

Bail Slip:- The Appellant/Accused namely Mariappan S/o. Thoppa Gounder was directed to be released on bail as per order of this Court dated 12.3.2013 in CrI.M.P.No.1/13 in CrI.A.No.151/13 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2016

CORAM:

THE HON'BLE MR.JUSTICE M.JAICHANDREN

AND

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

CRIMINAL APPEAL No. 151 OF 2013

Mariappan ... Appellant/ 1st Accused

Vs.

State rep. by
Inspector of Police
Ammappettai Police Station
Ammappettai. ... Respondent/ Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment of conviction and sentence made in S.C.No.177 of 2010 by the learned IV Additional District and Sessions Judge, Erode District, Bhavani, dated 05.10.2012.

For Appellant : Mr.N.A.Nissar Ahmed

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

J U D G M E N T

(The judgment of the Court was made by S.NAGAMUTHU,J.)

The appellant is the 1st accused in S.C.No.177 of 2010 on the file of the learned IV Additional District & Sessional Judge, Erode District, at Bhavani. The Trial Court framed as many as two charges. The 1st charge was against the accused Nos.1 to 3 under Section 302 r/w. 34 IPC. The 2nd charge was against the 3rd accused under Section 307 IPC. By judgment, dated 05.10.2012, the Trial Court convicted the 1st accused under Section 302 IPC alone and acquitted the accused Nos.2

and 3 from all the charges levelled against them. The Trial Court sentenced the 1st accused to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for one year for the said offence. Challenging the said conviction and sentence, the appellant/1st accused is before this Court with this appeal.

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

(i) The deceased in this case was one Mr.Kolandaiappan. P.W.1-Arukkani @ Chandralekha is the daughter of the deceased. There was a long standing enmity between these three accused and the deceased in respect of a land. This is stated to be the motive for the occurrence. 3 ½ years prior to the occurrence, the deceased had gone to the disputed land. At that time, the accused Nos.1 and 2 challenged him that they would not spare him alive. On a subsequent event, there was a wordy quarrel between the wife of the deceased and one Pappa, who is the sister of the 1st accused. The wife of the deceased gave a complaint to the police. The police compromised the matter. Even thereafter, the growing enmity was there between the accused Nos.1 to 3 and the deceased.

(ii) While so, on 17.03.2009, at about 6.00 p.m., when the deceased was standing along with P.Ws.2, 3, and 5-Suresh, Rajkumar and Subramanian respectively, near Koil Kaadu Chithanattu Salai, Neringipettai Village, all the three accused came to the said place and developed quarrel with the deceased and P.Ws.2, 3 and 5. The deceased shouted at all the accused and wanted them to stop quarrelling with him. Immediately, the 1st accused took out a soori-knife from his waist and stabbed the deceased on his left chest. The 2nd accused also took out a soori-knife from his waist and stabbed the deceased on his left upper hand, left elbow and other parts of the body. The 3rd accused was armed with a spade with handle. But, she did not cause any injury. She facilitated the accused Nos.1 and 2 to stab the deceased. When P.W.2 intervened to rescue the deceased, the 3rd accused with spade handle, attacked him on his left hand and caused simple hurt. All the accused then fled away from the scene of occurrence.

(iii) P.W.1 witnessed the occurrence. Then, P.W.1 and others took the deceased to the Government Hospital at Bhavani. After examining the deceased, P.W.7-Dr.Janatha declared him dead. The dead body was kept in the mortuary. Then along with P.W.2, P.W.1 rushed to the Ammapettai Police Station and made a complaint to Mrs.Muniammal, the then Sub-Inspector of Police. On receipt of the said complaint under Ex.P.1, the Sub-Inspector of Police registered a case in Crime No.55 of 2009 under Sections 302 and 324 IPC, against all the three accused.

Ex.P.16 is the First Information Report. Then, she forwarded Ex.P.1 and Ex.P.16 to the Court, which were received by the learned Magistrate, at 4.00 a.m., on 18.03.2009.

(iv) The case was taken up for investigation by P.W.13-Mr.Subbiah, the then Inspector of Police. He proceeded to the place of occurrence, on 18.03.2009, at 6.00 a.m., and prepared an Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.17), in the presence of P.W.6-Palanisamy and another witness, by name, Senthil. Then, he recovered bloodstained earth (M.O.1) and sample earth (M.O.2) from the place of occurrence. On going over to the hospital, P.W.13 conducted inquest on the body of the deceased and forwarded the body for postmortem.

(v) P.W.8-Dr.Poornachandrika of Government Hospital, at Bhavani, conducted autopsy on the dead body of the deceased, on 18.03.2009, at 11.45 a.m. The Doctor found the following injuries on the body of the deceased :-

"External Injuries:-

- 1) A cut wound of 2 cm x 1 cm over left side chest below the nipple with clear edges.
- 2) A cut wound of 4 x 2 cm with depth of 5 cm above the left elbow joint with clear edges.
- 3) A clear cut wound of 3 x 2 cm with 2 cm depth on back of left arm an opening, a stab injury of 2 x 1 cm on left side chest of depth of 8 cm piercing the 6th rib and left ventricle of heart. Thoracic cavity contain 300 ml of blood.

