and the accused also shouted that he would kill his son. On hearing the cry, PW1 also came to the place and tried to intervene. In the melee, PW1 was also attacked by the accused and sustained injuries on his lips and face. Immediately, PW1 and the deceased were taken to the Government Hospital, Mannarkudi and then he was admitted for further treatment to Medical College Hospital, Thanjavur. The said Jagannathan took treatment till 23.04.2007 and again he was admitted in hospital as inpatient on 25.04.2007, however the deceased died on 18.05.2007 at 11.30 a.m. due to head injuries. Hence, the charges were framed against the accused under Section 450, 302, 506(2) and 324 of IPC.

3. Initially, the case was taken cognizance by the Judicial Magistrate No.II, Mannarkudi in PRC.No.1/2008. Since the case against the accused has to be tried only by the Sessions Court, the case was committed to the Sessions Court, Nagapattinam, which took the same on file in S.C.No.234/2008. Due to the inauguration of Tiruvarur District and Sessions Court, the case which was pending trial

in the Sessions Court, Nagapattinam, was transferred to the Sessions Court, Tiruvarur and re-numbered as S.C.No.29/2008. After hearing the arguments of both sides, the Court below acquitted the accused for the offences punishable under Sections 302 and 324 IPC. Aggrieved against the said judgment, the present revision and appeal have been preferred.

4. Learned Additional Public Prosecutor appearing for the appellant submitted that PW-2-Sasikumar, after taking bath in the pond, heard the sound of the occurrence and after the occurrence PW1 and PW2 took the said Jagannathan in an Auto to Thalayamangalam Police Station and PW1 gave a complaint to PW9-Sub Inspector. Based on the complaint given by PW1, PW9 registered the case in Crime No.16 of 2007 for the offence punishable u/s.324, 506(ii) and 452 IPC and the FIR is Ex.P11. PW1's complaint and FIR-Ex.11 were sent to the Judicial Magistrate, Mannargudi. PW9-Sub Inspector has investigated the case and on the same day, she went to the place of occurrence at about 9.30 a.m. and prepared observation mahazar in the presence of witnesses PW3 and 4 and the Observation Mahazar is Ex.P12 and prepared rough sketch under Ex.P13. Thereafter, she recorded the confession and the statements regarding the occurrence from the witnesses Kumar, Anbalagan, Selvaraj and Mariyappan.

Thereafter, PW9 went to Thanjavur Medical College Hospital and investigated the case and recorded the statements from PW1 and PW2. On 18.04.2007 at about 5.00 a.m. PW9 arrested the accused at Ethakudi Colony Street and sent him to judicial custody. She sent the said Jagannathan to Mannargudi Government Hospital on 14.04.2007 for treatment. After providing first aid, the injured was sent to Thanjavur Medical College Hospital for further treatment and Ex.P6-Wound Certificate. On 14.04.2007 at about 10.15 a.m. the accused has got treatment in the hospital and PW5-Doctor who issued a wound Certificate under Ex.D1. Based on the gravity of the Wound Certificate, the injured Jagannathan was admitted as inpatient in the Thanjavur Medical College Hospital and PW6, Dr.Mathiadas gave treatment and he discharged him on 23.04.2007 and the discharge summary is Ex.P7. At the time of discharging the said Jagannathan, he fell unconscious and got respiratory problem. Due to which, on 25.04.2007, again PW1 admitted the Jaganathan in Thanjavur Medical College Hospital and PW6-Dr.Mathiadas took CT Scan and found out a swelling in the brain, hence for providing treatment he was admitted as inpatient. However, he died in the hospital on 18.05.2007. PW6-Doctor prepared a receipt Ex.D2 and on 19.05.2007 at about 8.00 a.m., the said information has been informed to PW10-Sub Inspector, Thalayamangalam Police Station through a written complaint and the

said complaint is Ex.P2. Based on the said information, PW10 altered the case under Section 302 IPC as against the case already registered under Sections 324, 506(2) and 452 IPC and prepared an Express Report Ex.P.14 and that report was sent to the Judicial Magistrate II, Mannargudi.

5. On 19.05.2007, at about 10.00 a.m., PW12-Pugalenth, Inspector, took up the case for investigation and went to Mortuary of Tanjavur Medical College Hospital and conducted inquest on the body of the deceased Jagannathan in the presence of Panchayatars Karunanithi, Selvaraj, Mariyappan, Arivalagan, Appadurai and the witnesses Ravikumar, Sasikumar, Jeeva and Kumar and prepared Inquest report Ex.P16. PW12 has recorded the confession statement from the witnesses Thaiyal Nayagi, Selvaraj, Ganesan, Paramasivam. On 19.05.2007, at 5.00 p.m. PW12 went to the place of occurrence and prepared observation mahazar-Ex.P3 in the presence of PW3 and PW4 and prepared rough sketch is Ex.P17. PW12 after inquest, sent the body for autopsy. On 19.05.2007, at about 2.30 p.m. Dr.Vijayalakshmi conducted autopsy and the Postmortem Report is Ex.P15. The doctor noted the following injuries on the body of the deceased:

External Injuries: 1) An obliquely placed headed wound scar measuring 4 cm in length noted over the middle of Right side frontal region of scalp.

