

BAIL SLIP

That the Accused Arumugam, S/o.Rajee was directed to be released on bail on this Court dated 02.02.2016 in M.P.No.1 of 2015 in CrI.A.No.581 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on 22.07.2016

Judgment Pronounced on 31.08.2016

CORAM:

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

CrI.A.Nos.581 and 635 of 2015

Arumugam

... Appellant/2nd accused
(in CrI.A.No.581 of 2015)

Radha @ Radhakrishnan

... Appellant/1st accused
(in CrI.A.No.635 of 2015)

Vs.

State, by
The Inspector of Police,
Annadhanapatti Police Station,
Salem District.
(Crime No.1112 of 2009)

... Respondent
(in both appeals)

Criminal Appeals preferred under Section 374(2) Cr.P.C., against the judgement, dated 31.08.2015, passed by the learned I Additional Sessions Judge, Salem in S.C.No.206 of 2010.

For Appellants : Mr.R.Sankarasubbu for
Appellant/first accused
(in CrI.A.No.635 of 2015)

: Mr.R.John Sathiyar for
Appellant/2nd accused
(in CrI.A.No.581 of 2015)

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor
(Both appeals)

C O M M O N J U D G M E N T

V.BHARATHIDASAN, J.

The appellant in CrI.A.No.635 of 2015 is the first accused and the appellant in CrI.A.No.581 of 2015 is the second accused in Sessions Case No.206 of 2010, on the file of the learned Ist Additional Sessions Judge, Salem. Totally, there were six accused in this case and they stood charged as detailed below:-

Sl.No.	Rank of the Accused	Charges
1.	A1 to A6	U/s. 120-B of IPC
2.	A1 to A5	U/s.148, and 341 of IPC
3.	A1 and A3	U/s. 302 of IPC
4.	A2, A4 and A5	U/s. 302 r/w 149 IPC
5.	A6	U/s. 302 r/w 120-B IPC

The trial Court, by Judgment dated 31.08.2015, convicted accused 1 and 2 and sentenced them to undergo imprisonment, as detailed below:-

Rank of the accused	Penal provision(s) under which convicted	Sentence imposed
A1 and A2	U/s. 341 of IPC	Rigorous Imprisonment for one month and to pay a fine of Rs.500/-each in default to undergo Rigorous Imprisonment for one month.
A1	U/s.302 of IPC	Life Imprisonment and to pay a fine of Rs.1000/- in default to undergo Rigorous Imprisonment for six months.
A2	U/s.302 r/w 34 IPC	Life Imprisonment and to pay a fine of Rs.1000/- in default to undergo Rigorous Imprisonment for six months.

and the trial Court acquitted the accused from the following charges.

Rank of the accused	Penal provision(s) under which acquitted	
A1 to A6	U/s.120-B of IPC	Acquitted
A1 to A5	U/s.148 of IPC	Acquitted
A3 to A5	U/s. 341 of IPC	Acquitted
A3	U/s.302 of IPC	Acquitted

Rank of the accused	Penal provision(s) under which acquitted	
A4 and A5	U/s.302 r/w 149 IPC	Acquitted
A6	U/s.302 r/w 120-B of IPC	Acquitted

Challenging the said conviction and sentence, dated 31.08.2015, the appellants/accused 1 and 2 are before this Court with these Criminal Appeals.

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

(i) The deceased in this case, one Madhu, is the father of P.W.1. The deceased used to smuggle PDS Rice and sell it in black market. A-6 and some other persons are his partners. During the course of above business, an enmity was developed between the deceased and A-6 and number of criminal cases were registered against the deceased and the 6th accused. In the above circumstance, the 6th accused, along with other accused, conspired to murder the deceased. In furtherance of the above conspiracy, on 29.08.2009 at about 12.00 noon, A1 to A6 formed an unlawful assembly with dangerous weapons and watched the movement of the deceased, and when the deceased came near the entrance of the Arch of Gnana Badhma Avenue in Nethimedu, the accused 1 and 2 came in a motor cycle, and A1 attacked the deceased with a billhook on the head and hand of the deceased, at that time P.W.1, son of the deceased, along with his Manager one Mohamed Ismayil, saw the occurrence from his house and raised alarm. On hearing the alarm, P.Ws.2 and 3, wife and daughter of the deceased, came out of the house and saw the occurrence. Then, they called 108 Ambulance and took the deceased to a hospital called "Dharan Hospital" at Salem. P.W.8-Dr. Selvarja of Dharan Hospital admitted the deceased and gave treatment. Subsequently P.W.1 gave a complaint before the respondent police.

