



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2016

CORAM:

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

CRL.A[MD].No.234 of 2013

1.S.Palanivelu
2.P.Pappathi

: Appellants/Accused Nos.1 & 2

Vs.

State Rep by
The Inspector of Police,
Thathayangarpet Police Station,
Trichy District,
[Crime No.2 of 2012].

: Respondents/Complainant

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 25.02.2013 made in S.C.No.193 of 2012 on the file of the learned District and Principal Sessions Judge, Trichirappalli.

For Appellants : Mr.N.Anandakumar

For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

JUDGMENT

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

The appellants are the accused Nos.1 and 2 in S.C.No.193 of 2012, on the file of the learned District and Principal Sessions Judge, Trichirappalli. The first appellant stood charged for the offence punishable under Section 302 of the Indian Penal Code and the second appellant stood charged for the offence under Section 302 r/w Section 34 of the Indian Penal Code. By Judgment dated 25.02.2013, the Trial Court has convicted the appellants, as detailed below.

Accused No.	Convicted under Sections	Sentence imposed	Fine amount
1	302 IPC	To undergo imprisonment for life.	Rs.1,000/- in default to undergo rigorous imprisonment for six months.
2	302 IPC r/w 34	To undergo imprisonment for life.	Rs.1,000/- in default to undergo rigorous imprisonment for six months.

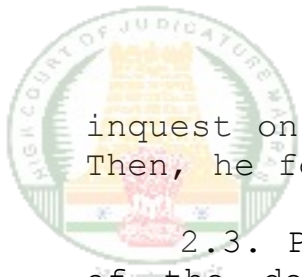
Challenging the said conviction and sentence, the appellants have come up with this Criminal Appeal.

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

The appellants/accused are husband and wife respectively. They were residing at Thekku Kattukottam, Jadamangalam Village, Musiri Taluk, Trichy District. The deceased, in this case, was one Mr.Thangaraj. The first accused is none other than the brother of the deceased. There was a long standing enmity between these two family members regarding irrigating their lands. Due to the said enmity, it is alleged that on 03.01.2012, at 06.00 PM, the deceased had gone to the field along with PW-1 and PW-2. When the deceased had tried to divert the water, these two accused objected to the same. This resulted in a quarrel between them. It is stated that in the said quarrel, the first accused attacked the deceased with a wooden log on his head. The deceased fell down.

2.1. It is further alleged that the second accused stabbed him with her legs. Then, both the accused ran away from the scene of occurrence. The occurrence was witnessed by PW-1 and PW-2, who are the children of the deceased. PW-1 was less than 16 years, at the time of occurrence and PW-2 was less than 14 years at the time of occurrence. The deceased was taken to the Government Hospital at Murisi in 108 Ambulance Service. After examining the deceased, the doctor advised him to be taken to the Government Hospital at Trichirappalli. Accordingly, he was taken to the Government Hospital, Trichirappalli, where, despite treatment, he died. PW-1 went to the Thathiangarpet Police Station and made a complaint, at 09.30 AM, on 04.01.2012. EX-P1 is the complaint and EX-P34 is the First Information Report.

2.2. PW-19 took up the case for investigation, proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of PW-1 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. Then, he conducted



inquest on the body of the deceased. EX-P30 is the inquest report. Then, he forwarded the dead body for postmortem.

2.3. PW-18, Dr.R.V.S.Renugadevi, conducted autopsy on the body of the deceased, on 04.01.2012, at 04.30 PM. She noticed the following injuries:-

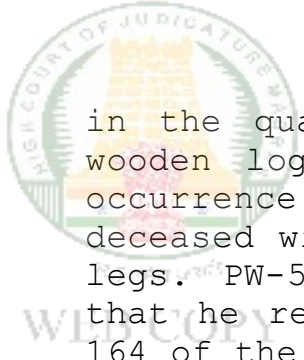
1. On the right cheek, 4 cm x 0.5 cm, top of right shoulder, 2 cm x 1 cm.
2. Contusion on the right cheek. The underlying soft tissues bruising - Dark red.
3. Contusion on the right frontal, right temporal region of the scalp and right temporalis muscle - Dark red.
4. Comminuted fracture of right temporal bone present.
5. Extra dural haematoma present.
6. Sub dural haemorrhage and Sub arachnoid haemorrhage on both cerebral and cerebellar hemispheres.

