

Bail Slip

The Appellants/petitioners/Accused namely

1 Kalarani F/A 51 years W/o Pannerselvam

2 Natarajan M/A 39 Years S/o Ganesan

3 Selvakumar M/A 33 years S/o Ganesan

were directed to be released on bail as per the order of this court dt.02.04.2012 and 24.07.2012 respectively in CrI.MP.1/2012, and MP.2/2012 in in C.A.No.107/2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 06.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.107 of 2012

1.Natarajan

2.Selvakumar

3.Kalarani(died)

... Appellants/Accused 1,2 & 3

vs.

State,by

The Inspector of Police,
Chozhatharam Police Station,
Cuddalore District.

Crime No.83 of 2007

.... Respondent/complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 27.01.2012 passed by the learned Additional District Judge, Fast Track Court No.I, Chidambaram, in S.C.No.45 of 2008.

For Appellant : Mr.N.S.Suganthan, Legal Aid Counsel

For A-1

Mr.S.Anandhanarayanan

For Mr.S.M.Nandhie Devan for A-2

For Respondent : Mr.M.Maharaja,Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by V.Bharathidasan, J.)

The appellants in this appeal are accused Nos.1 to 3 in Sessions Case No.45 of 2008, on the file of the learned Additional District Judge, Fast Track Court No.I, Chidambaram. They stood charged for the offences punishable under Sections 341, 302, 302 r/w 114 and 506 (ii) of the Indian Penal Code. The Trial Court by judgement dated 27.01.2012, convicted all the appellants for the offence under Section 341 of the Indian Penal Code, and imposed a fine of Rs.500/-, in default, to undergo simple imprisonment for one month; convicted the appellants 1 and 2 for the offence under Section 302 IPC and sentenced each of them to undergo life imprisonment and also imposed a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for six months; convicted the appellants 1 and 2 for the offence under Section 506(ii) of IPC and sentenced each of them to undergo rigorous imprisonment for two years and convicted the third appellant for the offence under Section 302 r/w 34 IPC and sentenced her to undergo life imprisonment and also imposed a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for six months. The sentences imposed against the appellants were ordered to run concurrently. Challenging the above said conviction and sentence, the appellants/accused are before this Court with this appeal.

2. Originally, there were four accused. A-3, namely, Gopi died pending trial and the present appellants alone faced trial. Pending the present appeal, the 3rd appellant, namely, Kalarani also died. Hence, the appeal stand abated as against the third appellant. The appellants 1 and 2 alone are now prosecuting the appeal.

3. The case of the prosecution in brief is as follows:
The deceased, in this case, was one Ilayaraja, brother of P.W.1 and P.W.3. The deceased Ilayaraja had illicit intimacy with the wife of A-1, one Usharani and they left the village. After six months, A-1 brought back his wife Usharani. But, fearing consequences, the deceased did not come to the village. After some time, the said Usharani committed suicide. While so, in May, 2006, the deceased Ilayaraja came to the village. On 31.05.2006, at about 8.00 p.m., while he was returning from temple, accused 1 to 4 waylaid the deceased, A3-Gopi(died) caught hold the deceased, A-1 and A-2 attacked him with aruval and ran away from the scene of occurrence. P.W.1, the brother of the deceased who witnessed to the occurrence, lodged a complaint Ex.P.1 before the respondent police.

(ii) P.W.15, Sub Inspector of Police, Chozhatharam Police Station, received the complaint and registered a case in Crime No.83 of 2006 under Sections 341 and 302 of IPC and prepared First Information Report Ex.P11, sent the same to the Judicial Magistrate Court and copies of the same to the Inspector of Police, Sethiyathoppu Police Station. On receipt of the FIR, P.W.21, Inspector of Police, Sethiyathoppu Police Station, commenced investigation. On 31.05.2006, he visited the scene of occurrence and prepared an observation mahazar, Ex.P.4 and drew a rough sketch, Ex.P17 in the presence of witnesses. On the same day, he recovered bloodstained soil, M.O.3 and sample soil M.O.4 in the presence of witnesses and he examined P.W.1, P.W.4 and P.W.7 and other witnesses and recorded their statements. In the meantime, the dead body of the deceased was sent to the Government Hospital, Chidambaram. On 01.06.2006 at about 7.00 am., P.W.21 went to the Government Hospital, Chidambaram, conducted inquest over the dead body in the presence of panchayat members and he prepared inquest report Ex.P18. Thereafter, he sent the dead body for post mortem through a head constable, namely, Rajendran. P.W.21 recovered blood stained lungi M.O.5, bloodstained Banian M.O.6 from the body of the deceased.

