

Bail Slip

That the Appellant 2&3 herein/Accused 2&3 namely Perumal S/o. Muthu Gounder (A2) & Kunjupayyan @ Maharajan S/o. Perumal (A3) were direction to be released bail as per order dated 06.07.2015 made in MP No.1/15 in CrI.A.No.164/15 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.164 of 2015

1.Govindaraj
2.Perumal
3.Kunjupayyan @ Maharajan ... Appellants/Accuse No.1 to 3

-Vs-

State of Tamilnadu
Represented by Inspector of Police
Tholasampaty Police Station
Salem District Respondent/Complainant
(Crime No.202/2011)

This Criminal Appeal has been preferred to set aside the conviction and sentence imposed by judgment dated 27.02.2015 made in S.C.No.130 of 2014 on the file of the II Additional District and Sessions Judge, Salem, by allowing this appeal.

For Appellant : Mr.M.Devaraj

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G 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.130 of 2014 on the file of II Additional Sessions Judge, Salem. The first accused stood charged for offences under Sections 120-B and 302

IPC and Accused 2 and 3 stood charged for offences under Sections 120-B, 342 and 302 r/w 34 IPC. By judgment dated 27.02.2015, the Trial Court convicted all the accused as detailed below:-

Accused	Section of law	Sentence
A.1 to A.3	120-B	Simple imprisonment for six months
A.1	302 I.P.C.	To undergo Life Imprisonment and to pay a fine of Rs.15,000/- and in default to undergo simple Imprisonment for six months
A.2 and A.3	342 I.P.C.	Simple Imprisonment for six months each
A.2 and A.3	302 r/w 34 I.P.C.	To undergo Life Imprisonment and to pay a fine of Rs.15,000/- each and in default to undergo simple Imprisonment for six months

Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

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

The deceased in this case was one Mr.Palanivel. His wife was one Mrs.Susheela. It is alleged that during the year 2010, the first accused had developed illicit intimacy with Mrs.Susheela. This came to the knowledge of the deceased Palanivel. He reprimanded both the first accused and the deceased. Aggrieved over the same, it is alleged that Mrs.Susheela committed suicide. The deceased Palanivel was under the impression that his wife committed suicide because of the activities of the first accused. Thus, he had developed grudges against the first accused.

3. On 27.05.2010, it is alleged that the deceased Palanivel cut the first accused with aruval; caused injuries and also caused extensive damages to the looms of the first accused. On a complaint made by the first accused, a criminal case was registered against the deceased Palanivel and in connection with the same, he was arrested and remanded to custody. He then came out on bail. 20 days prior to 10.11.2011, the deceased shouted at the first accused and warned him to withdraw the criminal case against him, in which he was arrested. Since the first

accused declined, the deceased challenged that one day or the other, he would do away with the first accused. The first accused was thus apprehensive that he would be done to death by the deceased. Therefore, along with Accused 2 and 3 one week prior to 10.11.2011, at the house of the first accused, all the three accused sat together and conspired to do away with the deceased. The second accused is the father and the third accused is the brother of the first accused. It is further alleged that on 10.11.2011 at about 5.p.m., the deceased was returning from the field towards his house carrying the cattle field. P.Ws.1 and 2 were following him carrying the cattle field. When they were nearing the house of one Muthu, these three accused suddenly emerged there from the hide out. On reaching the deceased Palanivel, the accused pushed him down and after the deceased had fallen down, it is alleged that the second accused held the legs and the third accused held the hands of the deceased. The first accused took out the aruval and cut the deceased indiscriminately. The deceased died on the spot. P.Ws.1 and 2 witnessed the occurrence. The accused fled away from the scene of occurrence.

4. P.W.1 went to Tholasampatty Police Station and made a complaint at 6.00 p.m. on 10.11.2011. P.W.11, the then Sub-Inspector of Police, on receipt of the said complaint registered a case in Crime No.202 of 2011 under Sections 342 and 302 IPC against all the three accused. Ex.P15 is the FIR. He forwarded both the documents Ex.P1 - Complaint and Ex.P15 - FIR to the Court, which were received by the learned Magistrate at 10.00 p.m. on 10.11.2011.

