

1.P.Jeevanantham Vs. State Rep By

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Court : Chennai

Decided On : Aug-05-2015

Judge : S.Nagamuthu

Appellant : 1.P.Jeevanantham

Respondent : State Rep By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

05. 08.2015 CORAM THE HONOURABLE MR.JUSTICE S.NAGAMUTHU AND THE HONOURABLE MR.JUSTICE V.S.RAVI CRL.A(MD).No.338 of 2010 1.P.Jeevanantham 2.S.Pitchaiah 3.P.Shanmugathai : Appellants Vs. State Rep by The Inspector of Police, Keela Colony, Kilavipatti, Pandavarmangalam Post, Kovilpatti Taluk, Thoothukudi District. : Respondents PRAYER Appeal is filed under Section 374 of the Code of Criminal Procedure to call for the records in S.C.No.177 of 2009, on the file of the Principal Sessions Court, Thoothukudi and set aside the Judgment dated 31.08.2010 in S.C.No.177 of 2009 passed by the learned Principal Sessions Court, Thoothukudi. !For Appellants : Mr.Antony S.Prabhakar ^For Respondent : Mr.C.Mayil Vahana Rajendran Additional Public Prosecutor :

JUDGMENT

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of the Court was delivered by S.NAGAMUTHU, JJ. The appellants are the accused in S.C.No.177 of 2009, on the file of the learned Principal Sessions Court, Thoothukudi. The Trial Court framed as many as seven charges against the accused as detailed below. By Judgment dated 31.08.2010, the Trial Court convicted all the three accused under all the charges and sentenced them as follows:-

Accused	Charge Under Section	Convicted/ Acquitted	Sentenced to under go/to
Nos.1 and 2	No.3 294(b) IPC	341IPC323IPC302IPC506(ii) IPC	294b) IPC
	341IPC323IPC and 506(ii) IPC	convicted convicted convicted	Convicted convicted convicted convicted convicted
			rigorous imprisonment for three months simple imprisonment for one month rigorous imprisonment for six months life imprisonment and a fine of Rs.3,000/- each in default to undergo rigorous imprisonment for one year rigorous imprisonment for one year rigorous imprisonment for three months simple imprisonment for one month rigorous imprisonment for six months rigorous imprisonment for one year

As against the said conviction and sentence, the appellants have come up with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows:- The first accused is the son of the second accused and the third accused is the wife of the second accused. They were residing at Kilavipatti Village in Kovilpatti Taluk. The deceased, in this case, was one Mr.Mariappan. He was the father-in-law of PW-1. PW-2 is the brother of PW-1. PW-3 and PW-4 are the neighbours and relatives of the deceased. They were also residing in the same village. According to him, one Alagurani, the daughter of the first accused was abducted for the purpose of marriage by one of the relatives of the deceased. On account of the same, both the families started living apart with enmity. 2.2. While so, on 27.01.2009, at about 03.00 PM, in front of the house of PW-1, when PW-1 to PW-4 were present, all these three accused came there armed with sticks. They wrongfully restraint PW-2 and scolded him in filthy language. Then, they attacked PW-2 with stick on various parts of his body. On seeing the same, the deceased suddenly intervened. The accused Nos.1 and 2 attacked him with stick. He fell on the ground. PW-1 intervened. He was attacked by the third accused with stick. All the accused, then,

intimidated PW-1 to PW-4 and ran away from the scene of occurrence. 2.3. The deceased was taken to the Government Hospital at Kovilpatti. PW-7, Dr.Sankar attended on PW-1 at the Government Headquarters Hospital at Kovilpatti on 27.01.2009, at 04.10 PM. He noticed the following injuries on her. "1. A contusion measuring 5 X3CM on the left thigh.

2. An abrasion measuring 1X12 CM on the left palm."

Then, on the same day, he examined PW-2 and found the following injuries:- "1. A contusion measuring 5 X4CM with abrasion on the right side of the head.

2. A contusion measuring 10 CM on the left elbow 3. A lacerated injury measuring 3 X1CM on the right knee.

4. A cut injury measuring 1 X12 X12 CM on the left side of his head". 2.4. EX-P4 is the Accident Register for PW-1 and EX-P5 is the Accident Register for PW-2. According to the case of the prosecution, the deceased was initially taken to the Government Hospital at Kovilpatti, where from he was taken to the Government Hospital at Palayamkottai, Tirunelveli and then to the Government Rajaji Hospital at Madurai. On receiving intimation from the Hospital Authorities, at Kovilpatti, PW-11, the then Head Constable attached to the Nalattinuthur Police Station went to the Hospital, on 27.01.2009 and recorded the statement of PW-1 at 05.00 PM. On returning to the Police Station, at 05.45 PM, he registered a case in Crime No.33 of 2009 under Sections 294(b), 341, 323 and 506(ii) of the Indian Penal Code. EX-P1 is the complaint and EX-P14 is the First Information Report. He forwarded both the documents to the learned Judicial Magistrate, Kovilpatti and then handed over the case diary to the Inspector of Police for investigation. 2.5. Taking up the case for investigation, PW-15, the then Inspector of Police, on 27.01.2009, proceeded to the place of occurrence and prepared an Observation Mahazer at 07.15 AM in the presence of PW-6 and another witness. According to him, at that time, there was enough light. He also prepared a rough sketch showing the place of occurrence. Then, he recovered the bloodstained earth and sample earth from the place of occurrence under a mahazer at 08.15 PM. Then, on the same day, he proceeded to the Government Headquarters Medical College Hospital at Tirunelveli and examined the deceased. Then, he recovered the bloodstained

