

BAIL SLIP

The Appellant / Accused namely Manjunatha Reddy, C/o.Mr.Bathra Reddy was directed to be released vide Order dated 20.08.2013 made in M.P.No.2 of 2013 in Crl.A.No.110 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2016

CORAM

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

CRL.A.No.110 of 2013

Manjunatha Reddy Appellant/A1

Versus

The State represented by
The Inspector of Police
Hatco Police Station
Krishnagiri District. Respondent

Appeal filed under section 374[2] Cr.P.C., against the judgment dated 18.01.2013 passed in SC.No.31/2010 by the learned Additional District and Sessions Judge, Krishnagiri District.

For Appellant : Mr.G.Udayashanakar for
Mrs.S.Shanthakumari

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

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

The appellant is the first accused in SC.No.31/201 on the file of the learned Additional District and Sessions Judge, Krishnagiri. Apart from the appellant herein, there were two other accused persons, viz., one Mr.Manjunatha Reddy, S/o.Nagi Reddy and Mr.Ravi, S/o.Munirajappa. The Trial Court framed as many as four charges as against the accused persons, viz., 341 IPC [against A1 to A3], 506[i] and 302 IPC [against A1] and 302 read with 34 IPC [as against A2 and A3]. By the judgment dated

18.01.2013, the Trial Court acquitted A2 and A3 from all the charges leveled against them ; but convicted the appellant herein for the offences u/s.341, 506[i] and 302 IPC and sentenced him to undergo one month simple imprisonment for the offence u/s.341 IPC ; sentenced him to undergo six months simple imprisonment for the offence u/s.506[i] IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.2500/-, in default, to undergo 2 months simple imprisonment. Challenging the said conviction and sentence, the appellant/A1 is before this Court with this appeal.

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

[a] The deceased in this case was one Muninanjappa. He had a bore well in the village for agricultural purpose. It is alleged that on 21.03.2009, when the deceased and his brother [P.W.1] had put on the motor, they found that bore well was closed with stones. The deceased had suspicion that out of bad intention, A1 had done the same. Therefore, P.W.1 and the deceased enquired A1 as to why he had done so. This resulted in a quarrel between A1 and the deceased. In the said quarrel, the deceased pushed the father of A1 down. This is stated to be the motive for the occurrence.

[b] It is further alleged that on 21.03.2009 at about 23.00 hours, the deceased and P.W.1 were returning from the field. When they were passing through the house of one Chandra Reddy, these three accused came to the place of occurrence in two motor cycles. One motorcycle was driven by A2 and A1 was sitting as a pillion-rider with a wooden log in his hand. A3 came in another motorcycle with a wooden log in his hand. They intercepted P.W.1 and the deceased at the place of occurrence. A1 questioned the deceased as to why he pushed his father in the earlier occurrence. So saying, suddenly A1 pushed the deceased down. A2 and A3 held the deceased tightly without leaving him to get up. Thus, when A2 and A3 were facilitating A1, A1 with the wooden log, attacked the deceased on his head. The deceased sustained head injury and fell down unconscious. On hearing the alarm raised by P.W.1, P.Ws.2 and 3 rushed to the place of occurrence. On seeing them, the accused persons ran away from the scene of occurrence, throwing the wooden log at the place of crime itself.

[c] P.Ws.1 to 3, thereafter made arrangements for a taxi and took the deceased to the Government Hospital at Hosur. After examining the deceased at the said hospital, the doctor advised them to take the deceased to a higher medical centre immediately for further treatment, as the condition of the was

bad. Therefore, they took the deceased to the Nimonds Hospital at Bengaluru. Despite treatment given, the deceased died on 22.03.2009 at about 04.00 hours. Due intimation regarding the death, was given by the hospital authorities to the Hudco Police Station in Krishnagiri District.

[d] P.W.10-Mr.Anandan, the then Sub Inspector of Police attached to the Hudco Police Station, on receiving the intimation, immediately rushed to the Nimmonds Hospital at Bengaluru on 22.03.2009 at 06.00 hours. He gave requisition to the hospital authorities to send the dead body of the deceased to the Government Hospital, Hosur, for postmortem. He also recorded the statement of P.W.1 under Ex.P.1. P.W.10 forwarded the said complaint to P.W.12, the Inspector of Police.

[e] P.W.12 [Syed Babu], the then Inspector of Police [In-charge] of the Hudco Police Station, on receipt of the said complaint [Ex.P.1], registered a case in Cr.No.152/2009 for the offences u/s.341 and 302 IPC. Ex.P.14 is the printed First Information Report. The case was so registered at 10.15 hours on 22.03.2009. P.W.12, then forwarded Ex.Ps.1 and 14 to the Court concerned and to the higher officials. He also went to the Government Hospital at Hosur, where the dead body had already arrived. He conducted inquest on the dead body of the deceased between 10.30 hours and 11.30 hours on the same day. Ex.P.15 is the Inquest Report. He forwarded the dead body for postmortem.

