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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal (MD) No.32 of 2016

Sivakumar

... Appellant/De facto Complainant

Vs.

1.The State rep. By

The Inspector of Police,

Adiramapattinam Police Station,

Thanjavur District.

(Crime No.115 of 2009)

.. 1st Respondent/1st Respondent

2.Somu @ Somasundaram

3.Marimuthu

4.Saminathan

5.Balu @ Balasubramanian

6.Raja @ Raja Thangaselvam

7.Kalayarasan

8.Muthukumar

9.Manimaran

.. Respondents 2 to 9/Accused 1, 2,
4, 6 to 10

PRAYER: This Criminal Appeal is filed under Section 372 of Cr.P.C to set aside the order of acquittal passed by the learned III Additional District and Sessions Judge, Thanjavur at Pattukottai made in S.C.No.4 of 2013 dated 15.07.2015 and allow the above criminal appeal.

For Appellant : Mr.M.Seeni Sulthan

For Respondents : Mr.C.Mayilvahana Rajendran (for R1)
Additional Public Prosecutor

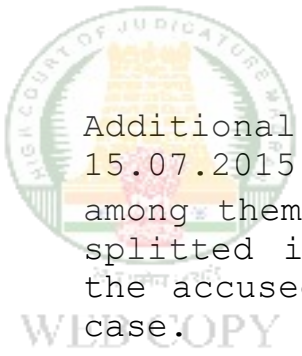
Mr.S.Deenadhayalan (for R2,3,5 to 9)

JUDGMENT

(Judgment of the Court was delivered by M.V.MURALIDARAN, J.)

The appellant is the defacto-complainant in S.C.No.4 of 2013 on the file of the III Additional District and Sessions Judge, Thanjavur. The trial court framed charges under Sections 147, 148, 324 r/w 149, 326 r/w 149 and 302 r/w 149 of I.P.C against this respondents 2 to 9/Accused 1, 2, 4, 6 to 10 in S.C.No.4 of 2013.

<https://hcservices.courts.gov.in/hcservices> The respondent appeal is arising out of the judgment of acquittal passed in S.C.No.4/13 on the file of the IIIrd



Additional Session Judge, Pattukottai, Tanjavur District on 15.07.2015. In the said case, 10 persons were shown as accused, among them the case as against the 3rd accused namely Balaji was splitted in S.C.No.25/14 on the file of the same court. Further the accused No.5 namely Rajendran was died in the pendency of the case.

3.The short facts of the aforesaid case is that the brother of the PW1 namely Jeyasundar was assaulted to death by the accused on 17.05.2009. In addition to that the PW1 along with one Rangaraj and Rajkamal were also inflicted injuries by the accused. All the injured were taken to hospital, but the brother of PW1 namely Jeyasundar was died. Based on the complaint of PW-1, a case was registered in Crime No. 115 of 2009 for the alleged offence under sections 147,148,324 and 307 of Indian Penal Code. In pursuance of the registration of the case, PW-22, commenced the investigation and filed a charge sheet under section 147, 148, 325, 324, 302 of IPC r/w 149 of IPC as against all the accused. Subsequently, the final report filed by the Investigation Officer was taken on file as PRC No.33/2010 on the file of the learned Judicial Magistrate, Pattukottai, Thanjavur District. Thereafter, the aforesaid case was committed to the file of the learned Principal District and Sessions, Judge, Thanjavur and the same was made over to the file of the III Additional Sessions Judge, Thanjavur District at Pattukottai.

4.In pursuance of the committal proceedings, charges were framed under Sections 147, 148, 302, 326 r/w 149, 324 r/w 149 against all the accused. Further in order to prove the case, the prosecution has examined 22 witnesses, marked Exhibits P1 to P37 along with material objects MO.Nos.1 to 11. At the end of the trial proceedings, the accused were examined under section 313 of the code of criminal procedure with regard to the availability of the incriminating substances as against them, but they denied as same. Finally in considering the evidence available in total, the learned trial court has acquitted all the accused.

5.Feeeling aggrieved over the judgment of the acquittal, the Defacto-Complainant namely Sivakumar has filed the instant appeal with a prayer to convict the accused.

