



Citation : CDJ 2016 MHC 7169

Court : High Court of Judicature at Madras

Case No : Criminal Appeal No. 205 of 2013

Judges : THE HONOURABLE MR. JUSTICE M. JAICHANDREN & THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

Parties : Solairaj & Others Versus The State rep. By its Inspector of Police, Vellore

Appearing Advocates : For the Appellants: K.M. Subramaniam, Advocate. For the Respondent: V.M.R. Rajentren, Additional Public Prosecutor.

Date of Judgment : 25-04-2016

Head Note :

Criminal Procedure Code - Section 374(2) -

Judgment :

(Prayer: Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment made by the learned III Additional District & Sessions Judge, Tirupattur, Vellore District in S.C.No.8 of 2012 dated 19.10.2012.)

S. Nagamuthu, J.

1. The appellants are the accused in S.C.No.8/2012 on the file of the learned Additional Sessions Judge, No.3, Tirupathur, Vellore District. A.1 to A.3 stood charged for offences under Sections 341, 302 r/w 34 I.P.C., and A.4 stood charged for offences under Sections 341, 302 r/w 109 I.P.C. By judgment dated 19.10.2012, the trial Court convicted all the three accused for offences under Sections 302 r/w 34 & 341 I.P.C., and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5,000/- each in default to undergo simple imprisonment for two years for the offence under Section 302 r/w 34 I.P.C., and to undergo rigorous imprisonment for one month. The trial Court convicted A.4 for the offences under Sections 302 r/w 109 & 341 I.P.C., and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for two years for the offence under Section 302 r/w 109 I.P.C., and to undergo rigorous imprisonment for one month for offence under Section 341 I.P.C. Challenging the said conviction and sentence, the appellants are before this Court with this criminal appeal.

2. The case of the prosecution in brief is as follows:-

The deceased in this case was one Mr.Nithyanandam. P.W.1, Mr.Sachidanandam is the younger brother of the deceased. P.W.1 was owning an Auto eking out his livelihood out of the same. The deceased was running a small petty shop at Sankarapuram Village. P.W.1 and the deceased were living in a joint family. All the accused also belong to the same village. On 27.12.2010 at about 9.00 pm, P.W.1 was driving his Auto towards his house from Vaniyambadi. When the Auto was nearing the old water tank, A.1 and A.2 were standing across the road blocking the road. P.W.1 stopped the Auto and wanted them to leave way for him to proceed further. A.1 & A.2 responded negatively. This resulted in a wordy quarrel between them. When the quarrel was in progress, on hearing the alarm raised, the deceased came to the spot in support of P.W.1. This further resulted in a quarrel between A.1 & A.2 on one side and P.W.1 and the deceased on the other side. The neighbours came to the spot, persuaded them and accordingly, they all disbursed. P.W.1 and the deceased came to their house. Within five minutes thereafter, again A.1 & A.2 along with A.3 and A.4 came to the house of the deceased and developed quarrel with the deceased and P.W.1. This time again the neighbours intervened, persuaded them to leave the place. Accordingly, all the four accused left the said place.

3. By about 10.00 pm on the same day, the deceased was proceeding to the cattle shed constructed by him at Sankarapuram road which belonged to the deceased. He went there to look after the cattle. P.W.1 was at his house. In normal course, the deceased should have returned within 10 minutes. Since, the deceased did not return, P.W.1 went to the cattle shed. When he was nearing the cattle shed, the deceased was on his way back to his house. When the deceased was nearing the house of one Ms.Padma, all the four accused again emerged there with weapons. They intercepted the deceased. A.1 shouted at him as to how dare he was to come in support of P.W.1. He further challenged that they were there to take revenge. So saying, A.1, with the knife in his hand, stabbed the deceased on his chest and the other parts of the body. The deceased fell down. P.W.1 rushed towards him to save him. But, A.4 caught him hold and prevented him from intervening. A.2 and A.3 stabbed the deceased with each one knife repeatedly. P.W.1 cried for help. P.Ws.2 to 4, who are the neighbours, rushed to the place of occurrence and they also witnessed the same. On seeing them, all the four accused, fled away from the scene of occurrence. The deceased was lying in a pool of blood struggling for life. P.W.1 rushed him to the Government Hospital, Vaniyambadi. The Doctor on examining him declared as dead.

