

Bail Slip

That the accused 2.Ramesh @ Pragalathan, S/O Subramanian, 2.Udhhayan @ Udayakumar S/o Periyasamy, were directed to be released on bail on this Court order dated 15/10/2015 in M.P.No.1/2015 in Crl.A.512/2015 on the file of this Court.

That the Accused Prabhu @ Kadi Prabhu S/o Thangavel was directed to be released on bail on this Court dated 29/10/2015 in M.P.No.1/2015 in Crl A.627/2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 28-07-2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.APPEAL Nos.512, 600 & 627 of 2015

1.Raja @ Fire Service Raja

2.Ramesh @ Pragalathan

3.Udhhayan @ Udhayakumar

...

Appellants in

Crl.A.No.512/2015

Pathu @ Padmanabhan

...

Appellant in

Crl.A.No.600/2015

Prabhu @ Kadi Prabhu

...

Appellant in

Crl.A.No.627/2015

-vs-

The State, by Inspector of Police,

Erode Town Police Station,

Erode District,

Crime No.446/2013.

...

Respondent in all Crl. Appeals

Appeals against the judgment, dated 13.07.2015, made in S.C.No.89 of 2014 on the file of I Additional District Sessions Court, Erode.

For appellants in Crl.A.No.512/2015 &
appellant in
Crl.A.No.600/2015 :Mr.N.Manokaran
For appellant
in Crl.A.No.627/2015 :Mr.K.M.Subheramaniam

For respondent
in all appeals :Mr.M.Maharaja,
Additional Public Prosecutor.

JUDGMENT

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

The appellants are accused 1 to 5 in S.C.No.89 of 2014 on the file of I Additional Sessions Court, Erode. A-1 stood charged for the offences under Sections 147, 148, 120-B, 302 and 307 IPC. A-2 to A-4 stood charged for the offences under Sections 147, 148, 120-B and 302 IPC and A-5 stood charged for the offences under Sections 147, 148, 120-B and 302 read with 34 IPC. By judgment, dated 13.07.2015, the trial Court convicted the accused and sentenced them as detailed below :

Accused	Section of law	Sentence
A.1 to A.5	147 IPC	Rigorous imprisonment for two years each.
A.1 to A.5	148 IPC	Rigorous imprisonment for three years each.
A.1 to A.5	120-B IPC	Rigorous imprisonment for ten years each.
A.1 to A.4	302 IPC	Life imprisonment and to pay of Rs.10,000/- each; in default, to undergo rigorous imprisonment for five years each.
A.1	307 IPC	Imprisonment for ten years and to pay fine of Rs.5,000/-; in default, to undergo rigorous imprisonment for three years.
A.5	302 r/w 34 IPC	Life imprisonment and to pay of Rs.10,000/-; in default, to undergo rigorous imprisonment for five years.

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

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

2.1. The deceased in this case was one Mr.Venkaktesh @ Rohit Venkatesh. The first accused is Mr.Raja @ Fire Service Raja. The deceased and the first accused were the associates and co-accused in many criminal cases. They were imprisoned together on many occasions. On account of some event, they parted away with each other. Thereafter, they were not in talking terms and there was lingering enmity between them. The accused 2 to 5 are the friends and associates of the first accused. The deceased was frequently interfering with the rowdyism of the first accused. On one occasion, the first accused called the deceased and told him not to interfere in his activities. The deceased promised to do so. But, he continued to interfere with the affairs of the first accused. Therefore, the first accused got wild and decided to do away with the deceased.

2.2. In this regard, according to the prosecution, all the five accused, on 14.07.2013 around 06.30 p.m., in a vacant site near old Nataraja Theatre at Erode, had conspired. On 15.07.2013, the deceased had gone to a bar attached to a Tasmac shop at Marappalam in Erode. Noting the same, all the five accused went to the said bar. The accused 1 to 4 were all armed with one knife each. The fifth accused was not armed with any weapon, but he was in possession of a motorcycle. The accused 1 to 4 entered into the bar, where the deceased was sitting and drinking. On reaching the bar, it is alleged, that the accused 1 to 4, one after another, in quick succession, indiscriminately cut the deceased. The fifth accused was waiting outside with the motorcycle. After the occurrence was over, the accused 1 to 4 rushed out of the bar and with the help of the fifth accused, the accused 2 and 3 fled away from the scene of occurrence in the motorcycle driven by the fifth accused. The accused 1 and 4 also ran away from the scene of occurrence.

