



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 22.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A. (MD)No.296 of 2018

Muthukumar @ Madurai Muthu

... Appellant/A-1

Vs.

State rep. by the Inspector of Police,
SIPCOT Police Station,
Thoothukudi District.
(Cr.No.279 of 2014)

... Respondent/Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the entire records connected to the judgment in S.C.No.31 of 2016 on the file of the learned I Additional District and Sessions Judge, Thoothukudi, dated 13.09.2017 and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.S.Ravi
for Mr.A.K.Manickam

For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

JUDGMENT

B. PUGALENDHI, J. ,

The first accused in S.C.No.31 of 2016 on the file of the learned I Additional District and Sessions Judge, Thoothukudi, is the appellant herein. He was charged along with six other accused before the trial Court for the offence under Sections 302, 506(ii) and 120(b) r/w 302 IPC. The trial Court, by judgment dated 13.09.2017, has found this appellant guilty for the offence under Section 302 IPC, convicted and sentenced him to undergo life imprisonment and to pay a fine of Rs.1000/-, failing which, to undergo simple imprisonment for one year. The other accused, who have been tried along with this appellant were acquitted from the respective charges made against them. Aggrieved over the conviction and sentence imposed against him, the appellant / first accused has preferred the instant appeal.



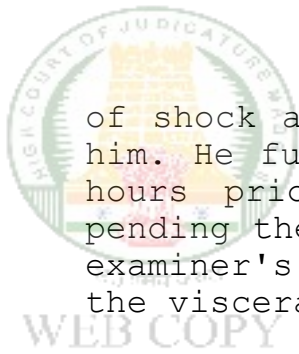
2. The brief facts of the prosecution case, in a nutshell, are as follows:

2.1. The deceased Sathishkumar was working as a Electrician, but without doing his job properly, he used to spend time with his friends, Muthukumar [A1] and Arunachalam [A2] who were working in a Swine farm owned by Ponselvan [A3]. The deceased also used to visit the Swine farm of the third accused often and attempted to learn driving the Minivan in the farm. The Pigs in the farm were found missing and the third accused suspected that the deceased Sathishkumar may be the cause for the missing of the Pigs. The deceased informed this to his brother, Saravanakumar [PW1] that the third accused is suspecting him for the missing of Pigs. PW1 advised him not to visit the third accused's farm anymore.

2.2. On 23.07.2014, the deceased left the house around 08.00 pm, by informing PW1 that he is going to the third accused's Swine farm, but he did not return till 09.00 pm and therefore, PW1 along with his Cousin, Ramesh [PW2] went in search of the deceased. On the way, they found Ramesh [PW3] and enquired about Sathishkumar, who, in turn, informed that he found Sathishkumar around 09.00 pm in the company of the first and second accused in a motorcycle. Therefore, PW1 along with PW2 went near the Sterlite Industries and was searching for Sathishkumar. At that time, they heard a hue and cry and found the deceased along with the first and second accused and the first accused, by saying because of him his owner suffered loss, cut him indiscriminately with an Aruval on various parts. PW1 went to his house, informed his parents and thereafter lodged the complaint before the Sub-Inspector of Police, SIPCOT Police Station [PW12] at about 11.45 pm in Ex.P1 and the same was registered by PW12 in Crime No.279 of 2014 for the offence under Sections 302 and 506(ii) IPC.

2.3. On receipt of the First Information Report, the Inspector of Police [PW15], proceeded to the place of occurrence at about 00.30 hours on 24.07.2014, prepared an observation mahazar [Ex.P2] and a rough sketch [Ex.P17] in the presence of PW6 and one Gurusamy. PW15 recovered earth with and without blood stains in MOs.10 & 11 respectively, from the place of occurrence, under a cover of mahazar Ex.P18, in the presence of the said witnesses. He conducted the inquest from 02.30 am to 04.45 am and the inquest report is marked as Ex.P19. He also made a request through the Sub-Inspector of Police [PW14] for conducting the postmortem. He also recorded the statements of the witnesses PWs.1 to 5 from the place of occurrence.

