

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 19.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

Crl.A.Nos.50 and 212 of 2017

1.Viji @ Vijendiran
2.Marudhupandian

... Appellants in
Crl.A.No.50 of 2017

State,rep.by
The Public Prosecutor,
High Court,
Madras-600 104

... Appellant in
Crl.A.No.212 of 2017

vs.

State,rep.by
the Inspector of Police,
Edaiyur Police Station,
Thiruvarur District

... Respondent in
Crl.A.No.50 of 2017

1.Karthi
2.Silambarasan
3.Theja @ Marimuthu
4.Prabhakaran
5.Vinodh

... Respondents in
Crl.A.No.212 of 2017

Criminal appeals preferred under Section 374(2) and 378(1)
(b) Cr.P.C., against the judgement dated 10.01.2017 passed by
the District and Sessions Judge, Thiruvarur, in S.C.No.71 of
2016.

M/s.Greetha Senthilkumar
for Appellants in Crl.A.No.50 of 2017
and for the Respondents in Crl.A.No.212 of 2017

Mr.P.Govindarajan,Addl.P.P. for the
Appellant in Crl.A.No.212 of 2017
and for the respondent Crl.A.No.50 of 2017

COMMON JUDGMENT

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

The appellants in Crl.A.No.50 of 2017 are the accused 1 and 2 in Sessions Case No.71 of 2016, on the file of the District and Sessions Judge, Thiruvavarur. There were six other accused in the case, by name, 1.Karthi, 2.Silambarasan, 3.Theja @ Marimuthu, 4.Prabhakaran, 5.Vinodh and 6.Sivakumar. Mr.Sivakumar died before trial. Thus, seven accused faced the trial. The trial Court has framed charges against the seven accused as detailed below:

Sl.No.	Charges (Section of law)	accused
1.	U/ss.120(b), 148, 341, 302 read with Section 109 IPC and Section 379 IPC	A1 & A2
2.	U/ss.120(b), 148, 341, 302 and 379	A3 to A5
3.	U/ss.148, 302 read with Section 109 IPC and Section 379 IPC	A6 & A7

By judgement dated 10.1.2017, the trial Court convicted the appellants in Crl.A.No.50 of 2017 alone, that too, under Section 302 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5000/- each, in default, to undergo rigorous imprisonment for three years. The trial Court acquitted all the other accused. Challenging the said conviction and sentence, the appellants/accused 1 and 2 have come with Crl.A.No.50 of 2017 and as against the acquittal of the other accused, the State has come up with Crl.A.No.212 of 2017.

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

(a) The deceased in this case was one Mr.Venkatesh. He was running a Petrol Bunk at Pinnathur Village in Thiruvavarur District. The accused 1 and 2 were the friends of the deceased. They used to visit the petrol bunk to meet the deceased often.

(b) It is alleged that two days before 11.5.2015, the first accused had told the second accused that the deceased was making sarcastic remarks about A2. A2 in turn spoke to the deceased over phone and enquired about the same. This resulted in a misunderstanding between the second accused and the deceased. This is stated to be the motive for the occurrence. The first accused also joined the second accused. These two accused, according to the case, therefore, decided to do away with the deceased.

(c) It is alleged that on 11.5.2015, around 8.00 p.m., the accused 1 and 2 along with the other six accused, who were their

friends, went to the petrol bunk of the deceased. In fact, A1 and A2 went to the petrol bunk in a motor cycle as though they had gone there to fill petrol to the motorcycle. The deceased was in the petrol bunk. Suddenly, the accused 1 and 2 took out one aruval each from the motorcycle and gave a chase to the deceased. When the deceased tried to escape and while scaling down the compound wall, the other six accused came from the other direction. All were armed with aruvals. They surrounded the deceased. The accused 4 to 6 cut the deceased indiscriminately. The deceased fell down sustaining injuries all over his body. Then the accused fed away from the scene of occurrence.

