

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 12.06.2018

JUDGMENT PRONOUNCED ON : 20.09.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.A.No.335 of 2011

1.Ramasamy
2.Chinnathayee .. Appellants / Accused 1 & 2

versus

State rep. by
The Inspector of Police,
Mecheri Police Station,
Salem District. .. Respondent / Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the order of conviction and sentence dated 16.05.2011 in S.C.No.234 of 2010 on the file of the learned Additional District and Sessions Court [Fast Track Court No.II], Salem.

For Appellants : Mr.B.Vasudevan
For Respondent : Mr.G.Ramar
Government Advocate [Criminal Side]

J U D G M E N T

The appellants herein are arrayed as A-1 and A-2 in S.C.No.234 of 2010 on the file of the learned Additional District and Sessions Court [Fast Track Court No.II], Salem. They stood charged for the offence under Section 302 r/w 34 of IPC. The accused denied the charges and opted for trial. Therefore, they were put on trial on the charges. After full-fledged trial, the learned Additional District and Sessions Judge, found them guilty of offence under Section 304(2) r/w 34 of IPC. The accused were accordingly convicted and sentenced to undergo 10 years rigorous imprisonment with a fine of Rs.10,000/- each, in default to undergo one year rigorous imprisonment. Challenging the conviction and sentence, the accused are before this Court with the present Criminal Appeal.

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

2.1. P.W.1 [Dhanapal] is residing in Uppupallam, Kaminaickanpatty and the deceased [Periyasamy] is his father. The first accused and the second accused in this case are his uncle and aunty. Prior to the occurrence, the second accused being the sister of the deceased demanded him for partition, for which, the deceased gave = acres of land and by using the said land, both the accused doing the agricultural work. Prior to 15 days from the date of occurrence, the deceased assaulted the second accused. Subsequently, in order to compromise the said issue, P.W.1 paid Rs.1,500/- to the second accused in front of village panchayath.

2.2. Due to which, both the accused made a threat that he will finish the deceased [Periyasamy]. After two days from the date of occurrence, the second accused informed to the P.W.1 about the death of his father. Immediately, he went to the hut of the deceased situated in his field wherein he found the dead body of the deceased. P.W.2 and P.W.3, who are the neighbours informed to the P.W.1 about the assault made by the accused.

2.3. Thereafter, P.W.1 rushed to the Village Administrative Officer and gave statement. P.W.7 [Sankaralingam, the then Village Administrative Officer], Pallipatti, recorded the statement given by P.W.1 and obtained his signature under Ex.P.1. At the time of giving the statement, P.W.1 handed over the copy of the document, which was executed by the deceased in favour of the second accused at the time of giving = acres of land. After recording the statement from P.W.1, P.W.7 prepared a special report under Ex.P.3. Thereafter, he went to the police station along with P.W.1 and lodged the complaint.

2.4. On 18.12.2009, P.W.10 [Zaheera], the then Sub-Inspector of Police, Mecheri, on receipt of the complaint given by P.W.1 registered a case in Crime No.844 of 2009 for the offence under Section 302 of IPC. Ex.P.13 is the printed First Information Report. After the registration of the case, she handed over the copy of the First Information Report to the Inspector of Police for investigation.

2.5. On the same day, at about 5.30 hours, P.W.12 [Shanmugasundaram, the then Inspector of Police], Mecheri, received the First Information Report and went to the scene of occurrence, in the presence of P.W.7 [Sankaralingam] and one Madhu, he prepared an Observation Mahazar under Ex.P.14. Further, he draw the rough sketch under Ex.P.16. In the presence of same witnesses, he recovered blood stained cotton dhoti, shirt, blood stained soil and sample soil [M.O.3 to M.O.7] from the place of occurrence and thereafter, he examined the witnesses and prepared inquest report under Ex.P.17.

2.6. On 19.12.2009, at about 13.00 hours, in the presence of P.W.7 and one Madhu, P.W.12 arrested both the accused and recorded the confession statement given by them separately. Pursuant to the confession statement given by the first accused, P.W.12 in the presence of same witnesses recovered the wooden log [M.O.1], blood stained dhoti [M.O.3] and one blood stained shirt [M.O.4] under the cover of mahazar from the bush, which was identified by the first accused. Thereafter, the second accused took the same team to the occurrence place and identified the seetha thadi (small axe) [M.O.2], which was hidden in a bush near to the occurrence place. The same was recovered under the cover of mahazar. The admitted portion of the confession statement given by the first and second accused and the seizure mahazar preferred by the P.W.12 were marked as Ex.P.6 to Ex.P.9 respectively.

