

BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

Dated : 20.09.2022

CORAM:

THE HONOURABLE Mrs.JUSTICE J.NISHA BANU

AND

THE HONOURABLE Mr. JUSTICE N.ANAND VENKATESH

Crl. A. (MD)No.404 of 2019

1.Rajiv Gandhi

2.Nagalakshmi

3.Kamala

4.Alagumalai

5.Murugan

6.Sanjeeviammal

.. Appellants/Accused 1to6

Vs.

State represented by

The Inspector of Police

Chinnamanoor Police Station,

Theni

(Crime No.334/2016)

.. Respondent/Complainant

Appeal filed under Section 397(3) & 401 of Criminal Procedure Code, to call for the records pertaining to the judgment in S.C.No.171 of 2016 on the file of the Additional District and Sessions Court, (Fast Track Court), Theni, dated 20.08.2019 and set aside the same.

For Appellants : Mr.C.Vakeeswaran
For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor

JUDGMENT

J.NISHA BANU
AND
N.ANAND VENKATESH

This Criminal Appeal has been filed against the judgment passed by the Additional District and Sessions Court (Fast Track Court), Theni, in S.C.No.171 of 2016, dated 20.08.2019, wherein the appellants were convicted and sentenced in the following manner:

S.No.	Rank of the Accused	Offence for which convicted	Sentence
1.	A1 to A4	Section 148 IPC Section 302 IPC	Six months Rigorous Imprisonment Life imprisonment and fine of Rs.5,000/- and in default to undergo six months Simple Imprisonment.

2.	A5 & A6	Section 302 IPC r/w. 149 IPC	Life imprisonment and fine of Rs.5,000/- and in default to undergo six months Simple imprisonment.
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2.The case of the prosecution is that A2 is the wife of A1, A3 is the sister of A1, A4 is the husband of A3, A5 is the uncle of A1 and A6 is the wife of A5 and all of them were living at North Street, Markaiyankottai, Uthamapalayam Taluk, Theni District. The deceased Rajkumar is the son of P.W.1. There was a pathway dispute between the parties. A1 is said to have caused hindrance in the pathway and the same was questioned by P.W.3 and there was some wordy altercation between A1 and P.W.3. On 15.05.2016 at about 09.30 a.m., the deceased Rajkumar is said to have used the pathway and this was questioned by A1 to A6 and A1 attacked the deceased with Wooden log in his head, A2 to A4 attacked the deceased with coconut petiole and A5 & A6 kicked the deceased Rajkumar. As a result, the deceased sustained head injuries and also injuries in his right chest. The deceased ultimately, succumbed to the injuries on 16.05.2016 at about 07.40 a.m.

3.P.W.1 is said to have given a complaint on 15.05.2016 and an FIR came to be registered by P.W.10, marked as Ex.P.8 for offence under Sections 324 and 506(i) IPC against A1 to A4. On the demise of the deceased, an alteration report was submitted to the concerned Court under Ex.P.10 and the offence was altered into Section 302 IPC against A1 to A3. The initial investigation was conducted by P.W.10 and thereafter, the investigation was taken over by P.W.15. On completion of investigation, final report came to be filed against A1 to A6 and it was committed to the Court below and charges were framed against A1 to A6 for offence under Sections 147, 148, 302 r/w. 149 IPC. The prosecution examined P.W.1 to P.W.15 and Ex.P.1 to Ex.P.16 were marked and M.O.1 and M.O.2 were identified and marked. The incriminating materials against the accused persons that arose in the course of trial was put to the accused persons by questioning them under Section 313(1)(b) Cr.P.C., and they denied the same as false.

4.The trial Court on considering the facts and circumstances of the case and on appreciation of the evidence available on record, came to a

conclusion that the prosecution has been proved the case beyond reasonable doubt against the accused persons and hence, convicted and sentenced them in the manner mentioned supra.

5.Heard Mr.C.Vakeeswaran, learned counsel appearing for the appellants and Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the respondent.

6.This Court has carefully considered the submissions made on either side and perused the materials available on record.

