



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :20.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.282 of 2009

WEB COPY

Kannan

... Appellant / Accused No.1

Vs.

State by
the Inspector of Police,
Thuvakudi Police Station,
Trichy District,
[Crime No.533 of 2003] ... Respondent/ Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records in S.C.No.78 of 2006 on the file of the learned Additional Sessions Judge (FTC -II), Trichy, set aside the order dated 10.02.2009 and acquit the appellant.

For Appellant : Mr.M.Karunanithi
Respondent : Mrs.S.Bharathi,
Government Advocate (crl side)

JUDGMENT

This appeal is filed as against the conviction and sentence imposed on the appellant by the trial Court, namely, the Additional Sessions Judge, Fast Track Court No.II, Tiruchirappalli in SC No.78 of 2006.

2.This appellant[A1] and another [2] have been tried before the trial Court for the offence under Sections 302, 326, r/w 34, 324 IPC and the trial Court by order dated 10.02.2009, acquitted A2 from the charges. However, found this appellant [A1] guilty for the offence under Section 304(ii)IPC and convicted and sentenced him to undergo five years of rigorous imprisonment with fine of Rs.2000/-, in default of payment of fine, one month of rigorous imprisonment was also ordered. With regard to the offence under Sections 326 r/w 34 and 324 IPC, the appellant was acquitted.

3.The brief facts of the case of the prosecution are as follows:

3.1.PWs 1 to 5 are the friends. Five days prior to the occurrence, while Indrajith [PW5] was riding his bicycle, he hit the grandfather of the appellant, namely, Velu and the appellant questioned PW5 as to the incident and there was a wordy quarrel



between Indrajith [PW5] and this appellant. PW5 informed this incident to his friend one Ilavarasan. Ilavarasan along with Indrajith [PW5] went to the appellant's house and abused the appellant that it is only on the fault of his grandfather, the incident had taken place on the other day, for which, how can he blame Indrajith. He also warned the appellant. On knowing that Ganesan [A2], father of the appellant along with his wife one Muniyammal, went to the house of the said Ilavarasan and informed his father Kalidhasan that his son Ilavarasan came to his house and scolded and warned them and therefore, they requested him to advice his son Ilavarasan. Consequently, Ilavarasan along with his brother Dhanasekaran, Charles, Sakthi alias Sakthivel went to the house of the appellant on 25.12.2003 at about 4.30 pm and asked him to return the gym articles. But, the appellant refused to give the same and therefore, a wordy quarrel arose among the parties. Consequently, Ganesan [A2] pushed the deceased Charles down and therefore, Ilavarasan pushed A2 and A2 fell down. Furiated over the same, this appellant went inside his house and brought Aruval and cut the deceased Charles with two blows on his head. On the instigation of A2, the appellant had also attacked Ilavarasan and by that time Ramalingam [PW2], who attempted to pacify them, had also been attacked and PW2 ran away from the place of occurrence.

3.2.Nargunan [PW1], Son of PW2 and a friend of the deceased and other witnesses lodged a complaint before the Thuvakudi Police Station on 25.12.2003 at about 5.00 pm. The Sub Inspector of Police [PW10] of Thuvakudi Police Station, registered the same in Crime No.533 of 2003 as against the appellant [A1] and his father Ganesan [A2], for the commission of offence punishable under Sections 341, 324 and 307 IPC. The deceased Charles and the injured Ilavarasan, Ramalingam [PW2] were taken to the private hospital, namely, Maruti Hospital at Tiruchirappali on 25.12.2003 at about 6.15pm and the Doctor at Maruthi Hospital has admitted the accused and the Wound Certificates issued to Ilavarasan and Ramalingam were marked as Ex.P21 series. The said Charles, who was taking treatment at Maruti Hospital died on 25.12.2003 at about 8.00pm and thereafter, the Doctor at Maruti Hospital sent an intimation to the Sub Inspector of Police, Thuvakudi Police Station, Tiruchirappalli through death intimation Ex.P24.

3.3.On receipt of the information, the Inspector of Police [PW12] went to the place of occurrence, prepared observation mahazar [Ex.P5] and Rough Sketch [Ex.P15], at about 7.15 pm in the presence of one Dhanabal and another. He also recovered earth with blood [MO6] and earth without blood [MO7] from the place of occurrence respectively under a cover of mahazar Ex.P6. He has also taken photograph of the place of occurrence and then went to the Maruti Hospital around 9.00pm and received the death intimation and thereafter, altered the offence under Sections 341, 324 and 302 IPC. The alteration report is marked as Ex.P16. He also recovered blood



stained clothes [MOs 1 & 2] from PW2 at about 11.30 pm and also recovered blood stained clothes [MOs 8,9 & 10] from the injured Ilavarasan in Ex.P7. He also examined the witnesses PW1, Ilavarasan, PW2, PW3, PW4 and others and recorded their statements.

