

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02..02..2017

CORAM

THE HONOURABLE MR . JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE N.AUTHINATHAN

Criminal Appeal No.165 of 2016
and
Criminal Appeal No.20 of 2017

Cr1.A.No.165 of 2016

1.Basappa [A1]
2.Nagaraaj [A2]
3.Venkatasamy [A3]

... Appellant

-Versus-

State Rep. by
The Inspector of Police,
Uddanpalli Police Station,
Krishnagiri District.
[Crime No.76 of 1995]

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C against
the judgement of conviction and sentence passed by the learned
Additional Sessions Judge, Hosur, Krishnagiri District in
S.C.No.155 of 2005 dated 05.02.2016.

Cr1.A.No.20 of 2017

State Rep. by
The Public Prosecutor,
High Court,
Madras.
[Udhanapalli Police Station
Crime No.76 of 1995] [Complainant]

... Appellant

-Versus-

1.Tmt.Sanjeevammal [A5]
2.Govindan [A6]
3.Tmt.Chinna Thayamma [A7]
4.Vijayan [A8]

...Respondent

Criminal Appeal filed under Section 378(1)(b) of Cr.P.C. by the State as against the judgement dated 05.02.2016 passed by the learned Additional Sessions Judge, Hosur, Krishnagiri District in S.C.No.155 of 2005 acquitting A5 to A8 from the charges.

For Appellant(s) : Mr.A.Natarajan, Senior Counsel for Ms.A.Madhumathi for Appellants/A1 to A3 in Crl.A.No.165 of 2016

For Respondent(s) : Mr.P.Govindarajan, Addl. Public Prosecutor for Respondent/State in Crl.A.No.165 of 2016 and Appellant/State in Crl.A.No.20 of 2017
: Mr.M.Krishnamoorthy for Respondents/A5 to A8 in Crl.A.No.20 of 2017

COMMON JUDGEMENT

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

The appellant in Crl.A.No.165 of 2016 are Accused Nos.1, 2 and 3 and the respondents 1 to 4 are Accused Nos.5, 6, 7 and 8 in S.C.No.155 of 2005 on the file of the learned Additional Sessions Judge, Hosur, Krishnagiri District. A4 was one Chinnapappaiah. The trial court framed as many as four charges against the accused as detailed below:-

Charge Number	Charges framed against	Penal provision under which Charge(s) framed
(1)	A1 to A8	Section 148 of IPC
(2)	A4	Section 427 of IPC
(3)	A1 to A8	Section 302 r/w 34 of IPC
(4)	A1 to A8	Section 506(ii) of IPC

A4 died during the pendency of the trial and thus, charges against him stood abated. The trial court, by judgement dated 05.02.2016, acquitted A5 to A8 from charges under Sections 302 r/w 34 and 506(ii) of IPC and however, convicted them under Section 148 of IPC and sentenced to pay a fine of Rs.1,000/- each in default to suffer simple imprisonment for six months. In so far as A1 to A3 are concerned, the trial court acquitted them from charges under Section 506(ii) of IPC, however, convicted

them for offences under Sections 302 and 148 of IPC and sentenced them as detailed below:-

Accused who was found guilty under charge (s)	Penal provision under which conviction was recorded	Quantum of sentence imposed on the accused
A1 to A3	Section 302 of IPC	Imprisonment for Life and to pay a fine of Rs.1,000/- each in default to suffer simple imprisonment for two years
A1 to A3	Section 148 of IPC	No separate sentence imposed

Challenging the said conviction and sentences, A1 to A3 are before this court with CrI.A.No.165 of 2016 and challenging the judgement of acquittal of A5 to A8, the State has come up with CrI.A.No.20 of 2017. That is how, both these appeals are before us for disposal. At to A8 died nt file any appeal as against their conviction and sentence of fine of Rs.1,000/- each for offence under Section 148 of IPC.