[f] P.W.8-Dr.Lakshmisree, the then Assistant Surgeon attached to the Government Hospital at Hosur, during the relevant point of time, conducted autopsy on the dead body of the deceased on 22.03.2009 at about 15.00 hours. She found the following injuries:-

"External Injuries:-

[1] Lacerated wound over left occipital area of scalp 5x3 cmsxbone depth.

[2] Contusion over left parietal and frontal area 10x5 cm,

Internal Examination:-

- Hyoid Bone - Intact
- Ribs - Intact
- Heart weighs 210 gms. All chambers full of clotted blood C/S congested.
- Lungs [R] 400 gms ; [L] 380 gms C/S fully congested
- Liver wt.1400 gms. C/S pale

- Stomach-semi-digested rice with banana 200 ml present
- Kidneys wt.120 gm C/S pale
- Spleen 100 gm C/S pale
- Bladder - empty
- Hemorrhage under the aponeurosis over occipital area, left occipital bone 4x2x2cm depressed
- Membranes tear over left occipital area
- Brain-1600 gm Laceration over left occipital area 3x1x2 cm. Doral congestion.
- Base of skull 3x1x1 cm."

Ex.P.10 is the Postmortem Certificate. She opined that the deceased would appear to have died of shock and hemorrhage due to injuries in the vital organs [skull and brain].

[g] Continuing the investigation, P.W.12, the investigating officer, went to the place of occurrence at about 14.30 hours and prepared the Observation Mahazar [Ex.P.2] and a Rough Sketch [Ex.P.16] in the presence of P.W.4 and one Ganesan. He also recovered the blood stained earth *[M.O.2] and sample earth *[M.O.3] under a cover of Mahazar [Ex.P.3] in the presence of the same witnesses. On 27.03.2009, at about 06.00 hours, he arrested A2 near Sappaalammal Koil at Kelavarappalli Dam and in the presence of P.W.5 [Jayachandran] and one Chandran, A2 came forward to give a confession statement, [the admissible portion of which is marked as Ex.P.17] in which he had disclosed the place where he had hidden the motorcycle. In pursuance of the same, A2 took the police and the witnesses to the place of hide out and he produced a black colour Pulsar Bike. The same was recovered under a cover of Mahazar. He forwarded the accused to the Court for judicial remand and also sent the material objects to the Court. When P.W.12, was on leave, P.W.11 continued the investigation.

[h] P.W.11, came to know that A1 and A3 have surrendered before the learned Judicial Magistrate, Hosur. He made an application to the learned Magistrate, for police custody of these two accused. Accordingly, on the orders of the learned Magistrate, on 17.04.2009, P.W.11 took police custody of A1 and A3. While in custody, A1 gave a voluntary confession statement in the presence of P.W.9 and another witness, the admissible portion of which is marked as Ex.P.11. A3 also gave a voluntary confession statement in the presence of the same witnesses. A1 took the police and the said witnesses to the place of hide out, viz., Nallur Agraharam Bridge, and produced a wooden log, which was seized under the cover of Mahazar Ex.P.12. A1 also took them to his house and produced a Red Colour Apachi Motorbike *[M.O.4] bearing Registration No.TN-24-U-5382 and the

same was also seized under a cover of Mahazar Ex.P.13. He forwarded A1 and A3 to the Court for judicial remand and also the material objects. Thereafter, he made a requisition to the Court to send the material objects for chemical examination. The Chemical examination Report revealed that there were blood stains on all the material objects, except the wooden log and the earth mixed with small stones recovered from the place of occurrence. Upon the receipt of Exs.P.7 and 8 [Biological Report and Serology Report] and on completion of the investigation, he laid the charge-sheet against the accused.

[i] Based on the above materials, the Trial Court framed charges against the accused persons, 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 12 witnesses were examined, 17 documents and few material objects were also marked.