5. The case was taken up for investigation by P.W.12. He went to the place of occurrence on 10.11.2011 at 7.30 p.m. Since it was dark, he did not immediately prepare Observation Mahazar and Rough Sketch. He conducted inquest on the body of the deceased in the presence of few witnesses and forwarded the same to the hospital for post-mortem.

6. P.W.10 - Dr.G.Panneerselvam conducted autopsy on the body of the deceased on 13.11.2011 at 10.25 a.m. He found the following injuries:-

- "Abrasion Dark Reddish Brown in colour over 1. Outer aspect of lower 3rd of Rt side Lt M 4 x 3 cms
- 2.Abrasion two in no's over lower aspect of Lt side mandibular region M 2.5 x 0.5 cms, 2x1 cms
- 3.Abrasion 3 in No's over front of upper part of Rt side shoulder M 2x0.5 cms, 0.75x5 cms, 0.5 x 0.5 cms
- 4.An incised wound over Rt supra scapular region

M 3 x 0.25 x 0.25 cms

5. An oblique chapped cut injury over Rt side occipital region extending upto Rt side cheek, through Rt middle ear lobe, M 20x3x cm deep with underlying bone shows cut fracture, brain matter exposed, it is situated 160 cms above Rt foot and 36 cms above the glabella

6. Cut injury over upper part of Rt side of neck M 9 x 7 cms with severance of trachea, Rt upper part of sterno mastoid muscles, cut fracture of C4 Trachea, Rt upper part of sterno mastoid muscles, cut fracture of C4 vertebrae and surrounding para vertebral muscles severed. It is situated 7 cms below midchin and 8 cms above supra sternal notch and 11.5 cms below Rt Mastoid process.

7. An incised wound M 5x2.5x cm muscle deep. It is situated 3.5 cms above mid clavicular region.

8. A transverse incised wound seen over outer aspect of upper part of Lt side neck M 4 x 2.5 x cm muscle deep. It is situated 3.5 cms above previous injury.

9. An incised laceration over Rt side supraclavicular region M 2.5 x 1x 1 x cms. It is situated 0.75 cms above Rt mid clavicular region.

In all cut injuries, edges regular with acute margin "

Ex.P12 is the post-mortem certificate. He gave opinion that the injuries 1 to 3, which were abrasions could have been caused by fall on the ground. The injuries 4 to 9 could have been caused by a weapon like M.O.1 - Aruval.

7. Continuing the investigation, P.W.12 went to the place of occurrence at 6.00 a.m. on 11.11.2011 and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.4 and another witness. Then he recovered the blood stained earth and sample earth from the place of occurrence. He examined few more witnesses. On 11.11.2011 at 9.00 a.m., near Ammankovilpatti bus stand, he arrested the Accused 1 and 2 in the presence of P.W.5 - the Village Administrative Officer and another witness. On such arrest, the first accused gave voluntary confession, in which, he disclosed the place, where he had hidden the blood stained cloth and Koduval. In pursuance of the same, he took the police and witnesses to the place of hide out and produced M.O.1 Koduval, a blood stained shirt and a lungi. The second accused also produced a blood stained shirt and a dhoti. P.W.12 recovered all these Material Objects under two different Mahazars.

8. On returning to the Police Station, he forwarded the accused to the Court and handed over the Material Objects also to the Court. On 12.11.2011, he arrested the third accused in the presence of P.W.5 and another witness. On such arrest, he disclosed the place, where he had hidden the lungi and shirt. In pursuance of the same, he took the Police and the witness to the place of hide out and produced the lungi and shirt. P.W.12 recovered all these Material Objects under a Mahazar. On returning to the Police Station, he forwarded the third accused to the Court and handed over the Material Objects also to the Court. Since P.W.12 was transferred, the investigation was taken up by his successor - P.W.13. P.W.13 made a request to the Court to forward the Material Objects for chemical examination. The report revealed that there were blood stains on all the material objects including M.O.1 -Koduval. On completing the investigation, he laid charge sheet against all the accused.

