



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 09.09.2019

JUDGMENT DELIVERED ON : 18.09.2019

CORAM:

**THE HON'BLE MR.JUSTICE S.VAIDYANATHAN
AND**

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

**Crl.A(MD)No. 417 of 2017 and
Crl.M.P(MD) .No.251 of 2018**

Ramaguru

... Appellant / Sole Accused

Vs.

The State represented by,
The Inspector of Police,
Peraliyur Police Station,
Ramanathapuram District.
(Crime No.31 of 2012)

... Respondent / Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the Judgment and sentence dated 16.09.2017, passed in S.C.No.114 of 2013 by the learned Additional District Judge (Fast Track Court), Paramakudi.

For Appellant : Mr.M.Subash Babu
For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

JUDGMENT

S.VAIDYANATHAN, J.

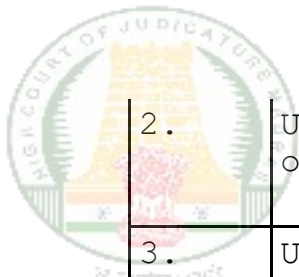
AND

N.ANAND VENKATESH, J.

The appellant has preferred this criminal appeal against the judgment passed by the learned Additional District Judge (FTC), Paramakudi, in S.C.No.114 of 2013, dated 16.09.2017, whereby, the appellant was convicted and sentenced as follows:

Sl.No	Offence	Punishment
1.	Under Section 341 of IPC	One month simple imprisonment and fine of Rs.500/-, in default, to undergo one week simple imprisonment.

<https://hcservices.ecourts.gov.in/hcservices/>



2.	Under Section 302 of IPC	Life Imprisonment and fine of Rs.5,000/-, in default, to undergo two years Rigorous Imprisonment.
3.	Under Section 506 (ii) of IPC	Acquitted.

2. The case of the prosecution:

In the year 1995, the appellant and his family were living at Sankarappanpatti village. During that period of time, the father of the appellant was alleged to have been attacked and murdered by one Kalimuthu (deceased in the present case) and three others. After a full-fledged trial, the said Kalimuthu was acquitted. Thereafter, the family of the appellant moved to Thoppadaipatti village. It is alleged that the appellant had developed a revengeful attitude against the said Kalimuthu and he wanted to retaliate against him to avenge for the death of his father.

(2.1) On 04.05.2012, there was a temple festival, which took place at Sankarappanpatti and on the same day night, a drama (Valli Thirumanam) was organised. The appellant was aware of the fact that Kalimuthu will come and watch the said drama and therefore, he concealed himself behind a tree very near to the place, where the drama was organised. He was also said to have carried a bill-hook with a hallow handle in order to attack the said Kalimuthu. At about 11.15 p.m., Kalimuthu was proceeding towards the place where the drama was held and 200 feet before the venue, where the drama was held, the appellant is said to have attacked Kalimuthu with the bill-hook, in his head, neck and face and as a result of the same, the said Kalimuthu died on the spot.

(2.2) P.W.1 and P.W.8, who are the sons of the deceased Kalimuthu and P.W.9, who is the daughter of Kalimuthu were walking in front of Kalimuthu and they turned back after hearing the cries of Kalimuthu and when they found the appellant attacking Kalimuthu, they rushed to catch hold of the appellant and at that time, he is said to have threatened them with dire consequences and thereafter, he ran away from the place.

(2.3) P.W.1 went to the police station and gave a complaint (Ex.P.1) on 05.05.2012 early morning at 01.00 a.m. P.W.18, who was the Sub Inspector of Police, immediately on receipt of the complaint, registered an FIR (Ex.P.10) for an offence under Section 302 IPC. An express FIR was immediately sent to the learned Judicial Magistrate, Kamuthi, through the Head Constable (P.W.13) and it reached the Court at about 8.00 a.m. On 05.05.2012.



(2.4) The Inspector of Police (P.W.19) took up the investigation and he reached the scene of occurrence at about 1.45 a.m., on 05.05.2012, and in the presence of P.W.2 and P.W.3, he inspected the spot and prepared the observation mahazer (Ex.P.2) and rough sketch (Ex.P.11) and seized the material objects on the spot under seizure mahazer(Ex.P.12). He conducted an inquest over the body of the deceased in the presence of witnesses and prepared the inquest report (Ex.P.13.). Thereafter, he had sent the dead body of the deceased Kalimuthu through the Constable (P.W.14) to the Government Hospital, Kamuthi. On 06.05.2012, at about 9.00 a.m., the appellant was arrested and his confession was recorded in the presence of Ramkumar and Ramaiya (P.W.12) and based on the confession, the bill-hook was seized. Thereafter, the appellant was brought before the Judicial Magistrate, Kamuthi and he was remanded to judicial custody.

