

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2016

CORAM:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU
and
THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

Criminal Appeal No.466 of 2011

Maharaja

..

Appellant/Accused No.1

Vs.

The State

Rep by the Inspector of Police,
Kattumannarkoil Police Station,
(Cr.No.284 of 2009)
P.R.C.No.20/2009

..

Respondent/
Complainant

Prayer: Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 22.02.2011 made in S.C.No.44/2010, passed by the learned Additional Sessions Court/Fast Track Court No.1, Chidambaram.

For Appellant : Mr.P.Palaninathan
(Amicus Curiae)

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

(Judgment of this Court was delivered
by M.SATHYANARAYANAN, J.)

Appellant is the first accused and he along with second accused, namely Raju @ Kasi were charged and tried for the commission of offences under Sections 341, 302 and 506(ii) IPC in S.C.No.44/2010 on the file of the learned Additional Sessions Judge [Fast Track Court No.1], Chidambaram. The Trial Court, vide impugned judgment dated 22.02.2011, had convicted and sentenced the appellant/first accused as follows:

Conviction under Section	Sentence
341 IPC	Fine of Rs.500/- in default to undergo simple imprisonment for one month
302 IPC	Imprisonment for Life with a fine of Rs.10,000/- in default to undergo one year rigorous imprisonment
506(ii) IPC	Two years rigorous imprisonment with a fine of Rs.1,000/- in default to undergo 3 months simple imprisonment

The appellant/first accused, aggrieved by the conviction and sentence awarded by the Trial Court, has filed this appeal.

2. Facts narrated in brief and necessary for the disposal of this appeal are as follows:

2.1. One Arun, son of Vadivel was related to the appellant/A1 and in connection with dispute regarding panchayat election, Arun was murdered and one of the accused was Thirumurugan. Appellant/A1 was one of the witnesses in the said sessions case and Thirumurugan was convicted and sentenced to undergo rigorous imprisonment for 7 years. Thirumurugan had developed animosity against Maharaja (A1), as according to him, he was the cause for his conviction and confinement in prison and therefore, decided to do away his life. Appellant/A1 sensing that his life is in peril, decided to act first and to eliminate the threat by murdering Thirumurugan, on 06.08.2009 at about 11.30 a.m. Thirumurugan was walking and while he was in front of the house of Arun, appellant/A1 appeared with Veecharuval and his brother Raja @ Kasi also appeared with Soori Knife and Thirumurugan was waylaid and attacked by the appellant/A1 by stating that he only murdered his cousin brother Arun and hence, he will not be spared. Thirumurugan sustained injuries on the thigh, neck and he died on the spot. The said occurrence was witnessed by PW1, Junior father of Thirumurugan (deceased) as well as by PWs.2 to 5 and 11.

2.2. PW1 proceeded to Kattumannarkoil Police Station and lodged a complaint under Ex.P1 to one Senthilvinayagam, Sub-Inspector of Police, who registered an FIR in Crime No.284/2009 at about 12.30 p.m. on 06.08.2009 under Sections 341 and 302 IPC. Printed FIR was marked as Ex.P10. Sub-Inspector of Police dispatched the original of the complaint and FIR to the jurisdictional Magistrate as well as copies of the same to higher officials.

2.3. PW18, Inspector of Police attached to Kattumannarkoil Police Station, on receipt of the FIR, went to the scene of occurrence at about 12.45 hours on 06.08.2009 and in the presence of PW8 and another, prepared the Observation Mahazar, marked as Ex.P2 and a Rough Sketch, marked as Ex.P11 and on the same day seized M.O.3-Blood Stained Earth, M.O.4- Sample Earth in the presence of PW8 and his Assistant under Mahazar/Ex.P3 and dispatched the same to the Court under Form-95, marked as Ex.P17 series. PW18 conducted inquest on the body of the deceased in the presence of panchayatdars and the Inquest Report was marked as Ex.P12 and also examined PWs.1 to 5 and other witnesses, namely Kumar, Akila, PW6, PW7, PW8 and his menial as well as one Sambandhan and recorded their statements. PW18, on coming to know that A1 surrendered before the District Munsif cum Judicial Magistrate Court, Kattumannarkoil, took steps to get his custody and police custody was granted for a period of three days on 17.08.2009. Appellant/A1 voluntarily came forward to give confession statement which was recorded in the presence of PWs.9 & 10 and he has stated that if he was taken to the scene of occurrence, he would demonstrate as to how the crime was committed and accordingly done so and thereafter, he was sent to judicial custody.