7. Bony bruising of right anterior cranial fossa, fracture of at middle cranial fossa present. The above mentioned wounds are ante - mortem. No other external, internal or bony wound".

EX-P25 is the postmortem certificate. EX-P26 is the final opinion. She gave opinion that the injuries found on the body of the deceased could have been caused by an attempt made with a wooden log. She gave further opinion that the deceased would appear to have died of head injuries.

2.4. During the course of investigation, on 04.01.2012, at 09.00PM, PW-19 arrested the first accused. On such arrest, he gave a voluntary confession, in which he disclosed the place, where he had hidden the wooden log. In pursuance of the same, he took the police and the witnesses and produced MO-1, wooden log from the hide out. PW-19 recovered the same under a mahazer. On returning to the Police Station, he forwarded the accused to the Court and handed over the material objects to the Court. He examined the doctors, collected the medical records and finally, on completing the investigation, he laid charge sheet against the accused.

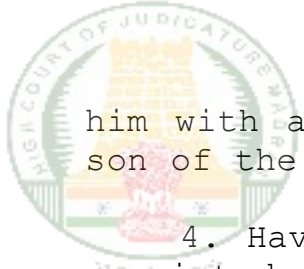
2.5. Based on the above materials, the Trial Court framed a lone charge against the first accused under Section 302 of the Indian Penal Code and under Section 302 r/w Section 34 of the Indian Penal Code against the second accused. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, on the side of the prosecution, 19 witnesses were examined, 34 documents and two material objects were marked. Out of the said 19 witnesses, PW-1 and PW-2, who are the children of the deceased, are the eye-witnesses to the occurrence. They have vividly spoken about the occurrence. PW-3 is the brother of the deceased. He also claims to have witnessed the occurrence. According to him, there was a long standing enmity between the accused and the deceased. He has further stated that



in the quarrel, the first accused attacked the deceased with a wooden log on his head. PW-4 has stated that he witnessed the occurrence. He has stated that the first accused attacked the deceased with a wooden log and the second accused stamped him with legs. PW-5, the learned Judicial Magistrate, Murisi, has stated that he recorded the statements of three witnesses under Section 164 of the Code of Criminal Procedure.

2.6. PW-6, Dr.V.Rajaselvam, has stated that when he was on duty at Musiri, on 03.01.2012, at 10.30 PM, the deceased was brought for treatment. The deceased was then unconscious. He was told that the deceased was attacked by two known persons. He gave first aid treatment and referred him to the Government Hospital, at Trichirappalli. PW-6 has further stated that on the same day, at 09.50 PM, the first accused came to the hospital for treatment. He told him that he was attacked by a known person with aruval and hands. PW-6 found a cut injury on the middle of the head. EX-P11 is the Accident Register. PW-7, Dr.G.Karthik, has stated that PW-1 appeared before him, on 04.01.2012 at 04.05 PM, at the Government Hospital at Thuraiyur. He did not notice any external injury on him. PW-8, Dr.S.Srihari, has stated that when he was on duty at the Government Hospital, Trichirappalli, on 04.01.2012, the deceased was brought for treatment. At that time, his condition was very serious. Despite treatment, on 04.01.2012, at 07.00 AM, the deceased died. PW-9 has stated that he took the deceased to the hospital for treatment. PW-10 has stated that she came to the place of occurrence, after the occurrence was over. PW-11 has stated that he went to the place of occurrence, after the occurrence was over. PW-12 has stated about the arrest of the accused and the recovery of MO-1, on the disclosure statement made by the first accused. PW-13 has also spoken about the arrest of the accused and the recovery of MO-1. PW-14 has spoken about the preparation of Observation Mahazer and the Rough Sketch at the place of occurrence. PW-15, Grade I Police Constable, has stated that he handed over the dead body for postmortem. PW-16, the Head Clerk of the Court of Judicial Magistrate, has stated that he forwarded the material objects for chemical examination. PW-17 has spoken about the registration of the case, on the complaint made by PW-1. PW-18 has spoken about the autopsy conducted by her and her final opinion. PW-19 has spoken about the investigation conducted by him and the filing of final report.