2.7. After completing the above formalities through P.W.9 [Venugopal, head constable], P.W.12 sent the dead body to the Government Hospital, Salem, along with a requisition letter for conducting autopsy. On the same day, P.W.11 [Dr.Paneer Selvam] attached with Salem Mohan Kumaramangalam Hospital, received the requisition letter given by P.W.12 and conducted autopsy over the dead body of the deceased [Periyasamy]. During the time of post mortem, he found the following injuries:

- 1) 5x3.5cms over RT side upper eyelid, lower eyelid and over infra orbital region with a laceration M 1.5x0.75cms over the lateral aspect of RT infra orbital region.
- 2) Swelling with deformity over the lower 3rd of RT thigh o/d. Fracture involving lower end of RT femur with surrounding soft tissue contused.
- 3) Abrasion 3x2cms over the upper 3rd of front of RT leg with a laceration 1x0.5x0.25cms.
- 4) Abrasion 2x1, 1x1cms over the upper 3rd of outer aspect of LT thigh

- 5) Abrasion 4.5x2.5cms over dorsum of LT hand
- 6) Abrasion 2x1cms over top of LT shoulder
- 7) 1.5x0.75cms over LT forehead and it is situated 2cms above mid eyebrow
- 8) Laceration involving at the level of lower 1/3rd of LT ear 1.5x0.5xcavity deep
- 9) Contusion with swelling over LT front to temple region 6x4x4cms
- 10) A laceration over LT side anterior parietal region 3.5x0.25x0.25cms and it is situated 15cms above LT foot and 17cms above occipital protuberance.

2.8. After completing the process of post-mortem, P.W.12 collected the viscera and sent it to the same for chemical examination. It was stated by the Forensic Department that there is no poisonous materials were found in the dead body. Ex.P.12 is the viscera report. After seeing the Ex.P.12, P.W.9 gave opinion as the deceased would appear to have died due to the effect of head injury. Final opinion given by the P.W.9 is marked as Ex.P.15. Ex.P.14 is the post mortem report.

2.9. Subsequently, P.W.12 [Inspector of Police] made requisition to the learned Magistrate for sending Material Objects for chemical examination. On 23.12.2009, P.W.13 [Manickam], when he was working as Chemical Examiner, received the following material objects for chemical examination:

- Item 1A : Earth mixed with small stones and vegetative matter on which were dark brown stains.
- Item 1B : Earth mixed with small stones and vegetative matter.
- Item 2 : A white dhoti on which were dark brown stains.
- Item 3 : A silken white shirt on which were dark brown stains.
- Item 4 : A torn green half trouser on which were dark brown stains.
- Item 5 : A torn silken blue shirt on which were dark brown stains.
- Item 6 : A white dhoti on which were dark brown stains.
- Item 7 : A bamboo stick measuring 94 cm in length on which were dark brown stains.
- Item 8 : A wooden stick measuring 87 cm in length on which were dark brown stains.
- Item 9 : A white dhoti on which were dark brown stains.
- Item 10 : A torn silken grey shirt with light blue, dark blue and green designs on which were dark brown stains.□

2.10. After completing the examination, he issued a report under Ex.P.18 stating that the blood is detected on each of the items i.e. 1A, 2 to 10 but not in item No.1B. Subsequent to the completion of the chemical examination, he sent the same for grouping and on examination it was identified that the blood found in all the material objects belong to A-Group. Biology Report and the Serology Report are marked as Ex.P.18 to Ex.P.20.

2.11. Subsequently, since P.W.12 was transferred from the said post, P.W.14 [Arockiasamy], who is the successor of P.W.12 took the case for investigation and after perusing the documents came to a positive conclusion that the accused committed the offence of murder and filed a final report under Section 302 of IPC.

2.12. Based on the above materials available, the trial Court framed the charges under Section 302 of IPC, both the accused denied the same and opted for trial. In order to prove their case on the side of the prosecution as many as 14 witnesses were examined as P.W.1 to P.W.14 and 20 documents were marked as Ex.P.1 to Ex.P.20, besides 12 material objects.

2.13. Out of the said witnesses, P.W.1, who is the son of the deceased [Periyasamy] has stated in his evidence that 15 days before the date of occurrence, the second accused herein was assaulted by the deceased. So, the second accused [Chinnathayee] constituted the Panchayath, in which, P.W.1 has paid Rs.1,500/- as penalty on behalf of his father and thereafter, he had not seen the deceased till

the occurrence. He has further stated on intimation given by the second accused he went to his father's hut situated in his farm house and found the dead body of his father. On enquiry, P.W.2 and P.W.3 told to him that prior to 2 days both the accused came and by using the wooden log attacked the deceased and thereafter, both of them pulled the body of his father inside to the farm house and thereafter, both of them are went away from the scene of occurrence. He has stated in the trial court as after seeing the dead body, he went to the Village Administrative Office and gave statement before the Village Administrative Officer about the occurrence.

