

BAIL SLIP

That the Appellants/Accused 1.Manivannan @ Kamal @ Kamaluddin and 2.Vignesh @ Vigneshwaran were directed to be released on bail as per the order of this Court dated 5.06.2015 in CrI.MP.No.1/2015 in CrI.A.No.153 /2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2016

CORAM:

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

Criminal Appeal No.153 of 2015

1. Manivannan @ Kamal @ Kamaluddin
2. Vignesh @ Vigneshwaran .. Appellants/ A-2 & A-3

Vs

State, Rep. By,
Inspector of Police,
Panruti Police Station,
Panruti .. Respondent / complainant

Prayer:- Criminal Appeal filed under Section 374 of the Criminal Procedure Code, praying to set-aside the conviction imposed in the judgment, dated 30.01.2015, made in S.C.No.97 of 2014 on the file of the learned Principal Sessions Judge, Cuddalore, by allowing this Criminal Appeal.

For Appellants : Mr. V.C.Janardhanan, Legal Aid Counsel
For Respondent : Mr. M.Maharaja,
Additional Public Prosecutor

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J U D G E M E N T

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

The appellants are accused 2 and 3 in S.C.No.97 of 2014 on the file of the learned Sessions Judge, Cuddalore Division, Cuddalore. The first accused, in this case, was Mr.Udaya @ Udayaprakash. Since he was a juvenile, the case against him was split up, for being dealt with by the Juvenile Justice Board, Cuddalore. The appellants herein were tried by the trial court.

They stood charged for the offence under Section 302 IPC.

2. By judgment, dated 30.01.2015, the trial Court convicted them under Section 302 IPC and sentenced them to undergo Imprisonment for life and to pay a fine of Rs.2,000/-, in default, to undergo Rigorous Imprisonment for three years. Challenging the said conviction and sentence, 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.Dhakshinamurthy. He was running a provisional shop, on the front portion of the house at L.N.Puram at Panruti. It is alleged that one week prior to the occurrence, the deceased, in a night, had closed the shop and he was sleeping on a cot, in front of the shop. At that time, the accused 1 and 2 came, woke him up and wanted him to open the shop and give cigarettes. The deceased refused to open the shop. The first accused (juvenile) and the second accused shouted at him and went away. This is stated to be the motive for the occurrence.

4. On 16.04.2013, after closing his shop, the deceased was sleeping in front of the shop, on a cot. It is alleged that on account of the above motive, all the three accused came in a motor cycle bearing Registration No.PY01-AH-2085. The said motorcycle belonged to the uncle of the third accused. They came to the shop of the deceased, parked the motorcycle and tried to wake up the deceased to purchase cigarettes from him. The deceased told them that, since he had closed down the business for the day, he could not open the door. This resulted in a quarrel. The deceased, without getting-up from the cot, shouted at the accused. This infuriated the accused. All the three accused then took out one casurina stick each, lying near the place of occurrence and attacked the deceased indiscriminately. The deceased died on the spot. The accused fled away from the scene of occurrence, abandoning the dead body. The occurrence was not witnessed by anybody.

5. P.W.1, the son of the deceased, found the deadbody of the deceased on 17.04.2013 around 06.00 am. He immediately went to the Panruti Police Station and made a complaint at 06.30 am. P.W.10, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.339 of 2013 under Section 302 IPC. Ex.P-9 is the First Information Report. He forwarded Ex.P-1 and Ex.P-9 to the Court, which were received by the learned Magistrate at 09.30 am on 17.04.2013.

6. P.W.11 took out 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.4 and another witness. He conducted inquest on the body of the deceased and forwarded the same for postmortem. P.W.8 conducted autopsy on the body of the deceased on the same day. He found the following injuries:-

"External Appearance: Eyes closed mouth closed tongue inside, teeth intact, bleeding from nostrils bleeding from right ear.

External injuries: Generating organs Normal
1. Laceration 7x0.5 cm over right temporal region.
2. Laceration 7x1 cm right front parental region.
3. Nasal Cartilage broken. 4. Around 1 liter of blood clotted around the head.

Internal Exam. No. # ribs, heart congested, lungs pale, stomach empty, intestines distended with gas. Bladder empty, skull 0.5x0.5 cm depressed fracture + over right temporal bone, linear # 7 cms on the fronto parietal bone right clotted blood seen over the surface of the brain. Spinal cord intact PM conducted at 3.50 PM. Time of death 10 to 14 hours prior to PM."

7. Ex.P-5 is the postmortem certificate and Ex.P-6 is his final opinion regarding the cause of death. He gave opinion that the death of the deceased was caused due to shock and hemorrhage caused on account of the injuries found on the body of the deceased.

