

BAIL SLIP

The Appellant/Accused namely Madesh S/o.Subramani was directed to be released on bail as per order of this Court dated 20.04.2016 made in Crl.M.P.No.4244 of 2016 in Crl.A. No.577 of 2014.

The Appellant/Accused namely Suresh S/o.Subramani was directed to be released on bail as per order of this Court dated 10.06.2016 made in Crl.M.P.No.6212 of 2016 in Crl.A. No.577 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2016

CORAM:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.577 of 2014

1. Subramani
2. Madesh
3. Suresh

... Appellants/Accused

Vs

State, Rep. by Inspector of Police,
Pennagaram Police Station,
Pennagaram
(Crime No.279 of 2012)

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374 of the Criminal Procedure Code, praying to set-aside the conviction and sentence imposed in the judgment, dated 31.10.2014, made in S.C.No.30 of 2013, on the file of the Principal Sessions Court, Dharmapuri, by allowing this Criminal Appeal.

For Appellants : Mr. R.Sankarasubbu

For Respondent : Mr. E.Raja,
Additional Public Prosecutor

J U D G E M E N T

(Judgment of the Court was delivered by S.Nagamuthu. J.,)

The appellants are the accused 1 to 3 in S.C.No.30 of 2013 on the file of the learned Principal Sessions Judge, Dharmapuri. The fourth accused is one Mrs. Saroja @

Chinnapappa. The accused 2 and 3 are the sons of the first accused and the fourth accused is the wife of the first accused. The trial court framed as many as three charges against the accused, as detailed below:-

Charges	Accused	Section of law
Charge No.1	Accused 1 to 4	449 IPC.,
Charge No.2	Accused 1 to 3	302 IPC.,
Charge No.3	Accused 4	302 r/w 109 IPC.,

2. By judgment, dated 31.10.2014, the trial court acquitted the fourth accused from all the charges, however, convicted the accused 1 and 3 alone for the offence under Section 449 IPC and sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/- each, in default, to undergo three months simple imprisonment and also for the offence under Section 302 IPC and sentenced them to undergo Imprisonment for life and to pay a fine of Rs.5,000/-, each, in default, to undergo three months simple imprisonment. Challenging the said convictions and sentences, the appellants are before this Court with this Criminal Appeal.

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

The deceased, in this case, was one Mr.Chellappan @ Selvam. He was residing at Konangialli Koosankottai Village, Pennagaram, Dharmapuri District. P.W.1 is the wife of the deceased. The accused are the neighbours of the deceased. The first accused and the deceased are cousins. In between the house of the accused and that of the deceased, there was a poramboke land. A year before the occurrence, the deceased demolished his house and heaped the debris, on the said poramboke land. Claiming right over the said land, the accused questioned the same. This resulted in a quarrel. P.W.1 and the deceased assured them that they would remove the debris soon. After two days, again the accused came and shouted in the front of the house of the deceased, as to why he had not removed the debris. In that quarrel, they attacked the mother of the deceased. At that time, the deceased was not at home. P.W.1 informed him about the same. P.W.1 took the mother of the deceased to Pennagaram Hospital and admitted her as an inpatient. The deceased went to the hospital and after visiting his mother, returned to his house. Around 01.00 pm, on 23.06.2012, the deceased started sleeping. Around 03.00 pm, all the accused (accused 1 to 4) trespassed into the house of the deceased. The fourth accused threw chilly powder on the face of the deceased, when he was sleeping. The accused 1 to 3 then dragged the deceased from inside the house to the front yard. The accused 1 and 2 attacked the deceased with Aruval and the third accused stabbed him with Velkambu (spear). The deceased sustained injuries and fell in a pool of blood and died instantaneously. The occurrence was witnessed by P.Ws.1 to 5. They raised

alarm. The accused fled away from the scene of occurrence. Then P.W.1, with the help of her father and other relatives, went to Pennagaram Police Station and made a complaint at 06.00 pm on 23.06.2012. P.W.9, the Special Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.279 of 2012 under Section 302 IPC., Ex.P-1 is the complaint and Ex.P-10 is the First Information Report. He forwarded both the documents to the Court, which were received by the learned Judicial Magistrate at 10.00 am on 24.06.2012.

4. P.W.11 took up the case for further investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of P.W.6 and another witness. He recovered blood stained earth and sample earth from the place of occurrence. On the same day, between 08.00 pm and 10.30 pm, he conducted inquest on the dead body of the deceased and forwarded the same for post-mortem. P.W.10, Dr.Ananthu, conducted autopsy on the body of the deceased on 24.06.2012 at 11.00 am. He found the following injuries:-

"External Injuries:-

1. 5x2 cm two cut injuries, backside of the head each.
2. 15x7 cm two cut injuries (incised wound) right arm upper each.
3. 10x5 cm incised wound, right shoulder,
4. 4x2 cm incised wound left side of forehead.
5. 4x2 cm incised wound lower jaw.
6. 8x5 cm incised wound left side of neck.
7. 3x3x3 cms stab injuries right side of collar bone.
8. Two incised wounds, right side of chest (10x4 cm) and (4x3 cm) of lower side of chest.
9. Two stab injuries 2x2 cm each over the right shoulder and backside of right shoulder.
10. Stab injuries 10x5 cm on right side shoulder (backside).

