

Bail Slip:- The petitioner /Accused No.1 namely Kumar @ Sivakumar S/o. Kaliya Perumal was directed to be released on bail as per the order of this Court dated 5.10.2012 and made in Crl.M.P.No.2/12 in Crl.A.NO.419/12 on the file of this Court.

The petitioner/accused No.2 namely Sumathi W/o. Kumar @ Sivakumar was directed to be released on bail as per order of this court dated 31.7.2012 and made in Crl.M.P.No.1/12 in Crl.A.NO.419/12 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.02.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.419/2012

1. Kumar @ Sivakumar

2. Sumathi

.. Appellants/A1 &A2

Vs

State by
The Inspector of Police,
Kuthalam Police Station,
Kuthalam.

Nagapattinam

.. Respondent/ Complainant

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned District and Sessions Judge, Nagapattinam in S.C.No.168 of 2009 dated 06.07.2012.

WEB COPY

For Appellants : Mr.V.Rajamohan

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

JUDGMENT

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

The appellants are the accused 1 and 2 in S.C.No.168 of 2009 on the file of the learned District and Sessions Judge, Nagapattinam. The trial court framed as many as 5 charges against the accused. The first charge was under Section 302 of IPC against both the accused; the 2nd charge was under Section 307 IPC against the 1st accused; the 3rd charge was under Section 307 read with 34 of IPC against the 2nd accused and the 4th charge was under Section 323 of IPC against the 1st accused and the 5th charge was under Section 323 read with 34 of IPC against the 2nd accused. By judgment dated 06.07.2012, the trial court convicted the 1st accused under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for two years and for the offence under Section 307 of IPC, sentenced him to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.250/-, in default, to undergo rigorous imprisonment for one year and for the offence under Section 323 of IPC, sentenced him to pay a fine of Rs.100/-, in default, to undergo simple imprisonment for one week.

2. The trial court convicted the 2nd accused under Section 302 of IPC and sentenced her to undergo imprisonment for life and to pay a fine of Rs.500/- in default, to undergo rigorous imprisonment for 2 years, for the offence under Section 307 read with 34 of IPC., sentenced her to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.200/-, in default, to undergo rigorous imprisonment for one year and for the offence under Section 323 read with 34 of IPC, sentenced her to pay a fine of Rs.100/-, in default, to undergo simple imprisonment for one week. Challenging the said conviction and sentence, the appellants/A1 and A2 are before this Court with this appeal.

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

(a) The deceased in this case was one Mrs.Sudha. P.W.2 Vanjinathan is her husband and P.W.1 is her mother. The 1st accused is the brother of P.W.2 and the 2nd accused is the wife of the 1st accused. In respect of partitioning an ancestral property in the village, there was misunderstanding between the two families. It is alleged that the accused had put up a fence encroaching upon the land allotted to the P.W.2. On 03.06.2009 A.N., the goats belonging to the deceased had gone into the field of the accused. On account of the same, there was a wordy quarrel between the deceased and the 1st accused. At that time, it is alleged that the 1st accused attacked the deceased. It was intimated to P.W.2, who in turn questioned the 1st accused. This infuriated the 1st accused as he told P.W.2 that he would not

allow P.W.2 and the deceased to be alive. This is stated to be the immediate motive for the accused.

(b) On 03.06.2009 at about 07.30 p.m., both P.W.2 and the deceased were going near the house of one Mr.Sundaramoorthy (P.W.4). At that time, both the accused suddenly emerged and the 1st accused started mounting attack on the deceased followed by the 2nd accused using Aruvals. She sustained multiple injuries and fell down in a pool of blood. P.W.2 intervened. But the 1st accused cut him also with Aruval on various parts of his body resulting in bleeding injuries. Mr.Manikandan, P.W.3, who was incidentally there, tried to intervene. The 1st accused attacked him with the very same weapon near his left eyebrow and caused him simple hurt. After the said occurrence, the accused fled away from the scene of occurrence. The occurrence was witnessed by P.Ws.1 and 6. Immediately, P.Ws.1 and 6 made arrangements to shift all the injured to the hospital. Thereafter, P.W.1 rushed to Kuthalam Police Station at 11.15 p.m. and made a complaint under Ex.P.1. P.W.11, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.213 of 2009 for the offences under Sections 323, 324 and 302 of IPC against both the accused. The printed copy of the F.I.R. is Ex.P.20. He forwarded both the complaint and FIR and handed over the Case Diary to the P.W.12 for further investigation.

