

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2016

CORAM:

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

Criminal Appeal No.701 of 2013

1.Joseph @ Ramanujam
2.Mathi @ Athimoolam
3.Gopi
4.Kumar @ Ashok Kumar ... Appellants

-Vs-

State rep by
The Inspector of Police
M.1, Perinaickenpalayam Police Station
Coimbatore District. ... Respondent

This Criminal Appeal has been preferred against the judgment passed in S.C.No.178 of 2011, on the file of the IV Additional District and Sessions Judge, Coimbatore dated 05.09.2013.

For Appellant : Mr.Philip Ravindran Jesudoss

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellants are the accused 1 to 4 in S.C.No.178 of 2011 on the file of the learned IV Additional District and Sessions Judge, Coimbatore. They stood charged for offence under Section 302 r/w 34 IPC. By judgment dated 05.09.2013, the trial Court convicted them u/s 302 r/w 34 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/- each, [no default sentence was imposed]. Challenging the said conviction and sentence, the accused/appellants are before this Court with this appeal.

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

[a] The deceased in this case was one Mr. Hari @ Harikrishnan. P.W.1 is the brother and P.W.6 is the father of the deceased. They owned a land at Narasimhanaicken Palayam in Coimbatore District. The adjacent land was purchased by one Mr. Kannan. Mr. Kannan intended to construct a house on his land. These four accused were working under him. They started digging on the land of Kannan for laying foundation for construction. The excavated sand was stored on the land belonging to the deceased, for which no permission had been taken from the deceased or his family members. On coming to know of this illegal act, the deceased and P.W.1 had gone to their land and questioned these four accused, as to why they were keeping the sand on their land without taking their permission. This resulted in a quarrel. In respect of the same, the deceased gave a complaint to the police at Periya Naicken Palayam. In that complaint, an enquiry was held by the police. All the four accused were taken to the police station for enquiry. During enquiry, the matter was compromised amicably between the parties and therefore, without further action, the said complaint was closed. The accused were enraged over the above conduct of the deceased in making a complaint against them. This is stated to be the motive for the occurrence.

[b] On 19.07.2009, at about 8.45 p.m., on the road leading to Thendral Nagar from Poochiyur, the deceased was proceeding in his motor cycle bearing Registration No.38-AF-5892. At that place, suddenly all these four accused emerged, intercepted the deceased and cut him indiscriminately with aruvals. The deceased fell down in a pool of blood and died instantaneously. The occurrence was witnessed by P.Ws.1 to 4.

[c] Immediately thereafter, P.W.1 went to Periya Naicken Palayam police station and made a complaint at 10.00 p.m. on 19.07.2009 under Ex.P1. P.W.11, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Cr.No.441 of 2009 u/s 302 IPC against the four named accused, by name, Mathi, Gopi, Kumar and Joseph. Ex.P15 is the FIR. He forwarded Exs.P1 [complaint] and P15 [FIR] to the Court, which were received by the learned Judicial Magistrate at 2.00 a.m. at 20.07.2009.

[d] The case was taken up for investigation by P.W.13. He went to the place of occurrence immediately at 10.45 p.m. and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.7 and another witness. He also recovered blood stained earth and sample earth from the place of occurrence.

The motor cycle belonging to the deceased was also recovered. Then, he conducted inquest on the body of the deceased between 12.15 a.m. and 2.45 a.m. on 20.07.2009 and then forwarded the body for post-mortem. P.W.10 conducted autopsy on the body of the deceased on 20.07.2009 at 10.30 a.m. He found the following injuries:

