

BAIL SLIP

The Appellant/Accused namely K.Panneerselvam, S/o.Kannan was directed to be released on bail as per Order of this Court dated 17.07.2012 in Crl.M.P.No.1 of 2012 in Crl.A.No.377 of 2012 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2016

CORAM

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

CRL.A.No.377 of 2012

K.Panneerselvam ... Appellant/Sole Accused

Versus

State rep by
The Inspector of Police
V6 Kolathur Police Station
Chennai 600 099. ... Respondent/Complainant

Appeal filed under section 374 Cr.P.C., against the Judgment passed by the learned IV Additional Sessions Judge, Chennai in SC.No.222/2011 dated 06.03.2012.

For Appellant : No appearance
Mr.K.Nagarajan, Legal Aid Counsel
[appeared for the appellant as per the direction of this Court made today]

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

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JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

The sole accused in SC.No.222/2011 on the file of the learned IV Additional Sessions Judge, Chennai, is the appellant herein and he was charged and tried for the commission of the offences u/s.448 and 302 IPC and vide impugned Judgment dated 06.03.2012, he was convicted and sentenced to undergo simple

imprisonment for three months and to pay fine of Rs.1000/-, with a default sentence of simple imprisonment for one week for the commission of the offence u/s.448 IPC and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.4000/- with a default sentence of three months for the commission of the offence u/s.302 IPC and challenging the said conviction and sentence, the appellant/accused has filed the present appeal.

2.The factual matrix of the prosecution case is as follows:-

[A] On 06.10.2010 at about 22.30 hours, the appellant/accused along with his mother and wife went to the provision stores viz., "Pitchaimani Stores" at Door No.1429/20, Poombuhar Nagar, II Main Road, Kolathur, Chennai and trespassed into the shop, threatened the shop owner viz., Manickavel and also stabbed him by using a knife on his throat, left shoulder, rear side of the head, upper neck and also in between shoulder of Manickavel and as a consequence, he died. The deceased Manickavel is the junior father of P.W.1 and he lodged a complaint under Ex.P.1, stating that he was employed in a provision store run by his father and while he was in his residence, he received a phone call at about 22.30 hours on 06.10.2010 from his junior mother, viz., Mariammal, stating that his junior father was found inside the shop in a pool of blood, as he was attacked and asked P.W.1 to rush immediately. Accordingly, P.W.1 along with his father, went to the shop of his junior father and found his junior father was lying in a pool of blood with cut injuries and they also made an attempt to revive and since he was not responding, P.W.1 along with the neighbouring shop owner, viz., Thiyagarajan, took him to Kumaran Hospital at Retteri and they told him that nothing can be done and asked him to take to Kilpauk Medical College Hospital and accordingly, P.W.1 and the said Thiyagarajan, took the injured to Kilpauk Medical College Hospital and the Casualty Medical Officer, viz., Dr.Giridharan, on examining him, declared dead on arrival.

[B] P.W.1-Senthilkumar [son of the deceased Manickavel's elder brother] proceeded to Kolathur Police Station and lodged a complaint to P.W.10 [Mr.Singaraja], the Inspector of Police attached to the said Police Station at the relevant point of time. P.W.10 registered a case in Cr.No.649/2010 on 07.10.2010 at about 02.30 hours for the offences u/s.448 and 302 IPC. Printed FIR is marked as Ex.P.14. He despatched the original complaint [Ex.P.1] and the printed FIR [Ex.P.14] to the Court of the jurisdictional Magistrate.

[C] P.W.10, upon commencing the investigation, went to the scene of crime and in the presence of P.W.3 [Ramesh] and

one Selvam, he prepared the Observation Mahazar, marked as Ex.P.2 and a Rough Sketch marked as Ex.P.3. He examined P.W.3 and according to P.W.3, he heard the demise of the owner of Pitchaimani Stores and also got the news that the culprit was the root cause for the death of the owner of the shop namely Manickavel at about 15.15 p.m. on 08.10.2010. P.W.10 also examined P.W.1 [Senthilkumar] and P.W.2 [Mariammal], Selvamani, Aadhimoolam, Dayalan, Seenivasan, Sathishkumar, Ramesh, Selvam, Prabhu, Danaseelan, Varadhan and other witnesses as well as the Casualty Medical Officer and recorded their statements. He also recovered M.O.1 [Knife] under the cover of Mahazar, marked as Ex.P.5. P.W.10 also conducted inquest on the dead body of the deceased between 10.00 hours and 12.00 hours on 10.07.2010 in the presence of the Panchayatdars and prepared the Inquest Report [Ex.P.15]. Through P.W.8-Kumarasamy [Head Constable], P.W.10 sent the body for postmortem.