2.4. Dr.Manoharan, Assistant Professor, Department of Forensic Medicine, Thoothukudi Medical College [PW11] conducted the Autopsy on 24.07.2014 at about 03.05 pm and noted down as many as 41 ante mortem injuries on the body of the deceased. In conclusion, the



of shock and haemorrhage due to multiple cut injuries sustained by him. He further opined that the death would have occurred 12 to 24 hours prior to autopsy. However, he reserved his final opinion pending the chemical examiner's report. After receiving the chemical examiner's report, the Doctor opined that no poison was detected in the viscera analysed.

2.5. The investigation officer [PW15] seized the cloths of the deceased from PW14 after the postmortem and arrested the first accused on 25.07.2014 at about 04.00 am in the presence of PWs.7 & 8. The first accused gave a voluntarily confession statement and pursuant to the same, PW15 recovered an Aruval [MO1], Dhoti [MO3] and Vest [MO4] under a cover of mahazar Ex.P3 in the presence of witnesses PWs.7 & 8. He also arrested the second accused on 25.07.2014 at about 07.00 am and recovered a Sword [MO2] under a cover of mahazar Ex.P4 in the presence of the same witnesses. He arrested the fourth accused and recovered a Mobile Phone [MO5]. He has also arrested the third accused and seized a Bike, bearing reg.no.TN-69-AC-5754 [MO6]. PW15 recorded the statements of the witnesses, made a requisition for altering the First Information Report and added the offence under Section 120(b) IPC on 26.09.2014. After completing the investigation, he filed the final report as against this appellant [A1] and six others before the learned Judicial Magistrate No.1, Tuticorin, for the offence under Sections 302, 506(ii) & 120(b) IPC.

2.6. The learned Judicial Magistrate No.1, Tuticorin, taken the case on file in P.R.C.No.1 of 2015 and committed the case to the Court of Sessions. The learned I Additional District & Sessions Judge, Thoothukudi, taken the case on file in S.C.No.31 of 2016. During the trial, the prosecution has examined as many as 15 witnesses and produced 27 documents, besides marking 11 material objects.

3. The available evidences from the prosecution witness are as follows:

- i) PW1, Thiru Saravanakumar, is the brother of the deceased, who witnessed the occurrence and he also speaks about the motive.
- ii) PW2, Thiru Suresh, is a relative of the deceased, who has also witnessed the occurrence and speaks about the motive.
- iii) PW3, Thiru Ramesh, is also a relative of the deceased and he witnessed the deceased with the first and second accused on 23.07.2014 in the night hours and he passed on the information to PWs.1 & 2.
- iv) PW4, Thiru Palani @ Muthuganesan, turned as a hostile witness.
- v) PW5, Thiru Balasubramani, is the father of the deceased and he speaks about the motive.
- vi) PW6, Thiru Ayyasamy, is the mahazar witness and declared as a hostile witness.

<https://hcservices.ecourts.gov.in/hcservices/> Tmt.Bhuvanewari, Village Administrative Officer,



recorded the statement of the first accused.

viii) PW8, Thiru Ganagavel, is the witness for the recovery of material objects.

ix) PW9, Thiru Surugamy, is the witness for Ex.P6 mahazar.

x) PW10, Thiru Balamurugan, is the Assistant Director, Regional Forensic Science Department, who conducted the chemical examination and issued reports Exs.P9 & 10.

xi) PW11, Dr.Manoharan, is the Doctor, who conducted postmortem on the body of the deceased and issued the postmortem certificate [Exs.P12 & P13].

xii) PW12, Thiru Balakrishnan, is the Sub-Inspector of Police, who registered the case in Crime No.279 of 2014.

xiii) PW13, Thiru Senthilvel Murugaian, is the Head Constable, who handed over the First Information Report to the Judicial Magistrate.

xiv) PW14, Thiru Muthusamy, is the Sub-Inspector of Police, who identified the body of the deceased for postmortem and thereafter, handed over the body to the relatives and recovered the dresses worn by the deceased.

xv) PW15, Thiru Sureshkumar, is the Inspector of Police, who conducted the investigation and filed the final report.

