

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.03.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

CRIMINAL APPEAL NO.19 OF 2017

Karunakaran

.. Appellant

Versus

1. Arjuna Gounder
 2. Balu @ Balamurugan
 3. Palani
 4. Iyyappan
 5. Elilarasan
 6. Thangaraju
 7. Elumalai
 8. State of Tamilnadu
- Represented by
Inspector of Police,
Brammadesam Police Station,
Tindivanam District.

... Respondents

Prayer: Criminal Appeal filed under Section 374 of Criminal Procedure Code_to set aside the order and judgment of acquittal of the respondents 1 to 7 / accused 1 to 7 passed by 1st Additional District and Sessions Judge, Tindivanam District in S.C. No.131 of 2013, dated 21.04.2016.

For Appellant : Mr.A.Raghunath, Senior Counsel,
for Mr.A.Edwin Prabakar

For Respondents : Mr.V.Gopinath, Senior Counsel, for
Mr.T.Meganathan (R1, R2, R4 to R7)
Mr.K.Sivakumar for R3
Mr.P.Govindarajan,
Additional Public Prosecutor for R8

J U D G M E N T

(Order of the Court was delivered by Dr.Anita Sumanth, J.)

This appeal is filed by the de-facto complainant challenging the judgment of the First Additional District Sessions Court in Sessions case No.131 of 2013 acquitting respondents/accused 1 to 7 of all charges laid against them under Sections 147, 148, 120(b), 341, 302 & 302 read with 149 of the Indian Penal Code.

2. The case of the defacto complainant and the prosecution is as follows:-

The deceased Prakash was travelling on his bike on 07.01.2011 alongside the Perumukkal lake on Marakkam-Dindivanam Road around 12.00 noon, when accused 1 to 7, riding on 3 bikes along with accused 8 and 9, whose case was spilt up at the stage of trial accosted him and caused bodily harm using knives, aruval and stick beating him on the head, back of the head, hands and legs. As a result, the said Prakash succumbed to injuries and died on the spot.

3. The Trial Court heard the matter extensively, considered the depositions of 18 witnesses, perused and analysed 29 exhibits and 14 Material Objects on behalf of the prosecution as well as one exhibit filed on behalf of the accused who not choose to examine any witness and thereafter passed the impugned judgment acquitting all accused. The de-facto complainant, Karunakaran, PW1 has come up with the present appeal challenging the aforesaid judgement.

4. In the course of the deposition, PW1 Thiru Karunakaran, the brother of the deceased Prakash would state that he had known the accused earlier and had identified A8 and A9 Sundar @ Surya and Shylu @ Shylendar both at the time of occurrence of the crime as well as later in the Puzhal Prison. A1 to A5 and A8 were residents of his village. He would state that his father Rama Gounder had contested the local elections two years ago standing against Arjuna Gounder/A1, winning the same. This has led to some amount of animosity between the two families. His father Rama Gounder had served for about 1½ years and passed away in the interregnum without completing his term on account of ill health. There was, thus, a necessity for a by-election that was contested by Arjuna Gounder and his elder brother Prakash, in which the latter emerged successful. This increased the animosity between the families.

5. On 07.01.2011, his brother had travelled to Dindivam on the

Marakanam - Dindivanam Highways, Raavanapuram near the Perumukkal lake. He had accompanied his brother on the visit riding pillion with Anbu s/o. Kuppusamy. He would state that when they were passing the Perumukkal lake, A1 to A9 had overtaken them driving at great speed on three bikes. They blocked his brother's bike and A1 caused severe injury using a knife on the head of the deceased. Apart from A3 Palani, who was carrying a stick, all the other accused were carrying knives. They launched a full scale attack on the deceased and cut him indiscriminately. Since the public started coming to the scene of crime, the accused fled from the scene. He spoke about Balu son of Kannabiran who had also come there on his bike who also witnessed the murder. Thereafter, a complaint was filed by A1 before the Brahmadesam Police Station marked as Ex.P1.

6. The matter was taken up for investigation thereafter by the investigating officer, who examined 18 witnesses, produced 29 exhibits and 14 material objects in support of its case. After a detailed hearing, the Trial judge found the accused innocent and acquitted them of all charges. Several factors weighed with the Judge in arriving at this conclusion.