(iii) P.W.2, Doctor, working in Chidambaram Government Hospital, conducted post mortem on the dead body of the deceased and found the following injuries.

External Injuries:

- 1) Decapitation of the head at the level of thyroid cartilage- with skin was attached (back of the neck) (exposing of internal structure).
2. Deep cut injury on the top of head 25 x 5 x 25 cm.
3. Deep cut injury on the left temple area 25x10x5cm.
4. A cut injury on right shoulder 25x5x2 cm.
5. A cut injury 25x10 cm, outer shoulder 10x5x5cm
(scapula)
- 6) A cut injury right shoulder 10x5x5 cm.
- 7) a cut injury on right chest wall 5x2x2 cm.
- 8) A cut injury on right forearm 10x5x2 cm.

Internal Examination:

Stomach contains about 500 gms. of undigested food particles seen, Small intestine - distended with gas, Liver-Pale Spleen pale, Kidney-pale, Bladder-Empty. Thorax: No fracture of ribs. Both shoulder bones are cut. Lungs-congested. Head and

neck hyoid bone intact and bone on the upper part of head separated from the cavical bones at the level C2-C4 (exposed). Fracture of skull bones cut - right and left occipital bones. Parietal bones - Membrane intact - Brain congested. viscera preserved.

He issued postmortem certificate Ex.P2. P.W.21, Inspector of Police arrested A-1 on 02.06.2006 and on such arrest, he voluntarily gave a confession and based on the disclosure statement, P.W.21 recovered blood stained knife M.O.1, in the presence of witnesses under Ex.P.20 seizure mahazar. On the same day, he arrested the second accused and another accused (Gopi) and on such arrest, they voluntarily gave confession and based on their disclosure statement, P.W.21 recovered M.O.2 a small knife and bloodstained Dhoty M.O.8 in the presence of witnesses. Subsequently, P.W.22, Inspector of Police, continued the investigation and examined witnesses. On 06.07.2006, he produced the witnesses before the learned Judicial Magistrate No.I, Chidhambaram for recording their statement under Section 164 Cr.P.C. On 29.07.2006, P.W.22, arrested the 4th accused and sent her to judicial custody and after completing the investigation, on 31.07.2006, he filed final report.

4. I 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 case of prosecution, as many as 22 witnesses were examined and 21 documents and 8 material objects were marked.

5. Out of 22 witnesses examined, P.W.1 is the brother of the accused. As per his evidence, on 31.05.2006, at about 8.00 p.m., he heard the noise of the deceased, and on hearing the same, he went to the scene of occurrence and A3(died) catch hold of the deceased and instigated the other accused to cut the deceased, A-1 and A-2 attacked the deceased with aruval indiscriminately and the deceased died on the spot. He has further stated that at that time, the 4th accused namely, Kalarani took the blood of the deceased and applied the same on her forehead and said that her vow was fulfilled and thereafter, he went to the respondent police and gave complaint Ex.P1. P.W.2 is the Doctor, who conducted postmortem and gave postmortem certificate Ex.P2. P.W.3 is the younger brother of the deceased. he has also an eye witness to the occurrence. In his evidence, he has stated that at the time of occurrence, he saw the accused attacking the deceased with aruval. His evidence is similar to that of P.W.1. P.W.4 is the brother-in-law of the deceased. He turned hostile. P.W.5 also turned hostile. P.W.6 is the mother of the deceased, who is also an eye witness to the occurrence. In her evidence, she has stated that the accused 1 and 2 attacked the deceased with aruval and