(2.5) The material objects that were seized in the course of investigation was sent to the Court with a requisition to send the same to the Forensic Science Department. P.W.19-Investigating Officer proceeded to record statements of Ramkumar, Ramaiya (P.W.12), Irulandi (PW.2), Kalimuthu (P.W.3), Subramani (P.W.10) and Selvaraj (P.W.11). At that stage, the investigation was taken over by P.W.20. He recorded the statements of the witnesses under Section 161(3) of Cr.P.C., and collected the postmortem report (Ex.P.6), Chemical Analysis Report (Ex.P.8) and Serological Report (Ex.P.9). He laid the final report before the concerned Court.

3. Based on the above materials, the Court below framed charges against the appellant for offences under Sections 341, 302 and 506 (ii) of IPC.

4. In order to prove the case on the side of the prosecution, 20 witnesses were examined and 15 documents were exhibited, besides 8 Material Objects. On the side of the appellant/accused, no documents were marked.

5. The Court below, by pointing out the incriminating materials recorded during the course of trial, questioned the appellant under Section 313 (1)(b) of Cr.P.C., and the appellant denied the same as false.

6. The trial Court on considering the facts and circumstances of the case and also after analysing the entire oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts against the appellant and passed a judgment, convicting and sentencing the appellant in the manner referred supra.



Submissions:

7. The learned counsel appearing for the appellant made the following submissions:

- There was a delay in sending the FIR to the Judicial Magistrate Court, Kamuthi. Though the FIR was registered at 1.00 a.m., the same reached the Court only at 8.20 a.m. Similarly, there was also a delay in registering the FIR since the incident is said to have taken place at 11.15 p.m., on 04.05.2012, and the distance between the scene of occurrence and the police station is only 5 kms, but the complaint was given only at 1.00 a.m., on 05.05.2012.
- P.W.1 was admittedly residing at Thoppadaipatti Village and he was only a chance witness and he could not have been present in the scene of occurrence.
- The prosecution has not proved the motive behind the murder and the motive that has been projected by the prosecution was that the appellant had avenged for the murder of his father by the deceased which took place in the year 1995 and the retaliation is said to have taken place after nearly 15 years.
- The important witnesses, who were examined on the side of the prosecution, namely, P.W.1, P.W.4, P.W.5, P.W.8 and P.W.9 are all related and interested witnesses and not a single independent witness was examined, more particularly, when the incident is said to have taken place very near to the place, where the drama was held and which was attended by nearly 200 people belonging to the said village.
- The evidence of P.W.4, who is the wife of the deceased, makes it clear that she was present in the venue, where the drama took place and thereafter her husband (deceased) was coming to watch the drama followed by her two sons and therefore, P.W.1, P.W.8 and P.W.9 could not have seen the occurrence since they have come only after some time and their version that the deceased followed them is falsified.
- There are material contradictions in the evidence of P.W.1, P.W.8 and P.W.9, who have been examined as witnesses.

8. The learned Additional Public Prosecutor appearing on behalf of the State made the following submissions:

- P.W.1, P.W.8 and P.W.9 have given a consistent version and they have clearly spoken about the incident and there is no reason to disbelieve their evidence.
- The incident took place at 11.15 p.m. on 04.05.2012 and the complaint was lodged by P.W.1 on 05.05.2012, early morning at 1.00 a.m., and there is no delay in lodging the complaint and registration of the FIR.

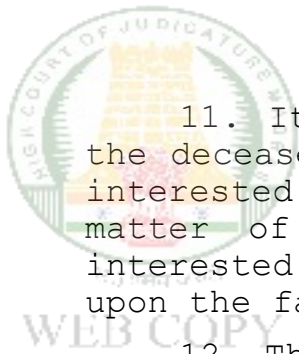


- Motive has been clearly established by the prosecution and in a case, where the incident has been explained clearly by the eye witnesses, P.W.1, P.W.8 and P.W.9, the motive does not gain any significance.
- Eventhough the witnesses are related, that by itself does not make them interested witnesses and their evidence is cogent and can be relied upon.
- The contradiction that was sought to be projected by the learned counsel for the appellant by pointing out to the evidence of P.W.4 is not sustainable, since P.W.4 was an old lady, who was examined after nearly 3 years from the date of incident, before the Court and therefore, there is bound to be some minor contradictions, due to loss of memory and her evidence does not in any way take away the credibility of the evidence of P.W.1, P.W.8 and P.W.9.
- Eventhough the incident had taken place at about 11.15 p.m., there was sufficient light that was available in the place, where the incident took place, from a lamp post and also from the place, where the festival/drama was organised and there was no difficulty in identifying the accused by the eyewitnesses.

