

IN 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

CRL.A.No.34/2016

R.Govindaraj .. Appellant/Defacto Complainant

Vs

1. Selvam
2. Parasuraman
3. Velu @ Anandh
4. Devakumar
5. Vijiyarangan
6. Murugadoss
7. Sumathi
8. Jayanthi
9. Santha
- 10.Selvam
- 11.Arumugham
- 12.The State rep. by the
Inspector of Police,
Mylam Police Station,
Tindivanam Taluk,
Villupuram District.

.. Respondents

Appeal filed u/s.374 Cr.P.C., against the Judgment of acquittal passed by the learned II Additional District and Sessions Judge, Villupuram at Tindivanam, made in S.C.No.102 of 2013 dated 01.12.2015.

For Appellant :Mr.K.Balakrishnan

For Respondents 1 to 11 :

For 12th Respondent :Mr.E.Raja,
Additional Public Prosecutor

JUDGMENT

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

This is an appeal against acquittal of the respondents 1 to 11. The respondents 1 to 11 were accused in S.C.No.102 of 2013 on the file of the learned II Additional District and Sessions Judge, Tindivanam at Villupuram District. The final report was filed by the 12th respondent. The respondents 1 to 11 stood charged for offences under various penal provisions as detailed below :

Sl.No.	Charge Number	Rank of Accused	Penal Provision
1	Charge No.1	Accused Nos. 1, 2 and 6	148 of IPC
2	Charge No.2	Accused Nos.3 to 5 and 7 to 11	147 of IPC
3	Charge No.3	Accused Nos.1 to 11	294-b of IPC
4	Charge No.4	Accused Nos.1 and 2	324 of IPC
5	Charge No.5	Accused Nos.1 to 11	506(ii) of IPC
6	Charge No.6	Accused Nos.3 to 5 and 9 to 11	341 of IPC
7	Charge No.7	Accused Nos.1, 2, 6 and 7	302 r/w.34 of IPC

By judgment dated 01.12.2015, the trial court acquitted the respondents 1 to 11 holding that the prosecution had failed to prove the charges beyond reasonable doubts. Challenging the said acquittal, the defacto complainant in the case (P.W.1) has come up with this appeal.

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

(a) The occurrence has taken place in Iveli Village in Villupuram District. On 12.04.2012 around 6.00 p.m., the children of one Palanivel Gounder and the children of one Selvam Gounder were playing in an open space situated near their house. While they were so playing, there arose a quarrel between the

children and they fought with each other. On hearing the noise, the accused 7 and 8 came to the spot and shouted at the children of Palanivel Gounder. The 7th accused is the wife of Selvam Gounder and the mother of the children. P.W.1 is the sister of the deceased. She along with Palanivel Gounder and her brother Dakshinamoorthy, the deceased herein, came out of their house and they persuaded the accused 7 and 8 not to give any importance for the quarrel between the children and to forget the same. But the accused 7 and 8 challenged that the prosecution party could see the result of the said incident on the next day.

(b) On 13.04.2012, the accused 7, 8 and 9 were found inducing the 1st accused and his family members that they should do away with at least one person from the prosecution party. P.W.1 and the others had heard these words of the accused 7, 8 and 9. But, they did not take it very seriously. Around 6.00 p.m., P.W.1, P.W.2 and the deceased were in front of their house and they were engaged in a chatting. At that time, all the 11 accused came there. The 2nd accused and the 3rd accused were armed with knives. The other accused were not armed with any weapon. The 1st accused was also armed with a knife. These 11 accused shouted at P.Ws.1, 2 and the deceased and then, the accused 1 and 2 attacked P.W.2 with knives. They were held by the accused 9 and 10. The accused 3 to 5 and 9 to 11 restrained the deceased from proceeding further. The accused 3, 4 and 5 held the deceased and the accused 1, 2 and 6 stabbed him repeatedly with knives. The 7th accused squeezed the testicles of the deceased and all the accused ran away from the scene of occurrence. Then, all the 3 injured were taken in a Mahindra Van to a hospital. The Doctor after examining the deceased, declared him dead. P.Ws.1 and 2 were admitted in the hospital for treatment. Then for further treatment, they were sent to Jipmer hospital. While they were in the hospital, on receiving intimation from the hospital, P.W.11, the then Special Sub-Inspector, went to the hospital, recorded the statement of P.W.1 and on returning to the police station, registered a case in Cr.No.254 of 2012 under Sections 147, 148, 294-b, 324 and 506 (ii) of IPC. Ex.P.25 is the First Information Report. He forwarded both the documents to court which were received by the learned Magistrate at 12.30 p.m. on 14.04.2012.

