



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 12.06.2018

CORAM :

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

CRL A(MD)Nos.270 and 362 of 2017

and

Crl.M.P.(MD).No.8321 of 2017 in Crl.A.(MD).No.362 of 2017

1.Laly @ Manikandan

2.Boopathy

... Appellants/A1 and A2 in
Crl.A.(MD) No.270 of 2017

3.Mahamani

... Appellant/Accused No.3 in
Crl.A.(MD) No.362 of 2017

Vs.

State through
The Inspector of Police,
Thiruvidaimaruthur Police Station,
Thanjavur District.
(Crime No.236 of 2013)

... Respondent/Complainant in
both the appeals

Common Prayer: Appeals filed under Section 374 of the Code of Criminal Procedure, 1973, praying to set aside the order of conviction and sentence imposed on the appellant by the learned II Additional District and Sessions Judge, Thanajvur, by judgment dated 19.01.2016 in S.C.No.254 of 2014.

For Appellant in
Crl.A.(MD).No.362 of 2017

: Mr.V.R.Balasubramanian
for Mr.S.Rajaprabu

For Appellants in
Crl.A.(MD).No.270 of 2017
For Respondent in
both appeals

: Mr.V.R.Balasubramanian
: Mr.S.Chandrasekar,
Additional Public Prosecutor

COMMON JUDGMENT

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

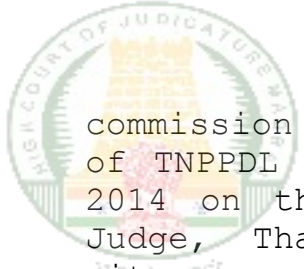
Since these two Criminal Appeals arise out of a single Judgment, they were heard together and are disposed of under this Common Judgment. The appellants in Crl.A.(MD) No.270 of 2017 are accused Nos.1 and 2 and the appellant in Crl.A.(MD)No.362 of 2017 is the third accused in case tried in S.C.No.254 of 2014 on the file of II Additional District and Sessions Court, Thanjavur.



2.The appellants/A1 to A3 have filed these Criminal Appeals, challenging the judgment, dated 19.01.2016, in S.C.No.254 of 2014 on the file of the II Additional District and Sessions Judge, Thanjavur, in and by which, the appellant/A1 was convicted for offence under Sections 302 and 341 IPC and Section 3(1) of TNPPDL Act and sentenced to undergo life imprisonment and fine of Rs. 1,000/- in default, three months simple imprisonment for offence under Section 302 IPC, sentenced to undergo one month simple imprisonment for the offence under Section 341 IPC and sentenced to undergo one year rigorous imprisonment and fine of Rs.1,000/-, in default three months simple imprisonment for the offence under Section 3(1) of TNPPDL Act and the appellants/A2 and A3 were convicted for offences under Sections 341 and 302 IPC r/w Section 34 IPC and sentenced to undergo life imprisonment each and fine of Rs. 1,000/- each in default, three months simple imprisonment for the offence under Section 302 r/w 34 I.P.C. and sentenced to undergo simple imprisonment for one month each for offence under Section 341 IPC.

3.The case of the prosecution is that owing to animosity between the friend of the accused viz., Selvakumar and one Periyavan @ Murugan, the latter's men committed murder of Selvakumar on 31.07.2013. Suspecting that the deceased Saravanan had informed the whereabouts of Selvakumar to Periyavan @ Murugan's goons, the accused, on a two wheeler bearing Registration No.TN 49R 5812 armed with aruvals, obstructed Tavera Car bearing Registration No.TN 02 AH 2844 by dashing thereagainst and broke the wind screen of the car with aruvals. A1 cut Saravanan on the right shoulder. Accused chased deceased Saravanan, who tried to run away and repeatedly cut him. Due to injuries suffered, the deceased Saravanan died on the spot.

4.Mahendran, who travelled in the car along with deceased Saravanan and P.W.1, preferred a complaint before the Sub Inspector of Police, Thiruvidadaimarudur Police Station on 31.07.2013 at 1.45 p.m. P.W.20 - Sub Inspector of Police registered the complaint in Crime No.236 of 2013 under Sections 341 and 302 IPC and prepared Ex.P.20 FIR. P.W.21 - Inspector of Police, took up investigation, went to the scene prepared observation mahazar Ex.P.22 as also rough sketch Ex.P.23 and recovered material objects. He conducted inquest over the body of deceased and prepared Ex.P.26, Inquest Report and sent the body to Government Hospital, Thiruvidadaimarudur for postmortem. The Post-mortem Report is Ex.P.15. On 02.08.2013, he arrested A1 and A3, namely, Lali @ Manikandan and Mahamuni, near Narasinghampettai Rayiladi Bus Stop and recorded their confessions in the presence of P.W.12, namely, Marimuthu and another, who attested the confession statement of the accused. He sent the accused to judicial custody. On 17.08.2013, he arrested A2, namely, Boopathy near Govindapuram Bus Stop and recorded his confession in the presence of P.W.9 namely, Sridhar and another. After recovering the material objects he sent the accused to judicial custody. Upon completion of investigation, he filed a charge sheet informing



commission of offences under Sections 341, 506(2), 302 IPC r/w 3(1) of TNPPDL Act. On committal, the case was tried in S.C.No.254 of 2014 on the file of learned II Additional District and Sessions Judge, Thanjavur. Before trial Court, prosecution examined 21 witnesses and marked 36 exhibits and 16 material objects. None were examined on behalf of defence nor were any exhibits marked.