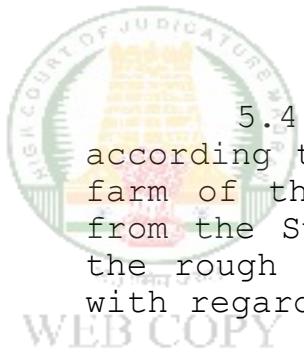
4. Heard Mr.S.Ravi, learned Counsel for Mr.A.K.Manickam, learned Counsel on record for the appellant / first accused and Mr.R.Anandharaj, learned Additional Public Prosecutor for the respondent / State.

5. Mr.S.Ravi, learned Counsel for the appellant has raised the following points for the consideration of this Court:

5.1. The motive projected by the prosecution was not at all established in this case. No evidence was let in by the prosecution that there was any theft of Pigs, as alleged, from the Swine farm of the third accused.

5.2. The prosecution projected the case that the deceased went to the third accused's farm to learn driving of the Minivan owned by the third accused. But the investigation does not reveal that the third accused own any Minivan at all and the investigation officer [PW15] has admitted during his evidence that there is no investigation to substantiate whether the third accused was having any Minivan during the relevant period of time.

5.3. PWs.1 & 2 are the eye witnesses to the occurrence and they are absolutely chance witnesses. PW1 is residing 10kms away from the place of occurrence and the occurrence was taken place at about 09.30 pm near the Sterlite Industries. PWs.1 & 2 went to the place of occurrence, based on the information given by PW3. Both PWs.1 & 2 claim to have witnessed the occurrence through the source of light from their motorcycle, but, both of them are unable to give the registration number in which they travelled.



5.4. The place of occurrence is highly doubtful that according to PWs.1 & 2, the occurrence was taken place in the Swine farm of the third accused, whereas, the dead body was found away from the Swine farm. The evidence of the mahazar witness [PW6] and the rough sketch [Ex.P17] are contra to the evidence of PWs.1 & 2 with regard to the place of occurrence.

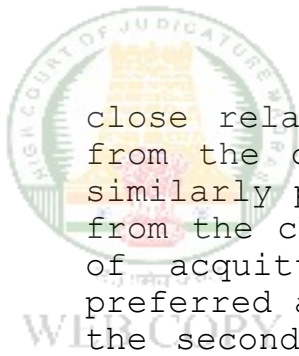
5.5. PW1 said to have lodged the complaint before the Sub-Inspector of Police [PW12] on 24.07.2014 at about 02.00 am, whereas, in the complaint [Ex.P1], PW12 recorded as if the complaint was received on 23.07.2014 at about 11.45 pm. PW1, in categorical terms, during his evidence, has stated that he completed Ex.P1 in the Police Station around 02.00 am.

5.6. There is an inordinate delay in the First Information Report [Ex.P14] reaching the Court. Though the complaint was said to have registered on 23.07.2014 at about 11.45 pm, the First Information Report reached the concerned Judicial Magistrate Court only on 24.07.2014 at about 03.15 pm. The printed First Information Report was handed over by the Sub-Inspector of Police [PW12] to the Constable [PW13] on 24.07.2014 at about 10.00 am and as per the evidence of PW13, one can reach the Court from the Police Station within 15 minutes. While so, the printed First Information Report [Ex.P14] which was registered at about 11.45 pm on 23.07.2014 reached the Court on the next day at about 03.15 pm. There is no plausible reason for this inordinate delay in First Information Report reaching the Court.

5.7. The conduct of PWs.1 & 2 is highly doubtful that though they have witnessed the occurrence on 23.07.2014 at 09.30 pm, they returned to the house, informed their parents and only thereafter, lodged the complaint to PW12. The distance between the place of occurrence and the house is 10kms, whereas, the Police Station is very much available near the place of occurrence. Instead of driving 1.5kms from the place of occurrence, PW1 is said to have travelled 10kms from the place of occurrence to his residence and returned another 9kms for lodging the complaint. Moreover, as per the evidence of the mahazar witness [PW6], he only identified the dead body of the deceased to the police and thereafter, PW1 was brought to the place of occurrence.

5.8. All the documents [Ex.P1 to Ex.P19] were stage managed by the prosecution. According to the investigation officer [PW15], he conducted the inquest over the body of the deceased around 02.30 am on 24.07.2014, on the place of occurrence, but, according to PW1, at the time of inquest, the body was taken to the Government Hospital and was in the Mortuary.

