



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 07.09.2017

Delivered on : 13.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Criminal Appeal (MD) No.461 of 2016

and CrI.M.P.(MD) No.11923 of 2016

1.Packiam

2.Murugan

3.Valli

.. Appellants/Accused 1 to 3

vs.

State,

rep. by Inspector of Police,

Nerkuppai Police Station,

Sivagangai District.

(Crime No.43 of 2010)

.. Respondent/Complainant

Criminal appeal is filed under Section 374(2) of Criminal Procedure Code against the judgment and conviction dated 25.11.2016, by the learned Sessions Judge, Sivagangai in S.C.No.71 of 2011.

For Appellants

: Mr.D.Ramesh Kumar

For respondent

: Mr.K.S.Duraipandian

Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by

M.M.SUNDRESH, J)

The 1st appellant, who stood charged and convicted for the offence under Section 302 I.P.C. and appellants 2 and 3, who stood charged and convicted for offence under Section 302 r/w 34 by the Sessions Court in S.C.No.71 of 2011 on the file of Sessions Judge, Sivaganga are before this Court, seeking to set aside the same.

2.The case of the prosecution:

(i) P.W.2 is the President of Society of Peria Pandi Kanmoi Water Users. P.Ws.1, 3 and 4 are its members. The appellants are father, son and mother. Contra to the agreed terms, the second appellant was found using water to the agricultural land. P.Ws.1 to 5 went to the land of the appellants and raised objections. It was replied by the second appellant that they can enquire the first appellant.

(ii) Thereafter, the first appellant was called and enquired in the residence of one Mr.Velu, near the tamarind tree and near the electric post on 25.09.2010 at about 7.30 p.m. When the deceased was questioning the first appellant, he asked the



third appellant, namely, his wife to bring the knife and thereafter stabbed the deceased. At that time, the second appellant caught hold of the deceased. Thereafter, P.W.1 and others brought a car and took the deceased to Ponnamaravathi Government Hospital. There they were informed that the deceased was no more. This happened at about 9.30 p.m., pursuant to which a complaint under Ex.P.1 was given.

(iii) P.W.12 is the officer, who registered the complaint under Ex.P.8. After registration of the First Information Report under Ex.P.8, it was sent to the Judicial Magistrate, Thiruppathur at 11.30 p.m. on 25.09.2010 through P.W.11 - Head Constable. P.W.14 is the officer, who conducted the investigation initially. He thereafter prepared Ex.P.2 - Observation Mahazar and Inquest Report - Ex.P.11 and arrested all the accused and obtained their confession statement, pursuant to which recovery of M.O.3- Knife was made. The recovery mahazar is Ex.P.5. Ex.P.10 is the rough sketch and Ex.P.7 is the postmortem certificate. Finally, on completing the investigation, P.W.15 laid the charge sheet against the accused under Section 302 I.P.C.

3. Prosecution Witnesses:

(i) P.W.1 is the father of the deceased. He has stated the case of the prosecution. He has further stated that the deceased was taken to Ponnamaravathi Government Hospital, wherein it was informed that he died. Thereafter, the complaint - Ex.P.1 was given. In his cross-examination he has stated that another Hospital was at Nerkuppai. According to P.W.1, the Accident Register has been prepared at Ponnamaravathi Hospital.

(ii) P.W.2 also deposed on the same lines. He also states that the occurrence took place during the night time and it happened under the street light. A1 asked A3 to bring the knife and thereafter A1 stabbed the deceased. The deceased was taken to Ponnamaravathi Government Hospital, wherein it was informed that he was dead. He further states that the deceased was taken to Ponnamaravathi Government Hospital by P.Ws.1, 8 and one Ganpathy, who has not been examined. It is his further evidence that P.W.1 is his uncle.

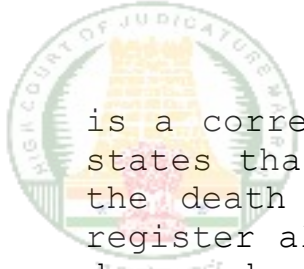
(iii) P.Ws.3, 4 and 5 though being members of the Society, turned hostile.

(iv) P.W.6 is the wife of the deceased, whose evidence is hearsay. However, she also stated that the deceased was taken to Ponnamaravathi Government Hospital. After getting information, she went to the Hospital by bus.

(v) P.W.7 has stated that he had seen the dead body, which was also witnessed by about 20 to 25 persons.

(vi) P.W.8 is the Village Administrative Officer, who signed the Observation Mahazar - Ex.P.2. He further deposed that he has also stated to be present at the time of recovery of M.O.3.