6.Before taking the appeal against the judgment of the acquittal, this court is conscious about the role of the appellate court as laid down by the Hon'ble Supreme Court in **AIR 2013 SC 3033** in **State of UP -Vs- Gobardhan and others**. Where in it is held that

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

"as in exceptional cases where there are compelling circumstances to interfere of a judgment under appeal is



found to be forces. The appellate court can interfere with the order of the acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial courts' acquittal bolsters the presumption of the innocence. Interference in a routine manner where the other view is possible should be avoided unless there are good reasons for interference."

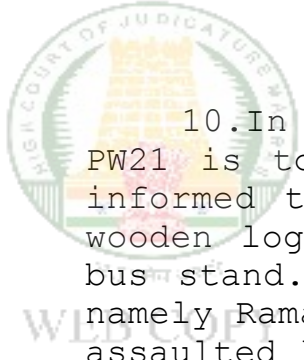
7. This is the case where 4 persons were inflicted upon injuries. Out of the injuries one person was died and in this connection a case is registered for the offence stated above. In this case PW1, PW2 are brothers, who are brothers of the deceased. PW3 is the son of PW2. PW4 is the resident of Adhirampattinam. PW5 is the Mahazar witness. PW6, PW7 are also shown as eye witness, PW8 is the witness for the arrest of A1 and A2. In their presence, the 1st accused namely Somu had given confessional statement. Exhibit P5, is the admissible portion of the confessional statement and in pursuance of the confession, 8 wooden logs and one reaper log were recovered through Exhibit P6. The wooden logs are marked as MO Nos.1 to 9. PW9 is also an eye witness. PW10 is turned as hostile; PW11 is the resident of Athirampattinam, but he did not support the case of the prosecution. PW12 is the Doctor who gave treatment to the deceased in an unconscious stage. He has given Ex. P7, the Accident Register of the deceased and who advised the person brought the deceased to take him to Thanjavur Government Hospital. He also given treatment to one Ezhumalai and had given Ex.p8, the Accident Register given to him. PW13 is also one of the doctors who gave first aid to one Jeyaraman. PW14 is the Scientific expert and PW15 is the Head Clerk of the Judicial Magistrate Court, Pattukottai. PW16 is the Police Constable attached with the Adhirampattinam police station, who on the direction of the Inspector of the Police produced the dead body for postmortem and thereafter entrusted the same with the relatives of the deceased. He entrusted MO No.10 and 11 through Exhibit P20. PW17 is the doctor who treated PW1 and issued Exhibit P21. PW17 also gave treatment to PW2 and also issued Accident Register Exhibit P22. Further PW17 also treated PW-3, Rajkamal and issued Accident Register Ex.P23. PW18 is the doctor who conducted Post-mortem and issued Ex.P24, Post-mortem Certificate. PW19 is also a doctor who issued Exhibit P27, Accident Register pertaining to the deceased. PW20 is a Sub-Inspector of Police who received the complaint statement Exhibit P1 and registered a case in Crime No.115 of 2009. PW21, PW22 are the Inspectors of Police conducted investigation, but the final report is filed by PW-22. The defacto-complainant has filed the instant appeal by raising seven grounds for interfering the order of acquittal. As for as the ground "B" is concerned, he alleged that the learned Trial Judge failed to consider the evidence of PW1 to PW4, PW6 and PW9. Further, it



is also the ground of the appellant that PWs 1 and 2 are the injured witnesses but the learned Judge has miserably failed to take into their evidence for consideration.

8. Further, it is the case of the appellant that the charge for the offence under section 302 is clearly established by the prosecution, but the judgment of acquittal was passed in a mechanical manner so the same is liable to be set-aside.