5.9. Excepting the first accused, all other accused were acquitted from the charges. Admittedly, the case of the prosecution is against the appellant / first accused and the second accused are



close relatives of the deceased. This appellant is also acquitted from the charge under Section 506(ii) IPC. The second accused is similarly placed as that of this appellant and he was also acquitted from the charges as per the impugned judgment. As against the order of acquittal of the second accused, the prosecution has not preferred any appeal and therefore, the benefit of doubt extended to the second accused based on the prosecution evidence, ought to be extended to this appellant also and he prays for interference.

6. Per contra, the learned Additional Public Prosecutor would submit that though the co-accused were acquitted, that by itself is not a ground to acquit this appellant when the available evidence is clinching against this accused. PWs.1 & 2 are eye witnesses to the occurrence and they have categorically stated about the manner of occurrence and the part played by this accused in committing the offence. The evidence of the Doctor [PW11], who conducted the postmortem and the postmortem certificate [Ex.P12] issued by him corroborates the evidence of PWs.1 & 2. Apart from this, the Aruval [MO1] used by the accused for the commission of offence was also recovered from this appellant in the presence of the mahazar witnesses. The prosecution has established the guilt as against this appellant beyond any reasonable doubt and there is no reason to interfere with the orders of the trial Court. Therefore, he prays for dismissal of this criminal appeal.

7. This Court paid it's anxious consideration to the rival submissions made by the learned Counsel on either side and also to the materials placed on record.

8. Admittedly, this appellant / first accused and the second accused are close friends of the deceased and the deceased was always found in the company of these two persons and the body was recovered in front of the Swine farm in which, the first and second accused were working.

9. The available evidence from the prosecution are the evidence of PWs.1 & 2, the eye witnesses and the evidence of PW3, who last seen the deceased in the company of the first and second accused. According to PWs.1 & 2, the occurrence took place on 23.07.2014 at about 10.15 pm and PW1 lodged the complaint at about 11.45 pm, but the First Information Report reached the Court only on 24.07.2014 at about 03.15 pm, with a delay of about 15 hours. The explanation offered by the prosecution for the delay is that after the occurrence, PW1 went to his house to inform his parents and thereafter, went to the Police Station and lodged the complaint at 11.45 pm. The complaint [Ex.P1] which was received and recorded at about 11.45 pm was handed over to the Constable only on the next day, ie., on 24.07.2014 at about 10.00 am and reached the Court at 03.15 pm. The Constable [PW13] who took the First Information Report to the Court would categorically admit that from their police
<https://services.courts.gov.in/eservices/> reach the Court within 15 minutes. While so, there

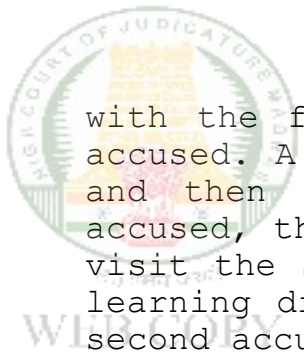


is no explanation for this inordinate delay in the First Information Report reaching the Court.

10. The Hon'ble Supreme Court, in the case reported in **1994 SCC (Cri) 1391**, in **Meharaj Singh v. State of Uttar Pradesh**, has held as follows:

"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 CrPC, 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."

11. PWs.1 & 2 are close relatives of the deceased. PW1 along with PW2 went in search of his brother and found the deceased along

