

BAIL SLIP

Appellants in Crl.A.Nos.214 and 255 of 2012 (Accused 1 & 2 in S.C.No.41 of 2007 dated 21.02.2012 on the file of Additional District and Sessions Judge(Fast Track Court), Vellore) were released on bail as per Order of this Court dated 23.07.2013 and 29.08.2013 as per M.P.No.1 of 2013 & 1 of 2013 in Crl.A.Nos.214 & 255 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2016

CORAM:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU
and
THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

Criminal Appeal Nos.214 and 255 of 2012

Babuji @ RahmanAppellant in C.A.214/2012
/Accused No.2

Ashok KumarAppellant in C.A.255/2012
/Accused No.1

Vs.

State by
The Inspector of Police,
Gudiyatham Police Station,
Crime No.493/2002,
Vellore District.Respondent/Complainant

Prayer: Appeals filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 21.02.2012 made in S.C.No.41/2007, passed by the Additional District and Sessions Judge (Fast Track Court), Vellore.

For Appellants : Mr.M.G.Udhayashankar for
M/s.S.Shanthakumari
in Crl.A.214 of 2012

Mr.R.Johnsathyan
in Crl.A.255 of 2012

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

COMMON JUDGMENT

(Judgment of the Court was delivered by M.SATHYANARAYANAN, J.)

The appellant in Crl.A.No.255 of 2012 is the first accused and the appellant in Crl.A.No.214 of 2012 is the second accused in S.C.No.41/2007 on the file of the learned Additional District and Sessions Judge, Fast Track Court, Vellore and they were tried and charged for the commission of offences under Sections 120-B, 302 (1 count as against A1 and 2 counts as against A2), 307, 392 r/w.397 r/w.34 and 449 IPC. The trial Court, vide judgment dated 21.02.2012, found both the accused guilty and sentenced them as follows:

Accused	Conviction under Section	Sentence
A1	120-B IPC	2 years rigorous imprisonment
	302 IPC	Imprisonment for life with a fine of Rs.1,000/- in default to undergo 3 months rigorous imprisonment
	307 IPC	10 years rigorous imprisonment with a fine of Rs.1,000/- in default to undergo 3 months rigorous imprisonment
	392 r/w. 397 r/w.34	7 years rigorous imprisonment with a fine of Rs.1,000/- in default to undergo 3 months rigorous imprisonment

Accused	Conviction under Section	Sentence
A2	120-B IPC	2 years rigorous imprisonment
	302 (2 counts) IPC	Imprisonment for life for each count with a fine of Rs.1,000/- in default to undergo 3 months rigorous imprisonment
	392 r/w. 397 r/w.34	7 years rigorous imprisonment with a fine of Rs.1,000/- in default to undergo 3 months rigorous imprisonment

The trial Court did not award any conviction for the offence under Section 449 IPC and further ordered that all the sentences to run concurrently and granted set-off under Section 428 CrPC. Insofar as the third accused is concerned, the case against him has been split up and taken up in S.C.No.66/2011.

2. Factual matrix of the case is as follows:

2.1. PW1 was the Village Administrative Officer, Ananganallur Village at the relevant point of time and at about 6.00 hours on 28.05.2002, his menial, namely Jaganathan came and informed him that Munirathinammal (deceased No.1), aged about 70 years and Mani (deceased No.2), aged about 52 years were murdered, who are the residents of Singalapadi, Maduranayudupatti as well as that Tmt.Dhanalakshmi has sustained injuries and she became unconscious. PW1, along with his menial, rushed to the scene of occurrence and sent the injured Dhanalakshmi/PW2 to the Government Hospital at Gudiyatham for treatment and he also lodged a complaint under Ex.P1 and Thiru.Venkatesan, who was the Sub-Inspector of Police, on receipt of Ex.P1/complaint has registered a case in Crime No.493/2002 for the commission of offences under Sections 307 and 302 IPC. The printed F.I.R is marked as Ex.P20.

2.2. PW15, Inspector of Police, Gudiyatham Police Station, took up the investigation and reached the place of occurrence and prepared Observation Mahazar/Ex.P2 and Rough Sketch/Ex.P21 in their presence and the services of the photographer, namely Jayaprakash was summoned and he photographed the scene of occurrence, marked as M.O.21 series and negatives M.O.22 series. PW15 seized the blood stained earth, marked as M.O.10 and sample earth, marked as M.O.11 and the M.O.16, blood stained matt used by deceased No.1, under Mahazar Ex.P4, in the presence of very same witnesses. PW13, conducted inquest on the deceased, namely Exs.D1 and D2 in the presence of Panchayatdars and prepared Inquest Reports marked as Exs.P22 and P23.

