

(2010) 10 MAD CK 0255

Madras High Court

Case No: Criminal A. No. 436 of 2010

State

APPELLANT

Vs

Alagesan and Others

RESPONDENT

Date of Decision: Oct. 20, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 107, 313
- Penal Code, 1860 (IPC) - Section 147, 148, 149, 302, 323

Hon'ble Judges: M. Chockalingam, J; C.S. Karnan, J**Bench:** Division Bench**Advocate:** V.R. Balasubramanian, app, for the Appellant; S. Anantha Narayanan, for R2 and N. Doraisamy, Amicus Curiae for R5 and R6, for the Respondent**Final Decision:** Dismissed

Judgement

M. Chockalingam, J.

Challenge is made to the judgment dated 29.5.2009 passed by the Additional District Sessions Court (Fast Track Court No. I), Poonamallee in S.C. No. 112 of 2006, whereby the first accused stood charged for the offences under Sections 302, 323 read with 149 of the Indian Penal Code, accused 2 and 3 stood charged for the offences under Sections 148, 302 read with 149, 324, 323 read with 149 of the Indian Penal Code and accused 4, 5, 7 and 8 stood charged for the offences under Sections 148, 302 read with 149, 324 read with 149, 323 of the Indian Penal Code and on trial, all the accused were found not guilty and acquitted of all the charges. It is reported that sixth accused Shanmugam died and no charge is framed against him.

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

(i) P.Ws.1, 3 and 10 are the brothers of the deceased Thirupathi. They are all residents of Ponthavakkam colony within the jurisdiction of Respondent-police. They used to play cricket in the piece of land, which belongs to ACA Church. The same was objected to by the second accused, who was in administration of the Church.

On that ground, there were quarrels in the past. In this regard, proceedings were initiated before the Revenue Divisional Officer, Ponneri u/s 107 of the Code of Criminal Procedure and further, their relationship became strained. On 28.4.2003, the accused party were making arrangement for fencing the land. The same was witnessed by the deceased and his friends. There was a wordy altercation.

(ii) Next day morning i.e. 29.4.2003 at about 6.30 a.m., when the deceased and his friends were in a tea shop, they informed about the previous day occurrence to one Manickam. At that time, accused 3 and 4, who are sons of second accused came over there and there was a wordy altercation. Following the same, accused 3 and 4 brought the other accused. When the accused came to place of occurrence, first accused armed with knife and other accused armed with wooden logs. The first accused stabbed the deceased on the abdomen, while accused 1, 3 and 4 attacked the deceased with sticks. When it was intervened by P.W.2, he was attacked by accused 2 to 4. Thereafter, all the accused ran away from the place of occurrence. This was witnessed by P.Ws.1, 2, 8, 18 and 25.

(iii) Thereafter, P.W.2 and others took the deceased Thirupathi to the Government Hospital, Chennai. On medical examination, the Doctor declared him dead. Immediately, at about 12 noon, P.W.1 proceeded to the Respondent-police and gave Ex.P1 report to the Sub Inspector of Police P.W.24, on the strength of which a case in Crime No. 112 of 2003 was registered for the offences under Sections 147, 148, 323, 324, 302 of the Indian Penal Code. Express First Information Report Ex.P16 was despatched to the Court. The third accused also gave a complaint, on the strength of which a case in Crime No. 113 of 2003 was registered.

(iv) On receipt of the copy of the First Information Report in both crime numbers, P.W.27 Inspector of police took up investigation. He proceeded to the place of occurrence and prepared Ex.P3 Observation Mahazar and Ex.P17 rough sketch. Photographs were also taken through P.W.26 Photographer. He also recovered M.O.1 blood stained earth, M.O.2 ordinary earth and M.O.3 cap under the cover of mahazar Ex.P4 in the presence of witnesses. P.W.27 Inspector of Police proceeded to the Mortuary and prepared inquest report Ex.P18 in the presence of witnesses and panchayatars. Thereafter, the dead body was sent to the Government Hospital, Chennai through requisition letter. P.W.23 Doctor conducted autopsy on the dead body and issued post-mortem Certificate Ex.P15 where he has narrated all the injuries both internal and external and gave his opinion that the deceased would appear to have died of shock and hemorrhage and due to the stab injury to abdomen.

(v) Pending investigation, P.W.27 arrested accused 2 to 4 on 29.4.2003 at about 7 p.m. On arrest, the second accused gave confession statement voluntarily and the same was recorded in the presence of the witnesses. The admissible portion of the same is marked as Ex.P20. Thereafter, he produced M.O.5 series wooden logs and the same were recovered under the cover of mahazar Ex.P21 in the presence of

witnesses. Thereafter, P.W.27 arrested the 8th accused and sent both accused 2 and 8 to judicial remand. On 1.5.2003 at 6.30 a.m., the first accused was arrested. On arrest, he gave confession statement voluntarily and the same was marked in the presence of witnesses. The admissible portion of the same is marked as Ex.P19. The first accused has also produced M.O.4 knife and the same was recovered under the cover of mahazar Ex.P5 in the presence of witnesses. Thereafter, he was sent for judicial remand. P.W.27 examined all the witnesses and recorded their statements. P.W.27 has also arrested the other accused.

(vi) All the material objects were sent to Forensic Department for chemical analysis. Chemical analysis reports are marked as Ex.P22 series. In Crime No. 112 of 2003, case was registered against the Respondents. In respect of Crime No. 113 of 2003, it was referred to as "Mistake of Fact" and notice was served upon the Respondents. On completion of investigation, final report is filed. The case was committed to the Court of Sessions. Necessary charges were framed against the accused.

