

BAIL SLIP

Gurunathan S/o.Karuppanathevar aged 64 years (A1) was released on bail vide order of this Court dated, 28.10.2015 in MP(MD)No.2 of 2015 in Crl A(MD)No.222/2015.

BAIL SLIP

Logandurai S/o.Velsamy aged 50 years (A2) was released on bail vide order of this court dated 23.09.2015 in MP(MD)No.1 of 2015 in Crl A(MD)No.222 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A[MD].Nos.222 of 2015 and 127 of 2016

Crl.A.(MD).No.222 of 2015:-

1.Gurunathan

2.Logandurai

: Appellants/A1 & A2

Vs.

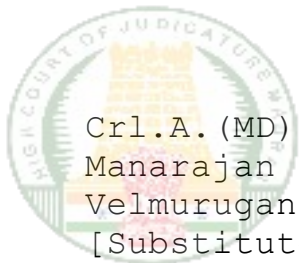
State Rep by
The Inspector of Police,
Chinnamannur Police Station,
Crime No.627 of 2008,
Theni District.

: Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction dated 28.04.2014 made in S.C.No.120 of 2010 on the file of the learned Sessions Judge, Mahalir Fast Track Court, Theni.

For Appellants : Mr.Gopala Krishna Lakshmana Raju
Senior Counsel
For Mr.R.Venkateswaran

For Respondent : Mr.C.Ramesh
Additional Public Prosecutor



Crl.A.(MD).No.127 of 2016:-

Manarajan [Died]

Velmurugan

[Substituted as per order of this Court dated 08.08.2016, made in Crl.MP.(MD)No.6435 of 2016]

: Appellant/Defacto Complainant

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Vs.

1.Gurunathan

2.Logandurai

3.Vijayaraj

4.State Rep by

The Inspector of Police,
Chinnamannur Police Station,
Crime No.627 of 2008,
Theni District.

:R1 to R3/A1 to A3

: Respondent No.4/Complainant

PRAYER: Appeal is filed under Section 372 of the Code of Criminal Procedure to call for the records of the learned Sessions Judge, Mahila Court, Theni in S.C.No.120 of 2010 and to enhance the conviction and inadequate sentence order dated 28.04.2014 with regard to A1 and A2 and set aside the acquittal rendered in favour of the third accused.

For Appellant : Mr.N.Ananthapadmanabhan

For Respondent No.1 : Mr.J.Sulthan Basha

For M/s.Ajmal Associates

For Respondent Nos.2&3: Mr.Gopala Krishna Lakshmana Raju
Senior Counsel

For Mr.R.Venkateswaran

For Respondent No.4 : Mr.C.Ramesh

Additional Public Prosecutor

COMMON JUDGMENT

[JUDGMENT of the Court was delivered by S.NAGAMUTHU, J]

The appellants in Crl.A.(MD).No.222 of 2015 are the accused Nos.1 and 2 in S.C.No.120 of 2010, on the file of the learned Sessions Judge, Mahalir Fast Track Court, Theni. There was yet another accused, by name, Mr.Vijayaraj. The Trial Court framed as many as three charges against the accused, as detailed below.

Charge	Accused	Penal Provisions
1	1,2 & 3	Section 120-B IPC
2	1 & 2	Section 302 IPC
3	3	Section 302 r/w 109 IPC

2. By Judgment dated 28.04.2014, the Trial Court acquitted the third accused from all the charges and also acquitted the accused

Nos.1 and 2 from the charge under Section 120(B) of the Indian Penal Code. However, the Trial Court convicted the accused Nos.1 and 2 and sentenced them, as detailed below:-

Section of Law	Sentence	Fine amount
302	To undergo imprisonment for life.	Rs.1,000/- each in default to undergo rigorous imprisonment for six months.

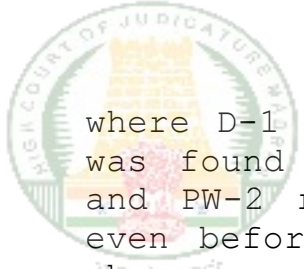
Challenging the said conviction and sentence, the appellants have come up with Criminal Appeal (MD).No.222 of 2015. Challenging the acquittal of the third accused under Section 302 r/w Section 109 of the Indian Penal Code and the accused Nos.1 and 2 from the charge under Section 120(B) of the Indian Penal Code, the *de facto* complainant [PW-1] has come up with Crl.A.(MD).No.127 of 2016.

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

There are two deceased in this case, by name, Mr.Vellivelthevar, [hereinafter referred to as "D-1"] and Mrs.Saraswathi [hereinafter referred to as "D-2"]. D-1 and D-2 were husband and wife respectively. They were residing at Uthupatti Village in Theni District. They were agriculturists by profession. All the three accused also belong to the same village. There was a long standing enmity between the family of the accused and the deceased. This is stated to be the motive for the occurrence.