2.14. P.W.2 [Backiyam], who is the neighbour to the deceased has stated in her evidence before the death the deceased by using the income derived through cows and goats leads his life. On the date of occurrence, i.e. on 16.12.2009, new moon day, at about 11.00a.m., she heard a noise from the house of the deceased, after hearing the same, she went and saw the occurrence along with her husband P.W.3. She has stated during the time of occurrence both the accused damaged the cattle shed and by using the wooden log assaulted the deceased on his head, right eye, right hip and in the knee. Due to the attack made by the accused, the deceased fell down and subsequently both the accused pulled the deceased inside the farm house and thereafter, both of them went away from the scene of occurrence. Further, she has stated the said incident was informed to the P.W.1 during the time when he came to his father's house.

2.15. P.W.3, who is the husband of P.W.2 has stated in his evidence as stated by his wife. The whole reading of the evidence given by P.W.3 is clearly corroborated the evidence of P.W.2.

2.16. P.W.4 [Shanthi, daughter of the deceased] has stated that due to the land dispute, her father frequently quarrelled with the second accused. Further, she has stated before one month from the date of occurrence her father assaulted the second accused, for the said incident a fine of Rs.1,500/- was paid by P.W.1 on behalf of the deceased.

2.17. P.W.5 [Angamuthu], who is the resident of Uppupallam has stated, prior to 25 days from the date of occurrence, the deceased assaulted the second accused, for which Rs.1,500/- was paid by one Thylammal.

2.18. P.W.6 [Muthusamy] has also stated about the previous occurrence happened between the deceased and the second accused. Further, he has stated that he instructed the P.W.1 to pay Rs.1,500/- for compensating the assault made on the second accused.

2.19. P.W.7 [Sankaralingam] the then Village Administrative Officer, Pallipatti has stated on 18.12.2009 at about 2.30p.m. when he was in his office, P.W.1 came and gave the statement with regard to the occurrence alleged in this case. Further, he has stated the statement given by P.W.1 was recorded and thereafter, he lodged a complaint before the Inspector of Police, Mecheri, he has stated on the same day at about 5.30p.m., the Inspector of Police, came to the place of occurrence and prepared an Observation Mahazar. In the said document, he was attested as a witness along with his Assistant. Further, he deposed in the trial court about the recovery of blood stained M.O.3 to M.O.6 from the scene of occurrence. He has further stated that on the next day, he went to the Kunandiyur along with the Inspector, and on identification, P.W.12, arrested both the accused and thereafter, on enquiry, the first accused in this case gave confession statement and the same was recorded by P.W.12 in his presence, his Assistant [Madhu] also attested in the confession statement. In the same way, the second accused gave confession statement and the same was recorded in their presence. Pursuant to the confession statement, the first accused produced the wooden log [M.O.1], blood stained dhoti [M.O.3], blood stained blue colour shirt [M.O.4] and in the same manner, the second accused identified the wooden stick [M.O.2], which are all hidden inside the bush.

2.20. P.W.8 is the then head clerk in Judicial Magistrate No.II, Mettur has stated about the request given by P.W.12 for sending the viscera collected from the dead body for chemical examination.

2.21. P.W.9 is the head constable has stated about the handing over of clothes to the Investigating Officer collected from the dead body. Further, he has stated all the M.O.s recovered in this case were handed over by him in the Forensic Science Department, Salem, for chemical examination.

2.22. P.W.10 has stated about the registration of the case and sending of the First Information Report to the Magistrate concerned.

2.23. P.W.11 [Dr.Paneerselvam] has stated about the process of post-mortem and with regard to the opinion given in respect to the cause for death.

2.24. P.W.12 [Shanmugasundaram, Inspector of Police] has stated about the manner of investigation, arrest of accused, recovery and in respect to the filing of final report.

2.25. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false, however, they did not choose to examine any witnesses nor did they mark any documents on their side.

2.26. Having considered all the above, the trial Court convicted them as detailed in the first paragraph of this judgment. Challenging the above said conviction and sentence, A-1 and A-2 are now before this Court with the present criminal appeal.

3. When the appeal is taken up consideration, I have heard the arguments advanced by Mr.B.Vasudevan, learned counsel appearing for the appellants, Mr.G.Ramar, learned Government Advocate [Criminal Side] appearing for the State and also perused the records carefully.

