

Bail Slip:- The Appellants herein/Accused 2,5, and 6 Viz., 1. Raja (A2) 2. Kutty @ Govindaraj (A5) 3. Aru @ Arumugam (A6) were directed to be released on bail as per order of this Court dated 4.6.2012 and 27.3.2012 made in M.P.2/12 and M.P.3/12 in CrI.A.No.204/12 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN
AND

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

CRIMINAL APPEAL No. 204 of 2012

1.Raja
2.Kutty @ Govindaraj
3.Aru @ Arumugam ... Appellants/ Accused 2,5, & 6

Vs.

State represented by
Inspector of Police
Vishnukanchi Police Station
Kancheepuram.
Crime No.93 of 2009 ... Respondent

This Criminal Appeal is preferred under Section 374(2) Cr.P.C against the judgment of conviction and sentence imposed on the appellants by the learned District & Sessions Judge No. II, Kancheepuram, in S.C.No. 65 of 2010, dated 28. 02.2012.

For Appellants : Mr.V.Gopinath
Senior Counsel
for Mr.T.Vijayaraghavan

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

(The judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellants are the accused Nos. 2, 5 and 6 in S.C. No. 65 of 2010 on the file of the learned Sessions Judge, Sessions Court No. II, Kancheepuram and they along with accused Nos.1, 3 and 4 stood charged for the offences as detailed below:-

Sl.No.	Charge No.	Rank of Accused	Charged for the Offence
1	Charge No.1	Accused Nos.5&6	U/s. 147 IPC
2	Charge No.2	Accused Nos.1 to 4	U/s. 148 IPC
3	Charge No.3	Accused Nos.1 to 5	U/s. 302 IPC
4	Charge No.4	Accused No.6	U/s.302r/w.149 IPC

During the pendency of the trial, the accused Nos.1, 3 and 4 died and therefore, the charges against them abated. Thus, the accused Nos.2, 5 and 6, who were the appellants, alone faced the trial. By judgment, dated 28.02.2012, the Trial Court convicted the appellant Nos.2, 5 and 6 and sentenced them as detailed below:-

Sl.No.	Rank of Accused	Conviction	Sentence
1	Accused Nos.2,5&6	U/s.147 IPC	To undergo two years Simple Imprisonment each and to pay a fine of Rs.1,000/- each, in default to undergo six months Simple Imprisonment.
2	Accused Nos.2,5&6	U/s. 148 IPC	To undergo Simple Imprisonment for three years each and to pay a fine of Rs.1,000/- each, in default to undergo six months Simple Imprisonment.
3	Accused Nos.2 & 5	U/s. 302 IPC	To undergo Imprisonment for Life and to pay a fine of Rs.1,000/- each, in default to undergo six months Rigorous Imprisonment.
4	Accused No.6	U/s. 302 r/w.149 IPC	To undergo Imprisonment for Life and to pay a fine of Rs.1,000/- each, in default to undergo six months Rigorous Imprisonment.

The sentences were ordered to run concurrently. Challenging the said judgment of conviction and sentence dated 28.02.2012, the appellants are before this Court with this appeal.

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

(i) The deceased in this case was one Mr.Babu. P.W.1-Jayagandhi is his wife. The deceased was doing Real Estate Business in Chinna Kancheepuram Village. On account of the said Real Estate Business, there was enmity between the accused Nos.1 and 2 and the deceased. This is stated to be the motive for the accused Nos.1 and 2 to commit the murder of the deceased.

(ii) On 17.02.2009, at about 7.45 p.m., when the deceased was nearing the junction of Tumbavanam Street, Puthutheru at Chinna Kancheepuram Village, it is alleged that all the six accused came there in an auto bearing Registration No.TN-05-4530, armed with deadly weapons. The 1st accused was having a patta knife; the 2nd accused was having an iron rod; the 3rd accused was having a cycle pump; the 4th accused was having an iron rod; and the accused Nos. 5 and 6 were not armed with any weapon. It is stated that all the accused attacked the deceased with their respective weapon, indiscriminately. The deceased sustained serious injuries and fell down in a pool of blood. All the accused fled away from the scene of occurrence. The occurrence was witnessed by P.Ws. 1 and 9 and many more persons. Since the deceased was still alive, P.W.1 immediately took him to the Government Hospital at Kancheepuram. After giving first aid treatment, the Doctor advised P.W.1 to take the deceased to the Government General Hospital at Chennai. But, on the way the deceased succumbed to the injuries. Therefore, the dead body was brought back to the Government Hospital at Kancheepuram and kept in the mortuary.

(iii) P.W.1 went to Vishnukanchi Police Station on 17.02.2009, at 11.30 p.m., and made a complaint under Ex.P.1. P.W.8-Ms.Amudha, the then Sub-Inspector of Police, Vishnukanchi Police Station, received the complaint at 11.30 p.m. and registered a case in Crime No. 93 of 2009 under Sections 294(b), 341, 324 and 302 IPC. Ex.P.4 is the First Information Report. He forwarded both the documents to Court and handed over the Case Diary to the then Inspector of Police for investigation.