A-4 Kalarani took the blood of the deceased and applied the same in her forehead. P.W.7 is the uncle of the deceased. He is also an eye witness to the occurrence. In his evidence, he has stated that he saw the accused 1 and 2 attacking the deceased with aruval and he advised P.W.1 not to include the name of A-4 Kalarani in the complaint on the ground that if her name is included, the case will be weakened. P.W.8 also turned hostile. P.W.9 is a witness to the observation mahazar. P.W.10 also turned hostile. P.W.11 is the mahazar witness for recovery of M.O.1. P.W.12 is the learned Judicial Magistrate No.I, Chidhambaram, who recorded statements of witnesses under Section 164 Cr.P.C. P.W.13 is the Head Clerk, working in the Judicial Magistrate Court, Chidhambaram. He has stated that he sent the material objects for chemical examination. P.W.14, Head Constable, submitted the material objects before the Forensic Department, Villupuram, from the Judicial Magistrate Court. P.W.15 is the Sub Inspector of Police, who registered the complaint Ex.P1. P.W.16 was working as an Assistant in the Forensic Department. He conducted viscera test and submitted a report, Ex.P12. P.W.17 was working in the Forensic Department, Villupuram, he examined the bloodstained material objects and submitted his report, Ex.P13. P.W.18 is a witness for recovery of M.O.2, small knife. P.W.19 turned hostile. P.W.21 is Inspector of Police, who conducted the investigation. P.W.22, is Inspector of Police, who continued the investigation and on completion of investigation, filed charge sheet against all the accused under Section 341, 302, 302 r/w 114 and 506(ii) of IPC.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. Their defence was total denial. The accused did not examine any witness and no document was marked on his side. As stated above, A-3 died during the trial.

7. Having considered all the above materials, the Trial Court convicted the accused 1,2 & 4 for the offences as stated in first paragraph of this judgement. Challenging the above conviction and sentence, A1, A2 and A4 had filed the appeal before this Court to stated earlier. Pending appeal, the 3rd appellant/A4, namely, Kalarani, died. Hence, the appeal stands abated against her. Now, appellants 1 and 2 are prosecuting the appeal.

8. We have heard Mr.N.S.Suganthan, learned counsel appearing for the first appellant and Mr.S.Anandhanarayanan, learned counsel appearing for the second appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

9. The learned counsel appearing for the appellants would submit that the prosecution has suppressed the origin and

genesis of the case. It is contended by the learned counsel appearing for the appellants that as per the evidence of P.W.1, at the time of occurrence, all the accused were present in the scene of occurrence, the accused 1 and 2 attacked the deceased with aruval and caused death of the deceased and thereafter, A-4, Kalarani, put the blood of the deceased in her forehead and stated that her vow has been fulfilled on that day and the evidence of P.W.3, the younger brother of the deceased, has corroborated such statement of PW1. but, in Ex.P1 complaint, the name of A-4 Kalarani was not mentioned but only the names of A-1, A-2 and Gopi (died) alone have mentioned. He further contended that P.W.7, the uncle of the deceased has advised P.W.1 and P.W.3 not to include the name of A-4 as it would weaken the case and the same was also admitted by P.W.1 in his cross-examination and hence it is clear that before giving the complaint, the complainant had deliberately omitted the name of A-4 and thus the prosecution has suppressed the origin and genesis of the case. Apart from that it is the contention of the learned counsel appearing for the appellants that all the eye witnesses are close relatives of the deceased and in the absence of any other independent witnesses to support the case, the case of the prosecution cannot be sustained. They further submitted that there is a long delay in examining the witnesses and it also creates doubt in the case of the prosecution.

10. On the other hand, the learned Additional Public Prosecutor, vehemently contend that in this case there are four eye witnesses and they have clearly stated about the involvement of the accused and hence the eye witnesses version cannot be discarded. Therefore, it is his contention that the prosecution has conducted the case in a proper manner and there is no infirmity in the judgment of the trial Court.

11. We have considered the rival submissions.

12. As rightly contended by the learned counsel appearing for the appellants, even though, in their evidence, P.W.1, 3 and 6 have clearly stated that the 4th accused, namely, Kalarani, was present in the scene of occurrence and she took the blood of the deceased and applied it in her forehead by stating that her vow has been fulfilled, in Ex.P1, the complaint given by P.W.1, deliberately her name has been omitted. P.W.7 admitted in his evidence that there was a deliberation before giving the complaint, and PW7 alone has advised P.W.1, not to include the name of Kalaranai, as it would weaken the case, which has also been admitted by P.W.1 in his cross examination. In the said circumstances, it is clear that before lodging the complaint, there was a deliberation between the witnesses and they have deliberately omitted the name of Kalarani, A-4 in the complaint. This creates serious doubt over the prosecution case