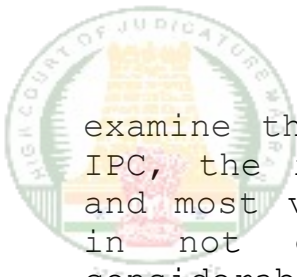
9. This court put its anxious consideration upon the oral and documentary evidence of the case. It is the categorical case of PW1 in the chief examination that he and the deceased belong to a political party namely AIADMK. The accused belong to another political party namely DMK. There was a rivalry in contesting the Parliament election in the year 2009. The result of the election was declared on 16.05.2009 and the occurrence was taken place on 17.05.2009. Since, the accused and the injured including the deceased belong to different political parties, they are having grudge with each other. When the evidence of PW1 has gone through, the rivalry between them is found. Under this back ground, the evidence of all the prosecution witnesses including the evidence of the injured witnesses has gone through. Further, the motive is a double edged weapon. It is the settled principles of law in the criminal jurisprudence that the prosecution is liable to prove the case beyond all the reasonable doubts. Though on 16.05.2009 itself it is alleged that an occurrence of wordy quarrel had taken place, but in this connection admittedly no complaint was lodged. Unfortunately on the very next day that is on 17.05.2009 the affray culminated into a culpable homicide of the deceased. When the evidence of PWs 1,2,3,4,6,7 and 9 have gone through, it is revealed that the 1st accused namely Somasundaram and the other accused are armed with the wooden logs assaulted PW1 and thereafter other witnesses, resulting which grievance injuries were inflicted upon the lips and right index finger of the PW1, On hearing the assault of his brother, the deceased came to the petty shop of PW-1, but he was assaulted indiscriminately by the accused and assaulted with an intention to murder him in front of the house of the PW1. It is the categorical case of the prosecution that the deceased fallen down in front of the residence of PW1 in a life and death condition. So, as per the evidence available, it is clear that the occurrence was commenced in front of the petty shop of PW1 in the Athirmapattinam East Coast Road and followed by which the deceased was chased and assaulted nearly about 100 meters in the northern side that is Subramaniya kovil Lane in front of the residence of PW1. So, this court has bounden duty to ascertain whether the prosecution has proved the place of occurrence without any discrepancy.



10. In this connection the Accident Register of PW1 Exhibit PW21 is to be perused. In the perusal, it is revealed that PW1 informed the doctor that he was assaulted by 2 known persons by wooden log on 17.05.2009 at about 10.30 am near Athiramapattinam bus stand. As such when the Accident Register pertaining to PW2 namely Ramaraj is taken up for perusal, it is revealed that he was assaulted by 30 unknown persons at Athiramapattinam bus stand. As such the Accident Register of another injured witness namely Rajkamal has disclosed the same. Unfortunately, when the evidence of PW1 to 3 is taken up for scrutiny, it is found that the occurrence was commenced at PW1 Sivakumar petty shop and ended in front of the house of PW11. Further, it is also revealed that all the accused and the injured eye witnesses are known to each other. If it is so, PW1,2,3 could have informed the doctors that they were assaulted by known persons. But no such evidence is available to strengthen the prosecution case. Apart from that according to the prosecution the distance between the petty shop of PW1 Shivakimar and Athiramapattinam bus stand could be about 200 to 300 feet. So, this court is unable to accept the evidence of PW1,2 and 3 in respect of the place of occurrence which will seriously affect the credibility of prosecution case.

11. Further, PW1, 2 and 3 were taken to Pattukottai Government hospital on 17.05.2009 at about 10.45 am. This factor is proved through the evidence of PW17. The distance between Athiramapattinam and Pattukottai is about 15 kilometers. However, when evidence of PW12 is taken up for perusal, it came to know that on 17.05.2009 at about 10.45 am the deceased Jayasundar was brought by one Veeraiyan to Athiramapattinam Government hospital for treatment. It is very unfortunate to record here that the evidence of PWs1,2,3,4,6 and 7 have disclosed that they took the injured Jayasundar, subsequently died, to Pattukottai Government hospital through an ambulance and admitted for treatment. So, the testimony of PW1, 2 and 3 is totally contradictory and it is not safe to rely upon to warrant conviction under section 302 of IPC. So, it is to be recorded here that the prosecution has failed to prove as to where the deceased was given first aid by the doctors and there is no explanation as to why PWs1,2,3,4,6,7 and 9 have deposed as against the information recorded in the Accident Register relating to the deceased Jayasundar Exhibit PW7. This aspect is seriously affect the case of the prosecution.

12. Further, it is relevant to point out here that the deceased Jayasundar was brought by one Veeraiyan to hospital and the same is recorded in Exhibit P27 and this aspect is ascertained by PW19 Doctor Balasubramanian. As such through Exhibits P 21 to 23 it came to light that PW1,2 and 3 are admitted in hospital by one Najeeb. It is very unfortunate to mention here that the investigation officers PW 21 and 22 had not taken any effort to



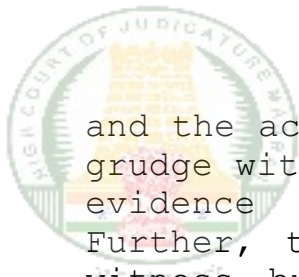
examine the aforesaid Veeraiyan and Najeeb. In a case of 302 of IPC, the investigation officers are expected to be very sincere and most vigilant. But the failure of two investigation officers in not examining the aforesaid Veeraiyan and Najeeb has considerably affected the root of the prosecution.

