
(2013) 01 MAD CK 0011
In the Madras High Court
Case No : Criminal A. (MD) No. 157 of 2011

Suresh and Others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 294(b), 302, 307, 323, 324

Citation : (2013) 3 MLJ(Cri) 6

Hon'ble Judges : S. Nagamuthu, J; M. Jaichandren, J

Bench : Division Bench

Advocate : S. Kanagarajan, for the Appellant; K.S. Duraipandian, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—The appellants are the accused in S.C. No. 101/2009 on the file of the learned Additional District and Sessions Judge,

(Fast Track Court), Pudukkottai. By judgment, dated 27.5.2011, the trial Court convicted and sentenced the accused as under:

In respect of A-1, the trial Court ordered the sentences to run concurrently. Challenging the said conviction, the appellants are before this Court with this appeal.

The case of the prosecution is briefly as follows:

(a) The brother's wife of the first accused is one Yogeswari. P.W.3-Murugesan used to talk to her frequently. The first accused developed a

suspicion that P.W.3 had developed illicit intimacy with Yogeswari and reprimanded him. Despite the said warning, on 5.6.2007, P.W.3 was

found talking to Yogeswari. The first accused noticed the same. He shouted at

the deceased in obscene language objecting to the said contact of P.W.3.

(b) At that time, the first accused was armed with a wooden log. He attacked P.W.3 with wooden log on his head and caused simple hurt. P.W.3

immediately went to Alangudi Government Hospital. One Dr. Boominathan was on duty. At 11.00 p.m. on 5.6.2007, Dr. Boominathan examined

P.W.3. At that time, P.W.3 told him that he was attacked at 5.30 p.m. on 5.6.2007 by a known person with wooden log. He noticed a lacerated

wound measuring 2 x 1 cm on the occipital region of the head. For further treatment, P.W.3 was sent to the Government Hospital, Pudukkottai.

Exhibit P-9 is the wound certificate.

(c) After P.W.3 had left for hospital, at 6.00 p.m., the accused attempted to set fire to the house of P.W.2. P.W.2 is the grand daughter of the

deceased. P.W.1 is her paternal aunt. Further she prevented the accused 1 to 3 from setting fire to the house. Then accused 1 poured kerosene on

P.W.2 and accused 2 and 3 attempted to set her ablaze. But P.W.2 attempted to escape from the place of occurrence. As narrated above, the

first accused attacked her with the blunt portion of aruval on her left cheek and caused simple hurt. Then all the three accused set fire to the house

of P.W. 1. The entire house was burnt to ashes. The deceased Annammal attempted to prevent these accused to set fire to the house. At that time,

accused 2 & 3 directed the first accused to attack the deceased. Immediately the first accused attacked her with wooden log on her head.

Annammal fell in a pool of blood and died instantaneously.

(d) After the occurrence, P.W. 1 went to the Vadakadu Police Station at 6.00 a.m. on 6.6.2007. P.W.10, was the Sub-Inspector of Police,

attached to Vadakadu Police Station. He reduced the complaint into writing under Exhibit P-1. Based on the same, he registered a case in Cr. No.

63 of 2007 under Sections 294(b), 323, 324, 436, 307 and 302 I.P.C. Exhibit P-10 is the First Information Report. He forwarded Exhibit P-10

to the Court and handed over the case diary to the Inspector of Police for investigation.

(e) P.W. 11 was the then Inspector of Police, attached to the said Police Station. He took up the case for investigation and he reached the place of

occurrence at 6.45 a.m. He prepared an observation mahazar and a rough sketch

showing the place of occurrence. Then he recovered burnt materials (M.Os. 1 to 5) in the presence of P.W.6 and another witness under Exhibit P-3, mahazar. Then, he conducted inquest on the body of the deceased at 11.45 a.m and prepared Exhibit P-12-inquest report. During inquest, he examined P.Ws. 1, 3, 6 and few more witnesses.