2.3. PW15 seized M.O.12 - Stick, M.Os.13- broken stick, M.O.14- earth mixed with small stones and blood stains and M.O.15- earth mixed with small stones under Ex.P3 in the presence of same witnesses and recorded the statements of PWs.1, 2 and other witnesses and took necessary steps to sent the body of Munirathinammal/deceased No.1 through PW13, the then Head Constable attached to Gudiyatham Police Station and the dead body of Mani/deceased No.2, for postmortem through PW14, the then Head Constable attached to Gudiyatham Taluk Police Station.

2.4. PW11, the Civil Surgeon, attached to Gudiyatham Government Hospital, on receipt of Ex.P12, commenced the postmortem on the dead body of Munirathinammal at about 4.00 p.m. on 29.05.2002 and noted the following features:

External Examination:

Injuries:

1.A lacerated injury over left parietal region of 15cm x 2cm.

2.A lacerated injury left fronto parietal region of 5cm x 1cm.

3.Fracture left fronto parietal bone of 15cm in length, extending to the base of brain.

4.Subdural and sub arachnoid clots in the parietal and frontal region in an area 15cm x 10cm.

Internal Examination:

Heart 250 gm pale, lungs right 350 gms; left 300 gms. Larynx, hyoid bone - intact; Stomach empty. Liver 1000 gm intact; spleen 100 gms; Kidneys 75 gms each; bladder empty, uterus normal. Apotried skull opened. The injuries were the same as mentioned above. Brain 1100 gms. Blood sample is preserved in the bottle and in the bloating paper as requested by the police and sealed and handed over to the concerned police.

After completion of postmortem, PW11 issued postmortem certificate, marked as Ex.P13 and opined that the deceased Munirathinammal appear to have died of severe head injury and damage of vital structure, brain due to sub dural and sub arachnoid hemorrhage due to effects of head injuries sustained.

2.5. PW11 also conducted postmortem on the body of Mani/deceased No.2 at 5.00 p.m. and noted the following features:

External Examination:

Injuries:

- 1.Fracture both bone right fore arm.
- 2.A lacerated injury over frontal region of 10cm x 1cm
- 3.A lacerated injury frontal region of 5cm x 4 cm.
- 4.A lacerated injury frontal region of 4cm x 2cm.
- 5.A lacerated injury right maxilla of 5cm x 1cm.
- 6.Fracture of both parietal bones, horizontally and vertically into 4 pieces.
- 7.Subdural and sub arachnoid clots in the corresponding area of 15cm x 10 cm.

Internal Examination

Heart 250 gms pale, lungs right 350 gms; left 300 gms. Larynx, hyoid bone - intact; Stomach empty. Liver 1100 gm intact; spleen 100 gms; Kidneys 75 gms each; bladder empty, on opening of the head, brain 100 gms fractures and injuries as mentioned above.

After completion of postmortem, PW11 issued postmortem certificate, marked as Ex.P14 and opined that the deceased Munirathinammal appear to have died of sub dural and sub arachnoid hemorrhage due to fracture of skull and injury to the brain.

2.6. PW13 seized M.O.17 - Green colour blood stained blouse, M.O.18- Blue colour blood stained saree wore by the deceased and submitted under Ex.P18/Special Report. PW15 sent the case properties to the Court under Ex.P24- Form 95 with a requisition for forensic analysis and thereafter handed over the case to his successor.

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2.7. PW16 took up the investigation and effected arrest of accused 1 and 2 on 31.03.2003 in the presence of PW9 and others.

Both the accused voluntarily came forward to give confession statement and the admissible portion of the confession statement was marked as Ex.P16, based on which M.O.23 - knife under Mahazar Ex.P29 in the presence of same witnesses. On 31.03.2003, PW17 seized M.O.2-Gold jewel known as 'Kinnam Pottu', M.O.3-Gold jewel known as 'Lakshmi Pottu', M.O.4 series-Gold coins in the presence of same witnesses from PW7, with whom the first accused had pledged jewels and received money and the said receipt was marked as Ex.P5. PW16 effected arrest of the third accused on 31.03.2003 at 15.00 hours on VTM lorry shed and he voluntarily came forward to give confession statement and based on the admissible portion of the said confession under Ex.P7, M.O.1 was recovered and the materials produced were sent to the Court under Ex.P26 under Form-95.

