

BAIL SLIP

The Petitioner/Accused namely G.Murugesan be and hereby was directed to be released on bail as per Order of this Court dated 04.07.2012 made in M.P.No.1 of 2012 in Crl.A.No.342 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2016

CORAM :

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.342 of 2012

G.Murugesan

... Appellant

Vs

State represented by
Inspector of Police,
Koradacheri Police Station,
Tiruvarur District.
In Crime No.187/2008

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the conviction and sentence of imposing life imprisonment for the charges u/s 302 r/w 34 I.P.C., and to pay a fine of Rs.50,000/- in default to undergo 5 years rigorous imprisonment passed against the appellant/A.1 by the learned Principal District & Sessions Judge, Tiruvarur in S.C.No.50 of 2008 dated 20.04.2009.

For Appellant : Mr.V.Parthiban

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGEMENT

(Judgment of the Court was delivered by S.Nagamuthu.J)

The appellant is A.1 in S.C.No.50 of 2008 on the file of the learned Principal District & Sessions Judge, Tiruvarur. A.2 was one Mr.Ilayaraja, the brother of the appellant/A.1. They stood charged for offence under Section 302 r/w 34 I.P.C.

By judgment dated 20.04.2009, the trial Court convicted both the accused for offence under Section 302 r/w 34 I.P.C., and sentenced them to undergo imprisonment for life and to pay a fine of Rs.50,000/- each in default to undergo rigorous imprisonment for five years. Challenging the said conviction and sentence, the appellant/A.1 has come up with this Criminal Appeal.

2. A.2 - Mr.Ilayaraja has filed a separate Criminal Appeal in CrI.A.No.343 of 2009 and a Division Bench of this Court, by judgment dated 21.10.2009, dismissed the said appeal thereby confirming the conviction and sentence imposed on A.2. The same appears to have become final. The present Criminal Appeal has been filed by A.1/the appellant herein.

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

A.1 & A.2, who are brothers, were selling illicit arrack. They had doubt that the accused had given information to the Police about the same. It is stated to be the motive for the occurrence. On 18.05.2008, at 8.00 pm, at Kulikarai Village, a relative of the deceased by name Mr.Ramadoss performed pooja in the local Kaliyamman Temple. The deceased and his brother (P.W.1) and P.W.2 and many more persons participated in the same. When the Pooja was about to come to a close, these two accused who are brothers came to the said temple and questioned the deceased as to why he had given information to the Police about their selling illicit arrack. The deceased and P.W.1 told them that they did not give any such information to the Police. But, the accused were not satisfied with the said reply. They challenged the deceased that one day or the other, they would take revenge on the deceased. After the pooja was over, P.Ws.1 & 2 and the deceased had returned to the house of the deceased. Just in front of the house of the deceased, at 11.00 pm, the deceased was lying on a wooden cot. P.Ws.1 & 2 and two others were sitting by the side of the deceased and they were engaged in chatting. A.1/appellant, armed with a wooden log and A.2 armed with an Aruval came to the said place. The distance between the place where P.Ws.1 & 2 and two others were talking and the place where the deceased was lying was hardly 25 feet. On reaching the deceased, suddenly, A.2 started cutting him with Aruval and A.1 attacked him with wooden log. P.Ws.1 & 2 and others tried to rescue the deceased, these two accused intimidated them and ran away from the place of occurrence.

4.P.W.1 immediately took the deceased to the Government Hospital at Tiruvarur. On examining him, the Doctor declared him dead. Immediately, P.W.1 went to the Police Station and preferred the complaint at 1.00 am on 19.05.2008. P.W.8, the then Inspector of Police, on receipt of the said complaint under Ex.P.1 registered a case in Crime No.187/2008 for offences under Sections 302 and 506(ii) I.P.C., against both

the accused. Ex.P.11 is the F.I.R. He forwarded both the documents viz., Ex.P.1 (complaint) and Ex.P.11 (F.I.R.,) to Court. The same were received by the learned Judicial Magistrate, Tiruvarur at 2.30 am on 19.05.2008.