Internal Organs :-

- 1) Heart - 250 gms. A clear cut wound of 1 cm x 0.5 cm on left ventricle.
- 2) Lungs - right - 400 grams, left - 350 grams.
- 3) Live - 1100 grams.
- 4) Spleen - 120 grams.
- 5) Kidney - Both 150 grams.
- 6) Stomach contain partially digested food.
- 7) Hyoid Bone - Intact.
- 8) Brain - 1100 grams."

Ex.P.7 is the Postmortem Certificate. The Doctor gave opinion that the death of the deceased was due to shock and haemorrhage due to the injuries.

(vi) P.W.13-Mr.Subbiah, the then Inspector of Police, recovered the bloodstained clothe from the body of the deceased. On 19.03.2009, at 1.00 p.m., he arrested the accused Nos.2 and 3 near Nerinjipettai Bus Stand, in the presence of P.W.9-Rajasekar, the Village Administrative Officer, and his Assistant, by name, Anbalagan. On such arrest, the 2nd accused gave a voluntary confession, in which, he disclosed the

place where he had hidden the bloodstained shirt and soori-knife with wooden handle. In pursuance of the same, the 2nd accused took the police and the said witnesses to the said place and produced the bloodstained shirt (M.O.3) and soori-knife (M.O.4). P.W.13 recovered the same under a Mahazar-Ex.P.9. The 3rd accused gave a voluntary confession, in which, she disclosed the place where she had hidden the spade with handle. In pursuance of the same, she took the police and the said witnesses to the said place and produced the spade. P.W.13 recovered the same under a Mahazar-Ex.P.13. On returning to the Police Station, he forwarded both the accused to Court for judicial remand and also handed over all the material objects to Court.

(vii) The investigation was thereafter taken over by P.W.14-Mr.A.Rajendran, the then Inspector of Police. The 1st accused had surrendered before the Court on 23.03.2009. On the orders of the jurisdictional Magistrate, P.W.14 took the 1st accused to police custody on 01.04.2009. While in custody, on 01.04.2009, at 5.00 p.m., in the presence of P.W.9, the Village Administrative Officer and his Assistant, he made a voluntary confession, in which, he disclosed the place where he had hidden the shirt, lungi and soori-knife. In pursuance of the same, the 1st accused took the police and the said witnesses to the said place and produced the soori-knife (M.O.7), shirt (M.O.8) and lungi (M.O.9). P.W.14 recovered the same under a Mahazar-Ex.P.11. Then, P.W.14 forwarded the 1st accused to Court for judicial remand. He handed over all the material objects also to Court. At his request, all the material objects were sent for chemical examination. The report revealed that there were bloodstains on all the material objects, including the knife. The Grouping Test revealed that the bloodstains found on all the material objects belong to "A" group. On completing the investigation, he laid chargesheet against the accused Nos.1 to 3.

(viii) Based on the above materials, the Trial Court framed the charges as detailed in paragraph No.1 of this judgment. The accused Nos. 1 to 3 denied the same. During the trial, in order to prove the case of the prosecution, on the side of the prosecution as many as 14 witnesses were examined and 18 documents and 9 material objects were exhibited. Out of the said witnesses, P.Ws. 1 to 5 are the eye witnesses to the occurrence. P.Ws.1 to 4 have stated about the individual overt acts of all the three accused. But, P.W.5 has stated that the 1st accused alone repeatedly attacked the deceased with soori-knife. He has further stated that though, the 2nd accused was present, he did not cause any injury on the deceased. He has not spoken about the presence of 3rd accused at the place of occurrence at all. P.W.6 has spoken about the preparation of

Observation Mahazar and Rough Sketch at the place of occurrence. P.W.7-Dr.Janatha has stated that she examined the deceased, on 17.03.2009, at 7.10 p.m. at the Government Hospital, Bhavani and declared him dead. P.W.8-Dr.Poornachandrika has spoken about the postmortem conducted by her and her final opinion regarding the cause of death. P.W.9-Mr.Rajasekar, the Village Administrative Officer, has spoken about the arrest of all the accused and the disclosure statement made by them and the consequential recovery of the material objects. P.W.10-Munirasan is the Scientific Expert, who has spoken about the scientific analysis conducted on the material objects and his final report. P.W.11-Senthilkumar is the Constable, who has stated that he carried the First Information Report and handed over the same to the learned Magistrate. P.W.12-Velmurugan, the Head Constable, has spoken about the fact that he took the dead body and handed over the same to the Doctor for postmortem. P.Ws. 13 and 14, the then Inspectors of Police, have spoken about the investigation done and their final opinion regarding cause of death.

