



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.10.2018

CORAM:

**THE HONOURABLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

CRL.A.[MD].No.358 of 2017

Subramani : Appellant

Vs.

State rep by
The Inspector of Police,
Musiri Police Station,
Tiruchirappalli District
Crime No.756 of 2015 : Respondent

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment dated 15.03.2017 made in S.C.No.147 of 2016, on the file of the learned Sessions Judge, Tiruchirappalli.

For Appellant : Mr.C.Christopher
For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by The Hon'ble Chief Justice]

This appeal is directed by the appellant - original accused against the Judgment and order dated 15th March 2017 passed by the learned Principal Sessions Judge, Tiruchirappalli in Sessions Case No.147 of 2016. By the said Judgment and order, the learned Sessions Judge convicted the appellant under Sections 302 and 506 (ii) IPC. For the offence under Section 302 IPC, the learned Sessions Judge sentenced the appellant to undergo life imprisonment and to pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for a further period of two years. For the offence under Section 506(ii) IPC, the appellant was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for a further period of six months. The sentences were ordered to run concurrently.



2. The case of the prosecution, briefly stated, is as under:-

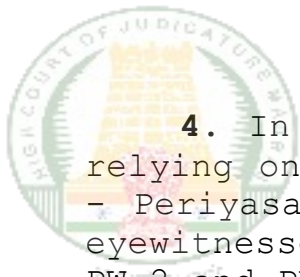
2.1. The deceased - Thangammal was the mother of the appellant. She was also the mother of PW-1 - Selvam. About 14 years prior to the incident, the appellant had murdered his own father on account of a land dispute. In the said case, the appellant was convicted and thereafter, he was released. After his release, the appellant started residing with his mother. The appellant used to trouble his mother to give him money.

2.2. The incident took place on 26.12.2015, at about 05.30, a.m., in Musiri Bus Stand. On 26.12.2015, at about 05.30 a.m., the appellant, his mother - deceased Thangammal and PW-1 - Selvam were standing at Musiri Bus Stand. At that time, the appellant asked the deceased Thangammal to give him money. His mother - Thangammal replied that she had spent the money. Whereupon, the appellant stated that if she does not give him money, he will beat her. Saying so, the appellant caught his mother by her hair and assaulted her with a stone. Due to this, the deceased Thangammal sustained injuries. This incident was witnessed by PW-1 - Selvam. However, as the appellant threatened PW-1 - Selvam that he will also murder him, due to fear, PW-1 - Selvam did not go near.

2.3. The deceased Thangammal was taken to the Government hospital, Musiri, where she was declared dead. PW-1 - Selvam lodged his complaint, which is at EX-P1. Thereafter, it was registered, which is at EX-P14. Thereafter, the investigation commenced. After completion of the investigation, charge sheet came to be filed. In due course, the case was committed to the Court of Session.

2.4. Charges came to be framed against the appellant under Sections 302 and 506(ii) IPC. The appellant pleaded not guilty to the said charges and claimed to be tried. His defence is of total denial and false implication. To support their case, the prosecution examined PW-1 to PW-15 and marked EX-P1 to EX-P16 and six material objects. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant, as stated in Paragraph No.1, above, hence, this appeal.

3. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the State. After giving anxious consideration to the facts and circumstances of the case, the arguments advanced by the learned counsel for the appellant and the learned Additional Public Prosecutor for the State, the evidence on record and the judgment delivered by the learned Sessions Judge for the reasons stated hereinbelow, we are of the opinion that the appellant has committed the murder of his mother Thangammal by assaulting her with a stone.



4. In order to support their case, the prosecution is mainly relying on the evidence of PW-1 - Selvam; PW-2 - Subbiah and PW-3 - Periyasamy. According to the prosecution, PW-1 to PW-3 are all eyewitnesses to the incident. We shall deal with the evidence of PW-2 and PW-3 first.