(iv) P.W.19- Mr.Sivapathasekaran, the then Inspector of Police, took up the case for investigation. On 17.02.2009, at 11.30 p.m., he proceeded to the place of occurrence and prepared an Observation Mahazar (Ex.P.9) at 1.00 a.m. on 18.02.2009 and he also prepared Rough Sketch (Ex.P.34) showing the place of occurrence. He then collected the

bloodstained earth (vide M.O.6) and the sample earth (vide M.O.7) from the place of occurrence. On 18.02.2009, he conducted inquest on the body of the deceased and forwarded the same for Post-Mortem. P.W.14-Dr.S.Karthikeyan conducted autopsy on the body of the deceased on 18.02.2009 at 10.30 a.m. He found the following injuries on the body of the deceased.

"Injuries:-(1)cutwound forehead 4 x 2 cm with parietal fracture frontal bone 1 x 1 cm.

(2)Left eyebrow laceration 6 x 2 cm.

(3) Cutwound left temple 2 x 2 cm.

(4) Fracture mandible, fracture left maxilla, fracture left 24 goona.

(5) Laceration parietal scalp with punctured fracture.

(6) Cut left cheek 4 x 2 cm.

Internal: No rib fracture.

Lungs right 450 grams c/s. congested

Lungs left 400 grams c/s. congested.

Heart 350 grams c/s. congested.

Stomach empty.

Liver 1600 grams c/s. congested.

Spleen wt. 100 grams c/s. congested.

Kidneys each 100 grams c/s. congested.

Brain weight 1300 grams c/s. congested.

Ex.P.27 is the Post-Mortem Report. The Doctor gave final opinion that the deceased would appear to have died of shock and haemorrhage due to the head injuries.

(v) P.W.19-the then Inspector of Police continued the investigation and arrested the accused Nos.2 and 3 on 19.02.2009 at 7.00 a.m. near Kancheepuram Bus Stop in the presence of the witnesses, viz., P.W.12-Loganathan and P.W.13-Vijayakanthan. On such arrest, the accused No.2 made a voluntary confession, in which, he disclosed the place where he had hidden the iron rod. Ex.P.36 is the Disclosure Statement. Similarly, the accused No.3 has made a Disclosure Statement, in which, he disclosed the place where he had hidden the cycle pump. Ex.P.37 is the said Disclosure Statement. In pursuance of the same, these Material Objects (vide M.Os. 2 and 4) were recovered in the presence of witnesses from the hidden place as produced by the respective accused. On 19.02.2009, at 1.15 p.m., he arrested the accused Nos. 4 and 6 at Orikai Military Road in the presence of the same witnesses. On such arrest, the accused No.4 made a voluntary confession statement, in which, he disclosed the place where he had hidden the iron rod. Similarly, the accused No.6 also made a Disclosure Statement, in which, he had disclosed the place where he had hidden the auto bearing

Registration No.TN-05-4530. Exs.P.38 and P.39 respectively are the said Disclosure Statements. In pursuance of the said Disclosure Statements, the above Material Objects - M.Os. 3 and 5 were recovered by P.W.19 on being produced by the respective accused. On 21.02.2009, at about 5.30 a.m., he arrested the 5th accused near Kancheepuram Bus Stop and forwarded him to the Court for judicial remand. He handed over the Material Objects also to Court. Then, he made a request to the Court to forward the Material Objects for chemical examination. The report revealed that there were bloodstains on all Material Objects, except on the sample Earth. On his transfer, he handed over the Case Diary to his successor for further investigation. P.W.20-Mr.Balu, the Inspector of Police, continued the investigation; collected the medical records and examined few more witnesses. Finally, he laid chargesheet against the accused.

(vi) Based on the above materials, the Trial Court framed charges as detailed in the paragraph No.1 of this judgment. All the accused denied the same as false. During the trial, in order to prove the case of the prosecution, on the side of the prosecution as many as 20 witnesses were examined and 52 documents and 10 material objects were marked. Out of the said witnesses, P.Ws. 1 and 9 have claimed that they witnessed the occurrence. They have stated about the occurrence and participation of the accused. P.Ws. 2 to 4 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.5 is not an eye witness to the occurrence and he has stated that he later came to know about the occurrence. P.W.8 has spoken about the complaint obtained from P.W.1 and registration of the case. P.Ws. 10 to 13 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.14 has spoken about the Post-Mortem conducted and also the final opinion regarding the cause of death. P.Ws. 15 and 16 have turned hostile. P.Ws. 19 and 20 have spoken about the investigation done by them respectively. Others are official witnesses, who are not very material.

(vii) When the appellants/accused Nos.2, 5 and 6 were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, they denied the same as false. But, they have not chosen to examine any witness nor to mark any document on their side. Their defence was a total denial. Having considered all the above, the Trial Court found the appellants/accused Nos. 2, 5 and 6 guilty and convicted them accordingly. That is how, the appellants/accused Nos.2, 5 and 6 are now before this Court with this appeal.

3. We have heard Mr.V.Gopinath, learned senior counsel appearing for the appellants and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the respondent and also we have perused the records carefully.