<https://hcservices.econet.gov.in/HcsServices/>
 (contd) P.W.9 is the Doctor, who has given the death intimation memo under Ex.P.6. Ex.P.6 merely records stab injury. It was signed on 25.09.2010 at about 8.30 p.m. He also admits that there



is a correction in Ex.P.6 with respect to the timing. He further states that there is an accident register, which normally records the death of the deceased. He further states that the accident register also would include the name of the person who brought the deceased. He further admits that Ex.A6 does not indicate the person to whom it was sent.

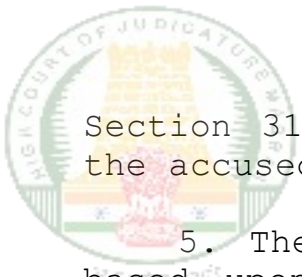
(viii) P.W.10 is the Doctor who conducted postmortem under Ex.P.7. He has stated that the deceased would have died 15 to 20 hours prior to postmortem done, which was on 26.09.2010 at about 11.15 a.m. In the cross-examination P.W.10 has stated that the stomach of the deceased contained brown liquid. However, no examination was done since the investigation officer did not make any request.

(ix) P.W.11 is the head-constable, who took the complaint registered and handed it over the jurisdictional Magistrate, Thiruppathur on 25.09.2010 at 23.30 hours. In his cross-examination he has stated that in the records of the Court with respect to the receipt of the First Information Report it was mentioned as 29.09.2010. There is a seal dated 29.09.2010. The First Information Report under Ex.P.8 has also been corrected with respect to the date. It was originally written as 25.09.2010 and thereafter corrected as 29.09.2010. Similarly, there is a correction with respect to the hour. He further states that there is no signature for the receipt of Ex.P.8.

(x) P.W.14 is the initial investigation officer who was put in charge. He has also deposed that on receipt of the First Information Report he prepared Ex.P.10 sketch and Observation Mahazar Ex.P.2. After enquiring P.Ws.1 to 8, he went to Ponnamaravathi Valayapattai Government Hospital and conducted the inquest and filed the report under Ex.P.11. Thereafter, he arrested the accused. The first appellant gave a confession statement, pursuant to which recovery was made. In his cross-examination he accepted that it has been mentioned in Ex.P.10 that the occurrence took place opposite to the hut of one Alagammal and below a tamarind tree. He further states that as per Ex.P.10 house of Velu situates opposite to Cement Road leading to Velar. He further admits that as per the complaint the occurrence took place near Velu's residence. He did not verify the documents in the hospital. He accepted that there is interpolation in Ex.P.5, which speaks about the recovery.

(xi) P.W.15 is the officer, who conducted the further investigation. In his examination he has stated that P.Ws.1 to 3 have stated that the deceased was taken to Ponnamaravathi Hospital. According to him, he examined the doctor therein. However, he did not peruse any records.

4. Based on the above materials, the Trial Court framed charges as detailed earlier in this judgment. During the trial, on the basis of the materials on file, the prosecution, as many as 15 witnesses were examined and 13 documents were exhibited, besides 5 Material Objects. When the above incriminating materials were put to the accused under



Section 313 Cr.P.C, they denied the same as false. On behalf of the accused no one was examined.

5. The trial Court convicted the appellants as stated above based upon the evidence of P.Ws.1 and 8, medical evidence of P.Ws.9 and 10 and the recovery of M.O.3.

6. The learned counsel for the appellant would submit that there is a serious doubt with respect to the case as projected by the prosecution. There is a contradiction between Ex.P.10 and the evidence of P.Ws.1 and 2. Even as per the evidence of P.Ws.1, 2, 14 and 15, P.W.1 took the deceased to Ponnamaravathi Government Hospital. P.W.14 has stated that he did the inquest in the said Hospital. Therefore, it is strange and surprise as to how the body has been transferred to Valayapatti Government Hospital. There is absolutely no reason as to why the doctor at Ponnamaravathi is not examined. It is also strange that the accident Register entered both at Valayapatti and Ponnamaravathi were not mentioned by the prosecution.

7. The learned counsel for the appellants further states that the entire case of the prosecution cannot be believed since the origin of the occurrence itself is suppressed. Even the complaint though said to have been received by the Magistrate on 25.09.2010 at about 11.30 p.m., it was corrected at two places with respect to date and hour. The date was mentioned as 29.09.2010 and thereafter corrected as 25.09.2010 and similarly a.m. has been changed into p.m. However, the seal is to the effect that it was received on 29.09.2010. There is absolutely no explanation though the same was admitted by P.W.11. Therefore, considering the above, it has to be held that the prosecution has not proved its case and thus the appeal will have to be allowed.

8. The learned Additional Public Prosecutor would submit that it is a case in which P.Ws.1 and 2 being eyewitnesses have clearly spoken about the overtacts attributed by the appellants. Therefore, when the eyewitnesses clearly spoke about the occurrence, merely because they are father and close relative of the deceased, the same cannot be disbelieved. Further more, the recovery was made pursuant to the confession statement given by A1. The trial Court rightly considered the materials available on record and rendered a conviction. Thus, the appeal will have to be dismissed.

