
(2016) 07 MAD CK 0006
In the Madras High Court
Case No : Criminal Appeal No. 663 of 2014

Venkatesan

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-07-2016

Acts Referred:

Citation : (2016) 2 MadWNCri 546

Hon'ble Judges : Mr. S. Nagamuthu and Mr. V. Bharathidasan, JJ.

Bench : Division Bench

Advocate : Mr. M. Venkataraman, Sr. Counsel for Mr. K. Mumundan, Advocate, for the Appellant; Mr. M. Maharaja, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S. Nagamuthu, J.—The appellants are the accused 1 to 4 in S.C. No.79 of 2011 on the file of the learned Principal Sessions Judge, Villupuram. There were three other accused, accused 5 to 7, in the case. The trial court framed as many as five charges against the accused as follows:-

Charges

Accused

Section of law

Charge No. 1

Accused 1 to 7

148 I.P.C.,

Charge No. 2

Accused 1

302 I.P.C.,

Charge No. 3

Accused 2 and 4

324 I.P.C.,

Charge No. 4

Accused 5 to 7

506 (ii) I.P.C.,

Charge No. 5

Accused 2 and 7

302 r/w 149 I.P.C.,

2. By judgment, dated 30.10.2014, the trial Court acquitted the accused 5 to 7, but convicted the appellants/accused 1 to 4 as detailed below:-

Accused

Section of law

Sentence

A-1

U/s 148, IPC

To undergo Rigorous Imprisonment for one year.

A-1

U/s 302 IPC

Imprisonment for life and to pay a fine of Rs. 10,000/-, in default to undergo rigorous imprisonment for six months.

A-2 to A-4

U/s 324, IPC

To undergo Rigorous Imprisonment for one year.

A-2 to A-4

U/s 302 IPC r/w 149

Imprisonment for life and to pay a fine of Rs. 10,000/- each, in default to undergo rigorous imprisonment for six months.

3. The trial Court has ordered the sentences to run concurrently. Challenging the said conviction and sentence, the appellants are before this Court with this Criminal Appeal.

4.The case of the prosecution, in brief, is as follows:- The deceased, in this case, was one Mr. Rajendran. He was a resident of Karapattu Village in Villupuram District. P.W.3 was an organizer of a Political out fit, known as "Vivasaya Viduthalai Munnani". All these accused belonged to a political party known as "CPM". In the said village, there was a very strong rivalry between these two political parties.

5. On 16.06.2008, there was a public meeting held by the members of the CPM party, at Karapattu Village. In the said public meeting, one Rajakannu, belonging to the CPM party, spoke publicly that he had hatched a plot to kill P.W.3. In protest of the same, the members of another political party, by name, "Viduthalai Siruthaigal" put-up flex boards in the village. The boards were destroyed by the members of the CPM party. The deceased, Mr. Rajendran, belongs to yet another political party, namely, DMDK. On account of the damage to the flex boards caused by the CPM party members, there was a quarrel. The deceased intervened and compromised the issue. In connection with the local body election also, there was a rivalry between the members of these political parties.

6. On 20.06.2008, it is alleged that all these accused were found near River Street, in the Village. The first accused was holding an Aruval and others were possessing iron pipes. It is alleged that they were conspired to eliminate P.W.3. The Villagers, who noticed the same, intervened the accused and asked them to leave. Accordingly, they left the place. When this occurrence took place, P.W.3 was in Mettu Street at Karapattu Village. On hearing about the above occurrence, he came to the place of occurrence. These accused, namely, accused 1 to 4, came to the spot. The first accused was possessing Aruval and other accused were possessing iron pipes. They shouted at him that they had decided to kill him. P.W.3 tried to escape to save his life. He scaled over a fence and ran into a nearby casurina grove. On seeing this, the accused gave a chase to P.W.3. The deceased, who incidentally came there, intervened. Immediately, the first accused shouted that the deceased also belonged to the group of P.W.3 and deserved to be killed. So saying, the first accused attacked the deceased with Aruval on his left palm, left elbow, left shoulder and left side of his hip. The accused 2 to 4 attacked the deceased indiscriminately with the iron pipes.

7. On hearing the commotion, P.Ws.2 and 5 rushed to the place of occurrence. P.W.1 also came to the place of occurrence. She tried to snatch away the knife from the first accused. In that process, she sustained injuries. The accused 2 to 4 attacked P.Ws.4 and 5 with iron pipes. They all shouted. The accused ran away from the scene of occurrence.

8. Then, P.W.3 arranged for an 108 ambulance and took the deceased, P.Ws.1, 2 and 4 to the hospital. P.W.5 came on his own to the hospital. On the way to the hospital, the deceased died. The injured were admitted in the hospital. Then, P.W.1 went to Thiruvennainallur Police Station and made a complaint at 11.30 pm on 20.06.2008. P.W.13, the then Sub-Inspector of Police, Thiruvennainallur Police

Station, on receipt of the said complaint, registered a case in Crime No. 301 of 2008 under Section 302 IPC against the accused 1 to 4. Ex.P-15 is the First Information Report. He forwarded Ex.P-1 and Ex.P-15 to the Court, which were received by the learned Magistrate at 11.00 am on 21.06.2008.