2.3. P.W.1 Mr.Vignesh was also present in the bar at that time. When he tried to rescue the deceased, the first accused stabbed the deceased with a knife on his head. Therefore, P.W.1 could not do anything further to rescue the deceased. P.W.1 cried for help. Then, P.W.1, with the help of other people, who gathered there, took the deceased to the Government Hospital, Erode. But, despite treatment, on 15.07.2013, at 08.30 p.m., the deceased succumbed to injuries in the hospital.

2.4. On receiving intimation from the hospital, P.W.22, the then Special Sub-Inspector of Police, rushed to the Government Hospital, Erode, recorded the statement of P.W.1 and, on returning to the police station, registered a case in Crime No.446 of 2013 on the file of Erode Town Police Station for the offences under Sections 302 and 307 IPC at 11.30 p.m., on

15.07.2013. Ex.P-30 is the F.I.R. He forwarded both the complaint Ex.P-1 and the F.I.R. Ex.P-30 to the Court, which were received by the learned Judicial Magistrate at 01.00 a.m. on 16.07.2013. P.W.23 took up the case for investigation. He went to the place of occurrence at 01.00 a.m. and prepared an observation mahazar and a rough sketch in the presence of P.W.17 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. He examined many witnesses at the place of occurrence. On going to the hospital on 15.07.2013 between 06.30 and 09.00 a.m., he conducted inquest on the body of the deceased. He examined P.W.1 and recorded his statement. Then, he forwarded the dead body to the doctor, for post-mortem. P.W.6, Dr.Ravichandar, conducted autopsy on the body of the deceased on 16.07.2013 at 09.50 a.m. He found the following injuries :

1. Clear cut incised wound above left side of chest nipple measuring 4x2x2 cm transversely till depth of left lung at the end of 3rd to 4th ICS.
2. Clear cut incised wound with sharp edges near right side of parietal area of scalp measuring 7x2x2 cm at right temporo parietal bone.
3. Clear incised wound over right side chest at level of 5th - 6th ICS transverse 4x3x2 cm, extending towards left lung.
4. Lacerated wound with singular merger over ventral aspect of right wrist 6x3x3 cm.
5. Clear cut incised wound from angle of right mouth extending internal cheek measuring 9x3x3 cm extending jaw.
6. Abrasion between eyebrows 4x1/2 cm.
7. A laceration with singular merger over right thumb 1x1x1 cm.
8. Abrasion over back of neck on right shoulder merger 3x1 cm.

Ex.P-9 is the post-mortem certificate. The doctor gave opinion that the death of the deceased was due to shock and hemorrhage due to injuries found on the body of the deceased. He further opined that the injuries found on the body of the deceased would have been caused by knives. P.W.23 recovered the bloodstained clothes from the body of the deceased and also forwarded the same to the Court.

2.5. When the investigation was in progress, all the accused surrendered before the Court. On the orders of the learned Judicial Magistrate, P.W.23 took police custody of all the accused. While in custody, on 28.07.2013, the first accused

gave a voluntary confession, in which he disclosed the place where he had hidden the knife with steel handle and also bloodstained clothes. In pursuance of the same, he produced M.Os.1 and 5 to 7 from the place of hideout. P.W.23 recovered the same under a mahazar. The second accused produced a bloodstained knife (M.O.2) and a polythene cover (M.O.10). The third accused made a disclosure statement, out of which he produced a polythene carry bag, bloodstained knife, jeans pant and a T-Shirt. P.W.23 recovered the same under a mahazar. The fourth accused gave a voluntary statement, in which he disclosed the place where he had hidden the knife, pant and T-Shirt. Accordingly, he produced M.O.4 knife and M.Os.14 to 16, which were recovered by P.W.16 under a mahazar. The fifth accused also gave a voluntary statement, in which he disclosed the place where he had hidden the motorcycle, bearing registration No.TN-33-AE-1198, which was recovered under a mahazar. Then, on returning to the police station, P.W.23 forwarded the material objects to the Court. At his request, the material objects were sent for chemical examination. The report revealed that there were bloodstains on all the material objects, except knives. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the trial Court framed charges against the accused as detailed in the first paragraph of this judgment and the accused denied the same. In order to prove the case, on the side of prosecution, 23 witnesses were examined, 40 documents and 26 material objects were marked.

