

Bail Slip

That the Appellant/Accused namely Sankar was directed to be released on bail as per the order of this court dated 16.03.2015 in CrI.MP No.1/2015 in CrI.A.No.769/2015.

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.08.2016

PRONOUNCED ON : 22.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.769 of 2015

R.Sankar

... Appellant

- Vs -

State rep. by The Inspector of Police,
Reddichavady Circle,
Thookkanampakkam Police Station.
(Crime No.54/2010)

.. Respondent

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Additional District and Sessions Judge (Exclusive trial of Bomb Blast cases), Chennai @ Poonamallee in S.C.No.2 of 2015 dated 04.09.2015.

For Appellant : Mr.S.Suresh, Legal Aid Counsel and
R.Sankar - Appellant-in-Person

For Respondent : Mr.E.Raja
Additional Public Prosecutor

J U D G M E N T

The appellant is the first accused in S.C.No.2 of 2015 on the file of the learned Additional District and Sessions Judge (Exclusive trial of Bomb Blast cases), Chennai @ Poonamallee. The second accused was one Prem Kumar S/o Harilingam. The trial Court framed as many as four charges as detailed below:

the deceased was working in the brick kiln. Every day, in the evening, P.W.2 used to visit the brick kiln to pay the wages to the workers.

2.2. On 09.04.2010, in the evening, P.W.2 in the usual course had gone to the brick kiln to pay the wages to the workers. The workers then left. P.W.1, the driver of the tractor, and the deceased alone were there with P.W.2. P.W.2 was sitting in a chair by the side of the brick kiln. P.W.1 was standing by his side. The deceased was asked by P.W.2 to get water for drinking. Therefore, the deceased had just left the place to fetch water. There was enough light available at the place of occurrence. At that time, suddenly these two accused came from the opposite direction. On nearing P.Ws.1 and 2, the first accused threw a country bomb and the second accused threw another country bomb at them. Both blasted. They hit P.W.1 and 2 and they sustained extensive injuries. The deceased, who was returning after fetching water, was by this time near the place of occurrence. The first accused threw yet another country made bomb that blasted and smashed the head of the deceased. He died on the spot. These two accused fled away from the scene of occurrence. The occurrence was witnessed by P.W.3 also. On hearing the noise, the villagers rushed to the place of occurrence. Then they took P.Ws.1 and 2 to the hospital.

2.3. P.W.12 Dr.Kanagalakshmi, examined P.W.1 on 09.04.2010 at 10.10 p.m. He was brought by his son-in-law. He was conscious, he told that he sustained the injuries due to hurling of country bomb on him by six unknown persons at 09.30 p.m. on the same day. She found the following injuries viz., (1) a lacerated injury in the leg measuring 2 x 1 cms on the left side (2) another lacerated injury in the hand measuring 1 x 1 cms on the left side. Ex.P.23 is the wound certificate. She gave opinion that both the injuries were simple in nature. On the same day, at 10.00 p.m. she examined P.W.2 and he told that on the same day at 09.30 p.m., he sustained injuries on account of throwing of country bomb on him by six unknown persons. She found the following injuries viz., (1) Contusion with multiple abrasions measuring 1 x 2 cm in the right forearm, (2) a lacerated injury measuring 3 x 2 cm exposing bone on the right leg. There was corresponding fracture on the bone. There were number of lacerated wounds measuring 1 x 1 cm on the right leg. Ex.P.24 is the accident register and she opined that the injury on P.W.2 were grievous in nature.

2.4. P.W.1, went to Thookkanampakam police station at 12.15 a.m. on 10.04.2010 and made a complaint. P.W.14 the Sub Inspector of Police on receipt of the said complaint, registered a case in Crime No.54 of 2010 under Sections 147, 148, 324, 307 and 302 I.P.C. and Section 3 of Explosive Substances Act, 1908. Ex.P.26 is the F.I.R. and Ex.P1 is the complaint. He forwarded both the documents to Court, which

were received at 07.00 a.m. on 10.04.2010.

2.5. P.W.15, the then Inspector of Police, took up the case for investigation. He went to the place of occurrence and the dead body of the deceased was lying at the place of occurrence. Since the head was completely smashed due to the blast, the trunk without head alone was found. Fearing for law and order problem, immediately, he shifted the body to the mortuary at the Government Hospital at Cuddalore.