1	Transversely oblique cut wound 8 x 3 x 4.5 cm muscle deep noted over upper part of lateral part of right thigh. The outer lower end is 37 cm above to lateral aspect of knee joint and inner upper end is 13cm below and outer to anterior ileac crest
2	Transversely oblique cut wound 10 x 4 x 4 cm muscle deep noted over upper part of right thigh. The outer lower end is 1.5 cm above to the lower end of wound No.1. The inner end is 10 cm below and posterior to anterior ileac crest.
3	Right wrist found cut in the posterior aspect and hand found hanging with 3 cm tissue and skin tag in the anterior aspect. Underlying wrist joint found opened exposing carpal bones and lower ends of radius and ulna.
4	Vertically oblique cut injury 16 x 3 -0.25 cm muscle deep noted over back of right mid forearm exposing radius bone. The lower inner end is 6cm above wrist with skin deep tailing 3cms seen. The upper outer end is 3 cm below right elbow with skin deep tailing 5 cms seen.
5	Transversely oblique cut wound 7 x 2 x 2cm muscle deep noted over front and lateral aspect of upper part of right forearm. The wound is seen 3 cm below elbow joint.
6	Transversely oblique cut wound 2 x 1 x 2 cm muscle deep, noted over right forearm, 1 cm lateral to the wound no.5.

7	Vertically oblique stab & cut injury 11 x 2 cm noted over outer aspect of right arm, the lower end is 5 cm above to right elbow and upper end is 23 cm below top of shoulder. The wound passes obliquely inwards and above cutting the underlying muscles to a depth of 5.5-2cms. The deepest part is near the blunt upper end. The lower end is sharp with skin deep tailing of 2 cms.
8	Vertically oblique cut injury 7 x 2 cms noted over back of right arm. The upper lateral end of wound is 13 cm below top of shoulder. The lower end is blunt. The wound passes obliquely inwards and downwards cutting the underlying muscles to a depth of 4-2cms. The deepest part is near the blunt upper end.
9	Flapping cut wound 8 x 4 cm noted over top of right shoulder. Skin, muscles along with partial thickness of 2 x 1 cm coracoid process is found flapped and hanging laterally with 3 cm tissue tag. The inner end of wound is 5 cm lateral to right side neck.
10	Vertically oblique cut wound 5 x 3 cm noted over right scapular region. The lower outer end of wound is 5 cm above and back of right axilla. Underlying muscles and scapula found cut along the line of the wound.
11	Oblique cut wound 3 x 1 x 1 cm muscle deep noted over right upper scapular region. Both ends and margins are sharp.
12	Oblique cut wound 5 x 1 x 1 cm muscle deep, noted over right upper medial scapular region, the upper end of which is 4 cms inner to previous wound (No.11). Both ends and margins are sharp.

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13	Horizontally oblique cut wound 16 x 5 cm x 3 cm thoracic cavity deep noted over back of lower part of left and right sides of chest. The inner end is 1.5 cm right to midline at the level of 'T10' vertebra and outer lower blunt end is at level of 11th intercostal space on posterior axillary line. Margins are sharp. Skin deep tailing of 3 cms length noted in the inner upper pointed end of the wound and it continues as an oblique cut wound 4 x 1 x 1 cms muscle deep on the right sub scapular region in the same straight line of the wound. The outer upper end is 11 cm below posterior axillary fold on the back.
14	Horizontally oblique cut wound 9 x 3 cm x 3 cm - thoracic cavity deep noted over back of left side lower chest, the lateral upper blunt end is 2 cm above the wound no.13. The inner end of wound is 8 cm lateral to mid line and merges with the upper border of previous wound (No.13), outer end is at level of 10th intercostal space on posterior axillary line 9 cm below posterior axillary fold on the back.
15	Horizontally oblique cut wound 11 x 2 cm thoracic cavity deep noted over back of left side chest and left scapular region. Underlying lower aspect of left side scapula found cut. The inner upper blunt end is 8cm lateral to mid line; outer lower pointed end is 6cm below posterior axillary fold on the back.
16	Horizontally oblique cut wound 16 x 5-1cm noted over upper part of back of left chest. Underlying upper aspect of left side scapula found cut along with muscles to a depth of 3 cms. The inner end is tailing about 4 cms at mid line in the level of T3 Vertebra, outer blunt end is 3 cm below posterior axillary fold on the back.
17	Oblique cut injury 7 x 2 x 3 cm muscle deep noted over back of left shoulder.