2.4. PW18 also summoned the services of PW15 - photographer, who took photographs and recorded the same in a CD, marked as Ex.P7 series. PW18 handed over the body of the deceased to PW14 - Head Constable with a requisition to conduct postmortem and accordingly it was taken to Government Hospital, Chidambaram and handed over to PW17, Medical Officer, Government Kamarajar Hospital, Chidambaram.

2.5. PW17, on receipt of the body, commended the postmortem at about 10.00 a.m. on 07.08.2009 and noted the following features:

External injuries:

- 1.A cut injury over the left frontal region of scalp 6 x 2 x 0.5 cms.
- 2.Cut injury over the left eyebrow 6 x 1 x 1cm.
3. A lacerated injury below nose 2 x 2 cm. c fracture of nasal bone.
4. A lacerated injury over left shoulder 3 x 3cm.
5. A stab wound present below the right clavicle over the right chest 10 x 6 x 3 cm.
6. A stab wound present below the previous wound measuring 10 x 6 x 3 cm.
7. A stab wound near the above injury measuring 3 x 2 x 2 cm.

8. A lacerated injury present over the front of neck about 20 x 8 x 7 cm exposing the trachea which is clearly cut into two halves. Hybrid bone intact. All the deep vessels of neck and trachea and oesophagus curve severely injured.
9. Abrasions seen over front and back of neck 10 x 5cm.
10. Cut injury present at the back of thigh(lf) 19 x 6cm.
11. A cut injury above the previous one 13 x 5 x 5cm.
12. A stab wound over the lateral 4 chestwall 4 x 5 x 3cm.
13. A stab wound over the left upper abdomen 8 x 4 8 5 cm.
14. Cut injury over back elbow 7 x 5 x 6 cm.
15. Another cut injury over left side left elbow 4 x 3 x 3 cm.
16. Another injury above the previous one 4 x 3 x 3 cm.

Internal examination:

- (1) Abd: Stomach contains 500 gm of undigested food article. Liver, Spleen, Kidneys - Pale Intestines empty.
- (2) Thorax : Ribs intact. 4 thoracic cavity anterior 500 mg fluid blood. Heart - pale. Lungs - pale.
- (3) Skull - Intact. Brain- pale. Membranes - pale.

PW17, after completion of postmortem, opined that the deceased would appear to have died at about 12-36 hours prior to autopsy to asphyxia due to cut injury on the neck and injury to vital organs and shock. Postmortem Certificate was marked as Ex.P9.

2.6. PW18, after completion of postmortem, seized the cloth worn by the deceased under Form-95, marked as Ex.P15 and thereafter handed over the body to the relatives of the deceased for cremation. PW18 made a requisition for Chemical Analysis of the seized articles and the Chemical Analyst Report was marked as Ex.P8. PW18 effected the arrest of A2 at about 2.30 p.m. on 02.10.2009 in the presence of PW12 and another. A2 voluntarily came forward to give confession statement and it was recorded and as per admissible portion of the confession statement of A2, marked as Ex.P5, M.O.1 - Soori Knife was recovered near thorny bush under mahazar/Ex.P6. PW18. On completion of investigation,

the Investigating Officer filed charge sheet against A1 and A2 for the commission of offences under Sections 341, 506(ii) and 302 IPC before the District Munsif cum Judicial Magistrate, Kattumannarkoil, who took it on file in P.R.C.No.20/2009. The committal Court had issued summons to both the accused and on their appearance, furnished to them copies of documents under Section 207 CrPC and having found that the case is exclusively triable by the Sessions Court, committed the same to the Court of Principal Sessions Court, Cuddalore, which in-turn made over the same to the learned Additional Sessions Judge/Fast Track Court No.1, Chidambaram, who took it on file in S.C.No.44 of 2010.