5.P.W.9, took up the case for investigation. On 19.05.2008 at 2.30 am, he proceeded to the place of occurrence. He prepared an observation mahazar and a rough sketch in the presence of P.W.3 and another witness. He also recovered blood stained earth and the sample earth at the place of occurrence. On going over to the hospital, he conducted autopsy on the body of the deceased and forwarded the same for post mortem. P.W.4 conducted post mortem on the body of the deceased on 19.05.2008 at 10.00 am. She found the following injuries on the body of the deceased:-

"External Injuries:-

- 1.An incised wound 4 x 3 x 4 cm seen over the left eyebrow.
- 2.An incised wound 3 x 3 x 5 cm seen over the right eyebrow.
- 3.Incised wound 3 x 1 x 1 cm over the middle of forehead.
- 4.Crush injury 7 x 3 x 7 cm seen in the chin."

6.Ex.P.4 is the post mortem certificate. According to her, the injury Nos.1 to 3 would have been caused by a weapon like M.O.3. The fourth injury would have been caused by a weapon like M.O.2. She further opined that the deceased would appear to have died of shock and hemorrhage following injury to vital organs namely 'brain'.

7.During the course of investigation, at 3.00 pm on 22.05.2008 near Agarathirunallur Ramasubramanian Nagar Arch, P.W.9 arrested both the accused in the presence of P.W.5 and another witness. On such arrest, these two accused gave independent confessions one after the other. In the confession given by A.2, he had disclosed the place where he had hidden an Aruval. Similarly, in the confession given by A.1, he had disclosed the place where he had hidden a wooden log. In pursuance of the same, A.2 took P.W.9 and another witness to the place of hide out and produced the knife (M.O.3). In pursuance of the said confession, A.1 took P.W.9 and another witness to the place of hide out and produced the wooden log (M.O.2). P.W.9 recovered both the knife (M.O.3) and the wooden log (M.O.2) under a mahazar in the presence of witnesses.

8.On returning to the police station, P.W.9 forwarded both the accused to Court for judicial remand and also handed over the Material Objects to Court. On the request made by P.W.9, the Material Objects were sent for chemical

examination. The report revealed that there were blood stains on all the material objects. On completing the investigation, P.W.9 laid charge sheet against both the accused.

9. Based on the above materials, the trial Court framed a lone charge against both the accused for offence under Section 302 r/w 34 I.P.C. They denied the same as false. On the side of the accused, two witnesses were examined as D.W.1 & D.W.2. However, they did not mark any document on their side. In order to prove the case of the prosecution, on the side of the prosecution, as many as 9 witnesses were examined and 14 documents were exhibited, besides 8 material objects.

10. Out of the said witnesses, P.Ws.1 & 2 are eye witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.W.3 has spoken about the preparation of observation mahazar and a rough sketch and the subsequent recoveries made at the place of occurrence. P.W.4 has spoken about the post mortem conducted and the final opinion given by her regarding the cause of the death of the deceased. P.W.5 has spoken about the recovery of blood stained clothes in the hospital pertaining to the deceased. P.W.6 has spoken about the arrest of accused and the consequential recoveries made at the instances of A.1 and A.2. P.W.7 has stated that he handed over the dead body of the deceased to hospital for post mortem. P.W.8 has spoken about the registration of the case and P.W.9 has spoken about the investigation done and the final report filed by him.

11. Having considered all the above, the trial Court found the accused guilty under the said charge and accordingly, sentenced them to undergo imprisonment for life. Aggrieved over the same, A.1/appellant is before this Court with this Criminal Appeal.

