

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 07.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Cr1.A.No.597 of 2013

Thirunavukkarasu Appellant/Defacto Complainant
vs.

1. State by:

Inspector of Police,
Killai Police Station,
Cuddalore District

2.Kumar @ Sivakumar

3.Ayyappan @ Velmurugan

4.Kaliyamurthy

5.Jayaraman ...Respondent 2 to 5/Complainant/Accused

Criminal appeal preferred under Section 372 Cr.P.C.,
against the judgement dated 28.03.2013 passed by the II
Additional District and Sessions Judge, Chidambaram, in
S.C.No.131 of 2011.

For Appellant : Mr.A.Arasu Ganesan

For Respondents : Mr.M.Maharaja,
Additional Public Prosecutor for R1

JUDGMENT

(Judgement of the Court was delivered by S.Nagamuthu,J.)

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This is an appeal against the acquittal. Respondents 2 to 5 were the accused in Sessions Case No.131 of 2011, on the file of the learned Additional District and Sessions Judge, Chidambaram. The appellant is the de-facto complainant, on whose information, the case was registered by the first respondent, which resulted in a final report. The first and second accused stood charged for the offence under Sections 302 read with Section 120-B and Section 302 and 201 of the Indian Penal Code. The accused 3 and 4 stood charged for the offence under Section 302 read with Section 120-B, 302

read with Section 34 and 201 read with Section 34 of the Indian Penal Code.

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

(a) All the accused and the deceased were residing at Melachadi Village, in Chidambaram Taluk. On account of petty quarrel between the accused on one side and the deceased on the other side, there was long standing enmity between the two. It is alleged that on 5.2.2011, during night hours, all the four accused, had conspired to commit murder of the deceased. It is further alleged that in pursuance of the said conspiracy, the accused 1 and 4, intercepted the deceased when he was coming near a channel at Melachadi Village. The second accused pushed the deceased into the channel and the first accused cut him with 'aruval' on the neck and on the forehead of the deceased. They pushed the deceased into the water and ran away from the scene of occurrence. The accused 3 and 4, according to the case, were present at the scene of occurrence and facilitated the accused 1 and 2, to commit murder. All the four accused, thereafter, fled away from the scene of occurrence. Since the deceased did not return home, P.W.1, who is the brother of the deceased, went in search of him. When P.W.1 went near the channel, he found the chappels of the deceased floating in the channel. Therefore, he developed a doubt that the deceased would have been immersed in the water. He gave a phone call to the police station as well as to the fire service. On 6.2.011, the fire service personnel came to the place of occurrence, at 3.15 p.m. and they searched in the water. At 5.00 p.m., they found the dead body of the deceased immersed in water and brought the same out. P.W.1 and others found that there were number of cut injuries on the body of the deceased. The police also had arrived at the scene of occurrence. At 8.00 p.m. P.W.1 made a complaint regarding the same. In the complaint, he did not mention the name of the assailants. On receipt of the said complaint, P.W.10, registered a case in Crime No.24 of 2013, under Section 302 of the Indian Penal Code. Ex.P1 is the complaint. Ex.P.7 is the First Information Report. P.W.10 forwarded Exs.P1 and P7 to the Court. P.W.11, the Inspector of Police, took up the case for investigation.

(b) On 7.2.2011, at 6.30 a.m., P.W.11 proceeded to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of P.W.2 and another witness. He recovered a pair of cheppals and a wooden log from the place of occurrence. The body was taken to the Government Hospital, at Chidambaram, where, he conducted inquest on the body of the deceased between 8.30 a.m. and 10.00 a.m. Ex.P9 is the inquest report. Then, he forwarded the body for post-mortem. P.W.7, Dr.Suganthi, conducted autopsy on the body of the deceased, on 7.2.2011, at 12.00 noon. She found the following injuries on the body of the deceased.

"External Injuries: (1) Cut injury over back extending from (R) side to centre of neck involving trachea, fascia, muscle both (L) and (2) carotid artery about 10 x 13 x 4 cm. (2) cut injury both (R) eyebrow extending from forehead 5 x 1 x 1/2 cm (4) cut injury over (L) Eyebrow 7 x 1 x 1/2 cm (5) cut injury over (R) side of forehead 2 x 1/2 x 1 cm and chip of humorous bone seen (7) Laceration of scalp 16 x 12 x 3 cm."

The Doctor opined that the death was due to shock and haemorrhage, due to the injuries found on the body of the deceased. She further opined that all the said injuries could have been caused by the weapon like 'aruval' (M.O.3) and wooden log (M.O.2). Ex.P6 is the post-mortem certificate. P.W.11, arrested all the three accused on 9.2.2011, at 11.00 a.m., in the presence of P.W.6 and another witness. On such arrest, the first accused gave a voluntary confession, in which, he disclosed the place where he had hidden the weapon. In pursuance of the same, he took the police and the witnesses to the place of hide-out and produced the 'aruval' (M.O.3). P.W.11 recovered the same under a mahazar. On returning to the police station, he forwarded the accused to the Court. He recovered the blood stained clothe from the body of the deceased and forwarded all the materials to the Court. On his request, the material objects were sent for chemical examination. On completing the investigation he laid charge-sheet against all the accused.

