

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28-11-2008

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

AND

THE HONOURABLE MR.JUSTICE S.RAJESWARAN

CRL.A.No.1092 of 2007

Gunaseelan

.. Appellant/Accused

vs

State by:

Inspector of Police
Dhali Police Station
Coimbatore District
(Crime No.151/2006)

.. Respondent/Complainant

Criminal appeal preferred under Sec.374(2) of Cr.P.C. against the judgment of the Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore, made in S.C.No.123 of 2007 dated 16.10.2007,

For Appellant : Mr.S.N.Arunkumar
for Mr.M.N.Balakrishnan

For Respondent : Mr.P.Kumaresan
Additional Public
Prosecutor

JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

This appeal challenges a judgment of the Additional Sessions Division, Fast Track Court No.II, Coimbatore, made in S.C.No.123 of 2007 whereby the sole accused/appellant stood charged under Sections 341 and 302 of IPC and on trial, found guilty as per the charges and awarded one month Simple Imprisonment along with a fine of Rs.500/- and default sentence under Sec.341 of IPC and also life imprisonment along with a fine of Rs.2000/- and default sentence under Sec.302 of IPC.

2.The short facts necessary for the disposal of this appeal could be stated as follows:

(a) P.W.1 is the husband of P.W.2. The deceased Ashokan was their son. They were residing at Ceylon Refugee Camp at Tirumoorthy Nagar, Udulampet. P.Ws.3 and 4 are also residents of that area. P.W.7 is the sister of the accused. The deceased fell in love with her. But, it was one sided. He asked her to marry him; but she asked him not to talk further, and she also reported the same to her parents. When it came to the knowledge of the accused, he got enraged and was on inimical terms with the deceased. On the date of occurrence that was on 15.10.2006 at

about 9'0 Clock, there was a panchayat election held at Tirumoorthy Nagar. P.W.3 after vending milk, was returning, and at that time, he found the accused standing near the refugee camp. At that time, the deceased was coming in his motorbike, and the accused waylaid him and restrained him. He immediately attacked him with M.O.1 wooden log, on the head and also back. It was witnessed by P.Ws.1 to 3. Immediately, the accused fled away from the place of occurrence.

(b) P.W.1 along with others took Ashokan to the Government Hospital, Udumalpet, where P.W.5, the Doctor, gave initial treatment and noted the injuries found on him, in the accident register copy, Ex.P7. Then, he was sent to the Government Hospital, Coimbatore, and an intimation was given to the Police Station at Udumalpet. P.W.9, the Head Constable, on getting the intimation, proceeded to the Government Hospital, Coimbatore, and since the deceased was unconscious, he got the statement from P.W.1 which is marked as Ex.P1. Then, he came back to the Station and registered a case in Crime No.151 of 2006 under Sections 294(b), 341, 324 and 506(2) of IPC. The printed FIR, Ex.P6, was despatched to the Court on 16.10.2006 at 1430 hours.

(c) P.W.10, the Inspector of Police, on receipt of the copy of the FIR, took up investigation, proceeded to the spot, made an inspection and prepared an observation mahazar, Ex.P2, and also a rough sketch, Ex.P8. Then, he examined the witnesses and recorded their statements. On 17.10.2006 at about 0630 hours, the Investigating Officer arrested the accused, and he was sent for judicial remand. An intimation was received from the hospital that Ashokan died at 2.00 A.M. on 20.10.2006. Then, the case was altered to Sec.302 of IPC. The express report, Ex.P11, was sent to Court.

(d) The Investigator continuing with his investigation, conducted inquest on the dead body of the deceased in the presence of witnesses and panchayatdars and prepared an inquest report, Ex.P12. Then, a requisition, Ex.P4, was given to the hospital authorities for the purpose of autopsy.

(e) P.W.6, the District Police Surgeon and Professor of Forensic Medicine, Coimbatore Medical College and Hospital, Coimbatore, on receipt of the said requisition, conducted autopsy on the dead body of Ashokan and has issued a postmortem certificate, Ex.P5, with his opinion that the deceased would appear to have died of head injuries sustained by him.

