

(2007) 11 MAD CK 0121

Madras High Court

Case No: Criminal Appeal No. 84 of 2005

Aari Gowder, Muthumani and
Rengasamy

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Nov. 2, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 341

Hon'ble Judges: K.N. Basha, J; D. Murugesan, J

Bench: Division Bench

Advocate: S. Ashok Kumar for L. Chandra Kumar, for the Appellant; V.R. Balasubramanian, Assistant Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

D. Murugesan, J.

The appellants were tried as A.1 to A.3 before the learned District and Sessions Judge, Udagamandalam, in S.C. No:

46 of 2004. By judgment dated 19.01.2005 they were convicted for the offence u/s 341 I.P.C. and sentenced to undergo simple imprisonment for

one month and was imposed a fine of Rs. 200/-, in default to undergo simple imprisonment for one week. They were also convicted for the offence

u/s 364 I.P.C. and sentenced to undergo seven years RI and was imposed a fine of Rs. 20,000/-, in default to undergo one year simple

imprisonment. They were also convicted for the offence u/s 302 I.P.C. and sentenced to undergo imprisonment for life and was imposed a fine of

Rs. 50,000/-, in default to undergo one year simple imprisonment. All the imprisonment were directed to run concurrently and the fine amounts were directed to be paid to the wife of the deceased as compensation. Questioning the above conviction and sentence, the present appeal has been filed.

2. Before the trial Court, apart from A.1 to A.3 five other accused were also tried for various offences. But they were acquitted. In nutshell, the

case of the prosecution is that, the deceased Ravi and P.W. 1 Murthy were on board in the bus bearing Registration No: TN 43 0098 to go to

Uthagamandalam from Kapachi. When they had taken their seats, A.1 to A.3 along with 50 unknown persons entered into the bus and asked both

P.W. 1 and the deceased to get down from the bus. The deceased refused to get down from the bus as he was not well and accordingly, he told

those persons. As the deceased refused to get down from the bus, he was assaulted by A.1 to A.3 and others. The deceased came to his house at

about 9.00 p.m. and his wife, P.W. 5, asked him as to why he was looking very tired. He told her that he was beaten up by A.1 to A.3 and 15

others in the bus. Thereafter, A.1 to A.3 came to the house of the deceased and took him along with them. The deceased did not return to the

house for the whole night. He was found lying near a transformer and the same was noticed by one Mohan who brought the deceased to his house.

The deceased informed his wife P.W. 5 that he was attacked by A.1 to A.3 and some more persons with hands and legs on his chest. As he was

not feeling well due to the attack, he was taken to the hospital by his wife P.W. 5 along with one Natraj and Murthy P.W. 1. As the deceased did

not respond to the treatment, he died on the morning of 30.11.1998.

3. When the injured was brought to the hospital, he was first seen by the Doctor P.W. 6. The Doctor found the injured conscious, who informed

the Doctor that he was assaulted by 150 known persons with hands at 12.00 noon at 28.11.1998. P.W. 6 admitted the injured as an inpatient and

sent an intimation Ex. P.2 to the police. P.W. 10 is the Head Constable attached to the Rural Police Station, Uthagamandalam, who, on receipt of

the intimation from the hospital, went to the hospital and recorded the complaint, Ex. P.12 at about 7.30 a.m. on 30.11.1998. He returned to the

police station and registered the complaint in Cr. No: 344 of 1998 for the offence under Sections 147, 148 and 302 I.P.C.

4. P.W. 12, is the Inspector of Police who took up the investigation. He went to the Government Hospital enquired P.W. 1, P.W. 9 and recorded

their statements. P.W. 12 conducted inquest over the dead body of Ravi and prepared Inquest Report Ex. P.14. At about 1.30 p.m. on

30.11.1998 he made arrangements for conducting post mortem on the dead body.

