

Bail Slip

The appellants herein namely 1.Sivakumar,, 2.Gomathi and 3.Thangam, accused in S.C No.64/14 on the file of the Principal District and Sessions Judge, Ariyalur were directed to be released on bail as per order of this Court dated 20.4.2016 made in Crl.M.P.No.3269/16 in Crl.A.No.39/16.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 02.08.2016

CORAM:

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

Crl.A.No.39 of 2016

1.Sivakumar
2.Gomathi
3.Thangam

... Appellants/Accused

vs.

State,by
The Inspector of Police,
Andimadam Police Station,
Ariyalur District.
(Crime No.11 of 2013)

... Respondent/Complainant

Criminal appeal preferred under Section 389(1) Cr.P.C., against the judgement dated 17.11.2015 passed by the learned Principal District and Sessions Judge, Ariyalur, in S.C.No.64 of 2014.

For Appellants : Mr.K.Gandhikumar

For Respondent : Mr.E.Raja, Addl.P.P.

JUDGMENT

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

The appellants in this appeal are the accused in Sessions Case No.64 of 2014, on the file of the learned Principal District and Sessions Judge, Ariyalur. They stood charged as detailed below:-

Serial number of charges	Charge(s) framed against	Charge(s) framed under
1.	A1	U/s. 302 IPC
2.	A2	U/s. 302 r/w 34 IPC
3.	A3	U/s. 302 r/w 114 IPC

2. The trial Court, by Judgment dated 17.11.2015, convicted all the accused and sentenced them as detailed below:-

Rank of the accused	Penal provision(s) under which convicted	Sentence
A1	U/s. 302 IPC	Imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three months.
A2	U/s. 302 r/w 34 IPC	Imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three months.
A3	U/s. 302 r/w 114 IPC	Imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three months.

Challenging the above said conviction and sentence, the appellants/accused are before this Court with this Criminal Appeal.

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

(i) The deceased, in this case, one Mahendiran was brother of A-2 and son of A-3. A1 is the husband of A-2. A-2 was already married and her husband died. Subsequently, she married A-1. On 14.01.2013 at about 10.30 p.m., the second accused was speaking to somebody in her cell phone. At that time, the deceased told her not to make any call to third parties in the night hours and both of them went inside the house of A2 and he did not return back. Hence, P.W.1/the wife of the deceased went there and saw the first accused attacking the deceased with wooden reaper and A-2 attacked him with iron rod on his head and private parts and at that time A-3 told A1 and A2 to finish him. Immediately, P.W.1 and her neighbour came to the scene of occurrence and they took the deceased to the Hospital at Andimadam, where, the deceased was declared dead. Then, P.W.1 gave a complaint [Ex.P1] before the respondent police.

(ii) P.W.12, Inspector of Police, working in the respondent police station, registered a case in Crime No.11 of 2013 under Section 302 IPC and prepared [Ex.P12] first information report. Then, he commenced investigation, proceeded to the scene of occurrence, prepared an observation mahazar (Ex.P11), drew a rough sketch (Ex.P12). He conducted inquest over the dead body in the presence of panchayatdars between 12.00 p.m. and 3.30 p.m., and prepared inquest report [Ex.P14]. Then, he sent a dead body for postmortem to the Government Hospital, Jayankondam with requisition letter through Head Constable, namely, Loganathan. P.W.12 examined some witnesses and recorded their statements. On 16.01.2013 at about 7.00 a.m., near Jayankondam bus stop, P.W.12 arrested the accused 1 and 2 and on such arrest, A-1 voluntarily given confession and based on the disclosure statement of A1[Ex.P3], P.W.12 seized M.O.1, Iron rod and M.O.2, wooden reaper in the presence of witnesses. P.W.12 sent the accused 1 and 2 for judicial custody. Then, P.W.12 handed over the investigation to P.W.13, his successor.

(iii) P.W.11, Assistant Doctor, working in the Government Hospital, Jayankondam, conducted postmortem on the dead body of the deceased on 16.01.2013 at about 12.00 p.m., and found the following injuries:-

External Injuries:

(i) Contusion over left periorbital region 5 x 4 cm. (ii) contusion over preauricular region (left) 5 x 5 cms. (iii) Multiple abrasions each 0.5 cm x 0.5 cms over left side of scrotum (iv) Blood clotted of sized 6 x 4 cm over left temporal and preauricular region. (v) punctured wound 2 x 1 x 0.5 cm over lefty infraorbital region.

Internal Injuries:

Neck - hyoid bone preserved for chemical analysis. Thorax: No fracture of ribs on both sides. Lungs: Both sides were lungs congested. Heart: All chambers were empty. Abdomen: Stomach 200 gms partially food materials found. Liver, Spleen all are congested. Bladder empty. Scrotum: multiple abrasion 0.5 x 0.5 cms each left side scrotum present; on sides section, testis left and congested. Skull: fracture of left temporal bone 5 x 1 cm present. Brain: flood clots seen of 6 x 4 cms over left temporal bone of brain death wound appeared.

