

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.08.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.583/2014 and Crl.O.P.No.17308 of 2016

Elavarasan ... Appellant/PW 1 in Crl
Appeal/Petitioner in Crl O.P

Vs

1.The State rep. by the
Inspector of Police,
Mangalampettai Post,
Viruthachalam Taluk,
Cuddalore District.Ist Respondent/Complainant in
both Appeal and O.P

2. Kubendhiran
3. Dhakshinamoorthy
4. Veerapandi
5. Valli ... Respondents/A1 to A4, 2 to 5 in
Appeal & O.P

Appeal filed u/s.372 Cr.P.C., against the Judgment of
acquittal passed by the learned III Additional District and
Sessions Judge, Cuddalore @ Vridhachalam, made in S.C.No.103 of
2013 dated 10.07.2014.

For Appellant :Mr.Thiyagarajan,
Senior Counsel
for M/s.S.Ramesh Kumar

For 1st Respondent :Mr.E.Raja,
Additional Public Prosecutor
For respondents 2 to 5 : Mr.C.Deivasigamani

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

This is an appeal against acquittal of the respondents 2 to
5. The respondents 2 to 5 were accused in S.C.No.103 of 2013 on
the file of the learned III Additional District and Sessions

Judge, Cuddalore at Vridhachalam. The final report was filed by the 1st respondent. The trial court framed as many as 4 charges as detailed below :

Sl.No.	Charge Number	Rank of Accused	Penal Provision
1	Charge No.1	Accused Nos.1 to 4	148 of IPC
2	Charge No.2	Accused Nos.1 to 4	449 of IPC
3	Charge No.3	Accused Nos.1 and 2	302 of IPC
4	Charge No.4	Accused Nos.3 and 4	302 r/w.149 of IPC

By judgment dated 10.07.2014, the trial court acquitted all the accused from all the charges. Challenging the said acquittal, the appellant, who is the son of the deceased, has come up with this appeal.

2. Seeking relief to file an appeal, the petitioner/appellant has filed Crl.O.P.No.17308 of 2016. The Registry has, however, received the appeal also and numbered it. Therefore, we have heard the Leave Application as well as the Appeal together.

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

(a) The deceased in this case was one Mr.Pitchalingam. He was residing at Mariamman Koil Street, Ko.Poovanur Village, Pudupet in Cuddalore District. The accused are also the residents of the same locality. The son of the 2nd accused and the son of the deceased were roaming around as spendthrifts. The 2nd accused tried to separate them. But, P.W.1, the son of the deceased continued the friendship. The 2nd accused quarreled with P.W.1 for the same. This is stated to be the motive for the occurrence.

(b) It is further alleged that on 12.08.2012, around 10 p.m., the deceased alone was at his house. All these four accused came to the place of occurrence. All were armed with iron rods and wooden logs. They trespassed into the house of the deceased. On reaching the deceased, the 1st accused attacked the deceased with iron pipe on the left side of his head. The 2nd accused attacked him with iron pipe near his left eyebrow. The accused 3 and 4 facilitated the accused 1 and 2 who attacked the deceased. Then, all the four accused fled away from the scene of occurrence.

(c) P.W.1 cried for help. The neighbours rushed to the house of the deceased. The deceased, who sustained injuries, fainted. Immediately, P.W.1, rushed him to the Government Hospital at Ulundurpet. After first aid treatment, he was taken to Munniyambakkam Government Hospital from where he was taken to Jipmer Hospital, Puducherry.

(d) On receiving intimation from the hospital, P.W.15, the then Special Sub-Inspector of Police, Mangalampettai Police Station, rushed to Ulundurpet Government Hospital, then to Munniyambakkam Government Hospital and finally to Jipmer Hospital. Since the deceased was taking treatment and the doctors were attending on him, P.W.15 recorded the statement of P.W.1 and on returning to the police station at 06.30 p.m. on 13.08.2012, he registered a case in Cr.No.108/2012 under Sections 147, 148, 457 and 307 of IPC. Ex.P.1 is the complaint and Ex.P.13 is the First Information Report. He forwarded both the documents to court which were received by the learned Magistrate at 11.30 p.m. on 13.08.2012.

(e) P.W.16 took up the case for investigation. He went to the place of occurrence and examined P.Ws.1 to 3 and few more witnesses. On the same day, he arrested the 2nd accused at 08.30 p.m. in the presence of P.W.9 and another witness. On such arrest, he made a voluntary confession in which he disclosed the place where he had hidden an iron pipe and took the police and the witnesses to his house and produced the same. P.W.16 recovered the same under a Mahazar. Then, he forwarded the 2nd accused to court for judicial custody and also handed over the material object to court.