5. The Doctor, P.W. 7, attached to the Government Hospital, Ooty, conducted post-mortem on 30.11.1998 at 4.20 p.m. The Doctor, P.W. 7

has not found any external injuries. He has not found any injury on the heart and the heart was found normal. He has sent the heart specimen for

further examination. Ex. P.9, the report revealed that on Microscopical examination the structures of the heart and the sections of the heart appear

to be normal. The final opinion was given by the Doctor under Ex. P.10 to the effect that the death probably due to Cardiac Concussion due to

blunt injury. The Doctor, P.W. 7 further stated in his chief examination that on the basis of the information furnished him to the effect that the

deceased was assaulted by 150 persons he has examined the body of the deceased and conducted post-mortem and he has not found any visible

internal injury and as such he has given the opinion that the death is due to heart concussion.

6. In continuation of his investigation, P.W. 12 inquired P.Ws. 5, 7 and some other witnesses and recorded their statements. He altered and added

Section 364 I.P.C. also in the F.I.R. and prepared Ex. P.15, report and sent the same to the Court on the same day. He made arrangements to

reach the F.I.R. and other records to the Court on the same day. He inspected the place of occurrence on 01.12.1998 and prepared the

Observation Mahazar Ex. P.16, in the first place of occurrence, in the presence of witnesses. He also prepared the Observation Mahazar Ex.

P.17, in the second place of occurrence near the transformer. He drew rough sketches Exs. P.18 and P.19 in both the places, in the presence of

witnesses. On 01.12.1998, he enquired P.Ws. 3 and 4 and recorded their statements. He recovered the shirt-M.O. 3, baniyan-M.O. 2, lungi-

M.O. 1, an underwear-M.O. 4 and a black colour waistband from the dead body handed over to him under Ex. P.20 mahazar. He enquired P.W.

7, the Post Mortem Doctor, and P.W. 9 and recorded their statements. He arrested the accused at 2.15 p.m. on 01.12.1998 and sent them for

remand. On 02.12.1998, he enquired some of the witnesses and recorded their statements. He made arrangements for sending the material

objects for chemical analysis. As he was transferred, he handed over investigation to P.W. 13.

7. P.W. 13 received Exs. P.6 and P.7 Chemical analysis report and serologist report from the Laboratory and sent Ex. P.26 requisition to the

Dean, Coimbatore Medical College Hospital, Coimbatore, to conduct medical examination on the heart of deceased Ravi. As, P.W. 13 was

transferred further investigation was taken up by P.W. 14 Selvarajan.

8. P.W.14 took up further investigation and enquired some of the witnesses namely P.Ws. 1, 2 and others. He enquired P.W. 7 also and obtained

his report. P.W. 14, filed the final report in Court on 31.12.2002 against eight accused for the offence under Sections 147, 341, 364, 506(2) and

302 read with 149 I.P.C.

9. Before the Trial Court, to prove their case, the prosecution examined P.Ws. 1 to 14 and marked exhibits P.1 to P.27 and produced M.Os. 1 to

M.O. 5. No witness was examined by the accused and no document was marked on the defence side.

10. When all the accused were questioned u/s 313 of the Criminal Procedure Code, as to the incrimination circumstances put up against them, all

the accused had denied the charges as false.

11. On consideration of the evidence available on record, the learned trial Judge, as already referred, while acquitting A.4 to A.8, convicted A.1 to

A.3 and sentenced them to undergo imprisonment and imposed fine for various offences as mentioned earlier.

12. Mr. S. Ashok Kumar, learned Senior Counsel appearing on behalf of the appellants submitted that in so far as the first instance, which was

said to have taken place on 28.11.1998 in the bus, is concerned the prosecution had examined P.Ws. 1 to 4 all of whom had turned hostile. In

sofar as the second instance, that is said to have taken place on the night of 28.11.1998, is concerned, the prosecution had examined P.Ws. 5 to