(f) P.W.11, the Inspector of Police, took up further investigation, made an observation in respect of the spot and verified the earlier records. He completed the investigation and filed the final report before the Court.

3.The case was committed to Court of Session, and necessary charges were framed. In order to substantiate the charges, the prosecution examined 11 witnesses and also relied on 14 exhibits and 1 material object. On completion of evidence on the side of the prosecution, the accused was questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses which he flatly denied as false. No defence witness was examined. The trial Court heard the arguments advanced, and took the view that the

prosecution has proved the case beyond reasonable doubt and hence found him guilty and awarded the punishment as referred to above. Hence this appeal at the instance of the appellant/accused.

4.The learned Counsel for the appellant in his sincere attempt of assailing the judgment of the trial Court, made the following submissions:

(i) The occurrence, according to the prosecution, has taken place at about 9.00 A.M. on 15.10.2006, and P.Ws.1 to 3 were marched by the prosecution as eyewitnesses. P.Ws.1 and 2 have categorically deposed that only after hearing the sound they came out and found their son, the deceased, lying on the ground, and nowhere had they stated that they had seen the accused attacking him. Hence their evidence has got to be rejected.

(ii) As far as the evidence of P.W.3 was concerned, it is highly doubtful whether P.W.3 could have been present at the place of occurrence for two reasons. According to P.W.3, after milk vending, he was just returning, and at that time, he saw the accused standing near the Refugee Camp, and the deceased was coming in his motorbike, and the accused waylaid and attacked him with the wooden log. But, what was before the Court that he was coming after the milk vending, and he saw the accused standing nearby the Refugee Camp was never stated to the Investigating Officer when he recorded his statement under Sec.161 of Cr.P.C. Thus it would be quite clear that he was a chance witness. If his presence at that time is not explained properly, it would be highly doubtful whether he could have been present at the time of occurrence.

5.Added further the learned Counsel that according to P.W.3, the accused after attacking the deceased with the wooden log, left the place with the weapon of crime M.O.1; but, when the observation mahazar is perused, it would indicate that the wooden log was found at the place of occurrence itself; that this would go to show that P.W.3 could not have been in the place of occurrence at all, and hence the evidence of P.W.3 has got to be eschewed.

6.The learned Counsel would further add that in the instant case, the occurrence has taken place on 15.10.2006 at 9.00 A.M.; that according to P.W.5, the Doctor, he has given the initial treatment at about 11.00 A.M., and Ex.P7 is the accident register copy, and a carbon copy of the same was given to the respondent police on the very day itself; but, the case was registered by the respondent police at about 1.30 P.M. on 16.10.2006; that it would clearly be indicative of the fact that there was a delay of 27 hours which remained unexplained; that the delay that has been caused is inordinate and would also go to the root of the matter; that apart from that, the deceased had got number of enemies in view of his character and conduct; that in such circumstances, who attacked him remained unknown; that having suspicion over the accused, P.W.1 has given the statement to the Doctor and also gave the statement to P.W.9, who registered the case; that in view of the above, the prosecution has not proved the case beyond reasonable doubt, and hence he is entitled for acquittal.

<https://hcservices.ecourts.gov.in/hcservices/>

7.The Court heard the learned Additional Public Prosecutor on all the above contentions and paid its anxious consideration on the

submissions made.

8. In the instant case, it is not in controversy that one Ashokan the son of P.Ws.1 and 2 following an incident that took place on 15.10.2006 at 9.00 A.M., was given initial treatment by P.W.5, the Doctor, at Udumalpet Government Hospital, and thereafter, he was given treatment at Coimbatore Government Hospital, where he died on 20.10.2006 despite treatment. Following the inquest made by P.W.10, the Investigator, the dead body was subjected to postmortem by P.W.6, the Medical Person, who has given a categorical opinion as a witness before the Court and also as could be seen from the contents in the postmortem certificate, Ex.P5, that Ashokan died due to head injuries. The fact that as a direct consequence Ashokan died was never disputed by the appellant before the trial Court, and hence without any impediment it could be recorded so.

