

(2005) 09 MAD CK 0114**Madras High Court****Case No:** C.A. No. 985 of 2001

Thanu @ Ramesh

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Sept. 8, 2005**Citation:** (2005) 2 LW(Cri) 802**Hon'ble Judges:** N. Dhinakar, J; M. Chockalingam, J**Bench:** Division Bench**Advocate:** N. Doraisamy for M/s. C. Balasubramanian B. Neelambigai, for the Appellant; S. Jayakumar, Additional Public Prosecutor, for the Respondent**Final Decision:** Allowed**Judgement**

M. Chockalingam, J.

The appellant herein, who stood charged as A-1 along with five others, under Sections 147, 341 and 302 read with 149 of I.P.C. in S.C. No. 627/99, on being found guilty under Sec. 302 of I.P.C. by the VII Additional Court of Sessions, Madras, has brought forth this appeal.

2. The short facts necessary for the disposal of this appeal can be stated thus:

a) A-1 to A-6 were auto drivers. They used to park their autos before a Kalyana Mandapam at Nandanam. On 08.11.1998, P.W. 6 was coming in her bicycle. At that time, A-1 was driving an auto in a rash manner and dashed over P.W. 6, and she fell down. The deceased Velmurugan and others who were standing nearby, chased the auto, caught him and questioned. While doing so, the deceased slapped the deceased once. Thereafter, A-1 went away from the place. He gathered all other accused, came to the place and attacked the deceased brutally. The deceased sustained severe injuries. All the accused fled away from the place of occurrence. P.W. 1 took the deceased to the private clinic of P.W. 11, the Doctor, at Nandanam, where he was given first aid. Then, he was asked to go over to Royapettah Government Hospital. Accordingly, the seriously injured was taken to Royapettah

Government Hospital, where P.W. 12, the Medical Officer, was on duty. At about 3.20 p.m., he admitted the deceased in the hospital, and treated him medically. The injuries found on the deceased are noted in the accident register copy, Ex. P6. Thereafter, P.W. 13, the Doctor, attached to the said Government Hospital, gave further treatment. An intimation was given to Saidapet Police Station. P.W. 9, the Sub Inspector of Police, on receipt of the said intimation, went to the Government Hospital and recorded the statement of P.W. 1 which is marked as Ex. P1. On the strength of Ex. P1, a case came to be registered by him in Crime No. 2418/98 under Sections 147, 341, 323 and 307 of I.P.C. Printed First Information Report Ex. P4 was despatched to Court.

b) P.W. 16, the Inspector of Police, attached to Saidapet Police Station, took up investigation in the case, proceeded to the place of occurrence, made an inspection in the presence of two witnesses and prepared an observation mahazar, Ex. P.10, and a rough sketch, Ex. P11. He recovered a shirt, M.O.1, and a pant, M.O.3, under Form 95. The severely injured Velmurugan who was admitted in the hospital, died on 09.11.98 at 6.40 a.m., and an intimation, Ex. P13, was given to the Police Station. Accordingly, the case was altered to Sec.302 of I.P.C., and Ex. P14, the express report, was despatched to court. Then, the case was taken up for investigation by the said Inspector of Police, who, proceeded to the mortuary and conducted inquest on the dead body of Velmurugan in the presence of panchayatdars and witnesses. After preparing a report in that regard, a requisition, Ex. P8, was forwarded by him to the Government Hospital, Royapettah, for the conduct of autopsy on the dead body.

c) P.W. 14, The Tutor/assistant Professor, Forensic Medicine Department, Government Royapettah Hospital, Chennai, on receipt of the said requisition, conducted autopsy on the dead body of Velmurugan and found the following injuries.

(1) Sutured would along vertical plane 33 cms in length seen over the mid abdomen extending, between Xiphisternum and a point 5 cms above symphysis pubis - Surgical.

(2) A transverse sutured would 15 cms in length over the mid abdomen extending from injury No. (1), 8 cms above umbilicus to a point over (R) loin 10 cms above (R) Iliac crest - Surgical.

(3) An oval sutured would over the (R) loin 5 cms above the (R) Iliac crest - surgical, within drainage tube in situ.

O/D: Bruising of scalp over (R) side of head 5 \diamond 4 cms and over (L) side of head 8 \diamond 6 cms seen. Cranial valut and meanings - intact. Brain - Pale. Fracture of nasal bone made out with bruising of surrounding soft tissues. Hyoid bone, Laryngeal cartilages and thoracic lage-Intact.

Bruising of tissues of upper pan of (R) side of chest and adjoining neck 12 ♦ 7.5 cms.

Bruising of tissues of (R) shoulder 8 ♦ 5 cms.

Bruising of tissues over (L) side of chest 18 ♦ 11 cms.

The Doctor issued Ex. P9, the postmortem certificate, and opined that the deceased would appear to have died of intra abdominal injuries, 12 to 24 hours prior to postmortem.

d) Pending investigation, the Investigating Officer arrested A-1 to A-6 on 09.11.1998 at 8.15 p.m. He recovered the auto M.O.2, bearing registration No. T.N. 07 Y 6447, which was used by the accused at the time of occurrence, under a mahazar Ex. P5. All the accused volunteered to give confessional statements. They were recorded in the presence of two witnesses. The admissible parts of the said confessional statements were marked as exs. P15 to P20 respectively. All the accused were sent for judicial remand. On completion of investigation, the Investigating Officer filed the final report.