He was of the opinion that the deceased appeared to have died of shock and haemorrhage due to injury to skull bone and brain left temporal lobe. He issued postmortem Certificate [Ex.P6].

(iv) P.W.13, Inspector of Police (Additional charge), working in the respondent police station, continued the investigation, examined the Doctor who conducted postmortem and recorded his statement, sent the material objects for chemical examination and after completing the investigation, he laid the charge sheet against the accused

4. Based on the above materials, the Trial Court framed charges as detailed above but the accused denied the same as false. In order to prove the case of prosecution, as many as 13 witnesses were examined and 18 documents were exhibited and 2 material objects were marked.

5. Out of the above witnesses examined, P.W.1 was the wife of the deceased and also eye witness to the occurrence. According to her, on the date of occurrence, at about 10.00 p.m., the second accused was speaking to some third party in her mobile phone, the deceased questioned her and told the second accused not to call any third person in the night hours and both of them went inside the house of A1, but A2, he did not return back, hence she went there and saw the first accused attacking the deceased with iron rod and the second accused attacked him with wooden reaper and A-3 abetted A1 and A2 to murder the deceased. She further stated that she and neighbours took the deceased to the private hospital, Andimadam, where, the deceased was declared dead and then she went to the respondent police and lodged a complaint. P.Ws.2 to 5 have turned hostile, they did not support the case of the prosecution. P.W.6 is the neighbour of the deceased. According to him, he took the deceased to the Private Hospital, Aandimadam, where the deceased was declared dead, then he took the dead body to the house of the deceased. P.W.7 turned hostile. P.W.8 is an Advocate, who know the deceased and the accused. According to him, he wrote the complaint, which is marked as Ex.P1. P.W.9 was working as Office Assistant in Tahsildar Office, Jayankondam. He is the witness to the arrest of A1 and A2 and recovery of M.Os.1 and 2 under Mahazar (Ex.P4). P.W.10 is the Junior Engineer working in the TamilNadu Electricity Board, Andimadam. According to him, there was no power cut at the time of occurrence. P.W.10-Doctor, working in the Government Hospital, Aandimadam, conducted postmortem on the dead body of the deceased and gave postmortem Certificate (Ex.P6). P.W.12- Inspector of Police attached to the respondent police, on receipt of the complaint from P.W.1, registered the case, commenced the investigation, examined the witnesses and recorded their statements, arrested the accused and recovered the materials objects and then handed over the investigation to P.W.13, his successor. P.W.13-Inspector of Police, attached to the respondent police, continued the investigation, examined the Doctor, who conducted postmortem and

recorded his statement, sent the material objects for chemical examination and after completing the investigation, he laid the charge sheet against the accused.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. Their defence were total denial. The accused did not examine any witnesses and no document was marked on their side.

7. Having considered all the above materials, the Trial Court convicted the accused for the offences as stated in first paragraph of this judgement. Challenging the above conviction and sentence, the accused is before this Court.

8. We have heard Mr.K.Gandhikumar, learned counsel appearing for the appellants and Mr.E.Raja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

9. P.W.1 is the sole eye witness to the occurrence and wife of the deceased. According to her, at the time of occurrence, when the second accused was speaking in her cell phone with some third party, the deceased questioned her and told the second accused not to call any third party in the night hours and both of them went inside the house of A1. Since he did not return back, she went there and saw the first accused attacking the deceased with iron rod and the second accused attacked him with wooden reaper and third accused abetted A1 and A2 to murder the deceased. She further stated that the occurrence took place at about 10.30 p.m., night hours, but the complaint was given only on the next day morning at about 10.00 a.m., on 15.01.2013. The first information report reached the Judicial Magistrate Court on 16.01.2013 at about 7.30 a.m., There was a delay of nearly 12 hours in giving the complaint and there was also delay of 36 hours in sending the first information report to the Judicial Magistrate Court and the delay was not properly explained by the prosecution. The Hon'ble Supreme Court in a judgment reported in THULIA KALI Vs. THE STATE OF TAMILNADU in [1972 (3) SCC 393], has held as follows:-

"First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the

actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained. In the present case, Kopia, daughter-in-law of Madhandi deceased, according to the prosecution case, was present when the accused made murderous assault on the deceased. Valanjiaraju, stepson of the deceased, is also alleged to have arrived near the scene of occurrence on being told by Kopia. Neither of them, nor any other villager, who is stated to have been told about the occurrence by Valanjiaraju and Kopia, made any report at the police station for more than 20 hours after the occurrence, even though the police station is only two miles from the place of occurrence. The said circumstance, in our opinion, would raise considerable doubt regarding the veracity of the evidence of those two witnesses and point to an infirmity in that evidence as would render it unsafe to base the conviction of the accused-appellant upon it.