2.7. The Trial Court, on appearance of the accused, had framed charges under Sections 341, 506(ii) and 302 IPC and questioned them and they pleaded not guilty to the charges framed against them. The prosecution, in order to sustain their case, examined PWs.1 to 18, marked Exs.P1 to P17 and also marked M.Os.1 to 4. Both the accused were questioned under Section 313 (1)(b) CrPC with regard to incriminating circumstances made out against them and they denied it as false. On behalf of the accused, DWs.1 and 2 were examined and Exs.D1 and D2 were marked. The trial Court, on consideration of oral and documentary evidence and other materials, had convicted and sentenced A1 as stated above and acquitted A2. The State did not prefer any appeal against the said order of acquittal of A2. A1, aggrieved by the conviction and sentence, has filed this appeal.

3. The learned counsel appearing for the appellant/A1 made the following submissions:

(1) According to the prosecution, A2 was also attributed with fatal overt acts and on the same set of evidence, he was acquitted and the trial Court committed a grave error in convicting and sentencing the appellant/A1.

(2) M.O.2 said to have been used by A1 was not recovered and as per the confession statement of A1, he took the police to the scene of occurrence and demonstrated as to how he committed the offence and in the absence of any explanation as to the non-recovery of M.O.2, it cannot be stated that A1 by using the said weapon, had murdered the deceased.

(3) Though the prosecution cited six eyewitnesses, PWs.2 to 5 turned hostile and PW11 - brother-in-law of the deceased was examined nearly 2 months after the date of

occurrence on 02.10.2009 and therefore, his testimony cannot be believed.

(4) The testimony of PW1 - brother of PW4 also cannot be believed for the reason that according to PW1, appellant/A1 attacked the deceased with M.O.1- Soori Knife and as per the charges framed against him, A1 said to have attacked the deceased with Veecharuval-M.O.2 and PW1 made very many improvements from that of statement recorded during investigation and since his testimony has not been corroborated with material particulars on another eyewitness, namely PW11, it is not safe to rely on his testimony to convict and sentence the accused.

(5) FIR was registered at about 12.30 p.m. on 06.08.2009 and it reached the jurisdictional Magistrate Court at about 21.20 hours and the delay in dispatching the FIR has not been explained by the Investigating Officer and the Sub-Inspector of Police, namely Senthilvinayakam, who registered the FIR, was also not examined and the belated dispatch of the FIR is very much fatal to the case of the prosecution.

(6) In the photographs marked as Ex.P7 series, near the body of Thirumurugan, a knife was found and when a specific question was put to PW18/Investigating Officer, he deposed that since it was kept by the deceased for his self defence, it was not seized and explanation offered in that regard was very feeble and it was also accepted by PW18 that the deceased had very many enemies.

In sum and substance, it is the submission of the learned counsel appearing for the appellant/A1 that since the case of the prosecution bristles with very many infirmities and inconsistencies, which had gone into the root of the matter, the Trial Court at least ought to have awarded benefit of doubt and acquitted him and hence, prays for setting aside the conviction and sentence and allowing of this appeal.

4. Per contra, Mr.M.Maharaja, learned Additional Public Prosecutor would contend that though PWs.2 to 5 - eyewitnesses have turned hostile, the testimony of PW1 was amply corroborated by PW11- brother-in-law of the deceased and with regard to weapon used by A1, it is the submission of the learned Additional Public Prosecutor that the said mistake is a trivial one and has not affected the case of the prosecution. It is the

further submission of the learned Additional Public Prosecutor that the testimonies of the eyewitnesses coupled with scientific evidence and recovery, had amply proved the case of the prosecution beyond any reasonable doubt and therefore, the Trial Court was right in convicting and sentencing the appellant/A1 and prays for dismissal of this appeal.

