

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.717 of 2016 & CrI.M.P.No.10389 of 2016

1. Vijaya (A1)

2. Vijai (A2)

.. Appellants/Accused 1&2

- Vs -

State rep by Inspector of Police,
B-3, Fort Police Station,
Chennai - 600 009.
(Cr.No.69 of 2012)

.. Respondent/Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned XVIII Additional Sessions Judge, Chennai in S.C.No.171 of 2013 dated 10.08.2016.

For Appellants : Mr.P.K.Mohanvel

For Respondent : Mr.P.Govindaraj
Additional Public Prosecutor

J U D G M E N T

The appellants are the accused 1 and 2 in S.C.No.171 of 2013 on the file of the learned XVIII Additional Sessions Judge, Chennai. Including these appellants, there were totally five accused. All the five accused stood charged for offences punishable under Section 302 r/w Section 149 of I.P.C. By judgment dated 10.04.2013, the trial Court acquitted the accused 3 to 5 and convicted these appellants / accused 1 and 2 alone under Section 302 r/w Section 149 I.P.C. and sentenced them to undergo imprisonment for life and pay a fine of Rs.10,000/- and in default to undergo rigorous imprisonment for six months. Challenging the said conviction and sentence, the appellants / accused 1 and 2 are before this Court with this appeal.

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

2.1. The deceased in this case was one Mr.Thirunavukkarasu. P.W.1 is the wife of the deceased and P.W.2 is the friend of the deceased. P.W.1 and the deceased were residing at Karpagakanni Amman Koil Street, 32nd Street, Triplicane, Maataankuppam, Chennai. All these accused hails from Annai Sathya Nagar in Chennai. The accused were not previously known to either the deceased or P.Ws.1 and 2.

2.2. On 03.08.2012, the deceased, P.W.2 and one Srikanth had gone to Maataankuppam from where, they went to Parrys Corner at Chennai. In a TASMACHOP shop, all the three drank liquor. Then, they went to Annai Sathya Nagar. Near the house of the first accused, Mrs.Vijaya, P.W.2 passed urine. The first accused on noticing that P.W.2 was passing urine just by the side of her house, objected to the same. This resulted in a quarrel. The first accused, in the said quarrel, attacked P.W.2. P.W.2 questioned the same and raised alarm. On hearing the same, the deceased and Mr.Srikanth rushed towards P.W.2 to rescue him. The deceased, questioned the first accused as to why she had beaten up P.W.2. The first accused got infuriated, she directed the accused 2 to 5 to attack the deceased and P.W.2. P.W.2 started running away from the place of occurrence, but all the accused surrounded the deceased and they attacked the deceased with hands and legs. The deceased fell down. Thereafter, the second accused sat on the chest of the deceased and hit him with a stone on his head. P.W.1 came in an auto to the place of occurrence and witnessed the occurrence. P.Ws.1 and 2 raised alarm. All the accused fled away from the scene of occurrence.

2.3. P.W.1, thereafter, took the deceased to the Government hospital. The doctor, after examining the deceased declared him dead. Thereafter, P.W.1 went to B-3 Fort Police Station and made a complaint at 06.30 p.m. on 03.08.2012. Ex.P1 is the complaint and Ex.P9 is the F.I.R. The case was registered by P.W.12.

2.4. 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 at the place of occurrence in the presence of witnesses. He examined P.W.2 and few more people from that locality and recorded their statement. After conducting inquest on the body of the deceased, he forwarded the body of the deceased for postmortem.

2.5. P.W.10 Dr.Sathyamoorthy conducted autopsy on the body of the deceased on 04.08.2012 at 01.15 p.m. He found the following injuries:

"Injuries: (1) Reddish irregular abrasion
4x3cms on outer aspect of right eye. 1.5 cms

away outer canthus of right eye. (2) An irregular reddish abrasion 3x1 cm over right forehead 1 cm above outer aspect of right eyebrow. (3) Vertically oblique reddish abrasion 2x1 cm just above left knee joint (4) Reddish Abrasion 1.5x1 cm over front of left knee. (5) Tear reddish abrasion 2x1cm on just above the right knee joint.