3.1. PW-1 - Mr.Manarajan is the brother of D-2. He was residing at Chinna Ovalapuram Village. The deceased had agricultural land near Periyakulam at Uthupatti. The first accused had his land just adjacent to the said land belonging to the deceased. There was a dispute between these two family members in respect the boundary between these two lands. On 15.09.2008, according to the case of the prosecution, D-2 - Mrs.Saraswathi informed PW-1 that she was going to plant coconut saplings in the above said land belonging to her and D-1. For the said purpose, she wanted PW-1 to engage a labourer. PW-1, in turn, went to Chinnaovalapuram Village and engaged PW-2 - Mr.Eswaran for the said purpose. PW-1, in fact, met him on 16.09.2008, early in the morning near the Coffee Shop of one Mr.Mokkai. Since PW-2 agreed to come for work, PW-1 came to his house in his motorcycle, picked up PW-2 and proceeded towards the field of D-1 and D-2 at Chinnamanur Village to drop PW-2 for planting coconut saplings.

3.2. PW-1 drove the motorcycle and PW-2 was travelling as a pillion rider. Around 07.00 AM, they were nearing the field of D-1 and D-2. At that time, they found D-1 standing by the side of the disputed ridge between the land of D-1 and the first accused. D-2 was working in the field. PW-1 and PW-2 heard that there was a wordy quarrel between the first accused and D-1 near the ridge. This they heard from a distance of 300 feet away from the place,



where D-1 and the first accused were standing. The second accused was found standing somewhere near the place of occurrence. PW-1 and PW-2 rushed in the motorcycle towards the said place. But, even before they could reach the said place, the first accused, who was armed with an iron rod, attacked D-1 on his head with the said iron rod. Then, he attacked D-1 with the same iron rod on his back, the face and other parts of the body. D-1 fell down. D-2 rushed towards the said place in an attempt to rescue D-1. She shouted at the accused Nos.1 and 2. The second accused was armed with an aruval, who, according to the case of the prosecution, attacked D-2 on her head with the blunt portion of the aruval. She also fell down. PW-1 and PW-2 rushed towards them. The accused Nos.1 and 2 ran away from the scene of occurrence. It needs to be mentioned that the third accused was nowhere present at the place of occurrence.

3.3. It is the further case of the prosecution that PW-1 and PW-2 found D-1 lying dead in a pool of blood, succumbing to the injuries. D-2 was struggling for life and she was in a serious condition. PW-1 wanted PW-2 to go to the nearby village in the motorcycle to pick up an Ambulance. PW-2 told him that he did not know to drive motorcycle. Therefore, leaving PW-2 at the same place, it is the further case of the prosecution, that PW-1 came to the Chinnamanur Village, which is a nearby small town. When he went to the hospital in search of Ambulance, he was informed that the Ambulance was not available.

3.4. Therefore, PW-1, immediately, called PW-4, the daughter of the deceased over phone and informed about the occurrence. PW-4, in turn, told PW-1 to inform the other relatives and then go to the Police Station to make a complaint. PW-1, then, tried to contact the two sons of the deceased, who were working as Police Constables in two different Police Stations. But, unfortunately, he could not contact them, because the telephone in the public booth also did not function. Therefore, he went in search of the sons of the deceased. Finally, he managed to contact the sons of the deceased and informed them. Thereafter, according to him, he went to the Chinnamanur Police Station, where, according to PW-1, there was only a Constable on para duty in the Police Station and there was no responsible officer available. The Constable on para duty refused to take the complaint and he wanted PW-1 to draft a complaint and to come with the same. According to PW-1, he went to a nearby Petition Writer. He was also not available. He waited for him. After he arrived, he dictated the complaint, which was reduced into writing by the Petition Writer, which, he ultimately presented to the Sub-Inspector of Police, at Chinnamanur Police Station at 11.00 AM.

<https://hcservices.squidfs.gov.in/hcservices> Receipt of the said complaint, the then Sub-Inspector of Police registered a case in Crime No.627 of 2008, under Sections 302, 307 and 109 of the Indian Penal Code. EX-P1 is the



complaint and EX-P8 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

3.6. Now, reverting back to the place of occurrence, PW-2 claims that he was sitting by the side of D-1 and D-2, waiting for someone to arrive. Finally, PW-4 and the other relatives of the deceased came to the place of occurrence. PW-4, the daughter of the deceased, took D-2 to K.Vilakku Hospital. The doctor in the said hospital wanted PW-4 to immediately rush her to the Hospital at Madurai. Therefore, PW-4 rushed D-2 to the Apollo Hospital at Madurai. D-2, underwent treatment from 16.09.2008, at the Apollo Hospital and she succumbed to the injuries, on 21.09.2008.