4. Out of the said witnesses, P.W.1 is the injured eye witness, who has spoken vividly about the entire occurrence. P.W.2, Dr.Kogila, has stated that on 15.07.2013, at 07.45 p.m., P.W.1 was brought to her private hospital, where she found that there was a cut injury on his head. At that time, he told P.W.2 that he was attacked by four known persons. P.W.4, Dr.Karthikeyan, has stated that on 15.07.2013, at 08.10 p.m., the deceased was brought to the Government Hospital, Erode, for treatment. He found as many as eight injuries on the body of the deceased. He admitted the deceased as in-patient. Ex.P-5 is the Accident Register. According to him, he gave intimation to the police. P.W.5 Dr.Sadasivam, has stated that the deceased was undergoing treatment in the Government Hospital, Erode, and he died at 08.30 p.m., on 15.07.2013. Ex.P-7 is the intimation given by him to the police. P.W.6, Dr.Ravichandar, has spoken about the post-mortem conducted and his final opinion, regarding the cause of death. P.Ws.7 to 10 have turned hostile and they have not supported the prosecution case in any manner. P.W.11 is the brother of the deceased. He has stated that he heard about the occurrence later and went to the hospital. P.W.12 has turned hostile and he has not supported the prosecution case in any manner. P.W.13 has spoken about the conspiracy. According

to him, on 14.07.2013, at 05.30 p.m., all the five accused were found near Nataraja Theatre in a vacant site and they were talking among themselves that they should do away with the deceased. He has further stated that the third accused told them to kill the deceased and the fourth accused told that they could kill the deceased in wine shop. The second accused told that they could kill the deceased in a different wine shop. The first accused told that the other accused to be ready on the next day with one knife each. P.W.14 has spoken only on the hearsay information. P.W.15 has also not stated anything incriminating against the accused, as he has spoken only on the hearsay information. P.W.16 has spoken about the disclosure statement made by the accused to the police while in custody and the consequential recovery of the material objects. P.W.17 has spoken about the preparation of observation mahazar and rough sketch and also the recovery of material objects from the place of occurrence. P.W.18 has spoken on the photographs taken at the place of occurrence, as requested by P.W.23. P.W.19 has spoken about the chemical analysis conducted on the material objects. P.W.20 has stated that he handed over the F.I.R. to the learned Judicial Magistrate at 01.00 a.m., on 16.07.2013. P.W.21 has stated that he handed over the dead body to the doctor, for post-mortem. P.W.22 has spoken about the registration of the case on the complaint of P.W.1. P.W.23 has spoken about the investigation done and the filing of the final report.

5. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness or to mark any document on their side. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment. That is how, they are before this Court with these appeals.

6. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and also perused the materials carefully.

7. As we have already narrated, in this case, the prosecution relies only on the eye witness account of P.W.1, who happened to be the injured witness. He has stated that the accused 1 to 4 entered into the bar and attacked the deceased indiscriminately. When P.W.1 intervened, according to him, he was also attacked. But, in the complaint, Ex.P-1, which was given at 11.30 p.m., on 15.07.2013, he has mentioned the name of the first accused alone and two other persons. He has not stated anything about the presence and participation of the accused 2 to 5. It is not as though the accused 2 to 5 were already known to P.W.1. Had it been true that these accused 2 to 5 had come to the place of occurrence and participated in the

occurrence, certainly, P.W.1 would not have omitted to mention about the presence and participation of the accused 2 to 5 in the F.I.R. When he was confronted with the same, he has got no explanation to offer. This would clearly go to show that the presence and participation of the accused 2 to 5 in the occurrence is highly doubtful. So far as the first accused is concerned, the prosecution has proved the motive and his participation in the crime has been spoken vividly by P.W.1.

8. The learned counsel for the first accused would submit that since P.W.1 is only partly believable, in the absence of any corroboration, this Court should not act upon his evidence alone and convict the first accused. Though attractive, we find no force in the said argument. It is not the law that the evidence of a solitary witness should not be the basis for conviction. It is not the quantity, but the quality, that matters. If the evidence of solitary witness inspires the confidence of the Court, there can be no legal impediment to act upon his evidence to convict the accused. In a case where the Court is able to separate the grain from the chaff, absolutely, there is no difficulty for the Court to act upon the grain and convict the accused. Here, in this case, P.W.1, at the earliest point of time, in his complaint, has stated that the number of assailants were only three, out of whom, two were not known earlier. But, in the F.I.R., he specifically mentioned about the presence and participation of the first accused. It is because of the reason that he has not offered any explanation as to why he did not mention the presence and participation of the accused 2 to 5 in Ex.P-1, we are not prepared to act upon his evidence as against the accused 2 to 5. But, at the same time, so far as the first accused is concerned, the evidence of P.W.1 is consistent. In other words, we are able to separate the grain from the chaff and we also find that the evidence of P.W.1 as against the first accused is so convincing. Therefore, we are inclined to act upon the solitary evidence of P.W.1 to convict the first accused.