2.6. On 10.04.2010, at 06.00 a.m. he prepared an observation mahazar and a rough sketch at the place of occurrence in the presence of P.W.7 and another witness. He recovered blood stained earth and sample earth from the place of occurrence. He recovered the broken pieces of the plastic chair from the place of occurrence. Then, on going over to the hospital, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.7. P.W.13, conducted autopsy on the body of the deceased on 10.04.2010 at 11.40 a.m. He found the following injuries:

"Symmetrical body with severed head. Head not present except for occipital scalp skin and hair skull and facial bones absent. (2) abrasion 1 x 2 cm (left) knee (3) abrasion 3 x 2 cm (right) chest, RM present in all 4 limbs. Abdomen distended, genitals intact (4) multiple abrasion over right shoulder. Cement coloured ? Explosive material over right shoulder and right upper chest.

Internal examination: Abdomen distended. Ribs (N) heart and lungs pale, hyoid bone not present stomach contains yellowish fluid, liver, spleen, kidney pale, intestines distended with gas, bladder empty."

Ex.P25 is the postmortem certificate. He gave opinion that the death of the deceased was due to the smashing of the head in full. He collected the chemicals from the dead body and forwarded the same for examination. The report revealed that there were sulphur, ammonium, Potassium and Nitrate. They were all components of an explosive. Thus, according to him, the death was due to explosion.

2.8. P.W.15, examined P.Ws.1 and 2 and recorded their statements. The sniffer dog which was brought to the place of occurrence could not yield any clue. He recovered bloodstained cloths from P.Ws.1 and 2 as well as from the body of the deceased and forwarded the same to the Court.

2.9. On 07.07.2010, P.W.15 was in search of the accused. When he went through Mallataru big bridge, he found the first

accused moving very fast in a motorcycle, when he intercepted, the first accused fell down from the motorcycle and tried to escape. He scaled down the culvert of the bridge. However, P.W.15 managed to arrest him in the presence of Saravanan and Bhagyaraj. Since the first accused had sustained injuries, he was taken to the Government hospital at Cuddalore for treatment. Thereafter, he was sent to the Court for judicial remand. On the same day, at 04.00 p.m. he arrested the second accused. Then he forwarded him also to Court for judicial remand. On his request, the material objects were sent for chemical examination. On completing the investigation, he laid charge sheet against the accused.

2.10. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this 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, 34 documents and 11 material objects were marked.

2.11. Out of the said witnesses, P.Ws.1 and 2 are the injured eyewitness, who have vividly spoken about the occurrence. They have stated that the accused 1 and 2 hurled country bombs on them which blasted. According to them, they both sustained injuries and the deceased died on the spot as his head was completely smashed. P.W.3 has stated that he was present at the place of occurrence and he also witnessed the entire occurrence.

2.12. P.W.4 has stated that on the date of occurrence, around 09.00 p.m. he heard the noise of the bomb blast. Within half an hour, these two accused were running from Mellakuppam village. When he enquired, they told him that the villagers were chasing them. Then in a motorcycle, the accused 1 and 2 escaped. P.W.5 has stated that after the occurrence, he went to the place of occurrence and took the injured to the hospital. P.W.6 has stated that on hearing the blast sound, he rushed to the place of occurrence and found P.Ws.1 and 2 with injuries and the deceased dead.

2.13. P.W.7 has spoken about the preparation of the observation mahazar and the rough sketch and the recovery of the material objects from the place of occurrence. P.W.8 has spoken about the chemical examination conducted at the Forensic lab. She examined the white cloth, the small pebbles, parts of the plastic chair and some stones, all recovered from the place of occurrence. She found that there were Sulphur, Aluminium, Potassium, Nitrate, Chlorate, Sulphate and Thiosulphate in the same. According to her, they are remains of the country made bomb.

2.14. P.W.9 has stated that he handed over the dead body to the doctor for postmortem. P.W.10, the learned Judicial

Magistrate has stated that he conducted Test Identification Parade for the accused 1 and 2, in which, P.Ws.1 to 3 correctly identified the second accused. P.W.11, is a forensic expert. She has spoken about the chemical analysis conducted on the clothes recovered from the dead body. P.W.12 has spoken about the treatment given to P.Ws.1 and 2 at the Government hospital at Cuddalore.

