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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.A. (MD) .No.390 of 2016

Sacha @ Irulandi

.. Appellant/Sole Accused

Vs.

State rep. by

The Inspector of Police,

Abiramam Police Station,

Parthipanoor Circle,

Ramnad District.

(Crime No.140 of 2009)

: Respondent/Complainant

PRAYER: Appeal filed under Section 374(2) Cr.P.C. to call for the records from the lower Court and set aside the Judgment of the Lower Court passed by the Additional District Court and Fast Track Court, Paramakudi, Ramanathapuram District in S.C.No.172 of 2010, dated 23.09.2016 by allowing this appeal.

For Appellant : Mr.V.Kathirvelu Senior Counsel
for M/s.B.Rooban

For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor.

Judgment Reserved on	04.08.2017
Judgment Pronounced on	11.08.2017

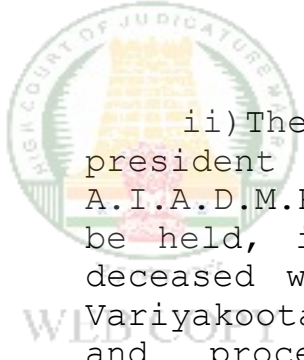
JUDGMENT

(Judgment of the Court was delivered by N.SATHISH KUMAR,J.)

Aggrieved over the judgment of the Additional District Court and Fast Track Court, Paramakudi, Ramanathapuram District, dated 23.09.2016 in S.C.No.172 of 2010, the present appeal has been filed. The Trial Court convicted the appellant/accused for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and imposed a fine of Rs.20,000/-, in default, 3 years Simple Imprisonment.

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

i) The accused Sacha @ Irulandi and deceased Karuppaiah are resident of Vikkiramapandiapuram Village, Ramanathapuram District and the deceased is the husband of PW1 and brother of PW2.



ii) The deceased belong to A.I.A.D.M.K. Party. PW5 was the Ex-president of the said village. Election for Branch Secretary in A.I.A.D.M.K party in Vikkiramapandiapuram Village was scheduled to be held, in which PW5 and the deceased decided to contest. The deceased was permitted to contest from the next village, namely Variyakootam. However, the deceased declined to accept the same and proceeded to contest in the same village, namely Vikkiramapandiapuram.

iii) On 27.11.2009 there was a function organised in the said village to distribute free television to the villagers and the said function was supposed to be attended by a Minister.

iv) When the matter stood thus, the deceased Karuppaiah and PW5/Santhi were returning from Paramakudi in a town bus No.23. While they were coming in the bus, there appears to have some altercation between PW5 and the deceased.

v) After alighting from the bus, the deceased questioned PW5 as to why she is contesting against him in the election. At the relevant time PW1 and PW2 along with others were present near the stage to get the free television and the accused was merely present at the stage. Immediately PW5 informed the accused about the deceased scolding her, who in turn questioned the deceased, for which the deceased replied that he will do so. At that time the accused removed MO1 knife from the waist. On seeing the same, the deceased started running towards the field. The accused chased the deceased and stabbed him on the right side of the back. The deceased immediately fell down.

vi) PW1 and PW2 found that the deceased died and thereafter lifted the deceased and kept the body on the stage. Immediately ambulance came there and deceased was taken to the hospital. The doctor declared the deceased was brought dead.

vii) Thereafter, PW1 along with PW2 went to the police and gave Ex.P1. PW12, Special Sub Inspector, on 27.11.2009 at 05.00 p.m. received Ex.P1 and recorded the statement of PW1 and registered the case in Crime No.140 of 2009 for the offence punishable under Section 302 IPC/Ex.P9 and forwarded the same to the Judicial Officer and copy to the Inspector of Police.

viii) PW15, Inspector of Police, after receipt of the First Information Report went to the place of occurrence at about 6 p.m. and prepared Observation Mahazar/Ex.P3 and Rough Sketch/Ex.P13 in the presence of PW6 and PW8, Village Administrative Officer and Revenue Superintendent. PW15 also seized blood stained shirt and dhoti blood stained earth and ordinary earth, as MO2, MO3, MO5 and MO6 respectively under Ex.P4 Mahazar.



ix) PW15 also conducted inquest over the dead body in the presence of Panchayatdars and prepared Ex.P14/inquest report and forwarded the dead body for autopsy. PW15 thereafter examined the witnesses and recorded their statements.

x) PW10 identified the dead body to the Doctor and handed over the request for postmortem. PW13, the Medical Officer attached to the Kamuthi Government Hospital, at the relevant time, after the receipt of requisition, conducted autopsy over the dead body and issue Postmortem certificate/Ex.P10 which is as follows:

"A moderately nourished body of a male lies on back forearm over chest. Cloths stained with blood, forthing at mouth present.

