

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T. SELVAM
AND
THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Cr1.A.No.301/2017

1.Shanmugam
2.Kanakambaram

Appellants / A1 & A2

Vs.

State rep. by,
The Inspector of Police
Pennadam Police Station
Cuddalore District.

..Respondent

Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the conviction and sentence imposed upon the appellants by the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam in SC.NO.137/2016 dated 20.03.2017.

For Appellants : Mr.V.Gopinath, SC for
Mr.L.Mahendran

For Respondent : Mr.V.Arul, APP

JUDGMENT

[Judgment of the Court was delivered by N.SATHISH KUMAR, J.,]

Appellants, arrayed as A1 and A2 in the case tried in SC.No.137/2016 on the file of the Court of III Additional District and Sessions Judge, Cuddalore at Vridhachalam, for offences u/s.341, 294[b], 324 and 302 IPC. The Trial Court, under impugned Judgment dated 20.03.2017, found the appellants / accused guilty of the above said offences and awarded sentence, as follows:-

Rank of the Accused	Conviction under section	Sentence Awarded
A1 & A2	341 IPC	Each of the accused were sentenced to undergo 15 days simple imprisonment.
	294[b] IPC	Each of them were sentenced to undergo 15 days simple imprisonment.
	324 IPC	Each of the accused were sentenced to undergo 3 months rigorous imprisonment.
	302 IPC	Each of the accused were sentenced to undergo imprisonment for life and to pay a fine of Rs.1000/- each, with a default sentence of 3 months simple imprisonment.

The sentences were ordered to run concurrently. Aggrieved over the said conviction and sentence, the present appeal came to be filed by the appellants/accused.

2 The brief facts of the prosecution case, are as follows:-

[a] A1-Shanmugam is the younger brother of the deceased Dharmalingam. A2-Kanakambaram is the wife of A1. The deceased Dharmalingam was residing in Karaiyur village with his two wives, viz., P.W.1-Poongothai and P.W.2-Ilavarasi. There was a dispute between the deceased and A1 in respect of 7 acres of land and civil suit is also pending. Due to such enmity, on 20.04.2016, at about 6.00 p.m., while the deceased was returning home after grazing goats, the accused waylaid the deceased ; scolded him in filthy language by saying as to why he had not partitioned the property and so saying, A1 cut the deceased with M.O.4-Bill Hook and A2 beat the deceased on the left ear and on the head with wooden reaper stick. When the deceased raised hue and cry, P.Ws.1 and 2 rushed to the spot and when they attempted to prevent the attack on the deceased, A1 cut P.W.1 on right hand and A2 attacked P.W.2 with the reaper stick on her forehead and back side of the body.

[b] Immediately, P.W.9-Manikandan, son of the deceased and P.W.1, called Ambulance and took the deceased to the Government Hospital, Vridhachalam. From there, the deceased was referred to JIPMER Hospital and he succumbed to injuries on 28.04.2016. While P.W.1 was in the Government Hospital at Vridhachalam, police came and obtained her statement under Ex.P.1. P.W.9 deposed that he had seen the deceased with blood

stains and at that time the deceased informed him that A-1 did it for good reason. He also saw his aunt - P.W.2 with blood injuries.

[c] P.W.13-Karunanidhi, Special Sub Inspector of Police attached to Pennadam Police Station, on receipt of intimation from the hospital on 20.04.2016, went to the hospital on 20.04.2016 at about 20.30 hours and recorded the statement from P.W.1, registered the crime in Cr.No.140/2016 u/s.341, 324, 294[b] and 307 IPC at about 22.30 hours. The Printed FIR is marked as Ex.P.6. He despatched the originals of Ex.P.1 and Ex.P.2 to the jurisdictional Court and forwarded the copies of the same to the higher officials.

