

Bail Slip

The Appellant/Accused, namely Thambidurai was directed to be released on bail as per order of this Court dated 19/7/2012 made in Crl.M.P.No.1 of 2012 in Crl.A.No.339 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.02.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.339/2012

Thambidurai

..Appellant/A1

Vs

State by the Inspector of Police
G1 Vepery Police Station
Chennai.

..Respondent/Complainant

Appeal filed u/s.374 [2] Cr.P.C., against to set aside the conviction of the appellant in passed by the learned II Additional Sessions Judge, Chennai in SC.No.152/2002 on 24.02.2005.

For Appellant : Mr.K.S.Suresh for
M/s.T.K.Sampath Associates

For Respondent : Mr.M.Maharaja
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is A1 in SC.No.152/2002 on the file of the learned II Additional Sessions Judge, Chennai. Including the appellant, there were a total number of seven accused. Pending trial, A6 [Rajesh] died. By Judgment dated 24.02.2005, the Trial Court acquitted A2 to A5 and A7, viz., Sekar @ Umai Sekar @ Umaikottan Sekar, Soori @ Gajendran, Kunjan @ Siva @

Ponnusamy, Dana @ Danasekaran and Auto Raj @ Samsaraj, from all charges and convicted the appellant alone for the offences u/s.148, 341 and 302 read with 149 IPC and sentenced him to undergo imprisonment for life for the offence u/s.302 IPC ; to undergo 2 years rigorous imprisonment for the offence u/s.148 IPC and to undergo one month simple imprisonment for the offence u/s.341 IPC. Challenging the said conviction and sentence, the appellant/A1 is before this Court, with this appeal.

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

[a] The deceased in this case was one Mr.Kannan. There was enmity between A1 and the deceased. On 05.06.2000, at about 8.00 p.m., P.W.1 and the deceased were coming in a motor-cycle. The deceased was the pillion-rider. When they were passing through Erran Street, Purasawakkam, Chennai, the above six accused and one Rajesh [now no more] emerged at the scene of occurrence. All the seven persons were armed with one knife each. They intercepted the motor-cycle with murderous intention. P.W.1 stopped the motor-cycle and ran to a distance with a view to escape. All the six accused and Rajesh cut the deceased indiscriminately. The deceased fell down, sustained grievous injuries and died instantaneously. P.W.1 went to Vepery Police Station and made a complaint.

[b] P.W.20, the then Inspector of Police, on receipt of the said complaint, registered a case in Cr.No.1222/2000 u/s.147, 148 and 302 IPC. Ex.P.1 is the complaint and Ex.P.11 is the printed FIR. He forwarded both the documents to the Court and took up the case for investigation.

[c] In the FIR, P.W.1 had mentioned the name of the appellant alone as one of the assailants and he further mentioned that four other persons who could be identified, but whose names were not known to him, also participated in the crime.

[d] Taking up the case for investigation, he proceeded to the scene of occurrence and prepared Observation Mahazar [Ex.P.12] in the presence of P.W.12 and another witness. He recovered blood stained earth [M.O.8] and sample earth [M.O.9] from the place of occurrence. There were three knife pouches found in the scene and he recovered them under a cover of Mahazar. Then he sent the dead body to Kilpauk Medical College Hospital and kept the body in the Mortuary. P.W.20 conducted inquest on the dead body of the deceased on 06.06.2000 from 6.30 a.m. onwards. Then he forwarded the body of the deceased for postmortem.

[e] P.W.17, Dr.Shantha Kumar, conducted autopsy on the body of the deceased on 06.06.2000 at 10.30 a.m. He found the

following injuries:-

"External Injuries:-

[1] An oblique linear, brown abrasion 5x0.3 cm on the front upper third of right arm.

[2] An oblique linear, brown abrasion 3x0.2 cm on the front of upper third of right forearm.

[3] An irregular, brown abrasion, 1x0.5 cm on the back of the upper third of right forearm.