3.7. PW-26, the then Inspector of Police, Veda sandhur Police Station, took up the case for investigation. He proceeded to the place of occurrence at 12.15 PM, on 16.09.2008 and prepared an Observation Mahazer [EX-P4] and a Rough Sketch [EX-P19], showing the place of occurrence in the presence of the witnesses. He recovered bloodstained earth and sample earth from the place of occurrence and also a specs belonging to D-1 and a pair of chappels, which were lying at the place of occurrence. Then, he conducted inquest on the body of D-1 in the presence of the Panchayatars and forwarded the dead body of D-1 for postmortem.

3.8. PW-24 - Dr. R.Thiagarajan conducted autopsy on the body of D-1, at 04.10 PM, on 16.09.2008. EX-P14 is the postmortem certificate. He noticed the following injuries:-

"External Injuries:

- 1.A lacerated wound extending from the frontal area to parietal area in the midline of skull. 8 x 1 x 2cm bone depth.
- 2.A Contusion present in the right thigh.
- 3.A contusion in the right shoulder 6 x 2 cms.
- 4.A contusion present in the back of neck. Contusion below the eye right. Bleeding from both nostrils".

He gave opinion that D-1 would appear to have died of shock and hemorrhage due to multiple injuries found on the body of D-1. He further opined that the said injuries could have been caused by a weapon, like iron rod.

3.9. PW-26 recovered the bloodstained cloth found on the body of D-1. On the same day, at 07.00 PM, PW-26 arrested the first accused in the presence of PW-1 and another witness. On such arrest, he gave a voluntary confession, in which he disclosed the place, where he had hidden the iron rod. In pursuance of the same, the first accused took the police and the witnesses to the hide out and produced the iron rod. PW-26 recovered the same under a
<https://hcrs.cse.go.in/hcrs/revs/revs.html> presence of the same witnesses. He examined few more witnesses, including one Mr.Palanivelu, driver of JCB Machine, who had been engaged by the deceased for making pits for



planting coconut saplings. At the request of PW-26, the statements of witnesses [PW-1 to PW-4 and few others] were recorded by the learned Judicial Magistrate.

3.10. After the demise of D-2 at the hospital, on 21.09.2008, PW-26 went to the hospital, conducted inquest on the body of D-2, examined few more witnesses and recorded their statements. During the course of investigation, according to PW-26, since it came to light that the first accused had committed the above crime, on the instigation made by the third accused, he altered the case into one under Sections 302 IPC [Two Counts] and 109 of the Indian Penal Code. Then, he forwarded the dead body of D-2 to the hospital for postmortem.

3.11. PW-25 - Dr. G.Natarajan conducted autopsy on the body of D-2, at 11.00 PM, on 21.09.2008. EX-P15 is the postmortem certificate. He noticed the following injuries:-

"1. A sutures lacerated antero posteriorly placed injury 7 cms x 1 cm x bone deep noted over right mid parietal region.

2. A curvi linear sutured surgical wound 30 cms x 1 cm x bone deep noted over left fronto temporo parietal region.

On dissection of scalp, skull & dura:

Contusion of scalp 20 x 12 cms noted over right fronto parietal region. A stellate fracture of skull bone over an area of 8 x 6 cms noted over right mid parieto right temporal region. Piece of Skull bone 11 x 10 cms in size found surgically removed in the left temporo parietal region. Evidence of burrholes noted over the corners of the removed body area. The underlying dura found surgically cut and sutured. Subdural haematoma 5 cms x 4 cms x 1 cm noted over left temporo parietal region. Cerebrospinal fluid increased in volume and blood stained. Cut section of brain congested and oedematous".

He gave opinion that the single external injury found on the body of D-2 and the corresponding internal injury could have been caused by a blow with the blunt side of aruval. He further opined that the death of the deceased was due to the said injuries found on the body of D-2.

3.12. PW-26 recovered the medical records pertaining to the treatment given to D-2 in the Apollo Hospital and the postmortem certificate. At his request, many more witnesses were examined by the jurisdictional Magistrate under Section 164 of the Code of Criminal Procedure. On completing the investigation, on 28.09.2008, he laid charge sheet against the first accused under Sections 448 and 302 Indian Penal Code [two counts] and the third accused under Section 109 r/w Section 302 of the Indian Penal



Code, however, he omitted the second accused.

