

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.351 of 2015

1. Srinivasan
2. Murali
1 and 2

... Appellants/Accused

Vs

State by
The Inspector of Police,
R.K.Pet Police Station,
Tirutani.

... Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned I Additional Sessions Judge, Thiruvallur, made in S.C.No.151 of 2011, dated 17.04.2015.

For 1st Appellant : Mr.B.Thirumalai,
Legal Aid Counsel
For 2nd Appellant : Mr.A.Raghunathan,
Senior Counsel
for M/s.M.Rajavelu
For Respondent : Mr.M.Maharaja,
Addl. 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 and 2 in S.C.No.151 of 2011 on the file of the learned I Additional Sessions Judge, Tiruvallur. The 1st accused stood charged for offences under Sections 449, 452, 324, 302 and 506(ii) of IPC and the 2nd accused stood charged for offences under Sections 449, 452, 324 read with 34, 302 and 506(ii) of IPC. By judgment dated 17.04.2015, the trial court convicted both the accused and sentenced them as detailed below :

Rank of the Accused	Conviction	sentence
A1 & A2	Convicted under sections 449 IPC	Sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/- each, in default, to undergo simple imprisonment for 3 years.
	Convicted u/s.452 of IPC	Sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/- each, in default, to undergo simple imprisonment for 3 years.
	Convicted u/s.324 IPC	Sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/- each, in default, to undergo simple imprisonment for 3 years.
	Convicted u/s.506 IPC	Sentenced to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/- each, in default, to undergo simple imprisonment for 3 years.
	Convicted u/s.302 of IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- each, in default, to undergo simple imprisonment for 6 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 follow:

(a) The deceased in this case was one Mr.Gurunathan. The sister of the 1st accused by name Sumathi was given in marriage to the deceased. The deceased and Mrs.Sumathi were living together as husband and wife for some time in Perambur, Chennai. Later, there arose some misunderstanding between them. Therefore, they were living separately. Sumathi had returned to her parental home. After persuasion, Sumathi was again taken back to the matrimonial home. That time onwards, Sumathi was living with the deceased at R.K.Pet,, Thiruvallur District.

(b) P.W.1 is the father of the deceased. It is stated that on 24.04.2008 at 07.30 p.m., these two accused came in a motorcycle to the house of the deceased. They were talking to the deceased about the matrimonial dispute. Suddenly, it is stated that the 1st accused took up an iron rod and attacked the deceased and the 2nd accused took up a knife and stabbed the deceased. When Sumathi intervened, the 1st accused attacked her

also with iron rod on her head. Both the deceased and Sumathi fell down in a pool of blood. Both the accused ran away from the scene of occurrence. The occurrence was witnessed by P.W.1. He raised alarm which attracted the neighbours including P.W.2. They took the deceased and Sumathi to the Government Hospital at Sholingar.

(c) P.W.13 Doctor Saravanan examined the deceased and Sumathi. He found injuries on both of them. He made entries in Accident Register. Ex.P.19 is the Accident Register relating to Sumathi and Ex.P.20 is the Accident Register relating to the deceased.

(d) P.W.1 then went to R.K.Pet Police Station and preferred a complaint at 09.00 p.m. on 24.04.2008. P.W.15, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.106 of 2008 under Sections 324 and 307 of IPC. Ex.P.21 is the First Information Report. He forwarded both the documents to court which were received by the learned Magistrate at 06.00 a.m. on 25.04.2016. He received intimation from the hospital that the deceased died in the hospital. Therefore, he altered the case into one under Section 302 of IPC. Then, he proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.2 and another witness. He recovered an iron rod and a knife lying near the place of occurrence vide M.Os.1 and 2. Then, on going over to the hospital at Vellore, he conducted inquest on the body of the deceased between 9.00 a.m. and 11.00 a.m. Then, he forwarded the body for postmortem.

(e) P.W.12 Dr.R.Vasanthamurthy conducted autopsy on the body of the deceased on 25.04.2008 at 03.15 p.m. He found the following injuries:

'Moderately nourished body of a male. Eyes closed. Mucous membranes of mouth, lips and tongue pale.

