

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 04.1.2017

CORAM:

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

Cr1.A.No.667 of 2016

1.Paul Titus @ Bala
2.Manikandan @ Mani Appellants/Accused 1&2

vs.

State, Represented by
Inspector of Police Ambattur Police station,
Tiruvallur District ... Respondent/Complainant

Criminal appeal preferred under Section 374(2)
Cr.P.C., against the judgement dated 28.04.2016 passed by the
Sessions Judge, Tiruvallur, in S.C.No.37 of 2013.

For Appellants : Mr.R.John Sathyan

For Respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

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

The appellants are the accused 1 and 2 in Sessions Case No.37 of 2013, on the file of the Principal Sessions Judge, Thiruvallur. They stood charged for the offences under Sections 449 read with Section 34 of the Indian Penal Code and under Section 302 read with Section 34 of the Indian Penal Code. By judgement dated 28.04.2016, the trial Court convicted all the accused under both the charges and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5000/- each, in default, to undergo rigorous imprisonment for six months for offence under Section 302 read with Section 34 IPC; and to undergo rigorous imprisonment for 10 years and pay a fine of Rs.1000/- each, in default, to undergo rigorous imprisonment for six months for the offence under Section 449 read with Section 34 IPC. Challenging the said conviction and sentences, the appellants are before this Court with this appeal.

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

(a) The accused 1 and 2 were friends. The first
accused is residing at M.K.B. Nagar, Ambattur and the second

accused is a resident of Ram Nagear, Ambattur. The brother of the first accused committed suicide some time before this occurrence. Referring to the same, in a public place, it is alleged that the deceased, who was also a resident of Ambattur, teased the first accused. The first accused got wild. This is stated to be the motive for the occurrence.

(b) It is alleged that on 16.09.2011, around 3.45 p.m., when the deceased alone was at his house, bearing No.6/420, at first main road, M.K.B.Nagar, Ambattur, Chennai, these two accused both armed with knives, trespassed into the house and indiscriminately cut the deceased. The deceased died on the spot. P.W.1, a nephew, who was also residing at M.K.P Nagar, Ambattur, on hearing the commotion from the house of the deceased, rushed to the house of the deceased. At that time, according to him, he witnessed the entire occurrence. Thus, he had been examined as a sole eyewitness to the occurrence.

(c) P.W.1 thereafter went to Ambattur Police Station and made a complaint at 4.30 p.m. P.W.13, the then Inspector of Police, registered a case in Crime No.882 of 2011, under Sections 449 and 302 IPC, against both the accused. Ex.P1 is the complaint and Ex.P13 is the First Information Report. He forwarded both the documents to Court, which were received by the Magistrate at 6.00 a.m., on 17.09.2011.

(d) P.W.13 took up the case for investigation. He proceeded to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of witnesses. He also recovered the blood stained earth and sample earth from the place of occurrence. On reaching the hospital, he conducted inquest on the body of the deceased, during which, he examined P.Ws. 1 and 2 and few more witnesses. Then he forwarded the body for post-mortem. P.W.10, Dr.M.N.Rajamani Beemrao has spoken about the post-mortem conducted by one Dr.Anbuselvan. Dr.Anbuselvan found the following injuries:

"Injuries: Cut injuries:

1.7cm x 2.1 cm x bone deep on left side forehead (n.c) subscalpal contusion 10 cm x 4 cm x 1 cm on frontal region of scalp bones intact. Brain normal in size.
2.8cm x 3.1 cm x bone deep on occipital of subscalpel contusion of 12 cm x 4 cm x 1 cm on occipital region. Bones intact.
3.3cm x 1 cm x muscle deep on occipital below wound 2.
4.4 cm x 1 cm x bone deep on back hof right wrist
5.13 cm x 3.1 cm x bone deep on right hand from Palm to middle finger. OCB? cut laceration of wound muscles cut fracture of metacarpals and pharyngeal bones.

6. 9cm x 0.5 cm x bone deep on right palm intersections the would No.5
7.2cm x 1 cm x bone deep on right little finger.
8. Horizontally oblique 3 cm x 1 cm x yearly deep on right axilla cut fracture of right 3rd rib and contusion of right side heart, cut laceration of right lung upper lob. Thoracic cavity contained 1200 ml of blood.
9.7 cm x 1 cm x muscle deep on left upper arm with a symmetry of left arm. O/D cut fracture of middle 1/3 of sharp of left humerus.
10. 3cm x 1cm x muscle deep on middle 1/3rd of left arm
11.2cm x 1 cm x bone deep on left elbow.
12.4 cm x 1 cm x bone deep on left elbow below wound (11).
13.4 cm x 0.5cm x muscle deep on upper 1/3rd of left forearm
14.12cm x 4-2 cm x bone deep on middle 1/3rd of left forearm. 15.5cm x 4-2 cm x muscle deep on left wrist.
16.2 cm x 1 cm x muscle deep on left wrist.
17.8cm x 6-1 cm x muscle deep on left palm and left thumb O/D cut laceration of muscles cut fracture of metacarpal and pharyngeals bones.
18.4 cm x 0.5 cm x muscle deep on left ring finger 19.5 cm x 0.5 cm x muscle deep on left side chest at level (n.c) intercoastal space O/D cut fracture of 6th rib (n.c) left side chest.

