

Bail Slip

The Appellants/Accused 1 to 4 were endorsed on bail and in by the orde rdt.21.04.2016 made in CrI.MP. 3571/16 in CrI.A.No.229/16 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.229 of 2016

1. Settu @ Prakash

2. Ramadoss

3. Kuppan

4. Ellappan @ Kathawarayan ...Appellants /Accused 1to 4

Vs

State rep. By
Inspector of Police,
Vellimedupettai Police Station,
Villupuram District,
Crime No.98 of 2014 ...Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed on the appellants by the judgment dated 26.02.2016 passed in S.C.No.81 of 2015 on the file of learned I Additional Sessions Judge, Tindivanam.

For Appellants : Mr. P.Parvadhraj Arumugam

For Respondent : Mr.E.Raja,
Additional Public Prosecutor

JUDGEMENT

(Judgment of the Court was delivered by V.Bharathidasan.J)

The appellants are A1 to A4 in S.C.No.81 of 2015 on the

file of the learned I Additional Sessions Court, Tindivanam. Totally there are 7 accused. A1 to A7 stood charged for the offences under Sections 147, 148 r/w.149, 324 and 302 IPC. After trial, by judgment dated 26.02.2016, the trial Court convicted A1 to A4 under Section 302 IPC and sentenced them to undergo Imprisonment for life and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for two months and acquitted A1 to A4 from the charges under Sections 147, 148 r/w.149 and 324 IPC and also acquitted A5 to A7 from all the charges. Challenging the said conviction and sentence, the appellant are before this Court with this Criminal Appeal.

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

Deceased, in this case, one Kesavan, is the brother of P.W.1 and son of P.Ws.3 and 4. A7, in this case, one Nagammal is daughter of A4. The deceased Kesavan had love affair with the said Nagammal. Earlier, the accused, being the family members of Nagammal, promised the deceased that they will get him married to Nagammal. But, later, they violated the promise and taken step to arrange a marriage for Nagammal with some other person. After knowing the same, the deceased came to his native place and on 07.07.2014, at about 8.00 p.m., he scolded the accused family and at the time, all the accused came to the house of the deceased and attacked the deceased with knife and wooden log and caused his death.

3. P.W.1, brother of the deceased, who is an eye-witness to the occurrence, along with P.W.2, his wife and others, took the deceased to the Government Hospital, Tindivanam, and then they, took the deceased to Government Hospital, Mundiyaibakkam. Thereafter, on the next day morning, at about 6.30 a.m., P.W.1 lodged a complaint, Ex.P.1, before the respondent police.

4. P.W.12, Sub-Inspector of Police, in the respondent police station, on receipt of the complaint, registered a case in Crime No.98/2014, for an offence under Section 302 IPC, prepared First Information Report, Ex.P.11, sent the same to the Judicial Magistrate and copy of the same to P.W.13, Inspector of Police.

5. P.W.13, on receipt of the First Information Report, commenced investigation, proceeded to the scene of occurrence and prepared Observation Mahazar, Ex.P.12, and Rough Sketch, Ex.P.13 in the presence of witnesses. Then, he conducted inquest on the dead body of the deceased at the Government Hospital, Mundiyaibakkam in the presence of panchayathars and prepared Inquest Report, Ex.P.14. Thereafter, he sent a requisition for

postmortem of the dead body through P.W.10, Head Constable.

6. P.W.11, Assistant Professor, working in Government Medical College Hospital, Villupuram, conducted postmortem/autopsy on the body of the deceased on 09.07.2014, at 11.00 a.m and found the following injuries:

" Injuries noted :

1. Contused abrasions of size 2 x 1.5 x 2 c.ms overlying the right 7, 8 ribs over chest wall.
2. Scratch abrasion of length 1 cm below right nipple.
3. Laceration of size 1 cm x 0.5 cm x 0.5 cm over outer aspect of middle 1/3rd of right lower leg."

Ex.P.6 is the Postmortem Certificate. He has given a opinion that the deceased appears to have died due to the injuries on the chest and abdomen.