2.8. PW16 had given requisition to the Chief Judicial Magistrate to nominate a Judicial Magistrate to record statement under Section 164 CrPC and accordingly Judicial Magistrate No.III, Vellore was nominated and Section 164 CrPC statement of PW2 was recorded and marked as Ex.P17 by PW12. PW16, after completion of investigation, filed a final report/charge sheet against all the accused on the file of the Court of Judicial Magistrate, Gudiyatham which was taken on file in P.R.C.No.21/2003. The accused appeared before the committal Court on summons and documents under Section 207 CrPC were furnished to them. The committal Court having found that the case is exclusively triable by the Sessions Court, made over the same to the Additional District and Sessions Judge, Fast Track Court, Vellore. Since the third accused was absconding, the case against him was split up and taken up on file in S.C.No.66/2011. The trial Court, on appearance of the accused, has framed charges for the offences as stated above and they pleaded not guilty to the charges framed against them.

2.9. The prosecution, in order to sustain their case, examined PWs.1 to 16, marked Exs.P1 to P30 and also marked M.Os.1 to 23. Both the accused were questioned under Section 313 (1)(b) CrPC with regard to incriminating circumstances made out against them in the evidence rendered by the prosecution and they denied it as false. On behalf of the accused Exs.D1 and D2 were examined and Ex.D1 was marked. The trial Court, on consideration and appreciation of oral and documentary evidence and other materials, convicted and sentenced both the accused as stated above. Hence, this appeal.

3. The respective learned counsel appearing for the appellants submitted that PW2 initially became unconscious on 31.05.2002 and was taken to the Government Hospital at Gudiyatham and the Accident Register pertain to PW2 was marked as Ex.P15, wherein it has been recorded that PW2 was said to have been assaulted by some unknown persons on 29.05.2002 in the early morning hours in her residence and thereafter she was admitted at Sri Ramachandra Hospital, Chennai on 30.05.2002 and was discharged on 07.07.2002 and the Wound Certificate issued by

the said hospital was marked as Ex.P11 and she was the injured eye witness and also related to the first accused and she is the daughter of deceased No.1 and wife of deceased No.2 and she was not examined as witness. The learned counsel appearing for the appellant has drawn the attention of this Court to the evidence of the Investigating Officer, namely PW15 and would submit that in the cross examination he has deposed that he reached the scene of occurrence at about 11.00 a.m. on 28.05.2002 and as per the complaint of PW1, marked as Ex.P1, unknown persons has committed the offences and the reasons for murder have not been stated in Ex.P1 and denied the suggestion that PW1 lodged the complaint through telephone and would further contend that PW2 was initially taken to the Gudiyatham Government Hospital and thereafter to Sri Ramachandra Hospital, Chennai-116 on 30.05.2002 and discharged on 07.07.2002 and when a specific question was put to the Investigating Officer, he admitted that he has taken steps to examine PW2 on 30.05.2002, but the relevant records are not available and denied the suggestion that PW2 gained conscious even on 30.05.2002 and he would further admit that initially PW2 was admitted in Gudiyatham Government Hospital and thereafter taken to Sri Ramachandra Hospital at Chennai for treatment and he has not examined any doctors in both the hospitals.

4. Attention of this Court was also drawn to PW16/Investigating Officer, who took over the investigation from PW15 and in the cross examination, he would depose that PW2 was examined on 22.03.2003 at his house at Naidupet and during the course of investigation found that since PW2 was in Coma stage, she was not examined and denied the suggestion that between 04.06.2002 and 22.03.2003 she did not conduct any investigation. It is also the submission of the respective learned counsel appearing for the appellants that there are contradictions between the statement of PW2 as well as her evidence, as PW16 has deposed that PW2 was examined on 22.03.2003 and 31.03.2002 and she did not state that immediately after attack, she switched on the lights and saw and after seeing the first accused she became unconscious and she has also not stated about attack inflicted by the first accused on her as well as to deceased No.2, namely Mani and PW16 denied the suggestion that on 07.07.2002, PW2 was discharged from Sri Ramachandra Hospital, Chennai-600 116 and did not produce any record relating to treatment given to PW2, maintained by the Gudiyatham Government Hospital as well as Sri Ramachandra Hospital for the reason that truth will come out. In sum and substance, the respective learned counsel appearing for the appellants would submit that the only witness to the occurrence is PW2, who is an injured witness and except her testimony with regard to overt act on the part of the accused, no other evidence was adduced by the prosecution and though the occurrence took place in the night hours, no identification parade was conducted insofar as the second accused and though the second accused was identified in the hospital, identification of the second accused for the first time in the Court has no evidentiary value and even otherwise