9, apart from placing medical evidence on record. Learned Senior counsel would submit that the evidence of P.Ws. 5 to 9 alone cannot be the

sole basis for sustaining the conviction and the consequential sentence. That apart, it is the categorical evidence of P.W. 5 as well as P.W. 9 that

the deceased had told them that he was attacked by 150 persons including A.1 to A.3. The prosecution has not adduced evidence as to who

caused the injury, which according to the Doctor was fatal. Learned Senior counsel would further submit that even if the evidence of P.Ws. 5 to 9

is accepted, the said evidence does not corroborate with the medical evidence as the Post Mortem Doctor P.W. 7 did not find any external or

internal injuries on the body of the deceased. It is quite unnatural that had the deceased been attacked by 150 persons, he would not have

sustained even a single external injury and not even rashes and bruises. The learned senior counsel would further submit that it was quite unnatural

that when the deceased was conscious when he was admitted in the hospital in the evening of 28.11.1998 and when an intimation was also sent by

P.W. 6 under Ex. P.2 to the police, nobody had enquired the injured and taken a statement from him. It is only after the death, P.W. 10, that too a

constable, had gone to the hospital at 7.15 a.m. on 30.11.1998 and recorded the statement of P.W. 1 under Ex. P.12, which was treated to be

one as the First Information Report.

13. Learned Senior counsel would further submit that P.W. 1 had also turned hostile and had disowned the contents of Ex. P.12. According to the

learned Senior counsel, having regard to the above circumstances, the learned trial Judge ought to have acquitted all the accused.

14. Per contra, Mr. V.R. Balasubramanian learned Additional Public Prosecutor, had submitted that the evidence of P.W. 5 is categorical

inasmuch as she has deposed that her husband, the deceased, told her about the attack by the accused and others on 28.11.1998 while he was

sitting in the bus to go to Udagamandalam along with Murthy P.W. 1. She was also categorical in her evidence that the deceased had told her

about the second instance that he was attacked by A.1 to A.3 and others. Learned Additional Public Prosecutor would also submit that the above

version of P.W.5 is corroborated by the evidence of P.W.9, who is an independent witness, while he had stated that the deceased told him that

A.1 to A.3 and some others had attacked him. Hence, the learned Additional Public Prosecutor submitted that there is no reason to reject the

evidence of P.W. 5. He would also submit that the cause of death of Ravi, as spoken to by P.W. 7, the Doctor, in Ex. P.10, that the death

probably due to CARDIAC CONCUSSION-due to blunt injury. Hence, the medical evidence supported the case of the prosecution.

15. We have given our anxious consideration to the rival contentions. As far as the motive is concerned, it must be stated that there is no evidence

at all let in on behalf of the prosecution. The first occurrence is said to have taken place while the deceased was sitting in a bus, along with P.W. 1,

to go to Udagamandalam and the accused entered the bus and asked them to get down from the bus. There is absolutely, no evidence to indicate

as to why these accused entered into the bus and asked the deceased and others to get down from the bus. There is no evidence at all to suggest

that the accused had intention to enter into the bus and assault the deceased. That apart, as far as the first instance that had taken place at 12.00

noon on 28.11.1998 is concerned, the prosecution had examined P.Ws. 1 to 4. P.W. 1, who was cited as an eye witness and who is the author of

Ex. P.12, the complaint, had turned hostile. Yet another eye witness to the occurrence namely P.W. 2 had also turned hostile. P.Ws. 3 and 4 the

driver and conductor of the bus in which the alleged incident is said to have taken place, have also turned hostile and they had deposed their

ignorance of such an occurrence in toto. Hence, absolutely, there is no evidence for the prosecution not only to the motive for the occurrence, but

also for the very occurrence that had allegedly taken place on 28.11.1998 at the bus.

