



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.10.2018
PRONOUNCED ON : 31.10.2018

WEB COPY

CORAM:

THE HONOURABLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
CRL A[MD]No.441 of 2017

John : Appellant/Sole Accused
Vs.

State through,
The Inspector of Police,
Cheranmahadevi Police Station,
Tirunelveli District. : Respondent/Complainant
(Crime No.196 of 2015)

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to call for the entire records connected with judgment rendered by the Principal Sessions Judge, Tirunelveli in SC No.194 of 2016 on 21.03.2017 and set aside the same and consequently acquit the appellant.

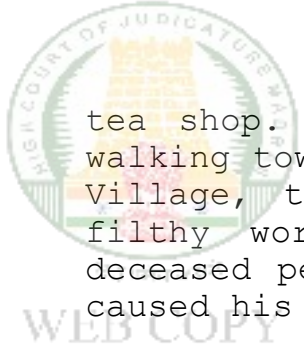
For Appellant : Mr.S.Titus,
for Mr.R.Alagumani
For Respondent : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor

JUDGMENT

**[Judgment of the Court was delivered by
JUSTICE N.ANAND VENKATESH]**

The sole accused, who was convicted for an offence under Sections 341 and 302 of IPC and sentenced to undergo one month simple imprisonment for the offence under Section 341 of IPC and to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo, three months simple imprisonment for the offence under Section 302 of IPC, by the learned Principal Sessions Judge, Tirunelveli, by judgment dated 21.03.2017, has preferred this appeal.

2.The case of the prosecution is that the deceased Roopanraja and the appellant are the residents of Oodaikaranpatti Village at Cheranmahadevi Taluk. There was previous enmity between both of them. While the appellant used to wash his clothes and take bath near a water pipe, it used to be objected by the deceased and others in his family. Prior to the occurrence there was a wordy altercation between the deceased and the appellant, on 08.11.2015 in front of a



tea shop. On 09.11.2015 at about 7.15 pm, when the deceased was walking towards CSI Church situated at Karisalpatti, Oodaikaranpatti Village, the appellant waylaid the deceased and started uttering filthy words against the deceased and thereafter attacked the deceased person with a billhook on his neck repeatedly and thereby caused his death.

3.PW.1, who is the brother of the deceased and who was also cited as an eye witness by the prosecution, went along with PW.2 to the Police Station and gave a complaint (Ex.P.1) at about 9.00pm and an FIR (Ex.P.27) came to be registered by the respondent Police for the alleged offence under Sections 341, 294(b) and 302 of IPC in Crime No.196 of 2015.

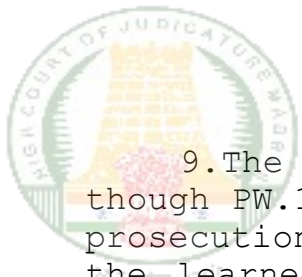
4.The investigation was taken up by PW.22, who went to the place of occurrence and prepared the observation mahazar and rough sketch (Ex.P.28 and Ex.P.29), in the presence of witnesses. He also conducted an inquest on the body of the deceased and the inquest report was marked as Ex.P.30. Thereafter he had sent the body of the deceased for postmortem. He also collected the material objects from the place of occurrence (MO.6 and MO.7). Thereafter the accused person was arrested on 10.11.2015 at about 12.30pm and based on the confession, the Investigating Officer recovered the billhook used for committing the offence and also the bloodstained banyan and shirt of the accused (marked as MO.1, MO.4 and MO.5). In the meantime, the express FIR reached the Judicial Magistrate Court, Cheranmahadevi at 1.00 am on 10.11.2015. The Investigating Officer also recorded the statement of the witnesses. Thereafter, the investigation was continued by PW.23, who also recorded the statement of witnesses and a final report came to be filed before the concerned Magistrate Court.

5.The case on being committed to the Sessions Court, the learned Judge framed charges against the accused person for an offence under Sections 341, 294(b) and 302 of IPC. The appellant denied the charges against him and therefore, the case was taken up for trial.