(f) On 14.08.2012 at 07.00 a.m., again he visited the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.11 and other witnesses. On 17.08.2012 at 06.00 p.m., the deceased succumbed to the injuries. Therefore, P.W.16 altered the case into 302 of IPC and submitted an Alteration report to the court. On 18.08.2012, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(g) P.W.14 Doctor Kusha Kumar Shaha conducted autopsy on the body of the deceased at 10.15 a.m. on 18.08.2012. He found the following injuries:

1. Partially healed abrasion of size 2 x 1 c.m. present just over right later aspect of eye brow;

2. Laceration of size 2 x 1 x soft tissue deep found over the inner aspect of the right side of lower lip just in front of right lower canine and lateral incisor;

3. Partially healed abrasion of size 3 x 2 c.m. present immediately below the left knee;

4. Bed sores are present in the following parts of the body, covered with a thin layer of yellowish green pus:

1. On the lower and inner quadrant of the right buttock 5 x 3 cms.

2. On the lower and inner quadrant of the left buttock 5 x 4 cms.

Internal Examination :

Head (Scalp, skull, brain, meninges) Brain - M.1400 gms. F:1275 and Blood Vessels.

a. Scalp - Intact

b. Skull - Intact

c. Meninges - Pale

d. Brain showed diffuse cerebral edema and congested.

e. Sub Archnoid Hemorrhage present over the posterior aspect of both lobes of cerebellum and left occipital lobe.

f. Both side lateral ventricular hemorrhage seen.

g. Brain stem hemorrhage seen

h. Fourth ventricular hemorrhage seen.'

Neck structures (Skin, Muscles, Hyoid, Thyroid cartilage, larynx, trachea, bronchi, etc) : Intact and healthy. Mucosa membrane - NAD. Hyoid bone and thyroid cartilage intact.

Thorax :

a. Chest Wall Intact

b. Pleural Cavity Intact

c. Mediastinum NAD

d. Oesophagus Intact

e. Bronchi Mucosa congested

f. Lungs Right (360-570gms) Congested
Left (325-480 gms)

g. Heart and Pericardium Intact, all chambers empty.

h. Blood Vessels Intact

i. Diaphragm Intact and healthy

Abdomen and Pelvis:

a. Abdominal Wall Intact

b. Peritoneum Intact

c. Stomach and content Mucosa membrane hemorrhage. Contain 75 ml of white colour semi digested fluid with no smell.

peculiar

d.	Small Intestine	Intact
e.	Large Intestine	Intact
f.	Liver & Gall Bladder	Enlarged 02 Kg.
NAD		
g.	Spleen	Congested
h.	Pancreas	NAD
i.	Kidneys, Uterus and	Left Kidney -NAD
Right-	Adrenals	showing single
cyst in		lower pole of
size 1 x 1		c.m.
Normal.		
j.	Urinary Bladder	Intact and empty
k.	Genital organs	Intact and healthy
	Muscles, Bones and Joints	Intact
	Spine	Intact and healthy''

Ex.P.12 is the Postmortem Certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage due to the injuries found on his body. He further opined that the death would have been caused by a weapon like iron pipe.

(h) P.W.16 during the course of investigation, arrested the accused 1 and 3 on 20.08.2012 at 8.00 a.m. in the presence of P.W.5 and another witness. On such arrest, the 1st accused gave a voluntary confession in which he disclosed the place where he had hidden an iron pipe. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the same. P.W.16 recovered the same under a Mahazar. The 3rd accused gave a voluntary confession in which he disclosed the place where he had hidden a wooden log. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the wooden log. P.W.16 recovered the same under a Mahazar. On returning to the police station, he forwarded the accused 1 and 3 to court for judicial remand and handed over the material objects also to court. He collected the medical records, examined the doctors. At his request, the material objects were sent for chemical analysis. On completing the investigation, he laid charge sheet against the accused.

4. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined and 19 documents and 3 material objects were also marked.

