

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-07-2016

CORAM

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

CRL.APPEAL No.597 of 2015

1.N.Kannan
2.E.Babu

... Appellants/Accused 1 & 2

-Vs-

State,
rep.by Inspector of Police,
Mannargudi Town Police Station,
Tiruvavur District.
(Crime No.1233/2013).

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C.,
against the judgment, dated 31.08.2015, made in S.C.No.72 of
2014 on the file of Sessions Judge, Magalir Neethimandram,
Tiruvavur.

For Appellants : Mr.M.Karunanithi

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

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

The appellants are the accused 1 and 2 in S.C.No.72
of 2014 on the file of Sessions Court, Magalir Neethimandram,
Tiruvavur. They stood charged for the offences under Sections
120-B, 394, 394 read with 109, 449, 341, 392, 302, 302 read
with 109, 307 and 307 read with 34 IPC. By judgment, dated
31.08.2015, the trial Court convicted both the accused and
sentenced them as detailed below :

Accused	Section of law	Sentence
A.1	449 I.P.C.	Rigorous imprisonment for seven years and to pay fine of Rs.1,000/-; in default, to undergo rigorous imprisonment for one year.

Accused	Section of law	Sentence
A.1	302 I.P.C.	Life imprisonment and to pay fine of Rs.1,000/-; in default, to undergo rigorous imprisonment for two years.
A.2	341 I.P.C.	Fine of Rs.100/-; in default, to undergo rigorous imprisonment for one week.
A.2	449 I.P.C.	Rigorous imprisonment for seven years and to pay of Rs.1,000/-; in default, to undergo rigorous imprisonment for one year.
A.2	302 r/w. 109 I.P.C.	Life imprisonment and to pay fine of Rs.1,000/-; in default, to undergo rigorous imprisonment for two years.
A.2	307 I.P.C.	Rigorous imprisonment for five years and to pay of Rs.1,000/-; in default, to undergo rigorous imprisonment for one year.

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 :

2.1. The deceased in this case was one Mrs.Rajalakshmi. She was residing in her own house, situated at west bank of Arithiranadhi Tank, at Mannargudi. P.W.1 is a tenant, living in the eastern portion of the same house. P.W.1 was so living as a tenant under the deceased for about three years. The accused were known to P.W.1 already, because they used to visit the house of the deceased. On 21.10.2013, at 11.30 a.m., P.W.1 was in his house. At that time, he heard a distress call of the deceased from her house. P.W.1 rushed to the house of the deceased. To his shock, he found these two accused inside the house of the deceased. The second accused was holding the deceased facilitating the first accused to cut her with a knife. The first accused cut the deceased with a knife on her neck. On seeing the same, P.W.1 shouted at them and rushed towards the deceased. The deceased

pushed the first accused aside and ran out of the house and fell near the steps. The first accused followed her and cut her again on her neck. The first accused, with the knife, attempted to stab P.W.1. P.W.1 tried to ward off. The first accused pushed P.W.1 against the wall and holding his left hand, cut him with the knife on his neck. P.W.1 sustained serious injuries on his neck. He cried for help. P.W.12, the brother's daughter of P.W.1, on hearing the alarm raised, rushed to the place of occurrence. Leaving the deceased and P.W.1 with injuries, the accused ran away from the scene of occurrence. While running away, the accused had stolen away the gold jewels, worn by the deceased. Then, the deceased succumbed to the injuries on the spot. P.W.11, a local resident, rushed to the place of occurrence and took P.W.1 to the hospital. P.W.13, Dr. Govindaraj, examined P.W.1 at the Government Hospital, Mannargudi, at 12.30 p.m. on 21.10.2013. At that time, P.W.1 told P.W.13 that at 11.30 a.m., at her house, she was cut with a knife by two known persons. P.W.13 found the following injuries on P.W.1 :

(1) An abrasion, measuring 2 x ½ c.m. across the neck.

(2) An abrasion, measuring 3 x ½ c.m. on the neck.

