

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-10-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Crl.R.C. No. 962 of 2009

Ganesan

.. Petitioner

Versus

1. Inspector of Police
Gudiyatham Town Police
Vellore District
Crime No.334/2008.

2. Ramesh Babu
3. Chandru
4. Prabakaran

.. Respondents

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the judgment of acquittal passed in S.C.No.297 of 2008 by the learned Additional District and Sessions Judge/Fast Track Court at Vellore, dated 09.07.2009.

For Petitioner : Mr.R.Margabandhu

For Respondents : Mr.V.Arul
Government Advocate (Crl.side)
for R.1

Mr.V.Madhavan
for R.2 to R.4

ORDER

The petitioner/P.W.1 has come forward with this Criminal Revision Case aggrieved against the judgment passed by the learned Additional District and Sessions Judge, Fast Track Court at Vellore, in S.C.No.297 of 2008, dated 09.07.2009, acquitting the accused Nos.1 to 3 in a case of murder. It is alleged that on 13.05.2008 at about 8.00 p.m., in a wordy quarrel that arose in Gangaianman Koil festival, the 1st accused has stabbed one Jayavelu using suri-knife and accused Nos.2 and 3 assaulted him with their hands. The injured person was admitted in Government Hospital, Gudiyatham and thereafter, he was admitted in Government Hospital, Vellore, for further treatment but, he died on 14.05.2008 at 2.00 a.m.

2. Mr.R.Margabandhu, learned counsel appearing for the

petitioner/ P.W.1 would submit that merely because of the alleged delay in the lodging of the complaint, the Trial Court has acquitted the accused Nos.1 to 3. The alleged occurrence has taken place on 13.05.2008, at 8.00 p.m., and immediately, after the occurrence, the injured person was first taken to the Government Hospital at Gudiyatham. Taking into consideration the serious nature of injury sustained by the injured person, he was referred to the Government Hospital at Vellore. Thereafter, they took him to the Government Hospital at Vellore, thereafter, he died at 10.30 p.m. and subsequently, a complaint was lodged at 2.00 a.m. on 14.05.2008 and thus, there is no delay and it cannot be said as an inordinate delay. Secondly, he would contend that the evidence of eye witnesses, viz., P.Ws. 2, 3 and 4 are very clear and in fact, they are the persons, who have taken the injured person to the hospital. The evidence of eye witnesses have not been properly considered by the Trial Court. Hence, he would contend that the Trial Court has failed to appreciate the evidence properly and acquitted the accused Nos.1 to 3 and hence, the revision.

3. Mr.V.Madhavan, learned counsel appearing for the respondents 2 to 4 would mainly contend that even as per the findings of the Trial Court, it is clear that when the injured person was taken to the Government Hospital at Vellore at 10.30 p.m. itself, there was a wireless message sent to the concerned authorities and that was the earliest complaint, that ought to have been registered, but, there is no mention regarding the wireless message received and admittedly, it was not registered, which is a mandatory one and which remains unexplained. Secondly, the alleged complaint has been registered at 2.00 a.m. on 14.05.2008, after the death of the injured person. He would further add that the evidence of P.W.3 is totally unreliable. In the Government Hospital at Gudiyatham, P.W.3 has stated that that the injured person has taken drinks and in an intoxicated mood, he fell down in an iron rod, as a result of which, the iron rod pierced on his body and that is how the occurrence has taken place and immediately after which, they have taken him to the hospital. In his evidence, P.W.3 has stated that if he has stated that it was a stab injury, the Doctor will not examine him and therefore, he uttered falsehood to the Doctor and that he is now saying correctly that the injured sustained stab injury. The Trial Court has analysed the evidence of P.W.3 and found that his evidence is untrustworthy. The Trial Court taking into consideration of the fact that P.W.3 at the earliest point of time in the Government Hospital, Gudiyatham, has stated to the Doctor that the injured person has taken drinks and in an intoxicated mood, he fell down in an iron rod, as a result of which, the iron rod pierced on his body, has granted benefit of doubt to the accused Nos. 1 to 3 and it needs no interference at the hands of this Court.

