

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2018

C O R A M

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

Criminal Appeal No.393 of 2017

Sivananda
S/o.Venkatramanappa ... Appellant

-vs-

1.Narayanappa
S/o.Krishnappa

2.Sundrappa
S/o.Krishnappa

3.Venkataramanappa
S/o.Yellapa

4.Seenappa @ Srinivasan
S/o.Krishnappa

5.Rajendiran @ Prabhu
S/o.Narayanappa

6.State represented by
Inspector of Police (Bagalur Circle),
Berigai Police Station,
Hosur Taluk, Krishnagiri District.
Crime No.5 of 2008

... Respondents

Criminal Appeal filed under Section 372 of the Code of Criminal Procedure against judgment of acquittal passed by learned Additional District and Sessions Judge, Hosur, Krishnagiri, in S.C.No.81 of 2011 on 28.04.2017.

For Appellant : Mr.R.John Sathyan

For Respondents: Mr.V.Rajamohan [R1 to R5]
Mr.V.Arul
Additional Public Prosecutor [R6]

J U D G M E N T

(Judgment of the Court was made by C.T.SELVAM, J)

This appeal arises against the judgment of acquittal passed by learned Additional District and Sessions Judge, Hosur, Krishnagiri, in S.C.No.81 of 2011 on 28.04.2017.

2. Prosecution case is that accused and deceased belong to Thippepalli Village. There was a dispute between fourth accused and deceased over running of a milk booth and the panchayat elections. Due to previous enmity, accused 1 to 5 conspired to murder the deceased and did so on 06.01.2008 at about 06.00 p.m. The accusation was that accused 1 to 3 indiscriminately assaulted the deceased with bill hooks and caused his death while accused 4 and 5 caught hold of him. PW-3, father of deceased, preferred Ex.P1, complaint, with the sixth respondent on 06.01.2008 at about 08.00 p.m. and a case was registered in Crime No.5 of 2008 on the file of sixth respondent for offences u/s.147, 148, 341 and 302 IPC. Upon completion of investigation, a charge sheet was filed informing commission of offences u/s.147, 148, 341 and 302 r/w 149 and 109 IPC before learned Judicial Magistrate I, Hosur. On committal, the case was tried in S.C.No.81 of 2011 on the file of learned Additional District and Sessions Judge, Hosur, Krishnagiri.

3. Before trial Court, prosecution examined 23 witnesses and marked 42 exhibits and 17 material objects. 2 witnesses were examined on the side of defence and 2 exhibits were marked. On appreciation of materials before it, trial Court, under judgment dated 28.04.2017, acquitted accused. There against, this appeal has been preferred.

4. Heard learned counsel for appellant, learned counsel for respondents 1 to 5 and learned Additional Public Prosecutor for sixth respondent.

5. In rendering a finding of acquittal, Court below has found as follows:

(i) While it was denied by accused that there was no previous enmity between them and complainant, prosecution has not produced any document to prove that there existed previous enmity, though sufficient opportunity was afforded to them.

(ii) Though three earlier instances of disputes were projected by prosecution as the cause of animosity between accused and the prosecution party, in all three such incidents neither A4 nor his family members has suffered loss or injury, which was the

- case of the prosecution and as such, the motive for accused to harbour ill-will against the deceased did not stand scrutiny.
- (iii) The presence of PWs.6, 7 and 11, alleged eye witnesses, has not been spoken to by PWs.3 to 5. The presence of PWs.6 and 7 also stands ruled out through the evidence of PW-8, an other alleged eye witness, who had admitted to not seeing the occurrence.
 - (iv) The delay of 14 ½ hours in the First Information Report reaching the Court has not been explained by prosecution.
 - (v) PW-3, in cross, deposed that he preferred a complaint to Sub-Inspector of Police, the same has been reduced into writing and he signed the same. However, such complaint has not been marked and hence, the case of accused that the first information has been suppressed by prosecution could not be rejected.
 - (vi) The evidence of alleged eye-witnesses was mere parrot like repetition. Eye-witnesses to the occurrence were examined belatedly and hence, the case of accused that they were cooked-up witnesses was acceptable.
 - (vii) PWs.3 to 5 deposed that the body of deceased was taken to hospital on the date of occurrence i.e., on 06.01.2008 at 10.00 p.m. whereas the prosecution alleges that the body was lying in the place of occurrence till the morning of the next day and inquest was conducted at the scene on 07.01.2008. PW-19, Head Constable, deposed to such effect.
 - (viii) No independent witness was examined though the occurrence took place at a public place.
 - (ix) As per the prosecution case and the evidence of eye-witnesses, the deceased sustained only 4 injuries. However, Ex.P28 - post-mortem report, revealed that deceased sustained 11 injuries. Further, the nature of injuries revealed that the same could not have been caused in the manner alleged by prosecution.

While the above findings are material and in themselves would justify acquittal, Court below has also incidentally found

- (i) There was vital discrepancy with regard to the clothes worn by deceased at the time of occurrence. PWs.3, 4, 5, 6, 7 and 11, alleged eye-witnesses to the occurrence, has deposed that the deceased was wearing a shirt. No shirt of the deceased was seized by prosecution and hence, it was doubtful whether PWs.3, 4, 5, 6, 7 and 11 were eye-witnesses to the occurrence.
- (ii) The alleged eye witnesses did not attempt to prevent the accused from committing the offence nor try to catch them after the occurrence.
- (iii) Prosecution has failed to prove recovery of articles from the place of occurrence through cogent and clear evidence as also arrest of the accused and recovery from them.
- (iv) Prosecution has failed to explain the connection of the Car and Tipper Lorry allegedly recovered from the accused, with the case.

Finding of acquittal stands rightly arrived at and no occasion for interference therewith arises.

The Criminal Appeal shall stand dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gm
To

- 1.The Additional District and Sessions Judge,
Hosur, Krishnagiri.
- 2.The Inspector of Police (Bagalur Circle),
Berigai Police Station,
Hosur Taluk, Krishnagiri District.
- 3.The Public Prosecutor,
High Court, Chennai.

+1cc to M/S.N.Mohideen Basha, V.Rajamohan, Advocate Sr.12717

Criminal Appeal No.393 of 2017

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srg 14/06/2018

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