18	Vertical stab wound 4 x 2.5 cm over back of midline of neck. Underlying C7 vertebra found partially cut along with muscles vessels and nerves to a depth of 5.5cms. Upper end is blunt. Margins clean cut.
19	Transverse cut injury 10 x 5 cm bone deep noted over top of left shoulder. Underlying head of humerus found partially cut along with muscles vessels and nerves to a depth of 3 cms.
20	Vertically oblique cut wound 2 x 1 cm noted over outer aspect of lower 1/3rd of left arm. Underlying muscles found cut to a depth of 2 cms. The lower posterior end is 5 cm above to back of left elbow.
21	Oblique cut injury 11 x 2 cm noted over palmar aspect of left palm in between little finger and ring finger. Underlying muscles and tendons found cut to a depth of 1 cm.
22	Two oblique cut wounds each 9-10x2cms parallel to each other and 3 cms apart seen from right to left and another two oblique cut wounds 10-12 x 2 cms parallel to each other and 2.5 cms apart seen from left to right seen in the back of head and crossing each other in the middle. Underlying bones found cut and a piece of skull bone 3 x 2.5 cms found cut and absent in the crossing area, exposing underlying dura.
23	Flapping cut wound 5 x 4 cm noted on left anterior parietal region. Scalp along with partial thickness of underlying parietal bone 2 x 2 cm found hanging anteriorly and above in a tag of tissue 1.5 cms length.
24	Oblique cut wound 4 x 2 noted over back of right side upper neck. Underlying muscles and soft tissues found cut to a depth of 2 cms
25	Transversely oblique cut wound 3 x 1 cm seen over left cheek. The posterior blunt end of the wound is 3 cms in front of middle or left ear. The wound has passed inwards and downwards cutting the underlying muscles and the maxillary bone partially. The total depth of the wound is 2cm.

26	Oblique cut wound 3 x 1 x 1 cm noted over left side upper cheek (malar process). Underlying muscles found cut and bone partially cut.
27	Oblique cut wound 11 x 1 cm noted over right side of nose, right cheek and chin, cutting both lips in its right side. The upper inned end of the wound starts in the right side root of nose. Underlying muscles and soft tissues found cut to a depth of 1.5 -1 cms and in areas upto bone deep.

He gave opinion that the death was due to shock and haemorrhage due to the cut injuries found on the body of the deceased. Ex.P14 is the Post-mortem Certificate.

[e] On 21.07.2009 at 11.00 a.m., P.W.13 arrested all the four accused at Singanallur bus stop in the presence of P.W.8 and another witness. On such arrest, all the four accused gave voluntary confessions one after the other. P.W.13 reduced the same into writing. In the said confession, each accused had made different statements as to where they had hidden the aruvals. In pursuance of the same, each accused identified the place where he had hidden the aruvals and produced the same. All the aruvals were accordingly recovered [vide M.Os.1 to 4]. P.W.13 recovered the blood stained earth from the body of the deceased. Then he forwarded all the material objects for chemical examination. At his request, the materials objects were sent for chemical examination. P.W.12 conducted chemical examination and found that there was human blood on all the material objections, including M.Os.1 to 4. On completing the investigation, P.W.13 laid charge sheet.

3. Based on the above materials, the trial Court framed lone charge u/s 302 r/w 34 IPC against all the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 13 witnesses were examined and 23 documents were exhibited, besides 9 material objects.

4. Out of the said witnesses, P.Ws.1 to 4 are the eye witnesses to the occurrence, who have spoken about their presence and also the fact that they witnessed the entire occurrence. They have stated that all the four accused intercepted the deceased who was coming in the motor cycle and cut him indiscriminately with aruvals. P.W.1 has spoken about the complaint made by him. P.Ws.5 and 6 have spoken about the motive. P.W.7 has spoken about the preparation of the

Observation Mahazar and the Rough Sketch and also the recovery of blood stained earth and the motor cycle belonging to the deceased. P.W.8 has spoken about the arrest of all the four accused on 21.07.2009; disclosure statements made by them and consequentially, recovery of M.Os.1 to 4. P.W.9 is the Head Clerk who has stated that he took the dead body to the hospital and handed over the same to the Doctor for post-mortem. P.W.10 has spoken about the post-mortem conducted by him and his final opinion regarding the cause of death. P.W.11 has spoken about the registration of the case on the complaint of P.W.1. P.W.12 has spoken about the chemical examination conducted on the material objects. She has stated that there was human blood on all the material objects, including M.Os.1 to 4. P.W.13 has spoken about the investigation done and his Final Report.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor they did mark any documents in their favour. Their defence was a total denial.