(ii) P.W.10-Inspector of Police of the respondent police station, on receipt of the complaint (Ex.P1), registered a case in Crime No.1122 of 2009 for the offence under Sections 341 and 307 of IPC and prepared first information report [Ex.P22]. Then, he proceeded to the scene of occurrence, prepared an Observation Mahazar (Ex.P2) and a Rough Sketch (Ex.P23) in the presence of witnesses. He recovered Blood stained soil (M.O.7) and Sample soil (M.O.8) in the presence of witnesses. He examined some witnesses and recorded their statements.

(iii) On 31.08.2009 at about 3.50 a.m., the deceased succumbed to injuries. On receipt of the death intimation from the Hospital, P.W.10 altered the case under Section 302 IPC, and the altered FIR (Ex.P24) was sent to the learned Judicial Magistrate No.II, Salem. Between 6.30 p.m and 8.30 p.m., P.W.10, conducted inquest over the dead body of the deceased in the presence of panchayatdars and prepared an inquest report (Ex.P25) and sent the dead body for conducting postmortem to the Salem Government Mohan Kumaramangalam Medical College

Hospital, through P.W.7, Head Constable, with a requisition letter (Ex.P19).

(iv) P.W.9-Dr.Rethinakumar, Professor, Salem Government Mohan Kumaramangalam Medical College Hospital, conducted postmortem on the dead body of the deceased on 31.08.2009 at about 10.15 a.m., and found the following injuries.

1) Slicing cut injury right tempero parietal region measuring 9 x 5 x BD with loss of scalp.

2) Sutured wound right temporal region 4 cm with 3 sutures on removal of sutures edge are clean cut.

3) Sutured wound over the right parietal region extend to occipital region with 14 sutures 15 cms long and on removal of sutures edge are clean cut.

4) A lacerated injury 5 x 4 BD over lamboid region.

5) Sutured wound right ear back side 11 cms long with 11 sutures and on removal sutures edges are clean cut.

6) Sutured wound left frontal region extends to left parietal region with 11 sutures 12 cm long on removal of sutures, the edges are clean cut.

7) Sutured wound over the dorsum of right hand with 4 sutures 4cms long and removal of sutures edges are clean cut.

8) Sutured wound over dorsum of right hand 5 cms long with 5 sutures on removal of sutures, edges are clean cut.

9) An "U" shaped sutures wound medial aspect of right hand dorsum measuring 8.5 cms long with 8 sutures.

10) A curvi linear sutured wound over the palmar aspect, thenar eminence to ring finger ppx 10 cms long with 8 sutures on removal edges are clean cut.

11) A linear scratch mark right upper arm about 15 cmc x 0.25 cms,

12) A linear scratch mark right shoulder 3 cms long.

13) A "K" wire fixation noted in the right thumb from dip O/D of PPX and first MC right hand and surrounding soft tissues contused on further dissection # 2nd, 3rd MC right hand noted.

He was of the opinion that the deceased appeared to have died of multiple injuries sustained by him and he issued Postmortem Certificate [Ex.P20].

(v) On 02.09.2009 at about 12.30.p.m., P.W.10 arrested the second accused and on such arrest, he voluntarily gave a

