



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 30.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.T.SELVAM
And
THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

CRL A(MD)No.136 of 2017

Senthil ... Appellant/Accused No.1

Vs.

State,
through the Deputy Superintendent of Police,
Muthupettai Sub-Division,
Tiruvarur District
in Kottur Police Station,
Crime No.9 of 2012 ... Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to set aside the Judgment and Conviction dated 06.02.2017, by learned I Additional District and Sessions Judge (PCR), Thanjavur in S.S.C.No.92 of 2012.

For Appellant : Mr.Arul Vadivel @ Sekar
for M/s.S.Udayan

For Respondent : Mr.R.Anandaraj
Additional Public Prosecutor

JUDGMENT

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

Appellant/accused No.1 has filed this Criminal Appeal, challenging the judgment, dated 06.02.2017, in S.S.C.No.92 of 2012 on the file of I Additional District and Sessions Judge (P.C.,R.), Thanjavur by which, he was convicted under Sections 341, 307 and 302 I.P.C. and sentenced to undergo simple imprisonment for 3 months for offence under Section 341 I.P.C., rigorous imprisonment for ten years and fine of Rs.10,000/-, in default, 1 year rigorous imprisonment for offence under Section 307 I.P.C. and life imprisonment and fine of of Rs.10,000/-, in default, 1 year rigorous imprisonment for offence under Section 302 I.P.C..

2.The prosecution case is that on 13.01.2012, at 5.15 p.m. deceased Anandaraj, P.W.1 - Illaiyaraja and P.W.2 - Palanivel were walking together and opposite the house of one Subramaniyan. A1, driven by previous enmity, restrained them and stabbed Palanivelu with a knife on his stomach. When P.W.1 and Anandaraj resisted A2



caught hold of him and A1 abused him using his caste name and stabbed him on the stomach repeatedly. When the injured Palanivel and Anandaraj were taken to hospital, Anandaraj was declared dead.

3.P.W.1, brother of the deceased, preferred a complaint before Sub-Inspector of Police, Kottur Police Station on 13.01.2012. Sundaramoorthy, Sub-Inspector of Police registered the complaint in Crime No.9 of 2012 under Sections 147, 148, 341, 324, 307, 302, 109 I.P.C. r/w Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and prepared Ex.P.13 FIR. P.W.18, Deputy Superintendent of Police, took up investigation, went to the scene and prepared observation mahazar Ex.P.2, as also rough sketch Ex.P.14. He examined the witnesses and recorded their statements and recovered material objects. On 14.01.2012, he conducted inquest over the body of deceased in the presence of Panchayatars and prepared Ex.P.15, Inquest Report. He sent the body to Government Hospital, Mannarkudi through PW-13 Grade II Constable for post-mortem. The Post-mortem Report is Ex.P.12. On 15.01.2012 at 6.30 a.m. he arrested the accused near Thattankovil Bus Stop and recorded their confessions in the presence of P.Ws.10 and 11, namely, Aasai Elamparithi and Veeramani. He sent the accused to judicial custody on the same day. He altered the F.I.R. to Sections 341, 324, 307, 302 I.P.C. r/w Section 3(2)(v) of the SC/ST (POA) Act and sent the alteration Report Ex.P.17 to Court. He sent a requisition for chemical analysis. After his transfer, P.W.19, Deputy Superintendent of Police continued the investigation. He obtained postmortem report and examined P.W.17 - Dr.Govindaraj and recorded his statement. Upon completion of investigation, he filed a charge sheet informing commission of offences under Sections 341, 307, 302 I.P.C. 294(b) and 302 IPC. and Section 3(2)(v) of the SC/ST (POA) Act. The case was tried in S.C.No.92 of 2012 on the file of learned I Additional District and Sessions Judge (P.C.R.), Thanjavur. Before trial Court, prosecution examined 19 witnesses and marked 17 exhibits and 6 material objects. Two Court documents were marked. None were examined on behalf of defence but one document was marked.

4.When the accused were examined under Section 313 Cr.P.C. on the incriminating materials against them, they denied their complicity in the crime and stated that they had been falsely implicated in the case.

5.On appreciation of materials before it, trial Court, under judgment dated 06.02.2017, while acquitting A2, convicted A1 under Sections 341, 307 and 302 I.P.C. and sentenced him to undergo simple imprisonment for 3 months for offence under Section 341 I.P.C., rigorous imprisonment for ten years and fine of Rs.10,000/-, in default, rigorous imprisonment for one year for offence under Section 307 I.P.C. and to life imprisonment and fine of Rs.10,000/-, in default, 1 year rigorous imprisonment for offence under Section 302 I.P.C.. Against such finding, the present appeal



6. Heard learned counsel for appellants and learned Additional Public Prosecutor for the respondent and perused the evidence on record.