3.13. According to the further case of the prosecution, on a representation made by PW-4 to the Superintendent of Police, by order dated 03.07.2009, under letter No.C2/16817/09, the Superintendent of Police ordered for further investigation in the case, as provided in Section 173(8) of the Code of Criminal Procedure. The Superintendent of Police had further directed one Mr.Ramathan, the then Inspector of Police, to hold further investigation in the case. But, Mr.Ramathan did not commence further investigation, as he was transferred within a short time. Therefore, the further investigation was ordered to be done by PW-29. Accordingly, PW-29, on 01.02.2010, took up the case for further investigation. He examined all the witnesses, examined by PW-26 and recorded their statements. Since the investigation done by PW-26 was ineffective, inasmuch as the omission of the second accused from the case was contrary to the facts, he laid final report against all the three accused, on 25.03.2010. According to him, the first accused attacked D-1 with iron rod and the second accused attacked D-2 with the blunt side of aruval and both the accused had done so, on the instigation made by the third accused.

3.14. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, on the side of the prosecution, 29 witnesses were examined, 27 documents and six material objects were marked. Out of the said 29 witnesses, PW-1 and PW-2 claim to have witnessed the entire occurrence. They have stated that when they went near the place of occurrence in the motorcycle, they found the first accused attacking D-1 with iron rod on his head, backside and other parts of the body. When D-2 intercepted, the second accused attacked her with the blunt side of the aruval. PW-1 has further narrated as to how he went to the Police Station. [This has been already narrated by us in the earlier paragraph of this Judgment].

3.15. PW-3 is the son of D-1 and D-2. During the relevant point of time, he was working as a Head Constable at K.K.Patti Police Station in Theni District. According to him, his brother, by name, Mr.Jeyabalan was also working as Head Constable at Veerapandi Police Station. He has spoken about the boundary dispute between the third accused and D-1. He has further stated that the third accused was threatening D-1 and D-2 of dire consequences. In this regard, D-1 and D-2 had given complaints to the Chinnamanur Police Station against the third accused on 28.01.2001, 19.01.2002, 10.02.2002 and 12.10.2004. He has further stated that on the day of occurrence, he had heard about the occurrence from PW-1. He had found fault with the investigation done by PW-26.

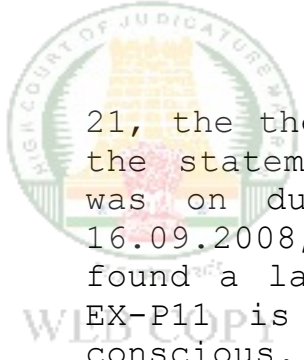


3.16. PW-4, the daughter of the deceased, has stated that when she was at her house, PW-1 informed her over phone about the occurrence and she went along with her husband to the place of occurrence and took D-2 to the hospital in the Ambulance. She has further stated that the investigation was not done properly by PW-26. She has also stated about the representations made by her to the Superintendent of Police. PW-5 has turned hostile and he has not supported the case of the prosecution in any manner. PW-6, a villager, has spoken about the long standing dispute between the accused and D-1. PW-7 has spoken about the photographs taken by him, as requested by PW-26. PW-8 has stated that at 08.00 AM, on 16.09.2008, he received a phone call, requesting him to rush to the place of occurrence in his Ambulance. He was the Ambulance Driver. He has stated that he rushed to the place of occurrence and took D-2 to the Theni Medical College Hospital and admitted her.

3.17. PW-9, who was expected to speak about the preparation of the Observation Mahazer, has only partly stated about the same. PW-10 has spoken about the preparation of Observation Mahazer and the Rough Sketch and the recovery of material objects from the place of occurrence. According to him, the Observation Mahazer and the Rough Sketch were prepared, when D-2 was still lying at the place of occurrence. PW-11 has spoken about the arrest of the first accused and the consequential recovery of MO-1 on his disclosure statement. PW-12, a Head Constable, has stated that on 18.09.2008, he went to the Apollo Hospital to examine D-2. Since she was unconscious, he could not record her statement. PW-13, yet another Head Constable, has stated that he handed over the dead body of D-1 to the hospital for postmortem, as directed by PW-26.

3.18. PW-14, yet another Head Constable, has stated that he handed over the dead body of D-2 to the hospital for postmortem, as directed by PW-26. PW-15, yet another Head Constable, has stated that he handed over the complaint and the First Information Report to the Court, at 12.30 PM, on 16.09.2008, as directed by PW-26. PW-16 has spoken about the registration of the case, on the complaint made by PW-1. PW-17 has stated that he carried the dead body of D-1 from the place of occurrence to the hospital in his auto, as requested by the police. PW-18 has turned hostile and he has not supported the case of the prosecution in any manner. PW-19, a Head Clerk of the Jurisdictional Magistrate Court, has stated that he forwarded the material objects to the lab for chemical examination, as directed by the learned Judicial Magistrate. According to the report, there were human bloodstains on all the material objects, including the iron rod.

