

BAIL SLIP

The Appellants/Accused 2 and 4 Viz., Rani and Santha were directed to be released on bail as per the Order of this Court dated 08.12.2008 in M.P.No.1 of 2008, CrI.A.832 of 2008, and accused 1, 3 and 5 Viz., Madhavan, Amar & Krishnan, were directed to be released on bail as per the Order of this Court dated 12.01.2009 in M.P.No.2 of 2008 in CrI.A.832 of 2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.11.2015
Delivered on : 17.12.2015

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.832 of 2008

1.Madhavan
2.Rani
3.Amasi
4.Santha
5.Krishnan

... Appellants/Accused 1 to 5

Vs.

State Rep. By
The Inspector of Police
Kandhikuppam Police Station
Kandhikuppam
Krishnagiri District
Crime No.374 of 2004

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the order passed by the Additional Sessions Court, Krishnagiri in S.C.No.62/2006 dated 19.11.2008.

For appellants : Mr.V.Gopinath, Senior Counsel
for Mr.V.Rajamohan

For respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGMENT

The convictions and sentences dated 19.11.2008 passed in Sessions Case No.62 of 2006 by the Additional District and Sessions Court, Krishnagiri, are being challenged in the present criminal appeal.

2. The case of the prosecution is that the defacto complainant by name Saradha is the wife of the deceased by name Periyasamy and their house is situate in Alamaram Karungannan Kottai. The defacto complainant and the said Periyasamy have been blessed with five children. The accused are the relatives of the defacto complainant. The husband of the defacto complainant and others are owning 60 acres of common land, wherein, the husband of the defacto complainant is having 1/3rd share. In between the families of the defacto complainant and accused, with regard to enjoyment of the property, a problem has been in existence and in order to solve the same, a Panchayat has been convened. On 03.12.2004, at about 5 p.m., the 4th accused, wife of 3rd accused has cut grass in the field of the defacto complainant. At that time, a tussle has arisen in between the defacto complainant and 4th accused. Next day, the accused have removed fence of a garden, which belongs to the family of the defacto complainant and placed the same in front of her house. The 4th accused has got hold of tuft of the defacto complainant and also attacked her and subsequently the accused, by name Madhavan and Amasi have also attacked her by using cudgels. At the time of occurrence, the husband of the defacto complainant has reached the place of occurrence and questioned the accused. The accused viz., Madhavan, Krishnan and Amasi, have attacked the husband of the defacto complainant by using cudgels. They have also attacked the son of the defacto complainant by name Tamilselvan. The occurrence has been seen by persons viz., Kaliyammal and Govindasamy. After occurrence, the husband of the defacto complainant has been taken to Krishnagiri Government Hospital and since his condition has become critical, subsequently referred to Government Hospital, Dharmapuri and thereafter, he has been referred to Government Hospital, Salem. On 09.12.2004, the husband of the defacto complainant has passed away. Due to overtacts by some of the accused, the defacto complainant has become unconscious and thereafter, the defacto complainant has given a complaint and the same has been registered in Crime No.374/2001 by the Sub Inspector of Police (P.W.7). The complaint given by the defacto complainant has been marked as Ex.P.1.

3. On receipt of Ex.P.1, P.W.17 has taken up investigation, examined connected witnesses and since the husband of the defacto complainant has passed away, P.W.18, Inspector of Police has taken up investigation, examined some witnesses and also made arrangements for conducting autopsy on the body of the deceased and accordingly, Dr.Vallinayagam (P.W.16) has conducted autopsy on the body of the deceased and found the following external and internal injuries:-

"Injuries:- 1) Abrasions - on R elbow 1 x 1 cm; 0.5 cm x 0.5 c.m., L forearm 0.5 x 0.5 cm; L side of neck 3 x 2 cm (2) contusions - over R side of chest 8 x 5 x 1 cm., L cheek 5 x 3 x 1 cm., L thigh 6 x 3 x 1 c.m; L parietal region of scalp 6 x 3 x 1 cm., R Temporal region of scalp 2 x 2 cm., L Midfrontal region of scalp 3 x 2 cm (3) Fissured fracture along the suture line of coronal suture present 8 c.m. (4) sub dural & subarachnoid haemorrhages present over the brain (Antemortem injuries) Other findings:- Pleural cavity - empty. Pericardial cavity - 10ml of straw colored fluid present peritoneal cavity -empty. Heart-fluid blood present. Myocardium-Normal/Coronaries- Patent. Stomach-50 ml of dark brown coloured fluid present. No smell. Mucosa-Normal/Liver, spleen, Kidneys-congested. Intestine-Yellowish chyme present. Hyoid Bone-Intact. Bladder-Empty. Pelvis-Intact. Spinal Column & Cord-Intact. "

The Post Mortem certificate has been marked as Ex.P.10. The Investigating Officer, after completing investigation, has laid a final report on the file of the Judicial Magistrate court, Krishnagiri and taken on file in P.R.C.No.4/05.

