

Bail Slip

The Appellant/Accused, Namely Murugesan, S/o.Thiyagarajan, was directed to be Released on Bail as per the Order of this Court Dated 09/07/15 in MP.NO.1/15 IN CRL.A.NO.354/2015.

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.354 of 2015

Murugesan

.. Appellant/Accused No.1

-vs-

State Rep.by
Inspector of Police,
Kilvellur Police Station,
Nagapattinam District.

.. Respondent/Complainant

This Criminal Appeal has been preferred under Section 374(2) Cr.PC. praying to set aside the conviction and sentence imposed vide judgment dated 13.04.2015 made in S.C.No.74 of 2012 on the file of the District and Sessions Judge, Nagapattinam, by allowing this appeal.

For Appellant : Mr.R.John Sathyan for
Mr.M.Govindaraju

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 appellant is the first accused in S.C.No.74 of 2012 on the file of the learned District and Sessions Judge,

Nagapattinam. There were two other accused, by name, Vaithialingam and Thiyaagarajan, who were arrayed as Accused 2 and 3. During the pendency of the trial, the third accused died and thus, charges against him stood abated. The Trial Court framed as many as three charges. The first charge was against the first accused under Section 302 IPC; the second charge was against the second accused under Section 302 r/w 34 IPC and the third charge was under Section 324 IPC against the second accused. By judgment dated 13.04.2015, the Trial Court convicted the first accused under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for two years. Similarly, the Trial Court convicted the second accused under Section 324 IPC and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for six months. The Trial Court acquitted them from the other charges. Challenging the said conviction and sentence, the first accused alone has come up with this appeal.

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

The deceased in this case was one Mr. Sakthivel. Accused 1 and 2 are the sons of the third accused. Some time before the occurrence, it is alleged that the second accused had eve-teased the sister of the deceased. The deceased informed the same to the villagers. The second accused felt humiliated and defamed by the same. Because of this, the second accused had developed grudges against the deceased. This is stated to be the motive for the occurrence. It is alleged that on account of the above enmity, on 26.09.2011, at about 9.30 p.m., when the deceased was standing near the Srinivasapuram Government Toilet, all the three accused came there. The first accused was armed with suluki (a pointed long instrument made of iron). With that suluki, he stabbed the deceased once on his abdomen. In the course of the same transaction, it is stated that the second accused stabbed P.W.1 with a knife and caused simple hurt. It is also the case that the third accused stabbed P.Ws.1 and 2 with knife. Then all the three accused fled away from the scene of occurrence. The deceased and P.Ws.1 and 2 were taken to the Government Hospital at Tiruvarur. All the three were admitted as inpatient.

3. On getting intimation from the hospital, P.W.6, the then Special Sub-Inspector of Police, went to the Government Hospital, Tiruvarur and recorded the statement of P.W.1 and on returning to the Police Station registered a case in Crime No 602 of 2011 under Sections 324 and 307 IPC against all the three accused. Ex.P6 is the FIR. He forwarded both the documents viz., Complaint [Ex.P1] and FIR [Ex.P6] to the Court, which were received by the learned Magistrate at 10.30 a.m., on 28.09.2011.

4. The case was taken up for investigation by P.W.11. He proceeded to the place of occurrence at 3.45 p.m. on 27.09.2011 and in the presence of P.W.4 and another witness prepared an Observation Mahazar and a Rough Sketch. Then, he examined the witnesses present there and recorded their statements. On 28.09.2011, at 6.00 a.m., at Thevur Bazaar, he arrested all the three accused in the presence of P.W.5 and another witness. On such arrest, the first accused gave voluntary confession, in which, he disclosed the place, where he had hidden the suluki and the knife. In pursuance of the said disclosure statement, he took the police and witness to the place of hide out and produced the instruments. P.W.11 recovered the same under a Mahazar. On returning to the Police Station, he forwarded the accused to the Court and also handed over the Material Objects to the Court.

5. In the mean while, the deceased was taken to Thanjavur Medical College Hospital, where he underwent treatment. On 25.11.2011 at 9.00 a.m, he died in the hospital. On getting intimation from the hospital, P.W.11 altered the case into one under Section 302 IPC. The alteration report is Ex.P14. Then on going over to the hospital, he conducted inquest on the body of the deceased and forwarded the same for post-mortem.

6. P.W.10 - Dr.Rajkumar conducted autopsy on the body of the deceased. He found the following injuries:

- "1.Laperotomy sutured lacerated seen over abdomen 14cm above the umbilicus, 11 cm below the umbilicus.
- 2.Sutured lacerated wound seen over right iliac fossa (11cmx5cm)
- 3.Sutured lacerated wound seen over left iliac fossa.
- 4.Healed wound seen over right side abdomen about 10 cm
- 5.Fracture present left wrist. (both bone)
- 6.Healed abrasions present of sizes (3x0.5cm), (5x0.5cm) over left forearm.
- 7.Healed abrasion of (3cm x 2 cm) over left abdomen.
- 8.Healed incised wound over right ala of nose about 4 cm."