<https://hcservices.equiss.gov.in/Pw-26s/>, the then Judicial Magistrate, Lalgudi, has stated that he recorded the statements of few more witnesses under Section 164 of the Code of Criminal Procedure, on 13.02.2009. PW-

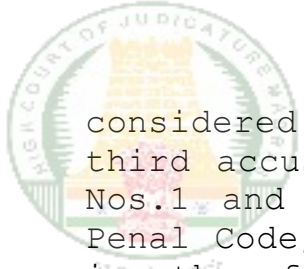


21, the then Judicial Magistrate, has stated that he also recorded the statements of few witnesses. PW-22 has stated that while he was on duty at Theni Government Medical College Hospital, on 16.09.2008, D-2 was brought to the said hospital for treatment. He found a lacerated injury measuring 5 X 3 CM on the head of D-2. EX-P11 is the Accident Register. At that time, D-2 was semi-conscious. PW-23, a Scientific Expert from Forensic Lab, has stated that he analysed the material objects and found human bloodstains on all the material objects, including the Iron Rod.

3.20. PW-24, Dr.N.R.T.Rajkumar, has spoken about the autopsy conducted by him on the body of D-1 and his final opinion regarding the cause of death. PW-25 has spoken about the autopsy conducted by him on the body of D-2 and his final opinion regarding the cause of death. PW-26 has spoken about the investigation conducted by him and the filing of final report. According to him, the investigation revealed that the second accused did not participate in the occurrence at all. Therefore, he laid charge sheet against the accused Nos.1 and 3 alone, on 28.02.2009. He has further stated that he omitted the second accused in the final report, since the second accused did not involve in the said occurrence. PW-27, a resident of Markaiyankottai Village, has stated that on the confession made by the second accused, MO-2 was recovered from the place of hide out. PW-28 has turned hostile and he has not supported the case of the prosecution in any manner. PW-29 has spoken about the further investigation conducted by him and the filing of additional final report. He has further stated that the omission of the second accused in the charge sheet filed by PW-26 was contrary to the facts. According to him, the second accused was also involved in the occurrence and therefore, he laid additional final report against all the three accused.

3.21. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied the same as false. However, they did not choose to examine. On their side, two witnesses were examined as DW-1 and DW-2. DW-1 is the uncle of the second accused. According to him, on 16.09.2008, from 05.00 AM, the second accused was at his house, participating in the last rites of the wife of DW-1. After participating in the religious ceremony till 05.00 PM, he went away. Thus, according to him, from 05.00 AM to 05.00 PM, on 16.09.2008, the second accused was at the house of DW-1, participating in the religious ceremony. Thus, the defence of the second accused was *alibi*.

3.22. DW-2 is a close relative of the second accused. He has stated that he participated in the religious ceremonies, which were held at the house of DW-1 on 16.09.2008, in which the second accused participated from morning to evening. Thus, the defence of the accused was a total denial. The second accused has pleaded *alibi* also. Having

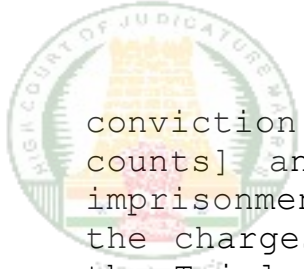


considered all the above materials, the Trial Court acquitted the third accused from all the charges and also acquitted the accused Nos.1 and 2 from the charge under Section 120(B) of the Indian Penal Code, however, convicted the appellants 1 and 2, as detailed in the first paragraph of this Judgment and punished them accordingly. That is how, the appellants/accused Nos.1 and 2 are now before this Court with this Criminal Appeal (MD).No.222 of 2015. Challenging the acquittal of the third accused from all the charges and also the acquittal of the accused Nos.1 and 2 from the charge under Section 120(B) of the Indian Penal Code, the *de facto* complainant/PW-1 has come up with CrI.A.(MD).No.127 of 2016.

4. We have heard the learned Senior Counsel appearing for the appellants, the learned counsel appearing for the *de facto* complainant, the learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

5. Before going into the rival contentions raised by the parties, we would like to express our anguish and displeasure in respect of the charges framed in this case by the Trial Court. Time and again, the Hon'ble Supreme Court as well as this Court have been impressing upon the Trial Courts that the framing of charges is a serious judicial function. Since the accused are put on notice by appropriate charges, so that they could have an effective defence, if any, and since such notice to the accused forms part of fair trial, as guaranteed under Article 21 of the Constitution of India and since the accused are answerable only to the said charges and they cannot be convicted for want of appropriate charges, the Court should bestow its best attention to frame necessary charges by going through the entire records.