4. The learned counsel appearing for the appellants initially would submit that there was a delay in lodging the complaint before the police officers, in the trial court, the said delay has not been properly explained by the prosecution witnesses. Since the deceased and the accused are having the previous enmity, a false case has been instituted against the appellants herein. Accordingly, he prayed for allowing the appeal and setting aside the order of conviction.

5. On considering the said arguments, it is an admitted fact that the accused and the deceased are having previous enmity due to the assault made by the deceased, as well as in respect to the non-partition of the family property. However, in the trial court, the printed First Information Report was marked as Ex.P.13, from the particulars available in the said record it seems that, the occurrence had happened on 16.12.2009, at about 11.00hours. Subsequently, the complaint has been preferred by the P.W.1, on 18.12.2009, at about 16.00 hours, it shows after two days from the date of occurrence, the complaint was lodged before the police officers. In this regard, P.W.1 has stated in his evidence that he has not seen his father from 16.12.2009 onwards, after two days from the date of occurrence, the second accused had informed him about the death of Periyasamy and about the particulars of lying of the dead body. So, according to the said evidence, P.W.1 knows the occurrence only on 18.12.2009 and immediately, after seeing the dead body of his father in the cattle shed, he rushed to the office of the Village Administrative Officer and gave a statement in respect to the offence. Thereafter, the Village Administrative Officer went to the police station along with P.W.1 and lodged a complaint, then only a case has been registered. So, the delay of 2 days in registering the First Information Report have been properly explained through the evidence of P.W.1 and hence, the said delay is no way in favour of the accused.

6. The learned counsel appearing for the appellants would contend that according to the evidence of

P.W.2 and P.W.3, they are the neighbours to the deceased, they are having the agricultural land near to the field owned by the deceased. According to the case of the prosecution, they are the eye witness to the occurrence and both of them have seen the occurrence, particularly about the assault made by the appellants. According to them, the alleged occurrence had happened on 16.12.2009. But after seeing the occurrence till 18.12.2009 they were not disclosed anything about the occurrence to anybody. So, the said circumstances create a doubt whether the occurrence had happened as stated by P.W.2 and P.W.3 or otherwise they are added as witnesses for falsely implicating the appellants in the alleged occurrence.

7. Per contra, the learned Government Advocate [Criminal Side] would submit that only due to the previous enmity and also due to the threat made by the appellants, P.W.2 and P.W.3 not disclosed the occurrence to the other persons which would not affect the case of prosecution.

8. Now, on considering the said submissions, it is true that the alleged occurrence had happened on 16.12.2009. Subsequent to that, only on 18.12.2009, the second accused in this appeal had inform to the P.W.1 about the death of Periasamy, then only P.W.1 went to the occurrence place and found the dead body of the deceased. Only thereafter, P.W.2 and P.W.3 disclosed the entire transaction to P.W.1. In otherwise, P.W.1 is not having any previous enmity with P.W.2 and P.W.3. So, the non-disclosure of the occurrence to the other persons by P.W.2 and P.W.3 will create a doubt and losses the credibility on their evidences. If a man living in a remote village if they really saw the occurrence as stated by them, definitely they would inform the same to the relative of the deceased or atleast to the neighbours, who are residing near to his field. But in this case, according to the evidence of P.W.2 and P.W.3, they are not informed the occurrence to anybody would create a reasonable doubt over their evidences.

9. With regard to the other circumstances, both P.W.2 and P.W.3 has stated in their cross-examination that, they saw the occurrence from their field, which was situated 300 feet away from the place of occurrence. In the said circumstances, they clearly depose about the overt act of the accused as well as about the weapon used by them. In normal course, seeing the occurrence accurately, away from 300 feet from the place of occurrence is doubtful. Furthermore, according to their evidence after assaulting the deceased both the accused pulled out the deceased into the hut. In the said circumstances, if a male aged about 60 years was pulled out by two other persons definitely an injury of abrasion may cause in his knee or otherwise in the foot. Now as per the evidence of Doctor, who conducted the postmortem, there is no such injury found on the dead body of the deceased. This would also create a doubt that the alleged occurrence had happened as stated by P.W.2 and P.W.3.

10. The next circumstances would arise in this case is during the time of giving evidence, P.W.3 has stated in his cross-examination as [rk;gtk; ele;JNghyPrhHte;jNgh] rpd;dj;jhap mq;Fjhd; ,Ue;jhH. rpd;dj;jhap md;W khiy fhty;epiyaj;jpw;F \$l;;;br; nrd;whHfs; md;W ,uNt uhkrhkpia Fkhughisaj;jpypUe;J fhty;epiyaj;jpw;F \$l;;;b te;jhHfs;. rk;gtj;jd;W NghyPrhH gpw;gfy; 2> 3 kzpmstpy; rk;gt,lj;jpw;F te;jhHfs;.]