6. Having considered all the above, the trial Court convicted all the four accused u/s 302 r/w 34 IPC. Aggrieved over the same, the accused/appellants are before this Court with this appeal.

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

8. The learned counsel for the appellants would submit that P.Ws.1 to 4 would not have witnessed the occurrence at all. They are either closely related to the deceased or highly interested in the affairs of the deceased and therefore, their evidences should be rejected. He would further submit that since it was very dark, none would have noticed the identity of the assailants. He has taken through the evidences of P.Ws.1 to 4 to substantiate his contention, that these four witnesses would not have seen the assailants at all, as they would not have been present. He would further submit that there is discrepancy in respect of the names of the accused in Ex.P1. Thus, according to the learned counsel for the appellants, the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellants are entitled to acquittal.

9. The learned Additional Public Prosecutor would however, oppose this appeal vehemently. According to him, though P.Ws.1 to 4 are either closely related or interested in the case of the

deceased, on that score, their evidences cannot be rejected. He would further submit that their presence has been clearly spoken by them and they have also vividly spoken about the entire occurrence. The medical evidence also duly corroborates the same. There is no delay in forwarding the FIR to the Court, which according to the learned Additional Public Prosecutor would further strengthen the case of the prosecution. He would further submit that recovery of M.Os.1 to 4 on the disclosure statement made by the accused would also go to strengthen the case of the prosecution. Thus, according to the learned Additional Public Prosecutor, the prosecution has proved the case beyond reasonable doubts.

10. We have considered the above submissions.

11. Admittedly, P.Ws.1 to 4 are either closely related or highly interested in the affairs of the deceased. On that score, we are of the view, that their evidences cannot be rejected. Prudence requires that their evidences require close scrutiny.

12. P.W.1 - the brother of the deceased has stated that he witnessed the occurrence. According to his evidence, he along with P.W.2 was going in his motor cycle and when they were nearing the place of occurrence, they found four people cutting another person. When he went near the exact place of occurrence, the assailants had already left. Thereafter only, he found that the victim was his brother, the deceased. Even during trial, he has not identified these accused as the assailants. He has only stated in general terms that there were four assailants and the deceased was his brother and that fact also he ascertained only on nearing the place where the deceased was lying. Thus, the evidence of P.W.1 does not incriminate any of these accused.

13. Had it been true that P.W.1 could have been in a position to notice the identifying features of the victim from the place where he saw the attack being made on him, certainly he would have stated that it was his brother Harikrishnan. But, his evidence is that, from a distance he found four assailants attacking another man. When he rushed to the place of occurrence, and only on reaching the place of occurrence, he found that the man who was cut was his brother. Thus, from the place where he claims to have witnessed the occurrence, he was not in a position to identify that it was his brother Harikrishnan, who was being cut. Similarly, from that place he would not have identified the assailants. That is how in the chief examination he has stated that only four people cut the deceased. He has not stated that those four people are the

accused. Thus, from the evidence of P.W.1, it is crystal clear that though from a distant place he was able to see that four people were cutting another man, he could not have noticed the identifying features of the assailants as well as the victim.

14. P.W.2 was with P.W.1 in the very same motor cycle. He has stated that the assailants were the accused and the victim was the brother of P.W.1. It is not as if P.W.2 had gone ahead of P.W.1, so that he could notice the identity of the assailants as that of the deceased. He was very much with P.W.1 and when it was not possible for P.W.1-the brother of the deceased to notice the identity of the assailants as well as the deceased from the place where they saw the attack being made, naturally, P.W.2 also would not have been in a position to notice the identifying features of the assailants as well as the victim. Thus, though P.W.2 has stated that the assailants were these four accused, we find it difficult to accept that part of the evidence of P.W.2. In the light of the evidence of P.W.1, we go to hold that P.W.2 would not have been in a position to notice the identifying features of the assailants as well as the deceased, because of the darkness. It is not as though there were lights, such as street lights anywhere near the place of occurrence.