3. Based on the above materials, the trial Court framed charges against the accused, as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 11 witnesses were examined, 9 documents were exhibited besides 3 material objects. M.O.2 is the 'wooden log', M.O.3 is the 'aruval' and M.O.1 are the pair of cheppals.

4. Out of the said witnesses, P.W.1, who is the brother of the deceased has stated about the motive and he had also stated that when he went in search of the deceased, he found the cheppals of the deceased floating in the channel and thereafter, he gave information to the fire service and police. He has further stated that the body was taken out from the channel, by the fire service personnel and then he made a complaint to the police. P.W.2 has spoken about the preparation of observation mahazar and the rough sketch and the recovery of material objects, at the place of occurrence. P.W.3 has stated that he assisted the fire service personnel to lift the body from the water. P.W.4 is a star witness for

the prosecution. He has stated that on 6.2.2011, at 6.00 a.m., at a place known as Periamarugu, he found all the four accused talking to themselves. He heard them discussing that they should kill the deceased. Thus, he has spoken about the conspiracy. P.W.5 is the eyewitness to the occurrence. He has stated that he found all the four accused at the place of occurrence and that the accused 1 and 2 causing the death of the deceased, by stabbing him and pushing the body in water. P.W.6 has spoken about the arrest of the first accused and the consequential recovery of 'aruval' (M.O.3). P.W.7 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.8 is the Station Officer of Cuddalore Fire Service, he has stated that he searched for the deceased in the water in a channel and he took out the body from the water. P.W.9 is a Constable, who took the dead body to the hospital for post-mortem. P.W.10 has spoken about the fact that he handed over the First Information Report and the complaint to the Magistrate, as directed by the Sub-Inspector of Police. P.W.11 has spoken about the investigation done and the final report filed.

5. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any one on their side nor mark any document. Their defence was a total denial.

6. Having considered all the above, the trial Court acquitted all the four accused and that is how the defacto complainant, P.W.1, is before this Court, challenging the said acquittal.

7. We have heard the learned counsel for the appellant and also the learned Additional Public Prosecutor appearing for the State and the respondents/accused have not made appearance. we have also perused the records carefully.

8. In this case, the prosecution, in order to prove the charge of murder, mainly relies on the evidence of P.W.5. According to him, on 6.2.2011, at about 6.00 a.m., he found all the four accused, at the place of occurrence and the accused 1 and 2 causing the death of the deceased, by stabbing him and pushing the body into water. Had it been true, going by the natural human conduct, he would have raised either alarm or he would have later on informed the same to the family members of the deceased. It is not as though this witness is a stranger to the family of the deceased. He has admitted, in the cross-examination, that he participated in the funeral of the deceased, after the body was lifted from the water and he helped the other ceremonies, which went on for two days. But, he did not disclose the occurrence to anybody, including the police. He has positively admitted that for the first time, he informed the police about the

occurrence only on 9.2.2011. Absolutely there is no explanation as to why from 6.2.2011 to 9.2.2011 he kept silent, without informing the above vital information to nobody. This is an unnatural human conduct, which makes the evidence P.W.5 unbelievable. Therefore, the trial Court was right in rejecting the evidence of P.W.5.

9. Now turning to the charge of conspiracy, the prosecution relies on the evidence of P.W.4. He has stated that on 6.2.2011 at 6.00 a.m., he found all the four accused together, conspiring to commit murder of the deceased. Had it been true, he would have informed about the same to the family members of the deceased. He has also admitted that on 9.2.2011, he participated in the funeral of the deceased. Even then, he did not disclose about the vital information to anybody. He has admitted that only on 9.2.2011, he informed about the vital information to others. Absolutely there is no explanation for his silence for such a long time. This again is a unnatural human conduct, which makes the evidence unbelievable. It is for this reason, the trial Court had rejected the evidence of P.W.4 also. Apart from these two witnesses, there is no other clinching evidence against the accused, so as to convict them for the offence stated above. Thus, for cogent and sound reasons, the trial Court has acquitted 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 at all in this appeal.

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

Sd/-

Assistant Registrar (CS-II)

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सत्यमेव जयते
Sub Assistant Registrar

msk

To

1.The Inspector of Police,
Killai Police Station,
Cuddalore District.

2.The II Additional District and Sessions Judge,
Chidambaram

3.-do-Thro'The Principal Sessions Judge,
Chidambaram.

4.The Public Prosecutor,
High Court, Madras

+1 cc to The Public Prosecutor, Advocate, sr.2713

Cr1.A.No.597 of 2013

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