[D] P.W.7-Dr.Hari Santhaseelan, who was the Tutor attached to the Department of Forensic Science at Kilpauk Medical College Hospital, during the relevant point of time, on receipt of the body of the deceased viz., Manickavel, has commenced the postmortem at about 13.00 hours on 07.10.2010 and noted the following features:-

"Identification and Caste marks:-

[1]A black mole over right chest.

[2]A black mole over centre of abdomen.

The body was first seen by the undersigned at 01.00 p.m., on 07.10.2010. Its condition then was rigor mortis present all over the body. Postmortem commenced at 01.00 p.m. on 07.10.2010. Appearance found at the postmortem. Moderately nourished male body.

Injuries:-

[1] Stab injury right side of just below the middle $1/3^{rd}$ of right clavicle of size 3cm x 1cm x bone deep.

[2] Lacerated injury over the upper $1/3^{rd}$ of lateral aspect of left arm measuring 6cm x 2cm x muscle deep.

[3] Chop injuries over the occipital

[a]8cmx2cmxbone deep.

[b]6cmx2cmxbone deep, just below and to the left of injury [a]

[c]4cmx1cmxbone deep to the below and right of [a]

[d]7cmx2cmxbone deep on sub-occiput.
[e]3cmx1cmxmuscled deep, over the nape
of the neck.
[f]4cmx2cmxbone deep over the left
temporo-parital region of scalp.

[4] A stab injury 3cmx1/2cmxmuscled deep in
between two scalpulae.

[5] Stab injury at the level of 4th inter
coastal space at the 4cm from the midline of
measuring 2cmx1/2cmxmuscled.

On Dissection:-

Extensive haemotoma over occiput and sub-
occiput on further dissection, injury No.[1]
extends obliquely upwards medially to the root
of the neck injuring the right carotid, right
internal jugular vein and trachea, at the level
of 4th and 5th tracheal rings with collection of
clotted blood about 75 grams.

Heart:- Normal in size. Lungs:- Normal in size.
C/S: Pale Hyoid Bone:- Intact Stomach-180 ml of
yellow coloured fluid present, no definite smell
perceived. Liver, Spleen, Kidneys: Normal in
size. C/S Pale Intestine: Distended with gas.
Bladder-empty. Pelvis-Intact Skull Bones:
Intact. Membranes-Intact Brain-Normal Spinal
Column-Intact."

On completion of postmortem, P.W.7 opined that the cause of
death was due to "shock and haemorrhage due to multiple
injuries". The Postmortem Certificate given by P.W.7 was marked
as Ex.P.10.

[E] P.W.10, the Inspector of Police, continued the
investigation and he examined Ramasamy and Lakshmanan on
11.10.2010 and recorded their statements and on receipt of prior
information, effected arrest of the accused at about 17.30 hours
on 12.10.2010 and in the presence of P.W.5 [Sivamurugan] and one
Murugesan, the appellant/accused voluntarily came forward to
give a confession statement, the admissible portion of which is
marked as Ex.P.16. In pursuance of the same, M.O.3 series were
recovered under the cover of Mahazar [Ex.P.17]. Thereafter,
P.W.10 sent the appellant/accused for judicial custody and sent
the material objects to the jurisdictional Court, viz., V
Metropolitan Magistrate Court, under Form 95. He also made
arrangements for conducting Test Identification Parade and made

a requisition to the Chief Metropolitan Magistrate and the learned XII Metropolitan Magistrate [P.W.9], was assigned with the duty to conduct the Identification Parade. P.W.9 [Tmt Indirani] has conducted the Test Identification Parade and given her report, marked as Ex.P.13. Thereafter, on 08.12.2010, P.W.10 recorded the statement of P.W.7 who conducted the autopsy as well as the Casualty Medical Officer of Kumaran Hospital and also received the Accident Register given by him [Ex.P.18]. P.W.10 forwarded the material objects for chemical examination and on receipt of Ex.P.8 [Biological report] and Ex.P.9 [Forensic report] and after completion of the investigation, filed the final report on the file of the learned V Metropolitan Magistrate, charging the appellant/accused for the commission of the offences u/s.448 and 302 IPC.