8. During the course of investigation, on 20.04.2013, P.W.11 arrested all the three accused in the presence of P.W.5 and another witness. But no discovery of new fact was made out on that confession. On completing investigation, he laid charge sheet against the accused.

9. 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 14 documents were exhibited, besides marking 13 material objects.

10. Out of the said witnesses, P.Ws.1, 2 and 3, who are the son, neighbour and daughter of the deceased, have stated that the deceased was found lying dead around 06.00 am on 17.04.2013. P.W.1 has spoken about the complaint made by him to the Police. P.W.4 has spoken about the preparation of the observation mahazar and the rough sketch at the place of occurrence and the recovery of material objects. P.W.5 has spoken about the arrest

of the third accused on 24.04.2013. He has further stated about the recovery of motorcycle, PY01-AH-0285, (M.O.13) from the accused. P.W.6 has stated that on 16.04.2013, around 11.00 pm, he found all the three accused going in the motorcycle on the Madras Road at Panruti. P.W.7 has stated that on 16.04.2013 around 11.00 pm, he found the deceased sleeping on a cot in front of the shop. He has further stated that these three accused were shouted on the deceased. P.W.8 has spoken about the postmortem conducted and the final opinion regarding the cause of death of the deceased. P.W.9 has spoken about the photographs taken at the place of occurrence. P.W.10 has spoken about the registration of the case on the basis of the complaint made by P.W.1. P.W.11 has spoken about the investigation done and the final report laid.

11. 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 marked any document, on their side. Having considered all the above, the trial Court found the accused guilty under the said charge and accordingly, sentenced them as detailed in the first paragraph of this judgment. Aggrieved over the same, the appellants are before this Court with this Criminal Appeal.

12. 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.

13. This is a case based on circumstantial evidence. The prosecution has succeeded in establishing that the deceased was sleeping on the night of 16.04.2013 and he was found dead around 06.00 am on 17.04.2013. According to the medical evidence, the death of the deceased was due to injuries found on the body of the deceased. Thus, the prosecution has proved that the deceased was done to death sometime during the night intervening 16.04.2013 and 17.04.2013.

14. In order to prove that the injuries on the deceased was caused by this accused, along with the juvenile delinquent, the prosecution relies only on the evidence of P.Ws.6 and 7. As we have already narrated, P.W.6 has stated that, on 16.04.2013 around 11.00 pm, he found all the three accused going in the motor cycle on the Madras Road at Panruti. He has further stated that he found the accused parking motorcycle near the shop of the deceased. P.W.7 has stated that he found these three accused engaged in wordy quarrel with the deceased. But during the cross-examination, P.W.7 has stated that he did not disclose about the occurrence to anybody, including the family members of the deceased, until he was examined by the Police. P.W.6 has also stated so. Had it been true that these witnesses had seen the accused, at or about the crucial time, at the place

of occurrence, quite naturally they would have told the same to the family members or others, who had gathered at the scene of occurrence at 06.00 am on 17.04.2013. But they did not disclose anything at that time to anyone. They have admitted that they have disclosed the said fact, for the first time, only when he was examined by the police. This conduct of P.Ws.6 and 7 let their evidence doubtful. Assuming that these evidences can be considered, since there are doubts in their credibility, in the absence of any other corroboration from any other independent source, in our considered view, it would not be safe to sustain the conviction. Therefore, we find it difficult to sustain the judgment passed by the trial court. In such view of the matter, we are inclined to acquit all the accused. Therefore, we hold that the prosecution has failed to prove the case beyond all reasonable doubts and therefore, the appellants are entitled for acquittal.

15. In the result, this Criminal Appeal is allowed and the conviction and sentenced imposed on the appellants / A-2 and A-3 by the learned Sessions Judge, Cuddalore Division, Cuddalore, in SC.No.97 of 2014, by the judgment, dated 30.01.2015, are hereby set-aside. The appellants are acquitted of all the charges levelled against them and they are directed to be set at liberty, forthwith, unless their presence is required in connection with any other case. Fine amount, if any, paid by the appellants, shall be refunded to them. Bail bond, if any, shall stand discharged.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

srk

To

1.The Judicial magistrate No.I Panruti

2.do-Thro The Chief Judicial Magistrate
Cuddalore

3.The principal Sessions Judge,
Cuddalore Division,
Cuddalore

4.The Superintendent
Central prison Cuddalore

5.The Inspector of Police
Panruti Police Station Panruti

6.The District Collector
Cuddalore

7.The Director General of Police
Mylapore Chennai 4

8. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.RC Paul Kanagaraj Advocate sr.37220

Crl.A.No.153 of 2015

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