

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.02.2019

Pronounced on: 11.03.2019

Coram:

The Honourable Dr. Justice G. Jayachandran

Criminal Appeal No. 167 of 2011

Ethiraj,
S/o. Veeraragava Naidu,
No. "C" 5/400, Gopalapuram,
Mannarswamy Koil,
Tindivanam. ... Appellant/Accused

/versus/

State represented by:
Inspector of Police,
Bremmadesam Police Station,
Villupuram District. ... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C, praying against to set aside the order of conviction dated 28.02.2011 in S.C.No.395/2010 on the file of the Additional District & Sessions Judge, Fast Track Court No.II, Tindivanam.

For Appellant : Mr.V.T.Narendiran

For Respondent : Mrs.P.Kritika Kamal
Government Advocate (Crl.Side)

J U D G M E N T

The Appellant Ethiraj is the sole accused tried in S.C.No.395 of 2010 for the charge under Section 307 of I.P.C. The victim of the crime is none other than the own brother of the accused. According to the charge, on 10.05.2009, at about 9.30 a.m, on the Tindivanam to Marakkanam road near Anna Nagar junction, 1st cross street, the accused attacked his brother Sridhar with vegetable chopping knife on his left hand, head and stomach with an intention to cause death.

2. The trial Court, considering the evidence has held the accused found to be guilty for offence under Section 307 of I.P.C. sentenced him to undergo 4 years R.I and to pay a fine of Rs.2,000/- in default one month imprisonment.

3. Aggrieved by the conviction and sentence the accused has preferred the appeal. It is contended by the appellant/accused that the trial Court has failed to see the motive behind the complainant to implicate the appellant. To deprive the right of the appellant in the property, the complainant has implicated his brother in this case. PW.1 Amudha Rani admits the property dispute between the accused and the victim. She admits the victim used abusive words and tried to

assault the accused during the Panchayat. There is a possibility of false implication of the accused, in order to prevent the accused from claiming share in the property. The accused has probalised the said probability, so the benefit of doubt ought to have been given to the accused. Except the evidence of the injured witness (PW.2) there is no independent witness to corroborate his evidence. When the previous enmity is admitted, possibility of false implication cannot be ruled out. Therefore, based on the un-corroborated evidence of the interested witnesses, the learned trial Judge had erroneously convicted the accused.

4. PW.3 who is the friend of the injured (PW.2) has not supported the prosecution. PW.4 witness to the rough sketch has turned hostile. PW.5 who is another friend of the injured (PW.2) also turned hostile. None of the independent witnesses supported the case of the prosecution. PW.8 who is the owner of the house where PW.2 took shelter after the attack denied knowledge about the occurrence. Under these circumstances, the trial Court ought to have held the accused not guilty, for want of proof. The wound sustained by PW.2 could be a self inflicted injury, as per the admission by PW.6

Dr.D.R.Agarwal, who treated the injured.

5. The learned counsel appearing for the appellant would submit that when the alleged occurrence took place at 9.30 am on 10.05.2009, the First Information report was recorded, after lapse of 12 hours and forwarding to the learned Judicial Magistrate, thereafter, with delay of nearly 20 hours. The unexplained delay in registration of F.I.R and forwarding the F.I.R to the Court leads to inference of embellishment, distortion and falsehood. The cloths of the injured victim and bloodstains on the floor were not collected by the Investigation Officer. All other the independent witnesses except the injured and his wife have turned hostile. While so, based on the evidence of the injured and his wife who had dispute with the accused regarding the property and had animosity convicting the accused is unsafe. Without considering the probability of falsehood in their evidence, the trial Court relied upon their evidence to convict the appellant. The learned counsel would point out that the alleged scene of crime is on the public road. No independent witnesses were examined to prove the occurrence. According to the prosecution, immediately after sustained injury, the victim has ran to the house of PW.8 Amudha to take shelter. However, the said Amudha PW.8 has not supported the case of the prosecution.

6. PW.3 Lakshmi Narayanan, who claims to be an eye witness is friend of the victim's sons. His presence in SOC is highly doubtful. As per the accident Register the victim was taken to the hospital by his son Santhosh, but Santhosh was not examined by the prosecution. The best evidence available would be the examination of the said Santhosh. When the prosecution has failed to adduce the best evidence. They have proceeded with the information received, after 12 hours. This has led to miscarriage of justice. Hence, pleaded that the trial Court judgment is contrary to law and evidence. Therefore, liable to be set aside.

7. In support of his submission and to buttress his argument, the learned counsel would rely upon the following judgments.

(i). **Kunju Muhammed @ Khumani and another vs. State of Kerala** reported in **(2004) 9 SCC 193;**

Paragraph 9 and 10, for the proposition the delay in sending F.I.R to the judicial Magistrate is fatal to prosecution.