On dissection of scalp: Contusion 6x4x0.5 cm on the right side of frontal region of scalp. On further dissection: diffuse sub dural and sub arachnoid hemorrhage seen over the brain. Heart: normal in size, chambers empty. Lungs: Normal in size, C/S pale. Stomach: 30 ml of straw coloured fluid with no specific odour. Liver, Kidneys: Normal in size C/S pale, Bladder: Empty, Pelvis, Spinal Column & Hyoid Bone: Intact."

Ex.P7 is the postmortem certificate. He opined that the death of the deceased was due to shock and hemorrhage due to the multiple injuries found on the body of the deceased.

2.6. P.W.12, during the course of investigation, recovered the clothes from the body of the deceased. He arrested the accused 2 to 5 at 03.00 p.m. on the same day. On such arrest, the second accused, while in custody, made a voluntary confession in which he disclosed the place where he had hidden a stone. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced a stone. On returning to the police station, he forwarded the accused to the Court for judicial remand. On completing the investigation, he laid chargesheet against the accused.

2.7. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this 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, 13 documents and one material object were marked.

2.8. Out of the said witnesses, P.Ws.1 and 2 claims to be the eyewitnesses to the occurrence. P.W.1 the wife of the deceased has stated that she went along with the deceased to the place of occurrence, where she witnessed the entire occurrence. P.W.2 has also stated so. P.W.3 has stated that on hearing about the occurrence, she rushed to the place of occurrence and took the deceased to the hospital, where the doctor declared him dead. P.W.4 has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence. P.W.5 has also stated about the preparation of the observation mahazar and the rough sketch. P.Ws.6 to 8 have turned hostile and they have not supported the case of the

prosecution in any manner. P.W.9, a police constable has stated that he took the dead body of the deceased to the hospital for postmortem. P.W.10 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.11, Dr.Senthil has said that on 03.08.2012 at 05.20 p.m. when he was on duty at the Government Hospital, Royapettah, the deceased was brought to him for treatment and on examination he found him dead. P.W.12 has spoken about the registration of the case, investigation done by him and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side three witnesses were examined as D.Ws.1 to 3. D.W.1 has stated that on 03.08.2012 when he was in his tea shop at Rajaji Salai, Royapettah, three persons came to the shop in a drunken state and they were quarreling among themselves. In the said quarrel and scuffle, one person fell down. Immediately the police came to the place of occurrence and took the said person to the hospital. But he has not identified any of them. He has further stated that at 09.00 p.m. on 03.08.2012, the police examined him and at 10.30 p.m. they took the accused 1 to 3 to the police station. D.W.2 yet another resident of Sathya Nagar has stated that the family members of the first accused were taken by the police illegally. D.W.3 an official from the southern railway has stated about the details of the trains between Putulur railway station and Chennai Central railway station. He has given details of the trains on 03.08.2012 between 02.30 p.m. to 04.00 p.m. Having considered all the above, the trial Court convicted the accused 1 and 2 alone as detailed in the first paragraph of this judgment and that is how, the appellants / accused 1 and 2 are before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

5. In the instant case, the prosecution mainly relies on the eyewitnesses account of P.Ws.1 and 2. P.Ws.1 and 2 are not the residents of Sathya Nagar. P.W.1 has admitted even during the cross examination that these accused were not at all known to her previously and for the first time she saw these accused only at the place of occurrence. P.W.2 during the cross examination has stated when he was examined by the police on the day of occurrence, since he was not aware of the names and other details about the assailants he did not inform the same to the investigating officer. Though these witnesses have identified all the five accused and have spoken about the specific overact of all the five accused, the trial Court disbelieved them and acquitted the accused 3 to 5 but has chosen to believe against these appellants / accused 1 and 2.

6. In our considered view on the same yardstick, the trial Court ought to have rejected the evidences of these two witnesses as against these appellants also, for, they have admitted that the identity of these accused were not previously known to them and for the first time they saw them at the place of occurrence, going by the nature of the allegations in this case, it is not sufficient.

7. Apart from that, though it is stated that the F.I.R. was registered at 06.30 p.m. on 03.08.2012, the same had reached the hands of the learned Magistrate only at 12.30 p.m. on 04.08.2012. Absolutely, there is no explanation for the inordinate delay. P.W.1 has further admitted that she is an illiterate, she did not know the names of the accused. P.W.2 has further admitted that when he went to the police station, these accused were already kept in the police station. Thus, it is crystal clear that after taking the accused in custody, the complaint has been drafted implicating the five people as accused. In the absence of any explanation for the enormous delay in forwarding the F.I.R. to the Court and in the absence of Test Identification Parade, in our considered view, it would not be safe to rely on the evidences of P.Ws.1 and 2 alone so as to sustain the conviction of the appellants / accused 1 and 2. More so because the trial Court has rejected the evidences of these witnesses as against the accused 3 to 5.

