

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Appeal No.330 of 2014

Kalimuthu

[P.W.1, the Father of the victim]

... Appellant/PW1

-Versus-

1. State Rep. by
The Inspector of Police,
Thalaiyamangalam Police Station,
Thiruvarur District.
[Crime No.54 of 2011] [Complainant]

2. K.Veeramani [A1]

3. V.Mathavan [A2]

4. K.Pasupathy[A3]

5. P.Balamurugan [A4]

6. P.Balaguru [A5]

... Respondents/Accused 1-5

Criminal Appeal filed under Section 372 of Cr.P.C.
challenging order of acquittal recorded by the learned Principal
Sessions Judge, Thiruvarur, in S.C.No.19 of 2012 dated
25.11.2013.

For Appellant : Mr.R.Senthil Selvan

For Respondent(s) : Mr.E.Raja
APP for 1st respondent/
complainant

: Mr.R.Vivekananthan
for respondents 2 to 6

JUDGEMENT

(Judgement of the Court was delivered by S.NAGAMUTHU, J.)

This is an appeal against acquittal. The respondents 2 to 6
herein are the accused in S.C.No.19 of 2012 on the file of the
learned Principal Sessions Judge, Thiruvarur. The 1st respondent
is the complainant in the said case. There was yet another

accused by name Mr.Vinoth, who was a juvenile in conflict with law. Therefore, case against him was separately dealt with. The respondents 2 to 5 stood charged for the offence as detailed below:-

Charge Number(s)	Charges framed against	Charges framed under
1	A1	Section 294(b) of IPC
2	A1 to A5	Section 148 of IPC
3	A1, A3 and A5	Section 323 of IPC
4	A2	Section 324 of IPC [Two counts]
5	A4	Section 324 of IPC
6	A1 to A5	under Section 302 r/w 149 of IPC

The trial court, by judgement dated 25.11.2013, acquitted the respondents 2 to 6/A1 to A5 from all the charges. Challenging the order of acquittal, the de facto complainant, the father of the victim [P.W.1] has come up with this criminal appeal.

2. The case of the prosecution in brief is as follows:-
The appellant/P.W.1 is a resident of South Street, Ranganathapuram, Mannarkudi Taluk, Thiruvavarur District. The death anniversary of his daughter was celebrated on 29.05.2011 at his house. On that day, the relatives of P.W.1, his neighbours and other villagers were invited. The accused also belong to the same village and they are neighbours of the appellant. On invitation, they also participated in the said function. On 30.05.2011, the daughter of P.W.1 and her husband quarreled with each other at the house of P.W.1. Out of anger, P.W.1's son-in-law left for his village. P.W.1 who just had come to his house learnt about it. Immediately, he went out of his house and again brought back his son in law. When he was passing through the house of A1, the dog belonging to A1 came from the house of A1. P.W.1 out of fear pelted a stone against the dog. A1 questioned P.W.1 as to why he pelted stone against his dog. This resulted in a quarrel. On hearing the alarm raised by P.W.1's wife (P.W.2), the daughter (P.W.3) and two sons of P.W.1 by name Manikandan and Lenin came to the said place. P.W.2 questioned as to why A1 had quarreled and attacked P.W.1. Immediately, A2-Madahavan, son of A1 who rushed out from his house with an aruval, cut P.W.2 on her forearm. Then, A1 slapped P.W.3. P.W.1's son-Manikandan shouted at the accused. A1 attacked him with a stick. P.W.1's yet another son-Lenin rushed there and questioned. At that time, juvenile accused -Vinoth who

came with a cricket stump, attacked Mr.Lenin on his head. A4 and A5 also attacked with hands. Then all the accused ran away from the scene of occurrence. P.W.1 fainted on the spot. Thereafter, the injured were taken in an 108 Ambulance to the Government Hospital at Mannargudi. While they were under going treatment at Government Hospital, at 09.00 a.m. on 31.05.2014, the Sub Inspector of Police (P.W.11) went to the hospital and recorded the statement [Ex.P1]. P.W.11, on returning to the police station, registered a case in Crime No.57 of 2011 under Sections 147, 148, 294(b), 323, 324 and 506(2) of IPC. Ex.P.14 is the FIR. Then, he forwarded both the complaint (Ex.P1) and the FIR (Ex.P14) to the jurisdictional court which were received by the learned Magistrate at 03.00 p.m. on 03.06.2011. Mr.Lenin was then referred to Thanjavur Medical College Hospital for further treatment.

3. The investigation was initially taken up by P.W.11. He went to the place of occurrence on 31.05.2011 and prepared an observation mahazar (Ex.P10) and a rough sketch (Ex.P.15) in the presence of P.W.8 and another witness. At 10.45 a.m. he recovered an aruval (M.O.1) and a wooden stick (M.O.2) under a mahazar (Ex.P11) in the presence of the same witnesses. Then, on going over to the Mannargudi Government Hospital, he examined P.Ws.1 to 4 and few more witnesses and recorded their statements. He arrested A3 on the same day and forwarded him to court for judicial.

