



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.03.2022
(Reserved on 07.03.2022)
CORAM:

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THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR
Criminal Appeal(MD)No.150 of 2019

State represented by:
The Inspector of Police,
Thiruvaiyaru Police Station,
Thanjavur District.
[Crime No.3/2012]

... Appellant/Complainant

vs.

1.Thulasiraman
2.Balamurugan
3.Ramesh

... Respondents/Accused Nos.1,2 & 4

Appeal filed under Section 378(i) of the Criminal Procedure Code, to set aside the judgment of the acquittal of the Respondents / Accused [A1, A2 & A4] in S.C.No.136 of 2015; dated 27.06.2018 by the II Additional District and Sessions Court, Thanjavur and convict the respondents / accused [A1, A2 & A4] for the charges framed against him.

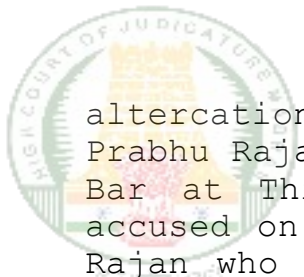
For Appellant : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor
For R1 & R3 : Mr.R.Maheswaran
For R2 : Mr.M.Jagadeesh Pandian
Legal Aid Counsel

JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

The State challenges the acquittal of the accused 1, 2 and 4 in S.C.No.136/2015 on the file of the II Additional District and Sessions Court, Thanjavur.

2. Though there were four accused in Crime No.3/2012, since A3 was absconding, the case was split up and a sessions case in S.C.No.194/2017 was registered against A3. The said sessions case is stated to be pending. According to the prosecution, the accused persons had conspired to kill the deceased Edward Prabhu Rajan, since there was a previous enmity between them with reference to an

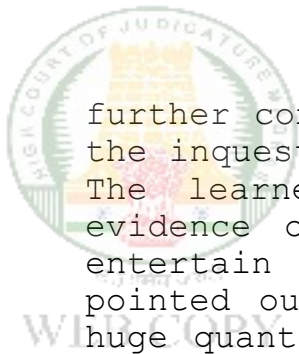


altercation that took place on 28.07.2011, where the said Edward Prabhu Rajan had attacked A2 with a broken wine bottle in the TASMAL Bar at Thiruvaiyaru. With a view to avenge the incident, the accused on 02.01.2012 at around 08.40 p.m., attacked Edward Prabhu Rajan who was standing near Alagappan Tea Shop in Theradi Road of Thiruvaiyaru Town. It is claimed that while A3 and A4 held Edward Prabhu Rajan, A1-Thulasiraman attacked him with sickle on the left neck and the right side of the head. A2-Balamurugan attacked the deceased on the left neck, middle portion of the head and throat, as a result of the attack, the deceased died on the spot.

3. A complaint was lodged by PW1-brother of the deceased on 02.01.2012 at around 11.00 p.m and the same was registered as Crime No.3/2012 under Section 302 IPC. Upon registration of the complaint, the investigating officer namely, PW9, took up the investigation. An FIR was registered on the same day and PW9 conducted an inquest on the body of the deceased, sent the body for postmortem. The Inspector of Police also inspected the scene of occurrence and prepared the Observation Mahazar which has been marked as Ex.P4. The confession statement of A2 was recorded by the Police and on the basis of the said confession statement, four sickles which were produced as MO3 to MO6, were recovered under Recovery Mahazar marked as Ex.P3. The admissible portion of the confession statement was marked as Ex.P2 through PW4. The investigating officer also recovered the soil with blood and without blood from the scene of occurrence. A Shirt, Inner-wear, Lungi and Banian were also recovered and were referred to scientific investigation. The serology report was marked as Ex.P9. As per the serology report, the Shirt, Inner-wear, Lungi and Banian had bloodstains of human blood group 'A'. The other items namely, earth and billhook etc., were disintegrated and hence the blood group could not be matched. After investigation, a final report was filed by the Police.

4. The sum and substance of the prosecution case is that in view of the enmity between the accused and the deceased, caused due to altercation at the TASMAL Bar on 28.07.2011, the accused had conspired together to do away with the deceased and they had executed their plan on 02.01.2012. In an attempt to prove the prosecution case, the prosecution examined as many as 13 witnesses as PWs.1 to 13 and marked 13 documents as Exs.P1 to P13. The material objects were marked as MO1 to MO11.