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13. Further there is no reason to differ with the findings of the learned Trial Court that on 17.05.2009 two occurrences were taken place as follows; at about 09.30., A.M an occurrence could have taken place at Subramaniya kovil street, Athiramaipattinam and for this reason PW1,2,3 were taken to Pattukottai Government hospital for treatment and the deceased Jayasundar was taken to Athiramaipattinam Government hospital itself at about 10.45., Am on the same day. Unfortunately, the investigation officers investigated the case as if it is one occurrence and filed final report. Further, the Observation Mahazar Ex.P3 and Rught Sketch Ex.P30 have been sent after a lapse of 2 months that is on 14.07.2009 to the learned Judicial Magistrate, Pattukottai. For this serious lapse on the part of the investigating officers, absolutely no explanation is available. So, the prosecution case as per the evidence of PW1,2 and 3 does not inspire confidence upon the mind of this Court.

14. Further, when the complaint lodged by PW1 Exhibit P1 is perused, it is found that the same is contradictory with the evidence given by PW-1. When PW1 gave complaint statement, he alleged that the 1st accused namely Somu cut him by Aruval and he attempted to stop the same, but due to the cut, his right hand index finger sustained cut injury. At the same time PW1 has deposed before the learned Trial Court that the 1st accused assaulted him by a wooden log and due to that his right hand index finger suffered with fracture. In addition to that in Exhibit P1, it is alleged by PW1 that the 1st accused Somu and another accused namely Balaji, whose case was splitted up, younger brother of the 1st accused namely Marimuth along with some persons namely Vaandayar Marimuthu, Gunasekaran, Kathiravan Shachidramohan, Inbanathan, and Ansar Ali khan, armed with wooden logs assaulted him, PW2 and PW3 namely Ramarajan, Rajkamal respectively. But, he did not ascertain the same during the police investigation. Instead, the name of accused Nos. 4,6,7,8,9 and 10 has been included in the case subsequently. However, as against these accused nothing is mentioned in the complaint. Further, though it is alleged that PW4 Uthayakumar sustained injury he was not taken any treatment which creates doubt over his testimony.

15. The evidence of the prosecution categorically disclosed that PW1, 2, 3, 4, and 6 belong to a particular political party



and the accused belong to another political party. They are having grudge with each other as per the evidence of PWs 1 to 4. So, their evidence is to be scrutinized with great care and caution. Further, the aforesaid PW1, 2, 3, 4, 6, 7 and 9 are interested witness but the prosecution has failed to prove the following aspects.

1. The real place of occurrence is not been proved.
2. The material contradiction of the oral evidence of Pws 1, 2, 3, 4, 6, 7 and 9 are contradictory with accident registers of Exhibits P7, 8, 9, 11, 14, 15, 21, 22, 23 and 27.
3. The non examination of the persons namely Veeraiyan and Nazim brought the deceased to Adirampattinam Government Hospital and one Nazim who brought the PW1, 2, 3 to Pattukotti government hospital respectively would seriously affect the case of the prosecutions.
4. Evidence of PW1, 2 and 3 would show that they had taken the deceased along with them to Pattukottai Government Hospital, which is totally against the Accident Registers of the respective injured and the deceased.
5. The important document Exhibits P3 and 30 have been belatedly sent to the learned Committal Court, the contradiction and exaggerations of the eye witness and the evidence of the other witness have not inspired confidence in the judicial conscience of this court.

16. So, this court is unable to appreciate the evidence of the prosecution case. On the other hand, it is found that the prosecution has failed to prove the case beyond reasonable doubt. Hence, the prosecution fails and the appeal is liable to be dismissed.

17. In the result, the criminal appeal is dismissed and the order of acquittal by the Learned Trial Judge is confirmed.

Sd/-

Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Inspector of Police,
Adirampattinam Police Station,
Thanjavur District.



2.The III Additional District and Sessions Judge,
Thanjavur at Pattukottai.

3.The Judicial Magistrate No.1
Thanjavur.

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Copy to:

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

+1cc to Mr.S.Deenadhayalan, Advocate, SR.No:56840

vsa/skn

AE/SV MMS/SAR3/22.02.2017/8P/6C

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