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3.4.PW12, conducted the inquest at Government Hospital, Tiruchirappalli on 26.12.2003 from 6.00am to 9.00am in the presence of Panchayatars and the inquest report is marked as Ex.P17. Thereafter, he arranged for the postmortem of the deceased Charles through Selvaraj, Head Constable and made a request to the Government Hospital, Tiruchirappalli. Based on his request the autopsy was conducted by the Doctor [PW9]. PW9 conducted autopsy on 26.12.2003 at 11.20am and noted the following injuries.

"Wounds: 1.Two overlapping chop wounds, antero-posteriorly placed, 19cm X 3.5 cm exposing the brain on the right side of the frontal, parietal and occipital regions of the scalp, 4.5cm away from the eye brow. O/E edges clean cut, cut fracture of underlying bones present. Meningeal tear present.

2.An antero posterior chop wound, 16 cm X 8 Cm X bone deep, on the left side of frontal, parietal regions of the scalp, front end, 5cm away from the left eye brow. O/E edges clean cut, cut fracture of frontal and left parietal bone present.

3.A slash incised wound, 4cm X 1cm X scalp deep, on the left temporal region of the scalp, the skin flap hanging down wards.

4.A vertical incised wound, 3cm X 1cm X skin deep, on the pinna of left ear.

5.An oblique incised wound, 2cm X 5 cm X skin deep, on the left supra clavicular fossa

6.A transverse chop wound, 15 cm X 5 cm exposing the underlying structures, on the right shoulder blade region. O/E the edges, muscles, blood vessels and nerves are clean cut. Cut fracture of shoulder blade bone present.

7.Dark brown colour abrasions: on the front of right side of chest, 3cm X 1cm; front of right arm, 5 cm X 0.5cm; back of right chest, 1cm x 1cm; back of right hand, 3 cm X 1cm; back of right index finger, 2cm X 1cm; front of left knee, 1cm X 0.5cm, are present.

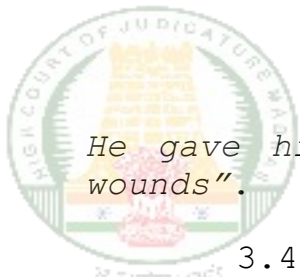
8.On opening the scalp, skull bones; bruising of the frontal, both parietal and occipital regions of the scalp-dark red.

9.Sub dural hemorrhage and sub arachnoid hemorrhage on both cerebral hemisphere.

10.Laceration of right frontal and right parietal lobes of cerebrum with intra cerebral hemorrhage.

11.An incised wound, 4 cm X 1cm X 0.5cm, on the left parital lobe of cerebrum.

12.Fissured fracture of psterior cranial fossa, communicates with wound No.1



He gave his opinion that the deceased died of 'Cranio cerebral wounds'.

3.4. Thereafter, on 26.12.2003, PW12 arrested the appellant in the presence of the Village Administrative Officer [PW6] and recorded his confession statement. Pursuant to the confession statement, Aruval [MO3] was recovered from the appellant under an Athakshi [Ex.P3]. He recovered the blood stained clothes [MO4 & MO5] from the appellant in Ex.P4. He arrested A2, who was taking treatment in the Government Hospital at Tiruchirappalli. He also recorded the statements of other witnesses and also Dr.Kalpana, who treated the deceased as well as the injured at Maruti Hospital, Tiruchirappalli and recorded their statements. The Accident Register and the Wound Certificate issued by Maruti Hospital were collected by the Investigating Officer PW12. Thereafter, he filed a final report in this case.

4. During the trial 12 witnesses were examined on the side of the prosecution and 24 documents were marked and 11 material objects were also produced.

5. The available evidence from the prosecution witness are as follows:

(i) Nargunan [PW1] is the friend of the deceased and also son of the Ramalingam [PW2] and he was examined as an eye witness and also in respect of the complaint Ex.P1 lodged by him.

(ii) Ramalingam [PW2] is also an injured witness and his blood stained clothes were marked as MOs.1 to 3.

(iii) Danasekaran [PW3] brother of one Ilavarasan was examined as an eye witness.

(iv) Sakthivel [PW4] is a friend of the deceased and was also examined as an eye witness.

(v) Indrajith [PW5] was examined for the motive purpose and for the observation mahazar.