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5. The learned counsel for the appellant submitted that PW-2 - Subbiah and PW-3 - Periyasamy are not eyewitnesses to the incident and they are got up witnesses. He submitted that both of them came to the scene of occurrence, after the actual incident of assault and hence, they have not witnessed the incident. To examine this proposition, we have carefully gone through the evidence of PW-2 - Subbiah and PW-3 - Periyasamy. Though PW-2 - Subbiah, in his examination-in-chief, has stated that he was standing at Musiri Bus Stand, thereafter, the appellant asked his mother about the money, the money was not given by his mother and the appellant assaulted his mother on the head with stone, however, the cross-examination of PW-2 - Subbiah shows that he came to the scene of occurrence after the incident. The relevant portion in his cross-examination shows that when he came to the bus stand, there was a crowd at the place of incident. Therefore, he went and looked. Only when he went to the place, he came to know who had died. This shows that PW-2 - Subbiah is not an eyewitness to the actual assault. Thus, we find much merit in the submission of the learned counsel for the appellant that PW-2 - Subbiah is not an eyewitness to the incident.

6. Coming to the evidence of PW-3 - Periyasamy, his examination-in-chief shows that the appellant assaulted Thangammal on the head with a stone. However, in his cross-examination, he has stated that he did not see the dispute between the deceased Thangammal and the appellant, as he was eagerly looking for the bus. Only when he saw that a crowd had gathered, he ran to see what had happened. He has further admitted that on account of the crowd which had gathered, he was not able to identify the deceased Thangammal and the appellant. In view of these admissions of PW-3 - Periyasamy in his cross-examination, it does support the case of the learned counsel for the appellant that PW-3 - Periyasamy was not an eyewitness to the occurrence. Thus, out of three witnesses, who according to the prosecution, are eyewitnesses to the incident, we hold that PW-2 - Subbiah and PW-3 - Periyasamy are not eyewitnesses to the incident. At the most, their evidence can be taken only to show that an incident of this nature had occurred at Musiri Bus Stand.

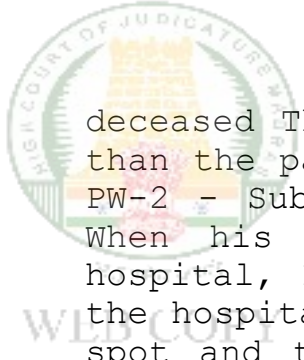
7. Now, we come to the evidence of PW-1 - Selvam. He is the son of deceased Thangammal and he is the brother of the appellant. PW-1 - Selvam has stated that 14 years prior to the incident, the appellant had beaten up their father and murdered him on account of land dispute. In that case, the appellant was convicted. After



his release, the appellant started staying with his mother. PW-1 - Selvam has further stated that the appellant used to trouble his mother for giving him money. The evidence of PW-1 - Selvam further shows that on 26.12.2015, Selvam, his mother - Thangammal and the appellant were standing at Musiri Bus Stand. At that time, the appellant asked his mother to give him money. His mother - Thangammal replied that she had spent the money. Thereupon, the appellant stated that if she did not give him money, he will assault her. Saying so, the appellant caught his mother by her hair, pushed her down and assaulted her with stone on the head. Due to the assault, his mother sustained injuries. PW-1 - Selvam has further stated that he was afraid that if he went near the appellant, the appellant would also murder him, hence, due to fear, he did not go near. Thereafter, the deceased Thangammal was taken to the Government Hospital, Musiri and PW-1 - Selvam lodged his complaint - EX.P1.