External injuries: Stab wound over right back of chest below. Scapula 3 x 1 cm x depth cannot be defined at this stage.

Internal examination" Thorax -on exploration. The wound passes through right 8th IC space piercing the parietal pleura and enters the base of right lung depth 8 cm."

xi) PW13 issued postmortem certificate/ Ex.P10 opining that the deceased would appear to have died of shock and hamorrhage due to stab wound over right chest involving the right lung 16 to 20 hours prior to autopsy.

xii) PW15 in continuation of the investigation, arrested the accused on 28.11.2009 at 3.30 a.m. in the presence of PW7 and one Palanivel and recorded the voluntary confession of the accused. The admissible portion of the confession is marked as Ex.P5. In pursuance to the same, PW15 seized MO1 knife near the bushes under Ex.P6 in the presence of witnesses and send the accused to judicial custody. PW15 also recorded statements and also seized blood stained trousers of deceased after postmortem under Ex.P15 and forwarded the same to the Court.

xiii) PW11 has handed over the material objects to forensic lab. PW9 examined the material objects and issued Ex.P7 biological report and serologist report Ex.P8 and found that blood was not deducted in MO1.

xiv) PW15 in continuation of the investigation after obtaining report from the forensic expert finally laid the charge sheet against the appellant/accused for the offence punishable under Section 302 IPC.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C. he denied the same as false and pleaded innocence. During trial, on the side of prosecution as <https://www.mca.gov.in/ncr/ncr.htm> were examined and 15 documents were exhibited besides 6 material objects.



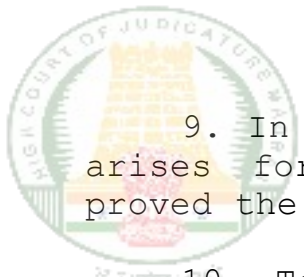
4. Having considered the above materials, the trial Court found the accused guilty as detailed in the first paragraph of this judgment and accordingly, punished him and that is how the appellant is before this Court with the appeal.

5. Heard the learned Senior Counsel for the appellant and the learned Additional Public Prosecutor for the State and also carefully perused the records.

6. The learned Senior Counsel appearing for the appellant submitted that the prosecution case is highly doubtful in the present case except the interested witnesses PW1 and PW2, the other witnesses have not supported the prosecution version. The evidence of PW1 and PW2 is also highly doubtful and further, their presence in the place of occurrence is doubtful and also not established convincingly. PW1's evidence, who allegedly present in the place of occurrence, is totally contradictory to the evidence of Investigation Officer. Therefore, the entire prosecution is doubtful in this case. Delay in registration of First Information report is also not properly explained in this case and delay in despatching the First Information Report is also not clearly established. Admittedly, there was a huge crowd at the relevant time in the place of occurrence to receive the free television to be distributed by the Minister of State. Therefore, the evidence of PW1 and PW2 that they witnessed the occurrence at the relevant time is highly doubtful. Further, the evidence of PW2 clearly shows previous motive for implicating the accused and furthermore, the accused is more than 70 years old and he chased the victim is highly improbable.

7. It is the further contention of the learned Senior Counsel that the Trial Court has simply relied upon the statement recorded under Section 164 Cr.P.C. and arrived at a conclusion that the prosecution has proved the guilt of the accused. Such approach by the Trial Court is not according to law. Hence, the learned Senior Counsel submitted that the prosecution has not proved the case beyond all reasonable doubt and prayed for benefit of doubt.

8. On the contrary the learned Additional Public Prosecutor appearing for the State submitted that in view of previous quarrel between the deceased and PW5, the accused chased the deceased and caused stab injury on the right side of the back, infact the injury pierced into the lung, which is also evident from the postmortem certificate. The evidence of PW1 and PW2 clearly proves the specific overt act of the accused. Merely because the prosecution witnesses are relative witnesses, their evidence cannot be disbelieved. Hence, he submitted that the prosecution has proved the guilt of the accused beyond all reasonable doubt.



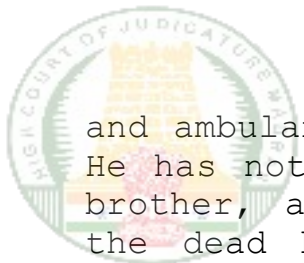
9. In the light of the above submissions made, the point that arises for consideration is that whether the prosecution has proved the guilt of the accused beyond all reasonable doubt.