(c) P.W.12, the then Inspector of Police took up the case for investigation, proceeded to the place of occurrence, prepared the Observation Mahazar [Ex.P.2] in the presence of P.Ws.4 and 5. He also prepared a Rough Sketch [Ex.P.21] showing the place of occurrence in the presence of the same witnesses. He recovered blood-stained earth [M.O.6] and sample earth [M.O.7] from the scene of occurrence under a Mahazar [Ex.P.22] in the presence of the same witnesses. He examined the injured witnesses P.Ws.2 and 3 in the Government Hospital, Mayiladuthurai. Then, at the Government Hospital, Mayiladuthurai, he conducted inquest on the body of the deceased at 07.00 a.m., on 04.06.2009 in the presence of Panchayatdars and other witnesses and prepared Ex.P.23-Inquest Report. Then, he sent the body of the deceased for postmortem.

(d) P.W.9 Dr.Sollaimegala conducted autopsy on the body of the deceased on 04.06.2009 at 11.30 a.m. He found the following injuries:

'External Injuries:

1. Right forehead 6 x 2 x 0.5 c.m.. Skull intact.
2. A cut wound in right temporal region 2 cm lateral to right eye
3 x 2 x 1 c.m. Skull intact.
3. Neck right side a deep cut wound about 5 x 4 x 3 cm with cut on jugular vein, carotid artery and right sternomastoid muscle present.

4. Cut wound in right side neck inferior to No.3 about 3 x 0.5 x 0.5 cms.
5. Below chin tongue shaped flap of skin hanging at left end about 5 x 4 x 0.5 c.m.
6. Right buttock region - 2 x 2 x 6 cm wound (penetrating wound) without any vessel injury.
7. A cut wound in right upper thigh 4 x 4 x 3 cm with exposed, cut muscle.
8. Back a) 3 x 2 x 5 cm wound in right side just inferior to right scapular bone a fractured rib palpable.
b. another wound below (a) 2 x 1 x 2 cm.
c. another superficial wound - 2 x 1 x 2 cms below (b) Abrasions over - both forearm present and also left knee joint.

Internal injuries:

Skull - No fracture. Brain-Palor. Hyoid Bone intact, both lungs were normal. Ribs-Fracture of 4th right rib at its origin.

No major vascular injury. About 100-ml of blood present in right pleural space. Heart - some blood clots present.

Limbs - No fracture. Abdomen - Stomach contain 200 ml. of digested white fluid present distended bowel loops present.

Peritoneum - No free fluid blood. Uterus - empty. Pelvis - Normal. No fracture, Kidneys, Liver, Spleen are present in their respective places with palor. Normal appearing abdominal organs.'

Ex.P.11 is the Postmortem Certificate. She gave final opinion that the deceased would have appeared to have died of shock and hemorrhage due to the injuries.

(e) P.W.12 during the course of investigation, arrested the accused on 05.06.2009 at 06.00 a.m. near Sendiruppu Bus Stop in the presence of P.W.10 Mr.Krishnamoorthy, Village Administrative Officer and another witness. On such arrest, both the accused gave independent confessions one after the other. In the said confession, the 1st accused disclosed the place where he had hidden the Aruval and similarly, the 2nd accused disclosed the place where she had concealed the Aruval. In pursuance of these two confessions, they took the police and the witnesses to the respective places and produced M.O.1 and M.O.2 and they were recovered under two different Mahazars, namely, Ex.P.18 and Ex.P.19.

(f) On returning to the police station along with the accused and the material objects, P.W.12 sent both the accused for judicial remand and produced the material objects to the court. He made a request to the court for forwarding the material objects for chemical examination. Thereafter, on returning to duty, P.W.13 Mr.Pichaipillai, the Inspector of Police has taken

up the case for further investigation, examined P.W.9 Postmortem Doctor and other witnesses and received Ex.P.11 Postmortem Report and Ex.P.12 to Ex.P.14 Accident Registers in respect of P.Ws.2 and 3 and the deceased Sudha and on his transfer, P.W.14, Mr.Sachithanantham, the Inspector of Police, who took charge, on completing the investigation, laid the charge-sheet against the accused.

4. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined, 24 documents and 7 material objects were also marked.

5. Out of the said witnesses, P.Ws.1 to 3 are the eyewitnesses to the occurrence, who have vividly spoken about the entire occurrence. P.W.4 Sundaramoorthy who was examined to speak about the preparation of Observation Mahazar by the police and the Rough Sketch has turned hostile. P.W.5 has also turned hostile as he has not supported the case of the prosecution in any manner. P.W.6 is yet another eyewitness who has also spoken about the occurrence. P.W.7 the Special Sub-Inspector of Police attached to the respondent police, has spoken about the seizure of the material objects, namely, M.Os.3 to 5 from the dead body of the deceased and handed over the same to the Inspector of Police under Ex.P.6 Special Report. P.W.8 Avina, Forensic Assistant has spoken about the chemical examination conducted on the material objects. P.W.9 Dr.Sollaimegala has spoken about the postmortem conducted by her on the body of the deceased Sudha and her final opinion regarding the cause of death. P.W.10 is the Village Administrative Officer. P.W.11 [Sub Inspector of Police] has spoken about the receipt of complaint from P.W.1 and preparation of F.I.R. P.W.12 [Inspector of Police] has spoken about the arrest of the accused by him, disclosure statements made by them and the consequential recovery of M.Os.1 and 2. P.Ws.13 and 14 have spoken about the further investigation done by them respectively and laying of charge-sheet against the accused.

6. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they do not choose to examine any witness nor mark any document on their side.

7. Having considered all the above, the Trial Court convicted both the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellants are before this Court.

8. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

9. Learned counsel for the appellants would submit that the prosecution has not come forward with the true version of the occurrence. In order to substantiate the said contention, the learned Counsel for the appellants would point out that at the earliest point of time, when the injured witnesses were examined by the Doctor, they have uniformly stated that they were attacked by four known persons, whereas, there are only two accused in this case. He would further submit that the original information relating to the occurrence has been suppressed. The learned Counsel for the appellants would also submit that the house of the accused was burnt to ash in the same occurrence. But, there was neither a case registered nor any explanation regarding the same. From these materials, the learned Counsel for the appellants would submit that the prosecution has suppressed the material part of the occurrence and thus, it has not come forward with clean hands. Therefore, according to the learned Counsel for the appellants, the appellants are entitled for acquittal.

10. The learned Additional Public Prosecutor appearing for the State, however, would vehemently oppose the appeal. According to him, there are no reasons to reject the evidence of the eye-witnesses, namely, P.Ws.1 to 3 and 6. They have vividly spoken about the entire occurrence and the medical evidence also duly corroborates their evidence. The learned Additional Public Prosecutor would further submit that the contradictions pointed out by the learned Counsel for the appellants are very minor in nature which would not create any dent in the case of the prosecution. He would also submit that it is true that the house of the accused was burnt, but, not in the same occurrence. He would further submit that the house of the accused was burnt subsequent to the said occurrence and therefore, on that score, it cannot be held that the prosecution has not come forward with clean hands. Thus, the learned Additional Public Prosecutor submitted that there are no reasons to interfere with the conviction and sentence recorded by the Trial Court.

11. We have considered the above rival submissions carefully.

12. The motive towards the occurrence, in our considered opinion, has been proved. The enmity on account of sharing of the ancestral property has been spoken to by the prosecution about which there is no denial at all. But, based on the mere motive, one cannot rush to the conclusion that the accused have committed the crime. In this case, there are 4 eye-witnesses. Of course, they have stated in one voice that both the accused caused injuries on the deceased and P.Ws.2 and 3. Immediately, after the occurrence, according to them, the injured witnesses were taken to the hospital by P.Ws.1 and 6. During the course of

cross-examination, they have stated that even before they could reach the hospital and when they were in the Ambulance, a statement was obtained from P.W.1 regarding the occurrence. That statement was unfortunately suppressed by the police. That statement, being the earliest statement, would, quite naturally, contain the truth. The suppression creates further doubt in the case of the prosecution. On coming over to the hospital, P.W.2 and P.W.3 have told the Doctor that they have attacked by four known persons. The explanation offered by them during cross-examination is that since they were perplexed, they mentioned so wrongly to the Doctor. This explanation is difficult to be believed. This would only indicate that as though they had a right to include any number of persons as accused at their whims and fancies. Thus, the tendency of the injured witnesses to implicate people falsely in the case, cannot be ruled out.

13. Next, coming to the burning of the house of the accused, it is in the evidence of almost all the witnesses from that locality that the house of the accused was burnt to ash. The Fire Service Personnel had come with fire equipments and extinguished the fire. Quite naturally, there would have been some report regarding the same by the Fire Service Officer. The Investigating Officers have admitted during their cross-examination that they did not collect the said report. It is not an accidental fire. Even according to the prosecution witnesses, the house would have been burnt by the accused by themselves. It is too difficult to believe. At any rate, the burning of the house of the accused to ash would fall within the limb of Section 436 of IPC. It is not as though the Investigating Officer was not aware of the same. Having come to know that the house of the accused was completely burnt to ash at the time of the occurrence, it is not explained to the court as to why the Investigating Officer did not bother to register a case in respect of the same. Had there been a case registered in respect of the said fire incident, truth would have come to light. The Investigating Officer is also not in a position to say as to when, where and by whom the house of the accused was burnt because there was no investigation done at all on that score. The learned Counsel for the appellants would also submit that in the same occurrence only the house of the appellants was burnt. We do not find any reason to reject the said argument. If it is so that the house of the appellants was burnt to ash in the very same occurrence in which the deceased and the prosecution witnesses 2 and 3 have sustained injuries, then, the prosecution witnesses were expected to explain as to how the house of the accused was burnt. But the prosecution has completely suppressed the facts relating to the burning of the house of the accused. As we have already pointed out, not even any investigation was done in respect of the same. Thus, it is crystal clear that the investigation was not done properly in this case and instead, the Investigating Officers have taken sides with the prosecution

party and have taken the investigation in the direction against the accused alone. Therefore, it is very difficult for this Court to believe the version projected by the prosecution.

