



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2018

CORAM:

THE HONOURABLE Mr. JUSTICE C.T.SELVAM
and
THE HONOURABLE Mr. JUSTICE A.M.BASHEER AHAMED

Cr1.A.(MD)No.357 of 2017

1.Murugan
2.Udayarsamy
3.Mana @ Marisamy

... Appellant / Accused Nos.1 to 3

Vs.

State Rep.by
The Inspector of Police,
Sankarankovil Town Police Station,
Tirunelveli District.
(Crime No.439 of 2011)

... Respondent/Complainant

PRAYER: The Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the judgment dated 21.08.2017 passed in S.C.No.207 of 2012 by the learned III Additional Sessions Judge, Tirunelveli.

For Appellants : Mr.R.Shanmugasundaram, Senior Counsel for
Mr.K.Prabhu for A1 and A2
Mr.V.Kathirvelu, Senior Counsel for
Mr.K.Prabhu for A3

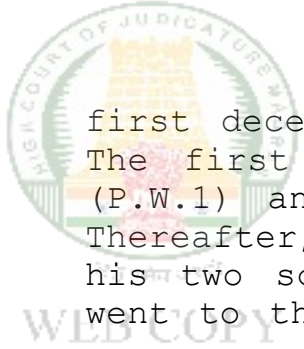
For Respondent : Mr.R.Anandaraj, APP

JUDGMENT

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

This Criminal Appeal has been filed against the Judgment, dated 21.08.2017 passed in S.C.No.207 of 2012 by the learned III Additional Sessions Judge, Tirunelveli.

2. The prosecution case is that since the hire charges of a Tractor were not paid by A1, the first deceased went to the house of A1 and demanded payment. This led to a quarrel, wherein, the



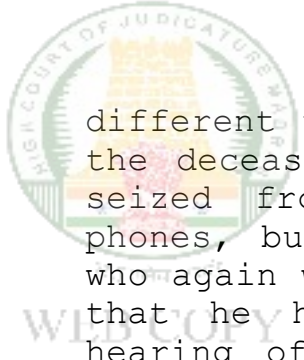
first deceased by name, Maharajan @ Durai, was assaulted by A1. The first deceased returned home and complained to his father (P.W.1) and brother / the second deceased, who was a soldier. Thereafter, at 8.30 p.m., on 05.07.2011, when P.W..1 along with his two sons namely, Maharajan @ Durai and Muthupandi @ Ramesh went to the house, of A1, accused Nos.1 to 3 attacked them with Aruvals and caused the death of Maharajan @ Durai and Muthupandi @ Ramesh.

3.Heard learned Senior Counsel for appellants as also learned Additional Public Prosecutor for respondent.

4.P.W.1 is the father of both the deceased, while A1 and A2 are brothers and A3 is the brother-in-law of A2. According to prosecution, A1 hired the Tractor belonging to P.W.1 for Rs.5,000/- for transporting gravel to the wind mill of P.W.13. Since the hire charges were not paid by A1, the first deceased (D1) by name Maharajan @ Durai had gone to the residence of A1 for collecting hire charges of the Tractor. A1 beat D1. D1 came home and informed P.W.1. Then P.W.1, D1 and D2 / younger son of P.W.1, who was a soldier had gone to the house of A1 to question him about his conduct. A1 was in the house of his brother A2, which was about 50 houses away from his own. P.W.1 questioned on why D1 had been beaten. Then A1 to A3 brought aruvals from inside the house of A2. They pushed P.W.1, who fell down. A1 attacked D1, while A3 attacked D2. P.W.1 saw that his younger son! D2 had died and that the elder one / D1 was struggling for life. He called for ambulance on 108 and took D1 to the Sankarankoil Government Hospital, which was about 5 kms. away. P.W.18, Doctor at such hospital, made accident register entry Ex.P.19 in respect of D1 to the effect that the deceased was brought by P.W.1 and had been attacked by 3 known male persons. D1 was referred to the Tirunelveli Government Hospital where P.W.21, Doctor, noted that D1 had died and issued death intimation Ex.P.24.

5.P.W.1, who, according to the prosecution, had accompanied D1 to Sankarankoil Government Hospital, had allowed him to be taken to the Tirunelveli Government Hospital by others while he proceeded to the police station, where he tendered a written complaint at 11.45 p.m. to P.W.20, Sub Inspector of Police. P.W.20 registered the case and on being informed P.W.22 Investigating Officer, took up investigation.

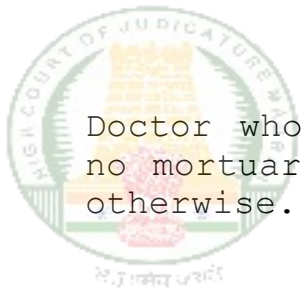
6.Learned Senior Counsel for appellants submitted that prosecution has projected P.Ws.1 to 3 as eye witnesses. They are close relatives, P.W.2 and P.W.3 being uncles of P.W.1. While the presence of P.W.2 is spoken to in the complaint of P.W.1, that of P.W.3 is not. Both P.W.2 and P.W.3 are only chance witnesses. Prosecution has failed to prove how they came to be present at the scene i.e., in front of the house of A2, that too in a



different village. While these witnesses have deposed to carrying the deceased into the ambulance, no blood stain clothes had been seized from them. All three witnesses admittedly had mobile phones, but none has chosen to inform the police station. P.W.7, who again was a close relative of P.W.1, has deposed to the effect that he had proceeded to the hospital at Sankarankoil after hearing of the occurrence and it was then that D1 and D2 were brought there. He has deposed that about 30 to 35 minutes after he had been at hospital, superior police officials were there but he did not note the presence of P.W.1 whereas P.W.1 has spoken to going to such hospital along with P.W.2 and P.W.7. P.W.7 has further stated that P.W.1 came to Sankarankoil Government Hospital half an hour after he had reached there and D1 had been by 108 ambulance to Tirunelveli Government Hospital, before the arrival of P.W.1.

