

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

AND

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

CRIMINAL APPEAL No.367 of 2011
and
Criminal Revision No.1158 of 2009

Cr1.A.No.367 of 2011 :
State rep. by the Inspector of Police,
Marakkanam Police Station,
Villupuram District. ... Appellant/Complainant

Vs.

1. Govindaraj
2. Rajendiran
3. Prasath
4. Preethi
5. Chandiran @ Ramachandiran
6. Sarathi ... Respondents/A1 to A6

This Criminal Appeal is preferred under Section 374(2)
Cr.P.C against the judgment of the learned Additional District
and Sessions Judge, Fast Track Court No.II, Tindivanam, made in
S.C.No.93 of 2009 dated 25.08.2009.

For Appellant : Mr.M.Maharaja,
Additional Public Prosecutor

For Respondents : Mr.B.Kumar,
1 and 2 Senior Counsel
for M/s.AAV Partners

For Respondents : Mr.M.V.Jaya Mehanath
3 to 6

Cr1.Revision No.1158 of 2009

Selvam ... Petitioner/P.W.1

vs.

1. Govindaraj
2. Rajendiran
3. Prasath

4. Preethi
5. Chandiran @ Ramachandiran
6. Sarathi
7. State rep. by the Inspector of Police,
Marakkanam Police Station,
Villupuram District.

.. Respondents

This Criminal Revision has been filed against the judgment of the learned Additional District and Sessions Judge, Fast Track Court No.II, Tindivanam, acquitting the accused (respondents 1 to 6 herein) from the charges for offences under Sections 120-B, 341, 302 read with 34 and 506(ii) of IPC in S.C.No.93 of 2009 by his judgment dated 25.08.2009.

For Petitioner : Mr.R.John Sathyan
For Respondents : Mr.B.Kumar,
1 and 2 Senior Counsel
for M/s.AAV Partners
For Respondents : Mr.M.V.Jaya Mehanath
3 to 6
For 7th Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

COMMON JUDGMENT

(The judgment of the Court was made by S.NAGAMUTHU, J.)

This is an appeal filed by the State, challenging the acquittal of the respondents 1 to 6 herein, who are accused 1 to 6, in S.C.No.93 of 2009 on the file of the learned Additional Sessions Judge, Fast Track Court No.II, Tindivanam. The trial court had framed as many as 4 charges as detailed below:

Sl.No.	Charge Number	Rank of Accused	Penal Provision
1	Charge No.1	Accused 1 to 6	148 IPC
2	Charge No.2	Accused 1 to 6	341 IPC
3	Charge No.3	Accused No.1	506(ii) IPC
4	Charge No.4	Accused 1 to 6	302 IPC

The trial Court, by judgment, dated 25.08.2009, acquitted all the respondents from all the charges. That is how, aggrieved over the same, the State is before this Court with this appeal and P.W.1 in the said case has come up with the revision in CrI.R.C.No.1158/2009. Since both the appeal as well as the revision have arisen out of the same judgment, they were heard together and disposed of by means of this common judgment.

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

(a) The deceased in this case was one Mr.Sekar. He was a resident of Chetty Nagar Kunimedu, Tindivanam. He was a Village Panchayat Board President for three terms. In one of the elections, the 1st accused contested against him, but, lost to the deceased. From then onwards, there had been long standing enmity between the 1st accused and the deceased. The accused 1 to 6 are closely related to each other and they were also related to the deceased. P.W.1 is the nephew of the deceased. The long standing enmity stated to be the motive for the occurrence.