5. This Court, after careful consideration of rival submissions and upon perusal of oral and documentary evidence and other materials as well as original records, is of the considered opinion that the appeal is to be allowed and the appellant is to be acquitted for the following reasons.

6. As per Ex.P1/complaint given by PW1, appellant/A1 and his brother/A2 waylaid Thirumurugan and attacked him with M.O.2-Veecharuval and it was witnessed by PWs.2 and 3 and other witnesses. PW18, after completion of investigation, has filed the final report and as per the charges framed by the trial Court, A1 said to have attacked Thirumurugan with M.O.2-Veecharuval repeatedly and the first informant/defacto complainant was examined as PW1 and in his chief examination, he would depose that A2 attacked Thirumurugan with M.O.2-Veecharuval and the appellant/A1 attacked him with M.O.1- Soori Knife. In the cross examination, PW1 would admit that Thirumurugan was convicted in a murder case and was awarded with sentence of seven years imprisonment and further admitted that during the course of investigation, he did not state that A2 attacked Thirumurugan with Soori Knife. Thus, there is a discrepancy as to the actual weapon used by the appellant/A1.

7. It is also pertinent to point out at this juncture that the prosecution has failed to explain as to how M.O.2-Veecharuval was recovered. According to PW18/Investigating Officer, A1 surrendered before the Court of District Munsif cum Judicial Magistrate, Kattumannarkoil and after getting police custody, he voluntarily came forward to give confession statement which was recorded in the presence of PW9 and another, wherein he has agreed to take the police party to the scene of occurrence and demonstrate as to how he has committed the offence and accordingly, he has done so. Admittedly, M.O.2-Veecharuval was not recovered either from the scene of occurrence or from elsewhere. PW18 would further state that in the photographs taken by PW15, marked as Ex.P7 series, a knife was found near right side of the deceased body and he did not seize the knife for the reason that it was possessed by the deceased for his self defence and also admitted that the deceased had very many enemies. However, in the Observation Mahazar, marked as Ex.P2, nothing is stated about the knife

found near the body of the deceased and the explanation offered by PW18/Investigating Officer in that regard was very feeble and cannot be accepted.

8. PWs.2 to 6 are the eyewitnesses and PWs.2 to 5 were closely related to the deceased and PW4-father of the deceased, in his cross examination, would admit that during the course of investigation, he did not state that the deceased took M.O.2-Veecharuval from the house of Rajasekar and cut his son and he did not state about the utterances made by A1 that he would finish off Thirumurugan and when the occurrence took place, he was in the house. PW4 would further state that he did not state to the police as to the plan hatched by A1 to do away with the life of his son. Therefore, it is highly doubtful that PW4-father of the deceased, witnessed the occurrence and since he has made vital improvements from that of his statement made during investigation, it is not safe to rely on his testimony and it did not corroborate with the testimony of PW1.

9. PW14 would depose that the deceased was attacked by A1 with M.O.2-Veecharuval and A2 with M.O.1-Soori Knife, however the trial Court partially disbelieved the evidence of the eyewitnesses, namely PWs.1, 4 and 11 as to the role played by A2 and acquitted him and the State did not prefer any appeal challenging the order of acquittal of A2.

10. PW18/Investigating Officer would admit that the statement of PW11 was recorded on 02.10.2009 and though the occurrence took place on 06.08.2009, he failed to offer reasons for belated examination of PW11. PW15, who took the photographs, would state that when the said photographs were published in Daily Thandhi news daily, knife was found near the body of the deceased and DW1 had also spoken about some newspaper reports. Newspaper Reports are hearsay evidence as per Section 81 of the Indian Evidence Act, 1872. It is a settled position of law that a statement of fact contained in a newspaper is merely a hearsay and, therefore, inadmissible in evidence, in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported. Even otherwise, PW18/Investigating Officer had admitted that the knife was found near the body of the deceased, but he did not seize it as he was under the impression that it was possessed by the deceased for self defence and this Court has pointed out that non-seizure of knife from the scene of occurrence is very much fatal to the case of the prosecution.

