

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 22.02.2017

CORAM:

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

Crl.A.NoS.622 & 815 of 2016

Rajbabu @ Babu ... Appellant in Crl.A.622 of 2016
Kanthan ... Appellant in Crl.A.815 of 2016

Vs.

State, rep.by
the Inspector of Police,
Thirumullaivoyal Police Station,
Thiruvallur District ... Respondent in both the
Appeals

Criminal appeals preferred under Section 374(2) Cr.P.C.,
against the judgement dated 01.06.2016 passed by the III
Additional Sessions Judge, Thiruvallur District at
Poonamallee, in S.C.No.157 of 2014.

For Appellants : Mr.V.Gopinath,
Senior counsel for
Mr.S.Sasikumar

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

COMMON JUDGMENT

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

The appellants are the accused 3 and 4 in Sessions Case No.157 of 2014, on the file of the III Additional District and Sessions Judge, Thiruvallur at Poonamallee. Including these appellants, there were a total number of six accused. The trial Court framed as many as two charges against the accused as detailed below:

Sl.No.	Charges (Section of law)	accused
1.	U/ss148 of the Indian Penal Code	A1 to A6
2.	U/s.302 of the Indian Penal Code	A1 to A6

By judgement dated 01.06.2016, the trial Court acquitted the sixth accused; however, convicted accused 1 to 5 under both charges and sentenced them accordingly, as detailed below:-

Sl.No	Rank of accused	Conviction	sentence
1.	A1 to A5	U/s.148 IPC	Rigorous imprisonment for three years.
2.	A1 to A5	U/s.302 IPC	Imprisonment for life, with a fine of Rs.1000/- each, in default, 12 months Rigorous Imprisonment.

Challenging the said conviction and sentences, the appellants/accused 3 and 4 alone are before this Court with these appeals.

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

(a) The deceased in this case was one Mr.Manoharan. He was the husband of P.W.1-Mrs.Renuka. They were residing at 8th Street, Annai Sathya Nagar, Annanur, in Thiruvallur District. All these six accused were also the residents of Annai Sathya Nagar and thus they were already known to P.W.1. It is alleged that these accused were involved in many crimes and other untoward incidents. They had suspicion that it was the deceased, who acted as informant to the police and informed the police about their involvements in various incidents. All these accused were thus unhappy with the deceased. They had developed grudges against him. This is stated to be the motive for the occurrence.

(b) On 21.06.2009, at around 8.00 p.m., the deceased was at his house. P.W.1 was also there. At that time, the first accused came to the house of the deceased and requested the deceased to come out, so that they could go for a small walk. Believing the words of the first accused, the deceased went along with him. Then, when they were nearing the bath room, situated out side the house of P.W.1, suddenly the first accused took out a knife and stabbed the deceased. The other accused 1 to 5 also rushed towards the said place, surrounding the deceased. The second accused, armed with a knife, cut the deceased on his right hand; the third accused cut him with a knife on the back side of the head; the fourth accused cut him with the knife on the chest; the fifth accused kicked him with his legs and the sixth accused attacked the deceased with an aluminium vessel. The deceased fell down in a pool of blood. P.W.1 and others raised alarm. All the accused ran away from the scene of occurrence with weapons. The deceased died instantaneously.

(c) Immediately thereafter, P.W.1 went to Thirumullaivoyal Police station, situate at a distance of 2 kms., and made a complaint at 9.00 p.m. on 21.06.2009. In the

complaint, she mentioned about the presence and participation of accused 1 to 3 alone. P.W.18, the then Inspector of Police, received the complaint and registered a case in Crime No.264 of 2009 under Sections, 147, 148, 447 and 302 of the Indian Penal Code. Ex.P1 is the complaint, Ex.P29 is the FIR. He forwarded both the documents to the Court, which were received by the learned Magistrate at 7.00 a.m., on 22.6.2009.

(d) The case was taken up for investigation by P.W.18. He went to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of witnesses and also recovered the blood stained earth and sample earth from the place of occurrence. He held inquest on the body of the deceased on the same day and forwarded the body for post-mortem. P.W.10-Dr.Tekkol, conducted autopsy on the body of the deceased on 22.06.2009 at 11.30 a.m. He found the following injuries:

"Injuries:

- 1) Brown irregular abrasions; a) 8 x 2.5-1 cm, horizontally oblique, on outer part of left side of the forehead and upper part of left side of the face; b) two horizontally oblique linear abrasions 3.5 x 0.3 - 0.1 cm and 3 x 0.4-0.2 cm on the upper part of right side of the chest; c) vertically oblique linear abrasion 5.5 x 0.4-0.2 cm on the upper part of right side of the chest; the abrasion was in plane with the cut injury on the left side of the neck.
- 2) A horizontally oblique incised wound 2 x 0.3 x 0.3 cm on the front of right shoulder and front and outer aspect of upper two third of right arm.
- 3) A horizontally oblique incised wound 2 x 0.3 x 0.3 cm on the upper part of left side of the face.
- 4) A horizontally oblique incised wound 1.5 x 0.5-0.3 x 0.5-0.3 cm on the middle part of left ear lobule.
- 5) A horizontally oblique incised wound 10 x 1-0.5 x 0.5-0.3 cm on the upper part of right scapular region, back of right shoulder and back of upper third of right arm.
- 6) An oblique cut wound 20 x 2-0.5 cm x skin deep, on the upper part of left side of the neck, left mastoid and left temporo-occipital region of the scalp; medial margin of the wound was bruised.
- 7) An oblique cut wound 8 x 1-0.5 cm x skin deep, on the right frontal region of the scalp; the margins were bruised; On reflection of the scalp; Dark red, scalp deep, bruising on the underlying right frontal region of the scalp; Calvarium was intact; on opening the calvarium:

Membranes were intact; brain was normal in size; C/S-Pale.

8)A horizontally oblique cut wound 21 x 4-2 x 9-4 cm on the lower part of left side front of the neck, upper part of left side of the chest and upper part of left side of the back; the margins of the wound were regular; the underlying subcutaneous soft tissues, sternomastoid, platysma and the deltoid muscles were cut, the blood vessels of the neck left common carotid artery and the jugular veins were completely cut; complete irregular cut fracture of left clavicle at inner third; complete irregular fracture of first rib on left side at costo-chondral junction and posteriorly, 1 cm from the costo-vertebral junction, with surrounding soft tissue bruising and extravasation of blood; the wound ends as a 1 cm cut fracture on left side of the fifth cervical vertebra; the wound enters the right thoracic cavity, with a laceration 4 x 2-1 cm x cavity deep, on the upper part of right pleura; dart red diffuse bruising on the upper border of right pleura; on opening the thoracic cavity: Both the lungs were intact and normal in size; C/S Pale."

Ex.P6 is the postmortem certificate. He gave opinion that the injuries found on the deceased could have been caused by a weapon like knife.

(e) P.W.18, during the course of investigation, recovered the blood stained clothes from the body of the deceased and forwarded the same to the Court. On 29.6.2009, the accused 1, 3, 4 and 5 surrendered before the learned XIII Metropolitan Magistrate, Chennai. On a request made to the jurisdictional Magistrate, the accused were sent to the police custody by the learned Magistrate. On 29.06.2009, P.W.18 took these accused into the custody. On 30.06.2009, at 8.30 a.m., while in custody, the first accused made a voluntary confession, followed by the 3rd accused-Mr.Kanthan and 4th accused-Mr.Rajbabu and lastly the fifth accused-Mr.Murali. In his confession, the first accused disclosed the place where he had hidden a knife. In pursuance of the same, he took the police and the witnesses to the place of hide-out and produced M.O.11, the knife. P.W.18 recovered the same under a mahazar. Similarly, the accused 3 and 4, in their independent disclosure statements, disclosed the place where they had hidden the respective knives. In pursuance of the same, they took the police and witnesses to the police of hide-out and produced the knives. They were also recovered under separate mahazars. The fifth accused, in his disclosure statement, disclosed the place where he had hidden the knife. In pursuance of the same, he produced M.O.13, the knife, from the

place of hide-out. On reaching the police station, he forwarded all the three accused and handed over the material objects also to the Court. On 7.10.2009, he arrested the sixth accused and forwarded him to the Court for judicial remand. At his request, all the material objects were sent for chemical examination, which reveals that there were human blood stains on all the material objects, including the knives, recovered from the accused. On completing the investigation, he laid charge-sheet against the accused, on 15.10.2009.

3. Based on the above materials, the trial Court framed charges as detailed in paragraph No.1 of this judgement. The accused denied the same. The trial Court proceeded with the trial. During the trial, in order to prove the charges, on the side of the prosecution, as many as 18 witnesses were examined, 47 documents and 17 material objects were marked. Out of the said witnesses, P.Ws.1 to 3 have been examined as eyewitnesses. They have vividly spoken about the entire occurrence, including the individual overt acts of all the six accused. P.W.1 has spoken about the complaint made by her to the police also. P.Ws.4 to 8 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.9, a Constable, has stated that he took the dead body from the place of occurrence and handed over the same to the Doctor for postmortem, as directed by P.W.18. P.W.10-Dr.Dekkol has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.Ws.11, 13 and 14 have also turned hostile and they have not supported the case of the prosecution in any manner. P.W.12 has spoken about the photographs taken at the place of occurrence. P.Ws.15 and 16 have spoken about the chemical examination conducted on the material objects and their final opinion. P.W.17, the then Judicial Magistrate, has stated that he recorded the statements of accused 2 and 3 under Section 164 Cr.P.C., as requested by the investigating officer. P.W.18 has spoken about 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. Their defence was a total denial.