6. But, in this case, we find that the Trial Court was so callous and indifferent in discharging its serious judicial function of framing charges. According to the prosecution, as we have already pointed out, the accused Nos.1 and 2 were present together at the place of occurrence, armed with weapons and in the course of one and the same transaction, the first accused attacked D-1 with iron rod and caused his death and the second accused attacked D-2 with the blunt side of the aruval and caused her death. But, the Trial Court has not framed charge by invoking Section 34 of the Indian Penal Code and instead, the Trial Court framed charge against the first accused for offence under Section 302 of the Indian Penal Code for murdering D-1 and against the second accused under Section 302 of the Indian Penal Code for murdering D-2 and eventually, the Trial Court convicted the first accused under Section 302 of the Indian Penal Code for single count and the second accused also for the offence under Section 302 of the Indian Penal Code for single count. Had there been appropriate charges framed invoking Section 34 of the Indian Penal Code against both the accused under Section 302 r/w 34 of the Indian Penal Code for two counts, there should have been

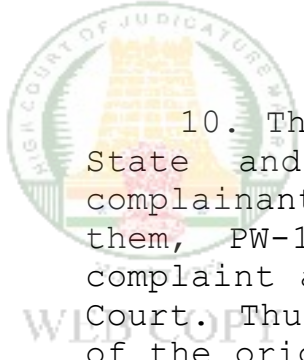


conviction under Section 302 r/w 34 of the Indian Penal Code [two counts] and the accused should have been sentenced to undergo imprisonment for life for two counts, besides fine, if any. Since the charges were not properly framed and in a mechanical fashion, the Trial Court had convicted both the accused and sentenced them only for single count, under Section 302 of the Indian Penal Code, in our considered view, this amounts to glaring miscarriage of justice. We do not want to make any more adverse comments about the manner in which the Trial Court had framed the charges.

7. Now, turning to the contentions raised on either side, the alleged occurrence, in this case, was at 07.00 AM, on 16.09.2008. The occurrence had taken place not anywhere near the houses of the prosecution witnesses, but, took place at a far off place in the midst of the fields. There is no controversy that there was a long standing enmity between the accused party and the deceased in respect of the boundary. Actually, from the presence of bloodstains at the place, where the dead body D-1 was lying, it has been clearly established that the occurrence had taken place just by the side of ridge lying on the boundary, over which there was a dispute between them. It is also in evidence that prior to the occurrence, there were a number of complaints and counter complaints made against each party in respect of the same. Thus, the prosecution has clearly established that there was a long standing enmity between these two families and thus, the prosecution has proved the motive.

8. Now, turning to the actual occurrence, for the alleged occurrence, which had taken place at 07.00 AM, on 16.09.2008, the complaint was made to the police only at 11.00 AM by PW-1. The distance between the Police Station and the place of occurrence is hardly five kilometres. The learned Senior Counsel for the appellants would submit that this enormous delay in preferring the complaint by PW-1 has not been explained away at all. He would further submit that the First Information Report had reached the hands of the learned Judicial Magistrate only at 12.30 PM, for which also there is no explanation.

9. The learned Senior Counsel for the appellants would further submit that PW-1 and PW-2 would not have witnessed the occurrence at all. It is the case of the accused that some unidentifiable persons would have attacked D-1 and D-2 and the same was not witnessed by anyone. After coming to know that D-1 died of injuries and D-2 was struggling for life, D-2 was taken by PW-4 to the hospital and thereafter, according to the learned Senior Counsel, as an afterthought, the complaint was made against all the three accused, on the instigation made by the sons of the deceased, who were then working as Head Constables in two Police Stations.



10. The learned Additional Public Prosecutor appearing for the State and the learned counsel appearing for the *de facto* complainant would vehemently oppose this argument. According to them, PW-1 has stated the cause for the delay in making the complaint and there is no delay in forwarding the complaint to the Court. Thus, according to them, there can be no doubt in respect of the origin of EX-P1.

11. In this regard, we may refer to the evidence of PW-10. PW-10 is a resident of Uthupatti Village. He has been examined to speak about the preparation of Observation Mahazer and the Rough Sketch. According to him, along with PW-9, he went to the place of occurrence, where he found D-1 lying dead and D-2 was lying at the place of occurrence struggling for life. He has further stated that at that time, the Inspector of Police - Mr.Nallu, [PW-26] was seen and at that time, he prepared the Observation Mahazer and the Rough Sketch. Thus, it is the definite evidence of PW-10 that even before D-2 was taken to the hospital, PW-26 had arrived at the scene of occurrence and he commenced the investigation. This witness has not been treated as hostile.