confession, based on the disclosure statement (Ex.P4), P.W.10, recovered a billhook (M.O.2) in the presence of witnesses. Subsequently, A1, A3 and A5 surrendered before the learned Judicial Magistrate, Omalur, on 08.09.2009. P.W.10, took police custody of the said accused and all the accused voluntarily gave confession. Based on the disclosure statement of A1 (Ex.P6), P.W.10 recovered a Hero Honda splendour Motor Cycle, bearing Registration No.TN-34-F-6190. Based on the disclosure statement of A4 (Ex.P7), P.W.10 recovered a billhook (M.O.9) and based on the disclosure statement of A5 (Ex.P8), P.W.10 recovered another billhook (M.O.10). Based on the disclosure statement of A3 (Ex.P12), P.W.10, recovered (M.O.11) wooden log in the presence of witnesses. Remaining Accused A-6 was already in Judicial custody in respect of another case, and on 29.09.2009, P.W.10 took police custody of A6 and he also voluntarily gave confession. On 10.10.2009, P.W.10 examined the Doctor, who conducted postmortem and other witnesses and recorded their statements. He also sent the material objects to the Judicial Magistrate Court, for forwarding the same for chemical examination. On 15.09.2009, after completion of investigation, P.W.10 laid the charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the same, on the side of the prosecution, as many as 10 witnesses were examined, 30 documents and 11 material objects were marked.

4. Out of the said witnesses, P.W.1 is the son of the deceased. According to him, the deceased and the 6th accused were partners in smuggling of PDS rice and in the said business there was some dispute which led to an enmity between them. He also deposed that number of criminal cases were also pending against the deceased and the 6th accused. He further stated that on 29.08.2009 at about 12.00 noon, he, along with his Manager one Mohamed Ismail, came out of his house and at that time he saw accused 1 and 2 coming in a motor cycle, A-2 was riding the motor cycle and A-1 was sitting in the pillion, and A-1 attacked the deceased with a billhook on his head and hands and when he raised alarm, his mother and sister came out of the house and they saw both the accused 1 and 2 fleeing away in the motor cycle at some distance and he also saw accused 3, 4 and 5 standing nearby and after the occurrence all the accused disappeared from the scene of occurrence. P.W.1 has stated that he called 108 ambulance and he and his mother and sister, along with his Manager, took the deceased to Dharan Hospital, Salem and thereafter he gave a complaint (Ex.P1) before the respondent police. He has further stated that subsequently, on 31.08.2009, the deceased succumbed to injuries and on 02.09.2009, at about 4.00 p.m., he went to the police station, where, he saw the second accused, who was arrested and kept in the police station and in the police station he identified A-2. P.W.2 is the wife of the deceased, according to her, on hearing

the alarm of P.W.1, she went to the scene of occurrence and saw the deceased lying on the road with cut injuries and she saw accused 1 and 2 fleeing in a two wheeler. P.W.3 is the daughter of the deceased, according to her, she, along with P.W.2, went to the scene of occurrence, after hearing the alarm of P.W.1 and she saw the accused 1 and 2 leaving the place in a two wheeler. P.W.4 is the Village Administrative Officer, Annadhanapatti. He was a witness to the observation mahazar and recovery of M.Os.1,4 and 5. P.W.5 is another Village Administrative Officer of Annadhanapatti and he was a witness to the confession statements given by A1 and A3 and also recovery of M.Os.1 and 11. P.W.6, a resident of Nazhikalpatti, has spoken about hatching of conspiracy by the accused. According to him, on 28.08.2009, at about 5.00 p.m., when he was sitting near a temple, A3, A4 and A5 came there, thereafter accused 1 and 2 also joined them and had a discussion to murder the deceased and subsequently, on 31.08.2009, he came to know about the death of the deceased through news paper. P.W.7 is the Head Constable, in the respondent police station, who carried the dead body to the Government Hospital for conducting postmortem and also submitted the material objects to the Judicial Magistrate Court. P.W.8 is a Doctor working in Dharan Hospital, Salem, according to him, he admitted the deceased in the Hospital and treated him and issued Accident Register [Ex.P14] and also issued death intimation (Ex.P16). P.W.9- Doctor has spoken about the autopsy conducted on the dead body of the deceased and he has given opinion regarding the cause of death. P.W.10 has spoken about the entire investigation done by him and filing of final report against the accused.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same. The accused did not choose to examine any witness or mark any documents.

6. Having considered all the above materials, the Trial Court convicted the appellants/accused 1 and 2 for the offences as stated in the first paragraph of this judgement and acquitted the other accused. Challenging the above conviction and sentence, the appellants are before this Court.