2. The case of the prosecution in brief is as follows:-
The deceased in this case was one Chandrappa. P.W.1 is the brother of the deceased. Many years before the occurrence, the deceased had developed illicit intimacy with one Pachiyammal of Vengikkal Village. He was having live-in-relationship with Mrs.Pachiyammal. A1 -Basappa, later on, developed intimacy with Mrs.Pachiyammal. When this came to the knowledge of the deceased, he objected to the said relationship between A1 and Mrs.Pachiyammal. This is stated to be the motive for the occurrence. After some time, Mrs.Pachiyammal visited the village where the deceased was residing and shifted her residence to a village near Soolagiri. The deceased also shifted his residence to Marakatta village near Denkanikottai. He started living with his father-in-law. After one year, on 04.04.1995, the deceased returned to Devarapalli Village which is his native place. When he was passing through Mariamman Temple in the said village, A3 and A6 found him and shouted at him. There was a scuffle between the deceased and A3 & A6. A relative of the deceased separated them. In the said scuffle, the dress of the deceased were all torn. The deceased rushed to the house of one Muniyammal, went into the house and locked it from inside. But, all these 8 eight accused in the mean while, gathered and came to the house of Muniyammal. When they knocked at the doors of the house, out of fear, the deceased removed few tiles in the roof, through which he escaped. But, all these accused gave a chase. On

nearing him in the field belonging to one Rangasamy, all these accused attacked him indiscriminately with weapons. According to the case, A1 cut the deceased with koduval on his left shoulder; A2 cut the deceased with koduval on his right knee; A3 cut him with koduval on his left thigh; A5 cut him with koduval on his left side of the neck; A6 cut him with koduval on his left shoulder; A7 cut him with koduval on the left ear; A8 cut him with koduval on the back of his neck; A4 attacked the deceased with iron rod on his right thigh. The deceased fell down with injuries and died instantaneously. Thereafter, immediately, all these accused fled away from the scene of occurrence. The occurrence was witnessed by P.Ws.1 to 6.

3. P.W.1 thereafter went to Kelamangalam Police Station at 02.30 p.m. on 04.04.1995 and made a complaint (Ex.P.1). One Head Constable (HC 441), on receipt of the said complaint, registered a case in Crime NO.76 of 1995 under Sections 147, 148, 427 and 302 of IPC against all the accused. Ex.P.10 is the FIR. Then, he forwarded both the complaint (Ex.P.1) and the FIR (Ex.P.10) to the court which were received by the learned Magistrate at 08.00 p.m. on 04.04.1995. In the mean time, he handed over the case diary to the Inspector of Police Mr.S.Vaiyapuri, for investigation.

4. Mr.Vaiyapuri, the then Inspector of Police, Kelamangalam Police Station [Now no more], took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of witnesses. He conducted inquest on the body of the deceased and forwarded the body for postmortem.

5. P.W.11 Dr.Kuppusamy, conducted autopsy on the body of the deceased at 12.15 noon on 05.04.1995. He found the following injuries on the body of the deceased:-
Internal injuries:

"(1) Incised wound of 4 x 1 x 1 cm with partial cut in the fibula of right leg lower part posterior and lateral part, horizontally.

(2) Incised wound of 6 x 2 x 2 cm on the left thigh posterior middle part obliquely with the muscles cut.

(3) Incised wound of 6 x 2 x 2 cm along the left posterior axillary fold into the axilla with left scapular bone lateral part partially cut.

(4) Incised wound of 6 x 2 x 2 cm on left shoulder lateral aspect vertically with partial cut in the lumbar.

(5) Incised wound of 5 x 1 x 0.5 c.m. left supra scapular region to the top of left shoulder.

(6) Incised wound of 3 x 1 x 0.5 cm left side of upper part of neck horizontally deep up to cervical vertebra.

(7) Incised wound of 5 x 1 x 1 left side of face and upper part of neck obliquely just below the ear.

(8) Incised wound over left scapular region just above injury No.3.

(9) Incised wound on the dorsum of left thumb proximal phalanx, vertically.

(10) Incised wound 1 x 0.5 x 0.5 cm on back of right thigh lower part.

(11) Incised wound 2 x 0.5 cm x bone deep on frontal region horizontally.

Internal Examination: Hyoid bone intact. Ribs - No fracture. Heart 200 grams, chambers empty. Lungs : right 500 grams c/s congested, left 450 grams c/s congested. Liver 1000 grams c/s pale. Stomach contains 50 grams of partially digested food particles. Kidneys each 100 grams c/s pale. Spleen 90 grams c/s pale. Bladder empty. Skull - No fracture. Membranes intact. Sub arachnoid haemorrhage about 3 x 3 cm in the frontal region. Brain 1000 grams c/s normal. Base of skull normal."

Ex.P.9 is the postmortem certificate He gave opinion that the death of the deceased was due to shock and hemorrhages as a result of multiple injuries found on the body of the deceased. He further opined that the injuries found on the deceased could have been caused by weapons like knives.