"From the judgment of the trial court, we notice that in regard to the time of incident, the trial court relied upon the evidence of PW-1 who lodged the complaint Ex. P-1. He in his examination in chief itself has stated that he signed

Ex. P-1 on the midnight of 3.11.1991. This witness was treated as hostile and cross examined by the prosecution. If this was the sole piece of evidence on which the trial court relied upon to come to the conclusion that the incident in question might not have taken place at 8.15 a.m. on 3.11.1991 we would have definitely disagreed with the trial court but then the trial court also relies on the fact that Ex. P-1 did not reach the Magistrate Court at least till the evening of 4.11.1991 as could be seen from the endorsement in the FIR. This omission on the part of the prosecution to explain why the FIR did not reach the jurisdictional Magistrate till the evening of 4.11.1991 even though the incident in question had taken place at 8.15 a.m. and reported to the police at 8.45 a.m. on 3.11.1991 itself casts very serious doubt which lends support to the evidence of PW-1 that the complaint was got ready only on the midnight of 3.11.1991/4.11.1991.

(ii). In the same judgment paragraph 16 for the proposition, when witnesses of prosecution not treated hostile but help the defence, the benefit of such evidence should go to the accused.

"We are at pains to appreciate this reasoning of the High Court. This witness has not been treated hostile by the prosecution, and even then his evidence helps the defence. We think the benefit of such evidence should go to the accused and not to the prosecution. Therefore, the High Court ought not to have placed any credence on the evidence of such unreliable witness."

(iii). **Arjun Marik vs. State of Bihar** reported in **1994**

SCC (Cri) 1551 again for the proposition delay in forwarding F.I.R to the Magistrate cast cloud on prosecution.

*"The matter does not stop here. There is yet another serious infirmity which further deepens the suspicion and casts cloud on the credibility of the entire prosecution story and which has also been lost sight of by the trial court as well as the High Court and it is with regard to the sending of occurrence report (FIR) to the Magistrate concerned on 22-7-1985 i.e on the 3rd day of the occurrence. **Section 157 of the Code of Criminal Procedure** mandates that if, from information received or otherwise, an officer in charge of police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence upon a police report. Section 157, CrPC thus in other words directs the sending of the report forthwith i.e without any delay and immediately. Further, Section 159 CrPC envisages that on receiving such report, the Magistrate may direct an investigation or, if he thinks fit, to proceed at once or depute any other Magistrate subordinate to him to proceed to hold a preliminary inquiry into the case in the manner provided in the Code of Criminal Procedure. The forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest despatch which intention is implicit with the use of the word "forthwith" occurring in Section 157, which means promptly and without any undue delay. The purpose and object is so obvious which is spelt out from the combined reading of*

Sections 157 and 159 CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation.

25. But in the present case, admittedly, the report as alleged is said to have been despatched to the Magistrate concerned on 22-7-1985 by a special messenger, vide Ext. 2. It is, thus, clear that the report was not sent forthwith, in other words immediately and without delay as the incident had occurred in the intervening night of 19/20-7-1985 and according to Doman, PW 10 the officer in charge of the police station, the FIR was already recorded in the morning of 20-7-1985. If in fact the FIR was already recorded in the morning of 20-7-1985 there was no reason not to despatch the same to the Magistrate concerned till 22-7-1985. Though there is no material on record to show as to why delayed report was sent to the Magistrate on 22-7-1985.

(iv). **Meharaj Singh Vs. State of U.P** reported in **1994**

(5) SCC 188 for the proposition that delay in lodging F.I.R will lose its value and authenticity.

12. FIR in a criminal case and particularly in a murder case is a vital and valuable piece of evidence for the purpose of appreciating the evidence led at the trial. The object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstance in which the crime was committed, including the names of

the actual culprits and the parts played by them, the weapons, if any, used, as also the names of the eyewitnesses, if any. Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. With a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the courts generally look for certain external checks. One of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate. If this report is received by the Magistrate late it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course the prosecution can offer a satisfactory explanation for the delay in despatching or receipt of the copy of the FIR by the local Magistrate. Prosecution has led no evidence at all in this behalf. The second external check equally important is the sending of the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under [Section 174 Cr.P.C](#), is aimed at serving a statutory function, to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed to

give it the colour of a promptly lodged FIR. In our opinion, on account of the infirmities as noticed above, the FIR has lost its value and authenticity and it appears to us that the same has been 'ante-timed and had not been recorded till the inquest proceedings were over at the spot by PW 8.

8. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent/state would submit that the deceased and the victim are brothers. They had feud regarding sharing the property as per the First Information Report. The day before the incident, the accused had assaulted his father, later it was compromised after complaint given to the police. On the next day, the accused stabbed his brother Ethiraj with knife over his stomach and cut the left hand. He was taken to the Tindivanam Ramadass Hospital, after first aid, shifted to Pondicherry Jipmer hospital for further treatment. Based on the first information report, which was registered on 10.05.2009, at about 9.30 p.m, investigation was taken up by Surendira Kumar (PW.9) Inspector of Police. The complaint was given by PW.1 Amutha Rani wife of the victim. The delay in giving the written complaint has been explained by PW.1 in her deposition. The details from Ramadass Hospital, Tindivanam were not admittedly collected by the Investigating Officer but that will not belie the case of

the prosecution. Not all delay in registering F.I.R is fatal to the prosecution or will lead to the invariable inference of falsehood and embellishment. It all based on facts and circumstances of each case.

9. In the Arjun Marik judgment cited by the defence counsel itself the Hon'ble Supreme Court has said as below:

It is true that quite often there are valid reasons for the delay in the despatch of the first information report and it is not always a circumstance on the basis of which the entire prosecution case may be said to be fabricated, but it all depends on the facts and circumstances of each case where the circumstance of delay may lead to serious consequences. Therefore in this case facts would go to show not fabrication of fact occurred due to delay.

10. In this case, the victim is the brother of the accused. The complainant is the wife of the victim. Neither to the victim nor to the police, there is any necessity to falsely implicate the accused. The previous enmity regarding sharing the property is a strong motive for the accused to attack the victim. Dr.Agarwal (PW.6) who given the wound certificate has opined that the injury sustained by the victim is grievous in nature. Accused has caused a sharp lacerated penetrating injury in the abdomen and also on the left arm. The wound certificate

indicates that the victim was brought by his son Santhosh to the Jipmer hospital on 10.05.2009 at 11.25 a.m. In the wound certificate itself, the doctor has mentioned that the patient alleged to have sustained injury following assault with a sharp knife by his brother at his home at 9.30 a.m. The distance between the residence of the victim and the SOC was nearly 150 to 200 feet as per the evidence of the injured which is not denied. Therefore, there is no discrepancy in the SOC. The victim has cogently narrated the sequence of event and the overt act of the accused. Certain minor lapses on the part of the investigating agency will not render the prosecution case false. When the overwhelming evidence collected by the prosecution and placed before the Court clearly proves the overt act of the accused, the weapon used by the accused established the intention of the accused to cause death. Therefore, the finding of the Court below is proper and in accordance with law.

11. Heard the respective counsels. Perused the records and the judgment relied by the counsels in support of his arguments.

12. PW.2 Sridhar is the injured witness. The accused is his own brother. The motive for his brother to attack him is spoken by

PW.2. In this case, as against the direct evidence of the injured witness about the overt act of the accused, the defence could place the following discrepancies to discredit the evidence.

(i). Sirdhar (PW.2) has deposed that the accused attacked him with knife on his stomach, head and hand. He ran to save his life, went to the house of Amudha and locked the door. Amudha was examined as PW.8, she does not corroborate the version of Sridhar (PW.2).

(ii). The bloodstain cloth of the victim not collected by Investigating Officer. The bloodstain mud were not collected from the house of Amudha (PW.8).

(iii). The accident report says, the incident took place at the house of the victim. The First Information Report says, it was near Anna Nagar 1st Street, Mannarsamy kovil, Tindivanam, the scene of crime is doubtful.

(iv).The incident alleged to have taken place at 9.30 a.m.

The First Information Report was filed on 21.30 hours and reached the

Court on 11.05 at 18 hours. The delay was not explained. Scope of fabrication of facts cannot be ruled out.

(v). Santhosh the son of the injured who accompanied the victim to the hospital not examined. He is the best witness to speak about the cause for injuries.

(vi). Independent witnesses for recovery has not corroborated the prosecution, so the recovery of M.O.1 is doubtful.

13. The response for his submission by this Court, on appreciating the evidence is that, the evidence of PW.2 Sridhar is natural and cogent. Being an injured person, there is no reason to doubt that he is falsely implicating his brother for the injury he sustained. He need not self inflict grievous injuries and falsely implicate his brother.