Internal Injuries:-

Sternum, Ribs - Normal, Heart - Normal, Lungs - Punctured lower edge right. Stomach contains about 200 gms of partially digested food. Liver - Punctured, spleen-Normal, Bladder-empty, Ext. genital-Normal, skull bone-intact, Brain-Hemorrhage seen, base of skull - normal."

5. Ex.P-10 is the post-mortem certificate. P.W.10, the Doctor, gave opinion that the death of the deceased was due to multiple injuries found on the body of the deceased. He gave a further opinion that the cut injuries on the deceased would have been caused by a weapon like spear (M.O.3).

6. P.W.11, during the course of investigation, arrested all the four accused at 02.00 pm on 24.06.2012. On such arrest, the first accused gave a voluntary confession, in which he had disclosed the place where he had hidden the motor-cycle and also the place where he had hidden the Veecharuval, Koduval and spear (M.Os.1 to 3). In pursuance of the same, he took the police and the witnesses to the place of hide out. On returning to the Police Station, he forwarded the accused for Judicial remand and also the material objects to the Court. He recovered the blood stained cloth from the body of the deceased and forwarded the same to the Court. At his request, the material objects were sent for chemical examination. On completing the investigation, he laid the charge sheet against the accused.

7. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same as false. In order to prove the case of the prosecution, on the side of the prosecution, as many as 11 witnesses were examined and 16 documents were exhibited, besides 12 material objects.

8. Out of the said witnesses, P.W.1, the wife of the deceased, has stated about the entire occurrence, including the individual overt-acts. P.W.2 is the father-in-law of the deceased. He has stated that on hearing the alarm raised by P.W.1, he rushed to the house of the deceased and witnessed the entire occurrence. P.W.3 is the mother-in-law of the deceased. She has also seen entire occurrence and has vividly spoken about the same. P.W.4 is the son of the deceased and at the time of occurrence he was hardly aged about 10 years. He is the child witness. He has stated that at the time of the occurrence, he was very much present at his house and he witnessed the entire occurrence. He has vividly spoken about the participation of all the four accused. P.W.5 is the minor daughter of the deceased. She was hardly aged 8 years, at the time of occurrence. She is also the child witness. She has stated that at the time of occurrence, she was very much present at her house. She has stated that she witnessed the entire occurrence. He has spoken about the individual overt-acts of the accused. P.W.6, the neighbour, has stated that he heard the alarm raised from the place of occurrence. He went to the place of occurrence and at that time, he found the accused 1 to 3 attacking the deceased and flying away from the place of occurrence, in a motorcycle. P.W.7 has spoken about the arrest of the accused, the confession of the first accused and the consequential recovery of the material objects. P.W.8 has spoken about the fact that he handed over the dead body of the deceased to the Doctor for post-mortem, as directed by P.W.11. P.W.9 has spoken about the registration of the case on the complaint of P.W.1. P.W.10 has spoken about the post-mortem conducted and the final opinion regarding the cause of

death. P.W.11 has spoken about the investigation done and the final report filed by them.

9. 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 witness nor mark any document on their side. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced them, as detailed in the first paragraph of this judgment. Aggrieved over the same, the accused / appellants are before this Court with this Criminal Appeal.

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

11. The learned counsel for the appellants would submit that, in this case, there is an inordinate delay in registering the case and in forwarding the First Information Report to the Court. He would further submit that this creates enormous doubt in the case of the prosecution.

12. In this regard, we have to state that, according to the case of the prosecution, the alleged occurrence happened at 03.00 pm on 23.06.2012, the First Information Report is stated to have been registered at 06.00 pm on 23.06.2012. The learned counsel for the appellants would submit that there is delay of three hours in this regard. But, we are not persuaded by the said argument. As seen from Ex.P-2, the distance between the Police Station and the place of occurrence is about 15.00 kms. P.W.1 is an illiterate poor village woman. A woman of such a stature cannot be expected to go the Police Station immediately, after the occurrence, as she may not know the importance of making the complaint immediately to the Police. She has stated that she took the help of others to go to the Police Station. In our considered view, absolutely there is no delay in lodging the complaint.

13. The learned counsel for the appellants would point out that the First Information Report has reached the hands of the learned Judicial Magistrate only on 10.00 am on 24.06.2012, for which, absolutely there is no explanation.