[F] On receipt of the final report, the learned V Metropolitan Magistrate took it on file in PRC No.24/2011. The Committal Court, on the appearance of the appellant/accused, furnished copies of the documents under section 207 Cr.P.C., and having found that the case is exclusively triable by the Sessions Court, committed the same to the Court of the learned IV Additional Sessions Judge, Chennai, who took it on file in SC.No.222/2011. The Trial Court, on appearance of the appellant/accused, framed charges u/s.448 and 302 IPC and questioned the appellant/accused, who pleaded not guilty to the charges framed against him.

[G] The prosecution, in order to sustain their case, has examined P.Ws.1 to 10 and marked Exs.P.1 to 18 and also marked M.Os.1 to 3. The appellant/accused was questioned u/s.313 Cr.P.C., with regard to the incriminating circumstances made out against him in the evidence rendered by the prosecution. He denied it as false. He further stated that he has nothing to do with the alleged commission of the offences. On behalf of the appellant/accused, Ex.D.1 - Xerox copy of the Call Register was recovered and no oral evidence was let in.

3. The Trial Court on consideration of the oral and documentary evidence and other materials placed before it, has convicted the appellant/accused for the offences u/s.448 and 302 IPC and sentenced him as mentioned above. Challenging the legality of the said conviction and sentence, the appellant/accused is before this Court with this appeal.

4. When the appeal was taken up for hearing, there is no appearance on behalf of the appellant/accused and this Court, having taken note of the fact that the Sessions Case is of the year 2011 and the impugned Judgment came to be delivered on 06.03.2012 and this appeal is of the year 2012, has appointed

Mr.K.Nagarajan, Advocate as the Legal Aid Counsel to advance the arguments on behalf of the appellant/accused.

5. Mr.K.Nagarajan, learned Counsel appearing as the Legal Aid Counsel for the appellant/accused made the following submissions:-

[1] The case of the prosecution was built up on circumstantial evidence and the following circumstances were projected against the appellant/accused:-

[a]The presence of the appellant/accused was seen near the scene of crime by P.W.4.

[b]The Test Identification Report marked as Ex.P.13, arrest and recovery of M.Os.1 to 3, the Postmortem Certificate and other scientific evidence.

The learned counsel for the appellant/accused would submit that the persons who accompanied the appellant/accused to the shop of the deceased have not been examined as witnesses and P.W.3 merely states that the appellant/accused was standing near the shop of the deceased and though in the Test Identification Parade, P.W.4 and another witness, namely Danasekaran have identified the appellant/accused, it is not a substantive piece of evidence. Though the scientific evidence has substantiated the fact that the deceased died on account of homicidal violence and articles seized were tainted with human blood, the same would not in any way connect the accused with the commission of the crime and further contended that in any event, the Trial Court ought to have awarded benefit of doubt and acquitted the appellant/accused as chain of circumstances projected by the prosecution against the accused is not complete and prays for setting aside of the conviction and sentence and for the acquittal of the appellant/accused.

6. Per contra, the learned Additional Public Prosecutor would contend that the prosecution, through the testimonies of the witnesses as well as through the Test Identification Parade coupled with the scientific evidences, had amply proved its case beyond any reasonable doubt and the Trial Court, on a thorough and proper consideration of the entire materials placed before it, has rightly reached the conclusion to convict and sentence the accused and in the absence of any infirmity, the well considered judgment rendered by the Trial Court may not be interfered with and prays for dismissal of this appeal.

7. This Court has carefully considered the rival submissions and also perused the oral and documentary evidence and also the other materials placed before it.

8. The question arises for consideration is whether the conviction and sentence recorded by the trial court against the

appellant/accused for the commission of the offences u/s.448 and 302 IPC, is sustainable.