3. 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. They did not choose to exhibit any document. However, on their side, they have examined two witnesses, namely DW-1 and DW-2. DW-1 is the second accused herself. She has stated that on the day of occurrence, the first accused went to the field for irrigating his land. Within a short while, he returned home with injuries on his head. When she enquired, he told that the deceased had attacked



him with aruval. Then, she took him to the hospital. DW-2 is the son of the first accused. He has also stated about the same facts.

4. Having considered all the above materials, the Trial Court convicted the appellants, as detailed in the first paragraph of this Judgment and punished them accordingly. That is how, the appellants are now before this Court with this Criminal Appeal.

5. We have heard the learned counsel appearing for the appellants, the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

6. Admittedly, there was a long standing enmity between the family of the deceased and that of the accused. The first accused is none other than the brother of the deceased. From a common Well, they had to take water to irrigate their respective lands. According to the positive case of the prosecution, at the time of occurrence, the deceased had gone to the field and diverted the water to his field, which was flowing to the field of the accused. It is the further case of the prosecution that the accused raised objections for the same. At that time, it is alleged that the first accused attacked the deceased with a wooden log on his head and the second accused stamped him with her legs. However, there is evidence to show that the first accused had sustained injury on his head, which was a cut injury, as spoken by PW-7. He went to the hospital at 09.50 PM on the day of occurrence. DW-1 and DW-2 have spoken that they took the first accused to the hospital for treatment.

7. From the evidences available on record, it is crystal clear that the first accused also sustained injury in the very same occurrence. But, none of the witnesses, including PW-1 and PW-2, have stated anything about the injury sustained by the first accused. A perusal of EX-P12 would go to show that the injuries sustained by the accused was also serious in nature. When the prosecution witnesses have spoken about each and every overt act of the accused, thereby explaining every injury sustained by the prosecution party, they are expected to speak in the same vigour about the injuries sustained by the accused party also. But, they have not stated anything about the injury found on the accused and thus, 4 they have not come forward with true version of the occurrence.

8. In this regard, we may refer to the Judgment of the Hon'ble Supreme Court in **Lakshmi Singh and others, Vs. State of Bihar**, reported in **1976 SCC [Cr1] 671**, wherein, the Hon'ble Supreme Court, in an identical situation, has held that it is the bounden duty of the prosecution to explain the injuries sustained by the accused party also. It is useful to extract the relevant portion of the said Judgment, which reads as follows:-



"Where the prosecution fails to explain the injuries on the accused, two results follow;

(i) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabalise the plea taken by the appellants.

It was further observed that;

"In a murder case, the non - explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of alteration is a very important circumstance from which the Court can draw the following inferences;

(i). that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version.

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore, their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."

9. Applying the said principles to the facts of the present case, we are of the considered view that the prosecution has suppressed the material part of the occurrence and the prosecution has not come forward with the true version of the occurrence. The origin of the occurrence has not been clearly established by the prosecution. In such view of the matter, it is very difficult to sustain the conviction and sentence imposed on the appellants and therefore, the appellants are entitled for acquittal.

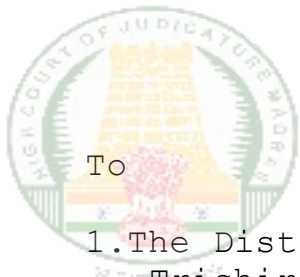
10. In the result, this Criminal Appeal is allowed; the conviction and sentence imposed on the appellants, by Judgment dated 25.02.2013, made in S.C.No.193 of 2012, on the file of the learned District and Principal Sessions Judge, Trichirappalli, is set aside and the appellants are acquitted. Fine amount, if any, paid by the appellants shall be refunded to them. Bail bond executed by the appellants and the sureties shall stand terminated.

Sd/-

Assistant Registrar(As)

/True copy/

Sub Assistant Registrar



To

1.The District and Principal Sessions Judge,
Trichirappalli.

2.The Chief Judicial Magistrate, Tiruchirapalli

3.The Judicial Magistrate, Thuraiyur

4.The Inspector of Police,
Thathayangarpet Police Station,
Trichy District.

5.The Superintendent, Central Prison, Trichy

6.The Superintendent, Special Prison for women, Trichy

7.The District Collector, Trichy

8.The Director General of Police, Vepery, Chennai-7.

9.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 Mr.N.Anandakumar, Advocate SR.No.51210

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JUDGMENT MADE IN
CRL.A[MD].No.234 of 2013
08.09.2016