Ex.P-5 is the Accident Register. He gave intimation to the police.

2.2. On receiving the said intimation, P.W.17, the S.I. of Police, Mannargudi Town Police Station, went to the hospital and recorded the statement of P.W.1. On returning to the Police Station, he registered a case in Crime No.1233 of 2013 for the offences under Sections 452, 342, 307 and 302 IPC against both the accused. Ex.P-10 is the F.I.R. He forwarded Ex.P-10 to the learned Judicial Magistrate, which was received by him at 08.40 p.m. on the same day. P.W.18 took up the case for further investigation. He proceeded to the place of occurrence at 02.00 p.m., on 21.10.2013. He arranged for a photographer to take photographs. Accordingly, the photographer took photographs. Then, P.W.18 prepared an observation mahazar and a rough sketch at the place of occurrence in the presence of P.W.11 and another witness. He recovered bloodstained earth and sample earth and other bloodstained articles from the place of occurrence, under a mahazar. He conducted inquest on the body of the deceased and forwarded the same to the doctor, for post-mortem. P.W.16, Dr. Dineshkumar, conducted autopsy on the body of the deceased on 21.10.2013 at 5.05 p.m. According to him, the approximate age of the deceased was 75 years. He found the following injuries :

"(1) 10 x 4 x 3.5 cm cut injury on the front of the neck. Wound extended 6 cm from the right angle of mandible ; 7 cm from the mentum ; 8 cm from the left angle of mandible. Depth of wound is variable.

Maximum in the right side (3.5 cm). Tailing of wound on left side. Trachea - anterior and lateral walls were cut, posterior wall was intact. Sternocleidomastoid muscle was cut and wide apart right side. Jugular vein was cut on right side and wide apart. Common carotid was cut on the right side. Third and fourth cervical vertebra was fractured. Blood clots were present inside the trachea. Wound edges were sharp. No contusion present in the edge.

(2) 2 x 0.5 x 0.5 cm. lacerated wound in between left great finger and index finger."

Ex.P-8 is the Post-mortem Certificate and Ex.P-9 is the report, regarding visceral organs. The doctor gave opinion that the death of the deceased was due to the injuries inflicted on the body of the deceased. He further opined that the said injuries would have been caused by means of a knife.

2.3. On 21.10.2013, when P.W.18 was on routine vehicle check-up on Vadacherry Road, two persons came on a motorcycle, bearing registration No.TN 50 Z 6546, and when he intercepted them, they abandoned the vehicle and tried to run away (those two persons were later on identified as these two accused). P.W.18 gave a chase. The second accused scaled down a compound wall of a school and while jumping, he fell down and sustained injuries. P.W.18 arrested the second accused and registered a case in Crime No.1233 of 2013. He forwarded the second accused to Mannargudi Hospital with a medical memo, for treatment, from where, he was shifted to Tanjore Hospital, for treatment. He altered the case into one under Sections 452, 342, 307, and 302 IPC. On the arrest of the second accused, he gave a voluntary confession in the presence of P.W.9 and another witness. P.W.18 recovered a piece of gold chain, which the second accused produced from his pocket. He recovered a T-Shirt also. Motorcycle bearing registration No.TN 50 Z 6546 was brought to the police station and from and out of the same, a knife was recovered. Then, he forwarded the second accused to the Court, for judicial remand. The first accused had surrendered before the Court on 31.10.2013 at 03.00 p.m. P.W.18 took police custody of the first accused on the orders of the learned Judicial Magistrate. While in custody, in the presence of P.W.12 and another witness, the first accused gave a voluntary confession, in which he disclosed the place where he had hidden the piece of gold chain. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced the same. In the disclosure statement, the first accused also disclosed the place where he had hidden a knife. In pursuance of the same, he produced the knife. P.W.18 recovered the knife and the T-Shirt belonging to the first

accused, under a mahazar. Then, he handed over the material objects to the Court. At his request, the material objects were sent for chemical examination. The report revealed that there was human blood on the material objects, except the knife and the shirt, recovered from the first accused. On completing the investigation, P.W.18 laid chargesheet against the accused.