5. Having considered all the above, the trial Court convicted the accused 1 to 5 as detailed in paragraph No.1 of this judgement and that is how these two appellants, who are accused 3 and 4 have come up with these appeals.

6. We have heard the learned Senior counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7.As we already pointed out, according to the case of the prosecution, the alleged occurrence was at 8.20 p.m., on 21.06.2009. The learned Senior counsel for the appellants would submit that though it is alleged by the prosecution that the FIR was registered at 9.00 p.m., it had reached the hands of the learned Magistrate only at 7.30 a.m. on 22.06.2009. Thus, there was enormous delay in forwarding the FIR to the Court. The learned Senior counsel submitted that the delay has not been explained by the prosecution and therefore, it is doubtful whether the FIR was registered at 9.00 p.m. on 21.6.2009. The learned Senior counsel would further submit that P.W.1 has admitted that all the six accused were already known to her and others for about 20 years. If that be so, it is for the prosecution to explain as to why the names of the accused 4 to 6 had not been mentioned in the FIR, the learned Senior counsel contended. The learned Senior counsel would further submit that during cross-examination, P.W.1 has admitted that the police arrived at the place of occurrence at 8.30 p.m. and thereafter, at 9.20 p.m., she went to the Police Station and made a complaint. Thus, according to the learned Senior counsel, the FIR is a doubtful document and when there were multiple number of accused, the overt acts attributed to the accused are also highly dramatic and artificial and therefore, the appellants are entitled for acquittal.

8.The learned Additional Public Prosecutor appearing for the State would vehemently oppose these appeals. According to him, it is true that there was some delay in forwarding the FIR to the Court. But on that score, according to the learned Additional Public Prosecutor, the entire case of the prosecution cannot be thrown out. He would further submit that there is no reason to reject the evidences of P.Ws.1 to 3, who have categorically stated about the entire occurrence, including the overt acts against the accused. The learned Additional Public Prosecutor would submit that though it is true that in Ex.P1, P.W.1 failed to mention the presence and participation of the accused 4 to 6, that is immaterial. He would further submit that the medical evidence duly corroborates the eyewitness account of P.Ws.1 to 3. Therefore, the learned Additional Public Prosecutor would submit that there is no artificiality in the evidences of P.Ws.1 to 3. He would further contend that the evidences of P.Ws.1 to 3 are cogent and convincing, which deserve to be accepted. Thus, according to the learned Additional Public Prosecutor, there is no merit in these appeals.

9.We have considered the above submissions.

10.A perusal of Ex.P29 would go to show that the FIR was registered at 9.00 p.m., on 21.06.2009. The distance between the place of occurrence and the Police Station is hardly 2 kms., which is not in dispute and in our considered view, there is no doubt at all in making the complaint by P.W.1.

At this juncture, we cannot ignore the fact that P.W.1 is an illiterate woman. Despite that, she had gone to the police station and made a complaint without any delay. Of course, as rightly contended by the learned Senior counsel for the appellants, there was enormous delay in forwarding the FIR to the Court. It is also true that it is too well settled that in a case involving multiple number of accused, the delay in forwarding the FIR weakens the case of the prosecution. But it is not the law that on that score alone, the entire case of the prosecution should be discarded. It all depends upon the facts and circumstances of each case. In a case where the evidences of eyewitnesses are so convincing and cogent, though there had occurred some delay on the part of the investigating officer in forwarding the FIR to the Court, on that score, the evidences of such eyewitnesses cannot be disbelieved. Applying the same yardstick to the present case, now we have to examine as to whether the evidences of P.Ws.1 to 3 are trust worthy.

11. In Ex.P1, the presence and participation of accused 4 to 6 have not been mentioned at all. P.W.1, even in chief examination has stated that all these six accused were residing in the same locality where they were residing and they were known to them personally for 20 years. If that be so, while making Ex.P1, complaint, P.W.1 would not have omitted to mention the presence and participation of A4 to A6. Absolutely we find no explanation on the part of the prosecution as to why the Inspector of Police, who registered the case, failed to mention the names of A4 to A6 in the FIR.