(vi) PW6 is the Village Administrative Officer, who has been examined with regard to the arrest of the appellant and recovery of Aruval [MO3] from the appellant and also for the recovery of clothes [MOs.4 and 5] from the appellant.

(vii) Dhanabal [PW7]/ the Village Assistant was examined for the purpose of observation mahazar and recovery of the earth with blood stain and the earth without blood stain from the place of occurrence.

(viii) PW8 was the President of the village panchayat, who



speaks about the sports articles kept in the panchayat office.

(ix)PW9 is Dr.Karthikeyan, who conducted the postmortem of the deceased Charles and the postmortem certificate issued by him is marked as Ex.P10.

(x)PW10 is the Sub Inspector of Police, who received the complaint in Ex.P1 from PW1 and registered the same in Crime No.533 of 2003 in Ex.P12 and also the counter complaint lodged by A2 in Crime No.534 of 2003.

(xi)PW11 is Dr.Sukumaran, who speaks about the treatment provided to A2 at Government Hospital, Tiruchirappalli and the wound certificate issued by him is marked as Ex.P13.

(xii)PW12 is the Investigating Officer, who conducted the investigation in this matter and filed a final report.

6.The incriminating materials of the prosecution were put to the accused under Section 313 of CrPC and the accused denied the same. Though he has stated he was having witnesses on his behalf, he has not examined any one in this case. In conclusion of the trial, the trial Court found this appellant guilty for the offence under Section 304(ii) IPC, convicted and sentenced him as stated above and acquitted the appellant from the other charges and also acquitted A2 from all the charges levelled against him.

7.As against the conviction and sentence,the appellant has filed this criminal appeal.

8.Heard Mr.Ma.Karunanithi, learned Counsel for the appellant and Mr.S.Bharathi,learned Government Advocate (Crl Side).

9.The learned Counsel for the appellant has pointed out that this is a case in counter. A2 in this case has sustained grievous injuries and one of his fingers has been chopped off and he was admitted in the Government Hospital at Tiruchirappalli and pursuant to the medical intimation, the case was also registered by PW10 in Crime No.534 of 2003 as against PWs.1,2,3 and the deceased Charles and others for the offence under Sections 147, 148 and 324 IPC r/w Section 3(1)(X) of SC/ST Act. Though the injured in Crime No.534 of 2003 sustained grievous injuries, there is no investigation at all in that case and the investigating materials with regard to the Crime No.534 of 2003 have not been placed before the trial Court and therefore, the prosecution has deliberately suppressed the counter case and therefore, as per the law laid down by the Hon'ble Supreme Court in **Lakshmi Singh Vs State of Bihar**, reported in **AIR 1976 SCC 2263**, the appellant is entitled for acquittal.

10.The learned Counsel for the appellant has also relied upon the contradiction in the evidence among PWs.1 to 4 and he also

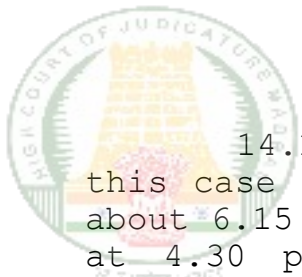


pointed out that one Ilavarasan, who was the main witness in this case for the motive purpose, has not been examined by the prosecution deliberately. The learned Counsel for the appellant would submit that the occurrence has taken place at the house of the appellant and it is the prosecution parties five in numbers have gone to the appellant's house and also assaulted A2 and caused grievous injury to A2 and the complaint was also duly lodged by A2 in this case and non-investigation of the said complaint, as provided under Police Standing Orders [PSO] 466, is a fatal to the prosecution case and therefore, the benefit of doubt has to be extended to this appellant.

11.He also placed reliance upon Ex.P24, the wound certificate issued by the Maruti Hospital for the deceased Charles and the Doctor at Maruti Hospital has noted down that the deceased Charles was assaulted by three unknown males on 25.12.2003 at 4.30pm and if that is so, the case of the prosecution that the other witnesses were also present at the place of occurrence is highly doubtful and he also pointed that the medical intimation was sent in this case only at 9.00pm. It seems that the investigation officer after reaching the Maruti Hospital at 9.00pm, the intimation was given to him. Dr.Kalavathi, who treated the deceased and the other injured witnesses in this case was deliberately not cited as witness and also not examined during the trial, which is also fatal to the case of the prosecution. Therefore, the learned Counsel for the appellant prays for allowing this appeal.