4. Thereafter, P.W.1 went to Ambalur Police Station and made a complaint on 28.12.2012 at 01.00 am. P.W.18, the then Sub Inspector of Police, on receipt of the said complaint registered a case in Crime No.231/2010 for offence under Section 302 I.P.C., against all the four accused. Ex.P.1 is the complaint and Ex.P.24 is the F.I.R. He forwarded both the documents to Court. The learned Judicial Magistrate (C.W.1) received the same on 28.02.2010 at 3.00 pm.

5. Thereafter, the case was taken up for investigation by P.W.19, the then Inspector of Police. He proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch at 6.00 am on 28.02.2010 in the presence of P.W.10 and another witness. He recovered blood stained earth and the sample earth from the place of occurrence under Ex.P.3 mahazar. Then on going over to the Hospital, he conducted inquest on the body of the deceased and forwarded the same for post mortem.

6. P.W.11 conducted autopsy on the body of the deceased on 28.12.2010 at 12.00 noon. He found the following injuries on the body of the deceased:-

“External Injuries:-

Right chest 10 cm x 4 cm x 10 cm depth only modal aspect of incised wound no rib fracture in 5th intercostal space.

Left chest 4 x 2 x 2 cm incised wound over 10th space.

Right knee – lat aspect incised wound 10x4cm.

Right thigh ant aspect 4 x 4 x 4cm incised wound.

Left arm post aspect

Two separate irregular lacerated wound about 6 x 6 x 3 cm On – hyoid/rib cage intact no fracture anywhere in the body”

Ex.P.4 is the post mortem certificate. P.W.11 gave opinion that the deceased would have died due to shock and hemorrhage due to stab injuries found on the body.

7. P.W.19 examined few more witnesses including P.Ws.1 to 9 and recorded their statements. All the four accused surrendered before the Court. P.W.19 took police custody of all the four accused on 06.01.2011. On 07.01.2011 while in custody, between 10.00 am and 11.00 am, A.1 gave a voluntary confession in the presence of P.W.15 and another witness. In the said confession, he disclosed the place where he had hidden a Pichuva knife. In pursuance of the same, he took the Police and the witness to the land of one Mr.Rajendren and from the hide out, he produced the pichuva knife (M.O.1). P.W.19 recovered the same under a mahazar. A.2 also gave a voluntary confession in which, he disclosed the place where he had hidden a Pichuva knife. In pursuance of the same, he took the Police and the witness to the land of one Mr.Rajendren and from the hide out, he produced the pichuva knife (M.O.2). P.W.19 also recovered the same under a mahazar. Then A.3 gave a voluntary confession in which, he disclosed the place where he had hidden a Suri knife. In pursuance of the same, he took the Police and the witness to the land of one Mr.Rajendren and from the hide out, he produced the pichuva knife (M.O.3). P.W.19 recovered the same under a mahazar. Then he produced all the accused to Court for judicial remand and handed over the Material Objects also to Court. He recovered the blood stained clothes from the body of the deceased and forwarded the same to Court. Since, he was transferred, the case was taken up for further investigation by P.W.20. At his request, the Material Objects were sent for chemical examination. The report

revealed that there were human blood stains on all the Material Objects including M.Os.1 to 3 (knives). On completing the investigation, P.W.20 laid charge sheet against all the four accused.

8. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused 1 to 4. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 20 witnesses were examined and 32 documents were exhibited, besides 12 Material Objects.