6.The prosecution examined PW.1 to PW.23 as witnesses and marked Ex.P.1 to Ex.P.34 and also MO.1 to MO.7, in order to substantiate its case.

7.After completion of the trial, the incriminating evidence was put to the appellant by way of questioning under Section 313 of CrPC and the appellant denied the commission of offence.

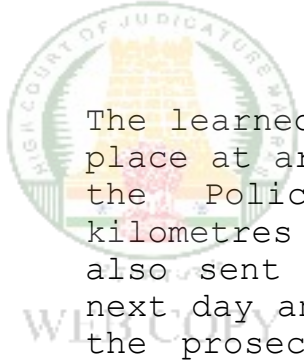
8.The learned Sessions Judge on consideration of the oral and documentary evidence and also the materials placed on record, came to the conclusion that the appellant has committed the offence under Sections 341 and 302 of IPC and accordingly imposed the punishment mentioned hereinabove and acquitted the appellant for the offence under Section 294(b) of IPC.



9. The learned Counsel for the appellant would submit that even though PW.1, P.W.2 and P.W.4 have been shown as eye witnesses by the prosecution, they could not have seen the occurrence. According to the learned Counsel, the rough sketch marked as ExP.29 shows that the body of the deceased was found in front of the house of one Jeyakumar and this place is outside the compound wall of the CSI Church and therefore the said witnesses could not have seen the occurrence that happened near the house of the Jeyakumar adjacent to the tar road running between Karisalpatti and Kanganakulam. The learned Counsel would further submit that the place, where the incident is said to have taken place, is a very crowded place and therefore, if the incident had taken place, as projected by the prosecution, it would have been witnessed by many others and therefore, the respondent Police ought to have examined independent witnesses also in this case. But, however, the respondent police have chosen to examine only PW.1, PW.2 and PW.4, who are the close relatives of the deceased.

10. The learned Counsel for the appellant would further submit that in the complaint, three motives have been given as the reason for the incident. However, PW.1 in his evidence has spoken only about the first motive namely the altercation that took place near the water pipe and other two motives have not even been spoken by PW.1 and therefore, the motive that has been attributed on the appellant by the prosecution itself is doubtful. The learned Counsel for the appellant would further submit that the weapon recovered and the weapon that was sent to the lab are totally different and the same is evident from the evidence of PW.10 and PW.11. The learned Counsel would further submit that all the witnesses speak about the bad antecedent of the deceased person and therefore, there is always a possibility of the deceased person being attacked by some other person, who has been antagonized by the deceased. The learned Counsel for the appellant would further submit that PW.1, who is the brother of the deceased without attending to the deceased by taking him to hospital, had proceeded to give complaint by going to the Police Station and this according to the learned Counsel for the petitioner, is an unnatural conduct on the part of PW.1. The learned Counsel also brought to the notice of this Court that the rough sketch does not reveal the availability of the staircase in the CSI Church and this fact has also been admitted by the Investigating Officer in the course of cross examination.

11. Per contra, the learned Additional Public Prosecutor would submit that the evidence of PW.1, PW.2 and PW.4 are cogent and it clearly reveals the fact that they have seen the occurrence. The learned Counsel would further submit that their evidence has not been discredited in the course of cross examination. Insofar as the motive is concerned, the learned Counsel would submit that PW.5, PW.6 and PW.7 have clearly spoken about the previous dispute between the deceased and the appellant and that apart PW.1 has also spoken about the previous enmity between the appellant and the deceased.