14. PW.3 Lakshmi Narayanan, in his chief examination has supported the case of the prosecution and identified the weapon used by the accused. He has also deposed about the fact that the victim was first taken to the Ramdass hospital and then to Jipmer hospital,

Pondicherry, after getting first aid. The chief examination was done on 18.01.2011, thereafter, on the same day, he was not cross examined. At the request of the defence counsel, the cross examination was adjourned. The victim was recalled on 03.02.2011 and then subjected to cross examination. In the cross examination, the very first suggestion to the witness was 'he did not saw the accused earlier' and in the second suggestion is 'he did not see the occurrence.' For both these suggestions, the witnesses have answered in affirmative. Thereby, impliedly turned hostile to the prosecution. The very factum of turning hostile to the prosecution during the cross examination, after supporting the case of the prosecution in the chief examination is an indication that the said witness was own over by the accused. PW.3 has said in the cross examination that he has not seen the occurrence and he had never seen the accused before but signed the mahazar and identified the M.O.1 on the request of the police. At the most, it will only taint the evidence of PW.3 a doubtful witness but not the evidence of PW.2 the injured victim. Even without any corroboration, the evidence of PW.2 the injured witness is suffices to hold the accused guilty. Since it inspires the confidence of the Court. The delay in registering the F.I.R and the delay in forwarding same to the Judicial Magistrate are explained through witnesses. The again lethargic

investigation can be attributed to the incompetence of the Investigating Officer but cannot be a reason to acquit a person. When the victim has come forward to tell the Court as say how he sustained injury and by whom the injury was caused, there should be enough reason to disbelieve his evidence. In this case there is no reason except suggestion that false complaint given to deprive the accused his share in the property.

15. Contrarily the dispute prevailing between the victim and the accused regarding sharing the property is a strong motive for the accused to attack his brother, who has been resisting to give share. The evidence placed before the Court establishes the fact that the appellant caused the injuries found in the body of the victim PW.2 and the assailant is identified by the victim. Against the said proven fact the minor lapse and lacuna in the procedures during the investigation cannot take away the strong evidence against the accused. Therefore, this Court finds no merit in the appeal.

16. Accordingly, the ***Criminal Appeal is dismissed.*** The conviction and sentenced passed by the trial Court is hereby

confirmed.

11.03.2019

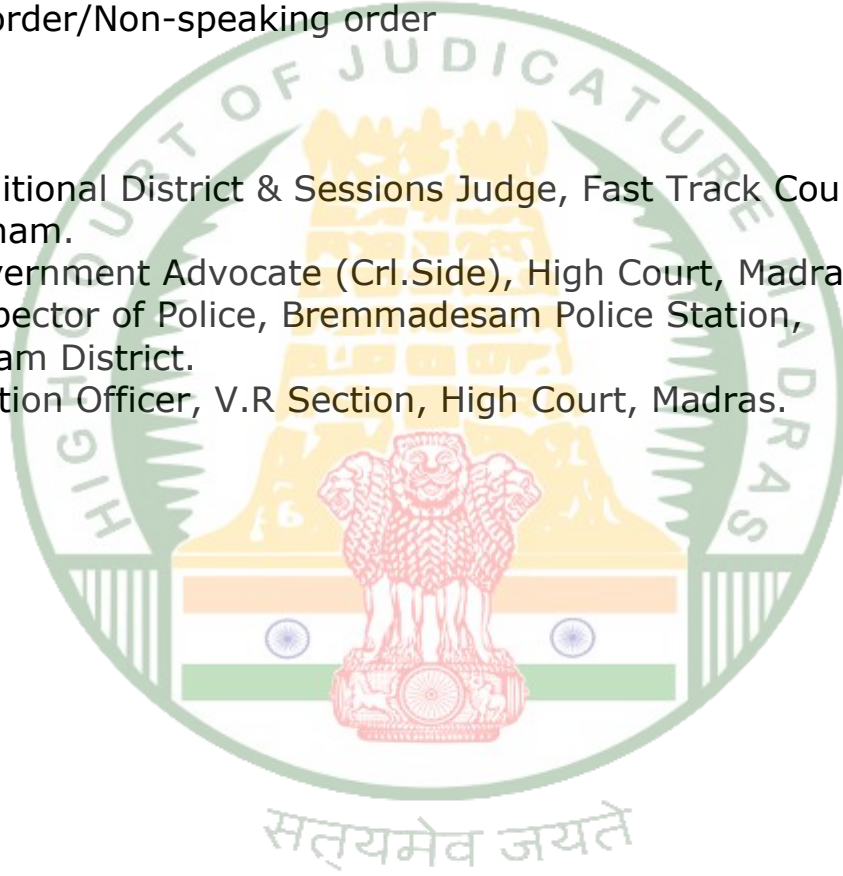
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Index :Yes/No

Speaking order/Non-speaking order

To,

1. The Additional District & Sessions Judge, Fast Track Court No.II, Tindivanam.
2. The Government Advocate (Crl.Side), High Court, Madras.
3. The Inspector of Police, Bremmadesam Police Station, Villupuram District.
4. The Section Officer, V.R Section, High Court, Madras.



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Dr.G.Jayachandran,J.

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Pre-delivery judgment in
Criminal Appeal No.167 of 2011

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