9. We have carefully considered the submissions made by the learned counsel appearing on behalf of the appellant/accused, the learned Additional Public Prosecutor appearing on behalf of the State and the materials available on record.

Discussion:

10. The entire prosecution case hinges upon the evidence of the eyewitnesses, namely, P.W.1, P.W.8 and P.W.9. P.W.1 and P.W.8 are the sons of the deceased and P.W.9 is the daughter of the deceased. The cumulative reading of their evidence clearly shows that they are not living along with their parents and the deceased was living along with his wife (P.W.4). They used to get together during the Mariamman and Meenakshi Amman temple festival. All these three witnesses along with their father had started together to watch the "Valli Thirumanam" drama. The house of the deceased Kalimuthu is situated within a distance of nearly 120 to 160 feet, from the venue, where the drama was organised. The deceased eventhough started along with his children, went back to his house to fetch drinking water and was coming within a distance of 10 to 20 feet behind P.W.1, P.W.8 and P.W.9. At that point of time, these witnesses heard the cries of the deceased and on turning back, they found the appellant attacking the deceased with M.O.1 and when they rushed towards the appellant, he had threatened them and thereafter he had run away from the place. All the three found their father lying dead.



11. It is true that these three witnesses are the children of the deceased. That by itself does not mean that they will become an interested witness and their evidence must be discarded. It is not a matter of rule that a related witness must be treated as an interested witness and it is mere a rule of prudence. It will depend upon the facts and circumstances of each case.

12. These witnesses were examined-in-chief in the year 2015 and 2016, nearly 3 or 4 years after the incident. P.W.1 was cross-examined after nearly two years and P.W.8 and P.W.9 were cross-examined after nearly one year. Therefore, there is bound to be some minor discrepancies in their evidence, due to loss of memory. What is required to be satisfied while appreciating their evidence is to see if these minor discrepancies have in any way shaken the core of the case of the prosecution.

13. A careful reading of the evidence of P.W.1, P.W.8 and P.W.9 shows that they have consistently maintained their stand regarding the incident and their evidence has not been discredited in the cross examination.

14. The motive that has been attributed against the appellant is that it was a retaliation murder to avenge the death of the father of the appellant, who was said to have been murdered by the deceased and three others and who were later acquitted, due to lack of evidence. In a case, which is established through the evidence of an eyewitness, motive really takes a backseat. It does not really have any significance, if the version of the eyewitness is clinching.

15. This Court does not find any strong materials to disbelieve the presence of the three eyewitnesses and their description regarding the incident. All the three of them clearly state that it was the appellant, who attacked their father and when they rushed towards him, they were also threatened by the appellant. The availability of the light in the place, where the occurrence took place is very clear from the rough sketch and also of the fact that it took place very near to the venue, where the drama was going on and sufficient lights were available for the eyewitnesses to identify the accused person.

16. The contradiction that was pointed out with regard to the evidence of P.W.4, who is the wife of the deceased, does not in any way affect the version stated by P.W.1, P.W.8 and P.W.9. This witness was a very old lady who was examined nearly after 3 years from the incident. According to her, she had also gone to watch the drama and she was followed by her husband and thereafter, by her children. It was very difficult for her to state as to who came



first and who followed, since she was already there in the venue, where the drama took place. Therefore, her statement cannot be given credence to the extent of discrediting the evidence of P.W.1, P.W.8 and P.W.9.

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17. Yet another witness, whose evidence requires consideration is P.W.14, who was the Head Constable belonging to the same police station, who was already present in the festival venue, since he was posted on bandopast duty. He also states that, immediately on being informed about the incident, he rushed to the place of occurrence and found the deceased lying in a pool of blood. He was the one, who was directed to take the dead body to the general hospital at Kamuthi and he had handed over the dead body to the relatives, after the postmortem. He had also handed over the clothes of the deceased from the Government hospital to the investigating officer (P.W.19) at about 8.00 p.m., on 05.05.2012, and a report was also prepared for the same, which was marked as Ex.P.14. There is nothing to discredit the evidence of this witness.

18. The incident had taken place at about 11.15 p.m., on 04.05.2012 and the complaint has been given at about 1.00 a.m., by P.W.1 to P.W.18 and the FIR came to be registered. It is seen that P.W.1 had reached the police station at about 12.45 a.m., and the FIR was registered around 1.00 a.m., on 05.05.2012. This Court does not find any significant delay in lodging the FIR. There is ofcourse a delay of nearly 8 hours in the express FIR reaching the Judicial Magistrate Court, Kamuthi. This delay by itself does not in any way affect the case of the prosecution.