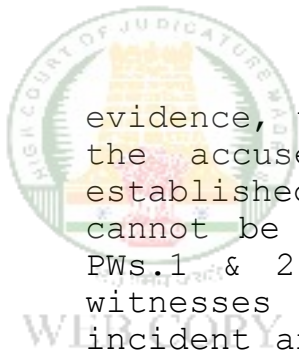


with the first and second accused in the Swine farm of the third accused. A word 'உள்ளே' was referred in the First Information Report and then struck off. For establishing a motive as against the accused, the prosecution has made a theory that the deceased used to visit the Swine farm of the third accused often for the purpose of learning driving and he was always in the company of the first and second accused. According to PW1, normally the deceased would return back home around 09.30 pm and on the date of occurrence, he did not return till 09.00 pm and therefore, PW1 went in search of the deceased along with PW2. PW2, the Cousin of the deceased and PW1, in his evidence has stated that 'இறந்த சதிசு எந்த இடத்தில் இருப்பார் என்று தெரியாததால் பல இடங்களில் தேடினோம். இறந்தவர் பன்னி பண்ணைக்குள் வெட்டுபட்டு கிடந்தார், ஆ.சா.ஆ.1ஐ ரைட்டர் எழுதினார்'. According to PW2, they went in search of the deceased and they found the deceased inside the Swine farm, whereas, according to the mahazar witness [PW6], the dead body was found 250 feet away from the Swine farm. Of course, PW6 was treated as hostile witness, even then, as per the rough sketch [Ex.P17], the dead body was found away from the Swine farm of the third accused.

12. PW1 went to the place of occurrence only on the information of PW3. According to PW3, he was taking Tea in a Tea stall around 09.00 pm on 23.07.2014 and at that time, he found the deceased in a motorcycle along with the first and second accused. On this information, PW1 went to the place of occurrence and found the accused attacking the deceased. According to PW1, he went in search of his brother, since his brother has not turned down even after 09.00 pm. But PW1 went to the place of occurrence, near the Swine farm only on the information of PW3, after searching for the deceased in various other places. Whereas, in his complaint [Ex.P1], PW1 admits that his brother used to visit the Swine farm of the third accused often and will be in the company of the first and second accused and he was suspected for the missing of Pigs, for which, he also warned his brother / the deceased not to visit the Swine farm any more. Despite the prior incidents, it seems, no attempt was made by PWs.1 & 2 to visit the Swine farm at the first instance and they went to the Swine farm only after the information of PW3.

13. PW1 admits that he do possess a Mobile Phone. But, he did not made any attempt to use his Mobile Phone either to inform his parents or to call the Police. PW1, in his evidence, admits that on 24.07.2014 at about 02.30 am, his brother's body was in the Mortuary. This evidence of PW1 is in line with the evidence of PW2. Whereas, according to the investigation officer, the inquest was conducted in the place of occurrence between 02.30 am and 04.45 am on 24.07.2014.

14. The contradictions in the evidence of PWs.1 & 2 and the conduct of the witnesses does not inspire the confidence of this Court. As rightly pointed out by the learned Counsel for the prosecution has not established, through their



evidence, that there was any enmity much less than a motive between the accused and the deceased. Motive is not required to be established in a case of direct eye witness. But the case on hand cannot be considered as that of a direct eye witness case, since PWs.1 & 2, who are close relatives of the deceased, are chance witnesses and that apart, in view of the delay in reporting the incident and FIR reaching the Court, their presence at the place of occurrence is highly doubtful.

15. The arrest and recovery has also not been established properly in this case. According to the prosecution, this appellant was arrested on 25.07.2014 and the weapon Aruval [MO1] was recovered pursuant to his confession statement, whereas, PW1, in his evidence, has admitted that the accused persons were in the police station on 24.07.2014 itself.

16. In view of the aforesaid contradictions, we are of the considered opinion that the prosecution has not established its case beyond reasonable doubt and the conviction imposed against the appellant / first accused cannot be sustained.

17. In fine, this Criminal Appeal is allowed and the conviction and sentence imposed as against the appellant / first accused by the learned I Additional District and Sessions Judge, Thoothukudi, in S.C.No.31 of 2016, dated 13.09.2017 are set aside. The appellant is acquitted from the charges levelled against him. Fine amount, if paid, shall be refunded to the appellant / first accused and he shall be released forthwith, unless his detention or custody is required in connection with any other case / proceedings.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Gk

To

1)The I Additional District and Sessions Judge,
Thoothukudi.

2)The Inspector of Police,
SIPCOT Police Station,
Thoothukudi District.



3) The Judicial Magistrate NO.1,
Thoothukudi.

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

5) The Superintendent,
Central Prison,
Palayamkottai.

Copy to:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.K.MANICKAM, Advocate (SR-2754[F] dated 24/01/2020)

Crl.A. (MD)No.296 of 2018

22.01.2020

NR (22.06.2020) 10P 9C