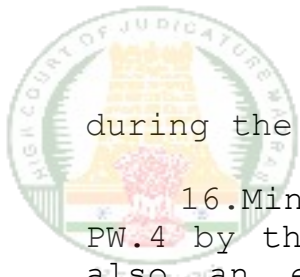
The learned Counsel would further submit that the incident had taken place at around 7.00pm and the FIR was registered at about 9.00pm in the Police station, which is situated roughly 9 to 11 kilometres from the place of occurrence and the express FIR was also sent to the Magistrate Court, Cheranmahadevi at 1.00 am the next day and therefore, there is absolutely no delay on the part of the prosecution in registering the FIR and also in sending the express FIR to the Magistrate Court. Therefore, there is no question of any manipulation of facts on the part of the prosecution. The learned Counsel would further submit that the minor discrepancies that have been pointed out by the learned Counsel for the appellant from the evidence of the witnesses, will not in any way shake the credibility of the witnesses and the basic version of the prosecution case cannot be discredited on that ground. The learned Counsel in order to substantiate the said submission had relied on the judgment of the Hon'ble Supreme Court in State of Madhya Pradesh Vs Chhaakki Lal and another in Criminal Appeal Nos.21 and 22 of 2011, dated 26.09.2018 and the judgment in State of Madhya Pradesh Vs Dal Singh and others, reported in (2013) 14 SCC 159.

12.This Court carefully considered the submissions made on either side.

13.In this case, PW.1 who is the brother of the deceased has been shown as an eye witness by the prosecution. PW.1 in his evidence has categorically stated that on 09.11.2015 at about 7.00pm when he along with his son Roshan Selva (PW.4) and his nephew PW.2 was seated in the staircase near the compound wall at CSI Church, the deceased parked his bike in his house and was walking towards the Church from East to West and at about 30 Ft distance from the Church, the appellant all of a sudden attacked the deceased with a billhook and the deceased fell down. Immediately PW.1 along with his son and nephew shouted and ran towards the place of occurrence and the appellant once again attacked the deceased with the weapon in his neck. Thereafter, the appellant ran away from the place of occurrence towards Eastern side and escaped. PW.1 also stated about the availability of sufficient light from the Church as well as the street light. Thereafter, PW.1 had called the Ambulance by dialing 108 and in the meantime he saw that Roopanraja had already died on the spot. Thereafter PW.1 had proceeded to the Police Station along with PW.2 and given a complaint, which is marked as Ex.P.1.

14.During the cross examination of PW.1, the Counsel appearing on behalf of the appellant was not able to elicit any contradiction with regard to the incident witnessed by PW.1.

15.In the same manner, Manoj, who was examined as PW.2 had also categorically stated in his evidence about witnessing the incident and his evidence is in line with the version given by PW.1. The credibility of this witness with regard to witnessing the incident, has also not been contradicted in anyway, in the Course of examination. He has categorically answered the questions put him



during the cross examination with regard to witnessing the incident.

16.Minor Roshan Selvan, who is the son of PW.1 was examined as PW.4 by the prosecution. According to the prosecution this boy was also an eye witness to the incident. The Court below before examining this minor witness, had satisfied itself with regard to the competency of the witness and rationale answers that were given by this witness for the questions posed by the Court below. PW.4 had categorically stated in his evidence that he along with his father and PW.2 were sitting in the staircase near the compound wall at CSI Church and at about 7.15 pm when the deceased Roopanraja was coming towards the Church, the appellant all of a sudden attacked the deceased with Aruval and escaped from the place of occurrence. Immediately after the attack, his father PW.1 and PW.2 shouted and rushed to the place of occurrence and this was witnessed by PW.4. PW.4 has further stated that PW.1 and PW.2 thereafter went to the Police Station to give complaint. This witness has been subjected to a detailed cross examination by the defence. PW.2 had cogently answered all the questions put to him in the course of cross examination and there is absolutely no contradiction in his evidence with regard to witnessing the incident.

17.Therefore, on a careful reading of the evidence given by PW.1, PW.2 and PW.4, it is clear that they have seen the incident and the prosecution has rightly examined them as eye witness. Even though these witnesses are related to the deceased person, that by itself will not make them interested witnesses and their evidence cannot be discredited on that account. The non examination of any other independent witnesses by the prosecution is not fatal to the case of the prosecution, since the evidence adduced by PW.1, PW.2 and PW.4 categorically supports the case of the prosecution with regard to the incident and the attack made by the appellant against the deceased person.

