



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2016

CORAM

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THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal (MD) No.267 of 2015

M.Krishnan

[Father of the deceased]

... Appellant

-Versus-

1. Parameswaran [A1]

2. Saraswathi [A2]

3. The Inspector of Police,
Pasupathipalayam Police Station,
Karur,
Karur District.

[Crime No.75 of 2012] [Complainant]

... Respondents

Criminal Appeal filed under Section 372 of Cr.P.C against the judgement of acquittal passed by the learned Sessions Judge, Karur, Karur District, in S.C.No.36 of 2013 dated 05.09.2013.

For Appellant : Mr.D.Selvaraj

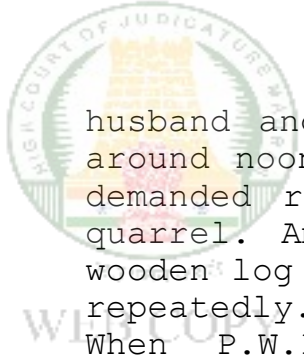
For Respondents : Mr.S.Gokularaj for R1 & R2
Mr.K.S.Duraipandian, APP for R3

JUDGEMENT

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

This is an appeal against acquittal. The respondents 1 and 2 herein are Accused Nos.1 and 2 respectively in S.C.No. 36 of 2013 on the file of the learned Sessions Judge, Karur, Karur District. A1 stood charged for offences under Sections 302 and 324 of IPC and A2 stood charged for offence under Section 302 of IPC. The trial court, by judgement dated 05.09.2013 acquitted both the accused. Aggrieved by the same, the father of the deceased has come up with this criminal appeal.

<https://hcservices.courts.gov.in/hcservices/> **The case of the prosecution in brief is as follows:-** The deceased in this case was one Mr.Palanisamy. Previously there was money transaction between him and the accused. These accused are



husband and wife respectively. On 05.02.2012, it is alleged that around noon, the deceased had went to the house of the accused and demanded repayment of money borrowed by A1. This resulted in a quarrel. Amidst quarrel, A2 went into her house, returned with a wooden log and broomstick. She attacked the deceased with broomstick repeatedly. A1 attacked the deceased with aruval on his right hand. When P.W.1 tried to intervene, he also sustained injuries. Thereafter, A1 and A2 fled away from the scene of occurrence.

3. It is further alleged that P.W.1 and the deceased were immediately taken to the Government Hospital at Karur at 02.30 p.m. on 05.02.2012 P.W.9, Dr.Jayalakshmi, examined P.W.1 and found the following injuries (1) a lacerated injury measuring 5 x 2 x 0.5 cm on the left palm; (2) an abrasion measuring 4 x 2 x 0.5 cm on the left hand; and (3) complained of pain on the back. He admitted him as inpatient. But, P.W.1 left the hospital without even informing him. Ex.P.6 is the Accident Register. On the same day at 02.30 p.m. he examined the deceased the deceased and found the following injuries:-

- (1) Abrasion 5 x 3 x 0.5 cm on right forearm
- (2) Swelling and pain near left scapula
- (3) Chest pain

He told the doctor that he was attacked by three known persons with wooden log and aruval. He admitted him as inpatient in the hospital.

4. When P.Ws.1 and 2 were in the hospital, on receiving the intimation from the hospital, P.W.13, the then Sub Inspector of Police went to the hospital and recorded the statement of P.W.1 at 04.00 p.m. on 05.02.2012 and on returning to the police station at 05.00 p.m. he registered a case in Crime No.75 of 2012 under Sections 323, 324 and 302 of IPC. The deceased had succumbed to the injuries before the complaint was recorded by P.W.13. Ex.P.1 is the complaint and Ex.P.10 is the FIR. He forwarded both the complaint (Ex.P.1) and the FIR (Ex.P.10) to court which was received by the learned jurisdictional Magistrate at 10.30 p.m. on 05.02.2006. In the mean time, he handed over the case diary to the Inspector of Police.

5. The case was taken up for investigation by P.W.15. He went to the place of occurrence, prepared an observation mahazar and a rough sketch at the place of occurrence in the presence of P.W.6 and another witness. He examined P.Ws.1 to 5 and few more witnesses and recorded their statements on the same day. Then, he conducted inquest on the body of the deceased and the body was thereafter forwarded to mortuary for post-mortem. P.W.10, Dr.K.Dhanapal, conducted autopsy on the body of the deceased at 07.45 a.m. on 06.02.2012. He found the following injuries on the body of the deceased:-

External injury:

Two lacerations parallel to each other over the inner aspect of right forearm / wrist spread about



0.25 x 5 cm x skin depth.

On dissection:

Skull - Intact; Brain - nothing abnormal; Hyoid - Intact.

Thorax: 150 ml of clotted blood present right side of throat

Ribs: Fracture present 1 to 3 ribs right side; lungs - punctured right side.