12. P.W.2 is a daughter and P.W.3 is a neighbour. In our considered view, had it been true that the fourth accused was present and he had also attacked the deceased, going by the natural human conduct, P.W.1 would not have omitted to mention the presence and participation of A4 in the FIR. The very fact that the presence and participation of A4 has not been mentioned in Ex.P1, would go to show that as an after thought, the fourth accused has been implicated as an accused. Thus, so far as the accused No.4 is concerned, there is enormous doubt in the case of the prosecution and thus, we are not prepared to believe the case as against him.

13. Now turning to the case against A3, his name does find a place in the FIR. The overt act attributed to him has also been spoken by P.Ws.1 to 3. The presence of P.Ws.1 and 2 cannot be doubted for any reason, because, the occurrence had taken place just in front of the house of P.W.1. The occurrence was during night hours. It is quite natural for the family members to be present in the house during night hours. P.W.3 is a neighbour. He had no grudges against the accused. He is an independent witness. He has also spoken about the presence and participation of A1 to A3. Though the alleged occurrence in this case was in the year 2009, and these three witnesses were examined in chief on 20.4.2015, i.e. after six years, for this delay, we cannot blame the

accused. At the same time, these three witnesses were not cross-examined on the same day when they were examined in chief. They were cross-examined after six months, for which, absolutely there is no explanation offered by the accused. It is quite obvious that the defence counsel preferred not to cross-examine the witnesses either with a view to see that these witnesses would run over or to ensure that they forget the events. Therefore, any answer elicited during cross-examination, after six months, cannot be given more weightage.

14. In this case though it is stated by P.W.1, during cross-examination, that police arrived at the scene of occurrence during night at 8.20 p.m., we cannot hold that the time of arrival of the police was precisely 8.20 p.m. The perception of a poor illiterate woman in respect of time cannot be given any weightage. Therefore, we reject the argument of the learned Senior counsel that the police arrived at the scene of occurrence at 8.20 p.m. itself.

15. The contention of the learned Senior counsel that the evidences of P.Ws.1 to 3 are highly artificial inasmuch as they have spoken about the individual overt acts of all the six accused, meticulously. We find some force in the argument of the learned Senior counsel. But, in our considered view, on that score, we cannot reject the evidences of P.Ws.1 to 3. We can hold that there is some exaggeration on the part of P.Ws.1 to 3, out of anxiety. There can be no doubt that these accused 1 to 3 were present at the scene of occurrence, all armed with weapons, to attack the deceased. To that extent, though we are not attaching much importance for the individual overt acts by accused 1 to 3, we hold that these three accused were present and they only caused the death of the deceased.

16. So far as the accused Nos.5 and 6 are concerned, since they have not filed any appeal, we do not want to express any opinion in respect of them. In our considered view there is nothing on record to create even a slightest doubt in the veracity of P.Ws.1 to 3, so far as A1 to A3 are concerned. We also hasten to add that our observations in respect of A1 and A2 in this judgement cannot be taken as a final adjudication as against them, because, we cannot adjudicate the case against them in their absence. But at the same time, we cannot avoid making any such remarks as against A1 and A2, when we are deciding the case against A3. Thus, we hold that as far as A3 is concerned, the trial Court is right in convicting him both under Sections 148 and 302 read with Section 149 IPC. Thus, we do not find any merit at all in the appeal filed by the third accused (vide Criminal Appeal No.815 of 2016).

17. So far as the accused No.4 is concerned, we find that the prosecution has failed to prove the case beyond reasonable doubts and therefore, he is entitled for acquittal. Thus, we are inclined to allow Cr1.Appeal No.622 of 2016 and we acquit the accused No.4 under both the charges.

18. In the result, CrI.A.No.622 of 2016 is allowed and the conviction and sentence imposed on the appellant/third accused Mr.Rajbau @ Babu, by the trial Court in Sessions Case No.157 of 2014, are set aside. The appellant/4th accused is acquitted. Fine amount, if any, paid by him is ordered to be refunded forthwith.

19. CrI.A.No.815 of 2016 is dismissed and the conviction and sentence imposed on the 3rd accused/Mr.Kanthan is hereby confirmed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

msk

To

- 1.The III Additional Sessions Judge,
Thiruvallur District at Poonamallee.
- 2.Through the Principal District Judge/
Sessions Judge, Thiruvallur.
- 3.The District Collector,
Thiruvallur District.
- 4.The Director General of Police,
Mylapore, Chennai.
- 5.The Judicial Magistrate No.II,
Poonamallee.
- 6.Through The Chief Judicial Magistrate,
Poonamallee.
- 7.The Superintendent,
Central Prison, Puzhal, Chennai.
- 8.The Inspector of Police,
Thirumullaivoyal Police Station,
Thiruvallur District.
- 9.The Public Prosecutor,
High Court, Madras

+1cc to Mr.S.Satish Kumar, Advocate, S.R.No.11660

CrI.A.No.622 of 2016