12.Per contra, the learned Government Advocate (Crl Side) would submit that the prosecution has established the case beyond reasonable doubt and nearly four witnesses have been examined as eye witnesses and among other witnesses PWs.2 and 3 are the independent witnesses. Their evidence cannot be disbelieved that they have also sustained injuries during the course of occurrence. PW1 in his complaint itself has specifically stated that during the course of occurrence, A1 has caused injury to A2. It has also been explained by referring the same in the complaint Ex.P1 and apart from that the complaint of A2 was also registered and the wound certificate of the injured A2 was also marked and therefore, it cannot be stated that the prosecution has not explained the injury to A2.

13.Insofar as the counter case is concerned, it was lodged by A2 and was duly registered by PW10. Since the offence under Section 3(1)(X) of SC/ST Act is also attracted in the counter case, the investigation in Crime No.534 of 2003 was carried out by the Deputy Superintendant of Police and it was concluded as mistake of fact and he also forwarded the complaint to the District Vigilance Committee, headed by the District Collector, for further course of action and therefore, on account of which, the complainant in counter case has not been examined.



14.PW2, who is the neighbour, he also sustained injury in this case and he was admitted at Maruti Hospital on 25.12.2003 at about 6.15 pm. It is to be noted that the occurrence has taken place at 4.30 pm and immediately, without any loss of time, he was admitted in Maruti Hospital along with one Ilavarasan and the deceased and therefore, the evidence of injured witness cannot be discarded for non-production of final report in the counter case.

15.Even according to the aversion of A2, who lodged a complaint in Crime No.534 of 2003, it is the appellant, who caused injury to the deceased Charles in this case. The learned Government Advocate (Crl Side) also relied upon the order of the Hon'ble Supreme Court in **Amar Malla and others Vs State of Tripura** [Appeal (Crl)22 of 2001, dated 23.08.2002] and the relevant portion is extracted hereunder:

"16. The last injured witness - PW.18, according to the evidence of PWs. 4 and 5, was assaulted by appellant No. 6. Further, this witness was assaulted by appellant Nos. 11 and 13 according to the evidence of PWs. 4,5,6,8 and 12. Shri Misra pointed out certain discrepancies in the evidence of some of the witnesses, but the same can be of no avail to the defence as these are minor ones. In any view of the matter, so far as assault on PW.9 is concerned, PWs. 4,5, and 9 have consistently supported the prosecution case and no infirmity could be pointed out therein. As far as the injuries upon PWs. 12 and 16 are concerned, they have consistently supported assault on them and there is no discrepancy therein. In relation to assault upon PW.18, evidence of this witness is corroborated by PW. 4 and he has consistently supported the prosecution case unfolded in the First Information Report."

16.Reliance was also placed on the decision of a Division Bench of Allahabad High Court, Ramesh Vs State of Uttar Pradesh (Criminal Appeal No.5213 of 2013 dated 30.05.2019 and the relevant portions are extracted hereunder.

'34. ... The expert witness is expected to put before the court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by [examining] the terms of science so that the court although, not an expert may form its own judgment on those materials after giving due regard to the expert's opinion, because once the expert's opinion is accepted, it is not the opinion of the medical officer but [that] of the court.'"

Above proposition of law has been duly considered by the Apex Court in **Hema** (supra) and it has been further



held by the Apex Court:

"(13) It is clear that merely because of some defect in the investigation, lapse on the part of the I.O., it cannot be a ground for acquittal. Further, even if there had been negligence on the part of the investigating agency or omissions etc., it is the obligation on the part of the Court to scrutinize the prosecution evidence dehors such lapses to find out whether the said evidence is reliable or not and whether such lapses affect the object of finding out the truth."

17.This Court has paid its best attention and anxious consideration to the rival submissions and also perused the materials placed on record.

18.This is a case in counter. The occurrence has taken place in the house of the appellant. Five days prior to the occurrence there was an incident, when PW5 was riding bicycle, hit against the grandfather of the appellant and therefore, the appellant has questioned PW5 for his act, on account of which, PW5 along with his friend one Ilavarasan went to the appellant's house and warned the appellant that how dare he can question PW5, for no fault on him, when it is the mistake of his grandfather. Consequently, A2 along with his father and his wife Muniyammal went to the Ilavarasan's house and informed the parents of Ilavarasan about his conduct that his son Ilavarasan came to his house and warned his son. In furtherance to that the said Ilavarasan along with PWs 3 and 4 and the deceased went to the appellant's house, questioned him that how can he inform his father about the incident and also insisted him to return the gym articles. At that time, there was a wordy quarrel and on account of which, the appellant went inside the house and brought the Aruval and caused injury to the witness PW3 and to the deceased and PW2 [neighbour], who attempted to pacify, had also sustained injury during the incident.