2.15. P.W.13 has spoken about the postmortem conducted and his final opinion regarding the cause of death. He has stated that he collected the chemicals found on the body of the deceased and forwarded the same for analysis. The report revealed that they were all components of country made bomb. P.W.14 has spoken about the registration of the case on the complaint of P.W.1. P.W.15 has spoken about the investigation done and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side, the first accused examined himself as D.W.1 and marked two documents viz., Ex.D1 is a certified copy of the judgement in S.C.No.38 of 2012 and Ex.D2 is a certified copy of the judgement in S.C.No.517 of 2013. D.W.1 has stated that he was prosecuted before the learned II Additional Sessions Judge, Cuddalore in S.C.No.38 of 2012 and in that case, he was acquitted. Ex.D1 is the certified copy of the said judgment. He has further stated that he was implicated in the present case based on the so-called confession given by him to the police in connection with the above case in S.C.No.38 of 2012. According to him, since he was acquitted in S.C.No.38 of 2012, disbelieving his confession, in this case also, the said conclusion in S.C.No.38 of 2012 is material. He has further stated that there was yet another case in S.C.No.517 of 2013 before the learned II Additional Sessions Judge, Villupuram in that case he was acquitted and Ex.D2 is the certified copy of the judgement. Similarly, the present case is also a false case against him, he has stated.

4. Having considered all the above, the trial Court acquitted the second accused however convicted the first accused alone as detailed in the first paragraph of this judgment and that is how, the appellant/ first accused is before this Court with this appeal.

5. In this appeal, one Mr.B.Baskaran, a learned counsel, was on record for him. When the appeal came up for hearing, Mr.B.Baskaran did not appear continuously. Therefore, this Court appointed one Mr.S.Suresh as the legal-aid-counsel to argue the case for the appellant. When the appeal came up on 04.08.2016, the brother of the appellant by name Mr.Alagu made appearance. He submitted to this Court that before the trial Court, the appellant himself conducted the trial and here

before this Court also, he himself wanted to argue the appeal. He further told that already, from the jail, the appellant had sent a letter to the Registry on 23.07.2016 itself, expressing his desire to argue the appeal before this Court in person.

6. Having considered the above, this Court directed the Superintendent of Central Prison, Cuddalore to produce the accused before this Court on 10.08.2016 at 10.30 a.m. Accordingly, he was produced. The learned counsel Mr.S.Suresh also appeared as Legal-aid-counsel. The appellant made his oral submissions and when we asked him as to whether Mr.S.Suresh, the learned counsel could supplement his arguments on legal issues, he told this Court that he had no objection for Mr.S.Suresh to make further arguments. Accordingly, we heard Mr.S.Suresh, the legal-aid-counsel also. We heard the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

7. The main contention of the appellant and his counsel would be that at the earliest point of time, in Ex.P1, P.W.1 had stated that there were six assailants in total, out of whom, two were known persons whose names and address alone were not known and others were unknown persons. The learned counsel would point out that there was strong motive between the appellant and P.W.2. Thus, according to him, the appellant was very well known to P.W.1. When that be so, according to the learned counsel, the fact that P.W.1 had told that two known and four unknown persons participated in the occurrence, would only go to show that it was not this appellant who was one among the assailants.

8. The appellant and the learned counsel for the appellant would further point out that at the earliest point of time, P.Ws.1 and 2 told the doctor that they were attacked by six unknown persons. This contradiction also has not been explained, they contended. The learned counsel would further submit that there was inordinate delay in registering the case and the F.I.R. reaching the hands of the Court also. They have further pointed out that the time of occurrence has also been inconsistently stated. Thus, according to the appellant and his learned counsel, the prosecution has not proved the case beyond reasonable doubts and therefore the appellant should be acquitted. He has further stated that the trial Court had disbelieved the evidence of P.Ws.1 and 3 as against the second accused and applying the same yardstick, according to them, the appellant should also be acquitted.

9. The learned Additional Public Prosecutor would vehemently oppose this appeal. According to him, it is true that in the F.I.R. P.W.1 had not mentioned the name of the appellant. However, he would submit that the evidences of P.Ws.1 to 3 who have mentioned the participation of the

appellant at the earliest point of time during investigation cannot be doubted. Thus, according to him, P.Ws.1 to 3 could be believed as against the appellant alone. He would further submit that because the second accused had been acquitted disbelieving P.Ws.1 to 3, on that score, their evidences cannot be rejected in toto. He would further add that the medical evidence fully corroborates the eyewitness account of P.Ws.1 to 3. Thus, according to the learned Additional Public Prosecutor, the conviction and sentence imposed on the appellant by the trial Court are liable to be confirmed.

10. We have considered the above submissions.

11. There can be no denial of the fact that the deceased died due to a country bomb blast near the brick kiln owned by P.W.2. There can also be no dispute that P.Ws.1 and 2 sustained injuries in the same occurrence. Therefore, the presence of P.Ws.1 and 2 at the place of occurrence cannot be doubted. P.W.3 has stated that he was also present at the time of occurrence. He has explained as to why and how he came to the place of occurrence. In our considered view, his presence at the place of occurrence also cannot be doubted. P.Ws.1 and 2 being injured eyewitnesses, require more credence. These three witnesses have stated in one voice that these two accused alone came, hurled country bombs, in which, the deceased died and P.Ws.1 and 2 sustained injuries. The question is whether to believe P.Ws.1 to 3 or not as against this appellant.