[4] An irregular, brown abrasion 2x1 cm on the back of the left elbow.

[5] An irregular, brown abrasion 4x1 cm on the upper part of left cheek.

[6] An irregular, brown abrasion 2.5x1 cm on the left side of forehead abutting the outer third of the left eye brow.

[7] An irregular, brown abrasion 3x2 cm on the upper part of the left side of the forehead.

[8] An oblique cut wound 1.5x0.3x0.3 cm on the back of upper third of right index finger.

[9] An oblique cut wound 2x0.3x0.3 cm on the back of the middle third right ring finger.

[10] An oblique cut wound 1x0.3x0.3 cm, on the back of the middle third of right right finger.

[11] An oblique cut wound 3.5x1x0.5 cm, on the lower part of the right cheek, 0.5 cm right lateral to the right angle of the mouth.

[12] An horizontal cut wound 9.5x1x1.5 cm on the side of the face involving upper third of the right side of the nose, lower part of lower lid of the right eye of the right zygomatic prominence exposing the underlying cut fracture of the right nasal bone with the surrounding cut margins of the soft tissues.

[13] Multiple criss-cross and overlapping, scalp deep to cavity deep cut wounds on the left parieto occipital, right parietal, and right temporal region of the scalp, right of the back of the neck and the right ear lobe, over an area of 28x25 cm, exposing the irregularly cut fractured ends of the occipital, both the parietal and the right temporal bones of the calvarium with the surrounding ragged soft tissues of the scalp and the lacerated underlying brain tissue. The right ear lobe is in piece meal. On opening the calvarium, 16x8x4.2 cm laceration of the right temporal, both the parietal and the right occipital lobes of the brain, diffuse sub arachnoid haemorrhage on the left cerebral hemisphere and the

cerebellar hemisphere.

[14] Multiple overlapping and criss-cross cut wounds on the upper part of the left side of the neck, left ear lobe and the left temporo occipital region of the scalp over an area of 23x13 cm exposing the underlying oblique cut fractures of the left temporal and left side of the occipital bone and the cut margins of the soft tissues. 3.5x1 cm portion of the left ear lobe is lying separated.

[15] An oblique cut laceration 9x1.5x3 cm on the back of right shoulder, exposing the cut fracture of the underlying upper and of the outer border of the right scapula bone.

[16] An oblique cut wound, 2.5x1x1 cm on the upper part of the right scapula, exposing the underlying 1 cm long cut fracture of the scapula.

[17] An oblique cut wound 8x1x1 cm on the upper part of the middle of the back.

[18] An horizontally oblique, 2.5x0.3xcavity deep stab wound, on the middle part of the right side of the back with its acute inner and right lower end 7 cm right lateral to the midline of the back. On dissection, the wound enters obliquely upwards and forwards and upwards in the right chest cavity through the right eighth inter costal space ending in the 2x0.5x1 cm stab wound on the underlying posterior aspect of the lower lobe on the right lung. Right thoracic cavity contains 60 ml of fluid blood.

[19] An horizontally oblique, 3.5x0.5x4 cm stab wound on the lower part of left side of the back with the inner and upper blunt end abutting the midline of the back and the lower, outer acute end 3 cm left lateral to the midline of the back. The dissection of the wound is forwards, outwards and horizontal.

[20] An oblique stab wound, 3x0.5x2.5 cm, on the upper part of the left buttock.

Internal Injuries:-

Heart : Normal in size. Cut
section:Empty,
Valves:Normal Coronaries:Patent,
Great Vessels: Normal.

Lungs : Left Lung normal in size. Cut
Section:

Pale. Larynx and trachea:empty
Stomach : Contains 100 ml yellowish partly
digested food material. No
definite smell.
Mucosa : Pale, Liver, Spleen and
Kidneys:Normal
in size: cut section:Pale.
Intestine: Contains brown chyme.
Urinary
Bladder: Empty"

Ex.P.18 is the Postmortem Certificate. He gave his final opinion that the deceased would appear to have died of shock and haemorrhage due to injuries.