10. Recently, a Division Bench in ARUL @ ARUL JOTHI V. STATE BY INSPECTOR OF POLICE, in [2016 (3) MLJ Cr1. Page 7, in which, one of us (Mr. Justice.S.Nagamuthu), in party, has held that the unexplained delay create a doubt regarding the veracity of the prosecution case.

11. Hence, the unexplained delay creates doubts in the prosecution case. Apart from that P.W.1 was the sole eye witness and also wife of the deceased, an interested witness. It is well settled principle law that the evidence of sole eye witness can be accepted provided its genuine and trust worthy. In the instant case, considering a delay in filing the first information report, it is very difficult for us to accept the testimony of P.W.1. Hence, it is highly unsafe to rely upon the uncorroborated testimony of P.W.1 to convict the accused. Hence, we are of the considered view that the prosecution failed to prove the guilt of the accused beyond any reasonable doubt. Hence, the accused/appellants are entitled for acquittal.

12. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the Appellants in S.C.No.64 of 2014 dated 17.11.2015 on the file of the learned Principal District and Sessions Judge, Ariylaur is set aside and the appellants/accused are acquitted of all the charges levelled against them and bail bond, if any, executed by them shall stand cancelled and the fine amounts paid by them are ordered to be refunded forthwith.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal District and Sessions Judge,
Ariyalur.
- 2.The Judicial Magistrate,
Jayankondam.
- 3.The Chief Judicial Magistrate,
Ariyalur.
- 4.The District Collector,
Trichy District.
- 5.The Director General of Police,
Mylapore, Chennai-4.
- 6.The Superintendent,
Central Prison,
Trichy.
- 7.The Superintendent,
Central Prison for Woman, Trichy.

8.The Inspector of Police,
Aandimadam Police Station,
Ariyalur District.

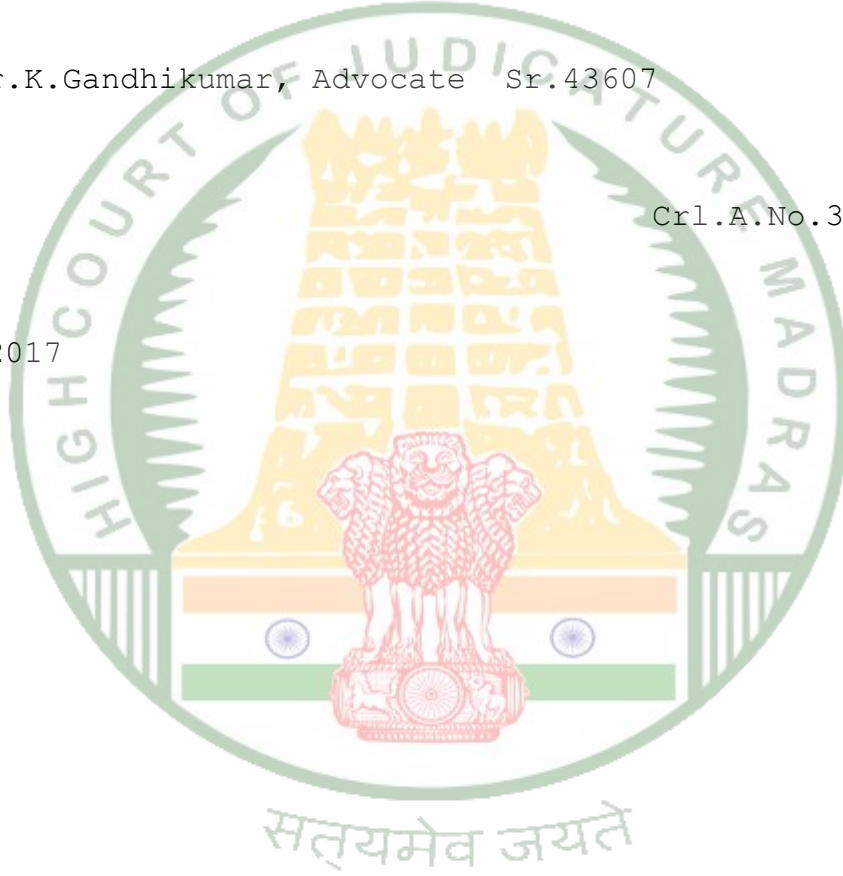
9.The Public Prosecutor,
High Court, Madras.

10.The Section Officer,
Criminal Section,
High Court, Madras-104.

+1cc to Mr.K.Gandhikumar, Advocate Sr.43607

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srg 23/2/2017



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