10. To prove the guilt of the accused, the prosecution has examined as many as 15 witnesses, out of which, 5 witnesses stated to be the eye witnesses and among them PW1 and PW2, wife and brother of the deceased respectively, though supported the prosecution version, remaining eyewitnesses resiled from their statement and turned hostile. Of course, interested witnesses need not always be seen with doubt, but at the same time, their evidence requires some scrutiny.

11. On a careful perusal of the evidence of PW1 shows that on the date of occurrence at about 3 p.m., she went to the place of occurrence to receive the free television to be distributed by the Minister of the State, wherein PW2 and others were present. The deceased and PW5 came in a bus and alighted from the bus. When the deceased questioned PW5 about the party election, there arose a quarrel between them. Thereafter PW5 informed the accused, who was standing near the stage, who in turn questioned the deceased, for which, the deceased replied that he would question PW5 like that only. Immediately, the accused removed MO1, knife from his waist and on seeing the same the deceased started running from the place and the accused chased the deceased and caused stab injury on the right back of the deceased. As a result, the deceased died and PW1, PW2 and others immediately, lifted the deceased and kept the dead body at the stage and thereafter, ambulance came to take the dead body to the hospital.

12. PW2, brother of the deceased, also supported the version of PW1. From screening of entire evidence of PW1 and PW2, particularly PW2 evidence makes it clear that PW2 has strong motive as against the accused, in view of some civil dispute in respect of property, which has been admitted by PW2. Further, their evidence shows that there is also election dispute between PW5 and the deceased at the relevant point of time.

13. Similarly, when evidence of PW6, Village Administrative Officer, carefully seen, it would show that he was also present at the relevant time in the place of occurrence, but he has not spoken anything about the occurrence. The evidence of PW11, the Special Sub Inspector, who stated to have received the statement from PW1, clearly shows that he was also present at the relevant time and the Minister was supposed to come on that day and there was a huge crowd and protection also granted by the police. His evidence also clearly proves one fact that immediately after the alleged occurrence, the officers present in the place of occurrence informed the police and immediately ambulance came and dead body was taken to the hospital. The evidence of PW6 and PW8 Government officials shows that they were present at the place

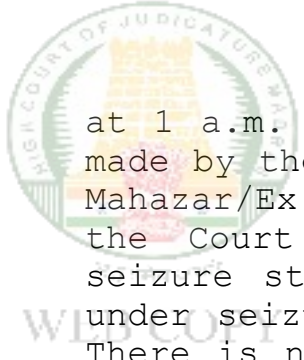


and ambulance came there and dead body was taken to the hospital. He has not even accompanied the dead body in the ambulance. As a brother, a normal conduct of the human would be to accompanying the dead body of own brother. This also creates serious doubt about the presence of PW2 in the place of occurrence. It is further to be noted that PW2 in his evidence has stated that about 150 to 200 people were very much present and they were allotted seat in the place of occurrence. When the Public functions are organised with loud speaker, the possibility of hearing conversation between two people by the witnesses also highly improbable.

18. PW1 and PW2 evidence clearly indicate that there is an election dispute between the deceased and their party men at the relevant time. The eye witnesses did not support the case of prosecution. Own brother-in-law of the deceased PW3 turned hostile and PW4 another eye witness also turned hostile. PW5 also turned hostile. PW6 and PW7, who stated to have present in the function not even whisper anything about the occurrence. Infact PW6 evidence show as if police came to the place of occurrence at about 3.30 p.m. itself and prepared observation mahazar. His evidence creates serious doubt about his presence at the time of occurrence. PW6 also in his evidence has stated that at about 3.30 p.m., the police came and prepared observation mahazar and these facts creates a serious doubt about the time of occurrence itself. When the genesis of occurrence is doubtful and not properly explained and one of the eye witnesses has serious motive and PW1's presence also doubtful, it is highly unbelievable to rely their evidence to bring home the guilt of the accused, of course, the medical officer evidence shows that there was stab injury on the right side back, which infact pierce into the lungs. Though the injury appears to be serious, the evidence of PW1 and PW2 creates serious doubt about the genesis of occurrence.

19. It is the prosecution case that the accused chased the deceased for some distance and caused the injury. As per the evidence of PW1 and PW2, there were quarrel between the accused and deceased and there were 100 people present in the place of occurrence. If really PW1 and PW2 who are close relatives of the deceased were present at the scene of occurrence, they would have made some attempt even to pacify either the deceased or the accused while making the quarrel. Their evidence is also silent on this aspect. Place of occurrence is shown as 50 mts away from the stage as per the observation mahazar. The accused is more than 71 years old, and at that age chasing such 50 meters, when more than 100 people were very much present in the place of occurrence, is highly improbable.