(b) It is alleged that on 04.05.2007, the deceased and P.W.1 had gone to Pondicherry to attend a function. By about 10.00 p.m., the deceased and P.W.1 were returning in a motor cycle to their village. The deceased was driving the motorcycle and P.W.1 was sitting as a pillion rider. When they were nearing a place known as 'Chellan Kottai', suddenly, all the 6 accused emerged and they intercepted the motor cycle. The 1st accused shouted at the deceased that if only he was killed, he and his people could live in peace. So saying, the 1st accused attacked the deceased with Aruval on his neck. The 2nd accused attacked the deceased with Aruval on his right cheek. The 3rd accused attacked the deceased with Aruval on his left hand. The deceased fell down along with the vehicle. After that, the accused 4, 5 and 6 also attacked the deceased rapidly with Aruvals. P.W.1 took his heels. On his way, he found P.Ws.2 and 3 coming in a Tempo Load Vehicle. He stopped that and told them that the deceased was being cut by the accused. Then, P.W.1 ran away to his house and informed his relatives. P.Ws.2 and 3 were still in the Tempo Load Vehicle. These 6 accused came towards them and told that they had finished of their enemy- the deceased and they further warned them not to disclose the same to anybody. After so warning P.Ws.2 and 3, all the accused fled away from the scene of occurrence with the weapons. P.W.4, who was also present at the time of occurrence, found these accused so shouting. Thus in effect, P.W.1 alone is the eye-witness to the occurrence, according to the case of the prosecution.

(c) Thereafter, P.W.1 went to Marakkanam Police Station and made a complaint at 01.00 a.m. on 05.05.2007. P.W.15, the then Inspector of Police of Marakkanam Police Station, on receipt of the said complaint, registered a case in Crime No.147 of 2007 under Sections 147, 148, 341 and 302 of IPC against all the six accused. Ex.P.20 is the First Information Report. Then, he forwarded the complaint Ex.P.1 and the F.I.R. Ex.P.20 to court which were received by the learned Judicial Magistrate No.I, Tindivanam at 12.30 p.m. On 05.05.2007.

(d) Taking up the case for investigation, P.W.15 proceeded to the place of occurrence immediately. But since it was too late in the night, he waited till morning. Then at 06.30 a.m., on 05.05.2007, he prepared an Observation Mahazar and a Rough Sketch at the place of occurrence in the presence of the witnesses. Then, he recovered the blood stained earth and sample earth from the place of occurrence. He conducted inquest on the body of the deceased at 08.30 a.m. He examined P.Ws.1 to 4 and few more witnesses. The properties recovered at the place of occurrence includes the Motor Cycle of the deceased. Then, he forwarded the body for postmortem.

(e) P.W.10 Dr.Ravendiran conducted autopsy on the body of the deceased on 05.05.2007 at 10.40 a.m. He found the following injuries:

'External Examination:

1. One chop wound, transversely placed with regular margins with acute edges on the right lower aspect of face extending from the right lateral border of occipital region to the right side of chin close to mid line, 21 cms x 1.5-3.8 cm x varying depths in size. The weapon has cut through the soft tissue including muscles, angle of mandible, body of mandible exposing the upper and lower rows of teeth on the right side and oral cavity. On the medical border, it is situated just below the lower lip. Right lower lip is severed in full thickness.
2. Transversely placed adjacent multiple chop wounds crisscrossing each other in front of the neck extending from the right lateral border of neck to the middle of left side of neck in front. Right end of the wound is situated 6cms below the right mastoid and left is situated over the lower border of middle of body of left mandible, 18cmsx2-6cmsxvarying depths (0.5 cm - 1.5 cm) in size. Because of the multiple chops the lower border of wound is irregular. The following structures, namely, the carotid arteries, jugular veins, ribbon muscles of neck and nerves on the right side, thyroid cartilage and thyroid gland were cut into 3 pieces. Trachea, oesophagus, the vertebral column between C5 to C6 and the ribbon muscles of left side of neck were cut. The spinal cord at the level of C5 C6 was found totally severed. The upper border of the injury is 4.5 cms below the middle of injury No.1.
3. 4.5 cms x 2.5 cms x muscle deep cut injury with regular margins seen on the left lower aspect of back of neck opposite to C1 vertebra.

4. Multiple small lacerated injuries of varying dimensions 1-2cm x-1cm x fascia deep seen on the dorsum of left index, ring and middle fingers. Left index finger nail was cut and displaced from the nail bed.

Internal Examination:-

Brain: C/S pale

Heart: Chambers are empty. Ventricles normal. Coronaries and valves-patent.

Lungs: Both lungs congested and oedematous C/S exuded blood stained froth.

Trachea and larynx: Contained blood stained frothy fluid.

Hyoid Bone: Intact

Stomach : Contained 500gms of partly digested recognizable food particles. No specific smell perceived. Mucosa healthy.