15. Now P.W.3 claims to have seen the occurrence. He has stated that he was proceeding in a bicycle, whereas, the deceased was going far ahead of him in his motor cycle. At that time, when he was nearing the place of occurrence, he found these four accused suddenly emerged, intercepted the deceased and cut him indiscriminately. But, during cross examination he has stated that the deceased went ahead first and thereafter, P.Ws.1 and 2 were proceeding and far behind them, he was proceeding in his cycle. He has further stated that when he reached the place of occurrence, already P.Ws.1 and 2 had gone there and as a matter of fact, the motor cycle in which P.Ws.1 and 2 were travelling was found parked at the place of occurrence. This would indicate that P.W.3 would have gone to the place of occurrence after the time at which P.Ws.1 and 2 had reached the place of occurrence. When P.Ws.1 and 2 themselves could not notice the identity of the deceased and that of the assailants, certainly, P.W.3 also would not have been in a position to notice the identifying features of the assailants as well as the deceased. Therefore, it is too difficult to believe the evidence of P.W.3, who has stated that the assailants were these four accused.

16. Now turning to the evidence of P.W.4, he has stated that before the occurrence, he was passing through the place of occurrence and at that time four people were standing there. He

has not stated that those four people were these assailants. He has further stated that when he was returning via the place of occurrence, he witnessed the entire occurrence. According to him, he was present at the place of occurrence. Had it been true that he had arrived at the place of occurrence at that hour at the time of occurrence, certainly the same would not have been noticed by P.Ws.1 to 3. It is not in evidence that they found P.W.4 anywhere near the place of occurrence. It appears that P.W.4 has been planted as a witness belatedly. Had it been true that he was very near to the place of occurrence and witnessed the entire occurrence, P.Ws.1 to 3 would have reached the place of occurrence only after him, in which case, they would have noticed P.W.4. The very fact that the presence of P.W.4 has not been spoken by P.Ws.1 to 3 and nothing has been mentioned about his presence in Ex.P1, would clear the doubt of the presence of P.W.4 at the place of occurrence. Therefore, we find it difficult to accept the evidence of P.W.4.

17. Apart from the above, in the complaint, P.W.1 had mentioned the names of the assailants. He has not stated as to how he came to know about the names of the assailants. In chief examination itself when he was not able say about the names of the assailants, it is not known as to how he was able to mention the names of the assailants in the FIR. Very strangely, the names of the assailants have been mentioned in the FIR as Mathi, Gopi, Kumar and Joseph, all belonging to Ajantha Nagar. Now the name of the first accused has been mentioned as Joseph @ Ramanujam. Similarly, the name of the second accused has been mentioned as Mathi @ Adhimoolam. There is no evidence that the first accused had a name as Ramanujam and similarly, the second accused had a name as Adhimoolam. This also creates doubt in the case of the prosecution.

18. In view of the above position, we find that there are lot of doubts in the veracity of the evidences of P.Ws.1 to 4 and therefore, it would not be safe to rely on the evidences of P.Ws.1 to 4 and to sustain the conviction imposed on the appellants/accused. Therefore, we hold that the prosecution has not proved the case beyond reasonable doubts and therefore, the appellants are entitled to acquittal.

In the result, the appeal is allowed. The conviction and sentence imposed on the appellants by the trial Court are set aside and the appellants are acquitted of all the charges. The

fine amount, if any paid, by the appellants shall be returned to them.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

gms

To

1. The Inspector of Police
M.1, Perinaickenpalayam Police Station
Coimbatore District.
2. IV Additional District and Sessions Judge,
Coimbatore .
3. Do-Thro' The Principal Sessions Judge,
Coimbatore.
4. The Public Prosecutor
High Court, Chennai.
5. The Judicial Magistrate No.6, Coimbatore.
6. Do-Thro' The Chief Judicial Magistrate, Coimbatore.
7. The Superintendent, Central Prison, Coimbatore.
8. The Superintendent, Central Prison, Cuddalore.
9. The District Collector, Coimbatore.
10. The Director Ward of Police,
Mylapore, Chennai 4.

1 cc to Mr. Philip Ravindran Jesudoss, Advocate, sr.25944

ksj co
kra 03.05.2016

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