5.1. P.W.1 - Guhan, who accompanied the deceased along with one Mahendran, has preferred the complaint. He deposed that on 31.07.2013, when they were travelling in a Tavera Car to collect sand for coconut saplings, accused obstructed them, caused damage to the car and murdered deceased Saravanan.

5.2. P.W.2 - Asaithambi, who is the owner of the hut in which the deceased was murdered and P.W.3 - Gandhi, his wife as also P.W.5 Jeyapal were examined as eye witnesses to the occurrence. However, they did not support the prosecution and turned hostile.

5.3. P.W.4 - Ramachandran, village head and P.W.6 Anubuselvan spoke to witnessing the occurrence.

5.5. P.W.7 - Sundharamoorthy is the father of the deceased and P.W.8 - Ramesh his brother-in-law. They spoke to the murder of deceased Saravanan by the accused. They are hearsay witnesses.

5.6. P.W.9 - Sridhar spoke to arrest, confession and recovery from A2.

5.7. P.W.10 - Durai and P.W.11 - Sivakumar Village Administrative Officers, spoke to attesting observation mahazar and recovery of material objects.

5.8. P.W.12 - Marimuthu, spoke to arrest, confession and recovery from A1 and A3.

5.9. P.W.13 - Karthikeyan, elder brother of deceased Saravanan informed of being the owner of M.O.4 - Tavera Car.

5.10. P.W.14- Ramesh, Court clerk, spoke to sending material objects for chemical examination.

5.11. P.W.15- Dr.Malarkodi, who conducted post-mortem on the body of deceased, opined that the deceased would appear to have died owing to shock and hemorrhage due to cut injury of neck with injury to vital structure of great vessels of neck.

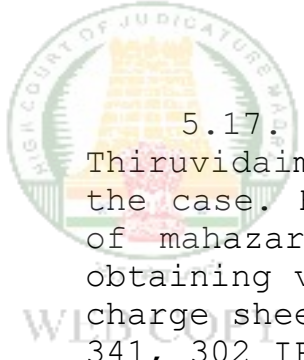
5.12. P.W.16- Avina, Scientific Officer, Regional Forensic Science Laboratory, Thanjavur, spoke to various tests conducted by her and of submitting report Ex.P.16.

5.13. P.W.17- Rameshkumar, Head Constable, spoke to handing over the body of deceased to Doctor for post-mortem and on completion thereof, handing over the body to the relatives.

5.14. P.W.18- Shanmugasundaram, a Police Constable, spoke to handing over the material objects for chemical examination to Regional Forensic Science Laboratory, Thanjavur.

5.15. P.W.19- Sivasankaran, who is running a workshop, spoke to issuing a damage estimate certificate for the car.

5.16. P.W.20- Suriya was Sub Inspector of Police, spoke to registration of case in Crime No.236 of 2013 u/s. 341 and 302 I.P.C. and of forwarding Ex.P.20, Original First Information Report to Principal District and Munsif cum Judicial Magistrate, Kumbakonam and copies thereof to higher officials.



5.17. P.W.21- Selvaraj was the Inspector of Police at Thiruvidadaimaruthur Police Station, who conducted investigation in the case. He spoke to visiting the place of occurrence, preparation of mahazars, examination of witnesses, arrest of accused and of obtaining various reports and on completion of investigation, filing charge sheet informing commission of offences under Sections 506(2), 341, 302 IPC r/w 3(1) of TNPPDL Act.

6. 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.

7. On appreciation of materials before it, trial Court, under judgment dated 19.01.2016, convicted appellants/A1 to A3 for offences u/s. 341 IPC and sentenced them to undergo one month S.I. each, convicted A1 for offence under Section 3(1) of TNPPDL Act and sentenced him to undergo one year rigorous imprisonment and fine of Rs.1,000/-, in default three months simple imprisonment and convicted A1 for offence under Section 302 I.P.C. and A2 to A3 for offence under Section 302 r/w 34 I.P.C. and sentenced each of them to undergo life imprisonment and fine of RS.1,000/- each i/d 3 months S.I. Against such finding, the present appeals have been filed.