7.It is clear from the evidence of the father of the deceased who was examined as P.W.1 that he was not an eye witness to this case and he came to know about the incident on being informed by P.W.2 who was the brother-in-law of the deceased. He states in his evidence that the deceased was lying unconscious in the scene of occurrence and he was taken in an auto rickshaw by P.W.1 and his son Nagendra Prabhu to Chinnamanoor General Hospital. He was given first aid treatment and thereafter he was

referred to Rajaji Government Hospital at Madurai and his son died on 16.05.2016 at 07.40 a.m. In his cross-examination, this witness states that he went and saw his son in the Chinnamanoor General Hospital and that he does not know who admitted his son in the said Hospital. P.W.1 further states that he came to know about the incident only after he was informed by P.W.2.

8.P.W.2 is the brother-in-law of the deceased and he was also examined by the prosecution as an eye witness. This witness in his cross-examination states that he also sustained simple injury in the incident and he also accompanied P.W.1 and his son Nagendra Prabhu to Chinnamanoor General Hospital. He further states that the complaint was prepared by Nagendra Prabhu and it was given by P.W.1. If really P.W.2 had seen the incident and had accompanied P.W.1 and his son Nagendra Prabhu to the hospital, there would have been some mentioning about the same in the complaint marked as Ex.P.1. Whereas in the complaint, there is absolutely no mentioning about P.W.2.

9.P.W.3 is the brother of the deceased and he was also examined as an eye witness in this case. He states that P.W.2 informed him about the incident and thereafter he ran to the place of occurrence. It is quite interesting when this witness states that he saw the deceased and A1 fighting in the scene of occurrence. This evidence of P.W.3 runs contrary to P.W.1 and P.W.2, who have stated that they saw the deceased lying unconscious in the place of occurrence. This witness has also admitted in the cross-examination that he had also attacked A1 and as a result, A1 sustained injuries. Even though the witness claims to have travelled along with P.W.1 and Nagendra Prabhu in the Auto rickshaw, that statement runs contrary to the evidence of P.W.1, who does not talk about P.W.3 accompanying him to the hospital.

10.The evidence of P.W.1 to P.W.3 to the effect that they took the deceased in an Auto rickshaw to Chinnamanoor General Hospital is completely falsified by the evidence of P.W.9 who was the Doctor who examined both the deceased as well as A.1. The Accident Register, after examining A1, is marked as Ex.P.6 and the Accident Register after

examining the deceased was marked as Ex.P.7. The Doctor categorically states that Rajkumar came to the Hospital on his own and no one accompanied him. The Doctor further states that Rajkumar was conscious enough to state that he was attacked by four known persons and thereafter he was referred to the Government Hospital, Theni for further treatment. This evidence given by the Doctor throws a lot of doubt on the evidence tendered by P.W.1 to P.W.3 with regard to they witnessing the incident and bringing the deceased to the hospital. Curiously the auto rickshaw driver who took them to the hospital was not even examined by the prosecution.

11.The FIR was initially registered by P.W.10 and he deposed that he registered the FIR on 15.15.2016 at 12 'o' clock and he went to the place of incident at about 01.00 p.m. If really the deceased had travelled in a two wheeler when he was intercepted and attacked in the disputed pathway, the two wheeler must be present in the scene of occurrence. In fact, P.W.10 says that the two wheeler was present at the scene of occurrence. However, in the sketch that was prepared by him and which was marked as Ex.P.9, there is absolutely no indication about the two wheeler in the scene of occurrence. It

can be further seen that in the complaint given by P.W.1, only the name of A.1 has been mentioned. Whereas the FIR that was registered based on the complaint, contained the specific names of A1 to A4. When this was put to P.W.10 in the course of cross-examination, he states that he examined the deceased at Chinnamanoor Government Hospital and he gave their names. Apart from that, P.W.1 also specifically gave the names of A.1 to A4. If really P.W.10 had recorded the statement of the deceased and collected the names of A1 to A4, there was no reason to wait for a complaint to be given by P.W.1 and thereafter register the FIR. The very statement recorded from the deceased could have been taken as a complaint and FIR could have been registered. Therefore, the explanation given by P.W.10 for specific mentioning of the names of A.1 to A4 in the FIR is not convincing. It is also clear that there is no reason as to why P.W.10 waited for P.W.1 to give the complaint upto 12 'o' clock, when he had the opportunity to hear about the incident from the deceased himself.