9. It is a well settled position of law that while appreciating the circumstantial evidence, the Court must adopt a very cautious approach and should record a conviction only if all the links in the chain are complete, pointing to the guilt of the accused and every hypothesis of innocence if capable of being negated on evidence. Great care must be taken in evaluating the circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, one in favour of the accused must be accepted. This circumstance relied upon, must be found to have been fully established and the cumulative effect of all the facts so established, must be consistent only with the hypothesis of guilt.

10. It is also a well settled position of law that the Test Identification Parade is not primarily meant for the Court and/or meant for investigation purposes and the object of conducting the Test Identification Parade is two fold, viz., first is to enable the witness to satisfy themselves that the person whom they suspect, is really the one who was seen by them in connection with the commission of the crime and second is to satisfy, the investigating authorities that the suspect is really the person whom the witness had seen in connection with the said occurrence.

11. This Court, keeping in mind, the ratio laid down by the Hon'ble Apex Court in a catena of decisions, has carefully scanned the materials placed before it.

12. The deceased Manickavel is the junior father of P.W.1 and as per the chief examination, P.W.1 would depose that on 06.10.2010 at about 22.30 hours, his junior mother, viz., Mariammal [P.W.2], had given a phone call stating that his junior father was attacked and accordingly, P.W.1 along with his father, rushed to the place and found inside the shop, his junior father was found in a pool of blood with cut injuries and accordingly, he with the help of one Thiyagarajan, took his junior father to a private hospital at Retteri and on their advise, took him to Kilpauk Medical College Hospital and the Casualty Medical Officer, who examined him, declared him dead on his arrival and he lodged a complaint. P.W.2 is the wife of the deceased and she would depose that at about 22.30 hours on 06.10.2010, one of the neighbours, viz., Sathish, knocked her door and told her that her husband was attacked and was found in a pool of blood and immediately, she rushed to the shop and found her husband lying on the floor with cut injuries and she immediately contacted P.W.1 [Senthilkumar] and on his arrival,

he took the injured in an auto along with one Thiagarajan. She would further depose that she does not know the appellant/accused and however, his mother used to come to the provision store run by her husband/the deceased to purchase the articles. P.W.3 is the witness to the preparation of the Observation Mahazar and the Rough Sketch. P.W.4 would depose that he was eking his livelihood as a plumber and after finishing his work, he along with his friends, was standing in front of the provision stores run by the deceased and were conversing with each other and at that time, at about 21.00 or 21.30 hours, the deceased was preparing to close the shop and the accused wearing a lungi, was standing nearby the shop and on the next day, he became aware that Manickavel, owner of Pitchaimani Stores, died of stab injuries. In the cross-examination, he would state that during the course of investigation, he told that the accused was standing near the STD Booth, which was located near the shop of "Pitchaimani Stores".

13. P.W.5, who was the witness to the arrest and recovery, turned hostile. P.W.6, the Assistant Director of Forensic Lab, has given the opinion under Ex.P.9 that the material objects contain "B" group human blood. P.W.7 who conducted autopsy, has given opinion, as already stated above and in the cross-examination, he would state that apart from the use of M.O.1, if a larger knife was used, injuries could have been caused. P.W.9, who conducted the Test Identification Parade would state that the accused was identified by one Danasekaran as well as by P.W.4 and in the cross-examination, she deposed that prior to the commencing of the Identification Parade, the accused told her that the accused was shown to the concerned witnesses even in the Police Station itself.

14. The case of the prosecution was solely built upon the testimony of P.W.4 coupled with the Test Identification Parade Report, marked as Ex.P.13. As already pointed out in the earlier paragraphs, P.W.4 merely stated that while he was conversing with his friends, he found the appellant/accused standing near the STD Booth which was located near the shop of the deceased. No doubt, in the Test Identification Parade, the appellant/accused was identified by Danasekaran and P.W.4. But, in the cross-examination, P.W.9 would depose that when she questioned the appellant/accused, he told her that prior to the Identification Parade, the accused was shown to Danasekaran and P.W.4 in the Police Station itself. The witness to the arrest and recovery, turned hostile. No doubt, the scientific evidence in the form of the Postmortem Certificate and other evidences, prove that the deceased died on account of homicidal violence. It is the bounden and foremost duty of the prosecution to

establish the fact that it was the accused and nobody else has committed the heinous offence of murder. In the considered opinion of the Court, the prosecution has miserably failed to do so, for the reason that the chain of circumstances projected by it to connect the appellant/accused with the commission of the crime, is not at all complete. There are very many missing links and glaring holes in the case projected by the prosecution. As a result, the benefit of doubt shall enure in favour of the appellant/accused.

