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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED; 21/02/2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.A.(MD)No.16 of 2019

Ramesh

... Appellant / Complainant

Vs.

1.The State rep. by
The Inspector of Police,
Thottiam Police Station,
Trichy District.
(Crime No.230 of 2014)

...1st Respondent/Complainant

2.Elavarasan

3.Hariharasudhan

... Respondents 2 & 3 / Accused

PRAYER: Criminal Appeal filed under Section 372 of Cr.P.C., to set aside the judgment made in S.C.No.123 of 2016 by the III Additional District Judge (FAC), Tiruchirappalli, dated 17.07.2018.

For Appellant : M/s.R.Karthika
for M/s.Right Law Associates
For R1 : Mr. T.Senthil Kumar
Additional Public Prosecutor
For R2 & R3 : Mr.K.Saran
for M/s.Veera Associates

JUDGMENT

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

M/s.R.Karthika, learned counsel, representing for M/s.Right Law Associates, would submit that the appellant is no more and no one else is interested in prosecuting the appeal.

2. We have heard Mr.T.Senthil Kumar, learned Additional Public Prosecutor appearing for the first respondent and Mr.K.Saran, learned counsel representing Mr/s.Veera Associates appearing for the respondents 2 & 3/accused persons.



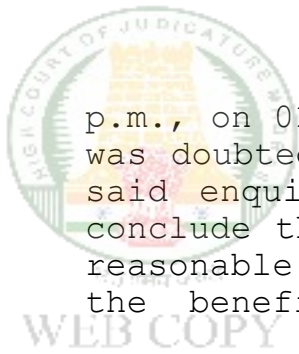
3.Challenge in this appeal is to the acquittal of the accused in S.C.No.123 of 2016, a case registered under Sections 302 and 326 of IPC.

4. According to the prosecution, on 01.08.2014 at around 11.30 a.m., P.W.1 went to Bagavathiamman Kovil Temple festival and at that time, there was a wordy quarrel between him and one Jagadeesan belonging to Valluvar Street. Later, on the same day, at around 4.30 p.m., when said Ramesh (PW1) and Natarajan, the deceased went to the temple for worshipping, the accused persons belonging to Valluvar Street came there, picked up a quarrel and a fight ensued. It is stated that the first and the second accused assaulted the deceased Natarajan with knife, stone and stick besides attacking P.W.1-Ramesh with a stone and stick. This incident was witnessed by P.Ws.2,3,4,5 & 6 besides one Sankar. It is the further case of the prosecution that P.W.3 took P.W.1 and the deceased Natarajan to Thottiyam Government Hospital. On the same day, around 06.00 p.m., the deceased Natarajan was taken to MM Hospital, Namakkal and was admitted there for treatment. The said Natarajan died at Government Hospital, Salem on 02.08.2014 at 12.35 p.m. P.W.18, the Investigating Officer recorded the statement of Ramesh (P.W.1) at the hospital on 02.08.2014 at 3.15 p.m., and based on the statement, FIR was registered in Cr.No.230 of 2014 (Ex.P14). Upon the receipt of the FIR, P.W.19-Inspector of Police commenced the investigation, completed the same and laid a final report charging the accused under Sections 302 and 326 of IPC.

5. Before the trial Court, the prosecution had examined 19 witnesses, marked 20 documents and 3 Material Objects were produced. On the side of the accused Ex.D1 and Ex.D2 were filed.

6. The learned trial Judge however, after completion of the evidence, altered the charges charging both accused under Section 302 r/w 34 IPC 326 r/w 34 IPC. He also found that though the eye-witnesses namely, P.Ws.1,2,4,5 & 6 have described the nature of attack in a similar manner, with minor variations, but their evidence is contradictory as regards the scene of occurrence. While P.W.1 and P.W.2 had claimed that the incident had happened on Thottiyam-Arangoor Road. P.W.4 and P.W.5 had stated that the incident had occurred in front of the temple. The learned trial Judge also found that there was a delay of 22 hours in making the complaint (Ex.P1). The learned trial Judge agreed with the counsel for the accused that the delay should create a doubt in the mind of the Court regarding the occurrence. The contradictions in the reason for the delay found in the FIR and the evidence of P.W.18 Sub-Inspector of Police was also pointed out by the learned trial Judge to disbelieve the evidence of the prosecution witnesses.

7. The trial Judge also pointed out that P.Ws.1,2 & 3 had
<https://hcmjssrtdts.golindtserv/Pls> Thottiyam Police had came to the hospital at 06.30



p.m., on 01.08.2014 and made enquiries. The case of the prosecution was doubted as to why FIR was not registered immediately, after the said enquiry. All these factors led the learned trial Judge to conclude that the prosecution has not established the case beyond reasonable doubt and hence he acquitted the accused by giving them the benefit of doubt.

8. The learned Additional Public Prosecutor appearing for the first respondent would submit that the contradictions pointed out by the learned trial Judge are minor in nature and they cannot form the basis for the acquittal.

9. We are afraid that the said contention of the prosecutor cannot be accepted in as much as there is a huge delay of 22 hours and there is also a suppression of vital evidence on the part of the prosecution. Though the Police had visited the hospital and enquired P.W.1 at 06.30 p.m., on 01.08.2014, no reason has been given as to why no action was taken immediately. The police waited till the complaint was lodged on 02.08.2014 at 03.30 p.m. These factors along with contradictions regarding the scene of occurrence in the evidence of the eye witnesses lead us to conclude that the judgment of the trial Court need not be interfered with. The criminal appeal, therefore, fails and the same stands dismissed.

Sd/-

Assistant Registrar(CS-)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The III Additional District Judge (FAC),
Tiruchirappalli.

2.The Inspector of Police,
Thottiam Police Station,
Trichy District.



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

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

+1 CC to M/s.RIGHT LAW ASSOCIATES, Advocate (SR-7360[F] dated
21/02/2022)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-7826[F] dated
22/02/2022)

Cr1.A. (MD)No.16 of 2019
21.02.2022

TP (CO)
TR (02.03.2022) 4P 8C