3. The case was committed to court of Session, and necessary charges were framed against the accused.

4. In order to substantiate the charges levelled against the six accused, the prosecution examined 16 witnesses and relied on 20 exhibits and 3 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses. They denied them as false. No defence witnesses were examined. After hearing both sides, the trial Court found the appellant/A-1 guilty under sec.302 of I.P.C and imposed life sentence and a fine of Rs. 2,000/- with a default sentence of 6 months Rigorous Imprisonment. The other accused namely A-2 to A-6, were acquitted of the charges. Hence, this appeal.

5. The Learned Counsel appearing for the appellant inter alia made the following submissions.

(i) In the instant case, the prosecution relied on the evidence of P.Ws.1 to 4, who, according to the prosecution, were eyewitnesses; but, P.W. 2 turned hostile. From the evidence of P.W. s 1, 3 and 4, it would be clear that the accused were quite unknown to them in the past, and the occurrence could have taken place only for a few minutes. If to be so, it was a fit case, where identification parade should have been conducted, but not conducted. The witnesses were examined in Court after a few years, and thus, they cannot identify the accused.

(ii) It is pertinent to point out that while P.W. 1 has come forward with an evidence to state in Court that he did not know any one of the accused in the past, Ex. P1

contained all the names of the accused, which according to the prosecution, has come into existence the very day. Thus, it throws a suspicion on the prosecution case.

(iii) The earliest document in the case is Ex. P6, the accident register copy, wherein P.W. 1 has given a statement to the Doctor that 20 unknown persons assaulted the deceased. Viewing the case from this point of view, Ex. P1 containing the names of the accused, should have been only an introduction of the false statement or the subsequent development.

(iv) In the instant case, there was actually no evidence available for the prosecution to connect the accused with the crime, and under the circumstances, they are entitled for an acquittal, which the lower court has failed to do, and hence, he seeks acquittal in the hands of this Court.

6. The Court heard the learned Additional Public Prosecutor on the above contentions.

7. Admittedly, an occurrence has taken place at about 2.30 p.m. on 08.11.1998 as put forth by the prosecution at the place, where the deceased Velmurugan was severely injured by the assault committed, and he was taken to the private clime of P.W. 11. Thereafter, he was taken to the Government Hospital, Royapettah, where he was admitted by P.W. 12 the Doctor. He was given treatment by P.W. 13, the Doctor, and he died on 09.11.1998 as a direct consequence of the injuries sustained by him in the incident. It would be quite evident from the evidence of the postmortem Doctor and his certificate that Velmurugan died of intra abdominal injuries. This fact is also not disputed by the appellant/A-1. Hence, it can be so safely recorded.

8. In the instant case, according to the prosecution, four persons have witnessed the occurrence. P.W. 2 has turned hostile. Thus, the prosecution and the evidence of P.W. s 1, 3 and 4. From their evidence, it would be quite clear that they did not know any one of the accused in the earlier point of time. If to be so, it was a fit and proper case, where identification parade should have been conducted, but not conducted. The prosecution had no explanation to offer in that regard.

9. Now, according to the prosecution, Ex. P1, the report, was recorded by P.W. 9, the Sub Inspector of Police, the very day at the Government Hospital, Royapettah. P.W. 1 was the informant. A perusal of Ex. P1 would clearly reveal all the names of the accused in the case. While Ex. P1 comes before a Court of law containing the names of all the accused, P.W. 1 would state that he did not know any one of the accused earlier, and thus, it is highly doubtful how he could have given the names of the accused in his information to the police. Under the circumstances, this Court has to necessarily agree with the contention put forth by the Learned Counsel for the appellant that it was a subsequent development to add the names of the accused before the court.

10. Yet another circumstance which is so strong against the prosecution, is the earliest document, which came into existence by way of Ex. P6, the accident register copy. According to P.W. 1, it was he who took the deceased to the Government Hospital, Royapettah, and he was also admitted by P.W. 12, the Doctor. P.W. 12 has recorded the statement of P.W. 1 in Ex. P6, the copy of the accident register. A perusal of Ex. P6 would go to show that the earliest statement given by P.W. 1 to P.W. 12 the Doctor, was that the deceased was assaulted by 20 unknown persons. Had it been the statement given by P.W. 1 that 20 unknown persons have assaulted the deceased at the time of occurrence, there was no possibility for him to name all the accused in Ex. P1 report, which would clearly reveal that their names have been given on a surmise, and not on the clear knowledge of the fact. Under the circumstances, this part of the evidence would clearly destroy the base of the prosecution case. Hence, it would be unsafe to rely on the evidence of P.Ws. 1, 3 and 4, who according to the prosecution, were eyewitnesses. If the absence of any identification parade and in view of all the doubts available this Court is of the firm opinion that it would be highly unsafe to sustain a conviction against the appellant. It remains to be stated, that the lower court was not ready to accept the evidence put forth by the prosecution as regards A-2 to A-6 in the case, but has accepted the same in respect of A-1, the appellant hereto, without reasons. Thus, the judgement of the lower court has got to be set aside, and the appellant is entitled for an acquittal.

11. In the result, this criminal appeal is allowed. The conviction and sentence imposed upon the appellant/A-1, are set aside. He is acquitted of the charges framed against him. It is reported that the appellant/A-1 is on bail. The bail bonds shall stand cancelled. The fine amount paid by him, if any, will be refunded to him.