11. In the light of the infirmities pointed out above coupled with the fact that the trial Court, on the same set of evidence, had acquitted A2, who was also attributed with fatal overt acts, this Court is of the view that the appellant/A1 is entitled to benefit of doubt and is to be acquitted. The Trial Court, without properly appreciating the oral and documentary evidence in proper perspective, had erroneously convicted and sentenced the appellant/A1.

12. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/A1 under Sections 341, 506(ii) and 302 IPC, vide impugned judgment dated 22.02.2011 made in S.C.No.44/2010 passed by the learned Additional Sessions Court/Fast Track Court No.1, Chidambaram are set aside and the appellant/A1 is acquitted of the charges framed against him. Fine amount, paid if any, is directed to be refunded to the appellant. This Court records it's appreciation the valuable assistance rendered by the learned Amicus Curiae and directs the Tamil Nadu State Legal Services Authority, Chennai to pay the remuneration as per norms.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Additional Sessions Court/FTC-I,
Chidambaram.
- 2.The Additional Sessions Judge FTC-I through the
Principal District Judge Cuddalore
3. The Superintendent Central Prison,
Cuddalore
- 4.The Inspector of Police,
Kattumannarkoil Police Station,
(Cr.No.284 of 2009).
- 5.The Public Prosecutor,
Madras High Court, Chennai.
- 6.The District Collector Cuddalore

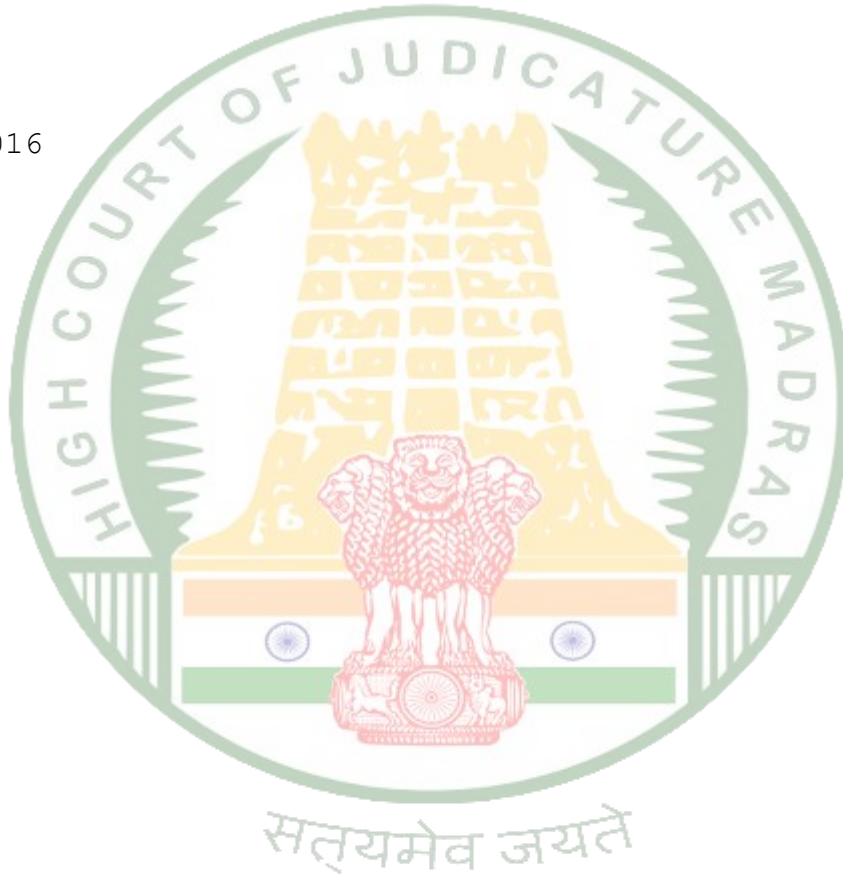
7.The Director General of Police,
Mylapore Chennai-4

8.The Secretary,
Tamil Nadu State Legal Services Authority,
High Court, Chennai.

+1 cc to Mr.P.Palaninathan Advocate sr.18333

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