6. Mr.Vaiyapuri, the then Inspector of Police arrested A1 and A6 on 09.04.1995 at Puttenahalli in the presence of witnesses and forwarded them to court for judicial remand. P.W.12 is his successor who took up the case for investigation on 05.03.1996. On the same day, he arrested A2, A4, A5, A7 and A8 at 12.30 p.m. in the presence of witnesses. He interrogated them in which all the accused jointly made a disclosure statement out of which one iron rod was recovered. Then, P.W.12 forwarded all the accused to the court for judicial remand. Investigation was thereafter continued by his successor (P.W.13). P.W.13 examined few more witnesses, recorded their statement and on completing the investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial court framed as many as four 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 14 witnesses were examined, 13 documents and 9 material objects were marked.

8. Out of the said witnesses, P.W.1, the brother of the deceased has spoken about the entire occurrence as an eyewitness. He has also spoken about the complaint made to the police by him. P.W.2 is yet another brother of the deceased. He has stated about the presence and participation of all the eight accused in the occurrence. Insofar as the overt acts are concerned, he has spoken only about the overt act of A1. P.W.3 is a local resident. He has stated that all these accused were chasing the deceased and all of them were armed with one vettaaruval. He has further stated that A2 cut the deceased first; the deceased fell down; thereafter, villagers gathered and so all the accused ran away from the scene of occurrence. He has spoken only about the overt acts of A2 and he has not stated that the others had any role to play in the occurrence. P.W.4, yet another villager, has also stated that he found all these accused chasing the deceased and they were all armed with vettaaruval. According to him, A3 was having iron rod. He has also stated only about the overt act of A2. He has stated that A2 cut the deceased on his leg. However, he has not stated anything about the rest of the accused. P.W.5 is another villager. He has also stated about the entire occurrence. According to him, A2 cut the deceased on his left leg and thereafter, the deceased fell down. Then, all the accused indiscriminately cut the deceased and ran away, he added. P.W.6 is the sister of the deceased. She has also stated that all these accused gave a chase and cut the deceased. P.Ws.7 and 8 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.9, the Village Administrative Officer has spoken about the preparation of observation mahazar and rough sketch at the place of occurrence and the recovery of material objects. He has further stated about the arrest of A1 and A6. P.W.10 is yet another Village Administrative Officer. He has stated that he witnessed the arrest of the rest of the accused. He has further stated that the accused gave voluntary confession together and out of the said confession, an iron rod and five knives were recovered. P.W.11, Dr.Kuppusamy, has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death of the deceased. P.W.12 and P.W.13 have spoken about the investigation done and P.W.13 has further spoken about the filing of charge sheet. P.W.14, the police constable, has stated that he took the dead body and handed over the same to the doctor for postmortem.

9. 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 nor did they mark any document on their side. Their defence was a total denial.

10. Having considered all the above, the trial court convicted the appellants/A1 to A3 and also A5 to A8 on certain charges as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, A1 to A3 are now before this Court with CrI.A.No.165 of 2016 and challenging the judgement acquitting A5 to A8 on certain charges, the State is before this court with CrI.A.No.20 of 2017.

11. We have heard the learned counsel appearing for the appellants/A1 to A3 and the learned Additional Public Prosecutor appearing for the respondent/State and we have also perused the records carefully.

12. In this case, the alleged occurrence, according to the case of the prosecution, had occurred at 01.00 p.m on 04.04.1995. The distance from the place of occurrence and the police station, as indicated in Ex.P.10 (FIR), is hardly 12 kms. It is alleged that the FIR was registered at 02.30 p.m. on 04.04.1995, but, it had reached the hands of the learned Magistrate only at 08.00 p.m. on 04.04.1995, for which absolutely, there is no explanation. This unexplained delay creates an initial doubt in the case of the prosecution, more so, because there were multiple number of accused and there was a long standing enmity between two groups.

13. The constable who registered the case has also not been examined for the reason best known to the prosecution. Thus, the accused have been deprived of the chance to challenge the facts relating to the registration of the case allegedly at 02.30 p.m. on 04.04.1995. A reading of Ex.P.1 (Complaint) and Ex.P.10 (FIR) would go to show that Ex.P.1 was reduced into writing by the Head Constable (HC 441) at the police station as spoken by P.W.1. But, P.W.1 has stated that before going to the police station, he prepared a complaint and presented the same to the police. During cross examination, he has stated that there were number of people with him and one of them drafted the complaint in which he signed and presented the same to the police. If that be so, that written complaint, which was presented to the police, should have been the foundation for registration of the case being the earliest information. But, that written complaint has been completely suppressed by the prosecution. P.W.1 has further stated that police arrived at the scene of occurrence by 03.30 p.m. itself where Ex.P.1 was prepared by the police in which his signature was obtained. We find no reason to reject this part of evidence of P.W.1 that Ex.P.1 was drafted at the place of occurrence after due deliberation. That is the reason why, the FIR had reached the hands of the learned Magistrate at 08.00 p.m. Thus, it is clear that the earliest complaint which was presented at the police station has been suppressed and the

