



BAIL SLIP

The Accused viz. Senthilkumar and Raji the Petitioners herein were directed to be released on bail as per the order of this Court made in MP.No.1/2015 in Crl.A.No.75/2015, dt.15.12.2015.

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.A.No.75/2015

1. Senthilkumar
2. Raji .. Appellants/Accused 1&2

Vs

State by
The Inspector of Police,
Brammadesam Police Station .. Respondent/Complainant

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned I Additional District and Sessions Judge, Tindivanam, made in S.C.No.110/2013 dated 22.12.2014.

For Appellants : Ms.P.Uma

For Respondent : Mr.M.Maharaja,
Addl. 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.110 of 2013 on the file of the learned I Additional District and Sessions Judge, Tindivanam. They stood charged for offences under Sections 341 and 302 read with 34 of IPC. By judgment dated 22.12.2014, the trial court convicted them under both the charges and sentenced them to undergo rigorous imprisonment for two weeks for the offence under Section 341 of IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- each, in default, to undergo simple imprisonment for two weeks. Challenging the said conviction and sentence, the appellants are before this Court with this Criminal Appeal.



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

(a) The deceased in this case was one Mr.Raja. P.W.1 is the wife of the deceased. The 1st accused is the brother-in-law of the deceased i.e. the brother of P.W.1. The 2nd accused is a close relative of the 1st accused. Between the deceased and the 1st accused, there was enmity on account of some money transaction in which the 1st accused refused to repay the loan amount due to the deceased. The deceased was insisting upon the 1st accused to pay the amount. But the 1st accused did not come forward to pay the same and he was very evasive. Four months prior to the occurrence, on one occasion, when the deceased wanted the 1st accused to pay the money, there arose a quarrel between them. In that quarrel, it is alleged that the 1st accused challenged that he would do away with the deceased. This is stated to be the motive for the occurrence.

(b) On 12.06.2011 at 05.30 a.m., it is alleged that the deceased along with his wife, namely, P.W.1 were proceeding to Vellakulam Koot Road. The deceased was travelling in a Motorcycle and P.W.1 was travelling as a pillion rider. At the place of occurrence, these two accused came in another motorcycle. They overtook the motorcycle driven by the deceased and came in front of the same. They blocked the deceased from proceeding further. The deceased stopped the vehicle. Suddenly, the 1st accused got down from the motorcycle with a knife and cut him on various parts of his body. The second accused stabbed him with knife on his chest and other parts of the body. The deceased died instantaneously. The accused fled away from the place of occurrence.

(c) P.W.1, thereafter, went to Brammadesam Police Station and made a complaint at 10.30 a.m. on 12.06.2011 against these two accused. Based on the said complaint Ex.P.1, P.W.11, the then Special Sub-Inspector of Police, registered a case in Crime No.231 of 2011 for the offences under Sections 302 and 341 of IPC against both the accused. Ex.P.12 is the First Information Report. He forwarded both the documents to court which were received by the learned Magistrate at 08.30 p.m. on 12.06.2011.

(d) P.W.14 took up the case for investigation. He proceeded to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.6 and another witness. Then, he recovered blood stained earth and sample earth from the place of occurrence under a Mahazar. He recovered a Motorcycle belonging to the deceased from the place of occurrence and few more material objects. He conducted inquest on the body of the deceased between 03.15 p.m. and 05.15 p.m. on 12.06.2011 and then, forwarded the dead body for postmortem.

(e) P.W.13 Doctor Ponnappan conducted autopsy on the dead body of the deceased on 13.06.2011 at 10.30 a.m. He found the following injuries:



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'External Injuries:

1. Laceration of size 25 x 3 x 2 c.m. extending from left side of angle of mouth to left ear lobe exposing the underlying muscle and frontal mandible;
2. 20 x 3 x 7 c.m. deep laceration over the left side lateral aspect of neck extending deep to the cervical spine with fracture of C5 and C6 cervical bones. Left side neck vessels are cut, both ends are renalins and occluded with clots. Neck muscles are cut and was decomposed. Laceration margin of the wound was extended;
3. 15 x 2 x 5 c.m. deep laceration over the right side of the neck extending to right of neck, deeply extending up to cervical spine;
4. 8 x 3 x 2 c.m. laceration over the right side chest. Abrasion over the middle and front parts of the chest. No bone fracture;
5. 5 c.m. deep laceration over the left elbow with dislocation of elbow joint;
6. 5 x 2 c.m. laceration at left arm exposing the muscle.

Internal Examination :

Skull, Membrane intact. Neck : Hyoid bone preserved.

Thorax : Both end ribs are intact. Lungs congested.

Stomach contains 100 ml of fluid liquid. Intestine distended with gas.

Liver, spleen, kidneys are pale. Bladder empty.

External genitalia distended with gas.'

Ex.P.14 is the Postmortem Certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage due to the injuries found on the body of the deceased.

(f) During the course of investigation, on 15.06.2011, P.W.14 arrested the 2nd accused in the presence of P.W.7 and another witness. On such arrest, he gave a voluntary confession in which he disclosed the place where he had hidden the two knives. In pursuance of the same, he took the police to the place of hide out and produced the knives. P.W.14 recovered the same under a Mahazar. On 24.06.2011, he arrested the 1st accused in the presence of P.W.8 and another witness. But, no recovery of any article was made out of the same. Both the accused were later on remanded to judicial custody.