7. We have heard learned Senior Counsels as well as the Additional Public Prosecutor appearing for the parties.

8. Firstly, the FIR lodged pursuant to receipt of complaint on

07.01.2011 was sent to Court only the next day on 08.01.2011 at 10.10 a.m. with a delay of 1 day. There was no credible explanation for this delay and one cannot, thus, rule out the possibility of manipulation of facts relating to the incident. Further, the discrepancy between the timing of the crime as stated by PW1 in his deposition and in the complaint also throws considerable doubt upon the case of the prosecution. PW1 in the deposition would state that the occurrence took place at 12.00 noon. The complaint, however, filed as Ex.P.1 originally sets out the time of occurrence at 1.00 a.m., subsequently corrected to read as 12.00 noon. There can be no two views on the matter that the recording of the time of occurrence correctly is vital and the contradiction between the deposition of PW1 and the complaint filed by him whittles down the case of prosecution to a great extent.

9. The other aspect was that there was a serious contradiction between the case of the prosecution and the final medical opinion issued by Dr.Ponnappan of the Rajiv Gandhi Hospital, who had conducted post mortem on the deceased. Prosecution had averred that there had been knife injuries to the back of head, head, hands and legs of the deceased. The expert opinion however would note that though there were five external injuries, stress was laid on the injuries to the head causing substantial effusion of blood inside the brain leading to the death of Prakash. The reporting of the facts relating to

injuries is critical. The case of the prosecution is based on the version of the crime as conveyed to it by the complainant, PW1. However, the discrepancies that arise between the version of the crime by PW1 and the opinion of the doctor conducting post mortem indicate that the reporting was not accurate and hence not credible. This aspect of the matter had been noted by the trial judge in the impugned judgement assailed in appeal before us and we agree with that the discrepancy goes to the root of the matter so as to cast a serious shadow on the case of the prosecution.

10. The sequence of events as narrated by PW1 would reveal considerable animosity between his family and the deceased. According to him, A1 harboured a grudge against his brother, as a result that, according to him, a plan was hatched along with A2 to A7 to do away with the deceased. This narration of events, no doubt, sets out a plausible theory. However, no evidence has been brought on record to establish the events as stated by PW1. It also cannot be denied that PW1, the star witness of the prosecution is an interested party, being the brother of the deceased. He, thus, has every motive himself to implicate the appellants in the crime. The deposition of PW1 and the version of the events that transpired at the place of occurrence on the banks of Perumukkal lake, according to him, is thus, merely one possible version that has to be supported by evidence that

clinches it beyond all reasonable doubt. This is lacking on various accounts as we have discussed in detail in the paragraphs above.

11. The deposition of PW2, Anbu alias Anbalagan, s/o, Kuppusamy would corroborate the narration of events as stated by PW1. However, neither the deposition of PW1 nor PW2 would inspire any confidence for the reason that neither are independent/dispassionate parties. Admittedly, PW2 was well known to PW1 and they were riding together on Anbu's bike along with the deceased when the incident occurred. It is also contrary to human conduct that PW1 and PW2 particularly, PW1, would stand by silently when A1 to A9 were supposedly assaulting his brother. In all probability, there should have been some reaction to the attack by the two witnesses which they would have spoken about in their depositions that is conspicuous by its absence. This factor contributes to the shadow over the case of the prosecution.

12. We find that the judgment of the Trial Court contains a reasoned analysis of various aspects of the matter. The basis on which the accused have been acquitted is that the prosecution has failed to establish its case beyond all doubt. We agree with the Trial Judge in this regard. No material has been placed before us to indicate that the conclusion of the Trial Judge in appreciation of the evidence is perverse. The settled position of law is to the effect that

Courts should be slow and cautious to reverse a judgement of acquittal except if clinching evidence is brought on record to establish fallacy on the part of the Trial Judge in appreciating evidence or in arrived at a proper conclusion. This has not been done before us.

13. We are, thus, of the view that the conclusion of the Trial Judge to the effect that the prosecution has failed to establish his case beyond all doubt is un-impeachable and correct in law. The judgment of the Trial Court is confirmed as is the acquittal of R1 to R7 before us. The appeal stands dismissed.

[S.N.,J.] [A.S.M.,J]

06.03.2017

Speaking order/non-speaking order

Index:Yes/No

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To

- 1.The Inspector of Police,
Brammadesam Police Station,
Tindivanam District.
2. The I Additional District and Sessions Judge,
Tindivanam District.
3. The Public Prosecutor,
High Court, Madras – 104.

S.NAGAMUTHU, J.

and

ANITA SUMANTH, J.

msr

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