18.The contention of the learned Counsel for the appellant that PW.1, PW.2 and PW.4 could not have seen the occurrence and there is possibility of someone else attacking the deceased person, is totally unsustainable. Even the careful examination of the rough sketch, which has been marked as Exp.29, clearly reveals the fact that the occurrence had taken place just opposite to the house of one Jeyakumar in the middle of the road, which runs from East to West from Karisalpatti to Kanganakulam. On the Eastern side, from the place of occurrence, lies the house of the deceased Roopanraja. On the Western side of the place of occurrence, lies the CSI Church. The availability of street light and also the availability of light from the Church is also clearly mentioned in the rough sketch. There is an opening in the compound wall of the CSI Church, from where the place where the incident took place can be easily seen. The rough sketch shows that the distance between the Church and the place of incident is hardly 35 Ft. The availability of power is further confirmed by the prosecution by examining PW.13, who is an employee of the Tamil Nadu Electricity Board, who categorically stated that



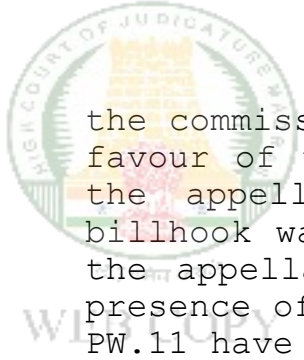
there was no power cut on the said date and electricity was available throughout. Therefore, the possibility of the eye witnesses not seeing the incident due to darkness, is also ruled out due to sufficient light available near the scene of occurrence. Just because the rough sketch does not show the availability of the staircase inside the compound wall of the Church, that by itself will not discredit the evidence available on record and the statement made by PW.1, PW.2 and PW.4. The rough sketch need not contain every minute detail regarding each property near the place of occurrence and therefore, a combined reading of the evidence of PW.1, PW.2 and P.W.4 and also the rough sketch marked as Exp.29, clearly shows that these witnesses have seen the occurrence and there is no material on the side of the appellant to show that these witnesses could not have witnessed the incident. In fact the questions to that effect have not even been put to the witnesses in the course of cross examination. Therefore, this Court is convinced that PW.1, PW.2 and P.W.4 have indeed seen the occurrence on the fateful day.

19. It is a settled principle of law that on the availability of an eye witnesses to the incident, the establishment of motive becomes insignificant. Even if the prosecution does not prove the motive, the Court can proceed further with the version of eye witness, once their evidence is credible and satisfies the Court. However, in this case, the prosecution has examined PW.5, PW.6 and PW.7 in order to establish the previous dispute between the appellant and the deceased person. Therefore, this Court does not want to dwell deep into the issue of motive, since this Court is satisfied with the evidence of the eye witness and is also satisfied with the evidence adduced by the witnesses about the previous dispute between the deceased and the appellant.

20. Insofar as the unusual conduct that has been pointed out by the learned Counsel for the appellant with regard to Rajendran (PW.1), who is the brother of the deceased, it is seen from evidence that the deceased died on the spot after he was attacked. Therefore, PW.1 along with PW.2 went to the Police Station and gave a complaint at the earliest possible time and the FIR was also registered at 9.00 pm on the same day. Therefore, there was nothing unusual on the conduct of PW.1.

21. In this case, the Police Station is situated nearly 9 to 11 kilometres from the place of occurrence and therefore, this Court is of the considered view that there was no delay in registering the FIR. It is also seen from records that the express FIR was made ready and was sent to the learned Judicial Magistrate, Cheranmahadevi at 1.00 am. Therefore, the possibility of manipulation of facts by the Police is also ruled out in this case.