19.A2 Ganesan was admitted in the Government Hospital at Tiruchirappalli on 25.12.2003 at 6.20pm. PW11, the Doctor, who treated A2 at Government Hospital, Tiruchirappalli has issued Accident Register Ex.P13 and noted down that A2 was assaulted by seven known persons in front of his house in Bhurma Colony at 4.30 pm on 25.12.2003, with Aruval and has also noted down the cut injury that 8X3X2CM in left hand exposing tender bones and lacerated injury 3X1X1/2cm scalp. But the wound certificate shows that A2 Ganesan has sustained fractures on the ring and little fingers and the injuries are grievous in nature.

20.Based on the medical intimation from the Government Hospital, Tiruchirappalli, PW10 went to the Government Hospital, Tiruchirappalli at 8.30 pm and recorded the statement of Ganesan [A2] and registered his complaint in Crime No.534 of 2003 as against the deceased Charles, Ilavarasan, Ramalingam [PW2], Nargunan [PW1],



Danasekaran [PW3] and others for the offence under Sections 147, 148 and 324 IPC and Section 3(1)(10) of SC/ST Act.

21. Police Standing Order [PSO] No. 466 requires, if a case and counter case are registered, it is the duty of the Investigating Officer, to conduct the investigation and file a final report simultaneously and the investigating officer has to record, who is the aggressor in this case. He can refer one of the cases as mistake of fact and can file a final report in other case and also can file a final report in both the cases. The case in Crime No. 534 of 2003 was registered for the offence under Section 3(1)(x) of SC/ST Act and therefore, investigation has to be conducted by the Deputy Superintendant of Police. Admittedly, the occurrence in Crime Nos. 533 and 534 of 2003 were taken place in front of the appellant's house at the same time. When a case in counter has been registered, apparently there is no investigation with regard to the counter case. The FIR in the counter case has not even been sent to the Court concerned. There is no endorsement of the Magistrate that the FIR was sent to the Judicial Magistrate Court. Though a plea has been taken by the Inspector of Police [PW12] that the Deputy Superintendant of Police, who conducted the investigation, has filed referred charge sheet in the counter case registered in Crime No. 534 of 2003, he has not examined the Deputy Superintendant of Police in this regard. Further no materials have been placed before this Court about the investigation carried out in Crime No. 534 of 2003.

22. Admittedly, the occurrence has taken place in front of the appellant's house. The appellant and his father were available in the house, where the prosecution in seven numbers went to the place of occurrence and questioned the appellant and his father about the conduct of the father A2 in reporting the incident to his parents. Curiously, in this matter the previous motive is between the appellant and one Ilavarasan. Though he has been cited as an eye witness and also an injured witness, he has not been examined by the prosecution. Moreover, the witnesses in this case have taken treatment in a private hospital namely, Maruti Hospital at Tiruchirappalli. Though the deceased is said to have died at the private hospital at 8.00pm, the intimation was sent only at 9.00pm. The Doctor Dr. Kalavathi, who treated PW2, PW3 and the deceased at the Maruti Hospital was not examined as witness in this case.

23. The Hon'ble Supreme Court in **Lakshmi Singh Vs State of Bihar**, reported in **AIR 1976 SCC 2263**, has held as follows:

"11.....We must hasten to add that as held by this Court in State of Gujarat v. Bai Fatima Criminal Appeal No. 67 of 1971 decided on March 19, 1975 : Reported in there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply



to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises"

24.The principle laid down by the Hon'ble Supreme Court coupled with the fact that the case in counter in this case has not been enquired at all and there is no material placed with regard to the investigation carried out in Crime No.534 of 2003, wherein A2 has sustained grievous injury and one of his fingers has been chopped off, reveals that the prosecution has not established, as to who is the aggressor in this case and has failed to prove the case beyond reasonable doubt and therefore, the benefit of doubt is extended to the appellant.

25.In the result,

- this Criminal Appeal is allowed;
- the conviction and sentence imposed on the appellant in S.C.No.78 of 2006 by the learned Additional Sessions Judge (FTC -II), Trichy are set aside and the bail bonds executed by the appellant shall stand terminated;
- Fine amount, if any paid, shall be refunded to him.

Sd/-

Deputy Registrar (Accounts)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dsk

To

- 1).The Additional Sessions Judge (FTC -II),Trichy.
 - 2)The Inspector of Police,Thuvakudi Police Station,Trichy District,
 - 3)The Superintendent, Central Prison, Trichy
 - 4)The Section Officer(2 copies),
Criminal Section, Madurai Bench of Madras High Court,Madurai.
 - 5)The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.
- +1 CC to M/s.M.KARUNANITHI, Advocate (SR-88270[F]

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20.09.2019

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