7. We have heard Mr.R.Sankarasubbu, learned counsel appearing for the appellant in CrI.A.No.635 of 2013 and Mr.R.John Sathiyar, learned counsel appearing for the appellant in CrI.A.No.581 of 2015 and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. Mr.R.Sankarasubbu, the learned Counsel appearing for the appellant/1st accused, would submit that the trial Court has convicted the first accused based on the sole testimony of P.W.1, who is the son of the deceased. According to the learned counsel for the appellant/1st accused, PW1 is an interested witness and his evidence is not trustworthy and in

the absence of any other corroborating evidence, the trial Court ought not to have convicted the first accused based on the interested testimony of P.W.1. He further contended that there was no motive against the first accused to cause the death of the deceased. Even as per the prosecution case, the motive was only between the deceased and the 6th accused, and the trial Court, disbelieved the conspiracy theory of prosecution and acquitted the other accused. Apart from that, there was delay in lodging the complaint which also creates a doubt in the prosecution case. In support of his contention, the learned counsel relied upon the following decisions reported in AIR 1957 SC 614 in VADIVELU THEVAR AND ANOTHER Vs. STATE OF MADRAS, 1976 (1) SCC 434 in KARUNAKARAN Vs. STATE OF TAMIL NADU and 2015 AIR SCW 6079 in K.A.KOTRAPPA REDDY AND ANOTHER Vs. RAYARA MANJUNATHA REDDY alias N.R.MANJUNATH AND OTHERS.

9. Mr. John Sathiyar, the learned counsel appearing for the appellant/second accused would submit that P.W.1 was the sole eye witness to the occurrence and he is also the author of the first information report, but the name of the second accused was not found place in the first information report, where it is merely stated that an unknown person, along with A-1, came in the motor cycle. Apart from that, there is no evidence available against the second accused to prove that he was riding the two wheeler, hence, he prays for allowing the appeal.

10. Per contra, the learned Additional Public prosecutor appearing for the state would submit that P.W.1 is the son of the deceased and at the time of occurrence, he, along with his Manager, came out of the house and saw A1 and A2 coming in a two wheeler, which was driven by A-2 and A-1, who was sitting in the pillion attacked the deceased with a billhook on his head and hand. He would further submit that when P.W.1 raised alarm and on hearing the same, P.Ws.2 and 3, the wife and daughter of the deceased, came to the scene of occurrence and saw the accused 1 and 2 leaving the scene of occurrence in the motor cycle. Even though, P.W.1 is the son of the deceased, the presence of P.W.1 at the time of occurrence cannot be disbelieved and P.W.1 has also identified the second accused in the police station and hence, his evidence regarding the presence of A-2 cannot be discarded, is his further submission. So far as A-1 is concerned, it is the submission of the learned Additional Public Prosecutor that P.W.1 has categorically stated that A-1 was sitting in the motor cycle and he only attacked the deceased with an aruval on the head and hand and the medical evidence also corroborate the evidence of P.W.1 and hence he prays for dismissal of these appeals.

12. P.W.1 is the son of the deceased. According to him, he along with one Mohamed Ismayil, was coming out of the house and at that time, both A1 and A2 came in a motor cycle, A2 riding the motor cycle and A-1 who was sitting in the pillion attacked the deceased with a billhook on the head of the deceased and when the deceased tried to prevent the same, A-1 attacked him on the hand also. Immediately, P.W.1, along with P.Ws.2 and 3, took the deceased to a private hospital in an ambulance and he was admitted in the hospital at about 12.25 p.m., and thereafter, P.W.1 went to the police station and lodged a complaint at about 2.00 p.m. Hence, from the testimony of P.W.1, it is clear that it is only P.W.1 took the deceased, along with his mother, P.W.2, and admitted him in the Hospital within half an hour of the occurrence. Thereafter, P.W.1, has gone to the police station and lodged a complaint at about 2.00 p.m. P.W.1 has categorically stated that it is only the first accused, who attacked the deceased with a billhook on the head and hand of the deceased. The medical evidence also corroborates his testimony. Apart from that, the testimonies of P.Ws.2 and 3 have also proved the presence of P.W.1 in the scene of occurrence. Hence, there is no doubt about the presence of P.W.1 in the scene of occurrence. So far as the contention of the learned counsel appearing for the appellants that P.W.1, being a sole eye witness and also the son of the deceased is an interested witness and his evidence cannot be relied upon. In our view, such a contention cannot be accepted in the facts of this case. Merely because P.W.1 is the son of the deceased, his evidence cannot be discarded as a matter of course. A relation, an interested witness, is not an incompetent to depose, but rule of prudence dictates that his evidence should be weighed with caution and care. It is settled law that it is not quantity, but quality of evidence is material. The evidence of P.W.1 clearly establishes that it is only the first accused who attacked the deceased, and it also draws corroboration from other witnesses. Hence, we have no reason to disbelieve the evidence of P.W.1