3. Based on the above materials, the trial Court framed charges against the accused as detailed in the first paragraph of the judgment and the accused denied the same. In order to prove the case, on the side of prosecution, as many as 18 witnesses were examined, 18 documents and 19 material objects were marked. Out of the said witnesses, P.W.1 has stated that he was residing in the eastern portion of the house belonging to the deceased, as a tenant. He has stated about the entire occurrence. He has further stated about the complaint made by him to the police. He has identified M.Os.1 and 2, as the knives used by the accused in the occurrence. P.W.2 Mrs.Revathi is a neighbour of the deceased. According to her, around 11.00 a.m. on 21.10.2013, she heard an alarm raised from the house of the deceased and when she rushed to the house of the deceased, she found one person (male) cutting the deceased and another person (male) cutting P.W.1. She has further stated that both the assailants ran away from the scene of occurrence. She has not identified the accused in Court. P.W.3 is yet another neighbour of the deceased. She has stated that by about 11.00 a.m. on 21.10.2013, on hearing an alarm raised from the house of the deceased, when she went to the house of the deceased, she found one person cutting the deceased with a knife and the other one cutting P.W.1 with another knife and, on seeing her, both the assailants ran away from the place of occurrence. She has also not identified the accused, as the assailants. P.W.4 is the daughter of the deceased. During the relevant time, she was residing in Chennai. On 21.10.2013, according to her, around 11.00 a.m., P.W.2 informed her over phone about the occurrence. Immediately, she rushed to Mannargudi to the house of the deceased. She reached the house between 06.30 p.m. and 07.30 p.m. At that time, she found a gold chain, worn by the deceased, missing. She has identified M.Os.3 and 4 as the two pieces of one single chain, worn by the deceased. P.W.5 has stated that he went to the place of occurrence, on hearing about the occurrence, later on. P.W.6 is a resident of Mannargudi. According to him, he was doing renovation works in the building, as a business, and the deceased used to call him as and when there had arisen necessity. He has further stated that 15 days prior to the date of death of the deceased, the deceased had requested him to do some repair work at her house. He had sent the first accused for the work at the house of the deceased. The first accused went there only for one day and, thereafter, he did not go. He also did

not turn up for work thereafter. P.W.7 has stated that on 21.10.2013, at 11.00 a.m., on hearing the alarm raised from the house of the deceased, when he went to the house of the deceased, he found two persons fleeing away from the scene of occurrence. He has not identified the accused as those two persons. P.W.8 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.9 has stated about the arrest of the second accused at Tanjore Medical College Hospital and the consequential recovery of a gold chain and a T.Shirt from him. P.W.10 has stated about the disclosure statement made by the first accused on 31.10.2013 while in police custody and the consequential recovery of pieces of the gold chain and other material objects. P.W.11 has spoken about the preparation of the observation mahazar and rough sketch and the recovery of material objects from the place of occurrence, including bloodstained earth and sample earth. P.W.12 is the brother's daughter of P.W.1. She has also stated about the entire occurrence. P.W.13 Dr.Govindaraj, has spoken about the treatment given to P.W.1 at 12.30 p.m. on 21.10.2013 at the Government Hospital, Mannargudi. P.W.14, a Head Constable, has stated that he handed over the F.I.R. and the complaint to the learned Judicial Magistrate at 08.40 p.m. on the same day. He has stated that they were handed over to him by the S.I. of Police, P.W.17, only at 06.00 p.m. P.W.15 has stated that he took the dead body from the place of occurrence and handed over the same to the doctor, for post-mortem. P.W.16 has spoken about the post-mortem conducted and his final opinion, regarding the cause of death. P.W.17 has spoken about the registration of the case on the complaint of P.W.1. P.W.18, Inspector of Police, has spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, they denied the same as false. On their side, they have examined one Dr.Govindaraj as D.W.1 and marked Exs.D-1 and D-2. Ex.D-1 is the Memo issued by the police for the second accused to the hospital and Ex.D-2 is the Accident Register, relating to the second accused. D.W.1 has stated that on 21.10.2013, at 09.20 p.m., the second accused was brought to Mannargudi Government Hospital for treatment along with Ex.D-1 Memo. According to him, the second accused told him that when the police gave a chase, he scaled down a compound wall and, in the said process, he sustained the injury.