5. Out of the said witnesses, P.W.1-the son of the deceased and P.W.2-the wife of the deceased have been examined as eye-witnesses to the occurrence. They have stated about the motive and they have also stated that all these four accused

trespassed into the house of the deceased and the accused 1 and 2 gave one blow each with iron pipes which resulted in the death of the deceased. P.W.3 has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence. P.W.4 has not stated anything incriminating against the accused. P.W.5 has spoken about the arrest of the accused 1 and 3, the disclosure statement made by them and the consequential recovery of the material objects. P.Ws.6 and 7 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.8 has spoken about the arrest of the 2nd accused, the disclosure statement made by him and the consequential recovery of the material object. P.Ws.9 and 10 have turned hostile and they have not supported the case of the prosecution in any manner.

6. P.W.11 has spoken about the treatment given to the deceased at the Government Hospital, Ulundurpet. According to him, on 13.08.2012 at 01.15 a.m., the deceased was brought to the Government Hospital, Ulundurpet for treatment. At that time, the deceased was conscious. He told that six known persons attacked him with hands, legs and stones at 10.00 p.m. on 12.08.2012 at his house. He found the following injuries:

- a. A contusion measuring 6 x 6 c.m. above the left eyebrow;
- b. An abrasion measuring 2 x 2 c.m. on the left eyebrow;
- c. He was unable to move his hands and legs; and
- d. a lacerated injury measuring 5 x 5 c.m. on the right foot.

Ex.P.11 is the Accident Register. He has further stated that he forwarded the deceased for further treatment. P.W.12 Head Constable of Mangalam Pettai Police Station has stated that he forwarded the material objects for chemical analysis as directed by the Investigating Officer. P.W.13 has stated that he took the dead body of the deceased to hospital for postmortem as directed by the Investigating Officer. P.W.14 has spoken about the postmortem conducted and his final opinion regarding cause of death. P.W.15 has spoken about the registration of the case on the complaint of P.W.1. P.W.16 has spoken about the investigation done and the final report filed by him.

7. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not choose to examine any witness nor to mark any document on their side. Having considered all the above, the trial court came to the conclusion that the prosecution had not come forward with clean hands. It was, on that ground, the trial court acquitted the accused. Aggrieved over the same, P.W.1 the son of the deceased is before this Court with this appeal.

8. We have heard the learned Senior Counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the State/1st respondent and the learned Counsel for the respondents 2 to 5/accused 2 to 5 and we have also perused the records carefully.

9. According to the positive case of the prosecution, the alleged occurrence has taken place inside the house of the deceased at 10.00 p.m. on 12.08.2012. P.Ws.1 and 2 have stated that these four accused alone trespassed into the house, out of whom, the accused 1 and 2 attacked the deceased with iron pipes. P.W.1 had taken the deceased immediately to the Government Hospital, Ulundurpet. P.W.11 examined him at 01.15 a.m. on 13.08.2012. According to P.W.11, at that time, the deceased was fully conscious. He told P.W.11 that he attacked by six known persons with hands, legs, stick and stone at 10.00 p.m. on 12.08.2012 at his residence. But, according to the evidence of P.W.1, 2 and 4, four persons trespassed into the house, out of whom, only two persons attacked the deceased. So far as the weapons used in the commission of the crime are concerned, the deceased had stated that he was attacked with stick, stone, hands and legs. According to the deceased, iron pipes were not at all used. But P.Ws.1 and 2 have stated that the deceased was attacked by the accused 1 and 2 only by iron pipes. They have not stated that the deceased was attacked with stick, stone, hands and legs as it was told by the deceased. At the earliest statement of the deceased to the doctor, being a dying declaration, needs to be given weightage of. If that is done, then, the evidences of P.Ws.1 and 2 cannot be given any weightage of. The trial court has rightly rejected the evidences of P.Ws.1 and 2 on this score.

10. Further, apart from that, P.W.1 during cross-examination has stated that at the time of occurrence, he was sleeping inside the house. On hearing the alarm raised by his father, his mother came and opened the door. Thereafter only, he went into the house and found these accused. Further, during cross-examination, he has stated that the accused 1, 3 and 4 attacked the deceased with wooden reapers. This is quite contrary to the facts spoken by him during chief examination. In Ex.P.1, he has stated that the 1st accused attacked the deceased with iron pipe. The 2nd accused attacked him with wooden log and the accused 3 and 4 also attacked him with wooden logs. As we have already pointed out, in his deposition, he has stated that the accused 1 and 2 attacked the deceased with iron pipes and the accused 3 and 4 did not attack the deceased. Ex.P.1 has been used to contradict P.W.1. He has not stated any explanation for this contradiction. This contradiction, in our considered view, is a material contradiction which creates enormous doubt in the case of the prosecution. Similarly, P.W.2 has stated that the 1st accused attacked the deceased with

iron pipe. The 3rd accused attacked him with wooden log and one Manikandan attacked the deceased with wooden log. Curiously, Manikandan is not an accused in this case. The allegation against Manikandan is quite contrary to the evidence of P.W.1. Regarding the overt acts and the weapons used by the accused also, P.W.2 completely contradicts the evidence of P.W.1. Thus, there are lot of material contradictions between the evidences of P.W.1 and P.W.2 which also creat enormous doubt in the case of the prosecution.