(c) P.W.12 the then Inspector of Police took up the case for investigation. He went to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch in the presence of witnesses. He recovered blood stained earth and sample earth from the place of occurrence in the presence of P.W.8 and another witness. Then, he conducted inquest on the body of the deceased between 08.30 a.m. and 10.30 a.m. on 14.04.2012 and forwarded the same for postmortem.

(d) P.W.7 Doctor Geethanjali conducted postmortem on the body of the deceased on 14.04.2012 at 12.30 p.m. She found the following injuries:

'On examination :

1. Elliptical shaped stab injuries seen over :
a) right side of chest - 5 c.m. x 2 c.m. x cavity deep 3 c.m. medial to right nipple; b) back side of chest in 4 c.m. below left nipple ; c) Left upper abdomen close to midline - 7 c.m. below xiphoid process of stomach of size 3 c.m. x 2 c.m. x cavity deep.

2. Chop injuries :

a. Middle 1/3rd of left arm - 5 c.m. x 3 c.m. x cavity deep - exposing the cut and contused tissues;

b. Outer aspect of upper 1/3rd of left forearm - 7 c.m. x 4 c.m. x 0.5 c.m.

Laceration : Involving the lower part of neck and upper back, oblique - left to right - size 19 c.m. x 2 c.m. x 0.5 c.m. exposing underlying crushed and contused tissues.

Abrasions : a. Upper part of right side of neck 3 c.m. x 2 c.m. b) Outer aspect of left wrist - 0.5 x 0.5 c.m. c) outer aspect of left hand 4 c.m. x 1 c.m.

On opening of the head : Scale, bones of the grannal valut and membranes intact. Brain : Normal size cut section pale. Base of skull : Intact.

On opening of the Thorax : Right side lung.

Laceration of size : 4 c.m. x 1 c.m. x 1 c.m. cut section pale. Left lung normal size. Cutsection pale (Stab injury seen in between 3rd to 4th rib)

Heart : Normal in size. Cut Section : Great vessels and valves intact. Chambers empty.

On opening of the abdomen :

Stomach : 300 grams of whitish yellow partially digested cooked rice particles. Mucosa normal. Lungs, Spleen and Kidneys : Normal in size. Cut Section : congested. Bladder : Empty.

Pelvis and Spinal Column intact.

Neck : Hyoid bone and Thyroid cartilage intact.'

Ex.P.6 is the Postmortem Certificate. She gave opinion that the death of the deceased was due to shock and hemorrhage due to the cumulative effect of all the injuries.

(e) P.W.12 arrested the accused Nos.1, 2, 6, 7, 8 and 9 at 11.30 a.m. on 14.04.2012. On such arrest, the 1st accused gave a voluntary confession in the presence of P.W.8 and another witness, in which he disclosed the place where he had hidden a knife. In pursuance of the same, he took the police and the

witnesses to the place of hide out and produced the knife. Similarly, the 2nd accused gave a voluntary confession in which he disclosed the place where he had hidden a knife. Accordingly, he took the police and the witnesses to the place of hide out and produced the same and the same was recovered. The 6th accused gave a voluntary confession in which he disclosed the place where he had hidden a knife. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the knife. P.W.12 recovered the same. Then, on returning to the police station, he forwarded the accused to court and handed over the material objects also to court. On 15.04.2012, he examined P.W.2 and recorded his statement. On completing the investigation, he laid charge sheet against the accused.

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 12 witnesses were examined and 28 documents and 5 material objects were also marked.