19. The investigating officer, namely, P.W.19, had reached the scene of crime at 1.45 a.m., and he had prepared the observation mahazer and rough sketch. He had thereafter conducted the inquest on the body of the deceased and sent the body for postmortem through P.W.14. He had arrested the accused person on 06.05.2012 at about 9.00 a.m. The sequence of events clearly shows that the investigation had proceeded in a systematic manner and there was no delay in taking the statements of the witnesses and producing the material objects before the Court. Therefore, the mere delay in sending the express FIR to the Court does not gain any significance.

20. The postmortem doctor, who was examined as P.W.15, clearly speaks about the injuries found in the body of the deceased and the postmortem report marked as Ex.P.6 shows the following injuries:

" External Examination:

1. Scalp 13x2x6 cm incised wound over right temporal region from just above the right ear to the



back of neck, penetrating the skull exposing brain parenchyma.

2. 12x3x7 cm cut injury over the base of skull extending upto the base of occipite exposing the base of brain.

3. Face: 11x2x1 cm laceration below right ear involving right cheek exposing facial bone.

4. 5x1x0.5 cm laceration just below the 3rd injury.

5. 3x0.5x0.5 cm laceration just below the 4th injury.

6. Neck: 5x5x6 cm cut injury over the thyroid cartilage level exposing the trachea.

Internal Examination:

No Hyoid bone fracture.

Skull : Right temporal bone fracture, Brain ICH, cut injury right temporal Lobe, Brainstem (NC) at the level of medulla.

Thorax : Lungs, heart congested, trachea opened.

Abdomen: Stomach partially digested food (NC) 500 ml, liver, kidney-congested.

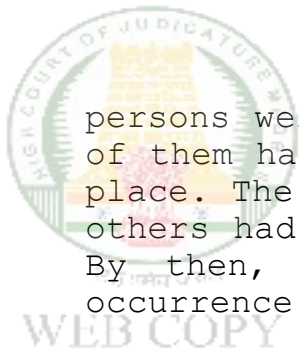
The postmortem doctor opined that the deceased would appear to have died of Brain injury and ICH, Brainstem injury and tracheal cut through about 12-16 hours before autopsy."

21. The injuries found in the body of the deceased as revealed by the postmortem report, corroborates the version given by the eyewitnesses regarding the attack made by the appellant on the deceased.

22. It is also found from the serological report (Ex.P9) that human blood was found in all the material objects and it was identified that the same belongs to group "B", which coincided with the blood group of the deceased.

23. All the above materials clearly corroborates the case of the prosecution and lends support to the prosecution to prove the case against the appellant beyond reasonable doubts.

24. Non-examination of independent witnesses is not always fatal to the case of the prosecution. It is true that nearly 200



persons were watching the drama during the temple festival and some of them had reached the scene of crime only after the incident took place. The real eyewitnesses were P.W.1, P.W.8 and P.W.9 and all the others had reached the scene of occurrence only after the incident. By then, the accused person had fled away from the scene of occurrence.

25. We are living in an era, where the general public are not prepared to stand as a witness in a Court, since they are frightened by the fact that judicial process takes its own time. Therefore, the police find it very difficult to convince independent witnesses to stand as a witness in a criminal case. Therefore, wherever the Court finds that the witnesses, who are related, have clearly stated about the incident and the same is supported/corroborated by the other materials collected by the prosecution, the Court can solely rely upon their evidence and it need not be discarded by branding them as an interested witness. Therefore, in the present case, merely because there is no independent witness to speak about the incident, that by itself does not in any way affect the case of the prosecution.

26. Conclusion:

This Court, on a careful appreciation of the oral and documentary evidence and also after considering the facts and circumstances of the case, finds that the prosecution has proved the case beyond reasonable doubts and therefore, there is absolutely no ground to interfere with the judgment passed by the Court below and the judgment passed by the learned Additional District Judge (Fast Track Court), Paramakudi, in S.C.No.114 of 2013, dated 16.09.2017 is hereby confirmed and accordingly, this Criminal Appeal is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Additional District Judge, (FTC),
Paramakudi.

2. The Inspector of Police,
Peraiyur Police Station,
Ramanathapuram District.



3. The Superintendent,
Central Prison,
Madurai

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

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

+1 CC to Mr.M.SUBASH BABU, Advocate (SR-87686[F] dated 19/09/2019)

Judgment made in
CrI.A(MD)No.417 of 2017
18.09.2019

pjl

MK (01.10.2019) 10P 8C