cloth worn by the deceased in the presence of the witnesses, on 28.01.2009, at 01.00 AM. Later, the deceased died at the Rajaji Government Hospital, Madurai, at 09.45 AM, on 28.01.2009. Due intimation regarding the death of the deceased was given to the Police Station, at Nalattinpathur from the Outpost Police Station at Government Rajaji Hospital, Madurai. Then, he proceeded to the Government Rajaji Hospital at 01.45 PM and altered the case into one under Sections 294(b), 341, 323, 506(ii) and 302 of the Indian Penal Code. He forwarded the alteration report under EX-P21 through PW-11 to the learned Judicial Magistrate. Thereafter, he conducted inquest on the body of the deceased, during which he examined PW-1 to PW-4 and recorded their statements. Then, he forwarded the dead body for postmortem. 2.6. PW-14, Dr.M.Alavudin, conducted autopsy on the body of the deceased on 28.01.2009. He found the following injuries:- "Bending of left upper arm. On dissection underlying bone is found fractured with surrounding bruising.

2. Bending of right upper arm. On dissection underlying bone is found fractured with surrounding bruising.

3. Partly healed abrasion 10 X3CMs noted on the back of left lower arm.

4. Intercostal drainage wound in left mid axillary line at 6th intercostals space. Fracture 4-8 ribs on left side with surrounding bruising. Contusion 5 X4CMs on interior of left anterior chest wall. Left Pleural cavity contains 50 ML of flukd blood. Peritoneal cavity - empty; pleural cavity - described; Pericardium - contains 15 ml of straw colour fluid; Heart - Right side fluid blood; left side empty; coronary vessels - patent; lungs - cut section congested; Liver, spleen and kindneys - cut section congested, Larynx & trachea - normal; Hyoid bone - intact; Stomach - contains 100 ml brown colour fluid, nil specific smell, mucosa normal; small intestines - contains 20 ml of brown colour fluid, nil specific smell, mucosa congested; Bladder - empty; Brain - surface vessels congested, cut section congested". He opined that the deceased would appear to have died of multiple injuries. 2.7. Continuing the investigation, on 30.01.2009, at 08.00 AM, he arrested all the three accused at Railway Feeder Road. On such arrest, the first accused gave voluntary confession, in which he produced a motorcycle bearing Registration No.TN-69-T-2488, which was seized under a mahazer. Then, out of

the said disclosure statement made by the first accused, he took the police and the witnesses to a hideout and produced the sticks, which were recovered under a mahazer, EX-P23. Then, he forwarded all the accused for judicial remand. On completing the investigation, he laid charge sheet against all the three accused.

2.8. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, the prosecution examined as many as 15 witnesses and 23 documents were exhibited, besides eight Material Objects. Of the said 15 witnesses, PW-1 to PW-4 are the eye witnesses, who have spoken vividly about the occurrence including the overtacts. PW-5 is the Auto Driver, who had taken the injured to the Government Hospital at Kovilpatti on 27.01.2009. He has spoken to the said fact. PW-6 has spoken about the Observation Mahazer prepared by the Inspector of Police. PW-7, Dr.Sankar, has spoken about the treatment given to PW-1 and PW-2 at the Government Hospital at Kovilpatti. PW-8 is the Head Clerk of the Court, who has spoken about the forwarding of the Material Objects for chemical examination. According to PW-8, the cloth materials contained human blood. PW-9 is the Constable, who carried the alteration report and handed over the same to the learned Judicial Magistrate, on 28.01.2009, at 11.00 PM. PW-10 is the Head Constable, who forwarded the dead body for postmortem. PW-11 is the Head Constable, who initially registered the case on the complaint of PW-1. PW-12 is the Constable, who received the death intimation on 28.01.2009 at 10.00 AM, at Nalattinpathur Police Station. PW-13 is the Village Administrative Officer in whose presence, according to him, all the three accused were arrested and on the confession, the sticks were recovered. PW-14, the doctor, who conducted autopsy on the body of the deceased, has spoken about his final opinion. PW- 15 is the Investigating Officer, who has spoken about the investigation done by him. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied the same as false. However, they did not choose to examine any witness nor to exhibit any document. Having considered all the above materials, the Trial Court convicted the appellants, as detailed in the first paragraph of this Judgment and punished them accordingly. That is how, the appellants are now before this

Court with this Criminal Appeal.

3. I have heard the learned counsel for the appellants, the learned Additional Public Prosecutor for the respondent and also perused the records carefully.