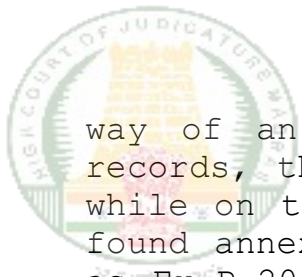
8. Heard learned counsel for appellants and learned Additional Public Prosecutor appearing for respondent in both appeals.

9. These appeals succeed for the following reasons:

(i) The prosecution case is that the occurrence took place at 1.30 p.m., on 31.07.2013 and the FIR was registered at 1.45 p.m. on the same day, on the complaint tendered by one Mahendran at the police station. The said Mahendran has not been examined.

(ii) The prosecution has examined P.W.1 to P.W.6 as eye-witnesses. While P.Ws.2, 3 and 5 have not supported the prosecution and have been treated hostile, P.W.4 and 6 have been disbelieved by the trial Court. P.W.4 has been disbelieved as he informed that the occurrence took place at 2.30 p.m., and that the deceased fell down outside the thatched shed of P.W.2, whereas the prosecution case is that he was done to death inside the said shed. P.W.6 has been disbelieved since he has spoken to an attack by 8 to 9 persons, whereas the prosecution case is of an attack by the three accused/appellants herein.

(iii) Contra to the prosecution case, it is the admission of P.W.1 that the police were at the scene within 5 to 10 minutes of the occurrence. Both P.W.1 as also P.W.4 would submit that the statements of all the witnesses were recorded at the scene and their signatures were taken. P.W.1 would particularly state that on recording the statement of Mahendran, the complainant, Mahendran's signatures were obtained and the same was attested by P.W.1 as also by P.W.4. The complaint in the case has not been marked, though by



way of an inadvertent error, as we find from a perusal of the records, that the FIR has on the front side been marked as Ex.P.20 while on the reverse has been marked as Ex.21 and the complaint is found annexed thereto. A doubt arises as to whether the FIR marked as Ex.P.20 and the complaint annexed therewith inform the original version, as not only has the complainant not has been examined, it is the version of the prosecution witnesses that the complaint was recorded at the scene.

(iv) P.W.20 Sub Inspector of Police, who has registered the FIR informs the distance between the police station and the Court to be 7 kms. FIR informs the scene to be a distance of 2 ½ km from the police station. The FIR has reached the Magistrate only at 7.00 p.m. Such circumstance give rise to a doubt on the genuineness thereof and raises the question of whether the genesis of the occurrence stands suppressed. The detailed narrative form of FIR informing the grudge of the accused against the deceased and the need to murder him only further fuels such doubt. The fact that the Constable entrusted with handing over the FIR to the Magistrate has not been examined makes matters worse for the prosecution.

(v) P.W.1 has spoken to seeing the accused at the police station on the very next day of the occurrence ie., on 01.08.2013, whereas the prosecution case is that A1 and A3 were arrested on 02.08.2013 and A2 was arrested on 17.08.2013.

(vi) According to the prosecution, the recovery of the aruvals have been effected from all the accused. P.W.1 in cross, would state that the aruvals were handed over by them ie., the prosecution party to the police.

(vii) Blood stained aruvals have been recovered. Postmortem stands conducted, but the blood group of the deceased has not been ascertained. Ex.P.16 would inform the presence of blood stains on the clothes worn by the deceased, and on the aruvals. No attempt has been made to correlate the blood group as admitted by P.W.21, Investigation Officer.

Giving the serious lacunae above noted, we do not consider it necessary to dwell on the delayed despatch of the 161(3) Cr.P.C., statements to Court.

10. In the result, these Criminal Appeals shall stand allowed. The conviction and sentence imposed by learned II Additional District and Sessions Judge, Thanjavur in S.C.No.254 of 2014 on 19.01.2016 against appellants/A1 to A3 are set aside. Appellants / A1 to A3 are acquitted of all charges. Fine amount, if paid shall be refunded to appellants / A1 to A3. Appellants/A1 to A3 shall be released forthwith from the prison, if they are no longer required in connection with any other case. Consequently, connected Miscellaneous Petition stands closed.

Sd/-

Assistant Registrar(CO)



To

1.The II Additional District and Sessions Judge,
Thanjavur.

2.The Judicial Magistrate, Kumbakonam.

3.Do -Thro- The Chief Judicial Magistrate,
Thanjavur at Kumbakonam.

4.The Superintendent,
Central Prison, Trichy.

5.The Inspector of Police,
Thiruvidaimaruthur Police Station,
Thanjavur District.

6.The Superintendent of Police, Thanjavur.

7.The District Collector, Thanjavur.

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

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

10.The Superintendent,
Central Prison, Palayamkottai.

11.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.V.R.Balasubramanian, Advocate SR.No. 67919

+1cc to M/S.S.Rajaprabhu, Advocate SR.No. 67970

Judgment made in
CRL A(MD)Nos.270 and 362 of 2017
12.06.2018

ns

JM/SKN RSK/SAR 4/03.08.2018/6P/15C