11. Now considering the above said circumstances with the other factual aspects, if really P.W.1 lodged a complaint after two days from the date of occurrence, it could not be possible to the police officer for coming over to the occurrence place on the date of occurrence itself. Furthermore, as per the evidence of Investigating Officer [P.W.12], on 19.12.2009, at about 13.00hours, both the accused were arrested and after recording the confession statement, the wooden log [M.O.1] and a stick [M.O.2] were recovered in the presence of Village Administrative Officer.

12. Further, if really on the date of occurrence, both the appellants are appeared before the Investigating Officer, there is no necessity for him to arrest the accused on 19.12.2009, after the lapse of 3 days from the date of occurrence. In the said circumstances, reliance is placed in the judgment of STATE OF HARYANA vs. JAGBIR SINGH reported in 1977 SCC [Cr.] 638, in which, our Honourable Apex Court has held as follows:

¶6.The High Court found a very serious infirmity in the entire prosecution case from an admission which had been made earlier by Sukhbir Singh (PW 18), the father of the deceased. From that statement the High Court found that Sukhbir Singh had admitted that the accused were arrested by the police in this case on March 16, 1975, the very day the dead body of his son was found at the Ram Lila Grounds. If the arrest of the accused on March 16 is true, as stated by Sukhbir Singh, not only the extra-judicial confession of the accused before Deputy Prasad on March 18, 1975 but also the recoveries of the blood stained clothes and kirpans made by the police on March 18, 1975 following the alleged statements of the accused lose all credibility. This is the principal ground on which the High Court came to the conclusion that there was ¶padding¶ in the prosecution case and that certain evidence was fabricated in order to implicate the accused.¶

13. Further, in the judgment of KANAKARAJ vs. STATE reported in 2003 [1] MWN (Cr.) DB 193, wherein, the Honourable Division Bench of this Court has observed as follows:

¶11..... If the police officers had taken the accused even on the morning of 19.3.1998, then the accused could not have appeared before P.W.5 on 25.3.1998 to inform him that he has murdered his wife. It is to be remembered that P.W.5 was not a friend of the accused, nor was he a relative of the deceased. In fact, in cross-examination, he has admitted that he owns the building, in which, the police station is situate, which shows that P.W.5 is an obliging witness to the police and therefore, had come out with a present version by stating that the accused appeared before him and Araipuli Gounder and confessed his complicity in the crime.....¶

14. So, the contradiction arised in the evidence of P.W.3 and P.W.12 creates a doubt and falsify the evidence given by P.W.12 in respect to the arrest of accused. So, the evidence given by the Investigating Officer with respect to seizure of M.O.1 and M.O.2 also goes away. The said circumstances will prove that the prosecution has not proved his case beyond reasonable doubt.

15. Furthermore, in this case one another circumstances also create a doubt on the case of prosecution. According to the evidence of P.W.3, the grand children of the accused are accompanying with them at the time of occurrence in the occurrence place. But they are not examined as a witness by the Investigating Officer. Further, P.W.12 has not offer any explanation in this regard.

16. Finally, on going through the Col.No.9 of the Inquest Report, it was mentioned that on 16.12.2009 when the deceased was inside in his hut, both the accused along with grand children went into the hut and after broken thread cot took the wooden log and assaulted the deceased, if really the said version is true one, there is no chance to P.W.2 and P.W.3 for seeing the occurrence. This is the another circumstances, which shaken the credibility of evidence given by P.W.2 and P.W.3. So, the doubt arised from the evidence of prosecution witness establish as whether the alleged occurrence had happened as stated by P.W.2 and P.W.3, who are the only eye witness to the occurrence or not. So, the benefit of doubt necessarily will goes in favour of the accused but the trial court without considering the above aspects in perspective manner convicted the accused which needs interference.

17. In the result, this Criminal Appeal is allowed, the conviction and sentence imposed upon the appellants by the learned Additional District and Sessions Court [Fast Track Court No.II], Salem, in S.C.No.234 of 2010, dated 16.05.2011 are hereby set aside and the appellants are acquitted. Bail bonds executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded

to the appellants.

20.09.2018

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes

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To

1.The Additional District and Sessions Court

[Fast Track Court No.II],

Salem.

2.The Inspector of Police,

Government of Tamil Nadu,

Mecheri Police Station,

Salem District.

3.The Section Officer,

V.R. Section,

Madras High Court,

Chennai.

R.PONGIAPPAN, J.,

sri

Pre-delivery Judgment in

Crl.A.No.335 of 2011

20.09.2018