4. The Judicial Magistrate, Krishnagiri, after considering the facts that the offences alleged to have been committed by all the accused are triable by sessions court, has committed the case to the court of sessions, Krishnagiri Division and taken on file in Sessions Case No.62/2006 and subsequently, made over to the trial court.

5. The trial court, after hearing arguments of both sides and upon perusing relevant documents, has framed 1st charge against accused 1 to 5 under Section 147, 2nd charge against accused 1 and 3 under Section 324(2); 3rd charge against accused 2, 4 and 5 under Section 324 read with 149, 4th charge against accused 2 and 4 under Section 355; 5th charge against accused 1 and 3 under Section 355 read with 149; 6th charge against accused

1 and 3 under Section 506(ii), 7th charge against accused 2, 4 and 5 under Section 506(ii) read with 149; 8th charge against accused 3 and 5 under Section 302; 9th charge against accused 1, 3 and 4 under Section 302 read with 149 of the Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 18 have been examined and Exhibits P.1 to P.14 and Material Object 1 have been marked.

7. When the accused have been questioned under Section 313 of the Code of Criminal Procedure as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. On the side of the accused, Exhibits D.1 to D.8 have been marked.

8. The trial court, after considering the arguments advanced on either side and also after perpending the relevant evidence available on record, has found the accused 1 to 5 guilty under Section 147 of the Indian Penal Code(hereinafter called as "IPC") and sentenced them to undergo 2 years rigorous imprisonment and also imposed a fine of Rs.500/- upon each of them; the accused 1 and 4 are found guilty under Section 334(2) of the IPC and sentenced them to undergo one month simple imprisonment and also imposed a fine of Rs.500/- upon each of them; the accused 3 and 5 are found guilty under Section 304 (2) of the IPC and sentenced to undergo 10 years rigorous imprisonment and also imposed a fine of Rs.1000/- upon each of them. The 1st accused has been found guilty under Section 304(2) read with 149 of the IPC and sentenced to undergo 10 years rigorous imprisonment and also imposed a fine of Rs.1000/- with usual default clause. In respect of other charges, the accused have been acquitted. The convictions and sentences passed by the trial court are being challenged in the present criminal appeal.

9. The consistent case put forth on the side of the prosecution is that the occurrence has taken place on 04.12.2004 at about 7 a.m., and during the course of occurrence, all the accused have formed an unlawful assembly and the accused 1 and 3 have attacked the defacto complainant and her son by name Tamilselvan. The accused 1 and 3 have also threatened the said Tamilselvan that they would kill him. The accused 3 and 5 have attacked the husband of the defacto complainant by using cudgels

and thereby caused fatal injuries and due to that, he passed away on 09.12.2004 at about 4.20 p.m.

10. Before contemplating the rival submissions made on either side, it would be more useful to look into as to whether the prosecution has established the guilt of the accused as mentioned in the judgment passed by the trial court.

11. The entire case of the prosecution is based upon Ex.P.1, complaint, wherein, the cause of occurrence and also details of attack alleged to have been made by some of the accused on the persons of the defacto complainant, her son Tamilselvan and her husband Periyasamy are given. The defacto complainant has been examined as P.W.1, the other injured witnesses, Tamilselvan has been examined as P.W.2 and the daughter of P.W.1, by name Ammu @ Sakunthala has been examined as P.W.5 and all of them have clearly spoken about the occurrence and also manner of attacks on their persons by some of the accused.

12. After occurrence, both P.Ws.1 and 2 have been medically examined by Dr.Chandhirasekar (P.W.11) and his specific evidence is that both P.Ws.1 and 2 have sustained injuries as mentioned in Ex.P.5, Ex.P.6, Wound Certificates. It is an admitted fact that the husband of P.W.1 viz., Periyasamy has passed away on 09.12.2004 at about 4.20 p.m., and after his demise, Doctor, by name Vallinayagam (P.W.16) has conducted autopsy and he found the injuries mentioned supra and issued Ex.P.10, Post Mortem Certificate.

13. From conjoint reading of the evidence given by P.Ws.1, 2, 5, 11 and 16 coupled with the documents mentioned supra, there is no incertitude in coming to a conclusion that occurrence has taken place as spoken on the side of the prosecution and during the course of occurrence, the accused viz., 1 and 3 have attacked both P.Ws.1 and 2, the accused 3 and 5 have attacked the deceased by using cudgels and due to their overtact, death has occurred.