9. Based on the above materials, the trial Court framed charges against all the accused as detailed in the first paragraph of this judgment. They denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 13 witnesses were examined and 22 documents were exhibited; besides 13 material objects were marked.

10. Out of the said witnesses, P.Ws.1 and 2 are the eye witness to the occurrence, who have vividly spoken about the entire occurrence. P.W.1 has also spoken about the complaint made by her to the Police. P.W.3 has spoken only on the hearsay information that the deceased had been done to death. P.W.4 has spoken about the preparation of Observation Mahazar, Rough sketch, recovery of blood stained earth and other material objects from the place of occurrence. P.W.5 has spoken about the arrest of all the three accused; their voluntary disclosure statements and the consequential recovery of material objects. P.W.6 has spoken about the photographs taken at the place of occurrence. P.W.7 - the Constable, has stated that he handed over the Material Objects to the Forensic Lab for examination. P.W.8 has stated that he handed over the dead body to the hospital for post-mortem. P.W.9 has stated that he handed over the FIR and the complaint to the learned Judicial Magistrate at 10.00 p.m. on 10.11.2011. P.W.10 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.11 has spoken about the registration of the case and the complaint of P.W.1. P.Ws.12 and 13 have spoken about the investigation done and the final report filed.

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 chose to examine any witness on their side. Their defence was a total denial.

12. Having considered all the above, the trial Court convicted all the three accused as detailed in the first paragraph of this judgment and that is how the appellants are before this Court with this appeal.

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

14. The learned counsel for the appellant would submit that there was enormous delay in preferring the complaint to the Police and also in forwarding the FIR to the Court. According to the learned counsel, this delay at both the ends creates doubt in the case of the prosecution. The learned counsel would further submit that P.Ws.1 and 2 have stated that the deceased did not have meal at all, whereas, the Doctor has stated that there was undigested food in the stomach of the deceased. Thus, according to the learned counsel for the appellants, P.Ws.1 and 2 would not have accompanied the deceased at all. The learned counsel would further submit that P.Ws.1 and 2 have stated that only two cuts were made by the accused, whereas, according to the Doctor, there were 9 cut injuries. Thus, according to the learned counsel for the appellants, the medical evidence does not corroborate the eye witness account of P.Ws.1 and 2. The learned counsel would further submit that P.W.2 has stated that M.O.1 was shown to him at the place of occurrence by the Police. When that be so, according to him, recovery of M.O.1 on the disclosure statement allegedly made by the first accused cannot be true. The learned counsel would conclude his argument stating that there are enormous doubts in the case of the prosecution and therefore, the accused should be acquitted.

15. The learned Additional Public Prosecutor would however vehemently oppose this appeal. According to him, the presence of P.Ws.1 and 2 at the place of occurrence was quite natural and the same cannot be doubted. He would submit that P.Ws.1 and 2 have vividly spoken about the entire occurrence and there are no reasons to doubt their credibility. He would also submit that the medical evidence also duly corroborate the eye witness account. So far as the delay in FIR is concerned, the learned Additional Public Prosecutor would submit that virtually, there was no delay either in preferring the complaint or forwarding the same to the Court. He would further submit that the other discrepancies pointed out by the learned counsel for the appellants are immaterial. He would conclude his argument stating that the well considered judgment of the Trial Court

does not need interference at the hands of this Court.

16. We have considered the above submissions.

17. As we have already pointed out, the prosecution relies on the eye witness of P.Ws.1 and 2. The learned counsel for the appellants dispute the very presence of P.Ws.1 and 2 at the place of occurrence. We find no force in the said argument at all. P.Ws.1 and 2 had accompanied the deceased from their field to their house. All the three were carrying cattle field. It was only when they were nearing the house of Muthu, all the three accused suddenly emerged from the hide out and attacked the deceased. Thus, we do not find any reason to doubt the presence of P.Ws.1 and 2 at the place of occurrence.

