

BAIL SLIP

Appellants 1 & 2 in CrI.A.No.448 of 2011 (Accused 2 & 3 in S.C.No.7 of 2008 on the file of the III Additional Sessions Judge, Puducherry) were released on bail as per order of this Court dated 06.02.2012 in M.P.No.1 of 2012 in CrI.A.No.448 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.448 of 2011

1.S.Selvam

2.Alex @ Alexander

... Appellants/Accused 2 & 3

Vs

State of Puducherry rep. By
The Inspector of Police,
Villianur Police Station,
Puducherry,
Crime No.624/2004

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment of the learned III Additional Sessions Judge, Puducherry in S.C.No.7 of 2008 dated 18.04.2011.

For Appellant : Mr.N.R.Elango, Senior Counsel
for Mr.V.R.Balasubramaniam

For Respondent : Mr.V.Balamurugane
Additional Public Prosecutor,
(Puducherry)

JUDGEMENT

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

The appellants are the accused 2 and 3 in S.C.No.7 of 2008 on the file of the learned III Additional Sessions Judge, Puducherry. A.1 in this case was one Mr.Vinayagam (the appellant in CrI.A.No.105 of 2012). The trial Court framed two charges against all the three accused for offence under Sections 449, 302 I.P.C., r/w 34 I.P.C. By judgment dated

18.04.2011, the trial Court convicted all the three accused under Sections 449, 302 I.P.C., r/w 34 I.P.C., and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for three months for offence under Section 302 I.P.C., r/w 34 I.P.C., and sentenced all the three accused to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for three months for offence under Section 449 I.P.C., r/w 34 I.P.C. Challenging the said convictions and sentences, the appellants/accused 2 and 3 have come up with CrI.A.No.448 of 2011. A.1 came up with a separate appeal in CrI.A.No.105 of 2012. So far as CrI.A.No.105 of 2012 is concerned, since, A.1 died on 21.02.2014, the same has been dismissed as abated on 03.02.2016 by this Court.

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

The deceased in this case was one Mr.Chinnadurai. P.W.2 is the friend of the deceased. P.W.1 is the father of P.W.2. P.W.3 is the mother of the deceased. They belonged to G.N.Palayam Village. There was previous enmity between the deceased and the accused. On 07.11.2004, at about 2.30 pm, the deceased was playing caram board with P.W.2 at the house of P.W.1. P.W.1 was sitting at the entrance of the house. At that time, all the three accused came to the house of P.W.1 and asked P.W.2 about the whereabouts of Mr.Chinnadurai. P.W.2 told them that he was there in the house. The accused entered into the house and on finding him they shouted that they would not leave the deceased without cutting him. P.W.2 tried to prevent the accused from attacking the deceased. But, the accused do not stop. A.2 cut the deceased with an Aruval on his left wrist; A.3 cut the deceased with an Aruval on his head and A.1 stabbed the deceased with a sharp edged knife on his throat. A.1 tried to remove the knife but he could not succeed. Therefore, he abandoned the same. Then all the three accused fled away from the scene of occurrence. The deceased died on the spot. Thereafter, P.Ws.1 and 2 rushed to the police station where, P.W.1 made a complaint.

3.P.W.9 was the then Sub Inspector of Police at Villiyanur Police Station. He received the complaint from P.W.1 at about 4.45 pm on 07.11.2004 and registered a case in Crime No.624 of 2004 for offence under Sections 448, 302 I.P.C., r/w 34 I.P.C., against all the three accused. Ex.P.1 is the complaint and Ex.P.19 is the F.I.R. He forwarded both the documents to the Court and thereafter, handed over the case diary to P.W.13, the then Inspector of Police for investigation.