and the prosecution has deliberately suppressed the origin and genesis of the occurrence. That apart, all the eye witnesses are close relatives of the deceased and no other independent witnesses has been examined in this case. As stated above, the evidence of eye witnesses cannot be believed as they have deliberately suppressed the origin and genesis of the case. Hence, it is not safe to rely upon the evidence of eye witnesses to convict the appellants. Apart from that, there is considerable delay in registering the first information report. Even though the occurrence is said to have taken place on 31.06.2006 at about 8.00 p.m the complaint has been given only on 31.06.2006 at about 10.30 p.m. This delay in giving the complaint has not been properly explanation by the prosecution. In view of all the above, we hold that the prosecution has failed to prove the case beyond reasonable doubt, therefore, the appellants are entitled for acquittal.

13. In fine, this Criminal Appeal is allowed. The convictions and sentences passed by the learned Additional Judge, Fast Track Court No.I, Chidhambaram, dated 27.01.2012 in Sessions Case No.45 of 2008 are set aside and the appellants/1 & 2 accused are acquitted of the charges levelled against them. Bail bonds if any, executed by them shall stand cancelled. Fine amounts, if any, paid by them are ordered to be refunded forthwith.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rrg

To

1 The District Munsif cum Judicial Magistrate
Kattumannarkoil Cuddalore

2 The Chief Judicial Magistrate, Cuddalore

3.The Additional District & Sessions Judge,
Fast Track Court No.I,
Chidhambaram.

4.The Inspector of Police,
Chozhatharam Police Station,
Cuddalore District.

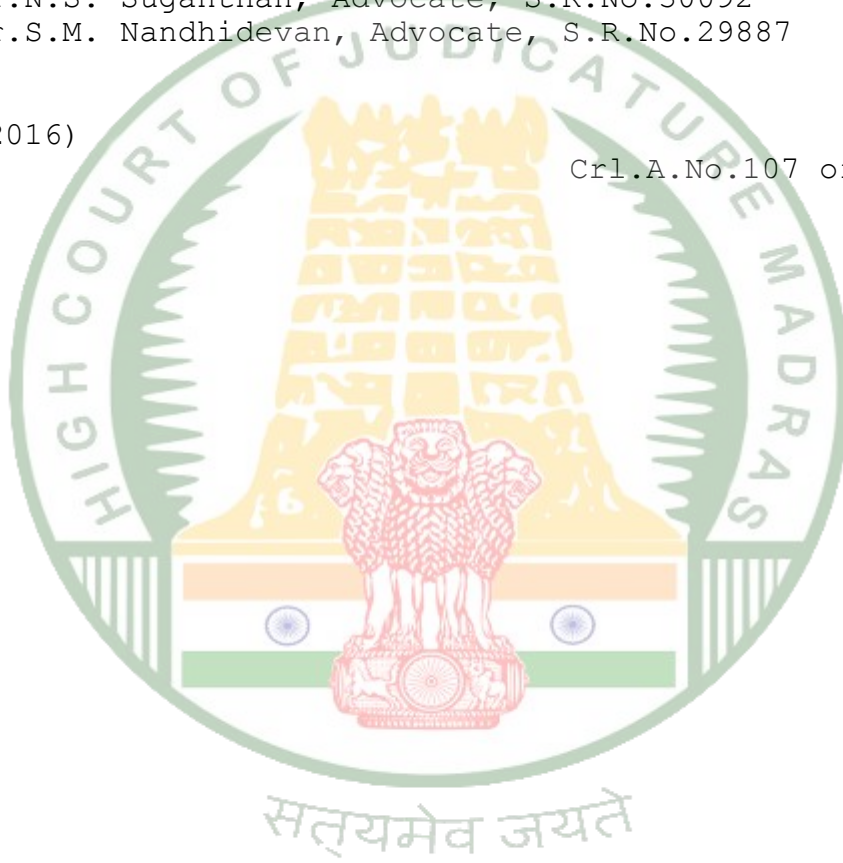
5 The Superintendent
Central Prison, Cuddalore

6 The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.S. Suganthan, Advocate, S.R.No.30092
+1cc to Mr.S.M. Nandhidevan, Advocate, S.R.No.29887

sr(CO)
md(30/12/2016)

Cr1.A.No.107 of 2012



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