14. The learned Senior counsel appearing for the appellants/accused has raised the following points so as to set aside the convictions and sentences passed by the trial court:-

(1) The occurrence is said to have taken place on 04.12.2004 at about 7 a.m., whereas, Ex.P.1, complaint has been given on 05.12.2004 and no explanation has been given on the side of the prosecution for such delay in giving Ex.P.1, Complaint;

(2) Due to occurrence, one of the accused has given a complaint to the Sub Inspector of Police and the same has been registered in Crime No.375/2004 and no investigation has been done either by Sub Inspector of Police or by Inspector of Police and in fact, the Inspector of Police has violated Police Standing Order 588A and therefore, the prosecution has suppressed the genesis of occurrence;

(3) Due to occurrence, some of the accused have sustained injuries but on the side of the prosecution, the same have not been explained;

(4) In the complaint, the injury sustained by the deceased on his head has not been mentioned;

(5) The specific evidence given by P.W.1 is that she has been examined by Police in Krishnagiri Hospital, but the statement given by her earlier has been purposely suppressed.

15. In order to sustain the convictions and sentences passed by the trial court, the learned Additional Public Prosecutor has also equally contended that the occurrence has taken place on 04.12.2004 at about 7 a.m., and during the course of occurrence, the accused 1 and 3 have attacked P.Ws.1 and 2 and the accused 3 and 5 have attacked the deceased by using cudgels and the specific evidence given by P.Ws.1, 2 and 5 is that in the place of occurrence, some of the accused have attacked P.Ws.1 and 2 and deceased by using cudgels and since P.Ws.1 and 2 are injured eye witnesses, much credence can be given to their evidence and further their evidence is clearly corroborated by medical evidence given by Dr.Chandhirasekar (P.W.11). Further the complaint given by one of the accused has been registered in Crime No.375/2004 and the same has been investigated and subsequently, a referred charge sheet has been filed and further the direction given in Police Standing Order 588A, is nothing but directory, not mandatory and trial court, after considering the replete evidence available on record, rightly invited convictions and sentences against the accused as mentioned in the judgment and therefore, the convictions and sentences passed by the trial court are not liable to be interfered with.

16. The first and foremost point urged on the side of the appellants/accused is that even though the occurrence has taken place on 04.12.2004, at about 7 a.m., Ex.P.1 has been given on 05.12.2004. The 5th point urged on their side is that P.W.1 has clearly admitted in her evidence that she has been examined by Police in Krishnagiri and therefore, the earlier statement has been suppressed on the side of the prosecution.

17. For considering points 1 and 5, the court has to look into evidence given by P.W.1 and her specific evidence is that after occurrence, her injured husband has been initially taken to Krishnagiri Government Hospital and since he has had critical condition, subsequently, referred to Dharmapuri Government Hospital and thereafter referred to Salem Government Hospital. From the evidence given by P.W.1, the court can very well come to a conclusion that almost all best efforts have been taken by P.W.1 and others to save life of the deceased. It is an admitted fact that P.W.1, during the course of cross examination, stated that in Krishnagiri, Police have enquired her, but she put her signature in Salem. Considering the critical condition of the deceased and also considering that P.W.1 and others have made their best efforts to save his life and also considering the specific evidence of P.W.1, that she put her signature in Salem, the prosecution has clearly explained delay in giving Ex.P.1 and therefore, the 1st and 5th points raised on the side of the appellants/accused are of no use.

18. For better appreciation, Point Nos.2 and 3 have been clubbed together.

19. The specific contention put forth on the side of the appellants/accused is that one of the accused has given a complaint to the Sub Inspector of Police and the same has been registered in Crime No.375/2004, but, no investigation has been done either by him or by Inspector of Police and thereby, violated Police Standing Order 588A and further some of the accused have sustained injuries and the prosecution has failed to explain the same and thereby, suppressed the genesis of occurrence.

20. In support of the said contentions on the side of the appellants/accused, the following decisions are referred to:-

(1) In AIR 1976 Supreme Court 2263(1) [Lakshmi Singh & Others Vs State of Bihar], in paragraph 11, it is observed as follows:-

"In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be explained by the prosecution, then it will be difficult for the Court to rely on the evidence of P.Ws.1 to 4 and 6

more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in State of Gujarat Vs. Bai Fatima, Criminal Appeal No.67 of 1971 decided on March 19, 1975 : (Reported in AIR 1975 SC 1478) there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises. "

(2) In (2006) 2 MLJ (Cr1.)1408 [Ravichandran and Others Vs. Inspector of Police, Thittakudi Police Station], a Division Bench of this Court has held that serious injuries sustained by the accused have not been explained by the prosecution not producing the accident register and wound certificate. The counter case instituted on the basis of the complaint has not been properly investigated and therefore, the prosecution has suppressed origin of occurrence.