Ex.P11 is the post-mortem certificate. He gave opinion that the death of the deceased was due to shock and haemorrhage due to the injuries. He opined that the said injury could have been caused by a weapon like suluki. He further gave opinion that the lacerated injuries could have been caused by fall.

7. P.W.11 recovered the blood stained cloth from the body of the deceased. On completing the investigation, he laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed charges against accused 1 and 2 as detailed in the first para 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 11 witnesses were examined; 15 documents were exhibited, besides 2 Material Objects viz., M.O.1 Knife and M.O.2 - suluki were marked.

9. Out of the said witnesses, P.Ws.1 and 2 are the injured eye witnesses. P.W.3 claimed to have witnessed the entire occurrence. They have stated that the first accused stabbed the deceased on his abdomen once with suluki (M.O.2). They have further stated that the second accused stabbed P.W.1 once and the third accused stabbed P.W.2 once with knife. P.W.1 has spoken about the complaint made by him when he was undergoing treatment in the hospital. P.W.4 has spoken about the preparation of observation mahazar and rough sketch. P.W.5 has spoken about the arrest of the accused and the confession made by the first accused and the consequential recovery of M.Os.1 and 2 on his disclosure statement. P.W.6 has spoken about the registration of the case and the complaint of P.W.1. P.W.7 has stated that he took the dead body and handed over the same to the doctor for post-mortem. P.W.8 has stated that she gave death intimation to P.W.7 after the demise of the deceased. P.W.9 has spoken about the treatment given to P.Ws.1 and 2 and the deceased at the Government Hospital, Tiruvarur. According to him, P.W.1 has sustained a lacerated injury measuring 1 x 1 x 1 cms on the left scapula. So far as P.W.2 is concerned, according to him, he found a lacerated injury measuring 1 x 1 x 1 cm near the left armpit. He further stated that these injuries could have been caused with a knife. 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 investigation done and the final report filed in this case.

10. 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 on their side nor marked any document in their favour. Their defence was a total denial.

11. Having considered all the above, the trial Court convicted the accused 1 and 2. Aggrieved over the same, A.1/appellant alone is before this Court with this appeal.

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

13. The learned counsel for the appellant would submit that Ex.P1 complaint would not have come into being at 9.00 p.m on 27.09.2011, as it is claimed by the prosecution. In order to substantiate his contention, the learned counsel pointed out that the FIR reached the learned Magistrate only at 10.30 a.m. on the next day, that was on 28.09.2011. We find force in the said argument. Absolutely, there is no explanation for the said delay. This, in our considered view, creates initial doubt about Ex.P1. But on this score, we do not intend to acquit the accused.

14. The learned counsel would further submit that the medical evidence is quite contrary to the evidence of P.Ws.1 to 3. We find some force in the said argument. According to P.Ws.1 to 3, the deceased was stabbed only once by the appellant/first accused with suluki. But P.W.10, who conducted autopsy had found as many as eight injuries on the body of the deceased. As a matter of fact, there were four stab injuries, all long size on the abdomen. There is no evidence that all these four injuries could have been caused by a single stab. The fifth injury is a fracture in both bones on the left wrist. Absolutely, there is no account for this injury. It is not the case that any of the accused attacked the deceased on his left wrist with any weapon, more particularly, a blunt object. Injuries 6 and 7 are abrasions. It may be true that these two injuries could have been caused due to fall on the ground. The 8th injury is again a lacerated injury near the nose. This injury has also not been explained away. Absolutely, all the consequential injuries corresponding to the external injuries would also go to show that the medical evidence does not corroborate the eye witness account and instead, it contradicts the eye witness account. Coupled with the delay in the FIR reaching the Court and if this material contradiction between the medical evidence and eye witness account is taken into account, we are of the view that the prosecution has not come forward with clean hands. P.Ws.1 and 2 claimed that they have sustained injuries. On that score, only their presence cannot be doubted. However, the veracity of their evidence is doubtful.

15. In such view of the mater, we hold that the conviction imposed on the first appellant is liable to be set aside.

16. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/A.1 by the learned District and Sessions Judge, Nagapattinam, in S.C.No.74 of 2012 by the judgment dated 13.04.2015 are hereby set aside.

The appellant/A.1 is acquitted of the charges levelled against him and he is directed to be set at liberty, forthwith, unless his presence is required in connection with any other case. Fine amount, if any, paid by the appellant, shall be refunded to him. Bail bond, if any, shall stand discharged.

svki

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

- 1.The Inspector of Police,
Kilveller Police Station,
Nagapattinam District.
- 2.The District and Sessions Judge,
Nagapattinam.
3. The Judicial Magistrate No.I, Nagapattinam.
4. -do- thro The Chief Judicial Magistrate, Nagapattinam.
5. The Superintendent, Central Prison, Cuddalore.
6. The District Collector, Cuddalore.
7. The Director General of Police, Mylapore, Chennai-4.
8. The Public Prosecutor, High Court, Chennai.
- + 1 cc to Mr.M.Govindaraju, Advocate Sr 11181

COPY TO :- The Section Officer, Criminal Section,
High Court, Madras.

KR/2/8/16

Crl.A.No.354 of 2015

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