<https://hcservices.eco.nic.in/Theservice1> PW12 claims to have received the information at about 5 p.m., on 27.11.2009, the First Information Report is also not sent to the Court immediately, the same has reached the Court



at 1 a.m. on 28.11.2009 as it could be seen from the endorsement made by the learned Judicial Magistrate. The so called Observation Mahazar/Ex.P3 stated to have been prepared on the same day reached the Court on 14.10.2010 with inordinate delay. Similarly the seizure stated to have been effected in the place of occurrence under seizure Mahazar/Ex.P4 also sent to the Court on 29.12.2009. There is no explanation forthcoming from the prosecution for such inordinate delay.

21. Further, there is no bloodstain found on MO1, which is evident from forensic report/Ex.P7. Therefore, merely on the evidence of PW1 and PW2 stated to be the eye witnesses, the prosecution cannot succeed in proving the case beyond all reasonable doubt, when the time of occurrence and the presence of PW1 and PW2 are doubtful. Moreover, the previous information sent to the police is also suppressed. Therefore Ex.P1 stated to be the First Information Report is also hit by Section 162 of the Indian Evidence Act. It is common knowledge that whenever functions organised by the State Government and any Minister proposed to participate in the function, there will be lot of police people. Therefore receiving information only at 5 p.m. and thereafter commencing investigation in this case is highly doubtful. Genesis of the occurrence is totally suppressed by the prosecution. Possibility of occurrence taking place in some other manner due to political enmity also not been ruled out. The Trial Court without taking into consideration all these facts, relied only upon the evidence of PW1 and PW2 and also the statement given by PW3 and PW4 under Section 164 Cr.P.C., which is not a substantive piece of evidence.

22. It is to be noted that statement recorded under Section 164 Cr.P.C. never be considered as a substantive piece of evidence. At the most it can be used to corroborate for the maker under Section 157 or to contradict under Section 145 of the Indian Evidence Act. Except the above two purposes, the statement recorded under Section 164 Cr.P.C. cannot be used as substantive piece of evidence. This is a basic principles of law, which has been ignored by the Trial Court and the Trial Court has simply relied upon the statment of witnesses recorded under Section 164 Cr.P.C. and recorded the conviction of the accused under Section 302 IPC.

23. It is also one of the disturbing feature noticed by this Court that the Public Prosecutor not even conducted the case properly. PW2 and PW3 have given statement under Section 164 Cr.P.C. before the Magistrate, which is also marked as Ex.P12 series. Similarly PW5 also given a statement under Section 164 Cr.P.C. Those witnesses though turned hostile, the Public Prosecutor has not even contradicted them with their statement recorded under Section 164 Cr.P.C. That itself clearly indicate that the Prosecutor has proceeded the case without knowing the



fundamental of Evidence Act. It is high time for the State Government to appoint the Prosecutor who are well-versed with the procedure of law, otherwise criminal justice will be in casualty. Despite the homicidal offence, since the prosecution has not put forth the genesis of the occurrence properly and in view of the over all analysis, we have no other option except to hold that it is highly unbelievable to rely upon the prosecution evidence mainly PW1 and PW2, which has got some serious infirmities. Accordingly, we hold that the prosecution has not proved the case beyond all reasonable doubt. Hence, the accused is certainly entitled to the benefit of doubt. Accordingly the judgment of the Trial Court convicting the accused under Seciton 302 IPC and imposing the life imprisonment are hereby set aside.

24. In the result, the appeal is allowed and the conviction and sentence imposed by the learned Additional District Court and Fast Track Court, Paramakudi, Ramanathapuram District, against the appellant in S.C.No.172 of 2010, dated 23.09.2016 are set aside. The Bail bond executed by the appellant, if any shall stand cancelled. Fine amount if any paid by the appellant shall be refunded. Connected Crl.M.P. is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

To

- 1.The Additional District Court and Fast Track Court,
Paramkudi,
Ramanathapuram District.
- 2.The Principal District Judge, Ramanathapuram.
- 3.The Judicial Magistrate - cum - District Munsif,
Kamuthi.
- 4.The Chief Judicial Magistrate,
Ramanathapuram.
- 5.The District Collector, Ramanathapuram.
- 6.The Director General of Police,
Mylapore, Chennai-4.
- 7.The Superintendent of Police,
Central Prison, Madurai.



8.The Inspector of Police,
Abriamam Police Station,
Parthipanoor Circle,
Ramnad District.

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9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre Delivery Judgement made in
CRL.A.(MD).No.390 of 2016
Dated: 11.08.2017

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JM/SV MMS/SAR 2/30.08.2017/10P/10C