(f) P.W.8-Dr. Latha, was an Assistant Civil Surgeon, attached to Government Hospital at Pudukkottai. She conducted autopsy on the body of the deceased on 6.6.2007 at 3.00 p.m. Exhibit P-5 is the Postmortem Certificate, wherein, She has stated as follows:

Appearances found at the post-mortem:-

Moderately nourished, symmetrical medium complexion female.

External Injuries:

- 1) Lacerated wound of 3 x 1 over right side forehead.
2. Lacerated wound of 4 x 1 over right parietal area.

Opening of thorax:

Heart-Pale, 20 ml fluid in pericardial cavity.

Lungs-Congested right 420 gms, left -400 gms.

Opening of abdomen:

Liver-Congested small in size 600 gms.

Spleen - Congested small in size 50 gms.

Kidney - Congested small in size right 60 gms., left 70 gms.

Hyoid bone and cervical vertebra intact.

Opening of skull:

1. Vessel clot of 3 x 2 over right temporal region.
2. Blood clot of 2 x 2 over right parieto occipital area.

During postmortem, P.W.8 preserved stomach and its contents, intestine and its contents, liver and kidney for the purpose of examination and

forwarded same in a preservative for the purpose of pathological examination. Exhibit P-6 is the Report from the Assistant Director and Assistant

Chemical Examiner to Government, Regional Forensic Science Laboratory, Tiruchirappalli. According to the said report, no poison was detected

in the above internal organs of the deceased. Therefore, P.W.8 gave final opinion

(Exhibit P-7) that the death was due to head injury.

(g) On the same day at 4. p.m., P.W. 11 arrested the accused 1 & 3 at Karukkakurichi village. On such arrest, the first accused gave a voluntary

confession, in which he disclosed the place where he had hidden the aruval and stick. Based on the said confession, he took the police and

witnesses to the said place and produced an aruval and a stick. P. W. 11 recovered the same under a mahazar. Then, he forwarded the accused

to the Court for remand. He handed over the material objects to the Court. On 8.7.2007, he examined P.W.3 and recorded his statement. On

26.7.2007 at 1 p.m. at Neduvasal village, he arrested the second accused and sent him for judicial remand. Thereafter, he handed over

investigation to his successor.

(h) P.W. 12 took up the case for further investigation on 2.9.2007. He examined the doctor and collected the medical records and examined few

more witnesses. Finally, on completing investigation, on 6.11.2007, he laid charge sheet against the accused.

2. Based on the above materials, the trial Court framed as many as eight charges as detailed in the first paragraph of the judgment. The accused

pleaded innocence. Therefore they were put on trial. In order to prove the case, on the side of the prosecution, as many as 12 witnesses were

examined, 14 documents were exhibited and 6 material objects were marked.

3. Out of the said witnesses, P.Ws.1, 2, 4 and 5 have been examined as eye witnesses to the occurrence. But P.W.2 has turned hostile and he has

not supported the case of the prosecution in part. P.W.4 has completely turned hostile and he has not supported the prosecution in any manner.

4. When the above incriminating materials were put to the accused u/s 313 of the Criminal Procedure Code, they denied the same as false.

However, they did not choose to examine any witness on their side nor to mark any document. Having considered the above materials, the trial

Court convicted the accused as referred to in the first paragraph of the judgment. That is how the appellants are before this Court with the present

appeal.

5. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also

perused the records carefully.

6. It is the positive case of the prosecution that the alleged occurrence was on 5.6.2007 at 5.30 p.m. in which P.W.3-Murugesan was attacked by

the first accused. Thereafter at 6.00 p.m., the second occurrence took place, in which P.W.1 was allegedly attacked by the first accused. In the

course of the same transaction, it is alleged that the house of the deceased was set on fire and the deceased was also done to death. It is the further

positive case of the prosecution that Exhibit P-1 First Information Report was prepared at 6.00 a.m. on the next day, that was on 6.6.2007 by