the Test Identification is not a substantive piece of evidence. It is further submitted by the respective learned counsel appearing for the appellants that as per the testimonies of PWs.5, 6 to 10, PW2 became conscious on 31.05.2002, however she was examined by PW16 only on 22.02.2003 in her house and no steps have been taken by neither of the Investigating Officers, namely PWs.15 and 16 to examine her when she became conscious.

5. Attention of this Court was also drawn to the testimony of PW10, Dr.Pradeep, who said to have spoken about the treatment given by Dr.Barani, whose signature he is acquainted with and he would depose that PW2 came along with PW5 for treatment and Ex.P11/Wound Certificate was issued by Dr.Barani. PW10 in the cross examination has deposed that PW2 was admitted on 31.05.2002 and she was unconscious at that time and on the next day, she was conscious and started responding to the commands and she was discharged on 07.07.2002 and after that there was no record to show that she took further treatment. It is further contended that PW5 would depose that initially PW2 was taken to Gudiyatham Government Hospital and since it was opined that she requires specialized treatment, she was taken to Vellore Government Hospital, wherein PW2, through sign language indicated something and thereafter she was shifted to CMC hospital and admittedly, the doctors who gave treatment at Vellore Government Hospital and CMC hospital were not examined and the belated examination of PW2 by PW16/Investigating Officer coupled with the fact that she has made improvements during the course of evidence as that of statements recorded during investigation, has created serious doubt in the case projected by the prosecution and the trial Court, overlooking the said material and vital aspect, has erroneously convicted both the accused and prays for their acquittal.

6. Per contra, learned Additional Public Prosecutor would contend that the testimony of the injured witness withstood the rigour of cross examination and fully supported the case of the prosecution and her testimony was amply corroborated by the testimony of other prosecution witnesses and also the scientific evidence and the trial Court, on a proper appreciation of oral and documentary evidence, has rightly convicted and sentenced both the accused and would further submit that it is a case of double murder and the infirmities pointed out by the learned counsel appearing for the appellants are only trivial in nature and does not affect the core of the prosecution case and prays for dismissal of both the appeals.

7. This Court paid its best attention and anxious consideration to the rival submissions and also perused the oral and documentary evidence as well as the original documents.

8. The primordial question arises for consideration is whether the prosecution was able to prove that murder of the deceased Nos.1 and 2 was committed by the accused 1 and 2?

9. PW1 is not an eye witness and the only witness available to the prosecution is PW2, who is an injured witness. PW2, in the chief examination, has spoken about the motive aspect, namely the land dispute and would depose that on 28.02.2002 at about 10.00 p.m. on hearing the sound, he switched on the light and her mother, namely deceased No.1 was sleeping outside and inside the house, he and her husband/deceased No.2 were sleeping and through illumination, she found that the accused 1 to 3 were inside their house and her husband was hit on the head by the second accused as well as the third accused and he fell down and when he raised alarm, the first accused attacked the deceased and on seeing the first accused, PW2 fallen down and became unconscious and she did not know anything and she took treatment till 22.02.2003 and then only became unconscious and she asked for the details from her son Saravanan and he informed that her mother as well as her husband had died and thereafter she was summoned by the police, wherein she stated that it was accused who had attacked her, her mother and husband and further informed that the jewels owned by her were also missing and after the accused were arrested, she identified the accused as well as the jewels and also given statement under Section 164 CrPC before the Judicial Magistrate No.III, Vellore. PW2, in the cross examination, would state that she was examined by the police for the first time after 10 months on 22.03.2002 at Gudiyatham Government Hospital and in the 164 CrPC statement she has stated that she has informed PW1, Village Administrative Officer and thereafter became unconscious and she did not state about the lodging of complaint by PW1 to the police. PW2 would further state in the cross examination that in the chief examination she did not state that she became unconscious after seeing the first accused and if any such statement was there, then it was wrong. She would further admit that through her son Saravanan, she became aware of the incident and in the course of investigation, she did not state anything about the murder of her husband and mother by attack through sticks and she was admitted in the hospital with blood injuries. PW2 would further depose in the cross examination that the police became aware of the incident only through telephone and denied the suggestion that even before this, she developed conscious and denied the suggestion that she was discharged on 07.07.2002.