(d) The occurrence was witnessed by P.Ws.1, 2, 6 and 7. The deceased is the sister's son of the wife of P.W.1. P.W.1 was then residing at Udayamarthandapuram. According P.W.1, on the day of occurrence, he went to the petrol bunk of the deceased and at that time, he witnessed the occurrence. After the occurrence was over, he took the deceased to the Government Hospital, Thiruthuraipoondi. On examining him, the Doctor opined that the deceased was already dead. Leaving the dead body in the mortuary, P.W.1 went to Edaiyur Police Station and made a complaint at 11.30 hours on 11.5.2015. The Inspector of Police, Edaiyur Police Station, registered a case in Crime No.73 of 2015, under Section 302 IPC. Ex.P1 is the complaint and Ex.P14 is the FIR. Then he forwarded both the documents to the Court. The learned Judicial Magistrate, Thiruthuraipoondi, received the said documents at 2.00 p.m. on 12.5.2015.

(e) P.W.15, the Inspector of Police, then went to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of witnesses. He recovered the blood stained earth and sample earth from the place of occurrence. He conducted inquest on the body of the deceased at the hospital and forwarded the same for post-mortem. P.W.5-Dr.Muthusamy conducted autopsy on the body of the deceased on 12.5.2015 at 11.00 hours. He found the following injuries.

"Head:1) Laceration of 8 x 5 x 3 cm over ® parieto temporal region, exposing skull bone fracture. 2) Large deep cut injury (12x6x6cm) extends from (L) ankle of mandible to the midline of back of neck exposing of base of skull and brain matter.

Upper limb: (1) Large deep cut injury over (L) shoulder deltoid region (8x8x6 cm) exposed tendons, muscles and head of humerus. (2) Laceration over ® deltoid region 6 x 3 x 2 cm exposing muscles.

Thorax: 1) Large cut injury over anterior wall of chest 10 x 6 x 6 cm exactly between nipples (both) exposing fracture ribs and

sternal bone, ® side of lung with laceration injury. 2) Deep cut injury over (L) lateral wall of chest at the level of nipple over mid line (5 x 3 x 1 cm) 3) Laceration over (L) side of chest (1 x 1 x 0.5 cm).

Lower limb: 1) Deep cut injury 8 x 5 x 2 cm over ® mid thigh exposing muscle 2) cut injury over upper leg just below the knee (6 x 2 x 2 cm) exposing bone exposed 3) Cut injury over ® ankle and dorsum of foot (8 x 2 x 2 cm) exposed muscles, tendons and bone 4) Laceration over ® thigh (1 x 1 x 1 cm) 5) cut injury over (L) knee lateral aspect (2 x 1 x 1 cm). Stomach : About 50 ml of fluid sent for chemical analysis. Liver:No injury, not congested Spleen: No injury. Not congested. Kidney: No injury, Not congested. Intestine: Straw coloured fluid present. No injury. External genitals: No injury. No discharge. Heart No injury. Clotted blood present."

Ex.P5 is the post-mortem certificate. He opined that the death of the deceased was due to shock and haemorrhage, due to multiple injuries found on the body of the deceased. He further opined that the said injuries could have been caused by a weapon like aruval (vide M.Os.1 to 3).