Heart: 100 ml of clotted blood present; stomach: 150 ml of partially digested material present. Bladder - empty; All the internal organs are pale."

He preserved the visceral organs and forwarded the same to the Forensic Science Laboratory for chemical examination. Ex.P.8 is the post-mortem certificate. He gave opinion that the death of the deceased was due to shock and haemorrhage as a result of injuries to vital organs. After the post-mortem was over, P.W.15 recovered the blood stained cloth materials from the body of the deceased and forwarded the same to the court.

6. During the course of investigation on 06.02.2012, at 12.00 noon A1 was arrested P.W.15. While in custody, A1 made a voluntary confession in which he disclosed the place where he had hidden a wooden log and aruval. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced billhook (M.O.1) and wooden log (M.O.2). P.W.15 recovered the same under a mahazar (Ex.P.4) in the presence of the P.W.7 and another witness. Thereafter, he forwarded the material objects to court. A2 was also arrested and remanded to judicial custody. Investigation was thereafter taken over by his successor (P.W.16). P.W.16 requested the court to forward the material objects to the forensic science lab for chemical examination. The chemical analysis report revealed that there were human blood stains in the material objects. He examined the doctor who conducted post mortem and the chemical analyst and recorded their statement. He also collected post-mortem certificate and chemical analysis report. On completing the investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial court framed two 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 16 witnesses were examined, 13 documents and 2 material objects were marked.

8. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness, but on their side, copies of accident registers relating to the deceased and P.W.1 were marked as Exs.D.1 and 2 respectively. Their defence was a total denial.

<https://hcservices.ecourts.gov.in/hcservices/>

9. Having considered all the above, the trial court acquitted



the appellants/A1 and A2. Challenging the order acquitting the accused, the father of the deceased has come up with this criminal appeal.

10. We have heard the learned counsel appearing for the appellant/father of the deceased; the learned Additional Public Prosecutor appearing for the 3rd respondent/State; and the learned counsel appearing for the respondents 1 and 2 and we have also perused the records carefully.

11. In this case, though it is alleged that the alleged occurrence was around 12.00 noon on 05.02.2012 and though it is alleged that the FIR was registered at 04.30 p.m., the same had reached the learned Magistrate at 10.30 p.m. on the same day. It is in evidence that the distance between the police station and the court is hardly 100 meters. Similarly, the distance between the Government Hospital and the Police Station could be covered in a time of 10 minutes. Having regard to these distance factors, the trial court has found that there was enormous delay in FIR reaching the court which remained unexplained and the same in turn created doubt in the case of the prosecution. In this doubt raised by the trial court, we do not find any infirmity. In our considered view too, this unexplained delay creates doubt in the case of the prosecution.

12. Next, the prosecution has examined P.Ws.1 to 4 as eye witnesses to the occurrence out of whom, P.W.3 has turned hostile. P.Ws.1, 2 and 4 have stated that they saw the occurrence. But, they have not stated anything about the injuries sustained by the accused. According to the accused (A1), the deceased, P.W.1 and yet another person came to his house in a menacing way, trespassed into his house and attacked him which resulted in a quarrel. A1 was also in the hospital. But, P.Ws.1, 2 and 4 have not offered any explanation in respect of the injuries sustained by A1. Above all, the occurrence had taken place at the house of the accused which would go to prove that the deceased party were the aggressors. In the absence of any explanation offered by these witnesses and in the light of the fact that the occurrence had taken place only at the house of the accused coupled with the fact that there is an inordinate delay in lodging the first information, the trial court found that the prosecution had failed to prove the case beyond all reasonable doubts. In this conclusion, we do not find any infirmity at all.

13. In an appeal against acquittal, it is the settled law that even if there are two views possible from out of the evidences available on record, unless the view taken by the trial court is found to be perverse, the same cannot be substituted by the other view taken by the appellate court. The presumption of innocence which is a basic human rights gets doubled because of the order of acquittal recorded by the trial court. Unless such presumption is rebutted by the prosecution by making out a strong case, it is not



at all possible to reverse the order of acquittal. As we have already pointed out, we do not find any infirmity at all in the judgement of the trial court. Thus, we do not find any merit at all in this appeal and the same deserves only to be dismissed.

14. **In the result**, the criminal appeal is dismissed and the acquittal of the respondents 1 and 2 is hereby confirmed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I, Karur.
2. -do- thro' The Chief Judicial Magistrate, Karur.
3. The Principal District Judge, Karur.
4. The Sessions Judge, Karur, Karur District.
5. The District Collector, Karur.
6. The Director General of Police.\
Mylapore, Chennai-4.
7. The Inspector of Police,
Pasupathipalayam Police Station,
Karur, Karur District.
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.

- + 1 CC TO Mr.D.SELVARAJ, ADVOCATE IN SR No. 65480
- + 1 CC TO Mr.S.GOKULARAJ, ADVOCATE IN SR No. 65545