3. In order to substantiate its case, the prosecution examined 27 witnesses and relied on 23 documents and also relied on M.Os.1 to 5. On completion of examination of witnesses on the side of the prosecution, when the accused were questioned u/s 313 of the Code of Criminal Procedure, they denied them as false. Two witnesses were examined and five documents were marked on the side of the accused.

4. The Trial Court, after hearing the arguments advanced by either side and scrutinizing the materials available on record, took the view that the prosecution has failed to prove its case beyond reasonable doubt and recorded an order of acquittal. Hence, this appeal is filed at the instance of Appellant-State.

5. Advancing arguments on behalf of the Appellant, learned Additional Public Prosecutor would submit that the trial Court has made an order of acquittal erroneously, while the prosecution has placed necessary and sufficient evidence before the trial Court. To prove its case, the prosecution has examined P.Ws.1, 2, 8, 18 and 25 as eye witnesses, out of whom P.W.2 was an injured witness. P.W.1 has seen the entire occurrence. P.W.1 saw the first accused running with blood stained knife. P.Ws.18 and 25 have also spoken to about the occurrence. The discrepancies found in the evidence are only minor, which, in no way, would affect the prosecution case.

6. Learned Additional Public Prosecutor would further submit that P.W.2, who is the injured witness, has deposed about the entire occurrence. Accident Register Ex.P2 was also placed before the Court. The same was brushed aside by the Court. The recovery of weapon of crime produced by accused 1 and 2 were also placed before the Court. The said weapons are produced by the accused consequent upon the confession statement given by them voluntarily. The scientific evidence produced before the Court was also fully supporting the case of the prosecution. But, the trial

Court has taken an erroneous view and made the order of acquittal. From the evidence available, it has reached an irresistible conclusion, which is perverse and also lacks reason to arrive at such a conclusion. Therefore, the judgment of the trial court has got to be set aside and the Respondents herein have got to be dealt with in accordance with law.

7. The Court heard the learned Counsel for the Respondents 2, 5 and 6, who made the submissions in their sincere attempt for sustaining the judgment of acquittal passed by the trial Court. The Court paid its anxious consideration and also made thorough scrutiny of the entire materials available.

8. It is not in controversy that the dead body of one Thirupathy was subjected to post-mortem by P.W.23 Doctor following the inquest report Ex.P18 prepared by P.W.27 Inspector of Police. P.W.23 Doctor, who has conducted post-mortem, has categorically opined that the deceased would appear to have died of shock and hemorrhage and due to the stab injury to abdomen. This fact was never disputed by the Respondents before the Trial Court and thus, the prosecution was successful enough in proving the same and rightly to.

9. In the instant case, P.W.2 is an injured witness and copy of accident register is marked as Ex.P2. When the eye witness happened to be the injured witness, the Court is mindful of caution to the ruling of the Apex Court and also to the settled principles of law that the evidence of such witness should not be discarded without strong circumstance or reason is noticed. In the instant case, the Court is afraid as to whether it can agree with the prosecution story or its case or evidence as put forth by the prosecution before the Trial Court.

10. The case of the prosecution is that the occurrence had taken place on 29.4.2003 at about 6.30 p.m. The first accused was armed with knife and the other accused were armed with wooden logs. The first accused stabbed the deceased Thirupathi with knife while the other accused attacked the deceased with wooden log. In that process, P.W.2 was also injured. It is true, P.W.2 was an injured witness. Insofar as P.W.2 is concerned, in Ex.P1 report, no whisper is made that P.W.2 was injured. All the injuries sustained by P.W.2 were found to be different as found in Ex.P2 Accident Register given by P.W.9 Doctor.

11. P.W.1 has categorically stated that there was a free fight and he could not say as to who attacked who. Apart from this, in the same transaction, accused, 2, 3 and 4 were also injured. The second accused sustained grievous injury. Ex.D2 to D4 Wound Certificates were also marked. In a given case like this, when the accused sustained injuries that too grievous injury, a duty is cast upon the prosecution to explain as to how the accused sustained injury. In the instant case, though number of witnesses have been examined as eye witnesses, there is no whisper about the injuries sustained by the accused and they were suppressed.

12. The crowning circumstance in the instant case is that the same Investigator is entrusted with two cases viz. Crime No. 112 of 2003 at the instance of P.W.1 and 113 of 2003 at the instance of third accused and both the cases were registered by the same Investigator. Admittedly, Crime Nos. 112 and 113 of 2003 pertain to the same transaction. If to be so, a duty is cast upon the prosecution to place the entire materials to enable the Trial Court to find out the truth. Neither 161 statement nor medical report pertain to Crime No. 113 of 2003 was produced. Hence, the prosecution has failed to prove the genesis of the occurrence and no material is put forth to enunciate the justice.

13. The added circumstance is that the injuries, which were grievous sustained by the accused, were never explained. Number of discrepancies were found in the evidence. The evidence of P.Ws.5 to 8 is that they saw the first accused with blood stained knife. When the knife is put for analysis, it did not contain the blood stain, which cast a doubt in the mind of the Court. In short, it can be stated that the learned Trial Judge has marshalled the evidence properly and consider the same properly and make the order of acquittal, which now cannot be termed either perverse or done without any evidence. Under such circumstances, the judgment of the trial court has got to be sustained. Accordingly, the appeal against acquittal is dismissed.