[j] Out of the said witnesses, P.W.1 is the eyewitness to the occurrence. He has vividly spoken about the same. P.Ws.2 and 3 have stated that on hearing the alarm raised by P.W.1, when they rushed to the place of occurrence, they found all the three accused near the deceased and the deceased was lying with injuries and two of the accused were having wooden logs. They have further stated that all the three accused fled away from the scene of crime in the motorcycles. P.W.4 has spoken about the preparation of the Observation Mahazar and the Rough Sketch and the recovery of the material objects from the place of occurrence. P.W.5 has spoken about the arrest of A2 and the consequential recovery of the motor bike, on his disclosure statement. P.W.6 is the Head Clerk of the Court, who had forwarded material objects for chemical examination on the orders of the learned Magistrate. P.W.7 has spoken about the autopsy conducted on the dead body of the deceased and his final opinion regarding the cause of death. P.W.9 has spoken about the arrest of A1 and A3 and the confession statements recorded from them and the consequential recoveries made, viz., the wooden log and the motorcycle. P.W.10 has stated that he went to the Nimmonds Hospital at Bengaluru and recorded the statement of P.W.1 and forwarded the same to P.W.12. He has further stated that he brought the dead body of the deceased to the Government Hospital, Hosur. P.Ws.11 and 12, have spoken about the investigation done by them and filing of the final report.

3. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., the denied the same as false. However, they did not choose to examine any witness on their side nor marked any document.

4. Having considered all the above, the Trial Court acquitted A2 and A3 and convicted the appellant herein for the charges u/s.341, 506[i] and 302 IPC and sentenced him as stated in the first paragraph of this judgment. Challenging the said conviction and sentence, the appellant/A1 is before this Court.

5. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6. According to the case of the prosecution, the occurrence was at 23.00 hours on 21.03.2009. But the case was registered only at 09.30 hours on the next day, i.e., on 22.03.2009. Of course, this delay has been explained by the prosecution. According to the prosecution, the injured was immediately taken to the Government Hospital, Hosur, from where, he was taken to Nimmonds hospital at Bengaluru and therefore, P.W.1 and others would not have been in a position to go to the Police Station and make a complaint. But, the learned counsel for the appellant would submit that the complaint would not have come into being at 09.30 hours on 22.03.2009 at all. Learned counsel would also point out that the First Information Report was received by the learned Magistrate at 12.30 hours on 22.03.2009, for which, there is absolutely no explanation. This, in our considered view, creates initial doubt in the case of the prosecution. P.W.1 claims to have accompanied the deceased to the place of occurrence. P.Ws.1 to 3 have stated that they found all the three accused together at the place of occurrence and at that time, they saw the deceased lying with injuries. Thus, P.Ws.1 to 3 have categorically stated about the presence and participation of all the three accused. It is the positive case of the prosecution that A1 and A2 came in a motorcycle and A3 came in another motorcycle. P.Ws.1 to 3 have stated that the accused parked the motorcycles and then, attacked the deceased. But, the Trial Court has disbelieved the evidences of P.Ws.1 to 3 as against A2 and A3 ; but has chosen to believe their evidence only against A1. Thus, even according to the Trial Court, P.Ws.1 to 3 are only partly believable.

7. In this regard, we may refer to the decision of the Hon'ble Apex Court in Vadivelu Thevar Vs. State of Madras reported in AIR 1957 SC 614, wherein the Hon'ble Apex Court has held that if a witness is wholly unreliable, there is no difficulty in rejecting his evidence ; if a witness is fully believable, there is also no difficulty for the Court to act upon such evidence even in the absence of any corroboration from any other source ; but the difficulty arises only when a witness is partly believable and partly unbelievable. The Hon'ble Apex

Court finally held that in the case of the evidence of such witness, who is partly believable and partly unbelievable, as a rule of prudence, the Court should except corroboration from any other independent source. In the instant case, absolutely there is no other evidence to corroborate the evidences of these witnesses, viz., P.Ws.1 to 3, who are partly believable and partly unbelievable. Therefore, as has already been held by the Hon'ble Apex Court, it is difficult to act upon the evidences of these three witnesses alone, so as to sustain the conviction.

8. Apart from the above, the earliest statement made to the doctor in the Government Hospital, at Hosur, has been suppressed by the prosecution, inasmuch as neither the doctor, who treated the deceased in the said hospital was examined nor the Accident Register has been marked. It is common knowledge that the Accident Register shall contain the earliest information/statement of either the deceased or the person who accompanied the deceased. There is no explanation as to why the said vital document has been suppressed and as to why the said doctor has not been examined. This is an additional factor, which further strengthens the doubt created in the prosecution case. Thereafter, it is stated that the deceased was taken to Nimmonds Hospital at Bengaluru. Neither the doctor attached to the said hospital, who treated the deceased was examined nor the medical records have been produced before the Court below. Here again, the Accident Register or the case records pertaining to the treatment given to the deceased would contain the earliest information/statement made, either by the deceased or by the person who accompanied the deceased. Further, whether the deceased was conscious or not, are all matters which are relevant. It is not explained to the Court as to why the said doctor was not examined and as to why the medical records pertaining to the treatment given to the deceased have not been produced. This also creates further doubt in the case of the prosecution.