12.The incident, as projected by P.W.1 to P.W.3 once again becomes unbelievable in view of the evidence of the postmortem Doctor examined as

P.W.14 through whom the postmortem certificate was marked as Ex.P.13.

The injuries that were recorded in the postmortem certificate are extracted hereunder:

“1.Contusion 8cm x 3cm noted on outer aspect of right side chest.

2.Surgical sutured wound 24cm x 1 cm x brain deep noted on right pareto temporo occipital region.

3.Surgical sutured wound 26cm x 1cm x brain deep noted on left pareito temporo occipital region.

4.Drainage tube noted on mid parietal region.”

13.It is clear from the above that out of four injuries, two of the injuries are surgical sutured wounds in the left and right parieto temporo occipital region. There is absolutely no explanation as to how there are two surgical sutured wounds and who conducted the surgery and sutured wounds for the deceased.

14.The evidence of the Investigation Officer P.W.15 also assumes significance. He states that to go to Chinnamanoor Government Hospital

from the scene of occurrence, one must cross the police station which was hardly 3 kms from the scene of occurrence. In that case, for the incident that took place at 09.30 a.m in the morning, there is no reason for giving the complaint at 12 noon, if really P.W.1 had seen the incident and had gone to the hospital along with deceased. Even P.W.15 was not able to give a clear explanation as to how the specific names of A1 to A4 was mentioned in the FIR, when it was absent in the complaint. He also admits that M.O.1 and M.O.2 were not even sent for scientific analysis to get a report. The Investigation Officer was also not able to give any explanation as to why Nagendra Prabhu and the auto driver were not examined as witnesses in this case. Similarly the two wheeler which was driven by the deceased at the time of incident was not even recovered and sent for the report of the Vehicle Inspector. The vital organs were not sent for chemical analysis to get the viscera report. The Investigation Officer also did not take effort to record the statement of the Doctor who conducted the operation for the deceased, since two surgical wounds were found at the time of conducting the postmortem. It is quite unfortunate that the Investigation Officer did not investigate the reason for A1 to sustain injuries in this case and this factor

becomes important, since in a case of this nature, it is the duty of the investigation officer to find out the real aggressor.

15.The conspectus of the above discussion leads to the only conclusion that the prosecution has not proved the guilt of the accused persons beyond reasonable doubts. In fact, there are absolutely no materials against A2 to A6 and it is not known as to how they are roped in this case. The benefit of doubt in this case has to go in favour of the accused persons. This Court has to necessarily comment upon the manner in which the trial Court has imposed punishment against the accused persons. Insofar as A.1 to A4 are concerned, the punishment was imposed under Sections 148 and 302 IPC. If A1 to A6 have formed into an unlawful assembly, it is not known as to how the trial Court did not punish A1 to A4 under Section 149 r/w 302 IPC. However, coming to A5 and A6, the trial Court convicted A5 and A6 for offence under Sections 302 r/w 149 IPC. This only shows that the trial Judge lacks fundamentals in framing of charges and ultimately convicting and sentencing the accused persons. Since this Court is interfering with the judgment of the trial Court, it is not necessary for this

Court to go into the issue of prejudice caused to the accused persons due to the improper manner in which the conviction and sentence was imposed against them.

16.In the result, the judgment of the Additional District and Sessions Court (Fast Track Court) Theni, made in S.C.No.171 of 2016 dated 20.08.2019, is hereby set aside. The bail bonds executed by the accused persons shall stand cancelled and the fine amount, if any paid by them shall be refunded to them. This Criminal Appeal accordingly allowed.

[J.N.B., J.] & [N.A.V., J.]
20.09.2022

Index : Yes/No
Internet : Yes
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J.NISHA BANU, J

AND

N.ANAND VENKATESH, J
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To

1.The Additional District and Sessions Court,
(Fast Track Court), Theni.

2.The Inspector of Police
Chinnamanoor Police Station,
Theni

3.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in

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