[f] Continuing the investigation, P.W.20 recovered the cloth materials [M.Os.11 to 15] found on the dead body of the deceased, which were blood-stained, under a cover of a Mahazar. On 07.06.2000, he arrested A4, A5, A6 and A7 near Solomon Fire-Wood Shop at Purasawakkam, Chennai, in the presence of P.W.8 and another witness. On such arrest, all the accused gave independent, voluntary confessions, one after the other. In pursuance of these confessions, M.Os.16 to 19 [4 knives] were recovered from the hide-out as produced by the respective accused. On returning to the police station, he sent the accused to the court for judicial remand and handed over the material objects also. The other accused surrendered before the Court. P.W.20 took police custody of A1 on 14.06.2000. While in police custody, A1 made a voluntary confession, in which he disclosed that he had hidden 3 knives at Otteri graveyard. In pursuance of the same, M.Os.4 to 6 [3 knives] were recovered. The accused Sekar and Soori [A2 and A3] also surrendered before the Court. On 27.6.2000, P.W.20 took police custody of A2 and A3. But no recovery of any article was effected from them. Then, on 30.06.2000, he made a request to the Court for conducting Identification Parade. Accordingly, on 19.07.2000, P.W.18, learned XV Metropolitan Magistrate conducted the Identification Parade for the accused. On completion of the investigation, he laid charge-sheet against the accused.

[g] Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same as false. In order to prove the case on the side of the prosecution, as many as 20 witnesses were examined, 22 documents and 22 material objects were also marked.

[h] Out of the said witnesses, P.Ws.1 to 4 are eyewitnesses to the occurrence. P.W.4 has turned hostile and has not supported the case of the prosecution in any manner. P.W.5 is the father of the deceased. He has stated that around 6.00 p.m. on the date of occurrence, all these accused were found moving

by the side of his house. P.W.6 is a neighbour. He has stated that when he was in the house, he heard a noise from the street and when he came out, he found the deceased with injuries. P.W.7 has turned hostile. P.W.8 has spoken about the arrest of A4 to A7 and about the recovery of material objects on the disclosure statement made by the accused. P.W.9 has spoken about the arrest of A1 and the recovery of the material objects. P.W.10 has stated that on 05.06.2000 at 9.00 a.m., A4 has taken his Auto bearing Registration No.TN-01-J-4676, for rent. P.W.11 has stated about the arrest of the accused and the consequential discovery of the material objects. P.W.12 has spoken about the Observation Mahazar and the recovery of the material objects. P.W.13 is the Head Clerk of the Court, who has forwarded all the material objects for chemical examination on the orders of the learned Magistrate. P.W.14 has stated that on 05.06.2000, A5 has taken his motor-cycle. P.W.15 has stated that P.W.14 has taken his motor-cycle. P.W.16 has stated about the photographs taken by him at the place of occurrence as requested by the Investigating Officer. P.W.17 has spoken about the Postmortem conducted by him and his final opinion regarding cause of death. P.W.18, learned Metropolitan Magistrate, has spoken about the Identification Parade conducted by her on 19.07.2000. When P.W.1 was asked to identify the accused persons thrice, he identified all the 7 accused twice and only 6 accused, during the third time. The other eyewitnesses also identified the accused. One Yuvarani also participated in the Identification Parade ; but has not deposed before the Court. P.W.19, Constable, came with the dead body to the hospital for postmortem. P.W.20 has spoken about the registration of the case and the investigation done.

3 When the above incriminating materials were put to the accused under section 313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not chose to examine any witness nor marked any documents.

4 Having considered all the above, the Trial Court convicted the appellant herein. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

5 We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record.

6 Out of the four eyewitnesses, P.W.4 has turned hostile. P.Ws.1 to 3 have, of course, spoken about the entire occurrence. The Trial Court has acquitted the other accused, disbelieving the evidence of P.Ws.1 to 3 ; but has chosen to convict the appellant alone because his name does find a place in the FIR. In our considered view, the said approach made by the Trial

Court, treating the FIR as a substantive evidence is not correct. In paragraph 14 of the judgment, the Trial Court has disbelieved the evidences of all these so-called eyewitnesses as against the rest of the accused. Thus even according to the Trial Court these witnesses are not fully believable.