FIR would not have been come into being at 02.30 p.m. as it is projected by the prosecution that it was drafted only at the police station at 02.30 p.m. by the police. When the FIR becomes doubtful, more particularly, when there were multiple number of accused, the suppressed of the said FIR would quite naturally create enormous doubt in the case of the prosecution. This doubt has not been cleared by the prosecution.

14. Now, turning to the eye witness account, it is alleged that the deceased who was inside the house of one Muniammal removed few tiles at the roof and tried to escape. It is the case of the prosecution that these accused gave a chase and attacked the deceased one after the other. According to the charge, A1 inflicted one blow with koduval on the left shoulder of the deceased; A2 inflicted one blow with koduval on his right knee; A3 inflicted one blow with koduval on the left thigh; A5 inflicted one blow on the left side of the neck; A6 inflicted one blow with koduval on the left sholder; A7 inflicted on e blow on the left ear with koduval; A8 inflicted one blow with koduval on the back of neck and A4 inflicted one blow with iron rod on his right thigh. This narration, in our considered view, is highly artificial going by the natural human conduct. Had it been true that all these accused had given a chase with an aim to kill the deceased, it would not have so happened that each one accused would have inflicted one single blow that too, in order, one after the other and left the place of occurrence. This would only go to show that an attempt has been made to implicate as many persons as accused in this case from the families of the accused with a view to rope in the entire family of the accused.

15. Now, turning to the evidences of P.Ws.1 to 6, who claimed to have witnessed the occurrence, their presence at the place of occurrence is highly doubtful because they are not at all residing anywhere near the place of occurrence. Their presence at the place of occurrence is by chance. It is the settled law that when a witness who claims to have present at the place of occurrence by chance, he should explain to the satisfaction of the court as to the circumstances under which he happened to be present at the place of occurrence. In this case, absolutely, there is no such explanation. P.Ws.1 to 6 are also closely related either to the family members of the deceased or closely related to the deceased. Thus, they are interested witnesses and also patricians in character. Their evidences require very close scrutiny. P.W.1 in his evidence has stated about the overt acts of all the accused wherein he has stated that each one accused inflicted one blow. P.W.2 has stated that A2 cut the deceased on his leg; and A1 cut the deceased on his neck; A3 cut the deceased on his leg; A6 also cut the deceased. Then, he has stated in general terms that all the accused cut the deceased. P.W.3 has stated that all these accused gave a

chase with weapons. A2 cut the deceased. The deceased fell down. Thereafter, the accused ran away from the scene of occurrence. He has not at all stated that the other accused either cut the deceased or attacked him in any other manner. P.W.4 in his evidence has stated that A2 cut the deceased. He has also not stated that the other accused either cut the deceased or attacked him in any other manner. P.W.5 has also stated that all these accused cut the deceased indiscriminately and ran away from the scene of occurrence. P.W.6, the sister of the deceased has stated that all these accused cut the deceased indiscriminately. Thus, there is no consistency among the evidences of these witnesses. For a moment, we are not prepared to say that consistency is the only test to test the veracity of the prosecution witnesses. We only say that consistency is also one of the tests to find out the veracity of the prosecution witnesses. Here in this case, in view of the fact that the presence of P.Ws.1 to 6 at the place of occurrence itself is doubtful and there are lot of inconsistencies among the evidences of these witnesses among the evidences of these witnesses. We find it difficult to place reliance on any of these witnesses.