There were no other external injuries anywhere o the body."

Ex.P8 is the post-mortem certificate. Dr.Anbuselvan gave opinion that the death of the deceased was due to shock and haemorrhage due to multiple injuries found on the dead body of the deceased. He also opined that these injuries could have been caused by knives.

(e) P.W.13, during the course of investigation, recovered the blood stained clothes from the body of the deceased and forwarded the same to Court. He arrested the first accused at 7.30 a.m. on 18.09.2011 and arrested the second accused at 9.15 hours on 18.9.2011, in the presence of witnesses. On such arrest, they gave independent voluntary confessions one after the other. Out of the said confessions, M.Os.1 and 11 were recovered. On returning to the police station, he forwarded the accused to the Court for judicial remand and handed over the material objects also to the Court. At his request, the material objects were sent for chemical examination, including the knives. On completing the investigation, he laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed charges against the accused. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined, 16 documents and 13 material objects were marked. Out of the said witnesses, P.W.1 is the only eyewitness to the occurrence. He has stated that on hearing the commotion from the house of the deceased, when he rushed to the house, he found these two accused inside the house of the deceased and he also found that these accused stabbed the deceased indiscriminately with knives. On seeing him, according to him, both the accused fled away from the scene of occurrence. P.Ws.2 and 3 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.4, the son of the deceased, has spoken about the enmity between the deceased and the first accused. He has not spoken anything incriminating. P.W.5 has spoken about the preparation of observation mahazar and rough sketch and the recovery of blood stained earth and sample earth from the place of occurrence. P.W.6 has spoken about the motive. P.W.7, is a Constable. He has stated that he handed over the dead body to the Doctor for post-mortem. P.W.8 has stated that he examined the internal organs of the deceased and found that there were neither alcohol nor poison. P.W.9 has spoken about the arrest of the accused, the confession made and the consequential recoveries of M.Os.1 and 11. P.W.10 has spoken about the post-mortem conducted by Dr.Anbuselvan. He has given opinion regarding the cause of death. P.W.11 has spoken about the chemical examination conducted on the material objects. He has stated that there were human blood stains on all the material objects, including the knives. P.W.12 has spoken about the Serology examination conducted on the material objects. P.W.13 has spoken about the registration of the case and the investigation done and also the final report filed by him.

4. When the above materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness on their side. Their defence was a total denial. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgement. That is how they are before this Court.

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

6. In this case, as we already narrated, the prosecution mainly relies on the eyewitness account of P.W.1. The learned counsel for the appellants would submit that the evidence of P.W.1 cannot be believed as there are lot of materials to infer that P.W.1 would not have witnessed the crime at all.

7. We find force in the argument of the learned counsel for the following reasons. During cross-examination, P.W.1 has admitted that he was not aware of the name and other details of the second accused, as he had no occasion to see the second accused prior to the occurrence at all. Thus, according to him, for the first time, he saw the second accused only at the time of occurrence. He has further stated that he came to know about the name and details of the second accused only during investigation by P.W.13. But strangely, the name of the second accused and all his other details are found in Ex.P1, the complaint itself. There is no explanation by the prosecution as to how the name of the second accused came to be mentioned in Ex.P1. This creates initial doubt about the very origin of Ex.P1. The F.I.R. has reached the Magistrate only at 6.00 a.m. on 17.09.2011, for which, absolutely there is no explanation. This also creates further doubt in the case of the prosecution.

8. Next, according to the case of the prosecution, the accused were arrested only on 18.9.2011 and on their respective disclosure statements, M.Os.1 and 11 were recovered. But P.W.1, during cross-examination, has admitted that on the day of occurrence itself, these two accused were in the custody of police and they identified them. Thus, only after securing the accused and keeping them in the custody, it appears that Ex.P1 had been drafted and then case was registered. This would create enormous doubt in the case of the prosecution. Thus, the case against the second accused, as projected by the prosecution, is to be rejected because of the fact that the second accused was not previously known to P.W.1 and there was no Test Identification Parade conducted, more so, because there is no explanation as to how his name came to be mentioned in Ex.P1.

9. Now turning to the case against A1, the learned counsel would submit that P.W.1 was working in the State Bank of India at Egmore Branch. He used to go for duty at 10.00 a.m. and to return only at 6.00 a.m. This was his normal practise. But it is not his case that on 16.9.2011, he was on leave and that he was on his house. P.W.13, during cross-examination, has admitted that he did not verify whether P.W.1 was in the State Bank of India at Egmore Branch, between 10.00 a.m. and 6.00 p.m. This would create some doubt about the very presence of P.W.1 at the place of occurrence. The deceased was alone at his house. According to P.W.1, he used to drink and quarrel with others. It appears that there were few cases against him. When that be so, the possibility of his other enemies, to have killed him in the house when he was alone also cannot be ruled out. At any rate, since this case is based on the solitary evidence of P.W.1, unless the evidence of P.W.1 inspires the fullest confidence of this Court, it would not be safe to convict either the first accused or the second accused solely on the basis of the evidence of P.W.1.