4. The learned senior counsel appearing for the appellants would submit that the Trial Court ought not to have relied on the evidence of P.Ws. 1 and 9 to hold the accused guilty. According to him, there are material contradictions between these two witnesses and they have not spoken about the participation of other accused in the crime. The evidence of P.W.1 is highly contradictory to her own earlier version, as expressed in the complaint viz., Ex.P.1. He would further submit that there is an enormous delay in preferring the complaint (Ex.P.1), which has not been explained at all by the prosecution. He would further point out that during cross-examination, P.W.1 has admitted that P.W.8-the then Sub-Inspector of Police, came to the hospital and examined her, but that statement, which is the earliest statement of P.W.1, has been suppressed. For this reason, the learned senior counsel appearing for the appellants would submit that the appellants/accused Nos.2, 5 and 6 are entitled for acquittal.

5. The learned Additional Public Prosecutor would vehemently oppose this appeal. According to him, though, there was some delay in preferring the complaint (Ex.P.1), the same has been explained and thus, there can be no doubt in the origin of the First Information Report. He would further submit that there is no material contradiction between the evidence of P.Ws. 1 and 9. He would further add that the medical evidence duly corroborates the evidence of P.Ws. 1 and 9. Thus, according to the learned Additional Public Prosecutor, the conviction and sentence imposed on the appellants by the Trial Court needs no interference at the hands of this Court.

6. We have considered the above submissions.

7. As rightly pointed out by the learned senior counsel appearing for the appellants, in the complaint (Ex.P.1), P.W.1 has stated about the alleged participation of the accused Nos.2, 3 and 6 alone and also yet another person, whose name was not known to P.W.1. In the complaint (Ex.P.1), P.W.1 had not stated anything about the participation of the rest of the accused viz., accused Nos.1, 4 and 5. But, in the evidence, P.W.1 has spoken about the participation of all the six accused. Absolutely, there is no explanation as to why P.W.1

had mentioned the participation of accused Nos.2, 3 and 6 alone in the First Information Report.

8. Now turning to the evidence of P.W.9, he has stated about the participation of only accused Nos.1 to 4. He has not stated anything about the participation of accused Nos.5 and 6. Thus, there are material contradictions between the evidences of P.Ws. 1 and 9. Further, the evidence of P.W.1 has been contradicted by her own earliest statement under Ex.P.1-Complaint.

9. With the above contradictions, let us consider the launching of the First Information Report. The alleged occurrence was on 17.02.2009 at 7.45 p.m., whereas, the complaint had been made only at 11.30 p.m. The distance between the place of occurrence and the Police Station is hardly 1 ½ km. It is not explained to Court as to why it took so much of time for P.W.1 to go to the Police Station to make the complaint. It is stated that after giving first aid treatment, the Doctor at Government Hospital, Kancheepuram, advised P.W.1 to take the deceased to the Government General Hospital at Chennai. P.W.1 took the deceased and proceeded towards Chennai, but, on the way, the deceased succumbed to the injuries, so she brought back the body to the Government Hospital at Kancheepuram, and therefore, there was delay. Assuming that the said explanation is true, even then, it is too difficult to believe the First Information Report. During cross-examination, P.W.1 has stated that P.W.8-the then Sub-Inspector of Police, came to the hospital and examined her and that information passed on by P.W.1 to P.W.8 seems to be the earliest information. But, that information has been suppressed. In these circumstances, the delay also assumes importance. In the light of the material contradictions between the evidences of P.Ws. 1 and 9 and in the light of the fact that the original First Information Report has been suppressed, it is too difficult to sustain the conviction of the accused Nos.2, 5 and 6, when there are multiple number of accused. In such view of the matter, we hold that the prosecution has failed to prove the case beyond any reasonable doubts and therefore, the appellants/accused Nos. 2, 5 and 6 are entitled for acquittal.

10. In the result,

- i.the Appeal is allowed and the conviction and sentence imposed on the appellants by the Trial Court in S.C.No. 65 of 2010, dated 28.02.2012, are set aside and the appellants are acquitted;
- ii.The fine amount, if any paid, shall be refunded to

them.

iii.The bail bond, if any executed by the appellants/accused Nos.2, 5 and 6, shall stand discharged.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

paa

To

- 1.The Sessions Judge,
Sessions Court No.II
Kancheepuram.
2. The Principal Sessions Judge
Kancheepuram
3. The Judicial Magistrate No.I
Kancheepuram
4. do thro the Chief Judicial Magistrate,
Kancheepuram
5. The Superintendent
Central Prison,
Vellore
6. The District Collector
Kancheepuram
7. The Director General of Police
Mylapore, Chennai-4
- 8.The Inspector of Police,
Vishnukanchi Police Station,
Kancheepuram.
- 9.The Additional Public Prosecutor,
High Court, Chennai.
10. The Section Officer
Criminal Section,
High Court, Madras

1 cc to Mr.T.Vijayaraghavan, Advocate, Sr. 7074

CRIMINAL APPEAL No.204 of 2012

MSM (CO)

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