(3) In (2008) 2 MLJ (Cr1) 333, [Rathinam @ Rathinasamy and Others Vs. State, Rep. By the Inspector of Police, Taluk Police Station, Aruppukkottai, Virudhunagar District.], it is observed that

"it is pertinent to note, not even the FIR, statements recorded, wound certificates, final report or any one of the material pertained to Crime No.21 of 1997 was placed before the Court. When the lower Court has thoroughly failed to consider this aspect of the matter, in the considered opinion of the Court, so long as all the materials were not placed before the court, the Court cannot find out the truth or otherwise of the prosecution case to adumbrate

justice, in accordance with law, and hence the prosecution has miserably failed to produce those documents and suppressed them, by which the prosecution case cannot be accepted."

21. From a close reading of the decisions mentioned supra, it is seen that if there is any counter case, the same has to be simultaneously investigated. Further if the concerned accused sustained injuries, the same have to be explained by the prosecution. Otherwise, the court can come to a conclusion that the prosecution has suppressed genesis of occurrence.

22. At this juncture, it would be condign to look into the following decisions:-

(1) In 2004 SCC CrI. 1932 [Dashrath Singh Vs State of U.P.], the Honourable Supreme Court has held as follows:-

" It is here the need to explain the injuries of serious nature received by the accused in the course of same occurrence arises. When explanation is given, the correctness of the explanation is liable to be tested. If there is an omission to explain, it may lead to the inference that the prosecution has suppressed some of the relevant details concerning the incident. The Court has then to consider whether such omission casts a reasonable doubt on the entire prosecution story or it will have any effect on the other reliable evidence available having bearing on the origin of the incident. Ultimately, the factum of non-explanation of injuries is one circumstance which has to be kept in view while appreciating the evidence of prosecution witnesses. In case the prosecution version is sought to be proved by partisan or interested witnesses, the non-explanation of serious injuries may prima facie make a dent on the credibility of their evidence. So also where the defence version accords with probabilities to such an extent that it is difficult to predicate which version is true, then, the factum of non-explanation of the injuries assumes greater importance. Much depends on the quality of the evidence adduced by the prosecution and it is from that angle, the weight to be attached to the aspect of non-explanation of the injuries should be considered."

(2) In (2002) 7 SCC 91 [Amar Malla vs. State of Tripura], the Honourable Supreme Court has held that it is well settled that merely because the prosecution has failed to explain injuries on the accused persons, ipso facto the same cannot be taken to be a ground for throwing out the prosecution case, especially when the same has been supported by eyewitnesses, including injured ones as well, and their evidence is corroborated by medical evidence as well as objective finding of the Investigating Officer.

(3) In (2001) 6 SCC 145, Takhaji Hiraji v. Thakore Kubersing Chamansing, the Honourable Supreme Court has held that when the evidence is clear, cogent and creditworthy and where the court can distinguish the truth from falsehood the mere fact that the injuries on the side of the accused persons are not explained by the prosecution cannot by itself be a sole basis to reject the testimony of the prosecution witnesses and consequently the whole of the prosecution case."

(4) In AIR 2005 SC 1912 [Mangu Khan & Ors vs State Of Rajasthan], wherein, the Hon'ble Supreme Court has held that "As far as the injuries sustained by the accused persons are concerned, the injury report shows small abrasions and laceration on non-vital parts of the body. for injuries sustained by accused are small abrasions and lacerations of non-vital parts of the body. Apart therefrom, we are unable to accept the contention that in every case there is such an inexorable burden upon the prosecution to explain the injuries on the body of the accused failing which the prosecution case must be thrown out lock, stock and barrel."

23. From cumulative reading of the decisions referred to supra, the court can deduce the following aspects:-

(1) In case of simple injury sustained by accused, mere non-explanation on the side of the prosecution cannot be a basis for rejecting its case;

(2) In case of serious injuries sustained by accused, the prosecution has to explain as to how the accused has sustained the same, if there is no explanation, it is the duty of the court to analyse credibility of the prosecution witnesses and failure on the part of the prosecution cannot be a sole ground to reject its case. If prosecution witnesses are injured and

their evidence is corroborated by medical evidence, mere non explanation with regard to injuries sustained by accused could not be a sole ground to reject its case.