[d] P.W.20-Raja, Inspector of Police attached to the respondent Police Station, on receipt of the Case Diary and FIR from P.W.13, took up the case for investigation and went to the hospital on the nights hours on 20.04.2016 and examined P.W.1 and recorded her statement. On 21.04.2016, he went to the place of occurrence and prepared the Observation Mahazar [Ex.P.3] and Rough Sketch [Ex.P.16] in the presence of P.W.6-Krishnakumar, VAO and one Sudha. He seized M.O.2-Blood stained cloth ; M.O.1-empty cool drink bottle ; M.O.3-a pair of chappals under the cover of Mahazar - Ex.P.5. He examined the witnesses and recorded their statements. He again went to the hospital ; examined P.W.2 and recorded her statement. On secret information, he went to Nandapadi Bus Stand on the same day at about 13.30 hours and arrested the accused persons in the presence of P.W.6 and Sudha. A1 came forward to give a voluntary confession statement, the admissible portion of which is marked as Ex.P.4. In pursuant to the same, the Investigating Officer seized M.O.4-Bill Hook and M.O.5-Wooden Reaper Stick under Mahazar-Ex.P.17 in the presence of the same witnesses. He sent A-1 for judicial remand and case properties to the Court. On receipt of death intimation of the deceased from JIPMER Hospital, Pondicherry, on 28.04.2016, he altered the crime to one u/s.341, 324, 294[b] and 302 IPC under Ex.P.20-Alteration Report. He went to hospital on 28.04.2016 and held inquest on the body of the deceased between 9.00 a.m. and 11.00 a.m. in the presence of witnesses and Panchayatdars and prepared Ex.P.21-Inquest Report. He forwarded the dead body for postmortem.

[e] P.W.12-Rajkumar, Police Constable [Grade II] attached to respondent Police Station deposed about [a] the handing over of FIR to the Court concerned on 21.04.2016 and Alteration Report on 28.04.2016 ; [b] his presence at the time of conducting [i] Inquest on the dead body by the Investigating Officer ; [ii] Postmortem ; and thereafter, handing over of dead body to the relatives for cremation.

[f] P.W.14-Ramu, Junior Scientific Officer, attached to Forensic Science Laboratory, examined the material objects and issued Ex.P.7-Biological Report. P.W.15-Rajiv, Junior Scientific Officer, issued Ex.P.8-Viscera Report. P.W.18-Dharani, Junior Scientific Officer issued Ex.P.13-Serology Report.

[g] P.W.16-Karikalan, Casualty Doctor attached to the Government Hospital, Vridhachalam, examined the deceased Dharmalingam on 20.04.2016 at about 7.50 p.m. The deceased was unconscious at that time. The Doctor found [1] Laceration measuring 5x2x1cm bone deep on the frontal head and [2] laceration measuring 4x2x1 cm on the left ear. Ex.P.15 is the Accident Register. He examined P.W.1-Poongothai, on the same day at 8.00 p.m. and found Laceration injury measuring 4x4x1cm on the right forearm. Ex.P.9 is the Accident Register pertaining to P.W.1 wherein he had opined that the injury is simple in nature. He also examined P.W.2-Ilavarasi on

20.04.2016 at about 8.10 p.m., and found a lacerated injury measuring 5x2x1 cm over frontal region. Ex.P.10 is the Accident Register pertaining to P.W.2, wherein the doctor had opined that the injury is simple in nature.

[h] P.W.17-Medical Officer attached to JIPMER Hospital, Pondicherry, on receipt of requisition, commenced the postmortem on 29.04.2016 at 11.35 a.m. and found the following injuries:-

"External Injuries:-

[1] Vertically placed sutured lacerated wound of size 6cm x 0.1cm with margins adherent and placed 10 cm above root of nose, covered with scab. Margins are pinkish white suggestive of healing with an open wound of size 1cmx0.5cm present at the base.

[2] Surgically sutured wound of size 2.5cm x 0.2cm x soft tissue deep present over back of left ear covered with 3 black sutures. On removing the sutures margins were irregular, pinkish white in colour.

[3] Surgically sutured wound of size 1.5cmx0.1cm margin firmly adherent, no scab presence. It is present 6cm above right eyebrow in the right frontal region, pinkish white in colour.

[4] Tracheostomy wound of size 2cmx1cmxtrachea lumen deep placed 3cm above suprasternal notch."

Ex.P.11 is the Postmortem Certificate issued by him wherein he had opined that the deceased would have died due to head injury.

[i] P.W.19-Dr.Chandra Mugesh, Senior Resident in Neuro Surgero Department, JIPMER Hospital. He admitted the deceased on 21.04.2016 at 1.18 a.m. and the deceased was unconscious and was put on ventilator. Despite treatment, he suffered brain injury and was declared dead on 28.04.2016. Ex.P.14 -Report issued by P.W.19.