(g) The investigation was thereafter taken over by P.W.14. At his request, the material objects were sent for chemical analysis. The Chemical Analysis Report revealed that there were human blood found on all the material objects. On completing the investigation, he laid charge sheet against both the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined and 20 documents and 12 material objects were also marked.



4. Out of the said witnesses, P.W.1 is the wife of the deceased. She has stated that she went along with the deceased and witnessed the entire occurrence. P.W.2 is the cousin of the deceased. He has stated that he was also going in another motorcycle following the deceased and at the place of occurrence, according to him, he witnessed the entire occurrence. P.W.3 has stated that after the occurrence, he went to the place of occurrence and found P.W.1 wailing. P.W.4 has spoken about the motive. P.W.5 has also stated that he went to the place of occurrence after the occurrence. 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 from the 2nd accused. P.W.7 has spoken about the arrest of the 2nd accused and the consequential recovery of the two knives, namely, M.Os.1 and 2. P.W.8 has spoken about the arrest of the 1st accused. P.W.9 Police Constable has spoken that he took the dead body of the deceased to the hospital and handed over the same for postmortem. P.W.10 Scientific Assistant has spoken about the chemical analysis conducted by her on the material objects. P.W.11 has spoken about the registration of the case on the complaint of P.W.1. P.W.12 has spoken about the photographs taken at the place of occurrence. P.Ws.13 and 14 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. Their defence was a total denial. However, they did not choose to examine any witness nor to mark any document on their side. Having considered all the above, the Trial Court convicted both the accused 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 the learned Counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. In this case, the alleged occurrence was early in the morning at 05.30 a.m. on 12.06.2011. Neither the house of P.W.1 nor the house of P.W.2 is situated anywhere near the place of occurrence. The learned Counsel for the appellants would submit that P.Ws.1 and 2 would not have seen the occurrence at all. In order to substantiate this submission, the learned Counsel for the appellants would submit that the F.I.R. in this case was registered only at 10.30 a.m. and the same had reached the hands of the learned Magistrate at 08.30 p.m. for which there is absolutely no explanation. We find force in the said argument of the learned Counsel for the appellants.

8. P.W.1 is admittedly the wife and P.W.2 is the cousin of the deceased. Had it been true that they witnessed the entire occurrence, by all human conduct, P.Ws.1 and 2 would have gone to the police station immediately and made a complaint. But the complaint was made only at 10.30 a.m. i.e. about 5 hours later. Absolutely,



there is no explanation for the same. As rightly pointed out by the learned Counsel for the appellants, it is doubtful as to whether really Ex.P.1 would have come into existence at 10.30 a.m. on 12.06.2011. Had it been true that the First Information Report was registered at 10.30 a.m., the same would not have taken 10 hours to reach the hands of the learned Magistrate. Absolutely, there is no explanation for this inordinate delay also. In view of the fact that the occurrence had taken place at a far off place from the houses of P.Ws.1 and 2 and the fact that the complaint was made at 10.30 a.m. and the F.I.R. had reached the hands of the learned Magistrate at 08.30 p.m., we are of the view that there is enormous doubt in the case of the prosecution.

9. In an identical situation, the Hon'ble Apex Court in Thulia Kali vs. The State of Tamil Nadu reported in AIR 1973 Supreme Court 501, has held that the unexplained delay on the part of the prosecution in forwarding the FIR to court would create doubt in the very origin of the F.I.R. In the case, where the accused and the witnesses are interested and when there are number of accused, the delay assumes importance. In the instant case, the said delay is enormous which creates doubt in the case of the prosecution. The said doubt has not been duly explained by the prosecution. Further, the presence of P.W.1 and P.W.2 at the place of occurrence, even according to the prosecution, was by chance. They are interested witnesses. There is no other independent witnesses examined. In such circumstances, unless, the evidence of these witnesses inspire the fullest confidence of this Court, it will not be safe to act upon their evidence. As we have already concluded, the unexplained, enormous delay in the F.I.R, creates doubt in the veracity of P.W.1 and P.W.2 and there are also other circumstances which add strength to the said doubt. Thus, in our considered view, it is unsafe to place reliance on the evidences of P.W.1 and P.W.2 alone. In such view of the matter, we find it difficult to believe the evidences of P.Ws.1 and 2. Thus, we hold that the prosecution has failed to prove the charges against the accused.

10. 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, if any, paid by the accused, shall be refunded to the respective accused.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar



To

1. The I Additional District and Sessions Judge,
Tindivanam.

2.-do- thro' The Principal Sessions Judge, Villupuram.

3. The Judicial Magistrate II, Tindivanam.

4.-do- thro' The Chief Judicial Magistrate, Villupuram.

5. The Judicial magistrate, No. I, Chengalpattu.

6. The Inspector of Police,
Brammadesam Police Station,
Villupuram.

7. The District Collector, Villupuram.

8. The Superintendent of Police, Cuddalore.

9. The Superintend, Central Prison, Cuddalore.

10. The Director General of Police, Mylapore, Chennai.

11. The Public Prosecutor,
High Court, Chennai.

+1 cc to Ms. P. Uma, Advocate, Sr. 37636.

bvr(co)
krd 22/7

Judgment in
Crl.A.No.75/2015