4.P.W.13, the then Inspector of Police took up the case for investigation and proceeded to the place of occurrence on the same day. P.W.13 prepared an observation mahazar and

rough sketch showing the place of occurrence in the presence of P.W.4 and another witness. He recovered sample earth and the blood stained earth from the place of occurrence and he also forwarded the same to Court. He made arrangements to take photographs of the place of occurrence. But, no clue was secured. Then he went to the Police Station and conducted inquest on the body of the deceased and forwarded the body for post mortem.

5. On 08.11.2004, P.W.5 - Dr.R.Balaraman, conducted autopsy on the body of the deceased and found the following injuries:-

"External Injuries

1. Incised wound 5 x ½ x bone deep present over mid occipital region of head.
2. Incised wound 3 x 1 x 1 cm over right shoulder with tailing in front
3. Penetrating wound 3 x 1cm x 4 cm over front of neck above supra sternal notch.
4. Incised wound 7 x 2 x 2cm over left fore arm exposing deep muscles and tenders
5. Incised wound 2 x ½ x ½ cm over dorsal aspect of middle phalanx of right middle fingers
6. Incised wound 11 x ½ x ½ cm over left axilla.
7. Linear abrasion 7 cm length over back of left shoulder.
8. Linear Abrasion 3 cm length over back of neck."

6. Ex.P.8 is the Post mortem certificate. P.W.5 gave opinion that the death was due to shock and hemorrhage due to the injuries. P.W.13 - the Inspector of Police, continued the investigation and collected the medical records of the deceased and also examined few more witnesses. On 13.11.2004 at about 3.30 am, he arrested all the three accused near Ariyur Bus Stop. On such arrest, A.1 gave a voluntary confession, in which, he disclosed the place where he had hidden a blood stained T-shirt. A.2 gave a voluntary confession, in which, he disclosed the place where he had hidden the Aruval. Lastly, A.3 gave a voluntary confession, in which, he disclosed the place where he had hidden the knife. In pursuance of the same, A.1 produced M.O.14 - blood stained T-shirt; A.2 produced M.O.18 - Aruval and A.3 produced M.O.19 - Aruval. Some more material objects were also recovered from there. All the three accused were sustained injuries in the said occurrence. P.W.13 collected Ex.P.30 - Wound Certificate pertaining to A.1, Ex.P.31 - Wound Certificate pertaining to A.2 and Ex.P.32 - Wound Certificate pertaining to A.3.

7. On returning to the Police Station, P.W.13 forwarded all the three accused for judicial remand and also handed over the Material Objects to the Court. Since, P.W.13 was transferred, he handed over the case diary to his successor (P.W.14) for further investigation. On completing investigation, finally, P.W.14 laid charge sheet against all the three accused for offence under Sections 449, 302 I.P.C., r/w 34 I.P.C.

8. Based on the above materials, the trial Court framed the charges as stated in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 14 witnesses were examined and 34 documents were exhibited, besides 22 Material Objects.

9. Out of the said witnesses, P.Ws.1 to 3 are the eye witnesses to the occurrence. They have vividly spoken about the same. P.W.4 has spoken about the observation mahazar. P.W.5 has spoken about the autopsy conducted by him on the body of the deceased and he also gave opinion regarding the cause of the death of the deceased. P.W.6 has spoken about the treatment given by him to the accused 1 to 3 on 07.11.2004 at 10.00 pm. P.W.7 has spoken about the photographs taken by him in the place of occurrence. P.Ws.8 & 10 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.9 has spoken about the registration of the case on the complaint of P.W.1. P.Ws.11 & 12 have spoken about the inquest conducted and P.Ws.13 & 14 have spoken about the investigation done by them and the final report filed by P.W.14.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. They did not choose to examine any of the witnesses on their side. However, 7 documents were exhibited on their side.

11. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced them as detained in the first paragraph of this judgment. Aggrieved over the same, the accused 2 and 3/appellants are before this Court with this appeal.

12. We have heard the learned Senior Counsel appearing for the accused 2 & 3/appellants and the learned Additional Public Prosecutor (Puducherry) appearing for the State and we have also perused the records carefully.