7 It is true well settled by the Hon'ble Apex Court in Vadivelu Thevar V. State of Madras reported in AIR 1957 SC 614, when the evidence of a witness is partly believable, then unless the same draws corroboration from independent sources, it is not safe to act upon the said un-corroborated testimony. Here, in the instant case, simply because the name of the appellant/A1 was mentioned in the FIR, it cannot be held that these witnesses could be believed as against him alone. The benefit given to the rest of the accused, should be given to the appellant also. Thus, we are impelled hold that the prosecution has failed to prove the case beyond reasonable doubt.

8 In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant herein are set aside and he is acquitted of all charges levelled against him. Fine amount, if any paid, shall be refunded to him.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The II Metropolitan Magistrate
Egmore, Chennai-8.

2.The Chief Metropolitan Magistrate,
Egmore, Chennai.

3.The II Additional Sessions Judge
Chennai.

4.The Inspector of Police
G1 Vepery Police Station
Chennai.

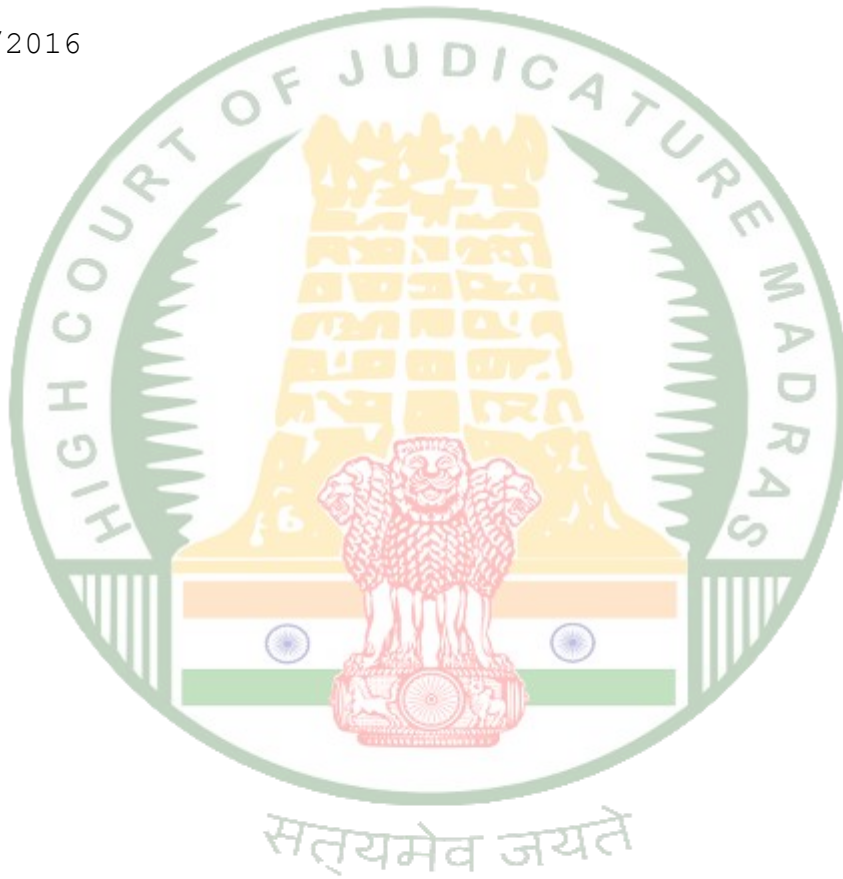
5.The Superintendent,
Central Prison, Puzhal.

6.The Public Prosecutor,
High Court, Chennai.

7.The Section Officer,
Criminal Section,
High Court, Madras.

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