9. Out of the said witnesses, P.Ws.1 & 4 have spoken about the entire occurrence as eye witnesses. P.Ws.2,3 & 5 who were examined as eye witnesses have turned hostile and they have not supported the case of the prosecution in any manner. P.W.6 is the owner of the house in front of which, the occurrence had taken place. She has spoken only on the hearsay information about the alleged occurrence. P.W.7, the father of the deceased has spoken about the motive for the occurrence. P.Ws.8 & 9 have also spoken only on the hearsay information about the death of the deceased. P.W.10 has spoken about the preparation of observation mahazar and the rough sketch and the recovery of blood stained earth and the sample earth from the place of occurrence. P.W.11 has spoken about the post mortem conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.12 has spoken only on the hearsay information about the death of the deceased and he has not stated anything incriminating against the accused. P.W.13 has spoken about the chemical examination conducted by him on the Material Objects including the knives. P.W.14 has again spoken only on the hearsay information about the death of the deceased. P.W.15 has spoken about the disclosure statements made by P.Ws.1 to 3. P.W.16 has spoken about the photographs taken by him in the place of occurrence on the request made by P.W.19. P.W.17 has spoken about the fact that he took the dead body of the deceased to hospital and handed over the same to the Doctor for post mortem. P.W.18 has spoken about the registration of the case on the complaint of P.W.1. P.Ws.19 & 20 have spoken about the investigation done and the final report filed.

10. 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 of the witnesses on their side besides the accident register pertaining to A.1 was marked as Ex.D.1.

11. Having considered all the above materials, the trial Court convicted all the four accused as stated in the first paragraph of this judgment. Challenging the same, the appellants/accused have preferred the present Criminal Appeal.

12. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

13. The learned counsel for the appellants among other grounds, mainly focused his argument on the ground that though, it is alleged that the occurrence was at 10.30 pm on 27.12.2010 and though, it is stated that the F.I.R., was registered at 1.00 a.m., on 28.12.2010, the same has reached the hands of the learned Judicial Magistrate only at 3.00 pm on 28.12.2010. The learned counsel submitted that absolutely, there is no explanation for the said delay.

14. But, the learned Additional Public Prosecutor appearing for the State by taking us through Ex.P.24 the F.I.R., has tried to convince us that the F.I.R., was received by the learned Judicial Magistrate at 3.00 am on 28.12.2010.

15. In order to satisfy our judicial conscience, we perused the F.I.R - Ex.P.24, more particularly, the endorsement made by the learned Judicial Magistrate, in her own hand writing about the time and date. But it is not clear as to whether it was received at 3.00 am or at 3.00 pm on 28.12.2010.

16. As contended by the learned Additional Public Prosecutor, from one angle for a naked eye, it looks as though the endorsement reads as 3.00 pm and if it is looked from another angle, it reads as 3.00 am. Since, the time of receipt of the F.I.R., is a crucial aspect in this case, we thought it absolutely necessary to get the said fact clarified by examining the learned Judicial Magistrate concerned as a Court witness before this Court. Accordingly, we passed order under Sections 391 & 311 Cr.P.C., summoning Mrs.K.Geetha Rani, the then District Munsif cum Judicial Magistrate, Vaniyambadi and examined her as C.W.1. In her evidence, she stated that the F.I.R., was received by her only at 3.00 pm and not at 3.00 am on 28.12.2010. To clarify the correctness of the same on record, we had a xerox copy of the entries in No.55 register of the said Court also. The learned Judicial Magistrate had the benefit of going through the said document before giving evidence. After having gone through the said document and after having gone through Ex.P.24, more particularly, the endorsement made by her in her own hand writing she deposed that the F.I.R., was received only at 3.00 pm at 28.12.2010.

17. In view of the said evidence of the learned Judicial Magistrate, we do not find any reason to hold that the F.I.R., was received by her at 3.00 am. We accept her evidence and we hold that the F.I.R., was received by her

only at 3.00 pm on 28.12.2010 and thus, there is a delay of 14 hours in the F.I.R., reaching the hands of the learned Judicial Magistrate. Unfortunately, in this case, neither the Sub Inspector of Police who registered the case nor the Inspector of Police has made any attempt to explain the said delay. The mode of transport of Ex.P.24 and Ex.P.21 to Court also has not been stated by them. Unfortunately, the Constable who carried the said documents to the learned Judicial Magistrate also has not been examined to explain the delay. Thus, the above delay remains unexplained.

18. The learned counsel for the appellants would make reliance on a judgment of the Hon'ble Supreme Court in *Thulia Kali vs The State of Tamil Nadu* [1973 AIR 501] wherein, the Hon'ble Supreme Court, in an identical situation, has taken the view that such inordinate unexplained delay creates doubt in the case of the prosecution. Applying the same yardstick to the facts of the present case, we have to doubt the case of the prosecution, as manipulation of facts stated in the F.I.R.