7. P.W.13 , arrested A1 and A2 near Melpakkam bus stop in the presence of witnesses. On such arrest, they have voluntarily given a confession, based on the disclosure statement, P.W.13 recovered wooden logs, (M.Os.1 to 4), under the cover of Mahazar, Ex.P.4, and sent A1 and A2 to judicial custody. On 20.10.2014, P.W.13, arrested A4 to A7, and on such arrest, they also gave voluntary confessions and based on the disclosure statements, he recovered two wooden logs, M.O.5 series under Mahazar, Ex.P.10 in the presence of witnesses. On 21.10.2014, P.W.13 arrested A3 near Singanoor bus-stop and remanded him to judicial custody. Then, he recorded the statement of the doctor, who conducted postmortem/autopsy on the dead body of the deceased and other witnesses. On completing investigation, P.W.13 laid charge sheet against the accused on 24.11.2014.

8. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment against all the accused, the accused denied the same. In order to prove its case, on the side of the prosecution, as many as 13 witnesses were examined, 15 documents were exhibited, and 5 Material Objects were marked.

9. Out of the said witnesses examined, P.W.1 is the brother of the deceased. He is an eye-witness to the occurrence. According to him, on 07.07.2014, at about 8.00 p.m., all the accused came with a knife and wooden log and attacked the deceased indiscriminately, the deceased was found unconscious, P.W.1 took him to the Government Hospital, Mundiambakkam. Subsequently, he lodged a complaint, Ex.P.1 to the respondent police.

10. P.W.2 is the wife of P.W.1. She is also an eye-witness to the occurrence. According to her, all the accused attacked the deceased indiscriminately with wooden logs. P.W.3, father of the deceased, he is also an eye-witness to the occurrence. According to him, all the accused came to their house with wooden logs and attacked the deceased. Then, P.Ws.1 & 3 took the deceased to Government Hospital, Tindivanam, thereafter, they took him to Government Hospital, Mundiyanbakam for further treatment. P.W.4 is the mother of the deceased. She is also an eye-witness to the occurrence. She saw all the accused attacking the deceased with wooden logs on his chest and leg.

11. P.W.5 is a villager and there is no substance in his evidence. P.W.6 is also another villager. He only saw the deceased after the occurrence. P.W.7 is a witness to the Observation Mahazar. P.W.8 is a Village Administrative Officer. He is a witness to the arrest of A1 and A2 and their voluntary confession and also recovery of wooden logs (M.Os.1 to 4). P.W.9 is a Scientific Officer in the Forensic Lab, Villupuram. He examined the visceral parts of the deceased and gave a Report, Ex.P.5. P.W.10, Head Constable, identified the dead body for postmortem and after postmortem, handed over the dead body to the relatives of the deceased. P.W.11 Doctor, conducted postmortem on the dead body of the deceased and gave final opinion regarding the cause of death. P.W.12, Sub-Inspector of Police, registered the complaint. P.W.13, Investigating Officer, has spoken about the investigation done by him, arrest of the accused, examination of witnesses and filing of final report in this case.

12. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. They did not choose to examine any witness or mark any documents.

13. Having considered all the above materials, the trial Court convicted the appellants/A1 to A4, as stated in the first paragraph of this judgment. Challenging the same, the appellants/accused are before this Court with this Criminal Appeal.

14. We have heard Mr.S.P.Parvadhraj Arumugam, learned counsel for the appellants and Mr.E.Raja, learned Additional Public Prosecutor, appearing for the State and we have also perused the records, carefully.

15. The learned counsel for the appellants would submit that P.Ws.1 to 4, being the brother, sister-in-law and parents of the deceased, are all interested witnesses. In absence of any independent witness, the testimony of the interested witnesses can not be relied upon. Apart from that, there is a long delay in filing the complaint and also there is a delay in sending the First Information Report to the court, and it

creates doubt in the prosecution case. That apart, the trial Court disbelieved the evidence of eyewitnesses in respect of A5 to A7 and acquitted them, so, this evidences cannot be partly believed to convict the appellants/A1 to A4, and sought for setting aside the judgment.

16. Per contra, the learned Additional Public Prosecutor would submit that eventhough eye witnesses are closely related to the deceased, since occurrence took place in the house of the deceased, their presence in the scene of occurrence is natural. Hence, their testimony cannot be discarded only on the ground that they are interested witnesses. Apart from that the delay in filing the First Information Report is also properly explained by the prosecution. Hence, he sought for dismissal of the appeal.