22. With regard to the submission of the learned Counsel for the appellant that there is discrepancy on the weapon that was used for



the commission of crime, this Court is not able to see any ground in favour of the appellant. In this case, the weapon that was used by the appellant was a billhook, which was marked as MO.1. This billhook was recovered by the Investigating Officer after arresting the appellant on 10.11.2015, between 12.30 pm and 1.30 pm in the presence of the witness. Even though, the recovery witness PW.10 and PW.11 have turned hostile, the evidence of the Investigating Officer PW.22 seen along with the seizure mahazar marked as ExP.33 clearly shows that the weapon was recovered based on the confession given by the appellant. PW.10 and PW.11 have not denied their signatures in ExP.31, ExP.32 and ExP.33. Therefore, there is nothing to doubt the recovery of the weapon by the respondent Police, which was marked as MO.1.

23.The evidence of the postmortem Doctor Sridharan, examined as PW.15 clearly shows that the injuries sustained by the deceased can be caused by MO.1. The postmortem report marked as ExP.21 reveals the following injuries.

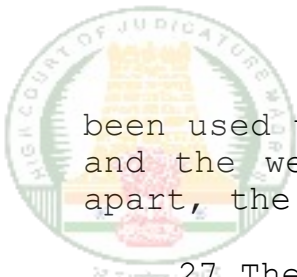
"1)An oblique gapping heavy cut injury of size 9 X 3 cm X cervical bone deep noted in the upper part of front neck. It lies 6 cm below chin and 9 cm above supra sternal notch. It cuts underlying soft tissue organs, blood vessels, nerves, Trachea (wind pipe) Oesophagus (food pipe). It also cuts underlying cervical vertebrae number 3.

2)An oblique gapping heavy cut injury of size 8 X 3 cm X cervical bone deep noted in the middle part of front neck. It lies 2 cm below injury No.1. It cuts underlying soft tissues organs, blood vessels, nerves, Trachea (wind pipe) and Oesophagus (food pipe). It also cuts underlying cervical vertebrae number 4."

24.PW.15 has also categorically deposed that the deceased had died due to the grievous cut injuries sustained in his neck and that there is possibility of both the cut injuries found on the neck, inflicted by using the billhook marked as Mo.1.

25.It is therefore clear from the evidence of postmortem Doctor, who was examined as PW.15, that the death of the deceased was caused only due to the cut injuries in the neck caused by MO.1.

26.In this regard, it is also relevant to refer to the evidence of PW.12 Dr.Kajendra Varadhan, who speaks about the Serological examination conducted on the blood found in the material objects. The Serology report was marked as ExP.14. In the said report it is clearly seen that there is presence of human blood in all the material objects. The blood group of the deceased was "Group-A" and the said Group-A blood was also found in the billhook marked as MO.1. Therefore, it is very clear that it is this billhook that has



been used to attack the deceased and it clearly connects the accused and the weapon that was used by him to attack the deceased. That apart, the same blood group was also found in MO.3, MO.6 and MO.7.

27. The discrepancies that have been pointed out by the learned Counsel for the appellant with regard to the distance between the Church and the place of occurrence and the manner in which, the complaint was given to the Police, are minor in nature and it does not in any way discredit or shake the case of the prosecution.

28. It will be relevant to rely upon the judgments cited by the learned Additional Public Prosecutor in this regard. The Hon'ble Supreme Court in State of Madhya Pradesh Vs Dal Singh and others, reported in (2013) 14 SCC 159 specifically dealt with the issue with regard to the manner in which discrepancies can affect the case of the prosecution. The relevant portion of the above judgment is extracted hereunder:

Discrepancies: 7. So far as the discrepancies, embellishments and improvements are concerned, in every criminal case the same are bound to occur for the reason that witnesses, owing to common errors in observation, i.e., errors of memory due to lapse of time, or errors owing to mental disposition, such as feelings shock or horror that existed at the time of occurrence.