19. Admittedly, from the place of occurrence, the deceased was taken to the Government Hospital, Vaniyambadi only by P.W.1. But the Doctor who examined the deceased at the hospital and declared him dead has not been examined by the prosecution. The Accident Register pertaining to the deceased has been marked as Ex.D.1.

20. In Ex.D.1, the Doctor has recorded that he was told by P.W.1, that the deceased was attacked by two known persons on 27.12.2010 at 10.30 pm at Sankarapuram. P.W.1 was duly confronted with the above statement made by him to the Doctor as provided in Section 145 of the Indian Evidence Act. P.W.1 has not offered any explanation as to why he had told the Doctor at the earliest point of time that the assailants were two in numbers. This, being the earliest statement, creates enormous doubt in the case of the prosecution about the number of assailants.

21. It is needless to point out that every human conduct is explainable and every statement made by an individual is also explainable by its maker. In the instant case, P.W.1 has made three contradictory statements, one to the Doctor and other in Ex.P.1, complaint and third one before this Court. At the earliest point of time, P.W.1 mentioned about the number of assailants as two whereas, subsequently, he made it as four. Why he mentioned the number of assailants as two in his earliest statement has not been explained and in the absence of explanation and in view of the long delay of 18 hours in forwarding the F.I.R., to Court, we have to necessarily doubt the case of the prosecution. Though, P.Ws.1 and 4 claim that they have witnessed the entire occurrence and they have stated that all the four accused attacked the deceased, in which, A.1 to A.3 stabbed the deceased repeatedly, in the absence of any explanation in respect of the earliest statement made in that the assailants were only two, we find it difficult to believe the entire case of the prosecution.

22. It may be true that out of these four accused, two are the real culprits. But, we find it difficult to separate the grain from the chaff. Therefore, we are forced to acquit all the four accused by giving the benefit of doubt to them.

23. Before concluding, we wish to make the following observations:-

It is well known that the delay in preferring the complaint and the delay in despatching the same to Court assumes some significance in criminal trials. In order to obviate any chance for the Police or for anyone to make improvements or to obliterate, law insists that the F.I.R., and the complaint should be forthwith despatched to the jurisdictional Magistrate. In the State of Tamil Nadu as per the Police Standing Orders, going by the serious nature of the crimes, the F.I.Rs., in such grave cases are considered as express F.I.Rs., and they are required to be immediately sent to the Court through a special messenger. The learned Judicial Magistrate who receives the same is obligated to endorse the time, date and place where she receives the said documents. Time and again, this Court has impressed upon the learned Judicial Magistrates to mention, in legible manner, the time, date and place and from whom these documents are received by him/her. This is a very important judicial function of the Magistrates. But, we have had bitter experience that this important judicial function is, many a times not discharged properly by the Judicial Magistrates concerned. In a casual manner, some kind of endorsements are made. In many cases, we have seen, the hand writings of the learned Magistrates concerned are illegible as in the present case. In many cases, the Magistrates do not write the place where these documents are received by him/her. In many other cases, they do not mention from whom it is received. In many F.I.Rs., the Magistrate makes only his/her initials. Some Magistrates subscribe his/her initial and it becomes difficult to find as to who was the Magistrate who received it. Therefore, we deem it appropriate to direct the learned Judicial Magistrates in this State to follow the following procedure scrupulously.

(i) As soon as the F.I.R., and the complaint are received by the Magistrate, in connection with the grave criminal offences (Express F.I.R., and the other F.I.Rs involving serious offences), shall mention time, date, and the place of receipt by him/her and also mention the name of the person from whom it is received.

(ii) The learned Judicial Magistrate shall make his/her full signature and also make endorsement of his/her name and designation in his own hand writing.

24. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants by the learned Third Additional District & Sessions Judge, Thirupathur, Vellore District, in S.C.No.8 of 2012 by the judgment dated 19.10.2012 are hereby set aside. The appellants are acquitted of the charges leveled 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.

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