(g) P.W.15, during the course of investigation, recovered the blood stained clothe from the body of the deceased and forwarded the same to the Court. On 16.5.2015, at 3.00 p.m., he arrested the accused Silambarasan, Teja @ Marimuthu, when they were proceeding in a motorcycle. On such arrest, he recovered two motorcycles bearing Registration Nos.TN-50-M-9660 and TN-50-U-0112 from them. On returning to the Police Station, he forwarded both the accused to the Court for judicial remand. The accused 1 and 2 surrendered before the Judicial Magistrate No.I, Mannarkudi on 24.5.2015. P.W.15 got police custody of these accused on the orders of the learned Magistrate. While in custody, they made voluntary confessions one after the other. Out of the disclosure statement made by the second accused, he took the police and the witnesses to his house and produced a motorcycle (M.O.6). The accused Siva @ Sivakumar (who is now no more) surrendered before the Judicial Magistrate at Pabanasam. P.W.15 took custody of the said accused on 28.5.2016. While in custody, he made a voluntary confession, out of which, he produced M.Os.1 to 3 (aruvals) from his house. P.W.15 recovered the same. Then, he forwarded the said accused to Court, for judicial remand. At his request, the material objects were sent for chemical examination. The report revealed that there were human blood stains on the all the material objects. On completing the investigation, he laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed charges as already detailed. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 15 witnesses were examined, 18 documents and 11 materials objects were marked. Out of the said witnesses, P.Ws.1, 2, 6 and 7 were examined as eyewitnesses, who spoke about the entire occurrence. But unfortunately, P.Ws.6 and 7 have turned hostile and they have not supported the case of the prosecution in any manner. P.Ws.1 and 2 have fully supported the case of the prosecution. P.W.3-Dr.Prabu has stated on that 11.5.2016, at 10.15 p.m., the deceased was brought to the hospital by one Mr.Raghu. At that time, the deceased was already no more. Mr.Raghu told P.W.3 that the deceased was attacked by five known persons at Udayamarthandapuram Bharath Petrol Bunk. P.W.4, a Scientific Expert from Regional Forensic Science and Laboratory, Thanjavur, has stated that he examined the external organs of the deceased, which revealed that there was neither poison nor alcohol. P.W.5-Dr.Muthusamy has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.8 has spoken about the motive. P.W.9 has stated that he took the deceased to the hospital along with one Mr.Raghu from the place of occurrence. P.W.10 has spoken about the arrest of the accused Silambaran and Marimuthu and the consequential recoveries made. P.W.11 has spoken about the confession made by the second accused while in police custody and the recovery made out of the same. P.W.12 has spoken about the confession made by the accused Siva @ Sivakumar and the consequential recoveries of materials objects. P.W.13 has spoken about the preparation of observation mahazar and rough sketch at the place of occurrence. P.W.14, a Constable, has stated that he took the dead body and handed over the same to the Doctor for post-mortem. He recovered the blood stained clothes from the body of the deceased, after the post-mortem was over. P.W.15 has spoken about the registration of the case, the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness nor mark any document on their side. Their defence was a total denial.

5. Having considered all the above, the trial Court convicted the appellants in CrI.ANo.50 of 2017 alone, that too, for the offence under Section 302 IPC alone. The trial Court has acquitted them from other charges. Similarly the trial Court has acquitted all the other accused.

6. We have heard the learned counsel appearing for the appellants/accused 1 and 2 and the learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully.

7. It is the positive case of the prosecution that the alleged occurrence had taken place in the petrol bunk owned by the deceased at 9.15 p.m. on 11.5.2015. It is the further case of the prosecution that P.W.1 took the deceased to the hospital and P.W.3-Dr.Prabu examined him at 10.15 p.m. At that time, the Doctor was told that the deceased was cut by five persons with aruval. Though the maker of the statement Mr.Raghu has not been examined, to the limited extent that the Accident Register contained the earliest information about the occurrence needs to be considered.

8. After the deceased was so declared dead by P.W.3, P.W.1 went to the police station and allegedly made a complaint at 11.30 p.m. Had it been true that P.W.1 was present at the place of occurrence, he would have told P.W.3-the Doctor, that the assailants were eight in number. When he made complaint at 11.30 p.m., he mentioned that a total number of four people alone cut the deceased. Out of whom, two were unknown people. Had it been true that P.W.1 was present at the place of occurrence, there was no reason for him to mention in Ex.P1 that only four people participated in the crime, out of whom, two were unknown. The case of the prosecution is that totally eight persons came in an unlawful assembly, all armed with aruvals and cut the deceased. P.W.1 had been duly contradicted by the defence, by using Ex.P1, the complaint. Absolutely there is no explanation as to why P.W.1 mentioned only about four persons in Ex.P1, that too, about the two un-known persons. This further creates doubt about the very presence of P.W.1 at the place of occurrence.