12. The learned counsel for the appellant would submit that the presence of P.Ws.1 & 2 at the time of occurrence cannot be believed at all. He would further submit that P.Ws.1 & 2 are interested witnesses and therefore, their evidences should be disbelieved. We are not persuaded by the said argument at all. Though, it is true that P.Ws.1 & 2 are interested witnesses, on that score, their evidences at the outset, cannot be rejected. Prudence requires only close scrutiny.

13. If we closely scrutinize the evidences of P.Ws.1 & 2, we do not find any reason to doubt their credibility. Their presence at the time of occurrence has been duly explained by them. It was only P.W.1 who had taken the deceased immediately to hospital. As soon as the deceased was declared dead by the Doctor, P.W.1 had gone to the Police Station and made the complaint without any delay at 1.00 am on

19.05.2008. The F.I.R., reached the hands of the learned Judicial Magistrate at 2.30 am on 19.05.2008. From these facts, we find that there are no reasons to reject the evidences of P.Ws.1 and 2.

14.As a matter of fact, a Division Bench of this Court having analysed the evidences of P.Ws.1 & 2 by judgment dated 21.10.2009, in CrI.A.No.343 of 2009, has dismissed the appeal filed by A.2 thereby believing the evidences of P.Ws.1 & 2. The medical evidence also duly corroborates the eye witness account. The Doctor has opined that the injuries 1 to 3 would have been caused by a weapon like M.O.1. The fourth injury would have been caused by a weapon like M.O.2. Thus, the medical evidence also duly corroborates the eye witness account.

15.Similarly, the recovery of M.O.2 at the instance of A.1 also further strengthens the case of the prosecution. Thus, from these evidences, we conclude that the death of the deceased was caused only by A.1 & A.2.

16.The learned counsel for the appellant would further submit that even assuming that the case against A.2 stands proved, that will not automatically prove the case against A.1, namely, the appellant herein. Ofcourse, it is true. But, we have independently come to the conclusion, on analysing the evidences of P.Ws.1 and 2, coupled with the medical evidence and other evidences that the prosecution has proved the case as against A.1/appellant also. Though, the injury caused by A.1/the appellant herein would not have been the cause for the death, on that score, he cannot escape from conviction for the offence under Section 302 r/w 34 I.P.C., because, there is enough evidence to prove that A.1 together with A.2 armed with weapons attacked the deceased. This clearly establishes that there was premeditation and pre-meeting of mind among both the accused. The fact that these two accused came together to the house of the deceased armed with weapons and made simultaneous attack on the deceased would go to show that both the accused had acted in furtherance of the common intention to cause the death of the deceased. So far as the quantum of punishment is concerned, we do not find any reason to interfere with the same, except reducing the default sentence to three months.

17.In the result, the Criminal Appeal is allowed in part in the following terms:-

"(i) The conviction of the appellant/A.1 under Section 302 r/w Section 34 I.P.C., and the substantive sentence of imprisonment for life and to pay a fine of Rs.50,000/- imposed by the trial Court are confirmed however, the default sentence imposed by the trial Court i.e., rigorous imprisonment for 5 years, is modified and instead, it is directed that in default

of payment of fine, the appellant/A.1 shall undergo rigorous imprisonment for three months.

(ii) It is reported that the appellant/A.1 is on bail. The trial Court is directed to take steps to secure the presence of the appellant/A.1 to commit him to prison to undergo the remaining period of sentence."

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jbm
To

- 1.The Principal District & Sessions Judge,
Tiruvarur.
- 2.The Judicial Magistrate,
Tiruvarur.
- 3.The Chief Judicial Magistrate,
Tiruvarur.
- 4.The Inspector of Police,
Koradacheri Police Station,
Tiruvarur.
- 5.The Superintendent of Central Prison,
Trichy.
- 6.The District Collector,
Trichy.
- 7.The Director General of Police,
Chennai.
- 8.The Public Prosecutor,
High Court, Madras.

Copy To

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

+1cc to Mr.V.Parthiban, Advocate, S.R.No.21783

CrI.A.No.342 of 2012

KS(CO)

CA(09/05/2016)