10. PW4 would state that on hearing the noise, he went to the spot and PW2 was taken by PW5 and following them, he went by his bicycle and she was admitted in Gudiyatham Government Hospital and thereafter, he came to know that she was shifted to some other hospital. PW5 would depose that after becoming aware about the murder of deceased No.2 and injury sustained by PW2, she went to the spot and found that deceased No.2 sustained injuries on the head and PW2 was taken to Gudiyatham Government Hospital and thereafter, she was shifted to a hospital at Chennai and she stayed with PW2 for a day and PW2, though sign language, informed her that her ear stud and other jewels are missing and she was examined by the police. PW5 in the cross

examination would state that she has reported that PW2 through sign language informed her about missing of the jewels and further deposed that on the advice given by the doctors at Gudiyatham Government Hospital, she was shifted to Vellore Hospital and from there to CMC Hospital.

11. This Court, in the earlier paragraphs, pointed out that as per the oral evidence of PW10, PW2 was in Sri Ramachandra Hospital, Chennai and became conscious on 31.05.2002 and the said testimony was also corroborated to some extent by PW5. At this juncture, it is to be pointed out at this juncture that though PW2 took treatment between 31.05.2002 and 07.07.2002 as evidenced under Ex.P11, neither PW15 nor PW16 examined her at the earliest point of time and according to PW16, PW2 was examined between 22.03.2003 and 31.03.2003 and her statements were recorded and no plausible explanation has been offered as to the belated examination of PW2 and that apart, PW2 also made improvements from that of her statements recorded during investigation and she did not state anything in her statement recorded under 161(3) CrPC as to the attack inflicted by the first accused on her as well as on her husband and even as per the testimony of PW2, her mother was sleeping outside and she did not see as to the persons who attacked her mother.

12. The respective learned counsel appearing for the appellants are right in submitting that on the next day of occurrence, PW2 became conscious and atleast was able to communicate through sign language, however no steps have been taken by the Investigating Officer/ PW15, who recorded her statement at the earliest and in the considered opinion of the Court, the said grave infirmity pointed out by the defence has shaken the very foundation laid by the prosecution.

13. Admittedly, it is a case of double murder and the prosecution should have bestowed it's best attention to tie or loose ends, but unfortunately they failed to do so. Though both of them had died by homicidal violence, in the light of the above said lacuna pointed out in the case projected by the prosecution and also coupled with the fact that PW2 made improvements during the course of her testimony, it is unsafe to rely on her testimony to sustain conviction. According to the prosecution, PW2 was the star witness and they should have taken proper care and caution to examine her at the earliest point of time and her belated examination without any plausible and acceptable explanation has affected the very foundation laid by the prosecution and as a consequence, both the accused are entitled to benefit of doubt.

14. In the result, both the Criminal Appeals are allowed and the conviction and sentence imposed on the appellants/accused 1 and 2 for the offences under Sections 120-B, 302 (1 counts against A1 and 2 counts against A2), 307, 392 r/w.397 r/w. 34 and 449 IPC, vide Judgment dated 21.02.2012 made in S.C.No.41 of 2007 by the Additional District and Sessions

Judge, Fast Track Court, Vellore are hereby set aside and the appellants/accused are acquitted of the charges levelled against them. It is reported that the appellants/accused are on bail. The bail bonds shall stand terminated. Fine amount, if any paid, shall be refunded to the appellants.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jvm

To

- 1.The Judicial Magistrate,
Gudiyatham.
- 2.Do Through the Chief Judicial Magistrate,
Vellore.
- 3.The Additional District and Sessions Judge
(Fast Track Court),
Vellore.
- 4.Do Through The Principal Sessions Judge,
Vellore.
- 5.The Inspector of Police,
Gudiyatham Police Station,
Vellore District.
- 6.The Superintendent,
Central Prison, Vellore.
- 7.The District Collector,
Vellore.
- 8.The Director General of Police,
Mylapore, Chennai.
- 9.The Public Prosecutor,
Madras High Court, Chennai.

+1cc to Mr.N.Sivaraj, Advocate, S.R.No.11631

Criminal Appeal Nos.214 and 255 of 2012