Abrasions : Linear abraded contusion over dorsum of left hand 2 x 1 c.m.

Contusion: Left cheek of size 5 x 4c.m. Left hand on the dorsum of size 6 x 4 c.m.

Laceration:

Dorsum of right hand of size 1 x 0.5 x 0.5 c.m.

O/D. Fracture of third metacarpal present.

Centre of frontal region of scalp of size 5 x 2 x 1 c.m.

Right side of forehead of size 5 x 2 x 1 c.m. Medial to the previous injury another laceration of size 3 x 2 x 1 c.m.

Vertex region of scalp of size 7 x 1 x 1 c.m.

Occipital region of scalp of size 6 x 1 x 1 c.m.

Left side of parietal region of scalp of size 2 x

1 x 0.5 c.m.

Over chin of size 5 x 2 x 1 c.m.. Lower, central and lateral incisors on the rig dislocated from the sockets.

O/D

Sub-scalp haematoma of size 12 x 4 c.m. extending over left fronto-parietal and occipital region of scalp.

Linear fracture of skull extending from left side of frontal bone to left parietal and to left side of occipital bone.

Brain :

1. Subdural haematoma of 8 x 5 x 2 c.m over the temporo-parietal lobes of both sides present.

2. Diffuse sub arachnoid hemorrhage seen over the parietal region of both sides and occipital lobe.

Other findings:

Hyoid Bone : Intact

Larynx and Trachea : Contained mucous froths, mucosa pale. All vital midline structures of neck were intact. NAD.

Lungs : Both lungs normal. C/S.pale.

Heart : Normal in size, Great vessels normal, Coronary vessels patent. Coronary ostia were normal. All chambers empty.

Stomach : Normal. C/s.150 gms of partially digested food particles present. Mucosa pale.

Small Intestine : Contained yellowish chyme with bile stained fluid. No specific characteristic smell perceived. Mucosa pale.

Large Intestine : Distended with gas.

Liver, Spleen, Kidney : On cut section found pale.

Gall Bladder : Contained bile. Pancreas - C/s. Pale.

Bladder : Empty.

On other internal organs : On cross section found pale."

Ex.P.17 is the Postmortem Certificate and Ex.P.18 is the final opinion report. He opined that the death of the deceased was due to shock and hemorrhage due to the injuries found on the dead body.

(f) P.W.16 then recovered the blood stained clothes from the body and forwarded the same to the court. On 26.04.2008 at 06.00 a.m., he arrested the 1st accused in the presence of P.W.4 and another witness. On such arrest, he gave a voluntary confession out of which P.W.16 recovered the Motorcycle bearing Registration No.TN 23 N 6412 (M.O.8). Then, out of the said disclosure statement, the 1st accused produced blood stained clothes (M.Os.3 to 5). P.W.16 recovered the same under a Mahazar. Then, at 08.15 p.m., he arrested the 2nd accused in

the presence of the same witnesses. On such arrest, he gave a voluntary confession in which he disclosed the place where he had hidden a blood stained shirt. P.W.10 recovered the same in pursuance of the said voluntary confession. P.W.16 forwarded the material objects to court and produced the accused before the learned Magistrate for judicial remand. At his request, the material objects were sent for chemical examination. The report revealed that there were human blood found on all the material objects except the knife and the shirt. Thereafter, the investigation was continued by P.W.17 and on completing the investigation, he laid charge sheet against the accused.

3. Based on the above, the trial court framed charges against the accused as detailed in the first paragraph of the judgment. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as we have already pointed out, 17 witnesses were examined and 36 documents and 8 material objects were also marked.