5. The learned Sessions Judge, upon consideration of the evidence on record, concluded that the presence of PWs 1 to 3 at the scene of occurrence itself, is doubtful. The learned Sessions Judge, however, found that the scene of occurrence being a very busy locality in Thiruvaiyaru Town, there was a possibility of many independent witnesses having witnessed the crime. The fact that no independent witness was examined, was also considered by the learned Sessions Judge as a vitiating factor. The learned Sessions Judge



further concluded that the evidence of PWs 1 to 3 is unreliable, as the inquest report does not show the presence of the said witnesses. The learned Judge also pointed out the contradictions in the evidence of the so-called eye witnesses namely, PWs 1 to 3, to entertain a doubt regarding the very occurrence. It was also pointed out that the postmortem report shows that the presence of huge quantity of Alcohol in the Stomach of the deceased, while PW1 had deposed that the deceased did not consume Alcohol on that day. The fact that PWs.1 and 2 are brothers of the deceased, was also taken into account by the learned Sessions Judge to come to the conclusion that their testimony cannot be believed and a conviction cannot be based on such a weak and interested testimony. On the above findings, the learned Sessions Judge held that the prosecution has not established the guilt beyond doubt and acquitted the accused.

6. We have heard Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the appellant, Mr.R.Maheswaran, learned counsel for the respondents 1 and 3 and Mr.M.Jagadeesh Pandian, Legal Aid Counsel appointed by this Court, for the 2nd respondent.

7. Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor would vehemently contend that the trial Court was not justified in disbelieving the evidence of PWs 1 to 3. According to him, the minor discrepancies in the evidence of PWs 1 to 3 have been given undue importance by the learned Sessions Judge to reach the conclusion that the prosecution has not discharged the burden of proving that the accused are guilty. He would also point out that the recovery having been proved and the fact that the bloodstains found in the clothes recovered from the accused, would demonstrate the guilt of the accused. It is his further contention that the trial Court had given undue weightage to the delay factor. Though the crime is said to have taken place at about 08.45 p.m., and the Police Station is just about 250 meters away from the scene of occurrence, the crime was reported to the Police only at 11.00 p.m on the same day, that is, nearly after two hours. The evidence of PW1 regarding the delay is wholly unconvincing according to the Sessions Court. The learned Additional Public Prosecutor would however point out that the fact that there was some delay in lodging the FIR, cannot be the sole ground for acquitting the accused.

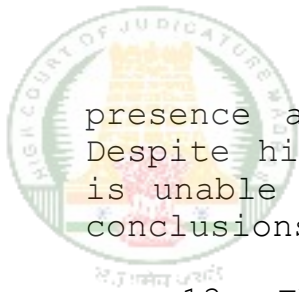
8. Contending contra, the learned counsel appearing for the accused would submit the following vitiating circumstances:-

- i. The delay in filing the complaint.
- ii. The delay in the FIR reaching the Court.
- iii. The contradictions in the evidence of PWs 1 to 3.
- iv. Non-examination of independent witnesses.
- v. Absence of any reference to the so-called eye-witnesses namely, PWs 1 to 3 in the inquest report.

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10. Admittedly, there is a delay of nearly two hours in lodging the FIR. PW1 in his evidence had said that after the occurrence, he was sitting in the scene of crime and he had called his relatives. He would also state that he prepared the complaint in his house along with one Muruganantham. PW1 would admit that the Police Station is just about 250 meters away from the scene of crime. He would also admit that there are certain alterations in the complaint. PW1 would further depose that his wife and children had come to the scene of occurrence and he did not attempt to lift the dead body of the deceased.