9. Had it been true that Ex.P1 was made at 11.30 p.m., the FIR would have reached the office of the learned Magistrate within half an hour. Admittedly, the distance between the police station at Edaiyur and the house of the Magistrate at Thiruthuraipoondi is hardly 15 kms. The learned Additional Public Prosecution has got instructions from the respondent police that the said distance is only 15 kms. But the FIR in this case had reached the hands of the Magistrate only at 2.00 p.m. on 12.5.2015. The fact remains that in the meantime, the inquest was over and even post-mortem was completed at 11.00 a.m. itself. Thus, it is quite obvious that Ex.P1 had come into being after post-mortem is over. There is absolutely no explanation as to why there was so much of delay in forwarding the FIR to the Court, if really the FIR had been registered at 11.30 p.m. itself. Further, when the FIR speaks about the presence and participation of a definite number of four accused, how it swelled into eighth is also not explained. Why P.Ws.1 and 2 have not stated, at the earliest point of time, that the total number of assailants were eight, is also not known.

10. In the light of these contradictory statements regarding number of assailants made at various circumstances and in the light of the unexplained delay in forwarding the complaint to the Court, we find it difficult to act upon the evidences of P.Ws.1 and 2. P.Ws.1 and 2 were not the residents of the occurrence village. They are related to the deceased. They have stated that they went to the place of occurrence by chance.

11. It is a settled law that if a witness claims to have been present at the place of occurrence by chance, he is required to explain to the satisfaction of the Court the reasons for his being present at the place of occurrence. In the instant case, absolutely there is no explanation as to why P.Ws.1 and 2 had come to the place of occurrence. Thus, the very presence of P.Ws.1 and 2, at the place of occurrence, is doubtful. This doubt is further strengthened by the other anomalies, about which we already made discussions.

12. Now turning to the evidences of P.Ws.1 and 2, it is the case that the accused 1 and 2 initially cut the deceased and thereafter, when the deceased tried to escape by scaling down the compound wall, the other accused surrounded him and according to the charge, the accused 4 to 6 alone killed the deceased by cutting. But the present evidence is that the accused 1 and 2 cut the deceased and then only the accused 4 to 6 cut the deceased. Thus, the evidences of P.Ws.1 and 2 is quite contrary to the charges framed. As such, in our considered view, it is difficult to act upon the evidences of P.Ws.1 and 2 to sustain the conviction of accused 1 and 2 and to reverse the acquittal of the others. We hold that the prosecution has failed to prove the case beyond reasonable doubts.

13. In the result, CrI.A.No.50 of 2017 is allowed; the conviction and sentences imposed on the appellants/accused 1 and 2 by the trial Court are set aside and the appellants/accused 1 and 2 are acquitted. Fine amounts, if any paid by them, are ordered to be refunded forthwith.

CrI.A.No.212 of 2017 is dismissed and the acquittal of the respondents is hereby confirmed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

msk

To

1. Judicial Magistrate,
Thiruthuraipoondi.
 2. The Chief Judicial Magistrate,
Thiruvarur.
 3. The District and Sessions Judge,
Thiruvarur
 4. The Inspector of Police,
Edaiyur Police Station,
Thiruvarur District.
 5. The Superintendent,
Central Prison, Trichy.
 6. The District Collector,
Thiruvarur
 7. The Director General of Police,
Mylapore, Chennai.
 8. The Public Prosecutor,
High Court, Madras
- +1cc to M/S.Greetha Senthil Kumar, Advocate Sr. 23727

Cr1.A.Nos.50 and 212 of 2017

RK(CO)
VR(15/5/2017)

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