

Bail Slip

That the petitioner herein/Accused 1&2 Viz., (1) Richard John @ Raja @ Rangoon Raja (M/A.47 years) A1 and (2) Rani @ Elizabeth Rani (F/A.46) A2, were directed to be released on bail as per the order of this Court dated 20.6.2016 and made in CrI.MP.No.4047 of 2016 in CrI.A.No.249 of 2016 as stated within.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.249 of 2016

1.Richard John @ Raja @ Rangoon Raja

2.Rani @ Elizabeth Rani ..Appellants/Accused 1&2

Vs

State rep. By
Inspector of Police,
F4 Thousand Lights Police Station,
Chennai.
Cr.No.1030 of 2013) ... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment of the learned VI Additional Sessions Judge, Chennai in S.C.No.125 of 2014 dated 24.03.2016.

For Appellants : Mr.M.Rajavelu

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

JUDGEMENT

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

The appellants are A.1 & A.2 in S.C.No.125 of 2014, on the file of the learned VI Additional Sessions Judge, Chennai. They stood charged for offence under Section 302 r/w 34 I.P.C. By judgment dated 24.03.2016, the trial Court convicted him under Section 302 r/w 34 I.P.C., and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for three months.

Challenging the said conviction and sentence, the appellants/A.1 & A.2 are before this Court with this appeal.

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

There was a festival in the Church on the Badari Road, Thousand Lights, Chennai on 28.09.2013. In that festival, the deceased as well as the accused participated. There arose quarrel between them and during which, the deceased abused the son of these two accused/A.1 & A.2 in an obscene language. This is stated to be the motive for the occurrence.

3.On 29.09.2013, around 10.00 pm, near the Badari Road Junction, the deceased was standing with his friends and engaged in chatting. At that time, these two accused who are the husband and wife along with their minor son Mr.K.Kelvin Britto (juvenile) came there and questioned the deceased, as to why he scolded Mr.K.Kelvin Britto (juvenile) on the previous day. It is alleged that when the quarrel was going on between the juvenile accused and the deceased, these two accused/A.1 & A.2 instigated the juvenile accused to stab the deceased. The juvenile accused suddenly took out a knife and stabbed the deceased. The deceased fell down, in a pool of blood. He was taken to the Government Royapettah Hospital, Chennai.

4.The Doctor after examining him, declared him dead. Thereafter, P.W.1 went to Thousand Lights Police Station and made a complaint at 11.00 pm on 29.09.2010. P.W.18, the then Inspector of Police, on receipt of the said complaint, registered a case in Crime No.1030/2013 for offences under Sections 341, 324, 294(b) & 302 I.P.C., against all the three accused. Ex.P.1 is the complaint and Ex.P.12 is the F.I.R. He forwarded both the documents to Court, which were received by the learned Judicial Magistrate at 9.30 pm on 30.09.2013.

5.P.W.18, the then Inspector of Police, took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of witnesses. He also recovered the blood stained earth and the sample earth from the place of occurrence and forwarded the same to Court. Then he conducted inquest on the body of the deceased and forwarded the same to Court.

6.P.W.13, Dr.Vinoth, conducted autopsy on the body of the deceased at 12.45 pm on 13.09.2013 and he found the following injuries:-

- "1.Reddish abrasion 3 x 2cm on right side of forehead
- 2.Oblique cut injury 5x1-0x1cm on left cheek

3.Vertically oblique cut injury 2.5x0.5x1cm on front nose

4.Vertically oblique stab wound 4x0.2x4cm on back of neck in midline upper end is blunt and lower end is acute margins were regular.

5.Vertically oblique stab wound 4x0.2cm x cavity deep on the middle part of left side of the chest; upper and inner blunt end is 4 cm from midline; lower and outer end is 5 cm from midline. The track of the wound is downward, forward and towards right causing puncture wound of 3x2x4cm in back of left lung. Left pleural cavity contained 700 ml of fluid blood. Both lungs cut section pale."

Ex.P.5 is the post mortem certificate. P.W.13 gave opinion that the death was due to shock and hemorrhage due to stab injury to the chest.

7.P.W.18, during the course of investigation, recovered the blood stained clothes from the body of the deceased and forwarded the same to Court. He examined many more witnesses. On 30.09.2013, at 5.00 pm, he arrested the juvenile accused Mr.K.Kelvin Britto. On such arrest, he gave a voluntary confession, in which, he disclosed the place where he had hidden a knife. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the knife (M.O.1). P.W.18 recovered the same under a mahazar, in the presence of same witnesses. He forwarded the material objects through Court to the forensic lab, for chemical examination. Thereafter, the investigation was taken over by P.W.19, the then Inspector of Police. On completing investigation, he laid charge sheet against the accused. Since, Mr.K.Kelvin Britto is a juvenile the case was split up as against him and A.1 & A.2 alone were tried in this Sessions Case.