5. Having considered all the above, the trial Court convicted both the accused as detailed in the first paragraph of this judgment. That is how, they are before this Court with this appeal. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and also perused the materials

6. In this case, there can be no denial of the fact that the alleged occurrence had taken place between 11.00 and 11.30 a.m. on 21.10.2013 at the house of the deceased. The deceased was an old woman, aged about 71 years, and she was residing alone. P.W.1 was residing in a different portion of the same house, as a tenant. The fact that the deceased and P.W.1 sustained injuries in one and the same occurrence also cannot be denied. Though the accused have disputed, we find no reason to doubt the case of the prosecution that the deceased and P.W.1 sustained injuries in one and the same occurrence at 11.30 a.m. on 21.10.2013.

7. Now, the question is, who are the assailants ? In order to prove the same, the prosecution mainly relies on the eye witness account of P.Ws.1,2 and 12. P.W.1 is the injured eye witness. He has vividly spoken about the entire occurrence. He has stated that when he was in his house, he heard the alarm raised by the deceased from her house and, immediately, he rushed to the house of the deceased. He found the second accused holding the deceased and the first accused cutting the deceased on her neck. On seeing the gory incident, P.W.1 raised alarm. The deceased managed to push the first accused and she ran out of the house. She fell down near the steps and the first accused gave a chase and again cut the deceased on her neck. The second accused attempted to stab P.W.1. P.W.1 warded it off. Then, the second accused pushed P.W.1 against a wall and stabbed him with a knife. P.W.1 also sustained injuries in the same occurrence.

8. We do not find any reason to reject the evidence of P.W.1 for any reason. The evidence of P.W.1 is duly corroborated by the evidence of P.W.2. P.W.2 is a neighbour. She has stated that on hearing the alarm raised, she rushed to the house of the deceased and, at that time, she found both the accused running away from the scene of occurrence. Though P.W.2 had not witnessed the entire occurrence, she saw these two accused fleeing away from the scene of occurrence. Thus, the evidence of P.W.2 goes to corroborate the evidence of P.W.1. P.W.3 is yet another neighbour. She was actually residing in a portion of the house of the deceased, as a tenant. She has also stated that on hearing the alarm raised, when she rushed to the house of the deceased, she found two assailants, and on seeing her, the assailants ran away from the place of occurrence. Though P.W.3 has not identified these two accused as the assailants, her evidence would go to corroborate the evidence of P.Ws.1 and 2, about the time of occurrence, place of occurrence and number of assailants and the fact that the deceased as well as P.W.1 sustained injuries in the same occurrence. P.W.7 is yet another neighbour of the deceased. He has also stated that on hearing the alarm raised, when he went to the house of the deceased, he found

two assailants fleeing away from the scene of occurrence. Though he has not identified these two accused as the assailants, his evidence would duly corroborate the evidence of the other eye witnesses, in respect of the place of occurrence, time of occurrence and the number of assailants and the persons, who were the victims. P.W.12 is another eye witness to the occurrence. She is the brother's daughter of P.W.1. At the time of occurrence, she was in the house of P.W.1. She was actually standing on the backyard of the house. On hearing the alarm raised, when she rushed to the house of the deceased, she found the first accused cutting the deceased and the second accused cutting P.W.1. She has further stated that one of the accused pulled a chain worn by the deceased and took it away. The presence of P.W.12 cannot be doubted. Though she has not identified the accused, her evidence would go to the limited purpose of corroborating the other witnesses in respect of the time of occurrence, place of occurrence, the number of assailants and the persons who sustained injuries and also the persons, who were the victims. In our considered view, the prosecution has clearly established that it was the first accused who caused the death of the deceased and it was the second accused, who caused injuries on P.W.1.