9. Now, turning to the evidence of P.W.13, in our considered view, he cannot be believed for more than one reason. According to him, on 14.07.2013, around 05.30 p.m., near Nataraja theatre in Erode, he found all these five accused speaking together in a vacant site and conspiring. He has further stated that the first accused told others that they should do something against the deceased. The third accused told that they could kill the deceased. The fourth accused asked others as to where to kill the deceased. The second accused replied that they could kill him in the wine shop near Manapparai. The first accused asked all the other accused to come with one knife each on the next day. Then, all the five accused went from the place of occurrence. Had it been true that the above conspiracy had taken place, P.W.13 would have

told the deceased about the same, because the deceased was a co-accused with P.W.13 in many cases. In a case where one Shajahan was abducted, the deceased and P.W.13 were the accused. When the deceased was so close to him, had it been true that such conspiracy was hatched by these accused, certainly, P.W.13 would have informed the same to the deceased. The very fact that he did not do so, which is an unnatural conduct, would go to show that the version of conspiracy spoken by him is not true. Therefore, we reject the evidence of P.W.13. There is no other evidence to prove the conspiracy. Therefore, the accused 2 to 5 are entitled for acquittal.

10. Turning to the case against the first accused, the learned counsel would submit that in the wine shop, the occurrence was preceded by a wordy quarrel between the first accused and the deceased. It is in evidence of P.W.1 that there was a quarrel between the deceased and the first accused on one side and the first accused and his associates on the other side and it was only in the said quarrel, the first accused took out a knife and stabbed the deceased. It is the case of the prosecution that the death of the deceased was caused not only by the first accused, but by his associates also.

11. Having regard to all these facts and circumstances of the case, we are of the view that the act of the first accused in causing the death of the deceased by causing injuries would squarely fall within the first limb of Section 300 IPC, but the same would fall under first exception to Section 300 IPC. Therefore, the first accused is liable to be punished under Section 304-I IPC. So far as the causing of single injury on P.W.1 is concerned, the first accused is liable to be punished under Section 308 IPC, as his attempt was only to commit culpable homicide.

12. Now, turning to the quantum of punishment, having regard to the aggravating as well as the mitigating circumstances, and also going by the antecedents of the first accused, we are of the view that sentencing him to undergo rigorous imprisonment for ten years and pay fine of Rs.1,000/-; in default, to undergo rigorous imprisonment for four weeks for the offence under Section 304-I IPC; and rigorous imprisonment for three years and pay fine of Rs.1,000/-; in default, to undergo rigorous imprisonment for four weeks for the offence under Section 308 IPC would meet the ends of justice.

13. In the result, Criminal Appeal Nos.600 and 627 of 2015 are allowed and Criminal Appeal No.512 of 2015 is partly allowed in the following terms :

(1) The conviction and sentence imposed on the accused 2 to 5 by the trial Court are set aside and they are acquitted

from all the charges. They are directed to be set at liberty forthwith, unless their custody is required in connection with any other case. Fine amount, if any paid by them, shall be refunded.

(2) The conviction and sentence imposed on the first accused by the trial Court are set aside and, instead, he is convicted for the offences under Sections 304-I and 308 IPC and sentenced to undergo rigorous imprisonment for ten years and pay fine of Rs.1,000/-; in default, to undergo rigorous imprisonment for four weeks, for the offence under Section 304-I IPC; and sentenced to undergo rigorous imprisonment for three years and pay fine of Rs.1,000/-; in default, to undergo rigorous imprisonment for four weeks, for the offence under Section 308 IPC.

(3) The sentences shall run consecutively.

(4) 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 IV)

//True Copy//

Sub Assistant Registrar

To

- 1.I Additional District & Sessions Court,
Erode.
- 2.The Principal District and Sessions Judge,
Erode.
- 3.The Judicial Magistrate No.2,
Erode.
- 4.The Chief Judicial Magistrate,
Erode.
- 5.The Inspector of Police,
Erode Town Police Station,
Erode District.
- 6.The Superintendent of Central Prison,
Coimbatore.

7.The District Collector,
Erode.

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

9.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.N.Manokaran, Advocate sr.42965,42964

+1cc to Philip Ravindran Jesudoss, Advocate Sr.43431

CRL.A.Nos.512,600 & 627/ 2015

ctr[co]
srg 06/10/2016



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