

BAIL SLIP

Crl.A.725 of 2011 : The Appellants 1, 2 and 4 i.e., Palani, Muniammal and Selvam in Crl.A.725 of 2011 (Accused 1, 2 and 4 in Sessions Case No.137 of 2007) were directed to be released on bail vide order of this Court, dated 14.02.2012 made in M.P.No.1 of 2011 in Crl.A.725 of 2011.

Crl.A.757 of 2011 : The Sole Appellant in Crl.A.757 of 2011 Sampath (3rd Accused in Sessions Case No.137 of 2007) was directed to be released on bail vide Order of this Court, dated 04.06.2012 made in Crl.M.P.1 of 2012 in Crl.A.757 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

AND

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

CRIMINAL APPEAL Nos. 725 and 757 of 2011

1.Palani

2.Muniammal

3.Sampath

4.Selvam

(3rd appellant -dismissed
as withdrawn vide
order dated 30.03.2012
by the Dn.Bench of this Court)

...Appellants in Crl.A.725/11
/Accused 1 to 4

Sampath

...Appellant in Crl.A.757/11
/Accused No.3

vs.

The State of Tamil Nadu
rep. by the Inspector of Police
Kadathur Police Station
Dharmapuri District
Crime No.5 of 2006

... Respondent in both appeals
/Complainant

Both Criminal Appeals are preferred under Section 374(2) Cr.P.C against the judgment of conviction and sentence passed by the learned Additional Sessions Judge, Fast Track Court, Dharmapuri, made in S.C.No.137 of 2007, dated 30.09.2011.

For Appellants : Mr.V.Nicholas
in Crl.A.No.725/2011

For Appellant : Mr.M.G.Udaya Shankar
in Crl.A.No.757/2011 for Ms.S.Shanthakumari

For Respondent : Mr.M.Maharaja
in both Appeals Additional Public Prosecutor

J U D G M E N T

(The judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellants are the accused Nos.1 to 4 in S.C. No.137 of 2007 on the file of the learned Additional Sessions Judge, Fast Track Court, Dharmapuri District. Crl.A.No.725 of 2011 was originally filed by all the four accused. During the pendency of the same, 3rd accused has filed an independent appeal in Crl.A.No.757 of 2011. Therefore, Crl.A.No.725 of 2011 was dismissed as withdrawn as against the 3rd appellant viz., Sampath, by giving liberty to him to prosecute Crl.A.No.757 of 2011.

2. The appellants/accused Nos.1 to 4 stood charged for the offences as detailed below:-

Sl.No.	Charge No.	Rank of Accused	Charged for the offence
1	Charge No.1	Accused Nos.3&4	U/s. 302 IPC
2	Charge No.2	Accused Nos.1&2	U/s. 302 r/w.34 IPC
3	Charge No.3	Accused Nos.1&2	U/s. 323 IPC

The Trial Court, by judgment dated 30.09.2011, convicted all the four accused and sentenced them as detailed below:-

Sl.No.	Rank of Accused	Conviction	Sentence
1	Accused Nos.3&4	U/s. 302 IPC	To undergo Imprisonment for Life and to pay a fine of Rs.1,000/- each, in default to undergo Simple Imprisonment for three months.

Sl.No.	Rank of Accused	Conviction	Sentence
2	Accused Nos.1&2	U/s.302 r/w. 34 IPC	To undergo Imprisonment for Life and to pay a fine of Rs.1,000/- each, in default to undergo Simple Imprisonment for three months.
3	Accused Nos.1&2	U/s. 323 IPC	No separate sentence was passed.

Challenging the said judgment of conviction and sentence dated 30.09.2011, the accused Nos.1 to 4 are before this Court with these appeals.

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

(i) The accused Nos.1 and 2 are husband and wife and accused Nos. 3 and 4 are their children. They were all residing at Mottankurichi Village in Dharmapuri District. The deceased in this case was one Gowrammal. There was a long standing enmity between the family of the deceased and the accused on account of a partition dispute. This is stated to be the motive for the occurrence on 16.01.2006 at about 9.00 a.m., at Mottankurichi Village.

(ii) P.W.1-Pachiyappan is the husband of the deceased. According to P.W.1, the deceased had taken water from the public Panchayat tap. The accused Nos. 1 to 4 were aggrieved over the same. They went near the water tap and indulged in quarrel with the deceased. P.W.1 at that time arrived at the scene of occurrence. In that quarrel, it is alleged that accused Nos.1 and 2 attacked the deceased with hands. The 3rd accused attacked the deceased with a granite stone, which was lying there. The stone hit on her chest. Then, the accused Nos.3 and 4 attacked her with stick also. The deceased fell down and fainted. Immediately, P.W.1 took her to Kadathur Hospital. One Dr.Chandrasekaran was present there. After examining the deceased, he advised P.W.1 to take her to some other hospital. Therefore, P.W.1 and others brought her to the Bus Stop at Kadathur, but, in the bus stop itself before the bus could arrive, the deceased breathe her last. From there, they took the deceased in an Ambulance to the Government Hospital at Dharmapuri. The Doctor in the said hospital kept her in the ambulance and gave intimation to the police.