[j] P.W.20, in continuation of investigation, examined the witnesses, Medical Officers ; recorded their statements ; collected various documents relating to the case including the Medical Reports and on completion of investigation, filed the Final Report u/s.341, 294[b], 324 and 302 IPC against the accused before the learned District Munsif-cum-Judicial Magistrate, Thittakudi, who took it on file in PRC.No.10/2016 and issued summons to the accused and on their appearance, furnished them copies of the documents u/s.207 Cr.P.C. and having found that the case is exclusively tried by the Sessions Court, committed the same to the Court of the Principal District and Sessions Judge, Cuddalore, u/s.209 Cr.P.C., who in turn had made over the case to the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam, who took it on file in SC.No.137/2016 and on appearance of the appellants / accused, had framed the charges u/s.341, 294[b], 324 and 302 IPC and questioned them. The appellants / accused pleaded not guilty to the charge framed against them.

[k] The prosecution examined P.Ws.1 to 20 and marked Exs.P.1 to 21 besides marking M.O.1 to M.O.5.

[l] The appellants/accused were questioned under section 313 Cr.P.C., with regard to the incriminating circumstances against them in the evidence rendered by the prosecution and he denied it as false. No witness was examined and no documentary evidence was marked on the side of the appellants/accused.

[m] The Trial Court, on consideration and appreciation of the oral and documentary evidence and other materials, has convicted and sentenced the appellants/accused as above stated and hence, this appeal.

3 Mr.V.Gopinath, learned Senior Counsel assisted by Mr.L.Mahendran, learned counsel appearing for the appellants/accused would submit that P.Ws.1 and 2 are highly interested witnesses as there exist previous enmity between the deceased and A-1 over the property. Hence, their evidence cannot be relied upon. P.Ws.1 and 2 have falsely implicated the

family members of A-1. In the First Information Report, apart from the names of the appellants/accused herein, the name of the son of the accused, viz., Arulselvan @ Iyyappan, is also included. It is the contention of the learned Senior counsel that P.W.1 and P.W.2, had stated to P.W.16-Doctor that three persons attacked with knife and wooden stick and therefore, the evidence of P.Ws.1 and 2 is unreliable and untrustworthy and their evidence is totally interested in nature and is highly doubtful. Further, the learned Senior counsel would submit that the FIR had reached the Court with an inordinate delay and no explanation is offered by the prosecution for such delay. Learned Senior Counsel submitted that insofar as A-2 is concerned, no specific overt act is alleged against her in the FIR. The only allegation made against A-2 in FIR is only that she had attacked the eyewitnesses, viz., P.Ws.1 and 2, with the wooden stick, causing simple injuries. Therefore, it is submitted that once the evidence of the eyewitnesses turns out to be unnatural ; interested and unreliable, benefit of doubt is to be given to the accused. Hence, he prayed for allowing of the appeal.

4 Per contra, Mr.V.Arul, learned Additional Public Prosecutor submitted that P.Ws.1 and 2 are injured witnesses and their evidence clearly speak about the manner of attack inflicted on the deceased by A-1 and the presence of A-2 in the place of occurrence. If really P.Ws.1 and 2 have falsely implicated, they could not have left the son of A-1 and A-2. This aspect clearly indicate their version is true. Merely because there is some discrepancy with FIR and the Accident Registers copy with regard to number of persons, their entire evidence cannot be discarded in toto. Hence, the learned Additional Public Prosecutor submitted that the Trial Court has considered the entire aspect and the prosecution has proved the guilt of the accused beyond all reasonable doubt and hence, he prays for dismissal of the criminal appeal.

5 We have perused the entire materials and evidence on record.

6 In the light of the above submissions, we have to analyse whether the prosecution was able to bring home the guilt of the appellants/accused beyond all reasonable doubt.