7.P.W.8 Village Administrative Officer had been examined to speak to preparation of observation mahazar at 0.45 hours on the next day after the occurrence and attesting the same as also on the surrender of the accused on 13.07.2011 and recording of their confessions and effecting recoveries thereupon. P.W.8 had deposed to hearing of the occurrence at about 8:00 p.m. on 05.07.2011 and of having proceeded to the scene. Even before he reached the same, D1 had been removed therefrom in an ambulance. He has admitted to the presence of police personal at such time i.e., 9.00 p.m. and that enquiry was on He has deposed that police took note of the objects at the scene in his presence.

8.Learned Senior Counsel importantly pointed out that P.W.8 has admitted to police causing enquiry of P.W.1 at the scene at 9.00 p.m. Neither P.W.7 nor P.W.8 have been treated hostile by the prosecution and their evidence stands unchallenged. Acceptance of evidence of P.W.7 and P.W.8 would lead to the irresistible conclusion of the prosecution case as projected, being also. P.W.22 Investigating Officer has admitted to not examining any of the neighbours of A2 in front of whose house the occurrence is said to have taken place. When the complaint registered at the instance of P.W.1 has not mentioned the time of occurrence, it is perplexing that Ex.P.23-First Information Report informs the same to be 8 30 p.m. P.W.18 Doctor who has issued accident register Ex.P.19 in respect of D1 admitted that the entry therein of D1 having been brought by his father was in her own hand, but in a different ink. Learned Senior Counsel submits that P.W.18 has obliged the prosecution by informing that D1 had been brought to hospital by P.W.1. Learned Senior Counsel also pointed out further discrepancies of P.W.2 speaking to the presence of a bike at the scene, in which, P.W.1 and both deceased had come to the 'scene whereas no mention thereof is to be found in Ex.P.2 observation mahazar Learned Senior Counsel added that by way of alteration report on 14.07.2013, prosecution has sought to make out a case of abetment by accused Nos.4 and 5. Such accused had been acquitted by the Trial Court. He also touched upon the evidence of D.W.1



Doctor who, as against the evidence of P.W.18 to the effect that no mortuary register was maintained at the hospital, has informed otherwise.

9. Learned Senior Counsel Submitted that the projected conduct of P.W.1, that he accompanied his son D1 to hospital at Sankarankoil Government Hospital, but allowed him, who was dying, to be accompanied by others to the Tirunelveli Government Hospital, while he proceeded to prefer a complaint at the police station was most unnatural Conduct. Neither ambulance driver nor record of ambulance towards establishing carrying the deceased had been produced.

10. P.W.7 has spoken to both deceased being taken by ambulance to the Sankarankoil Government Hospital, whereas P.W.8 Village Administrative Officer would have it that only D1 had been taken by ambulance.

11. The prosecution case is riddled with improbabilities. Given the variance in the evidence of prosecution witnesses the very presence of P.W.1 at the scene is doubtful. This would render the FIR doubtful especially as more than one witness speaks to presence of Police before registration thereof. Evidence on record also renders unbelievable the evidence of P.Ws.2 and 3 immediate relatives of the deceased. The absence of any witnesses/neighbours of A2 before whose house the occurrence allegedly took place casts a further doubt on the prosecution case. Dr. P.W.18 demonstrably has obliged the prosecution by making an entry in Ex.P.19. Accident register of P.W.1 having brought Doctor to hospital. He is caught in a lie on maintenance of mortuary register through evidence of Doctor D.W.1. The very manner in which the deceased reached hospital is not properly projected. There are way too many discrepancies in the prosecution case which would not justify conviction.

12. In the result, this Criminal Appeal shall stand allowed. The conviction and sentence passed by learned III Additional Sessions Judge, Tirunelveli dated 21.08.2017 passed in S.C.No.207 of 2012 is set aside and appellants are acquitted of all charges. Fine amount, if any, paid shall be refunded. Bail bond(s), if any, executed shall stand cancelled.

Sd/-

Assistant Registrar (CS-III)



To

1. The Principal District Judge, Tirunelveli.
2. The III Additional Sessions Judge, Tirunelveli.
3. The Chief Judicial Magistrate, Tirunelveli.
4. The Judicial Magistrate, Sankarankovil, Tirunelveli District.
5. The District Collector, Tirunelveli.
6. The Director General of Police, Mylapore, Chennai-4
7. The Superintendent of Police, Tirunelveli.
8. The Superintendent, Central Prison, Palayamkottai.
9. The Inspector of Police,
Sankarankovil Town Police Station,
Tirunelveli District.
10. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy To:-

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

+ 1 CC TO Mr.K.PRABHU, ADVOCATE IN SR No. 71554

NBJ

TE/RSK/SAR-1 : 24/09/2018 : 5P/14C

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05.07.2018