(iii) On receiving the said intimation, P.W.11-Subramanian, the then Sub-Inspector of Police went to the hospital at 4.00 p.m. and recorded the statement of P.W.1. On returning to the

Police Station, he registered a case in Crime No.5 of 2006 for the offence under Section 302 IPC against all the four accused. Ex.P.6 is the First Information Report. Ex.P.1 is the complaint. He forwarded both the documents to Court and handed over the Case Diary to the Inspector of Police and on the same day, the 1st accused, who sustained injury in the very same occurrence, has also been admitted in the same hospital. P.W.11 recorded the statement from him and on returning to the Police Station, he registered a case on the said complaint in Crime No.6 of 2006 under Sections 323 and 324 IPC against the prosecution party. Ex.P.7 is the First Information Report. Then, he handed over the Case Diary of this case also to the Inspector of Police for investigation.

(iv) P.W.16-Krishnan, the then Inspector of Police, took up the case for investigation. At 6.00 a.m., on 17.01.2006, he visited the place of occurrence and prepared an Observation Mahazar (Ex.P.2) and a Rough Sketch (Ex.P.11). Then, he conducted inquest on the body of the deceased between 8.30 a.m. to 11.30 a.m. and forwarded the body for postmortem. P.W.12-Dr.Ramesh Babu conducted autopsy on the body of the deceased on 17.01.2006 at 12.15 p.m. He found the following injuries on the body of the deceased :-

"External injuries: No visible external injury except for an abrasion 3 x 2 cm in left side of chest.

Internal Examination: Neck: Hyoid Bone Intact. Chest: Blood clot of 5 x 5 cm below the manubrium and below the right side II and III ribs below the middle. Ribs: No fracture. Heart: All 4 chambers empty. Pericardium: About 200 ml of blood clot in pericardial cavity. Lungs: Pale. Abdomen: Stomach and Intestine - About 200 ml of brown colour liquid present. Kidney - Normal. Liver - Normal, Spleen- normal. Bladder - Empty. Uterus - Empty. Head - skull vault normal, Ball of skull-Normal, no fracture, Meninges-Intact, Brain Mother -Normal."

Ex.P.9 is the Postmortem Certificate. The Doctor gave final opinion that the deceased would appear to have died of shock and haemorrhage due to the injuries.

(v) P.W.16, the then Inspector of Police, in the course of investigation collected the blood-stained clothes from the body of the deceased. On 17.01.2006, at 3.00 p.m., he arrested the accused Nos.3 and 4 at Kethureddipatti Bus Stop in the presence of P.W.9-Nagarajan and another witness, by name, Vadivel. On such arrest, they gave independent voluntary confessions one after other. In pursuance of the same, P.W.16 recovered M.Os.1

and 2-Stone and Stick respectively. On returning to the Police Station, he forwarded the accused Nos.3 and 4 to the Court and handed over the Material Objects also to the Court. Then, he handed over the Case Diary to the successor for further investigation.

(vi) P.W.17-Gopal, the then Inspector of Police, conducted further investigation. He conducted investigation in the case in Crime No.6 of 2006 and referred the same as "mistake of fact". Ex.P.13 is the Final Report in the said case. So far as the present case in Cr.No.5 of 2006 is concerned, on completing the investigation, he laid chargesheet against the accused Nos. 1 to 4 on 30.05.2006.

(vii) Based on the above materials, the Trial Court framed the charges as detailed in the paragraph No.1 of this judgment. The appellants/accused Nos.1 to 4 denied the same as false. During the trial, in order to prove the case of the prosecution, on the side of the prosecution as many as 17 witnesses were examined and 13 documents and 5 material objects were exhibited. Out of the said witnesses, P.Ws. 1 to 5 are the eye witnesses to the occurrence. P.W.1 is the husband and P.Ws. 2 and 5 are the sons and P.Ws. 3 and 4 are the daughters of the deceased. They have stated about the individual overt acts of the accused Nos. 1 to 4. P.W.6-Madhu, who is a neighbour, has turned hostile and he has not supported the case of the prosecution in any manner. P.W.7-Tamilraj has spoken about the motive. P.W.8-Dr.Chandrasekaran has stated that the deceased was brought to him to his private clinic, but, he did not examine her at all. P.W.9-Nagarajan, the Village Administrative Officer, has spoken about the arrest of the accused Nos.3 and 4 and the confession statements said to have been given by them and the consequential recovery of M.Os. 1 and 2-Stone and Stick respectively. P.W.10-Dr.Tamilarasan has spoken about the treatment given to the 1st accused. According to him, the 1st accused appeared before him at the Government Hospital, Dharmapuri, on 16.01.2006 at 11.20 a.m. The 1st accused told him that he was attacked by four known persons near his house on 16.01.2006 at 9.00 a.m. with stones and hand. P.W.10-Dr.Tamilarasan found the following injuries on the 1st accused :-

"1.Laceration on lower left leg 3 cm x 3 cm x 2 cm.