9. P.W.12 has further stated that one of the assailants pulled a chain worn by the deceased. P.W.4, daughter of the deceased, received a telephonic message from P.W.2 about the occurrence. According to her, when she reached the place of occurrence between 06.30 p.m. and 07.30 p.m., she found the gold chain, worn by the deceased, was missing from the dead body. It was later on identified by her during trial as M.Os.3 and 4 (these two material objects were pieces of a single gold chain). From the evidence of these two witnesses, namely, P.Ws.1 and 2, the prosecution has clearly established that in the very same occurrence, the gold chain (M.Os.3 and 4) was removed by one and the same assailants.

10. On the arrest of the second accused, one piece of gold chain and on the arrest of the first accused another piece of gold chain were recovered. The recovery of two pieces of gold chain has been spoken to by two independent witnesses and P.W.18. There is no reason to reject their evidences. Though these witnesses have been crossexamined at length, nothing has been elicited by the defence so as to create any doubt in the veracity of the evidence of these two witnesses, who have spoken about the recovery of M.Os.3 and 4. The accused have got no explanation with regard to the possession of M.Os.3 and 4. The recovery of M.Os.3 and 4 from the possession of the accused would give rise to a presumption under Section 114 of the Indian Evidence Act that these accused had only removed the M.Os.3 and 4 from the body of the deceased. Since it has been established that removal of

M.Os.3 and 4 and the death of the deceased had taken place in one and the same transaction, we have to presume that the accused were the perpetrators of the entire crime. Of course, this presumption under Section 114 of the Indian Evidence Act is rebuttable. But, the accused have not rebutted the said presumption either by means of any direct evidence or by any circumstantial evidence. Thus, this unrebutted presumption is sufficient to sustain the conviction. As we have already stated, from and out of the eye witness account, the prosecution has clearly established that it was these two accused, who were the perpetrators of the crime. Thus, in our view, the prosecution has proved the guilt of the accused.

11. The learned counsel for the appellants, however, would submit that there are a lot of doubts in the case of the prosecution. First of all, he would submit that though the occurrence had taken place at 11.30 a.m., the F.I.R. came to be registered only at 01.30 p.m. on 21.10.2013, for which there is no explanation. This argument, in our view, is not well founded. As we have already pointed out, P.W.1 sustained injuries in the very same occurrence at 11.30 a.m. He immediately rushed to the hospital and P.W.13 examined him at the Government Hospital, Mannargudi, at 12.30 p.m. on 21.10.2013. Thus, the fact remains that P.W.1 had told the doctor that he sustained injury at 11.30 a.m., at the hands of two known persons with a knife. It cannot be said that there was a delay in shifting P.W.1 to the hospital. After 11.30 a.m., on receiving the intimation from the hospital, the police had gone to the hospital, recorded the statement and then on returning to the police station, registered the F.I.R. at 13.30 p.m. Thus, there is no delay at all in registering the case.

12. The learned counsel would point that the police station and the learned Magistrate's Court are in the very same compound and it would not have taken more than five minutes to hand over the F.I.R. to the learned Judicial Magistrate. The learned Counsel, in this regard, would point out that P.W.14, the Head Constable, who handed over the F.I.R. and the complaint to the learned Magistrate at 08.40 p.m. on 21.10.2013, has stated that they were handed over to him by the S.I. of Police only at 06.00 p.m. on 21.10.2013. He has further stated that immediately he handed over the same to the learned Magistrate at his house. Of course, there is no explanation by the prosecution as to why the F.I.R. was handed over by P.W.14 only at 06.00 p.m., though it is stated that the F.I.R. was registered at 01.30 p.m. This delay has not been explained. At the most, the said delay may only create a suspicion in the case of the prosecution. But, the said suspicion, by itself, would not go to doubt the entire case of the prosecution so as to throw it out. As we have already pointed out, there are enormous evidences to prove the