10. In this regard, we may refer to the judgement of the Honourable Supreme Court in Vadivelu Thevar vs. State of Madras (AIR 1957 SC 614) wherein, the Honourable Supreme Court has held that if a witness is wholly believable, there cannot be any difficulty for the Court to act upon the solitary evidence of the said witness. "if a witness is fully unbelievable, then undoubtedly, his evidence deserves to be rejected at the outset". According to the Supreme Court, difficulty arises for the Court only in respect of the witness, who is partly believable and partly unbelievable. The Hon'ble Supreme Court has held that if the evidence of the solitary witness is partly believable and partly unbelievable, then as a rule of prudence, the Court should look for corroboration from other independent source in material particulars and in the absence of any such corroboration in material particulars, it would not be safe to rely on the witness who could only be partly believed.

11. As in the instant case, we have already stated that there were lot of doubts about the presence of P.W.1 and about which we have already discussed. There is no other corroboration coming forward from other independent source in material particulars. Therefore, in our considered view, P.W.1, assuming that he could be believed, he is only partly believable and since there is no corroboration from other independent source in material particulars, it would not be safe to convict the accused solely on the basis of the evidence of P.W.1. Thus, we hold that the prosecution has failed to prove the case beyond reasonable doubts against the accused and therefore, the appellants are entitled for acquittal.

12. In the result, this criminal appeal is allowed; the conviction and sentences imposed as against the appellants are set aside. The appellants/accused are acquitted. Fine amounts, if any, paid by them shall be refunded to them forthwith.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

msk

To

1.The Principal Sessions Judge,Tiruvallur.

2.District Collector, Tiruvallur

3.Direct General of Police, Mylapore chennai.

4.The Superintendent, Central Prison, Phase-1,
Puzhal Chennai (Induplicate)

5.The Inspector of Police,
Ambattur Police station,
Tiruvallur District

6.The Public Prosecutor,
High Court, Madras

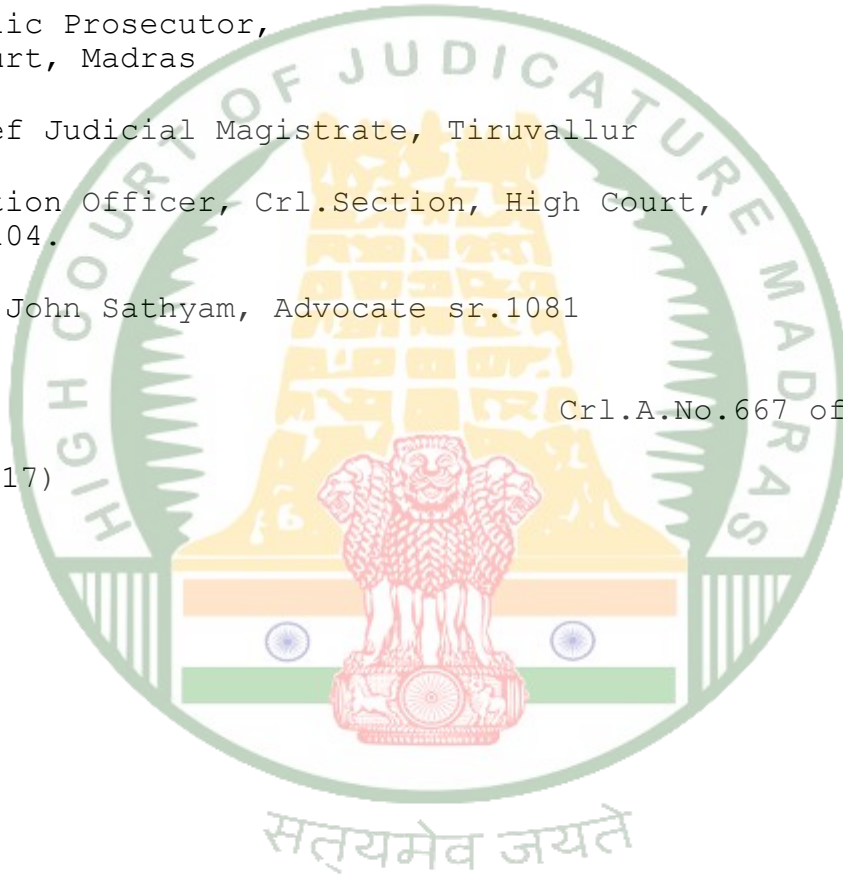
7.The Chief Judicial Magistrate, Tiruvallur

8.The Section Officer, Crl.Section, High Court,
Madras-104.

+1cc to R.John Sathyam, Advocate sr.1081

pk(co)
ss(7/2/2017)

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