9. In order to substantiate the charges, the prosecution rested its case on the direct evidence by marching three witnesses namely P.Ws.1 and 2, the parents, and P.W.3, a neighbour. As rightly pointed out by the learned Counsel for the appellant, if the evidence of P.Ws.1 and 2 who are the parents of the deceased, is tested with careful scrutiny, the same cannot be relied for the simple reason that both have deposed that they came to the scene only after hearing the noise, and when they came there, they found their son lying on the ground with injuries. Nowhere had they stated that they found the accused attacking him, and hence their evidence was not useful to the prosecution.

10. As far as P.W.3 was concerned, this Court is afraid whether it could accept his evidence. According to P.W.3, he went for milk vending, and after it was over, he was just returning, and at that time, he found the accused standing nearby the Refugee Camp; but, he did not entertain suspicion, and the deceased was coming in his motorbike, and the accused waylaid and attacked him. At this juncture, it is pertinent to point out that it would be quite clear that he was a chance witness. In a given case like this, the evidence of a chance witness can be accepted provided he is able to explain as to his presence at the time and place of occurrence. The Investigating Officer has categorically deposed that at the time when the statement of P.W.3 was recorded under Sec.161 of Cr.P.C., he has never stated that after milk vending, he was available in that place.

11. Added circumstance which would cast a doubt on his evidence was that according to P.W.3, immediately after the occurrence, the accused fled away from the place along with M.O.1 wooden log. But, from the perusal of the observation mahazar, it would be abundantly clear that the wooden log was actually found in the place of occurrence. Both the above circumstances would cast a doubt on the evidence of P.W.3. The Court need not go for the quantity of evidence, but, it would expect the quality of evidence. In a given case, the Court can sustain a conviction by accepting the case of the prosecution even on the uncorroborated testimony of a solitary witness. But, the Court must exercise more care and caution before accepting the evidence to sustain a conviction. When the doubts and circumstances above mentioned are available, which would cast a doubt on the evidence of P.W.3, this Court is of the considered opinion that it would be highly unsafe to sustain a conviction.

12. Apart from the above, the Court is able to notice that there was an unexplained and inordinate delay in the registration of the case. The occurrence has taken place on 15.10.2006 at 9.00 A.M. P.W.5 has given initial treatment to him. According to the Doctor, he immediately gave a carbon copy of the accident register, Ex.P7, to the respondent police on that day itself. But, the case has been registered on 16.10.2006 at about 1.30 P.M. This would go to show that there was a delay of 27 hours. It is true that originally it was a case under Sec.324 of IPC. Ordinarily for the mere delay the prosecution case need not be rejected. But, the instant delay coupled with the above circumstances would clearly indicate that the prosecution has not proved its case. It is true that the prosecution was successful enough in proving that as a direct consequence of the injuries sustained by Ashokan, he died in the Government Hospital, Coimbatore, while under treatment. But, the prosecution was unable to prove the nexus between the accused and the crime, and hence it cannot be stated that the prosecution has proved the case beyond reasonable doubt or brought home the guilt of the accused. In such circumstances, the judgment of the trial Court has got to be set aside, and the appellant is entitled for acquittal.

13. In the result, this criminal appeal is allowed setting aside the judgment of conviction and sentence passed by the trial Court. The appellant/accused is acquitted of the charges levelled against him. The fine amount paid by him will be refunded to him. He is directed to be released forthwith unless his presence is required in connection with any other case.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nsv

To:

1. The Additional District and Sessions Judge
Fast Track Court No.II
Coimbatore
2. The Principal Sessions Judge,
Coimbatore.
3. The Judicial Magistrate, No.I,
Udumalaipet.
4. -do- Thro' The Chief Judicial Magistrate,
Coimbatore.

5. The Superintendent, Central Prison,
Coimbatore.

6.The Inspector of Police
Dhali Police Station
Coimbatore District
(Crime No.151/2006)

7.The Public Prosecutor
High Court, Madras.

8.The Section Officer, Criminal section,
High Court of Madras.

9.The Director General of Police,
Chennai.

10.The District Collector,
Chennai.

+ 1 cc to Mr.M.N.Balakrishnan, Advocate, Sr.No.66800

CRL.A.No.1092 of 2007

GV(CO)
EM/4.12.08



WEB COPY