8. For these reasons, we hold that the prosecution has failed to prove the case beyond all reasonable doubts. Therefore, the appellants / accused 1 and 2 are entitled for acquittal.

9. In the result,

(i) the appeal is allowed and the conviction and sentence imposed on the appellants / accused 1 and 2 by the learned XVIII Additional Sessions Judge, Chennai in S.C.No.171 of 2013 dated 10.08.2016 is set aside and the appellants / accused 1 and 2 are acquitted.

(ii) The fine amount, if any paid, shall be refunded to them.

(iii) Since the appellants / accused 1 and 2 are in jail, they are directed to be set at liberty forthwith, unless their detention is required in connection with any other case. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar

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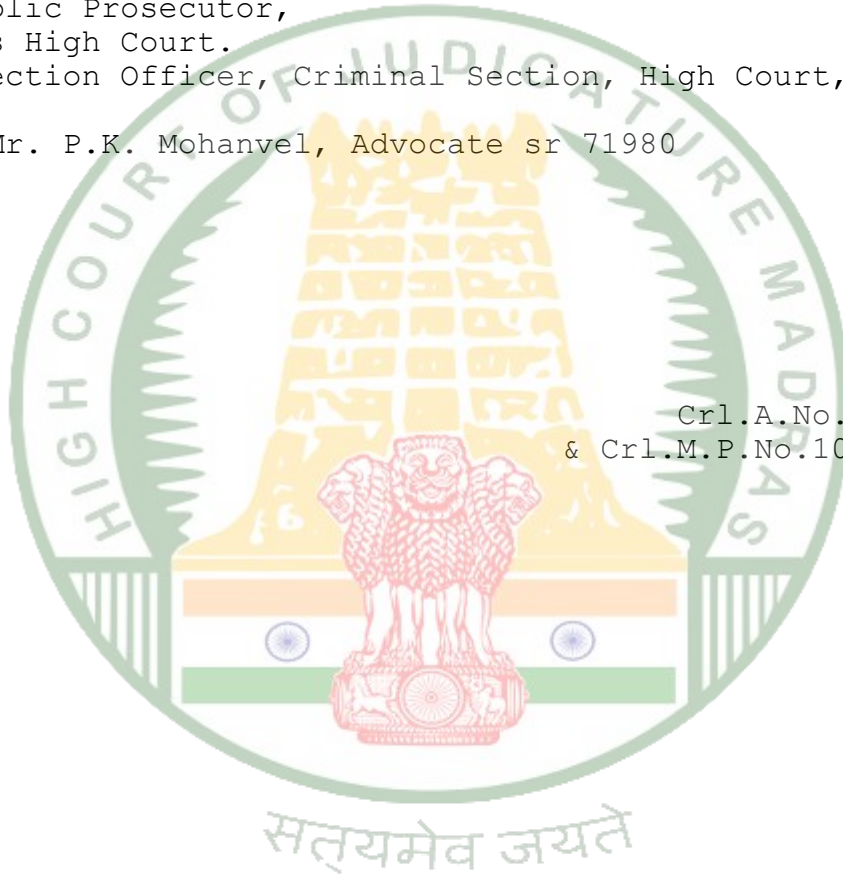
Sub-Assistant Registrar

To

1. The XVIII Additional Sessions Judge,
Chennai.
 2. The Principal Sessions Judge, Chennai
 3. The VII th, Metropolitan Magistrate , George Town, Chennai
 4. The Chief Metropolitan Magistrate , Egmore, Chennai-8
 5. The Superintendent, Central Prison, Puzhal Chennai
 6. The District Collector, Chennai
 7. The Director General of Police, Mylapore, Chennai-4
 8. The Inspector Of Poilce, B3, Fort Police Station,
Chennai-4
 9. The Public Prosecutor,
Madras High Court.
 10. The Section Officer, Criminal Section, High Court, Madras-104
- +1 CC to Mr. P.K. Mohanvel, Advocate sr 71980

MSM(CO)
sp/2/2

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& Crl.M.P.No.10389 of 2016



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