4. Mr.V.Arul, learned Government Advocate appearing for the first respondent would contend that the Trial Court has analysed the entire evidence available and has come to a correct

conclusion.

5. Heard both sides. By consent, the main Criminal Revision Case itself is taken up for final disposal.

6. On a careful consideration of the entire evidence available on record and the judgment of Trial Court and on hearing the arguments, it is clear that there is an inordinate delay in the lodging of the complaint and there is a total lack of co-ordination in the evidence. When it is clearly proved that there is a wireless message from the Government Hospital at Vellore, even on 13.05.2008 at 10.30 p.m., sent to the concerned authorities and that was the earliest complaint, that ought to have been registered, but, that was not registered and it is fatal to the case of the prosecution. Secondly, it is seen that the complaint was given by the father of deceased on 14.05.2008 at 2.00 a.m., after the death of deceased. The occurrence has happened on 13.05.2008 at 8.00 p.m., the injured died at 10.30 p.m., but the complaint was lodged on 14.05.2008 at 2.00 a.m., thus, there is a delay of six hours in lodging the complaint, the delay is not properly explained, the delay is also fatal to the case of the prosecution.

7. Apart from that, the evidence of P.W.3 is fatal to the case of the prosecution. P.W.3 who is the injured person was taken to the Government Hospital at Gudiyatham. He has stated before the Doctor that it was the deceased person, who was intoxicated and in an intoxication mood, he fell down and an iron rod pierced on his body and therefore, he was taken to the hospital. Thereafter, P.W.3 changed his version and in his evidence, he has stated that if he tells before the Doctor that the injury sustained by the injured person is a stab injury, the Doctor will not examine him and hence, he uttered falsehood to the Doctor and that he is now saying correctly that the injury sustained by the deceased is a stab injury.

8. When there is difference in respect of the very occurrence as to whether the deceased died as a result of stab injury or the deceased died as a result of falling down in an iron rod, the Trial Court has correctly analysed the entire evidence and has rightly come to a clear conclusion that the prosecution has not proved its case beyond reasonable doubt and has rightly given the benefit of doubt and acquitted the accused Nos.1 to 3 in a case under Section 302 IPC, inasmuch as there is no specific overt act attributable against the accused Nos.1 to 3.

9. In the decision of the Hon'ble Apex Court reported in (Ram Swaroop and others vs. State of Rajasthan) (2005 SCC (Cr1.) 61) it was held that it is well settled that if two views are reasonably possible on the basis of the evidence on record, the view which favours the accused must be preferred.

10. Applying the aforesaid decision to the facts and

circumstances of this case, in the present case, there are no evidence available on record to connect the accused Nos.1 to 3 to the offence complained of and the prosecution has miserably failed to establish the guilt against the accused Nos. 1 to 3 beyond reasonable doubt. Therefore, I am of the view that the Trial Court has rightly acquitted the accused Nos. 1 to 3 by giving benefit of doubt. Hence, it has to be concluded that the prosecution has not proved the guilt against the accused Nos.1 to 3 beyond reasonable doubt and therefore the accused Nos.1 to 3 are entitled to benefit of doubt.

11. Accordingly, I do not find any reason to interfere with the reasoned judgment passed by the Trial Court and the judgment of acquittal passed by the Trial Court dated 09.07.2009 stands confirmed. This Criminal Revision Case is dismissed.

sd/
ASSISTANT REGISTRAR (CCC)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

paa

To

1.The Inspector of Police
Gudiyatham Town Police
Vellore District.

2.The Additional District and Sessions Judge
Fast Track Court
at Vellore.

3.The Public Prosecutor
High Court, Madras

+1 CC to MR.R.Margabandhu Advocate. SR.NO. 56749

+1 CC to MR.V.Madhavan Advocate. SR.NO. 57664

CrI.R.C. No. 962 of 2009

CO-VD

JD 06/11/2015