4. When the case was under investigation, Mr.Lenin who was shifted to Thanjavur Medical College Hospital for further treatment from Mannargudi Government Hospital died at 04.10 a.m. on 04.06.2011. Therefore, P.W.11 handed over the case diary to the Inspector of Police (P.W.12) for further investigation. P.W.12 taking up the case for further investigation, altered the case into one under Section 302 of IPC. He conducted inquest on the body of the deceased and forwarded the same to the hospital for post-mortem.

5. P.W.6, Dr.Rajkumar, conducted autopsy on the body of the deceased at 12.40 p.m. on 04.06.2011. He found the following injuries:-

"External Injuries:

- (1) Abrasion 2 x 1 cm over right temporal region
- (2) Abrasion of 2 x 1 cm present over the left forearm
- (3) Abrasion of 2 1 cm present over the left elbow posteriorly
- (4) Small multiple abrasions present over left shoulder anteriorly

Internal Injuries:

(5) On reflecting the scalp skin: Sub scalp contusion present over right temporo parietal region.

(6) Fracture length of 5 cm present over the left temporal bone.

(7) Subarachnoid haemorrhage present over the temporo parietal region.

(8) Pus found in both lateral ventricles of brain

Extremities : As noted above

Abdomen : Normal

Thorax : Normal

Pericardium : Normal

Heart : Normal in size. All the four chambers contained fluid blood

Valves : Normal

Coronary vessels: Patent

Great vessels : Normal

Lungs : Normal

Hyoid bone : Normal

Stomach : Contained 100 ml of brown colour fluid with rice

Liver : Normal

Spleen : Intact

Kidneys : Normal

Head& Membranes: As noted above

Spinal Column : Intact."

Ex.P9 is the post-mortem certificate. P.W.6, the doctor, gave opinion that the deceased had died due to effects and complications of injury involving vital organ (brain).

6. P.W.12, during the course of investigation, on 05.06.2011 arrested A1, A2, juvenile accused-Vinoth, A4 and A5. On such arrest, the juvenile accused gave a voluntary confession. Out of which, a cricket stump was recovered. P.W.12, on returning to the police station, forwarded the accused to the court for judicial remand. On completing the investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial court framed charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 12 witnesses were examined, 19 documents and 3 material objects were marked.

8. Out of the said witnesses, P.Ws.1, 2 and 3 are the eye witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.W.4 has turned hostile and he has not

supported the case of the prosecution in any manner. P.W.5, Dr.Najima Rani, has stated that at 12.00 midnight on 30.05.2011 P.W.4 was brought before her for treatment at Mannargudi Government Hospital. P.W.5, the doctor, found as many as three injuries namely (1) Lacerated injury measuring 1 x 1 cm on the right eyebrow; (2) Lacerated injury measuring 7 x 0.5 cm on the left forearm; (3) Lacerated injury measuring 4 x 2 cm on the left front dorsal, on P.W.4. Ex.P.2 is the copy of accident register. He was discharged on 03.06.2011.

9. On the same day at 11.30 p.m., P.W.5, the doctor, examined P.W.1. She found as many as four injuries namely, (1) a contusion measuring 3 x 3 cm on the right knee joint; (2) a contusion measuring 3 x 3 cm on the back; (3) an abrasion on the left back; and (4) an abrasion measuring 1 x 1 cm on the right leg. Ex.P.4 is the copy of accident register. According to P.W.5, the doctor, the injuries sustained P.W1 and P.W.4 are simple in nature.

10. P.W.6, the doctor, has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.7 has stated that he took the deceased and the injured to the hospital. He has turned hostile and he has not supported the case of the prosecution. P.W.8 has spoken about the preparation of the observation mahazar and the rough sketch by the police at the place of occurrence and also the recovery of material objects from the place of occurrence. P.W.9 has spoken about the arrest of the juvenile accused-Vinoth and the consequential recovery of the cricket stump on his disclosure statement. P.W.10 has stated that he handed over the dead body at the hospital as directed by the investigating officer and identified the same to the doctor for post-mortem. P.W.11 has stated about the registration of the case and the initial investigation done by him until the demise of the deceased-Lenin. P.W.12 has spoken about the further investigation done by him and the filing of charge sheet against the accused.

11. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness nor did they mark any document on their side. Their defence was a total denial. Having considered all the above, the trial court acquitted the respondents 2 to 6 from all the charges. Aggrieved by the order of acquittal, the father of the deceased has come up with this criminal appeal.