17. We have considered the rival submissions.

18. P.Ws.1 to 4 are eyewitnesses to the occurrence. P.W.1 is the brother of the deceased. According to him, on 07.07.2014, at about 8.00 p.m., all the accused came to their house carrying weapons and A1 and A2 attacked the deceased with wooden log and other accused also attacked the deceased with wooden log and stone and the deceased fell down, then they ran away, P.W.1 along with others took the deceased to the hospital, thereafter, he has given a complaint.

19. But, in the cross examination, P.W.1 has admitted that eventhough P.Ws.1 and 2 were inside the house, on hearing the noise and after the deceased fell down, they came out of the house and then, they gave first aid to the deceased.

20. P.W.2, wife of P.W.1 also says all the accused came with weapon and all of them attacked the deceased on his chest and leg with wooden log and stone. According to her, there was a quarrel between the accused and deceased from 4.00 p.m. onwards. According to P.W.3, father of the deceased, all the accused attacked the deceased. According to P.W.4 mother of the deceased, all the accused attacked the deceased with weapon. From the testimony of P.W.1, it could be seen that at the time of occurrence P.Ws.1 and 2 are inside the house and they came out only after the deceased fell down and on hearing the alarm of the deceased. Hence, it is doubtful, where P.Ws.1 and 2 could have seen the occurrence. Apart from that it is a consistent evidence of P.Ws.1 to 4 that all the accused have attacked the deceased on his chest and leg. But, the trial Court disbelieved their evidence in part and acquitted A5 to A7.

21. The medical evidence also did not corroborate the evidence of P.W.1. Eventhough all the eyewitnesses deposed that

all the accused attacked the deceased with wooden log all over the body, the doctor, who conducted postmortem, found only 3 injuries on the dead body of the deceased. A contusion abrasion on chest, a scratch and abrasion near the nipple and a lacerated injuries on the lower leg.

22. Apart from that there is an enormous delay in giving the complaint. Eventhough the occurrence took place on 07.07.2014, at 8.00 p.m., complaint was lodged only on 08.07.2014 at about 6.30 a.m., and the First Information Report also reached the Court at 12.30 p.m. The long delay in giving the complaint as well as sending the First Information Report to the Court were not explained by the prosecution. That apart, the entire family of the accused have been implicated in the occurrence and it also creates more doubt in the prosecution case. In a similar circumstance, Division Bench of this Court in which one of us [S.Nagamuthu.J] is a party in 2016 (3) MLJ (Cr1) 7, in Arul @ Arul Jothi and others Vs. State, held that when there are multiple number of the accused, and the witnesses are interested witnesses, the delay in filing First Information Report assumes importance and the possibility of false implication cannot be ruled out and it looms large.

23. In the instant case also all the eyewitnesses are interested witnesses and the entire family has been implicated in the offence. Hence, the delay in filing the First Information Report creates a doubt in the prosecution case. Now the trial Court partly disbelieved the eyewitnesses and acquitted A5 to A7. In the said circumstances, in absence of any independent witness to corroborate the testimony of the eyewitnesses, it is highly unsafe to convict the accused based on the testimony of interested eyewitnesses. In the said circumstances, the appellants are entitled for acquittal.

24. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/A1 to A4 by the learned I Additional Sessions Judge, Tindivanam, in S.C.No.81 of 2015, by the judgment dated 26.02.2016, are hereby set aside. The appellants/A1 to A4 are acquitted from all the charges levelled against them. Fine amount, if any paid by the appellants, shall be refunded to them. Bail bonds, if any, executed by the appellants shall stand discharged.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp

To

1. I Additional Sessions Judge,
Tindivanam.
2. Prl. District Judge,
Villupuram.
3. JM No.1,
Villupuram.
4. Thro' CJM,
Villupuram.
5. The District Collector,
Villupuram.
6. The Director General of Police,
Mylapore, Chennai.
7. The Inspoector of Police,
Vellimedupettai Police Station,
Villupuram District.
8. The Superintendent,
Central Prison, Cuddalore.
9. The Section Officer,
Criminal Section,
Mylapore, chennai. सत्यमेव जयते
10. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.Parvadhraj, Advocate, S.R.No.46097

AK(CO)
RS(24/02/2017)

Cr1.A.No.229 of 2016