12. The main contention of the appellant is that at the earliest point of time, P.W.1 in the F.I.R. had not mentioned the presence and participation of this appellant at all. He has stated that two known persons whose names and address were not known to him and four unknown persons hurled country bombs on them. Thus, the earliest statement of P.W.1 is to the effect that the assailants were six in numbers, whereas, only two were prosecuted by the police. This, in our considered view too is a contradiction. But it is not every contradiction that would make evidence of a witness totally unbelievable. In the evidence of a witness, if truth could be separated from falsity, there can be no difficulty in acting upon the truth spoken by the witness. Though P.W.1 had stated that the number of assailants were six and that for his own reasons, he has not stated about the others during trial, except the accused 1 and 2, on that score, his evidence against the appellant cannot be rejected.

13. P.W.2 had also told the doctor that he was attacked by six unknown persons. This is a former statement of P.W.2. Admittedly, there was a strong enmity between the first accused and P.W.2. Thus the first accused was known to P.W.2 very well. The contention of the learned counsel for the

appellant is that had it been true that this appellant participated in the occurrence, to the doctor, P.W.2 would not have told that he was attacked by six unknown persons. In our considered view, acting on this contradiction, we cannot reject the evidence of P.W.2 also as against the appellant. Might be because he was under a severe shock due to the blast, he would have given an incorrect statement to the doctor. Therefore, we find it difficult to reject his evidence as against the appellant. At any rate, P.W.3 is an independent witness. He has got no axe to grind against the appellant. He has categorically stated about the participation of this appellant. Therefore, there is no reason to reject the evidence of P.W.3.

14. It is contented by the appellant that the trial Court had rejected the evidence of P.Ws.1 to 3 as against the second accused and therefore applying the same yardstick, there evidences should be rejected as against this appellant also. This argument does not persuade us, as the principle 'falsus in uno falsus in omnibus' has not been recognised by Indian Courts. In the Indian scenario, the law is, if the Court is able to separate the grain from the chaff, there is no legal impediment for the Court to act upon the grain. Here, in this case, the trial Court has acquitted the second accused for various reasons and similar reasons are not available for the first accused. In our considered view, the grain is easily capable of being separated from the chaff in the instant case. Therefore, we are unable to reject the evidences of P.Ws.1 to 3 as against this appellant.

15. From the evidences of P.Ws.1 to 3, it has been clearly established that the appellant was one of the assailants who hurled the country bombs on P.Ws.1 and 2 and the deceased, which resulted in injuries to P.Ws.1 and 2 and in the death of the deceased.

16. So far as the motive is concerned, it has not been denied by the appellant. Exs.D1 and D2 are the judgments in two other Sessions case, in which, the appellant was the accused. In one case, he was convicted for life and the same was modified by the High Court. It is pointed out by the State that from the materials available on record, it is inferable that the appellant was indulging in rowdyism in that locality and he was a great threat to the people. P.W.2 appears to be a gang leader opposing the appellant. Thus, P.W.2 as well as the appellant were a menace to the society as they were fighting with each other resulting in a number of cases against them, including murder cases and attempt to murder cases etc. I am of the view, whether the appellant is a rowdy and a menace to the society cannot be gone into. But, the previous incidents referred to above would certainly go to prove that there was strong enmity between the accused and

P.W.2. Thus, the motive has also been clearly established by the prosecution.

17. In view of all the above, we hold that the prosecution has clearly established the guilt of the appellant and the trial Court was right in convicting him and accordingly imposing punishment.

18. So far as the quantum of punishment is concerned, the trial Court has imposed only a 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.

19. In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellant / first accused by the learned Additional District and Sessions Judge (Exclusive trial of Bomb Blast cases), Chennai @ Poonamallee in S.C.No.2 of 2015, dated 04.09.2015, is hereby confirmed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.1, Cuddalore.

2.Do Thro The Chief Judicial Magistrate, Cuddalore.

3.The Additional District and Sessions Judge,
(Exclusive trial of Bomb Blast cases),
Chennai @ Poonamallee.

4.The Superintendent, Central Prison, Cuddalore.

5.The Inspector of Police,
Reddichavady Circle,
Thookkanampakkam Police Station, Cuddalore District.

6. The Public Prosecutor, Madras High Court, Chennai 600 104.

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