8. The learned counsel for the appellant submitted that the conduct of PW-1 - Selvam is such that it shows that he was not present at the time of the incident. In order to support this contention, he has placed reliance on the evidence of PW-1 - Selvam, which shows that he did not intervene, when the appellant assaulted Thangammal and he has not taken his mother - Thangammal to the hospital. As far as this submission is concerned, the evidence of PW-1 - Selvam shows that on account of fear, he did not go near his mother, because, he was criminally intimidated by the appellant. How a person will react in any particular situation cannot be fixed in a straight jacket formula. In a given situation, each person will react in a different way. Reaction varies from individual to individual. A person may rush to help the victim; a person may run away from the spot due to fear or a person may stand back silently and do nothing. Looking to the fact that the appellant had earlier murdered his own father and had just murdered his own mother and the fact that the appellant had criminally intimidated PW-1 - Selvam, it was not expected from PW-1 - Selvam that he would go forward to intervene. This is more especially so looking to the history of the appellant that he had earlier murdered his very own father on account of land dispute and on this occasion, the appellant murdered his mother, hence, naturally, there would be every apprehension in the mind of PW-1 - Selvam that the appellant would also assault him and cause his death, if he intervened. It is in these circumstances that PW-1 - Selvam did not intervene. Thus, we do not find anything unnatural in the conduct of PW-1 - Selvam in not coming forward to intervene, when his mother was assaulted.

9. The evidence on record shows that PW-2 - Subbiah had taken the deceased Thangammal to the hospital along with others. This is the evidence of PW-2 - Subbiah, where he says in Paragraph No.1 that "After the incident, we took her to Hospital at Musiri". This clearly shows that PW-2 - Subbiah took the



deceased Thangammal to the hospital. PW-2 - Subbiah is none other than the paternal uncle of the appellant as well as PW-1 - Selvam. PW-2 - Subbiah is the brother-in-law of the deceased Thangammal. When his paternal uncle took the deceased Thangammal to the hospital, PW-1 - Selvam might not have felt it necessary to go to the hospital at that time and he found it necessary to stay at the spot and thereafter, to proceed to give his complaint. Thus, in our opinion, this conduct on the part of PW-1 - Selvam is not such as to discredit his testimony.

10. Thereafter, the learned counsel for the appellant submitted that the incident occurred at 05.30 a.m. However, the complaint was lodged at 09.35 a.m. He submitted that the Police Station was situated very close to the place of occurrence, hence, the complaint ought to have been lodged within a very short time. However, the fact that the complaint was lodged after nearly four hours after the incident shows that PW-1 - Selvam was not present at the time of the incident and he came to know of the incident later on, hence, the complaint was lodged at 09.35 a.m.

11. As far as the contention of the learned counsel for the appellant that there is delay of four hours in lodging the First Information Report and hence, it is clearly a case of false implication is concerned, we are of opinion that the delay is not such as to be fatal to the prosecution case. The Supreme Court in the case of **Ramdas and others v. State of Maharashtra reported in (2007) 1 Supreme Court Cases (Cri) 546**, has observed that mere delay in lodging the F.I.R is not necessarily fatal to the case of the prosecution. This fact has to be considered in the light of the other facts and circumstances of the case. In the ultimate analysis, what is the effect of delay in lodging the report with the police is a matter of appreciation of evidence, and the court must consider the delay in the background of the facts and circumstances of each case. Different cases have different facts and it is the totality of evidence and the impact that it has on the mind of the court that is important. No straitjacket formula can be evolved in such matters and each case must rest on its own facts. Thus, mere delay in lodging of the report may not by itself be fatal to the case of the prosecution, but, the delay has to be considered in the background of the facts and circumstances in each case and is a matter of appreciation of evidence by the court of fact.

12. We may state here that nothing has been brought on record to show that PW-1 - Selvam had any axe to grind against the appellant, i.e., there is nothing on record to show that PW-1 - Selvam had any reason to falsely implicate the appellant or that there was any previous enmity between the appellant and PW-1 - Selvam so as to cause PW-1 - Selvam to falsely implicate the appellant. On going through the evidence of PW-1 - Selvam, we are



of the opinion that it inspires confidence, hence, we have no hesitation in relying on his evidence. Looking to the facts and circumstances of the present case, we are convinced that the delay in lodging the complaint/F.I.R is not at all fatal to the case of the prosecution.