9. Further, the occurrence had taken place in a lonely place, that too, at odd hours, viz., at 23.00 hours on 21.03.2009. The presence of P.Ws.1 to 3 in the place of occurrence is also doubtful. P.Ws.2 and 3 have not explained as to what made them to be present at the place of occurrence at that crucial time. Though P.W.1 has stated that he had accompanied the deceased, his credibility is also doubtful in view of the above discrepancies and other improbabilities in the case of the prosecution. It is too well settled that the life and liberty of an individual cannot be deprived of, by acting on mere surmises and suspicions. In the instant case, though the prosecution has succeeded in establishing the suspicion against the accused, that will not take the place of proof and there are

lot of doubts in the prosecution case which were not been properly explained by the prosecution. In such view of the matter, we are bound to give the benefit of doubt to the accused/appellant and to acquit him.

10. In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellant by the Trial Court for the offences u/s.341, 506[i] and 302 IPC in SC.No.31/2010 vide judgment dated 18.01.2013, are hereby set aside. Bail bonds shall stand terminated. Fine amount, if any paid, shall be refunded to the appellant.

Sd/-

Assistant Registrar(CS II)

Dated : 01.07.2016

***Corrected as per Order
dated 21.04.2016 in**

CrI.A.No.110 of 2013

Sd/-Assistant Registrar(CS II)

Dated : 01.07.2016

//True Copy//

Sub Assistant Registrar

AP

To

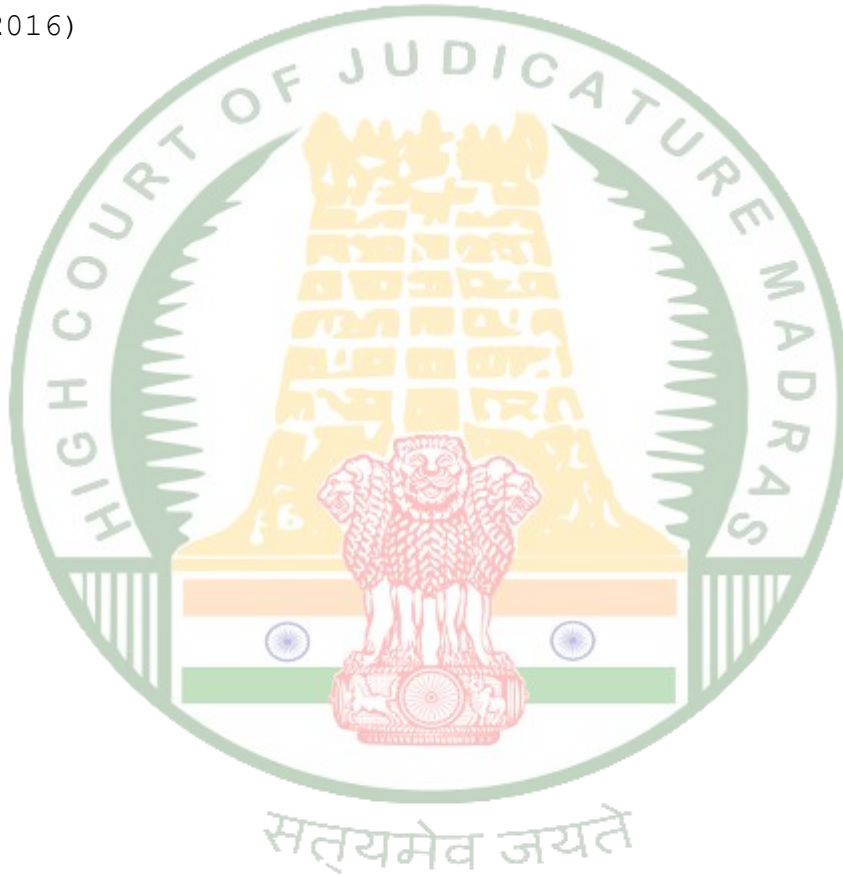
1. The Additional District and Sessions Judge
Krishnagiri District.
2. Do- Through The Principal Sessions Judge,
Krishnagiri.
3. The Inspector of Police
Hatco Police Station
Krishnagiri District.
4. The Judicial Magistrate No.2,
Hosur.
5. The Chief Judicial Magistrate,
Hosur.
6. The Director of Police,
Mylapore, Chennai 04.
7. The District Collector,
Krishnagiri.

8. The Superintendent,
Central Prison,
Vellore.

9. The Public Prosecutor
High Court, Chennai.

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RSI (CO)
CA(11/07/2016)



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