18. Simply because, we believe that P.Ws.1 and 2 were present at the time of occurrence, it cannot be concluded that whatever spoken by P.Ws.1 and 2 are gospel truth. In their evidence, they have stated that on reaching the deceased, all the three accused pushed the deceased down. After the deceased had fallen, the second accused held the legs and the third accused held the hands of the deceased. Then the first accused cut the deceased indiscriminately. This part of the evidence against the accused 2 and 3, in our considered view, cannot be believed. This doubt is because of various reasons. First of all, the entire men folk of the house of the accused, namely 1 to 3 have been implicated in the case. The motive between the two families is so strong that on an earlier occasion, the deceased had attacked the first accused with aruval, which resulted in a criminal case. The death of the wife of the deceased was yet another cause for motive. Thus, P.Ws.1 and 2 are not independent witnesses. They are motivated witnesses. There is no independent witness examined by the prosecution to corroborate the evidences of P.Ws.1 and 2. Next, going by the number of injuries found on the body of the deceased and their location, in our considered view, these many number of injuries could not have been caused by the first accused when the deceased was allegedly held by accused 2 and 3. Apart from that, as rightly contended by the learned counsel for the appellants, there is delay in preferring the complaint. P.Ws.1 and 2 have admitted that the distance between the Police Station and the place of occurrence is only 5 minutes walk. But the FIR was registered only at 6.00 p.m. Why it took one hour for them to make complaint has not been explained away. Similarly, FIR has reached the hands of the judicial magistrate after four hours. This delay also has not been explained away. In our considered view, this delay was because, there should have been deliberation among P.Ws.1 and 2 with their men as to the persons against whom the complaint should be made. This also creates

doubt in the veracity of P.Ws.1 and 2 as against Accused 2 and 3. For all these reasons, it is doubtful that Accused 2 and 3 would have participated in the occurrence. In view of the same, we are inclined to acquit Accused 2 and 3.

19. Now turning to the case against the first accused, P.Ws.1 and 2 have vividly stated that it was the first accused, who caused the death of the deceased by cutting him indiscriminately. Simply because, we have rejected the evidences of P.Ws.1 and 2 as against the Accused 2 and 3, it cannot be said that the evidence of P.Ws.1 and 2 should be rejected in toto. The principle "Falsus in uno falsus in omnibus", has not been recognised by Indian Courts. It is the settled law of this Country that if the Court is able to separate the grain from the chaff, there can be no legal impediment to act upon the grain. Here in the case on hand, we are of the considered view that the grain is easily separable. We have found reasons to reject the evidences of P.Ws.1 and 2 only as against Accused 2 and 3. But we find no reason to reject their evidences as against the first accused. The evidence against the first accused, which is the grain, can be easily separated and we are inclined to act upon the same.

20. The learned counsel for the appellants would submit that there is no corroboration drawn from the medical evidence. It is well founded on the fact that P.Ws.1 and 2 have spoken only about two cuts made by the first accused, whereas, there are 9 cut injuries on the body of the deceased. In our considered view, so much of stress cannot be given to this part of the evidence of P.Ws.1 and 2. In our considered view, in that perplexed mood, P.Ws.1 and 2 would not have noticed and counted the number of injuries caused by the first accused on the deceased, as it is projected by the learned counsel for the appellants. So far as the recovery of M.O.1 is concerned, of course, it is stated by P.W.2 that M.O.1 was shown at the place of occurrence by the Police, but he has not stated that it was shown at the place of occurrence when the dead body was lying. P.W.2 do not even know to subscribe his signature. Such a village illiterate cannot be expected to say meticulously as to the time and place, where M.O.1 was shown to him. Therefore, the evidence given by P.W.2 that M.O.1 was shown to him at the place of occurrence cannot be construed as though, it was shown on the date of occurrence itself. Therefore, this argument is also rejected. From the evidence of P.Ws.1 and 2, coupled with the medical evidence, we hold that the prosecution has proved beyond any reasonable doubt that it was the first accused who cut the deceased, caused number of injuries, which resulted in his death.

21. The said act of the first accused would squarely fall within the first limb of Section 300 IPC and therefore, he is liable to be punished for the offence under Section 302 IPC. For having restrained the deceased, who was proceeding to his house, the first accused is liable to be punished for the offence under Section 342 IPC also. So far as the offence under Section 120-B is concerned, the first accused is entitled for acquittal, as there is no evidence that there was any such conspiracy between all the three accused.