12. Absolutely, there is no other explanation in respect of his evidence that when D-2 was still lying at the place of occurrence, the Inspector of Police had arrived at the scene of occurrence. If this part of the evidence of PW-10 is accepted, then, as a corollary, it has to be held that there was some other information to the police before EX-P1, which had brought PW-26 to the place of occurrence, when D-2 was still lying at the place of occurrence. PW-1 has stated that after the occurrence, he wanted PW-2 to go in the motorcycle and pick up an Ambulance. PW-2 has stated that he did not know to drive the motorcycle. Therefore, according to him, he went in his motorcycle to the nearby place to pick up the Ambulance. His explanation was that no Ambulance was available. Therefore, he informed PW-4 over phone about the occurrence. Then, PW-4 wanted him to inform the sons of the deceased and the other relatives. PW-1, then, tried to contact the sons of the deceased, who were working as Head Constables, over phone. The telephone in the public booth did not function. Therefore, he went in search of the sons of the deceased. Finally, he found them and informed about the occurrence. Then, he went to the Police Station, where except a Head Constable, there was nobody in the Police Station. According to him, he refused to receive the oral complaint. Therefore, according to PW-1, he went in search of a Petition Writer. The Petition Writer was also not available. Therefore, he was waiting for the Petition Writer. Then, the Petition Writer came. Thereafter, PW-1 dictated the complaint, which was reduced into writing by the Petition Writer and thereafter, he made the complaint at 11.30 AM. Thus, the explanation offered by PW-1 was that at every stage, whatever he wanted to have failed. This is highly artificial. The explanation offered by him is like a story, out of imagination. Therefore,

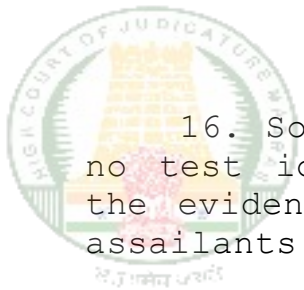


this explanation cannot be accepted at all. At the time when the complaint was made, the sons of the deceased, who were working as Head Constables in two different Police Stations, had arrived at the scene of occurrence. Even according to PW-1, the third accused was not even found anywhere near the place of occurrence. But, in the complaint, he has made allegations against the third accused also and then, in the First Information Report, the third accused was named as an accused. There is no explanation as to why and how PW-1 implicated the third accused as an accused in EX-P1. This would eventually go to show that on the instigation made by the sons of the deceased, who were Head Constables, the third accused has also been included in EX-P1 as an accused. That is how, there had occurred enormous delay in making the complaint.

13. As we have already pointed out, the explanation offered by PW-1 is unreasonable and not plausible. For these reasons, we hold that there is every doubt in the origin of EX-P1. In a case of this nature, where the witnesses are enimical and also they claimed to have been present at the place of occurrence, by chance and there is inordinate and unexplained delay in making the complaint, the case of the prosecution needs to be doubted. In this regard, we may refer to the Judgment of the Hon'ble Supreme Court in Thulia Kali Vs. State of Tamil Nadu, reported in AIR 1973 SC 501 : 1972 SCR (3) 622, wherein the Hon'ble Supreme Court has held that if the delay is abnormal and the same remains unexplained by the prosecution, it would create doubt about the time at which the First Information Report had come into being.

14. Now, turning to the actual occurrence, according to the learned counsel, PW-1 and PW-2 would not have witnessed the occurrence at all. They claimed to have been present at the place of occurrence by chance. We are conscious of the legal position that simply because the witnesses were present at the place of occurrence by chance, their evidences cannot be outright rejected. Prudence requires that their evidences should be scrutinized closely.

15. In the instant case, applying the said yardstick, let us now analyze the evidence of PW-2, at first. PW-2, during cross-examination, has admitted that prior to the occurrence, he had no acquaintance with the accused Nos.1 to 3. He has further admitted that he did not see these three accused prior to the occurrence and he was not aware of the names of these three accused. But, in Court, he has identified all the three accused. There was no test identification parade held at all. According to the case of the prosecution, the third accused was not found anywhere near the place of occurrence. When that be so, it is not known as to how PW-2 could identify the third accused in Court as an assailant, there is no explanation at all.



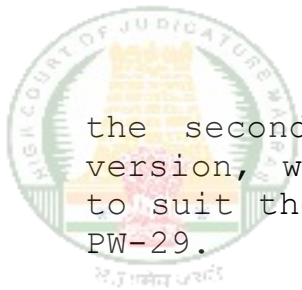
16. So far as the accused Nos.1 and 2 are concerned, there was no test identification parade held to identify them. Therefore, the evidence of PW-2 identifying the accused Nos.1 and 2 as the assailants is difficult to be accepted.

17. The learned counsel for the appellants would submit that even according to the case of the prosecution, one Mr.Palanivelu, who was driving the JCB Machine at the place of occurrence and making pits for planting coconut saplings has not been examined. In this regard, in our considered view, the non-examination of Mr.Palanivelu as an independent witness is also a fatal to the case of the prosecution.