2.Fracture on both bones of lower left leg.

3.Abrasion left knee anterior 2 cm x 2 cm."

P.W.10 took x-ray and found that there were two fractures on the left leg. He gave opinion that the injury Nos. 1 and 3 were simple and injury No.2 was grievous one. He had further opined that the said injuries could have been caused by hands and stones at the time and manner alleged by the 1st accused. P.W.11-

Subramanian, the then Sub-Inspector of Police has spoken about the registration of the case in Cr.No.5 of 2006 on the complaint of P.W.1 and registration of yet another case in Cr.No.6 of 2006 on the complaint of 1st accused. P.W.12-Dr.Ramesh Babu has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.13-Krishnan has stated that he took the deceased in the Ambulance from the bus stand to the Government Hospital at Dharmapuri. P.W.14-Ramamorthy has stated that he carried the First Information Report in both the cases and handed over the same to the Magistrate. P.W.15-Sankaralingam, the then Head Constable, has stated that he forwarded the dead body for the purpose of postmortem. P.Ws.16 and 17, the then Inspector of Police, have spoken about the investigation done and the final report filed.

(viii) When the appellants/accused Nos.1 to 4 were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, they denied the same as false. On their side, they examined two witnesses as D.Ws. 1 and 2. D.W.1-Lakshmanan is the son-in-law of the 1st accused. He has stated that the accused Nos.3 and 4 were also taken to the Police Station from their house and the so called arrest of the accused Nos.3 and 4 as stated by P.W.16, the then Inspector of Police, is not correct. D.W.2-Sivaji has spoken about the attack made on the 1st accused by the prosecution party. Having considered all the above, the Trial Court found the appellants/accused Nos.1 to 4 guilty and convicted them accordingly. That is how, the appellants/accused Nos.1 to 4 are now before this Court with these appeals.

4. We have heard Mr.V.Nicholas, learned counsel appearing for the appellants in CrI.A.No.725 of 2011; Mr.M.G.Udaya Shankar, learned counsel appearing for the appellant in CrI.A.No.757 of 2011; and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

5. It is the admitted case that there was a long standing enmity between the family of the accused and that of the deceased. In this case, there was no independent witness to speak about the occurrence at all. The occurrence has taken place in a public place and there were independent witnesses present. The prosecution relies only on the evidence of the family members of the deceased. As we have already pointed out, P.W.1 is the husband and P.Ws. 2 to 5 are the children of the deceased. Thus, P.Ws. 1 to 5 are interested as well as inimical witnesses. It is settled law that if the witnesses are interested and inimical, they should pass the test of close scrutiny. In

this case, admittedly, the 1st accused sustained three injuries, out of which, one was a grievous injury and he has suffered two fractures in his left leg. But, P.Ws. 1 to 5 have not explained the said injuries at all. They have stated that when one of the accused threw stone that hit the 1st accused. This is too big a story to be believed. Because there is no such acceptable explanation offered in respect of the grievous injury sustained by the 1st accused, the evidences of P.Ws. 1 to 5, who are inimical witnesses, become doubtful.

6. In (1976) 4 Supreme Court Cases 394, Lakshmi Singh and others vs. State of Bihar, in an identical situation, the Hon'ble Supreme Court has held in paragraph No.12 as follows:-

"12.....It seems to us that 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."

Applying the said principle to the facts of the present case, we have to hold that the prosecution has not come forward with the true version. The prosecution witnesses have suppressed an important part of the occurrence by declining to explain the injuries sustained by the 1st accused.

7. In such view of the matter, we hold that it is too difficult to act upon the evidence of P.Ws.1 to 5, that too, in the absence of any other independent witness, so as to sustain the conviction. In our considered view, the appellants/accused Nos.1 to 4 are, therefore, entitled for acquittal, as the prosecution has failed to prove the case beyond reasonable doubt.

8. In the result,

- i. these Appeals are allowed and the conviction and sentence imposed on the appellants by the Trial Court in S.C.No.137 of 2007, dated 30.09.2011, are set aside and the appellants/accused Nos.1 to 4 are acquitted;

- ii.The fine amount, if any paid, shall be refunded to them.
iii.The bail bond, if any executed by the appellants/accused Nos.1 to 4 , shall stand discharged.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

paa

To

- 1.The Additional Sessions Judge,
Fast Track Court,
Dharmapuri.
- 2.Do Through The Principal Sessions Judge,
Dharmapuri.
- 3.The Judicial Magistrate No.II,
Dharmapuri.
- 4.Do The Chief Judicial Magistrate,
Dharmapuri.
- 5.The Inspector of Police,
Kadathur Police Station,
Dharmapuri District.
- 6.The Superintendent,
Central Prison, Vellore.
- 7.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Nicholas, Advocate, S.R.No.7824

+1cc to Mr.S.Shanthakumari, Advocate, S.R.No.8368

CRIMINAL APPEAL Nos. 725 and 757 of 2011

GJ(CO)
CA(08/03/2016)