Liver, Spleen, Kidneys: C/S pale

Intestines: Filled with gas and faecoliths

Bladder : 50 ml of urine.''

Ex.P.11 is the Postmortem Certificate. He gave opinion that the deceased had died due to shock and haemorrhage due to the cut injuries found on the body of the deceased. He further opined that the injuries on the dead body of the deceased would have been caused by a weapon like Aruval. P.W.15 recovered the blood stained clothes from the dead body of the deceased and forwarded the same to court.

(f) During the course of investigation on 06.05.2007, P.W.15 arrested the accused 1 and 5 in the presence of P.W.6 and another witness. On such arrest, the 1st accused gave a voluntary confession in which he disclosed the place where he had hidden two Aruvals. In pursuance of the same, he took the witnesses and the police to Vallathamman Temple and from the nearby bush, he produced two Aruvals. P.W.15 recovered the same under a Mahazar. Similarly, the 5th accused also gave a voluntary confession. But, no discovery of any fact was made out of the same. Then, he forwarded both the accused to court and also forwarded the material objects to court.

(g) On 10.05.2007 at 08.00 a.m., P.W.15 arrested the 4th accused Preethi and brought her to the police station. On such arrest, she gave a voluntary confession in which she disclosed the place where she had hidden a Vitchu Aruval. The same was recovered in the presence of P.W.9 and another witness. In pursuance of the same, he took P.W.15 and the witnesses to Udayar Koil and produced Hero Honda bearing Registration No.TN 02 F 2251 and an Aruval measuring 69 cms. P.W.15 recovered the same under a Mahazar. On the same day he arrested the 3rd accused at 09.00 a.m. He made a voluntary confession in the

presence of the same witnesses. On such arrest, he made a voluntary confession in which he disclosed the place where he had hidden an Aruval. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced an Aruval. Then, P.W.15 forwarded the 3rd accused to court for judicial remand. On 17.05.2007 at 4.30 a.m., he arrested the 2nd accused in the presence of P.W.7 and another witness. On such arrest, he gave a voluntary statement in which he disclosed the place where he had hidden a Vitchu Aruval. In pursuance of the same, he took the police and witnesses to the place of hide out and produced the Vitchu Aruval. He forwarded the 2nd accused to court and handed over the material object also to court. On the request made by him, the material objects were sent for chemical examination. The report revealed that there were human blood stains in all the material objects including the Aruvals recovered from the accused.

(h) On 27.05.2007, since P.W.15 was transferred, he handed over the case to his successor. P.W.16, the successor continued the investigation and laid the charge sheet.

3. 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 31 documents and 14 material objects were also marked. On the side of the accused, 8 documents were marked as Ex.D1 to Ex.D.8.

4. Out of the said witnesses, P.W.1 is the only an eye-witness. He has spoken about the individual overt act of all the accused. P.Ws.2 to 4 have stated that they found all these accused coming from the place of occurrence with blood stained Aruvals and informed them that they have killed the deceased and therefore, they could live in peace. They have further stated that the accused wanted them not to disclose the occurrence to anybody. P.W.5 has stated that one month prior to the occurrence, all the 6 accused sitting together by the side of the deceased and planning to kill him. P.W.6 and P.W.7 have spoken about the arrest of the accused and the consequential recovery of the Aruvals. P.W.8 has spoken about the preparation of the Observation Mahazar and the Rough Sketch and the recovery of material objects. P.W.9 has also spoken about the arrest of the accused and the consequential recovery of the material objects. P.W.10 has spoken about the postmortem and his final opinion regarding cause of death. The balance are the official witnesses.

5. 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 on their side.

6. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellants are before this Court.

7. We have heard the learned Counsel for the appellants/accused, the learned Counsel for the Revision Petitioner/P.W.1 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. In this case, the occurrence had taken place at a lonely place where there are no houses. P.W.1 claims to have accompanied the deceased at the time of occurrence in the Motor Cycle. It is not in evidence that there was any light available at the place of occurrence. P.W.1 is a close relative of the deceased and he belonged to his faction. Admittedly, the village was two factions on account of the election motive. All these accused belong to the opposite faction. Thus, the accused had strong enmity not only against the deceased, but also against P.W.1. Had it been true that P.W.1 was present at the time of occurrence, certainly, the accused would not have spared P.W.1 without harming him. They would have at least caused some injuries on him. The very fact that he did not sustain any injury and the very fact that there were no blood stains on his clothe have been taken note of by the trial court to doubt his very presence at the place of occurrence.