4. Out of the said witnesses, P.W.1 the father of the deceased has stated that the 1st accused attacked the deceased both with iron rod as well as knife. He has further stated that the 2nd accused also attacked him both with iron rod and knife. P.W.2 has stated that on 24.04.2008, these two accused came in a motorcycle to the house of the deceased. He has further stated that he heard the alarm raised from the house of the deceased and he went to the house of the deceased. He found these two accused were moving away from the place of occurrence. P.W.3 is yet another neighbour. He has stated that he came to the place of occurrence on hearing the alarm raised. P.W.4 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.5 has stated that on 24.04.2008, he found these two accused going in a motorcycle. P.W.6 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence and the recovery of the material objects. P.W.7 has also spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. P.W.8 has stated that both the accused were arrested together near Sumathi Paradise Theatre on 26.04.2008. He has also spoken about the recovery of the material objects on the basis of the confession statements of both the accused. P.W.9 has spoken about the same facts. P.W.10 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.11 has stated that she examined the material objects and found that there were human blood found on all the material objects excluding the knife and the shirt. P.W.12 has stated about the postmortem conducted by him and his final opinion regarding cause of death. P.W.13 has spoken about the treatment given to Sumathi and the deceased in the Government Hospital, Sholingar. P.W.14 has stated that he took the dead body of the deceased and handed over the same to the doctor for

postmortem. P.W.15 has spoken about the registration of the case on the complaint of P.W.1. P.Ws.16 and 17 have spoken about the investigation done and the final report filed.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. On their side, 3 witnesses were examined as D.Ws.1 to 3. D.W.1 has stated that on the day of occurrence, when he went to the house of the deceased, the deceased accidentally fell down and his head came into contact with the floor and sustained injury. He has further stated that he took the deceased and admitted him in Sholingar Hospital. D.W.2 has also stated the same facts. D.W.3 yet another neighbour has also stated so. According to the defence, in the Accident Register, it has been mentioned that the deceased had fallen and sustained injury. Having considered all the above, the Trial Court convicted the accused 1 and 2/appellants herein as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellants are before this Court.

6. We have heard Mr.B.Thirumalai, the learned Legal Aid Counsel for the 1st appellant/1st accused and Mr.A.Raghunathan, the learned Senior Counsel for the 2nd appellant/2nd accused and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. There is no denial of the fact that the deceased and his wife Sumathi were in their house. There was also some misunderstanding between Sumathi and the deceased. It is stated that these two accused came to the house of the deceased and when they were talking for some time, suddenly, the 1st accused took out an iron rod and attacked the deceased and the 2nd accused took out a knife and stabbed the deceased. When Sumathi intervened, the 1st accused attacked her also with iron rod. Though Sumathi could not be examined as she died some time before by committing suicide, in order to prove the actual occurrence, the prosecution, therefore, has to rely only on the evidence of P.W.1.

8. P.W.1 was examined in chief on 12.01.2012. In the chief examination, he said that both the accused, attacked the deceased with knife as well as iron rod. For the reasons best known to the prosecutor, he made an appeal to the trial court to postpone the further examination of the said witness. Thus, considering the request of the learned Additional Public Prosecutor, the examination of this witness was stopped. The witness was again recalled on 28.01.2012. On that day, this witness made some more improvement. This time, he said that the 1st accused attacked the deceased both with iron rod and knife. Similarly, the 2nd accused also attacked the deceased with iron rod and knife. On both the occasions, he has not stated

anything about the injuries caused on Sumathi. Thus, the evidence of this witness even in chief examination is not in tune with the charges. Further, in chief examination itself, P.W.1 has stated that he knew the names of both the accused. But, in the complaint which was given at 09.00 p.m. on 24.08.2010, he has mentioned the name of the 1st accused alone. He has further stated that the other assailant was an identifiable person whose name was not known to him. Had it been true that the 2nd accused was the other assailant, certainly, he would have mentioned his name in Ex.P.1. This doubt in the evidence of P.W.1 has not been explained away. The other witnesses have stated that they saw these two accused going in the motorcycle. These evidences, in our considered view, would not in any manner go to conclusively prove that it was these accused, who caused the death of the deceased. The motive for the occurrence has also not been proved by the prosecution. The First Information Report had reached the hands of the learned Magistrate only at 06.00 a.m. on 25.04.2008, that was after the demise of the deceased. There is no explanation for the same also. Thus, there are lot of doubts in the case of the prosecution and therefore, in our considered view, it is not safe to sustain the conviction of the accused on the evidence of P.W.1 and the other evidences about which we have made elaborate discussion hereinabove. Therefore, we hold that the prosecution has failed to prove the case beyond all reasonable doubts and therefore, the appellants are entitled for acquittal.

9. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants by the trial court are set aside and they are acquitted. The bail bonds, if any, executed by the appellants, shall stand cancelled. The fine amount, if any, paid by the accused, shall be refunded to the respective accused.

10. While parting with the case, we appreciate the services rendered by Mr.B.Thirumalai, the learned Counsel, who appeared on behalf of the 1st appellant/1st accused as Legal Aid Counsel. The Legal Services Authority is requested to pay his remuneration.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Inspector of Police,
R.K.Pet Police Station,
Tirutani.
2. The I Additional Sessions Judge,
Thiruvallur.
- 3.The Public Prosecutor,
High Court, Chennai.

4.The Superintendent
Central Prison, Puzhal Chennai

5.The Secretary
Legal Service Authority
High Court, Madras

6.The District Collector
Triuvallur

7.The Director General of Police
Mylapore
Chennai-4

8.The Section Officer
Criminal Section
High Court, Madras

9.The Judicial Magistrate
Tiruthani

10.The Chief Judicial Magistrate
Thiruvallur

11.The Principal District & Sessions Judge
Tiruvallur

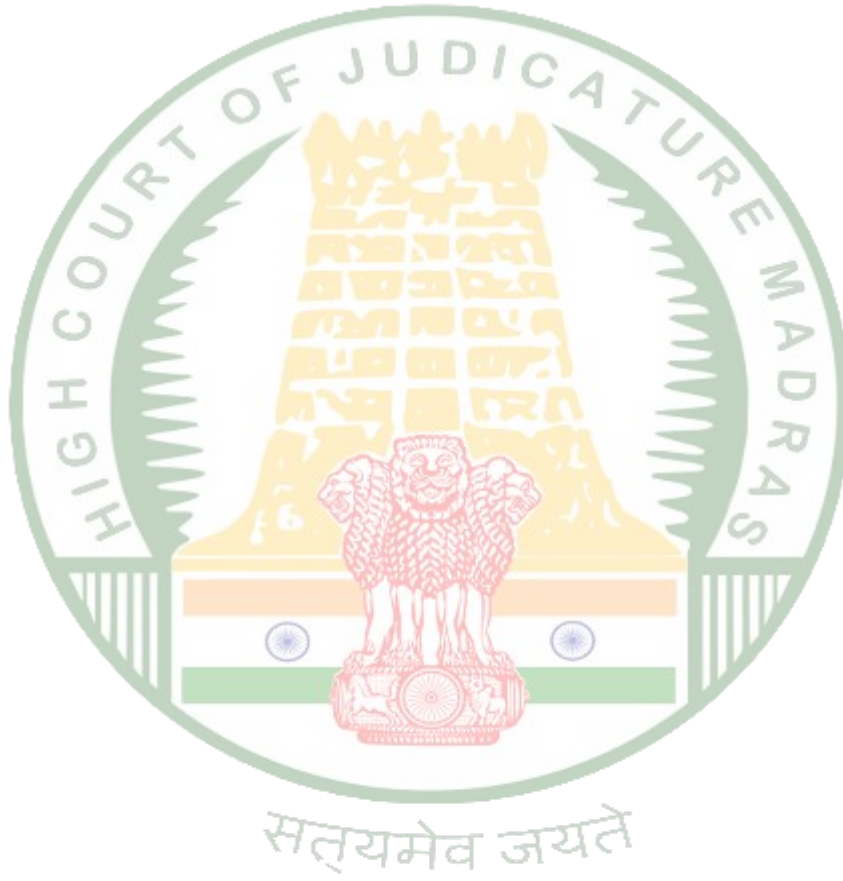
+1 cc to M/s.M.Rasavelu Advocate sr 40523

+1 cc to M/s.B.Thirumalai Legal Aid Counsel sr 40119

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