2) Healed chicken pox scars noted at many places all over the body surface.

Internal Injuries: 3) On reflecting the scalp skin - resolving subscalp contusion noted over the whole of right side scalp and occipital region. A depressed fracture measuring 4 cm x 2 cm noted corresponding to the external injury No.1 over the middle of right side frontal bone with few scalp hair found embedded into the fractured bony segments. On opening the vault of skull- the above said depressed fracture was found compressing the brain matter. The inner plate of depressed fractured frontal bone segment was found elevated and has found lacerated the brain underneath over an area of 4 cm x 2 cm x 2 cm. The lacerated brain matter was found softend, infected with greenish yellow coloured layer of pus and blood clots were also present in the substance of lacerated brain matter. Diffuse bilateral subdural and sub arachnoid hemorrhages present over the whole of cerebral hemisphere. Laceration of right side occipital lobe of brain measuring 3 cm x 2 cm x 2 cm with surrounding softening and blood clot. contusion of both sides Cerebellum with bilateral intra cerebellar with bilateral intra cerebellar hemorrhages. Brain was found to be edematous hemorrhages in the regions of Pons and Mid brain areas.

All the above mentioned injuries No.1 and 3 were of ante-mortem in nature and the doctor PW15 opined that the deceased would appear to have died due to head injuries in the brain.

6.The Accused was arrested on 16.06.2007 at 4.00 p.m., by PW12 and he recorded the confession statement in the presence of PW8 Govindasamy and Ramakrishnan. The admissible portion is Ex.P9 and in view of the same, he seized M.O.1-Spade. Then PW.12 sent the accused along with Observation Mahazar Ex.P10 and seized articles to the Court. On 10.07.2007, the Head Constables, Pandian and on 25.07.2007, Babu Doss, Jayapal and Sub Inspector Manjula were enquired and their statements were recorded by him. On 27.07.2007, PW12 recorded the statement of Dr.Mathyadas, Dr.Jayanthi, Dr.Karimuthu, Dr.Rajkumar and PW7-Chemical Analyst Valli and on 10.08.02007, he enquired and recorded the statement of Rajendran-Sub Inspector. After obtaining Medical Opinion and examining the Witnesses and on completion of formalities of the investigation, Charge Sheet was filed against the Accused on 30.08.2007 for the offence under Sections 450, 302 and 506(2) IPC.

7.In order to substantiate the charges against the Accused, P.Ws.1 to 12 were examined; Exs.P.1 to P.17 and M.O.1 were marked by the prosecution.

8.Learned Additional Public Prosecutor contended that the deceased was assaulted by the accused with the spade on his head and the injury sustained by the deceased was only due to the said assault. He further submitted that the Court below ought to have seen that though the deceased was discharged from the hospital on 23.04.2007, he was readmitted on 24.04.2007 for some complications and in view of the same, he dead. Dr.Vijayalakshmi, who conducted postmortem, could not depose evidence due to ill-health, however PW11-Dr.Sundarrajan deposed that the injury found on the head was the cause for his death and as per the evidence the doctor who conducted post mortem noticed that the injuries found inside the skull, could have caused damage to the brain by which resulted the death. He further submitted that the Court below could not have come to the conclusion that the deceased died out of the complications of chicken pox, especially when the same has not been proved either by way of documentary or oral evidence by way of defence. He further submitted that the Court below ought to have seen that both PWs 1 and 2 have adduced corroborated evidence which is according to him sufficient to convict the accused and the reasons given by the Court below in acquitting the accused is not acceptable.

9.Per contra, learned counsel for the respondent submitted that the respondent/accused has been falsely implicated in this case and the deceased died due to chicken-pox and not on the the alleged injuries sustained by him in the alleged occurrence. Further more, in the occurrence, the accused had also sustained injuries and hence the trial Court based on the evidence has rightly held that the prosecution failed to prove its case beyond reasonable doubt.

10.It is seen from the impugned judgment that the accused had also sustained injuries at the hands of PW1 and others also sustained simple injuries, for which, a complaint was lodged and FIR was registered in Crime No.17 of 2007 and thus, there is case and counter. During the occurrence, both sides attacked each other and sustained injuries. However, the prosecution has failed to prove as to who attacked the father of PW1-the deceased Jaganathan and how he sustained injuries and in fact the same was established by the prosecution by way of adducing proper evidence.

11.The trial Judge after analyzing the evidence adduced by the prosecution as well as the accused and also upon considering the documents marked on either side, had acquitted the accused by giving benefit of doubt. The said finding of the trial Court is based on the

evidence and documents produced. Therefore, we are of the view that there is no ground made out to interfere with the well founded judgment of the trial Court.

12. In the result, the Criminal Appeal is dismissed. As we held as stated supra, the prosecution has failed to establish its case beyond reasonable doubt and the Criminal Revision preferred by the defacto-complainant also fails and accordingly, the same is dismissed.

[S.T., J] [C.T.S., J]
15.10.2015

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To

The learned Sessions Judge,
Tiruvarur

S.TAMILVANAN, J
and
C.T.SELVAM, J

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Crl.A. No.78 of 2010

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