7. This appeal succeeds for the following reasons:

(i) The defence has challenged the validity of Ex.P.1 complaint. According to P.W.1, he had gone to police station to prefer the complaint half an hour after the occurrence. The occurrence allegedly took place on 13.01.2012 at 5.15 p.m. The F.I.R. was allegedly registered at 8.00 p.m. The same has reached the Magistrate only at 4.00 a.m. on 14.01.2012. When the defence has challenged the truthfulness of Ex.P.1 - Complaint, the prosecution was upon a duty to cite as a witness the Sub-Inspector of Police by name Sundaramoorthy, who had received and registered the complaint. Although learned Additional Public Prosecutor informs that he now learns that the said Sundaramoorthy had passed away, such is a position that this Court cannot now take into consideration.

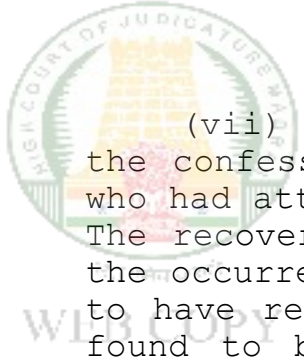
(ii) P.W.2 is an injured witness. P.W.2 as also other witnesses P.Ws.1, 4 and 6 all speak to one injury suffered by P.W.2. However, Doctor - P.W.15, who had operated upon him informs that P.W.2 had suffered a stab injury in the stomach and major laceration to the left chest and had undergone two operations. How P.W.2 came to suffer both injuries is within his special knowledge but P.W.2 has not whispered a word on the injury to the left chest which was major enough to require an operation. In *Balak Ram v. State of U.P.* [1974 SCC (Cri) 837], the Hon'ble Supreme Court had informed 'when key witnesses deny the obvious, pretend ignorance of facts within their special knowledge and give free play to their imagination on crucial matters, pursuit of truth becomes a wild goose chase. And the befogged trial Judge has then to discharge the unenviable duty of seeing and hearing such witnesses.'

(iii) This Court finds merits in the submission of learned counsel for appellants that the prosecution has suppressed the case sheet and discharge summary as the same might reveal a position other than that informed by the prosecution.

(iv) Admittedly P.W.2 had been examined four days after the occurrence. However, his statement under Section 161(3) Cr.P.C. reached the Court only two months after the occurrence.

(v) Ex.P.11 - Accident Register of P.W.2 informs that P.W.2 was brought to hospital by one Saravanan, who again has not been examined.

(vi) The occurrence had taken place at the Village of the appellant. All the witnesses belonging to the neighbouring village of the deceased. Neither Subramanian, before whose house the occurrence taken place nor any person belonging to the appellants village has been examined. This is highly unnatural.



(vii) Recovery of M.O.1 knife allegedly used was effected upon the confession of the appellant in the presence of P.Ws.10 and 11, who had attested the seizure mahazar Ex.P.16. P.W.10 turned hostile. The recovery of the knife is said to have been made two days after the occurrence and within the waters of a lake and the same is said to have revealed blood stains, which upon forensic examination was found to be human blood, a most unimaginative and very unlikely tale. P.W.17, Doctor, in cross, informed that the injury suffered by the accused could not have been occasioned by use of knife - M.O.1. We also note that the entire confession of appellant/A1 has been marked as Ex.P.4. It is only such portion of the confession that leads to discovery in keeping with Section 27 of the Indian Evidence Act that would be admissible in evidence.

(viii) The prosecution has projected a very weak motive of a small quarrel between P.W.2 and the appellant three days prior to the occurrence. But for the say so by the prosecution, there is nothing to indicate or suggest the truth thereof.

8. There absolutely is no material to support the prosecution case. The finding of conviction and sentence stands wrongly arrived at by the trial Court and the same is liable to be set aside.

9. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant/A1 by learned I Additional District and Sessions Judge (P.C.R.), Thanjavur in S.S.C.No.92 of 2012, dated 06.02.2017, are set aside. The appellant is acquitted of the charges levelled against him. Fine amount, if any, paid by the appellant shall be refunded to him. The appellant/A1 is directed to be set at liberty forthwith, if he is not required for detention in connection with any other case.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The Principal District and Sessions Judge,
Thanjavur.
2. The I Additional District and Sessions Judge (P.C.R.),
Thanjavur.
3. The Judicial Magistrate No.II,
Mannargudi.

4.-do-through- The Chief Judicial Magistrate,
Thanjavur.



5.The District Collector,
Thanjavur.

6.The Director General of Police,
Mylapore,
Chennai.

7.The Deputy Superintendent of Police,
Muthupettai Sub-Division,
Thiruvarur District.

8.The Superintendent of Central Prison,
Tiruchirappali.

9.The Sub Inspector Of Police,
Kottur Police Station,
Thiruvarur District.

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

Copy to:

The Section Officer,
Criminal Record Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

+1CC TO MR.C.ARUL VADIVEL @ SEKAR ADVOCATE IN SR.No.75851.

SJ

DS RSK SAR-3:04.09.2018: 5P/14C

Judgment made in
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30.07.2018