12. Adverting to the evidence of PW2, another eye-witness, who is also another brother of the deceased, his evidence is not in tune with the evidence of PW1. He had stated that after the occurrence, they went home, prepared the complaint with the help of Muruganantham and thereafter went to the police station. While PW1 had deposed that the accused attacked the deceased one after the other, PW2 had said all of them attacked the deceased together. There is also a specific admission in his evidence that all the shop keepers around the area are known to their family. The fact that none of them have been examined, creates a doubt in the mind of the Court. The evidence of PW3 is also to the same effect. PW3 has admitted that there were about 100 people at the scene of occurrence when the crime took place. He very categorically deposed that the accused attacked the deceased one after the other and not simultaneously. His evidence on this aspect is contrary to the evidence of PW2. The learned Sessions Judge has considered the evidence of PWs 1 to 3 and has reached the conclusion that their



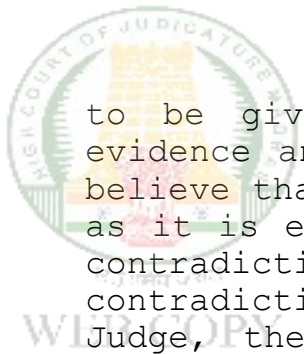
presence at the scene of occurrence itself, is highly doubtful. Despite his best efforts, the learned Additional Public Prosecutor is unable to make out any ground to enable us to deviate from the conclusions reached by the learned Sessions Judge.

13. The other reason that has been assigned by the learned Sessions Judge for concluding that the prosecution has not proved its case, is the contradiction in the evidence of PW1. The postmortem report would show that there was 1323 milligrams of ethyl alcohol in the Stomach, 1208 milligrams of ethyl alcohol in the Small Intestine, 1093 milligrams of ethyl alcohol in the Liver and 978 milligrams of ethyl alcohol in the Kidney. This fact would show that the deceased was heavily drunk at the time of occurrence. PW1 in his evidence had stated that the deceased did not consume alcohol on the said date. PW2 would also affirm the said statement. This contradiction is so vital that it de-stabilizes the prosecution's case to a great extent.

14. The evidence of PW13-investigating officer, regarding the recovery, contradicts the evidence of PW4, who is stated to have been present at the time of recovery. While PW4 would depose that the confession by A2 was written at the scene of occurrence by the Sub Inspector, PW13 would depose that the said confession was written at the place where A2 was arrested. There are also contradictions with regard to scribe of the Recovery Mahazar-Ex.P3. While PW4 would state that it was written by the Special Sub Inspector Sekar, PW13 had stated that it was written by a Constable. There are also contradictions in the evidence of PW4 and PW13, regarding the place of recovery. While PW4 would state that the haystack from which the weapons were recovered, was situate in the backyard of a house in Sannathi Street, PW13 would state that haystack was situate on the street and he did not enquire as to who was the owner of the same. The fact that the brother of the deceased was taken as a witness for effecting recovery, would also contribute to the uncertainty in the case of the prosecution.

15. The inquest report which has been prepared by the investigating officer marked as Ex.P11, does not reflect the presence of PWs 1 to 3. The evidence of the investigating officer-PW9, is also far from convincing. As rightly pointed out by the learned counsel appearing for the accused, the delay in lodging the complaint and the delay in the FIR reaching the Court which is about 15 kilometers from the scene of occurrence, are also vitiating factors.

16. The burden of proving the guilt being on the prosecution, the prosecution is expected to discharge the said burden to the satisfaction of the Court and the proof available should lead the Court to inescapable conclusion that the accused are guilty. If the defence is able to pick holes in the prosecution theory and plant seeds of doubt in the mind of the Court, then, the accused will have



to be given the benefit of doubt. The contradictions in the evidence and the delay in the case on hand, definitely lead us to believe that the prosecution has not discharged the burden of proof, as it is expected to prove the guilt beyond reasonable doubt. The contradictions are such that they cannot be brushed aside as minor contradictions. As rightly pointed out by the learned Sessions Judge, the conduct of PW1 and PW2 who are the brothers of the deceased, soon after the occurrence leaves a lingering doubt in the mind of the Court regarding the truth of the version of the prosecution.

17. In view of the above, we are of the opinion that the learned Sessions Judge was right in concluding that the prosecution has not established the guilt and acquitting the accused giving them the benefit of doubt. We do not see any reason to interfere with the conclusions of the learned Sessions Judge.

18. The Criminal Appeal fails and it is accordingly dismissed.

Sd/-

Assistant Registrar(CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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To

1. The II Additional District and Sessions Judge, Thanjavur.

2.The Inspector of Police,
Thiruvaiyaru Police Station,
Thanjavur District.

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

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

JUDGMENT MADE IN
CRL.A(MD)No.150 of 2019
DATED : 14.03.2022

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