9. We have considered the rival submissions and perused the evidence available on record.

Discussion:

<https://hcservices.courts.gov.in/hcservices/> On perusal of the records, we find that Ex.P.8 - F.I.R. was found corrected. The date was originally mentioned as 29.09.2010. Then the date was corrected as 25.09.2010. So is with



respect to the time. It was corrected from a.m. to p.m., though the hour is not corrected. However, the seal of the Judicial Magistrate Court, Thiruppathur shows that it was received only on 29.09.2010. Similarly we find that correction under Ex.P.8 with respect to timing. Such correction was also found with respect to Ex.P.5. Thus, if we look into this document along with statements made by the prosecution witnesses, then it creates serious doubts especially with respect to Ex.P.8. There is absolutely no explanation for this, though admitted. Therefore, we are of the view that the case as projected by the prosecution cannot be accepted.

11.All the witnesses including P.Ws.1 and 2 have stated both in chief and cross examination that the deceased was taken to Ponnamaravathi Government Hospital. P.W.2 has stated in the cross-examination that there are two hospitals one at Ponnamaravathi and another at Valayampatti. P.W.1 has stated that the Doctor at Ponnamaravathi has made a recording. However, neither the Doctor was examined nor the Accident Register has been marked. In the inquest report, it has been stated that the deceased was dead on the way while taken to Ponnamaravathi Government Hospital. P.W.14 while accepting the fact that P.Ws.1 to 3 have stated the deceased was taken to Ponnamaravathi Hospital stated that he did not enquire the Doctor, so did not peruse the records. Ex.P.6 merely issued by P.W.9, who is a Doctor working at Valayampatti Government Hospital. If one peruse Ex.P.6 it contains no information at all except the word 'stab injury'. Thought it is a death intimation, there is no indication about the person to whom it was sent. P.W.14 also states that he examined the Doctor and perused the records.

12.From the above, it is not known as to how the dead body was taken from Ponnamaravathi Government Hospital to Valayapatti Government Hospital. It is to be noted that the prosecution witnesses say that the dead body was taken from Ponnamaravathi Government Hospital to Government Hospital Valayampatti contrary to the case of the prosecution case that the deceased was taken to Ponnamaravathi Government Hospital, where he was found dead. From the above, we are of the view that the entire case of the prosecution cannot be accepted as true.

13.It is the specific case of the prosecution through its witnesses that the occurrence took place opposite to the house of one Velu near the electric post. If one goes through the Sketch under Ex.P.10, it is clear that the place of occurrence is near the hut of one Alagammal. There are two roads stand in between the house of Velu and Alagammal. One road by name M.D.R. Road and another Ponnamaravathi - Thiruppathur Road. This position has been

<https://hccases.courtserv.in/cases/hccases>

cross-examination by stating that house of Velu is situated opposite to the same road leading to Velar. The place of occurrence as per prosecution is opposite to Alagammal hut.



From the above, we are of the view that even the place of occurrence has not been established to the satisfaction of the Court.

14. The trial Court merely went by the evidence of the prosecution without considering the infirmities noted above. Merely because P.Ws.1 and 2 are stated to be eyewitnesses coupled with recovery, it cannot be stated that the prosecution has proved the case beyond reasonable doubt. The trial Court in our considered view has omitted to consider the material aspects discussed above. Thus, in the light of the discussion above, we are of the considered view that the appellants are entitled for the benefit of doubt as the prosecution has failed to prove its case.

15. In the result, the Criminal Appeal is allowed and the order of conviction and sentence passed by the learned Sessions Judge, Sivagangai made in S.C.No.71 of 2011 dated 25.11.2016, are set aside. The appellants are acquitted of all the charges. The appellants 1 & 2 are now undergoing sentence in the Central Prison, Tiruchirappalli and the 3rd appellant is confined at Special Prison for Women, Tiruchirappalli. In view of this judgement acquitting them, the jail authorities are directed to set them at liberty forthwith, if they are not required in connection with any other case or proceedings. Fine amount paid shall be refunded to the appellants. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Sessions Judge,
Sivagangai.
2. The Superintendent,
Central Prison,
Tiruchirappalli.
3. The Superintendent of Prison,
Special Prison for Women,
Tiruchirappalli.
4. The Inspector of Police,
Tirunelveli District.



5.The District Collector,
Sivagangai.

6.The Superintendent of Police,
Sivagangai.

7.The Director General of Police,
Mylapore, Chennai-4.

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

+1cc to M/S.D.Ramesh Kumar, Advocate SR.No. 78443

Pre-delivery order in
Criminal Appeal (MD) No.461 of 2016
and Crl.M.P.(MD) No.11923 of 2016
Delivered on
13.09.2017

sj
JM/RSK/SAR 3/13.09.2017/7P/10C