In so far as the second occurrence is concerned, the evidence of P.Ws. 5 and 9 were relied upon by the prosecution. Ofcourse, P.W. 5 is none

else than the wife of the deceased who had stated that the deceased told her on the evening of 28.11.1998 when he returned home, he was

looking very tired and when asked by her as to the reasons, he told her that he was attacked by A.1, A.2 and A.3 and some other persons. This statement that the deceased was attacked by many persons in the manner spoken to by the prosecution was not accepted by the learned trial Judge for the reasons stated earlier. P.W. 5 had gone further to state that A.1 to A.3 came to their house at about 9.00 p.m. on the same day and asked the deceased to come along with them for a talk and therefore, the deceased went along with A.1 to A.3 and others. We are afraid as to how the said evidence of P.W. 5 could be accepted for the implication of A.1 to A.3. P.W. 5 was already informed of the earlier occurrence wherein the deceased was attacked by the accused A.1 to A.3 and others. If that be true, then she would not have allowed the deceased to go along with A.1 to A.3.

16. Secondly, the deceased did not return for the whole of the night and P.W. 5 had kept quiet without informing the police or atleast the neighbours. Further after the deceased was brought to the hospital by P.W. 8 on the next day morning again she did not take any steps to lodge a complaint. However, we had to appreciate her stand that she took the deceased to the hospital for treatment as at that time her utmost concern was to save the injured. But, her subsequent conduct namely after admitting her husband in the hospital, she had preferred to go to Koonoor and stay there for the night and she had returned only the next day morning. This conduct of P.W. 5 shows that at the relevant point of time, the injured was all alone in the hospital and atleast after admitting her husband in the hospital, she should have lodged a complaint with the police. Moreover, P.W. 8, who claims to have brought back the deceased to the hospital after he found the deceased lying near a transformer also accompanied the deceased and P.W. 5 to the hospital also did not support the version of P.W. 5 in this regard.

17. P.W. 9 of course has spoken to about the deceased telling him that he was assaulted by A.1 to A.3 and some others. According to him he was in the hospital throughout night. But, he also did not care to give a complaint to the police. Under these circumstances, we are of the

considered view that basing solely on the evidence of P.Ws. 5 and 9 alone, sustaining the case of the prosecution and implicating A.1 to A.3 would be clearly unsafe.

18. Going by the evidence of P.Ws. 5 and 9, the deceased was attacked by 150 persons. It is the specific statement of P.W. 6 also that he was

informed so by the injured which is evident from Ex. P.3, the Accident Register issued by P.W. 6. It is also evident from the deposition of P.W. 6

while he stated that the deceased was conscious when he was brought to the hospital and he informed P.W. 6 that he was attacked by 150

persons. Had 150 persons attacked the deceased at a time, he could have definitely sustained injuries. However, the Post Mortem Doctor, P.W.

7, while examining the body of the deceased has not found any external injuries or internal injuries.

19. it is to be seen that a perusal of Ex. P.5 does not indicate any external injury, not even any contusion, any rashes, any bruises, etc. on the body

of the deceased. Even P.W. 7, the Post Mortem Doctor, has opined that the death was probably due to Cardiac concussion in Ex. P.10 and he

has not shown the cause of death was because of the attack by 150 persons. Thus, the medical evidence does not corroborate the evidence of

P.Ws. 5 and 9 as to the attack on the deceased allegedly by 150 persons. It is very clear that the medical evidence in this case does not disclose

concussion as per the final opinion of the Doctor, P.W. 7 under Ex. P.10. It is also pertinent to note that the Doctor, P.W. 7 has categorically

stated in his chief examination itself that he has not found any visible internal injury in the heart and as such he has given the final opinion that the

death was probably due to cardiac concussion. Therefore, it is clear that the medical evidence in this case does not disclose that the deceased died

due to homicidal violence. It is pertinent to note that the manner in which the deceased was assaulted was stated by the deceased himself to the

Doctor, P.W. 6 and the medical evidence does not disclose that the deceased could have attacked or assaulted by 150 persons.

20. In view of the above said infirmities and the reasons stated, we are of the considered view that the prosecution has miserably failed to establish

the guilt of the accused beyond reasonable doubt and as such the appellants are entitled to the benefit of doubt and hence they are acquitted of all the charges. Accordingly, the appeal is allowed and the conviction and sentence imposed on appellants are set aside and they are directed to be set at liberty forthwith if their presence is not required in connection with any other case. Fine amount, if any paid by them, is directed to be refunded.