13. As we have already pointed out, P.Ws.1 & 2 are eye the witnesses to the occurrence. Though P.W.1 has stated in the chief examination about the individual overt acts of these

accused and though he has claimed that he witnessed the entire occurrence, during cross examination, he has given a go-by and he has stated that he did not know anything about the occurrence and he did not know about the contents of the complaint preferred by him. In a similar manner, though, P.W.2 has stated in his chief examination about the individual overt acts of these accused and though, he has claimed that he witnessed the entire occurrence, during cross examination, he has given a go-by and he has stated that he did not know anything about the occurrence.

14.The learned Additional Public Prosecutor (Puducherry) appearing for the State would submit that these two eye witnesses were examined in chief on 12.01.2010 but, they were cross examined by the defence only on 21.07.2010. Thus, according to the learned Additional Public Prosecutor (Puducherry), these witnesses have been cross examined long after the chief was over and therefore, the answers elicited during cross examination by the defence should not be given any weightage of.

15.But, we find it very difficult to persuade ourselves by the above submissions made by the learned Additional Public Prosecutor (Puducherry) for more than one reason. First of all, these witnesses have not been treated as hostile and cross examined by the Public Prosecutor so as to falsify the evidence spoken to by them during chief examination. The Public Prosecutor kept silent without seeking permission to cross examine these witnesses though these witnesses had shown total hostility. Thus, the answers elicited during cross examination remains un-challenged by the State. This is really unfortunate.

16.Assuming that the evidences collected during cross examination of these two witnesses are to be ignored even then, it is difficult to sustain the conviction imposed on the accused for the simple reason that, in the very same occurrence, all the three accused had sustained injuries but, no explanation whatsoever has been offered by P.Ws.1 and 2 in chief examination. Even the Investigating Officer had not collected any evidence to explain the injuries sustained by the accused. In an identical situation in (1976) 4 Supreme Court Cases 394, Lakshmi Singh and others vs. State of Bihar, the Hon'ble Supreme Court has held as follows:-

"In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences :

(1)that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version ;

(2)that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable ;

(3)that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."

17.Applying the said principle to the facts of the case, we have to hold that it is not safe to act on the evidence of P.Ws.1 & 2. Thus, P.Ws.1 & 2 who were not shown hostility during cross examination by stating that they do not know anything about the occurrence deserve to be disbelieved. Further, the prosecution witnesses have suppressed an important part of the occurrence by declining to explain the injuries sustained by the accused 1 to 3.

18.In such view of the matter, we hold that it is too difficult to act upon the evidence of P.Ws.1 & 2 that too in the absence of any other independent witness, so as to sustain the conviction imposed on the accused. In our considered view, the appellants are therefore, entitled for acquittal as the prosecution has failed to prove the case beyond reasonable doubt. Therefore, the appellants herein are entitled for acquittal.

19.In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the accused 2 & 3/appellants by the learned III Additional Sessions Judge, Puducherry, in S.C.No.7 of 2008, dated 18.04.2011, is set aside and the accused 2 & 3/appellants are acquitted. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the accused 2&3/appellants, shall stand discharged.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jbm

To

- 1.The Judicial Magistrate No.I,
Puducherry.
- 2.-Do- Through The Chief Judicial Magistrate,
Puducherry.
- 3.The III Additional Sessions Judge,
Puducherry.
- 4.-Do- Through The Principal Sessions Judge,
Puducherry.
- 5.The Inspector of Police,
Villianur Police Station,
Puducherry.
- 6.The Superintendent,
Central Prison,
Puducherry.
- 7.The District Collector,
Puducherry.
- 8.The Director General of Police,
Mylapore, Chennai 04.
- 9.The Section Officer,
Criminal Section,
High Court, Madras.
- 10.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Muniapparaj, Advocate, S.R.No.7133

+1cc to the Public Prosecutor, S.R.No.448

Cr1.A.No.448 of 2011

TEJ(CO)
CA(17/02/2016)