22. Now turning to the quantum of punishment, the Trial Court has imposed only minimum punishment for both offence, which do not require any interference at the hands of this Court.

23. In the result, the appeal is partly allowed in the following terms:-

i) The conviction and sentence imposed on the first accused for offences under Sections 302 and 342 IPC are confirmed. The conviction and sentence imposed on the first accused for the offence under Section 120-B IPC is set aside and he is acquitted from the said charge.

ii) The conviction and sentence imposed on the accused 2 and 3 are set aside and they are acquitted of all charges. Fine amount, if any, paid by them, shall be refunded to them. Bail bond, if any, shall stand discharged.

iii) It is directed that the sentences imposed herein on the first accused would run concurrently and the period of sentence already undergone by the first accused shall be given set off, as required under Section 428 Cr.P.C.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

svki

To

1. The Inspector of Police
Tholasampaty Police Station
Salem District

2.The II Additional District and Sessions Judge,
Salem.

3.-Do-Thro'The Principal District and Sessions Judge,
Salem.

4.The Judicial Magistrate, Omalur.

5.The Cheif Judicial Magistrate, salem.

6.The Superintendent,
Central Priosn, Salem.

7.The District Collector, Salem.

8.The Director General of Police,
Mylapore, Chennai 4.

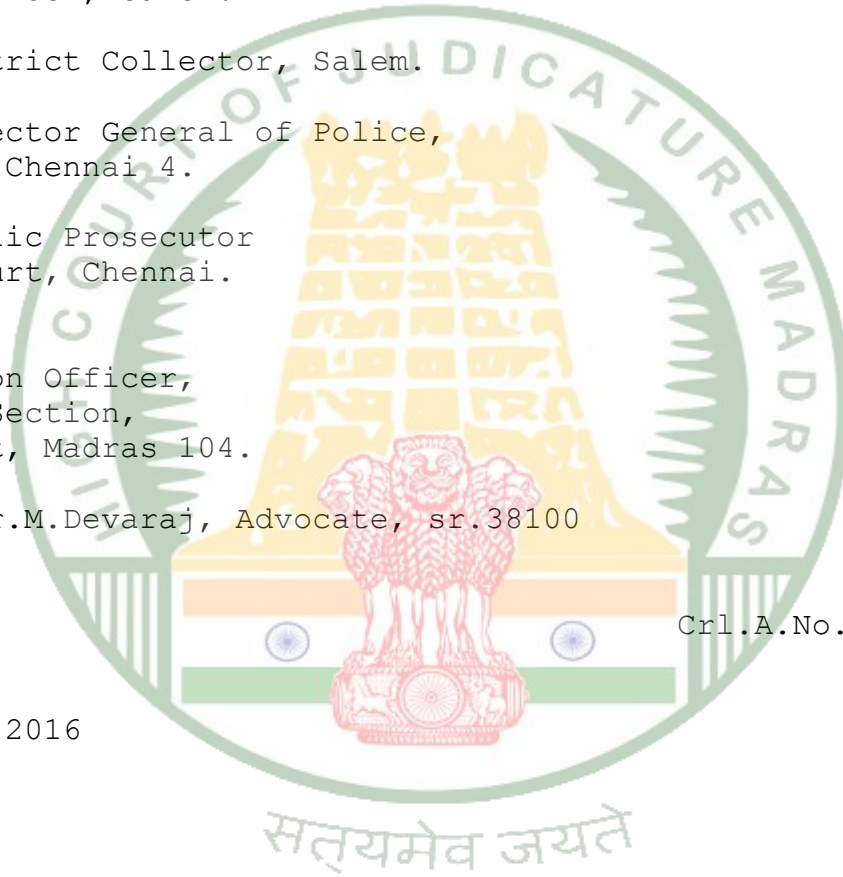
9.The Public Prosecutor
High Court, Chennai.

Copy to:
The Section Officer,
Criminal Section,
High Court, Madras 104.

1 cc to Mr.M.Devaraj, Advocate, sr.38100

Crl.A.No.164 of 2015

rj co
kra 29.07.2016



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