13. So far as the Judgements relied upon by the learned counsel appearing for the appellant/first accused are concerned, in VADIVELU THEVAR AND ANOTHER Vs. STATE OF MADRAS reported in AIR 1957 SC 614, the Hon'ble Supreme Court has held that if the testimony of sole eye witness is found by the Court to be reliable, there is no legal impediment to base conviction against the accused on such proof. Hence, the Judgment relied upon by the learned counsel appearing for the appellant/first accused is not helpful to the defence of the appellant. The other Judgment relied upon by the learned counsel reported in 1976 (1) SCC 434 in KARUNAKARAN Vs. STATE OF TAMIL NADU, also deals with the reliability of the testimony of sole witness. Based on the facts of that case, the Hon'ble Supreme Court did not incline to rely upon the sole eye witness and acquitted the accused. In another judgment reported in 2015 AIR SCW 6079 in K.A.KOTRAPPA REDDY AND ANOTHER Vs. RAYARA MANJUNATHA REDDY alias N.R.MANJUNATH AND OTHERS, the Honourable Supreme Court

dealt with the delay in filing the first information report. In the present case, there is no inordinate delay in giving the complaint. The occurrence is said to have taken place on 29.08.2009 at about 12.00 noon. Immediately, P.W.1, along with P.Ws.2 and 3, has taken the deceased to the Hospital in ambulance and admitted him in the hospital. Thereafter, P.W.1 has gone to the police station and lodged a complaint at about 2.00 p.m. In the above circumstances, the delay in lodging the complaint has been duly explained and it does not create any doubt regarding the prosecution case. In such circumstance, the above judgment of the Honourable Supreme Court also not applicable to the facts of this case.

14. In the light of the above discussion, we hold that the prosecution has clearly established the guilt of the first accused and we find no reason to interfere with the judgment of the trial Court as against the first accused.

15. So far as the second accused is concerned, the name of the second accused was not found place in the FIR. Even according to P.W.1, he identified the second accused only in the police station, after his arrest. Apart from that, there is no other evidence available to connect the second accused with the murder of the deceased. In the above circumstances, we are of the considered view that the prosecution has failed to prove the charges against the second accused and the second accused is entitled for acquittal.

16. In the result,

(i) the Criminal Appeal No.581 of 2015 is allowed. The conviction and sentence imposed on the Appellant/second accused in S.C.No.206 of 2010 dated 31.08.2015 on the file of the learned I Additional Sessions Judge, Salem, is set aside and the appellant/2nd accused is acquitted of all the charges levelled against him. Bail bond, if any, executed by him shall stand cancelled and fine amounts, if any, paid by him is ordered to be refunded, forthwith.

(ii) the Criminal Appeal No.635 of 2015 is dismissed. The conviction and sentence imposed on the appellant/first accused in S.C.No.206 of 2010 dated 31.08.2015 on the file of the learned I Additional Sessions Judge, Salem stands confirmed. If the appellant/first accused is not in custody, the trial Court is directed to take appropriate steps to secure him and commit him to prison so as to serve the remaining sentence imposed on him. Bail bonds, if any, executed by him shall stand terminated.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

To

1. The I Additional Sessions Judge,
Salem.
2. The Inspector of Police,
Annadhanapatti Police Station,
Salem District.
3. The Judicial Magistrate,
Salem.
4. The Chief Judicial Magistrate,
Salem.
5. The Director General of Police,
Salem.
6. The District Collector,
Salem.
7. The Superintendent,
Central Prison,
Salem.
8. The Public Prosecutor,
High Court,
Madras.

+1cc to Mr.R.Sankarasubbu, Advocate, S.R.No.49385

Cr1.A.Nos.581 and 635 of 2015

CTR(CO)
CA(05/10/2016)

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