7 Though the prosecution has examined as many as 20 witnesses, P.Ws.1 and 2-wives of the deceased Dharmalingam, were examined as eyewitnesses. P.Ws.1 and 2, in their evidence have stated about the strained relationship between the families of A-1 and the deceased due to dispute over 7 acres of land and on account of the same, on 20.04.2016 at about 6.00 p.m., when the deceased was returning home after grazing goats near Mariamman Temple, the accused waylaid him and A-1 abused the deceased in

filthy language and questioned him as to why he has not partitioned the property and so saying, cut the deceased on the head while A-2 attacked the deceased with wooden reaper stick. When P.Ws.1 and 2 rushed to the spot and tried to prevent the attack, they also sustained injuries at the hands of A-2. On hearing the hue and cry, P.W.9-son of the deceased called Ambulance and took the deceased and injured persons to the Government Hospital, Vridhachalam. On a careful perusal of the entire evidence of P.Ws.1 and 2 coupled with the medical evidence, viz., the evidence of P.W.16, it is seen that both P.Ws.1 and 2 came to the hospital along with the deceased in an Ambulance and when he examined them, he found that both P.Ws.1 and 2 were injured [P.W.1 sustained simple injury measuring 4x4x1cm on the forearm and P.W.2 sustained simple injury measuring 5x2x1cm over the frontal region]. These facts would in fact, establish that the occurrence took place as stated by P.Ws.1 and 2 on 20.04.2016 at 6.00 p.m. Though P.Ws.3 and 4 have turned hostile, their evidence would also indicate that at the relevant point of time, the deceased went to hospital. On a careful analysis of the evidence of P.Ws.1, 2 and 7 / wives and son of the deceased, it is seen that they have spoken about the previous enmity between A-1 and the deceased over the partitioning of the property. P.W.9, yet another son of the deceased, immediately after the occurrence has seen his father with blood oozing out on his head. He also seen injuries on P.Ws.1 and 2 and when enquired, the deceased Dharmalingam informed P.W.9 that only A-1 did the act of cutting him with a knife and advised P.W.9 not to go near A-1 as he may attack P.W.9 also. P.W.9 called Ambulance and took the deceased to the hospital.

8 Though P.Ws.1 and 2 gave a statement to the doctor in Casualty, viz., P.W.16, about they being attacked by three known persons with knife and wooden stick, a perusal of their evidence before the Court below would reveal that they have spoken about the specific overt acts pertaining to A-1 and A-2 only. P.W.1, at the first instance, had given a statement to P.W.16 that he was attacked by 3 known persons with knife and hand near Mariamman Temple on 20.04.2016 at 6.00 p.m. Further, a reading of Ex.P.1-statement given by P.W.1 given to P.W.13-Special Sub Inspector of Police on the basis of which FIR was filed, would show that P.W.1 had stated that A-1 and his son, viz., Arulselvan @ Iyyappan, had attacked the deceased with knives. In the complaint, nowhere it is stated by P.W.1 that A-2 beat the deceased with wooden log / reaper stick. The specific overt act alleged against A-2 in the complaint as well as in the FIR was with regard to causing of injuries on P.W.2. This fact has also spoken to by P.Ws.1 and 2 in their evidence. From the above, it is crystal clear that though P.W.1 and P.W.2, in their statements before police, had implicated A-1 ; A-2 and

their son in the complaint and also narrate the specific overt acts against each of the accused, in their evidence before the Court they had given a contrary version about the role of A-2 in attacking the deceased. Therefore, we are of the view that the evidence of P.Ws.1 and 2 insofar as A-2 is concerned in attacking the deceased with reaper stick, cannot be relied upon and it is highly unsafe to place credence on their evidence. The manner in which A-1 ; his wife - A-2 and their son were implicated in the FIR, clearly show that both P.Ws.1 and 2 tried to implicate the entire family members of A-1 in the FIR. Hence, we are of the view that the evidence of P.W.1 and P.W.2 as regards implication of A-2 is highly doubtful and is nothing but an improved version before the Court and cannot be relied upon insofar as A-2 is concerned.

9 Insofar as the role of A-1, P.Ws.1 and 2 have spoken in one voice about the cut injuries caused by A-1 using M.O.4-Bill Hook and the said injuries is also substantiated by the medical evidence as discussed above. Merely because the statements of the witnesses and their evidence are disbelieved in certain aspects, their entire evidence cannot be discarded in its entirety. The Court has to look into / search for the fact in issue involved in the case on the basis of the available materials. As the doctrine of falsus in uno falsus in omnibus has not been followed in Indian Courts, we are of the view that merely because the evidence of P.Ws.1 and 2 is not reliable as against A-2, their evidence cannot be discarded with regard to the specific overt act as against A-1 in causing cut injuries on the head of the deceased. Further, the evidence of P.W.9 does not indicate the presence of A-2 in the scene of crime.