9. P.W.14 took-up the case for further investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.6 and another witness. Then, he examined P.Ws.1 to 5 and recorded their statements. He recovered blood stained earth and sample earth from the place of occurrence under a mahazar. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

10. P.W.12, Dr. Subramanian, conducted autopsy on the body of the deceased on 21.06.2008 at 01.35 pm. He found the following injuries:-

"External Injury: 1. A cut injury over the left lower arm left elbow and (4) upper forearm measuring 12x7x1 cm with muscles and vessels are exposed and cut. 2. A cut injury over the middle ? of left forearm 3 x 1 x 0.5 cm. 3. A cut injury over the left thumb and left hand. Palmar region 8 x 0.5 x 0.5 cm. 4. A cut injury over the lumbar region right 4 x 1 x 0.5 cm. 5. A cut injury over the left occipital region 4x0.5xbone depth. 6. A cut injury over the left frontal temporal and parietal region of scalp measuring 15x1xbone depth.

Internal injuries: Head, on opening of scalp contusion. Left frontal temporal and occipital region seen. Liver : about 16.0 cm length seen in middle midline frontal. Left pancreas improved and left occipital bone depressed. Occipital left temporal bone seen. Meninges termed at left temporal region at brown. SAH and liver both sides brown. Brain lacerated in left temporal lobe of brain. Brain is pale. Neck, hyoid bone preserved for analysis. Thorax ribs intact. Heart pale and chambers empty. Lungs pale. Abdomen : Stomach pale and empty. Intestines pale & with gas. Lower spleen and lungs are pale. Bladder pale and empty. Spinal cord - intact."

11. P.W.12, the Doctor, opined that the death of the deceased was due to shock and hemorrhage caused on account of the injuries, more particularly, the injuries on the head. Ex. P-10 is the postmortem certificate.

12. On 21.06.2008, at 01.30 pm, he arrested the first accused in the presence of P.W.7 and another witness. On such arrest, he made a voluntary confession, in which, he disclosed the place, where he had hidden the Aruval and the iron pipes. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the Aruval and three iron pipes. P.W.14 recovered the same under a mahazar. Then, he forwarded the first accused to the Court for judicial remand and handed over the material objects to the Court and collected clothes from the body of the deceased and forwarded the same to the Court.

13. On 24.06.2008, he arrested the accused 2 and 4 in the presence of P.Ws.7 and 8. On such arrest, they made voluntary confessions, one after the other. In

the confession made by the second accused, he disclosed the place, where he had hidden the iron pipe. Accordingly, he took the police and the witnesses to the said place of hideout and produced M.O.7-iron pipe. P.W.14 recovered the same under a mahazar. Then, the fourth accused was arrested by him, on 24.06.2008 at 12.00 noon. The fourth accused has also given a confession, where he had hidden the iron pipe. Accordingly, he took the police and the witnesses to the said place of hideout and produced M.O.8-iron pipe. On returning to the police station, he forwarded the accused 2 to 4 to the Court for judicial remand. At his request, the material objects were sent for chemical examination. The report revealed that there was human blood stains on all the material objects. The weapons recovered from the accused also were found to be contained human blood stains. On completing the investigation, he laid a charge sheet against the accused.

14. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same as false. In order to prove the case of the prosecution, on the side of the prosecution, as many as 15 witnesses were examined and 20 documents were exhibited, besides marking 11 material objects.

15. Out of the said witnesses, P.Ws.1 to 5 are the eye-witnesses to the occurrence. P.Ws.1 and 2 have turned hostile and they have not supported the case of the prosecution in any manner. P.Ws.3 to 5 have stated about the occurrence. According to them, the first accused attacked the deceased indiscriminately with Aruval and the accused 2 to 4 attacked the deceased indiscriminately with iron pipes. P.W.6 has spoken about the preparation of the observation mahazar and the rough sketch and the recovery of material objects from the place of occurrence. P.W.7 has spoken about the arrest of the first accused and his confession and the consequential recovery of M.Os.3 to 6, from the possession of the first accused. P.W.8 has spoken about the arrest of the second accused and the consequential recovery of M.O.7-iron pipe, on the disclosure statement made by him. P.Ws.9 and 10 have spoken about the inquest made. P.W.11 has stated that, before the occurrence when the deceased wanted to enter into the place of occurrence, he tried to persuade him not to do so, but the deceased went to the scene of occurrence, is his evidence. P.W.12 has spoken about the postmortem conducted and the final opinion regarding the cause of death of the deceased. P.W.13 has spoken about the registration of the case on the basis of the complaint made by P.W.1. P.W.14 has spoken about the investigation done and the final report filed in this case. P.W.15 has spoken about the treatment given to P.W.1.

16. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor marked any document on their side. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced them as detailed in the second paragraph of

this judgment. Aggrieved over the same, the appellants are before this Court with this Criminal Appeal.

17. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State.