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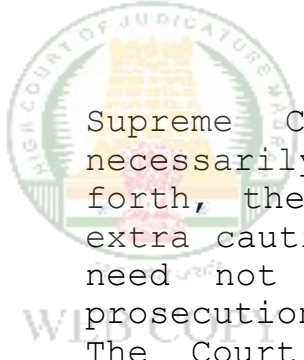
13. The learned counsel for the appellant, thereafter, submitted that there is no evidence to show who took deceased Thangammal to the hospital. As far as this aspect is concerned, the evidence of PW-2 - Subbiah shows that he along with others took the deceased Thangammal to the hospital. We may make a mention at this stage that the investigation in this case is not as desired. However, it is well settled that defects in investigation would not lead to acquittal of the accused on that ground alone.

14. The issue as to how far the prosecution case can be thrown out in view of the defective investigation is not new to the Courts. This issue had come up for consideration before the Supreme Court in a number of cases. The Supreme Court, while considering the lapse by the investigating officer and whether due to such lapse, the benefit should go to the accused, has held that if on a proper evaluation of various facts and circumstances if there are apparent inconsistencies in the case of prosecution solely due to the omissions on the part of investigating officer, there would be no justification to throw away the prosecution case solely on the ground that the investigation was highly defective. This has been held by the Supreme Court in **Chandra Kanth Lakshmi v. State of Maharashtra** reported in (1974) 3 Supreme Court Cases 626.

15. The Supreme Court in **Karnal Singh v. State of Madhya Pradesh** reported in (1995) Supreme Court Cases (Cr1.) 977, has held that defect in investigation by itself cannot be a ground for acquittal. Similar view was taken in **Ram Bihari Yadav v. State of Bihar** reported in (1998) Supreme Court Cases (Cr1.) 1085. The Principle in **Ram Bihari Yadav** was once again reiterated by the Supreme Court in **Amar Singh v. Balwinder Singh** reported in 2000 Supreme Court Cases (Cr1.) 641 and in **Allarakha K.Mansuri v. State of Gujarat** reported in AIR 2002 Supreme Court 1051 : (2002) 3 Supreme Court Cases 57. Thereafter, in **Rambali v. State of U.P** reported in 2004 Supreme Court Cases (Cr1.) 2045, the Supreme Court again observed that "in case of defective investigation, the Court has to be circumspect while evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective."

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16. Thus, a careful reading of the law laid down by the



Supreme Court shows that defective investigation need not necessarily result in acquittal. Whenever such a plea is put forth, the Court must evaluate the other evidence with care and extra caution. Any deficiency or irregularity in the investigation need not necessarily lead to disbelieving the case of the prosecution, if it is otherwise proved with sufficient materials. The Court must also be cautious that in case of defective investigation and while scrutinising other materials, any conclusion arrived by the Court should not ultimately lead to the miscarriage of justice. The conduct of police officials during the course of investigation shall not stand in the way of the Court in evaluating the evidence to find out the real truth.

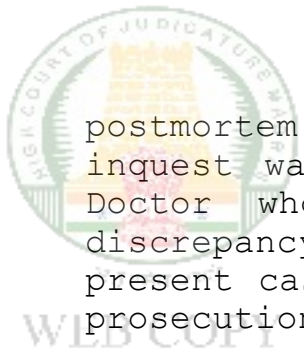
17. On going through the evidence on record, we are of the opinion that we can rely on the evidence of PW-1 - Selvam. As stated earlier, there is nothing on record to show that he had any animus against the appellant or any reason for him to falsely implicate the appellant who is his own real brother.