14. In this regard, to satisfy our judicial conscience, we perused the General Diary of Pennagaram Police Station. We permitted the learned counsel for the appellants also to go through the same. According to the entries in the said General Diary, the First Information Report, in the instant case, was registered only at 06.00 pm on 23.06.2012. It however reveals that at 07.00 am on 23.06.2012, all the policemen from the said Police Station were deputed for

bandobust duty, in connection with the examination held for selection to the post of Constables, at Dharmapuri. As per the General Diary, there were only two policemen in the police Station, from 07.00 am, on 23.06.2012. They were Mr.Bala Sundaram (P.W.9) and one Mr.Saravanan (Police Constable No.642). The General Diary further shows that, after the case was registered at 06.00 pm, at 06.40 pm, on 23.06.2012, P.W.9 handed over the Case Diary to Mr.Saravanan, Police Constable, with a direction to him to hand over the same to the Inspector of Police, so that the Inspector of Police would go to the place of occurrence, where the dead body was lying. Because he had sent Mr.Saravanan, according to the General Diary, P.W.9 alone remained in the Police Station. The entries in the General Diary further shows that, on the next day morning, i.e., on 24.06.2012, at 08.00 am, P.W.9 again deputed Mr.Saravanan to take the dead body for post-mortem. A perusal of the entries in the General Diary would go to show that there is no indication as to when Ex.P-1 and Ex.P-10 were sent to the Court. Taking advantage of this, the learned counsel for the appellants would submit that there is an inordinate delay in forwarding the First Information Report to the Court. But, we are not persuaded by the same, for the simple reason, that, as is seen in the General Diary, except P.W.9, there was nobody else available for him to send these documents to the Court immediately, as the only another policeman has been sent to the Inspector of Police, carrying the case diary. For want of men only, there had occurred a delay in forwarding the First Information Report to the Court. Thus, the primary argument of the learned counsel for the appellants on the ground of delay is rejected.

15. The learned counsel for the appellants would further submit that P.Ws.1 to 5 would not have witnessed the occurrence at all. We find no force at all in this argument. They are the natural witnesses, as the members of the family of the deceased. Their presence cannot be doubted. More particularly, the presence of the children, P.Ws.4 and 5, cannot be doubted. They have vividly spoken about the participation of the accused 1 to 3. Though they have spoken about the presence of the fourth accused, the trial court has acquitted the fourth accused, because chilly-powder was not found on the body of the deceased. Because the trial court has disbelieved these witnesses, as against the fourth accused, we cannot afford to reject their evidence in toto, because the principle "falsus in Uno, falsus in omnibus" has not been recognized by the Indian Courts. In the Indian scenario, if the Court is able to separate the grain from the chaff, there can be no legal impediment for the Court to act upon the said grain. In this case, the trial court has separated the grain, as against the accused 1 to 3 and has acted upon the same, in which we do not find any infirmity. The medical evidence also duly corroborates the eye-witness account.

16. The learned counsel for the appellants would submit that the first accused alone had caused all the injuries on the body of the deceased and caused his death and therefore, the others may be acquitted.

17. This argument was something surprising for us, because, this argument is based on an affidavit filed by the first accused before this Court. The affidavit was sworn before the Jailor, Central Prison, Vellore - 2, on 23.06.2015, and filed by the learned counsel for the appellants, Mr.R.Sankara Subbu, carrying his name in the docket of the affidavit. In the affidavit, the first accused has stated that he alone attacked the deceased and caused his death and the accused 2 and 3 had nothing to do with this occurrence. Referring to the same, the learned counsel for the appellants would submit that acting on the said affidavit of the first accused, the first accused may be convicted and the accused 2 and 3 may be acquitted. But we find it difficult to act on the said affidavit for more than one reason.

18. First of all, this affidavit cannot be treated as a confession, because it has not undergone the process, as laid down in Section 164 of the Cr.P.C., This cannot fall under any other provisions of the Indian Evidence Act, which declares the relevancy of the facts. The learned counsel for the appellants would further submit that this affidavit could be taken at least as a statement of the first accused. He further wanted us to examine the first accused again under Section 313 of the Cr.P.C., as he is prepared to admit his guilt.

19. This argument also does not persuade us, because it overlooks the legal position that this affidavit cannot be taken either as a piece of evidence or as a statement of the first accused under Section 313 of the Criminal Procedure Code. In effect, the same cannot have any evidentiary value. Assuming that the said statement can be taken into account by this Court, it can be taken into account only against the maker of the said affidavit, namely, the first accused, and the first accused cannot try to exonerate others by making the admission of his guilt. It is well settled that the confession of a co-accused can be used against others only for the limited purpose, as provided under Section 30 of the Indian Evidence Act, but, under the guise of admitting his guilt, the co-accused cannot exonerate the others. There is no provision of law, to our knowledge, that such exoneration can be made by the co-accused by admitting his guilt.