The court must form its opinion about the credibility of a witness, and record a finding with respect to whether his deposition inspires confidence. "Exaggeration per se does not render the evidence brittle. But it can be one of the factors against which the credibility of the prosecution's story can be tested, when the entire evidence is put in a crucible to test the same on the touchstone of credibility." Therefore, mere marginal variations in the statements of a witness cannot be dubbed as improvements, as the same may be elaborations of a statement made by the witness at an earlier stage. "Irrelevant details which do not in any way corrode the credibility of a witness cannot be labelled as omissions or contradictions." The omissions which amount to contradictions in material particulars, i.e. which materially affect the trial, or the core of the case of the prosecution, render the testimony of the witness as liable to be discredited.

Where such omission(s) amount to contradiction(s), raising serious doubts about the truthfulness of a witness, and other witnesses also make material improvements before the court in order to make their evidence acceptable, it cannot be said that it is safe to rely upon such evidence. (Vide: A. Shankar v. State of Karnataka)



29. The Hon'ble Supreme Court in State of Madhya Pradesh Vs Chhaakki Lal and another in Criminal Appeal Nos. 21 and 22 of 2011, dated 26.09.2018 has also dealt with the very same issue and the relevant portion is extracted hereunder.

"Discrepancies which do not shake the credibility of the witness and the basic version of the prosecution case are to be discarded. If the evidence of the witness as a whole contains the ring of truth, the evidence cannot be doubted. In Prithu alias Prithi Chand and Another v. State of Himachal Pradesh (2009) 11 SCC 588, it was held as under:-

"14. In Bharwada Bhoginbhai Hirjibhai v. State of Gujarat (1983) 3 SCC 217, it was observed that undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the root of the matter and shake the basic version of the prosecution witnesses. A witness cannot be expected to possess a photographic memory and to recall the details of an incident verbatim. Ordinarily, it so happens that a witness is overtaken by events. A witness could not have anticipated the occurrence which very often has an element of surprise. The mental faculties cannot, therefore, be expected to be attuned to absorb all the details. Thus, minor discrepancies were bound to occur in the statement of witnesses." The same principle was reiterated in State of U.P. v. M.K. Anthony (1985) 1 SCC 505."

30. From the above judgments it is clear that undue importance should not be attached to the omission, contradiction and discrepancies, which do not go to the root of the matter and shake the basic version of the prosecution witnesses. In this case, the discrepancies / contradictions pointed out by the learned Counsel for the appellant, do not in anyway go to the root of the matter or shake the basic version of the prosecution witnesses.

31. The learned Counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in Bhimappa Jinnappa Naganur vs State of Karnataka reported in 1993 SCC (Cri) 1053 in order to substantiate his arguments with regard to the unnatural behaviour. In the said judgment, the Hon'ble Supreme Court has held that PW.1, who was the wife of the deceased merely offered water to the deceased husband, who was breathing his last and she had not even tried to offer him any help, which was needed during that hour. Therefore, the Supreme Court held that the conduct of the wife was unnatural. This judgment will not apply to the facts of the present case. In the present case, by the time PW.1, who is the brother of the deceased rushed towards the deceased, he saw him lying dead and therefore PW.1 did not see any reason to rush the deceased person to the hospital. He has therefore, chosen to call the Ambulance by dialing 108. This conduct exhibited by PW.1, in the considered view of this Court, is not unnatural. PW.1 immediately after the incident, has chosen to go the Police Station along with PW.2 and



has given complaint against the appellant. Therefore, the arguments advanced by the learned Counsel for the appellant in this regard is also rejected.

32. On over all appreciation of the oral and documentary evidence and entire materials available on record, this Court is of the considered view that the prosecution has proved the guilt of the appellant beyond reasonable doubts. This Court does not find any ground to interfere with the well considered judgment passed by the Principal Sessions Judge, Tirunelveli. Accordingly, the judgment of the trial Court is hereby confirmed.

33. In the result, this Criminal Appeal is dismissed and the judgment of the learned Principal Sessions Judge, Tirunelveli, made in SC No.194 of 2016, dated 21.03.2017 is hereby confirmed.

Sd/-

Assistant Registrar(P AND A)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

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

DSK

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JUDGMENT MADE IN
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31.10.2018