8.Based on the above materials, the trial Court framed a lone charge under Section 302 r/w 34 I.P.C., against the appellants/A.1 & A.2. Both of them denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 19 witnesses were examined and 22 documents were exhibited, besides 8 Material Objects.

9.Out of the said witnesses, P.Ws.1 to 5, who claim to be the eye witnesses, have spoken about the entire occurrence. P.W.1 has further spoken about the complaint made by him to the Police. P.W.6 has stated that, he heard about the occurrence, went to the hospital and found the dead body of the deceased. P.W.7 has also spoken about the same facts that he went to the hospital, on hearing about the occurrence. P.W.8 has spoken about the motive arising out of the previous day occurrence between the accused and the deceased. P.W.9 has

also spoken about the motive. P.W.10 has spoken about the preparation of observation mahazar and rough sketch, at the place of occurrence. P.W.11 has stated that he handed over the dead body to the Doctor for post mortem. P.W.12, an employee of the Chennai Municipal Corporation, has stated that during the relevant time, on the day of occurrence, there was no electricity failure at the place of occurrence. P.W.13 has spoken about the post mortem conducted and his final opinion regarding the cause of death. P.W.14 has stated that the deceased was brought to the Government Hospital at Royapettah, Chennai on 29.09.2013 at 10.30 pm. On examination, he found him dead. Then, he gave intimation to the Police. P.W.15, a Forensic Expert has stated that he examined the vital organs of the deceased and it proved that there was no poison or alcohol. P.W.16 has stated that he examined the material objects and found that there were blood stains. P.W.17 has turned hostile and he has not supported the case of the prosecution in any manner. P.Ws.18 & 19 have spoken about the registration of the case and the investigation done.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not chose to examine any witness nor did they mark any documents on their side.

11. Having considered all the above materials, the trial Court convicted the appellants/A.1 & A.2 as stated in the first paragraph of this judgment. Challenging the same, the appellants/A.1 & A.2 are before this Court with this Criminal Appeal.

12. 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.

13. In this case, as we have already pointed out, P.Ws.1 to 5 claim to be the eye witness to the occurrence. According to them, the juvenile accused namely, son of these two accused only stabbed the deceased which resulted the death of the deceased. According to the case of the prosecution, these two accused/appellants shared the common intention with the juvenile accused to cause of death of the deceased and therefore, they are liable to be punished for offence under Section 302 r/w 34 I.P.C.

14. But, a perusal of the evidences of P.Ws.1 to 5 would go to show that the meeting of the deceased and the accused at the place of occurrence itself was by chance. The deceased was standing at the junction of the road, chatting with his friends. These two accused who came there would not have anticipated that the deceased would have been standing there. The juvenile accused came some time after, which is evident from the evidences available on record. The meeting of the deceased and the appellants/A.1 & A.2, at the place of

occurrence, was by chance. It appears that the juvenile accused had a knife readily with him and on seeing the deceased, he developed quarrel and stabbed him. From these evidences, it is crystal clear that there was no pre-meeting of mind between these two accused/appellants and the juvenile accused at all. Simply because these two accused/appellants were present at the time of occurrence, it cannot be inferred that they shared the common intention with the juvenile accused to cause the death of the deceased. We find no force at all even to remotely infer that these two accused would have had pre-meeting of mind with juvenile accused and had a common intention to cause the death of the deceased. Thus, in our considered view, for the death of the deceased, caused by the juvenile accused, these two accused/appellants cannot be in any manner held responsible. In such view of the matter, we hold that the trial Court was not right in convicting these two accused/appellants.

15. In the result, this Criminal Appeal is allowed and the conviction and sentence passed against the appellants/A.1 & A.2 are set aside and the appellants/A.1 & A.2 are acquitted from all the charges. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the appellants/A.1 & A.2, shall stand discharged.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The VI Additional Sessions Judge,
Chennai.

2.-do- Through The Principal Sessions Judge, Chennai.

3. The XIV Metropolitan, Magistrate, Chennai.

4. -do- Through The Chief Metropolitan Magistrate,
Chennai.

5. The Inspector of Police,
F4-Thousand Lights Police Station,
Chennai (Cr.NO.1030 of 2013)

6. The Superintendent, Central Prison,
Puzhal, Chennai.

7. The District Collector, Chennai.

8. The Director General Police Mylapore,
Chennai-4.

9. The Public Prosecutor, High Court, Madras.

Crl.A.No.249 of 2016

UG (CO)
Eu 21.09.16



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