20. For these reasons, we hold that the affidavit of the first accused filed before this Court and the argument advanced by the learned counsel for the appellants, Mr. R. Sankara Subbu, on that basis, deserve only to be

rejected. We are bound to analyze the entire evidence in the case and to come to the conclusion, as to whether the prosecution has proved the guilt of each of the accused in the case. As we have already discussed elaborately, from the eye witnesses account of P.Ws.1 to 5, the prosecution has clearly proved the guilt of these appellants / accused.

21. The medical evidence would go to show that there were number of stab injuries and also cut injuries. According to the Doctor, the cut injuries could have been caused by Aruval and the stab injuries could have been caused by Spear. Thus, the medical evidence also duly corroborates the eye-witnesses account of P.Ws.1 to 5. From these evidences, undoubtedly, the prosecution has proved that, it was these three accused, who caused the death of the deceased.

22. Mr.R.Sankara Subbu, the learned counsel appearing for the appellants would further contend that the act of the accused would not amount to murder and it would be only culpable homicidal.

23. This argument also deserves to be rejected, because there is overwhelming evidence to prove the intention of the accused to cause the death of the deceased. The motive has been spoken by P.W.1 and other witnesses. When the deceased was sleeping in his house, these accused had gone there, trespassed into his house, dragged him out and attacked him indiscriminately, causing as many as ten injuries on his vital parts. From this, we can infer that the intention of the accused was only to cause the death of the deceased. The act of the accused would not fall under any of the exceptions to Section 300 IPC. Thus, the appellants are liable to be punished for the offence under Section 302 IPC only. The Trial Court has thus rightly convicted them under Section 302 IPC and imposed the minimum punishment.

24. In view of the foregoing discussions, we find no merit at all in this appeal. Therefore, this Criminal Appeal fails and accordingly, the same is dismissed. The conviction and sentence imposed on the accused / appellants are hereby confirmed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

srk

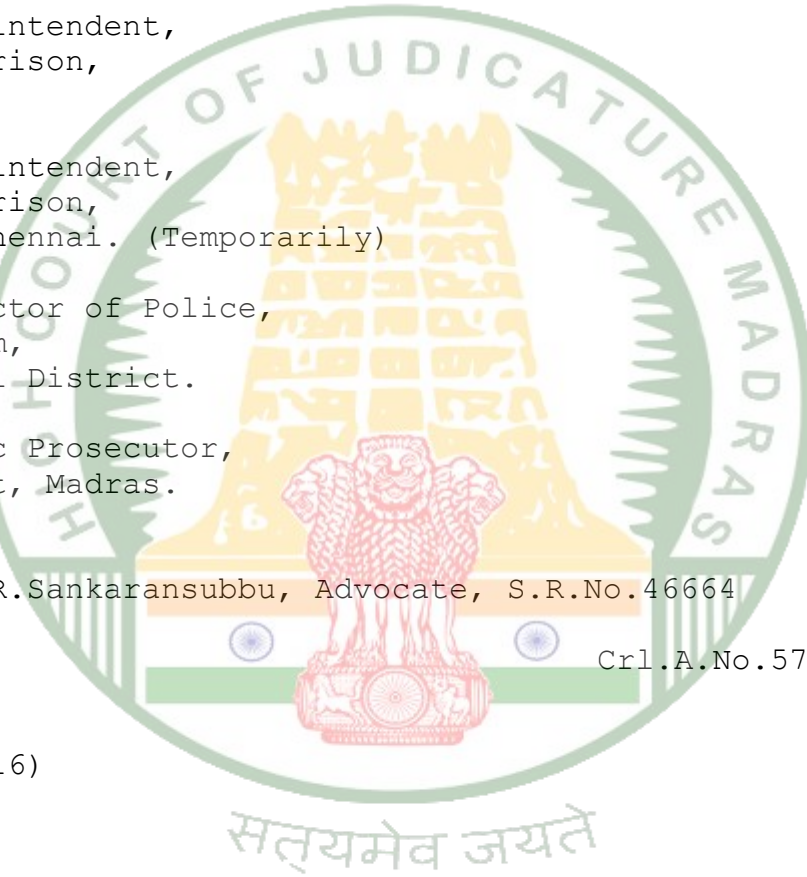
To

- 1.The Judicial Magistrate,
Pennagaram.
- 2.The Chief Judicial Magistrate,
Dharmapuri.
- 3.The Principal Sessions Court,
Dharmapuri.
- 4.The Superintendent,
Central Prison,
Vellore.
- 5.The Superintendent,
Central Prison,
Puzhal, Chennai. (Temporarily)
- 6.The Inspector of Police,
Ponnagaram,
Dharmapuri District.
- 7.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Sankaransubbu, Advocate, S.R.No.46664

CrI.A.No.577 of 2014

RP(CO)
CA(12/11/2016)



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