10 Nowadays, it is the normal tendency of the family members of the aggrieved to implicate the members of the assailant's family. This trend is common in the Society. Therefore, we are of the view that though the evidence of P.Ws.1 and 2 in implicating the family members of the accused is doubtful, the fact remains that their evidence as regards presence of A-1 in the scene of crime and causing cut injuries on the deceased cannot be brushed aside. The said fact is also fortified by the evidence of P.W.9-son of the deceased, to whom the deceased had stated that it was only A-1 who had attacked him. The evidence of P.W.9 appears to be quite natural one. We find no infirmity in his evidence. The doctor who conducted Postmortem, had also opined that the deceased died due to head injury and his evidence does not suggest any other reasons for the death except the injuries. Similarly, the evidence of P.W.19-Senior Resident in Neuro Department, JIPMER Hospital, also clearly show that from the date of admission, the deceased was in critical condition in the hospital and brain injury was found out in the CT Scan and despite treatment, the deceased succumbed to injuries. Hence, considering the reliable portion

of the evidence of P.Ws.1 and 2 and the evidence of P.W.9 coupled with the medical evidence, we hold that it was only A-1 who has caused injuries on the deceased by using M.O.4-Bill Hook. If any act is done with an intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, then the said act would definitely fall within the ambit of Section 300 IPC. Therefore, we are of the view that though we disbelieve the evidence of P.W.1 and P.W.2 insofar as A-2 is concerned, we are inclined to rely upon their evidence as against A-1.

11 Though it is the contention of the learned Senior counsel appearing for the appellants that there is a delay in registering the FIR, the fact remains that P.W.1 and P.W.2 were injured and along with the deceased, they were taken to the hospital in Ambulance immediately. The evidence of the Medical Officer-P.W.16 clearly shows that they were given treatment on 20.04.2016 between 7.50 p.m. and 8.10 p.m. and thereafter, on the basis of the intimation from the hospital, P.W.13 came to hospital and recorded the statement of P.W.1 under Ex.P.1 and registered the FIR at about 22.30 hours on the same day. Of course, the FIR has been received by the jurisdictional Court only on the next day, i.e., 21.04.2016 at about 14.30 hours. Merely because, there was a delay in despatching the FIR to the Court, we are of the view that such lethargic attitude on the part of the police personnel cannot be a ground/factor to discard the entire prosecution case.

12 Insofar as Grouping of blood is concerned, though the Serology Report shows detection of human blood and the Grouping was inconclusive, the same is not a ground to disbelieve the version of eyewitnesses. The result of Grouping of blood always depends upon various reasons. The Grouping sometimes could be inconclusive due to hematological changes and plasmatic coagulation of blood and that the Serologist may fail to detect the origin of the blood in question. Therefore, mere non-detection of the blood group in the materials seized, is in no way, affect the case of the prosecution.

13 In the result, the criminal appeal is partly allowed and the conviction and sentence imposed on the 1st appellant/A-1 by the Trial Court vide impugned Judgment in SC.No.137/2016 dated 20.03.2017 are confirmed and the conviction and sentence imposed on the 2nd appellant/A-2 are set aside and she is acquitted of all charges levelled against her. Fine amount if any paid by her, shall be refunded.

14 It is reported that the 2nd appellant/A-2 is in jail. Hence, she is directed to be released forthwith unless her presence / custody is required in connection with any other

case/proceedings. A-1 is directed to undergo the remaining period of sentence. The period of sentence already undergone by him, shall be given set-off u/s.428 Cr.P.C.

s/d-
Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

AP
To

1. The III Additional District and Sessions Judge Cuddalore at Vrindhachalam.
2. The Principal District and Sessions Judge Cuddalore District.
3. The District Munsif-cum-Judicial Magistrate Thittakudy.
4. The Chief Judicial Magistrate, Cuddalore District.
5. The Inspector of Police Pennadam Police Station, Cuddalore District.
6. The District Collector Cuddalore District.
7. The Director General of Police Mylapore, Chennai-4.
8. The Superintendent of Prison Central Prison, Cuddalore.
9. The Public Prosecutor, High Court, Madras.
10. The Superintendent, Spouse Person for Women Vellore.

Cr1.A.No.301/2017

KAN (CO)
SP (21/02/2018)