9. Apart from that, though it is alleged that the occurrence was at 10.00 p.m. on 04.05.2007 and the distance between the police station and the place of occurrence is hardly 12 kms., the F.I.R. is said to have been registered at 01.00 a.m. on 05.05.2007. Assuming that there was no delay in registering the case, the First Information Report has reached the hands of the learned Magistrate only at 12.30 p.m. on 05.05.2007. The distance between Marakkanam and the house of the Magistrate at Tindivanam is hardly 35 kms. Absolutely, there is no explanation as to why it took so much of time to reach the hands of the learned Magistrate. The said delay has been considered by the trial court and the lower court has doubted the case of the prosecution on this ground also.

10. In an identical situation, the Hon'ble Apex Court in Thulia Kali vs. The State of Tamil Nadu reported in AIR 1973 Supreme Court 501, has held that the unexplained delay on the part of the prosecution in forwarding the FIR to court would create doubt in the very origin of the F.I.R. In the case, where the accused and the witnesses are interested and when there are number of accused, the delay assumes importance. The trial court has rightly doubted the case of the prosecution on account of the delay in forwarding the same.

11. Above all, P.W.15, the Inspector of Police has stated that he arrived at the scene at 11.30 p.m. itself. He has further stated that he removed the dead body from the place of occurrence at 11.30 p.m. itself whereas the F.I.R., even according to the case of the prosecution, came to be registered only at 01.00 a.m. It is not known as to what was that information, which was earliest in point of time, which had brought P.W.15 to the place of occurrence. This would further strengthen the doubt in the case of the prosecution.

12. Apart from that, the prosecution relies only on the solitary evidence of P.W.1. It is the law that if the evidence of a solitary witness inspires the confidence of the court, even without looking for any corroboration from any independent source, the court could act upon the same. But, in the instant case, the presence of P.W.1 has been doubted by the trial court for the reasons which we have already dealt with. There is no other corroboration for the evidence of P.W.1 from any other source. Apart from that, it is highly unbelievable that P.W.1 would have noticed the overt act of each accused.

13. The other witnesses, namely, P.W.2 to P.W.4 have stated that they belonged to the faction of the deceased. They were also equally inimical towards the accused. They have stated that the accused came to them after killing the deceased and informed them that they have killed the deceased so that they could live in peace and warned them not to disclose of the same to anybody. Thus, the trial court disbelieved P.W.2 to P.W.4 as their evidence is highly unbelievable as it is artificial. Going by the nature of the human conduct, we are of the view that the fact spoken by P.Ws.2 to 4 cannot be believed. Further the very presence of P.Ws.2 to 4 at the place of occurrence is highly doubtful. The trial court has given sound reasons for rejecting the evidence of P.Ws.1 to 4 and to acquit the accused.

14. It is the settled law that even if there are two views which are equally possible, as an appellate court examining the correctness of the acquittal, this Court cannot substitute its view in the place of the view taken by the trial court, unless the view taken by the trial court is apparently erroneous and perverse. In this case, we concur with the view of the trial court. In our considered view, though the prosecution has proved the motive, it has miserably failed to prove the guilt of the accused. Therefore, in our considered view, the trial court was right in acquitting the accused in which we do not find any infirmity warranting interference at the hands of this Court. Thus, we do not find any merit in the Criminal Appeal as well as in the Criminal Revision also.

15. In the result, the CrI.A.No.367 of 2011 and the Criminal Revision No.1158 of 2009 are dismissed and the acquittal of the accused is hereby confirmed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
Marakkanam Police Station,
Villupuram District.
2. The Additional District and Sessions Judge,
Fast Track Court No.II,
Tindivanam
- 3.The Additional Public Prosecutor,
High Court, Chennai.

+2cc to Mr.AAV Partners, Advocate sr.25629

CrI.A.No.367 of 2011
and
CrI.Revision No.1158/2009

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