16. The learned counsel for the appellants would further submit that the trial held in this case was not fair and, therefore, on the ground that the trial held and the conviction recorded violate Article 21 of the Constitution of India and the accused should be acquitted. We find force in the said argument. The fair trial includes speedy trial which is in built as a fundamental right in Article 21 of the Constitution of India. In this case, the alleged occurrence was on 04.04.1995, but the charge sheet was laid only on 18.06.2002, i.e., after seven year. For this delay, the accused were not at all responsible. Absolutely, there is no explanation as to why it took up more than seven years for the police to file final report in this case. Though final report was filed in the year 2002, after the case being committed, the learned Sessions Judge framed charges against the accused only on 20.12.2005. Even thereafter the examination of witnesses did not commence immediately. A perusal of the notes paper of the trial court would go to show that A1 to A8, including a woman folk, were very prompt in attending the court almost on all hearing dates. Even on those days, when some of the accused could not appear, they were represented by their counsel and their absence was also dispensed with on application. Thus, though the accused were attending the court from the year 2002 onwards, there was no progress made at all for about nine years. The examination of witnesses commenced on 13.12.2011. But, even after that there was no speedy trial. The last witness was examined on 10.09.2005. The accused were not responsible for this delay also. Finally, the judgement was delivered in this case by the trial court acquitting A1 to A3 and A5 to A8 only on 05.02.2016. Thus, for the occurrence which

allegedly took place on 04.04.1995 on completion of the trial, the judgement was delivered on 05.02.2016, i.e., after 21 years. A perusal of the notes paper of the trial court would again go to show that the accused were not at all responsible for the prolongation of the trial. It shows that some documents were not received by the trial court and some and some other reasons attributable by the prosecution were the reasons for this delay. It is unfair to drag on the case for 21 years thereby making the accused to attend the court for 21 years and then to conclude the trial. In our considered view, since speedy trial is a fundamental right, in this case, the trial which concluded after 21 years of occurrence is, certainly, not only a delayed trial, but, also an unfair trial. After 21 years, it would have been difficult for the accused to defend their case effectively as most of the witnesses would have forgotten about the happenings due to fading memory. Thus, in this case, in our considered view, the accused have been denied fair trial. As guaranteed under Article 21 of the Constitution of India. The life and liberty of an individual could be deprived of only by following the procedure established by law which included fairness in investigation, fairness in trial and also speedy trial. In the instant case, as we have already narrated, there is a gross violation of these guaranteed rights and thus, in our considered view, the conviction of the appellants is vitiated as it violates Article 21 of the Constitution. As we have already concluded, on facts also, the prosecution has failed to prove the case against any of the accused and therefore, they are entitled for acquittal.

17. In view of the said settled position of law [vide Dandu Lakshmi Reddy v. State of A.P., 1999 (7) SCC 69], though, in the instant case, A5 to A8 have not made any appeal, against their conviction under Section 148 of IPC and sentence of fine imposed thereunder, they are also entitled for acquittal for the reasons stated supra.

18. In the result, (i) (a) CrI.A.No.165 of 2016:- This criminal appeal is allowed; the conviction and sentences imposed on the appellants/A1-Basappa, A2-Nagaraj and A3-Venkatasamy by judgement dated 05.02.2016 in S.C.No.165 of 2016 on the file of the learned Additional Sessions Judge, Hosur, Krishnagiri District, are hereby set aside; and they are acquitted of all the charges. Fine amount already paid, if any, shall be refunded to them. The appellants/A1 to A3 are directed to be set at liberty forthwith unless and otherwise their presence is required in connection with any other case.

(b) Though, A5 to A8 have not preferred any appeal against their conviction and sentence of fine imposed on them by the judgment dated 05.02.2016 in S.C.No.155 of 2005, their conviction and sentence are also set aside and they are also

acquitted from the charge under Section 148 of IPC. Fine amount, if any paid, shall be refunded to them.

(ii) Crl.A.No.20 of 2017:- This criminal appeal is dismissed. The judgement of the learned Additional Sessions Judge, Hosur, Krishnagiri, dated 05.02.2016 insofar as it relates to the acquittal of A5-Sanjeevammal, A6-Govindan, A7-Chinna Thayamma; and A8-Vijayan in S.C.No.155 of 2005 from the charges under Section 302 r/w 34 and 506(ii) of IPC is hereby confirmed.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

1. The Additional Sessions Judge, Hosur, Krishnagiri District.
2. Do Thro The Principal Session Judge, Krishnagiri
3. The Judicial Magistrate No2, Hosur
4. Do Thro The Chief Judicial Magistrate, Krishnagiri
5. The Inspector of Police, Uddanpalli Police Station, Krishnagiri District.
6. The Superintendent, Central Prison, Vellore
7. The District Collector, Krishnagiri
8. The Director General Of Police
Mylapore, Chennai 4
9. The Public Prosecutor, High Court, Chennai.

Copy to

The Section Officer
Criminal Section
High Court, Madras

सत्यमेव जयते

- +1 CC to Ms.A. Madhumathi, Advocate sr 6384
+1 CC to Mr. Krishnamoorthy, Advocate sr 6682

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RJ (CO)
sp/2/5