12. We have heard the learned counsel appearing for the appellant/P.W.1, the learned counsel for the respondents 2 to

6/A1 to A5 and the learned Additional Public Prosecutor appearing for the 1st respondent/State and we have also perused the records carefully.

13. A careful perusal of the judgement of the trial court would go to show that the trial court has held that there was no common object so as to hold these accused also responsible for the death of the deceased which was caused by the juvenile accused - Vindoth. We find no infirmity in the said finding of the trial court. From the evidences of P.Ws.1 to 3, who are eye witnesses to the occurrence, it is crystal clear that the occurrence was not a premeditated one. Admittedly, at the time when P.W.1 was passing through the house of A1, the dog belonging to A1 came there and fearing for the same, P.W.1 had pelted stone at the dog. This resulted in a quarrel. At that time, the other accused were not at all present there. Even the juvenile accused was not present. The family members of P.W.1 had gathered on hearing the noise. When the quarrel was going on, suddenly, the juvenile accused rushed out from the house of A1 with a cricket stump and attacked the deceased which resulted in his death. Thus, there was no pre-meeting of mind and thus there would have been no common object at all so as to describe the gang as unlawful assembly. In fact, the juvenile accused was not at all in the gang so as to be a part of the assembly. Thus, the trial court was right in holding that there was no unlawful assembly with any common object and so there is no scope to invoke Section 149 of IPC to hold these accused also guilty of the offence of murder of the deceased.

14. So far as the injuries caused on P.Ws.1 and 4 are concerned, the trial court has given cogent reasons to disbelieve them. We find no infirmity in the same also. In our considered view, the judgement of the trial court is a well considered one which does not require any interference at all at the hands of this court. Thus, we do not find any merit in the appeal and the same deserves only to be dismissed.

15. In the result, this criminal appeal fails and the same is accordingly dismissed.

Sd/-
Assistant Registrar (CS VII)

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Sub Assistant Registrar

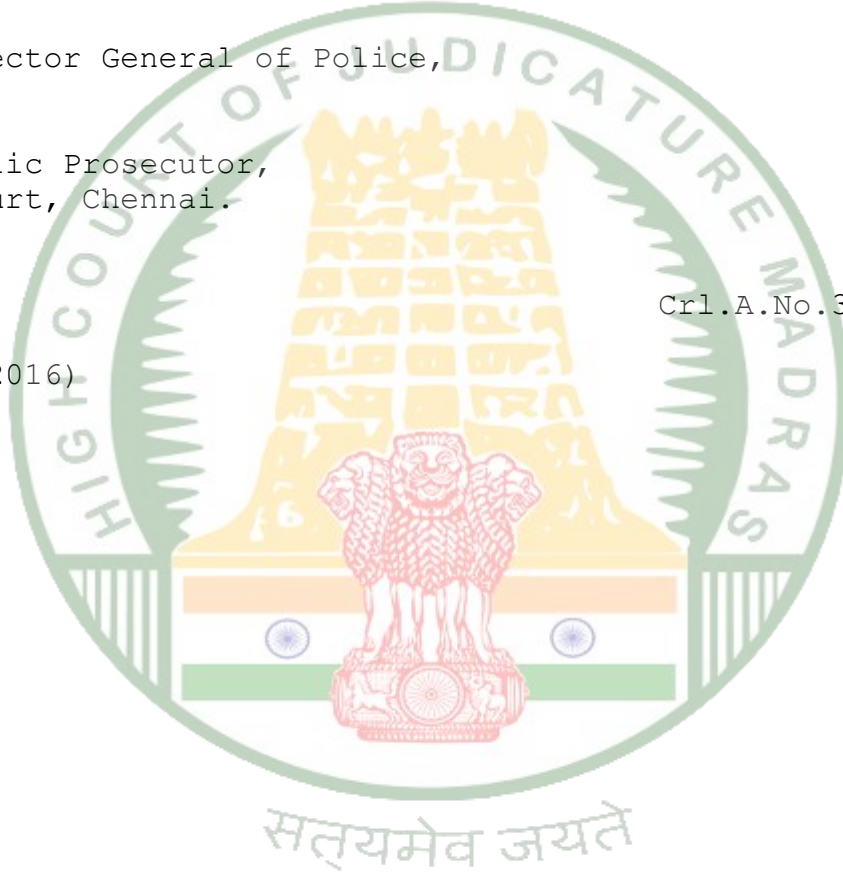
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To

- 1.The Principal & District Sessions Judge,
Thiruvarur.
- 2.The Inspector of Police,
Thalaiyamangalam Police Station,
Thiruvarur District.
- 3.The District Collector,
Tiruvarur.
- 4.The Director General of Police,
Chennai.
- 5.The Public Prosecutor,
High Court, Chennai.

SAI (CO)
CA(08/11/2016)

Cr1.A.No.330 of 2014



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