14. The learned Additional Public Prosecutor would submit that since P.Ws.2 and 3 are injured witnesses, their evidences ought to be accepted. We find no force in this argument at all. The presence of injuries on these two witnesses would only vouch for their presence in the place of occurrence. But that would not go to prove that they are telling only the truth. In this case, though we are prepared to believe that P.Ws.2 and 3 were present at the place of occurrence, we find it difficult to give any credential to their evidence. Therefore, this argument is also rejected.

15. In view of the foregoing discussions, since the prosecution has not come forward with clean hands and since the prosecution has suppressed the material part of the occurrence, though P.Ws.2 and 3 were injured witnesses, still, we find it difficult to hold that the prosecution has proved the case beyond reasonable doubts and therefore, the appellants are entitled for acquittal.

16. In the result, the appeal is allowed and the conviction and the sentence made by the trial court on the appellants are set aside and they are acquitted. The bail bonds, if any, executed shall stand discharged. The fine amount, if any, paid, shall be refunded to the respective accused.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

tsi

To

1. The Judicial Magistrate No.1
Mayiladuthurai
2. do tho the Chief Judicial Magistrate
Nagapattinam
3. The District and Sessions Judge,
Nagapattinam.
4. do thro the Principal Sessions Judge
Nagapattinam

5. The Superintendent
Central Prison
Cuddalore

6. The Superintendent
Special Prison for woman
Tiruchirapalli

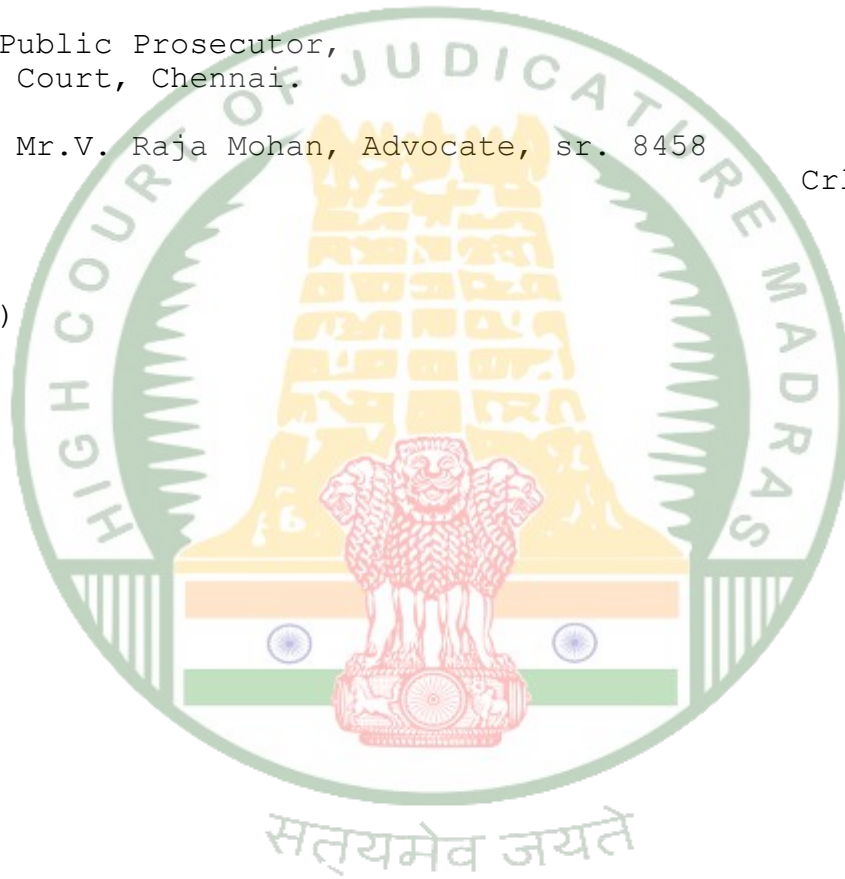
7. The Inspector of Police,
Kuthalam Police Station,
Kuthalam, Nasgapattinam

8. The Public Prosecutor,
High Court, Chennai.

1 cc to Mr.V. Raja Mohan, Advocate, sr. 8458

Cr1.A.No.419/2012

SKV (CO)
kk 25/2



WEB COPY