11. The alleged occurrence was on 12.08.2012 at 10.00 p.m. whereas the case was registered only on 13.08.2012 at 06.30 p.m. The First Information Report reached the hands of the learned Magistrate only at 11.30 p.m. on 13.08.2012. Absolutely, there is no explanation for the said delay. Since there are multiple number of accused in this case, this unexplained delay also assumes much importance. This also creates doubt in the case of the prosecution. For these reasons, the trial court has disbelieved the prosecution and has rightly acquitted the accused. Thus, we do not find any perversity in the findings of the trial court, warranting interference at the hands of this Court.

12. In the result, the appeal fails and the same is accordingly dismissed. Consequently, connected Criminal Original Petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The III Additional District and Sessions Judge,
Cuddalore at Vridhachalam.
- 2.Thro The Principal Sessions Judge,
Cuddalore District.
- 3.Inspector of Police,
Mangalampettai Post,
Viruthachalam Taluk,
Cuddalore District.

4.The Judicial Magistrate,
No.II, Vridhachalam.

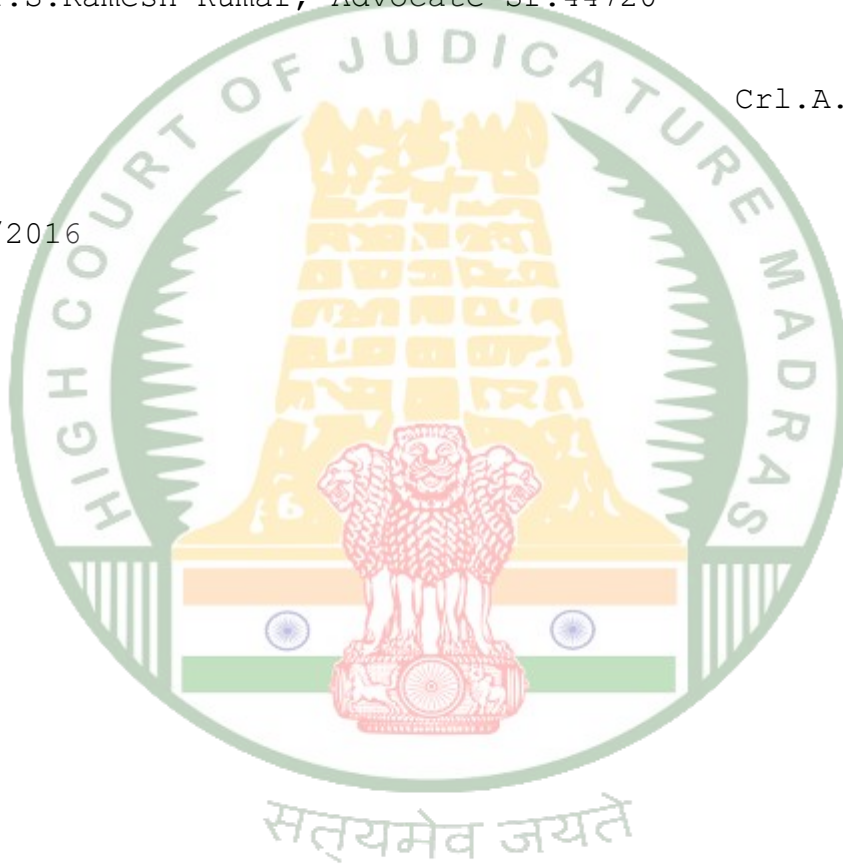
5.-Do- Thro The Chief Judicial Magistrate,
Cuddalore District.

6.The Public Prosecutor,
High Court, Chennai.

+lcc to Mr.S.Ramesh Kumar, Advocate Sr.44720

Cr1.A.No.583/2014

pur[col]
srg 12/09/2016



WEB COPY