18. Now, turning to the attack made on D-2, the earliest version of PW-1 and PW-2, during the investigation, was that the second accused cut D-2 with the sharp edged portion of aruval. However, later on, they have changed their version and they have stated that the second accused attacked D-2 with the blunt portion of aruval. It is quite obvious that the injuries found on D-2 was a blunt injury, which would not have been caused by a cut with the sharp edged portion of aruval. In order to make their evidences believable and to make it to fit in with the medical evidence, the prosecution has managed to change the version and that is how, PW-1 and PW-2 have stated, in their evidence, that the second accused attacked D-2 with the blunt portion of aruval.

19. PW-26, who investigated the case initially, laid charge sheet reporting that the second accused did not participate in the occurrence at all. But, the Superintendent of Police had ordered for further investigation, as provided in Section 173(8) of the Code of Criminal Procedure, after PW-26 had laid charge sheet. That is how, PW-29 took up the case for further investigation. But, unfortunately, the representation made by PW-4 to the Superintendent of Police has not been marked in evidence. Had it been produced before the Court, the contents of the said representation could have been used by the accused to contradict PW-4, if there had been anything in their favour. It is not explained to the Court as to why such a vital document, which gave rise to further investigation, was not proved in evidence. Neither the order passed by the Superintendent of Police has been proved in evidence. It is also not explained to the Court as to why the same has been suppressed. If the said order had been produced and proved in evidence, the contents of the same would have disclosed the reasons as to why further investigation was ordered.

20. PW-29, who conducted further investigation, had filed an additional final report alleging that the second accused also participated in the occurrence. It was only during the further investigation made by PW-29, a new version was introduced that D-2 was attacked by the second accused with a blunt portion of aruval, whereas, according to PW-26, who investigated the case initially,



the second accused did not attack D-2 at all. This change in version, which is so obvious, as we have already pointed out, is to suit the medical evidence. This has been the innovation made by PW-29.

21. Now, there are two reports, out of the investigation done by two different police officers. PW-26 has stated that the second accused did not participate in the occurrence, whereas PW-29 has stated that the second accused also participated in the occurrence. Thus, now, there are two versions, Which out of the said versions is true, is a matter to be proved by the prosecution. Unless it is proved that the conclusion arrived at by PW-26 is contrary to the facts and unless it is proved that the conclusion arrived at by PW-29 reflects the true version, it is difficult for this Court either to accept the theory projected by PW-26 or by PW-29, as between these two versions, there is a major contradiction.

22. Coupled with the contradictions between the medical evidence and the eye-witness account, the unexplained delay in preferring the complaint, forwarding the complaint and the First Information Report to the Court, the fact that the original information, which brought PW-26 to the place of occurrence, when D-2 was struggling for life at the place of occurrence, was suppressed, the very fact that the sons of D-1 and D-2 were then working as Head Constables in the nearby Police Stations and on information, they had come to the Police Station and only after consulting them, EX-P1 had been preferred and the very fact that the third accused had been arrayed as an accused in the First Information Report, though he was not present at the place of occurrence, would all go to show that the prosecution has not come forward with the true version of the occurrence. At every stage, there is a concoction. From the facts narrated above, it is inferable that who attacked the deceased and how they were attacked would not have been witnessed by anyone. Somebody would have noticed D-1 and D-2 lying in the field and thereafter only, D-2 had been taken to the hospital. Because there was a strong motive between these two family members and on account of the same, there were complaints and counter complaints made to the police, a story has been cooked up by the prosecution as though PW-1 and PW-2 had witnessed the occurrence.

23. For the reasons stated above, we are unable to accept the case of the prosecution to convict any of the accused. In our considered view, all the three accused are entitled for acquittal.

24. In the result, CrI.A.(MD).No.222 of 2015 filed by the appellants/accused Nos.1 and 2 is allowed; the conviction and sentence imposed on the appellants/accused Nos.1 and 2, by Judgment dated 28.04.2014, made in S.C.No.120 of 2010, on the file of the learned Sessions Judge, Mahalir Fast Track Court, Theni, is



set aside and the appellants/accused Nos.1 and 2 are acquitted. Fine amount, if any, paid by them shall be refunded to them. Bail bond executed by the appellants and the sureties shall stand terminated. Crl.A.(MD).No.127 of 2016 filed by the *de facto* complainant/PW-1 is dismissed.

WEB COPY

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

- 1.The Sessions Judge,
Mahalir Fast Track Court,Theni.
- 2.The Judicial Magistrate,
Uthamapalayam.
- 3.Do Through The Chief Judicial Magistrate,
Theni District.
- 4.The District Collector,Theni.
- 5.The Director General of Police,
Mylapore, Chennai-4.
- 6.The Inspector of Police,
Chinnamannur Police Station,
Theni District.
- 7.The Superintendent of prison,
Central Prison, Madurai.
- 8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy To

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.Ajmal Associates, Sr.No.63793

COMMON JUDGMENT MADE IN

CRL.A[MD].Nos.222 of 2015 and 127 of 2016

25.10.2016