P.W. 1. It is the further case of the prosecution that P.W.1 on her own came to the Police Station and prepared Exhibit P-1-complaint. P.W.1 in

her evidence has also stated that she, on her own accord, went to the Police Station and made a complaint. Thus, the earliest information,

according to the prosecution, was made on 6.00 a.m. on 6.6.2007 under Exhibit P-1. But curiously during cross-examination, P.W. 10 has

admitted that on 5.6.2007 at 8. p.m. itself, P.W.3 came to the Police Station and made a complaint in respect of the entire occurrence. He has

further stated that based on the said complaint, he issued a memo to him and sent him to the hospital for treatment. Exhibit P-9 is the Accident

Register. This was entered by P.W.8-Dr.Latha. She has stated that on 5.6.2007 at 11.00 p.m., P.W.3-Murugesan came to the Government

Hospital at Alangudi for treatment for the injuries sustained in the occurrence. He came with a Police memo. In Exhibit P-9, a Police medical

memo has been mentioned as 24/medical/F4 PS/07 dated 5.6.2007. Thus, the evidence of the P.W.10 that P.W.3, Murugesan made a complaint

on 5.6.2007 and based on the same, he referred him to the hospital with a police memo on 5.6.2007 itself must be true. If that be the case,

according to the learned counsel, the said information which contains the truth has been suppressed. P.W. 11, the Investigating Officer has also

admitted during cross-examination that he came to know that on 5.6.2007 itself, P.W.3 had preferred a complaint in respect of the very same

occurrence. But, neither P.W. 10 nor P.W. 11 has explained as to what had happened to the said complaint made by P.W.3. Thus, it is crystal

clear that the earliest complaint given by P.W.3, in respect of the occurrence on 5.6.2007 has been suppressed by the prosecution.

7. In our considered opinion, in a case where there are number of accused, it is essential for the prosecution that the earliest information must be

produced before the Court. But curiously, P.W.3 during cross-examination has stated that he did not go to the Police Station at all before going to

the Alangudi Government Hospital. This evidence of P.W.3 cannot be believed because of the entry found in the Accident Register.

8. Next, P.W.2 speaks only about the attack made on her by the first accused. She has not stated anything about the setting fire to the house and

the attack made on the deceased. That is the reason why she has been treated as hostile. P.W.3 also has not stated anything about the attack

made on P.W.2 by the accused as well as setting fire to the deceased. P.W.5 claims to have witnessed the entire occurrence. She is the daughter-

in-law of the deceased. According to her, after two hours of P.W.3 going to the hospital, the subsequent occurrence took place. But according to

the prosecution case, after the first occurrence in which P.W.3 was allegedly attacked, within half an hour, the second occurrence had taken place.

Thus, it is doubtful that P.W.5 would have seen the occurrence. So far as P.W.1 is concerned, she has spoken about the entire occurrence.

According to her, there were no two occurrences. The entire occurrence was at one and the same time and in the same transaction. This is

obviously in contradiction to the case of the prosecution itself, as it is narrated that the first occurrence, in which P.W.3 was attacked was at 5.30

p.m. and after P.W.3 had gone to the hospital, after about half an hour, the second occurrence took place. But according to P.W.4, the entire

occurrence was at one and the same time. Thus, she has also not come forward with the true version in consonance with the case of the

prosecution. Thus, there are lot of contradictions between the witnesses. When there are such contradictions, at least, if there is no doubt regarding

the First Information Report, the grain can be separated from the chaff and based on the same, conviction can be sustained. But in this case,

admittedly, the earliest information has been suppressed. In view of all the above facts and circumstances, we find it difficult to accept the case of

the prosecution and to sustain the conviction. Hence, we hold that the prosecution has failed to prove the case beyond all reasonable doubts. In the

result, the appeal is allowed. The conviction and sentence imposed by the trial Court on the appellants/accused are set aside and they are

acquitted. The appellants 2 and 3/accused Nos. 2 & 3 have already been released on bail. The first appellant/accused No. 1 is directed to be

released forthwith unless his detention is required in connection with any other case or proceedings. The bail bond executed by accused 2 and 3 shall stand discharged. Fine amount, if any paid by the accused shall be refunded to them.