15. In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant/accused for the offences u/s.448 and 302 IPC vide Judgment dated 06.03.2012 made in SC.No.222/2011 by the learned IV Additional Sessions Judge, Chennai, are hereby set aside.

16. It is reported that the appellant/accused is on bail. The bail bond stand terminated. Fine amount, if any paid, shall be refunded to him.

17. Before parting with the matter, this Court appreciates the role played by Mr.K.Nagarajan, Legal Aid Counsel, in properly projecting the case. The Tamil Nadu State Legal Services Authority, is directed to pay him the remuneration as per norms.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AP

To

1. The IV Additional Sessions Judge,
Chennai.
2. The V Metropolitan Magistrate,
Egmore, Chennai-8.
3. Do Through The Chief Metropolitan Magistrate,
Chennai 08.
4. The Inspector of Police
V6 Kolathur Police Station,
Chennai 600099.

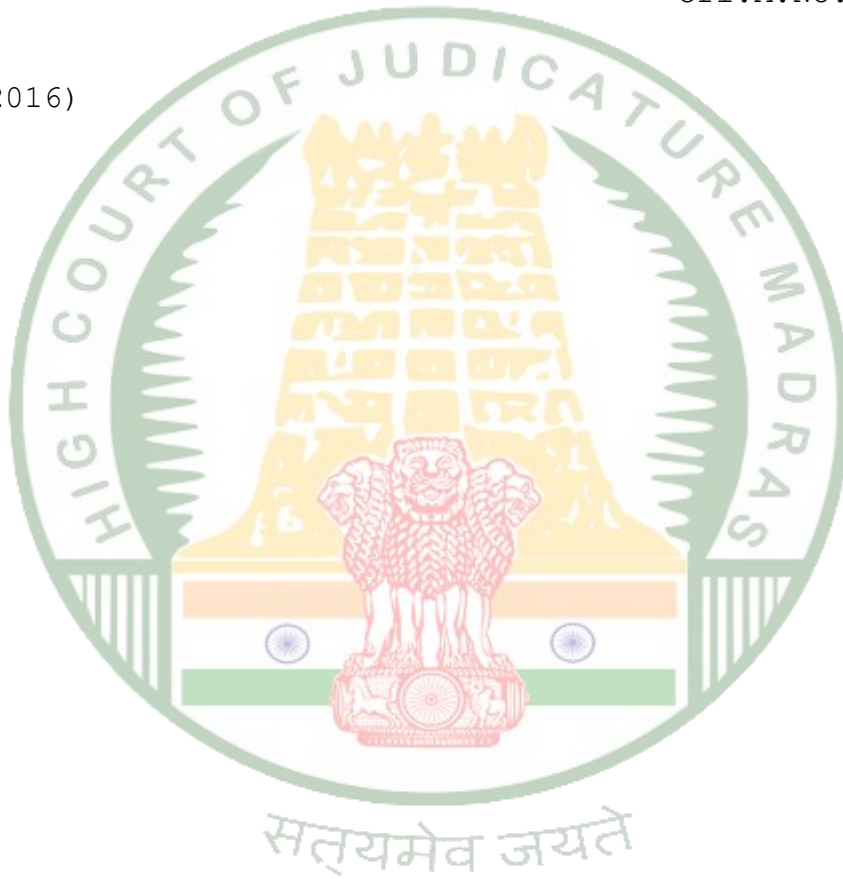
5. The Public Prosecutor
High Court, Madras.

6. The Secretary
TamilNadu Legal Services Authority,
Chennai.

+1cc to Mr.K.Nagarajan, Advocate, S.R.No.10295

CrI.A.No.377 of 2012

KK (CO)
CA(07/03/2016)



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