(3) If on the side of the prosecution, clear cogent and credit worthy evidence is available, the court can very well distinguish truth from falsehood and mere failure on the part of the prosecution to explain injuries on the person of the accused cannot be a sole basis to reject testimonies of the prosecution witnesses.

24. It is a settled principle of law that the direction given in Police Standing Order 588A is nothing but directory and not mandatory. It is seen from the evidence given by the Sub-Inspector Police, P.W.17 that one of the accused has given a complaint and the same has been registered in Crime No.375/2004 and subsequently, he has conducted investigation and ultimately filed a final report stating as mistake of fact. It is true that the final report filed in Crime No.375/2004 has not been filed in the court, it is nothing but a mistake on the part of the prosecution. Further, as per Police Standing Order 588A, both the cases must be investigated by the same Investigating Officer and in this case, the same has not been done and the same is nothing but an omission.

25. It is seen from the evidence of P.W.11, Dr.Chandrasekar that he medically examined the accused viz., 1 to 5 and found the injuries mentioned in Exhibits D.3 to D.8. Further P.W.11 has given clear evidence to the effect that all injuries sustained by all the accused are simple in nature.

26. Even though on the side of the prosecution, no document has been filed with regard to injuries sustained by all the accused, on the side of the accused, Exs.D.3 to D.8 have been filed for the scrutiny of the court. Further P.W.11 has given categorical opinion to the effect that injuries sustained by accused are simple in nature.

27. It is a settled principle of law that if injuries sustained by accused are simple in nature, the same need not be explained. Further, the court has to analyse the credit-worthy of evidence given by P.Ws.1 and 2. It is seen from the record that P.Ws.1 and 2 have sustained injuries and their specific evidence is that in the place of occurrence, the accused mentioned supra have attacked them by using cudgels and they

have also attacked the deceased. In fact, the evidence given by P.Ws.1 and 2 is clearly corroborated by medical evidence.

28. It is also a settled principle of law that the evidence given by the injured witnesses should be given much credence. Since P.Ws.1 and 2 are injured witnesses and no vital contradictions are found place in their evidence, the court can very well accept their evidence, even though injuries sustained by the accused have not been explained on the side of the prosecution. Therefore, the said contentions put forth on the side of the appellants/accused cannot be accepted.

29. The fourth contention put forth on the side of the appellants/accused is that in the First Information Report, the injury sustained by the deceased on his head has not been mentioned. It is also equally a settled principle of law that details of injuries need not be mentioned in the First Information Report and simply because such injury has not been mentioned in the First Information Report, the court cannot come to a conclusion that the entire prosecution is liable to be thrown out. Therefore, the fourth contention put forth on the side of the appellants/accused is not factually and legally sustainable.

30. Even at the risk of repetition, the court would like to point out that in the instant case, by way of examining P.Ws.1, 2, 5, 11 and 16, the prosecution has clearly established the guilt of the accused as mentioned supra. It is not an adulation to say that even though P.Ws.1, 2 and 5 are interested witnesses, their testimonies cannot be belittled. The reason is that they have given trustworthy evidence for the purpose of proving the cause of occurrence, details of attack made on their persons and deceased. Therefore, viewing from any angle, the contentions put forth on the side of the appellants/accused cannot be accepted.

31. The trial court, after evaluating the available evidence on record properly, has rightly invited the convictions and sentences as mentioned in its judgment. In view of the foregoing enunciation of both factual and legal premises, this court has not found any acceptable force in the contentions put forth on the side of the appellants/accused and altogether, the present Criminal Appeal deserves to be dismissed.

32. In fine, this Criminal appeal is dismissed. The convictions and sentences passed in Sessions Case No.62/2006 by the trial court are confirmed. If the appellants/accused are not in duress, the trial court is directed to take effective steps to imprison them.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nvsri

To

1. The Inspector of Police
Kandhikuppam Police Station
Kandhikuppam
Krishnagiri District
Crime No.374 of 2004
2. The Additional Sessions Judge,
Krishnagiri
3. -do- Through The Principal Sessions Judge,
Krishnagiri.
4. The Judicial Magistrate,
Krishnagiri.
5. The Chief Judicial Magistrate,
Dharmapuri @ Krishnagiri (For Information)
6. The Superintendent,
Central Prison, Vellore.
7. The Public Prosecutor,
High Court, Madras.

+4cc's to M/s.N.Mohideen Basha, Advocate, S.R.No.68024 & 68589
Criminal Appeal No.832 of 2008

RSK(CO)
CA(06/01/2016)