occurrence, the involvement of these two accused in the said occurrence and the fact that the deceased and P.W.1 sustained injuries in the very same occurrence. When the evidences of P.W.1 and the other eye witnesses are cogent and convincing and when the presumption raised under Section 114 of the Indian Evidence Act from and out of the fact that these two accused were found in possession of M.Os.3 and 4 soon after their arrest remains unrebutted, the mere delay in dispatching the F.I.R. to the Court would not create any doubt in the case of the prosecution. Therefore, this argument is rejected.

13. The learned counsel for the appellants would submit that there was no test identification parade conducted and, therefore, the identity of the accused made by the witnesses for the first time in the court should not be believed. Though we find some force in the said argument of the learned counsel for the appellants, on that score, we are of the opinion that the case of the prosecution cannot be rejected. P.W.18 would have done well, by making arrangement for test identification parade. But, for his own reasons, he did not think it necessary to do so. In our view, the failure to conduct test identification parade cannot be a ground to reject the case of the prosecution, for, it is not as though the accused could have been seen by P.W.1 only for a fraction of a second or a minute. The occurrence went on for quite sometime, in which P.W.1 sustained injury also. Therefore, P.W.1 would have had enough time to notice the identifying features of the accused. Apart from that, in the F.I.R. it self, P.W.1 has stated that the accused were known to him. Therefore, in our considered opinion, so far as P.W.1 is concerned, there was no need for any test identification parade and so far as the other witnesses are concerned, since they had not identified the assailants in court also, the failure to conduct the test identification parade would not have any adverse impact on the case of the prosecution.

14. The learned counsel for the appellants would further submit that according to P.W.18, A-2 was arrested while on routine vehicle check-up. It is his further case that while scaling down the wall, the second accused sustained injury and the gold chain was in the pocket of the accused, when he was in the hospital and then it was recovered. According to him, it is unbelievable that the second accused would have had the piece of gold chain in his pocket all through. But, it is not the case of P.W.18 that there was a search made on the second accused before he was sent to the hospital. Because the second accused had sustained injury, P.W.18 would have rushed him to the hospital, to save him. As the second accused was in hospital continuously, he would not have removed the gold chain. Therefore, we believe the case of the prosecution that one of the pieces of gold chain was recovered from the second accused in the hospital. So far as

the first accused is concerned, he surrendered before the Court voluntarily and while in custody, out of his disclosure statement, yet another piece of gold chain was recovered from him. There is no reason to reject his evidence.

15. From the above evidences, the prosecution has proved beyond all reasonable doubts the guilt of the accused and, thus, the trial Court was right in convicting them. Turning to the quantum of punishment also, the trial Court has imposed only a minimum proportionate punishment, which also does not require any interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

16. In the result, this Criminal Appeal fails and the same is, accordingly, dismissed. The conviction and sentence imposed on the appellants by the trial Court are hereby confirmed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

dixit

To

1. The Judicial Magistrate,
Tiruvarur.
2. Do- Through The Chief Judicial Magistrate,
Tiruvarur.
3. The Sessions Judge, सत्यमेव जयते
Magalir Neethimandram,
Tiruvarur.
4. Do- Through The Principal Sessions Judge,
Tiruvarur.
5. The District Collector,
Tiruvarur District.
6. The Superintendent,
Central Prison,
Trichy.
7. The Director General of Police,
Mylapore, Chennai 04

8. The Inspector of Police,
Mannargudi Town Police Station,
Tiruvarur District.

9. The District Collector,
Trichy.

10. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.M.Karunanithi, Advocate, S.R.No.37368

CRL.A.No.597 OF 2015

EV(CO)
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