18. It is the prosecution case that the appellant assaulted his mother Thangammal with a stone on the head and caused her death. This is fortified by the medical evidence. PW-6 - Dr. Adiththan conducted the postmortem on the dead body of Thangammal. On external examination, the Doctor found the following injuries:

- "1. Lacerated injury right parietal region 10cm x 10cm x bone depth.*
- 2. Lacerated injury 10cm x 10cm over right side of face with fracture of right zygoma bone.*
- 3. Lacerated injury left side of Parietal Region 5cm x 3cm bone depth.*
- 4. Lacerated injury Lower Jaw with fracture of Mandible.*
- 5. Lacerated injury Lower Third of Left leg with fracture both bones of leg."*

On internal examination, fracture of the skull was found. According to PW-6 - Dr. Adiththan, cause of death was due to head injury, hemorrhage and shock. The medical evidence supports the case of the prosecution that the appellant assaulted Thangammal with the stone - MO-1.

19. The learned counsel for the appellant has made a submission that the inquest report does not mention the injuries as stated in the postmortem report, hence, according to him, the prosecution case is a false one and the appellant has been falsely implicated by way of an afterthought. No doubt, there is some discrepancy in the inquest report and postmortem notes. The inquest report does not mention all the injuries mentioned in the



postmortem report. However, it is to be borne in mind that the inquest was made by lay persons and not by an expert, like the Doctor who conducted the postmortem. Hence, at times, some discrepancy may arise between the two. The discrepancy in the present case is not so material as to be fatal to the case of the prosecution.

20. The prosecution is also relying on the circumstance of recovery of stone - MO-1, i.e., weapon with which the appellant assaulted Thangammal which led to her death. PW-9 - Shanmugam has deposed on this aspect. Shanmugam has stated that on 26.12.2015 at about 06.00 p.m., he was asked to be a recovery witness. Shanmugam further stated that in his presence, the appellant made a statement, pursuant to which the appellant led them to a place from where he took out a stone and handed it over. The said stone came to be seized. PW-9 - Shanmugam has identified the stone as MO-1. This stone was sent for Forensic Analysis. The Forensic Analysis Report, which is exhibited as EX-P6 through PW-7 shows that the stone was stained with the blood of 'A' Group. Along with the stone, the clothes of the deceased Thangammal were also sent for Forensic Analysis. They were white designed saree, green blouse and inskirt. All these articles, which were on the body of deceased Thangammal, were as per the Forensic Report also found to be stained with blood of 'A' Group. From this, it can be safely inferred that the blood group of the deceased was 'A' Group. Thus, finding of blood of 'A' Group on the stone - MO-1, which was recovered at the instance of the appellant, is a strong incriminating circumstance against the appellant.

21. After carefully analysing the evidence on record, we are of the opinion that there is sufficient evidence on record to prove beyond reasonable doubt that the appellant caused the death of his mother Thangammal by assaulting her on the head with the stone. Thus, we find no reason to interfere with the judgment and order passed by the learned Sessions Judge, Tiruchirappalli.

22. In the result, this Criminal Appeal is dismissed and the Judgment dated 15.03.2017 passed by the learned Sessions Judge, Tiruchirappalli, in S.C.No.147 of 2016 is confirmed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-IV)



To

1. The Principal Sessions Judge,
Tiruchirappalli.
 2. The Judicial Magistrate, Musiri.
 3. The District Collector, Trichy.
 4. The Director General of Police,
Mylapore, Chennai.
 5. The Superintendent, Central Prison, Trichy.
(in duplicate for communicate to the accused)
 6. The Inspector of Police,
Musiri Police Station,
Tiruchirappalli District.
 7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
 8. The Section Officer,
Criminal Section (Records)
Madurai Bench of Madras High Court,
Madurai. (2 Copies)
- + 1 CC TO Mr.C.CHRISTOPHER, ADVOCATE IN SR No. 91206

NB

TE/PM/SAR-4 : 16/11/2018 : 9P/12C

JUDGMENT MADE IN
CRL.A.[MD].No.358 of 2017
22.10.2018