4. Out of the said witnesses, P.Ws.1 and 2 are the injured witnesses who have spoken about the entire occurrence. P.W.3 is a neighbour who has stated that there was a fight going on between the prosecution party and the accused party. He persuaded them. In that fight, it is alleged that the 1st accused stabbed the deceased with a knife. Similarly, he stabbed P.W.2 also with knife. Then, the 1st accused ran away from the scene of occurrence. He was treated as hostile as he did not speak about the entire facts. P.W.4 has also spoken about the occurrence. She has spoken about the individual overt acts of the accused as spoken by P.W.1. P.W.5 has stated that he took the deceased and the other witnesses to the hospital. He has treated as hostile as he has not supported the case of the prosecution in full. P.W.6 is the Forensic Expert who has stated that she examined the material objects and found that there were blood stains found on all the material objects. P.W.7 has spoken about the postmortem conducted and her final opinion regarding cause of death. P.W.8 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence and the recovery of blood stained earth and sample earth from the place of occurrence, the arrest of some of the accused and the consequential recoveries of the knives. P.W.9 Doctor has spoken about the treatment given to P.W.2 at the Government Hospital, Mundiambakkam, Villupuram District. He found a lacerated injury measuring 8 x 3 x 2 cms. on the left hand of P.W.2 and found a lacerated injury measuring 3 x 1 x 1 cms. on the left hand and an abrasion on the left hand of P.W.1. P.W.10 has stated that he handed over the

dead body of the deceased to Doctor for postmortem. P.W.11 has spoken about the registration of the case on the complaint of P.W.1 and P.W.12 has spoken about the investigation done and the filing of the final report.

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 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, the defacto complainant is before this Court with this appeal.

6. We have heard the learned learned Counsel appearing for the de facto complaint/appellant, the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. A perusal of the records would go to show that in the same occurrence, the accused also sustained injuries upon which a criminal case was registered against the prosecution party in Crime No.315 of 2012 under Sections 147, 148, 324 and 448 of IPC. The trial court has found that there was no proper investigation in respect of the counter case and the records have not been exhibited in the present case. The trial court has further found that the injuries sustained by some of the accused have not been explained by the prosecution.

8. In this regard, we may refer to a judgment of the Hon'ble Supreme Court in Lakshmi Singh and others vs. State of Bihar reported in (1976) 4 Supreme Court Cases 394, wherein the Supreme Court has held that the failure on the part of the prosecution to explain the injuries sustained by the accused would create doubt in the credibility of the eye-witnesses. In the instant case, though there were injured eye witnesses examined on the side of the prosecution, their credibility is doubtful because they have not explained away the injuries sustained by the accused. On his part, the Investigating Officer also had not been fair to investigate both the cases thoroughly to come forward with a true version. Thus, the trial court was right in coming to the conclusion that the prosecution had not come forward with the true version of the occurrence. We are not inclined to take a different view on this aspect.

9. Further, there is enormous delay in forwarding the F.I.R. to the court. As we have already narrated, though it is stated that the FIR was registered on 14.04.2012 at 3.00 a.m.,

it reached the hands of the learned Magistrate only at 12.30 p.m. on 14.04.2012 for which also there is no explanation. When there are multiple number of accused and when there are two versions of the occurrence, one by the prosecution and the other by the accused, the delay in forwarding the FIR to court also assumes importance. Such delay creates doubt in the case of the prosecution. It was, for these reasons, the trial court has acquitted the accused in which we do not find any infirmity warranting interference at the hand this Court. Thus, we hold that there is no merit at all in this appeal.

10. In the result, the appeal fails and the same is accordingly dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. Inspector of Police,
Mylam Police Station,
Tindivanam Taluk,
Villupuram District.
2. The II Additional District and Sessions Judge,
Villupuram at Tindivanam
3. The Public Prosecutor,
High Court, Chennai.
4. The Judicial Magistrate No.2,
Dindivanam, Mylam.
5. The Chief Judicial Magistrate,
Villupuram at Dindivanam.

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kra 23.09.2016