18. As we have already pointed out the prosecution has examined P.Ws.1 to 5 as eye-witnesses. P.Ws.1 and 2 have turned hostile and they have not stated anything about the occurrence. P.Ws.3 to 5 have spoken about the entire occurrence.

19. The learned counsel for the appellants would submit that the occurrence had taken place in the midst of a casurina grove and the presence of P.Ws.3 to 5 at the crucial moment, inside the casurina grove, cannot be believed. He would further submit that P.Ws.3 to 5 are highly motivated against the accused and therefore, their evidences are liable to be rejected. He would further submit that the medical evidence do not corroborate the eye-witnesses at all. He would also submit that the complaint would not have come into being at the time as it is projected by the prosecution. He would further submit that there is an inordinate delay in the First Information Report, reaching the hands of the learned Magistrate, which has not been explained. For these reasons, according to the learned counsel for the appellants, the entire case of the prosecution should be rejected.

20. But the learned Additional Public Prosecutor would refute the said arguments. According to him, though there is a delay in forwarding the First Information Report to the Court, on that score, the eye-witness account of P.Ws.3 to 5 cannot be rejected. He would further submit that P.Ws.3 to 5 have explained as to why and how they came to be present at the scene of occurrence. He would further submit that the medical evidence corroborates the eyewitness account. Thus, according to the learned Additional Public Prosecutor, the conviction and sentence imposed on the appellants do not require any interference at the hands of this Court.

21. We have carefully considered the said submissions made by the learned counsel for both sides and perused the material available on records.

22. As we have already narrated, the alleged occurrence had happened at 06.15 pm on 20.06.2008. But the First Information Report was registered only at 10.30 pm on 20.06.2008. Though it is argued by the learned counsel for the appellants that there is a delay in preferring the complaint to the police, we are not persuaded by the same. Might be because the deceased was taken to the hospital for treatment, there would have occurred some delay in preferring the complaint. Assuming that the said possibility could be ruled out, even then, in our considered view, there is a doubt as to whether the First Information Report would have come into being at 10.30 pm on 20.06.2008, As per the endorsement made by the learned Magistrate, the First Information Report had reached the hands of the learned Magistrate only at 11.00 am, on 21.06.2008.

Absolutely, there is no explanation as to why there occurred such an enormous delay in the First Information Report, reaching the hands of the learned Magistrate. This unexplained erroneous delay creates initially a doubt in the case of the prosecution.

23. In this regard, we may refer to a judgment of the Hon "ble Supreme Court in the case of Thulia Kali v. State of Tamil Nadu, reported in AIR 1973 SC 501, wherein, the Supreme Court, in an identical situation has held that, if there is an inordinate unexplained delay in forwarding the complaint to the Court, it would naturally create a doubt in the case of prosecution. Here, in this case, as we have already pointed out, no attempt has been made by the prosecution to explain the delay. This also creates doubts in the mind of the Court.

24. Apart from the above doubt, we have to point out that in the First Information Report, the names of the accused 1 to 4 alone have been mentioned as assailants. But in the final report seven persons, including these accused, were shown as assailants. According to the charge, the accused 2 to 7 did not cause any injury at all on the deceased, but they caused injuries on the witnesses. But, according to the evidence, the accused 2 to 4 alone attacked the witnesses with iron pipes. But there was no corresponding injury found on any of these witnesses. These witnesses have further stated that the accused 2 to 4 attacked the deceased indiscriminately with iron pipes. This is contrary to the charge. Correspondingly, there were no injuries found on the body of the deceased due to the discriminate attack made by the accused 2 to 4 with iron pipes. Thus, the medical evidence does not corroborate the eye-witnesses account at all.

25. Above all, we have already pointed out that the occurrence had taken place in the midst of casurina grove. Had it been true that P.W.3 was given a chase by these accused, in an attempt to kill him, and because he ran into the casurina grove, these accused also followed him, certainly, they would not have spared P.W.3 without causing even a slightest harm. The accused had no motive against the deceased. The very fact that the accused gave a chase only to P.W.3 against whom they had motive would go to show that they have no reason to attack the deceased, sparing P.W.3. Thus, the evidences of these so-called eye-witnesses are highly improbable and unbelievable. The fact that the First Information Report has reached the hands of the learned Magistrate only at 11.00 am on 21.06.2008 would give an inference that the dead body of the deceased would have been found in the casurina grove in the morning of 21.06.2008 and thereafter only the complaint had been made to the Police. This alternative theory cannot be ruled out.

26. Thus, there are lot of doubts in the case of the prosecution. Therefore, we hold that the prosecution has failed to prove the case beyond all reasonable doubts and therefore, the appellants are entitled for acquittal.

27. In the result, this Criminal Appeal is allowed and the conviction and

sentenced imposed on the appellants/A-1 to A-4 by the learned Principal Sessions Judge, Villupuram, in SC. No.79 of 2011, by the judgment, dated 30.10.2014, are hereby set-aside. The appellants are acquitted of all the charges levelled against them and they are directed to be set at liberty, forthwith, unless their presence is required in connection with any other case. Fine amount, if any, paid by the appellants, shall be refunded to them. Bail bond, if any, shall stand discharged.