4. The learned counsel for the appellant would submit that in this case, there is enormous delay in preferring the First Information Report and despatching the same to the Court. He would point out that the alleged occurrence, in this case, was at 03.00 PM, on 27.01.2009. But, the First Information Report has reached the hands of the learned Judicial Magistrate only at 06.00 PM, on 29.01.2009. He would further point out that the deceased died on 28.01.2009, at 09.45 AM, about which intimation was received at the Police Station at 10.00 AM itself. But, the First Information Report has reached the hands of the learned Judicial Magistrate at 06.00 PM, on 29.01.2009. Absolutely, there is no explanation offered for the said delay. This creates doubt in the case of the prosecution, he contended. The learned counsel would further submit that though PW-1 to PW-4 are injured eye-witnesses, even then, on account of such enormous delay, their evidences are not believable and therefore, they are to be rejected. The learned counsel would also point out certain material contradictions between the evidences of PW-1 to PW-4. The learned counsel would further submit that the medical records relating to the treatment given to the deceased at the Government Hospital at Kovilpatti and at the Medical College Hospital, Tirunelveli, have not been proved in evidence. The learned counsel would also point out that the statements made by the deceased, when in the hospital at Kovilpatti and then he was in the hospital at Tirunelveli are all dying declarations. The learned counsel would further submit that since these documents have been suppressed by the prosecution, there has to be a presumption that they are adverse to the case of the prosecution.

5. The learned Additional Public Prosecutor would however, oppose this Criminal Appeal. According to him, PW-1 to PW-4 are the injured witnesses, whose presence cannot be doubted at all. PW-1 to PW-4 have vividly spoken about the occurrence. He would further submit that the medical evidence duly corroborates the eye-witnesses account. The learned Additional Public Prosecutor would further submit that though there is a delay in preferring the First Information Report, that

by itself would not cause any harm to the case of the prosecution.

6. We have considered the above submissions.

7. Even according to the case of the prosecution, the alleged occurrence was on 29.01.2009, at 03.00 PM, and the First Information Report is stated to have been registered at 05.00 PM. However, the First Information Report has reached the hands of the learned Judicial Magistrate only, on 29.01.2009, at 06.00 PM, at Kovilpatti. After all the Police Station and the Quarters of the learned Judicial Magistrate are situated only within the small town, namely, Kovilpatti. Absolutely, there is no explanation for the said delay. No witness has been examined as to why the First Information Report has not reached the hands of the Judicial Magistrate immediately. The death intimation was received, on 28.01.2009, at 09.45 PM,. Even thereafter, there was no effort made to forward the First Information Report to the Court and the First Information Report has reached the Court, long after the demise of the deceased. In the meanwhile, the case was altered at 01.45 PM on 28.01.2009, as a murder case. Thereafter, the body was sent for postmortem and autopsy was also conducted on the body of the deceased and thereafter only, the First Information Report had gone to the hands of the Court. In this regard, the learned counsel for the appellant would place reliance on the Judgment of the Hon'ble Supreme Court in Marudanal Augusti Vs. State of Kerala, reported in 1980 SCC [Cr].

985. 8. In the said Judgment, the Hon'ble Supreme Court has impressed upon the importance of the immediate despatch of the First Information Report to the Court and if there is enormous and unexplained delay in forwarding the same to the Court, the registration of the case itself is doubtful, the Hon'ble Supreme Court has held. In this case, since there are more than one accused and since the entire family of the accused has been roped in, the unexplained delay assumes much importance. Above all, the prosecution has suppressed the medical records pertaining to the deceased relating to the treatment given at the Government Hospital at Kovilpatti as well as the Government Hospital, at Tirunelveli. It is not known as to whether the deceased was in a position to speak when he was in these hospitals. It is also not known as to whether there was any statement made

by the deceased regarding the injuries sustained by him. If really any statements were made by the deceased, when he was in the hospital, such statements would squarely fall within the ambit of Section 32 of the Indian Evidence Act, 1872, as a dying declaration. Absolutely, there is no explanation as to why these records were not collected and produced in evidence. for the same. Though the Investigating Officer has stated that he examined the deceased while he was in the hospital, that document has also been suppressed. From the evidence of PW-15, it is clear that the deceased was in a position to speak until he was in the Government Hospital at Tirunelveli. It is not explained to the Court as to why no attempt was made to utilize the services of a learned Judicial Magistrate to get a dying declaration recorded. Thus, there are serious flaws creating doubt in the case of the prosecution.

9. For the reasons stated above, we find that the prosecution has failed to prove the case beyond reasonable doubts. Thus, the appellants are entitled for acquittal.

10. In the result, this Criminal Appeal is allowed, the conviction and sentence imposed on the appellants by Judgment dated 31.08.2010, made in S.C.No.177 of 2009 on the file of the learned Principal Sessions Judge, Thoothukudi, is set aside and the appellants are acquitted. Fine amount, if any, paid by the appellants shall be refunded to them. Bail bond and the sureties executed by the appellants shall stand terminated. To 1.The Inspector of Police, Keela Colony, Kilavipatti, Pandavarmangalam Post, Kovilpatti Taluk, Thoothukudi District. 2.The learned Principal Sessions Court, Thoothukudi. 3.The Public Prosecutor, Madurai Bench of Madras High Court, Madurai..

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