(ix) When the accused Nos.1 to 3 were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, they denied them as false. On the side of the defence, the treatment pertaining to the 1st accused was marked as Ex.D.1. Their defence was a total denial. Having considered all the above, the Trial Court acquitted accused Nos.2 and 3 and found the accused No.1 alone guilty and convicted and sentenced him to undergo imprisonment as stated in paragraph No.1 of this judgment. That is how, the appellant/accused No.1 is now before this Court with this appeal.

3. We have heard Mr.N.A.Nissar Ahmed, the learned counsel appearing for the appellant/1st accused; Mr.M.Maharaja, the learned Additional Public Prosecutor appearing for the State; and we have also perused the records carefully.

4. In this case, the prosecution relies mainly on the eye witness account of P.Ws. 1 to 5. The learned counsel for the appellant/1st accused would submit that P.W.5 has spoken only about the presence and participation of the 1st accused. It is true that P.W.5, though, has spoken about the presence of accused No.2 also at the place of occurrence, he has stated in positive terms that accused No.2 did not cause any injury on the deceased or any witness. He was only passively standing at the place of occurrence. P.W.5 has not even spoken about the presence of the 3rd accused at the place of occurrence. But, P.Ws. 1 to 4 have stated that the accused Nos.1 and 2 attacked the deceased, each one with soori-knife repeatedly, and the 3rd

accused attacked P.W.2. The Trial Court has disbelieved the evidence of P.Ws. 1 to 4 as against the accused Nos.2 and 3 and preferred to accept the evidence of P.W.5. The learned counsel would submit that the Trial Court ought to have rejected the evidence of P.Ws. 1 to 5, as against this appellant/1st accused also.

5. We do not find any force in the above said argument. The principle *Falsus in uno, falsus in omnibus*, has not been recognised by the Indian Courts. The well settled law of the land is that if in the evidence of the eye witnesses the truth and falsity are mixed with each other and in the event, the Court is able to separate the grains from the chaff, it is well within the power of the Court to act upon the truth, thereby, rejecting the falsity and convict the accused. Here in this case, the Trial Court has given cogent reasons as to why the Trial Court had preferred to accept the evidence of P.W.5 and to reject the evidence of P.Ws. 1 to 4 as against the accused Nos.2 and 3. The Trial Court has rightly separated the truth from the evidence of P.Ws. 1 to 4 and has found that the appellant/1st accused alone had attacked the deceased. In the said finding, we do not find any infirmity.

6. Eventhough in the First Information Report itself, the presence and participation of all the three accused has been mentioned, on that score, we cannot reject the entire case of the prosecution, as the Trial Court has rejected the case against the accused Nos. 2 and 3. We find that there is sufficient evidence, which convincingly would go to prove that it was this appellant/1st accused alone, who attacked the deceased repeatedly with soori-knife and caused his death.

7. The learned counsel for the appellant/1st accused would submit that Ex.D.1, which was the document pertaining to the treatment given to the 1st accused, would go to show that the appellant/1st accused has also sustained injuries in the occurrence. It is the contention of the 1st accused that he was in the hospital undergoing treatment for 13 days for the injuries sustained in the very same occurrence. But, the 1st accused has failed to prove that he sustained injuries in the very same occurrence. The contents of Ex.D.1 have not been duly proved. Even when the 1st accused was questioned under Section 313 Cr.P.C., he had not stated that he was attacked by any of the witnesses examined on the side of the prosecution or the people belonging to the prosecution party. A perusal of Ex.D.1 would also go to show that there were no injuries visibly found on the 1st accused. Therefore, there is no question of expecting the prosecution to explain anything about the hospitalisation of the appellant/1st accused. Thus, this argument based on Ex.D.1 is also rejected.

8. For the foregoing discussions held, we conclude that it is this appellant/1st accused, who caused the death of the deceased. The act of the 1st accused would squarely fall within the third limb of Section 300 IPC and the same would not fall under any of the Exception to Section 300 IPC, therefore, he is liable to be punished only for the offence under Section 302 IPC. The Trial Court was right in convicting the 1st accused accordingly.

9. Now, turning to the quantum of punishment, the Trial Court has imposed only a minimum punishment on the appellant/1st accused, which also does not require any interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

10. In the result,

(i) the appeal fails and the same is dismissed and the conviction and sentence imposed on the appellant/1st accused by the Trial Court, in S.C.No.177 of 2010, dated 05.10.2012, stands confirmed.

(ii) Since, the appellant/1st accused is on bail, the Sessions Court is directed to take steps to secure his custody to commit him to prison to undergo the remaining period of sentence.

(iii) The period of detention already undergone, if any, by the appellant/1st accused shall be given set off under Section 428 Cr.P.C.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

paa

To

1.The Inspector of Police
Ammapettai Police Station
Ammapettai.

2.The IV Additional District & Sessions Judge
Erode District
Bhavani.

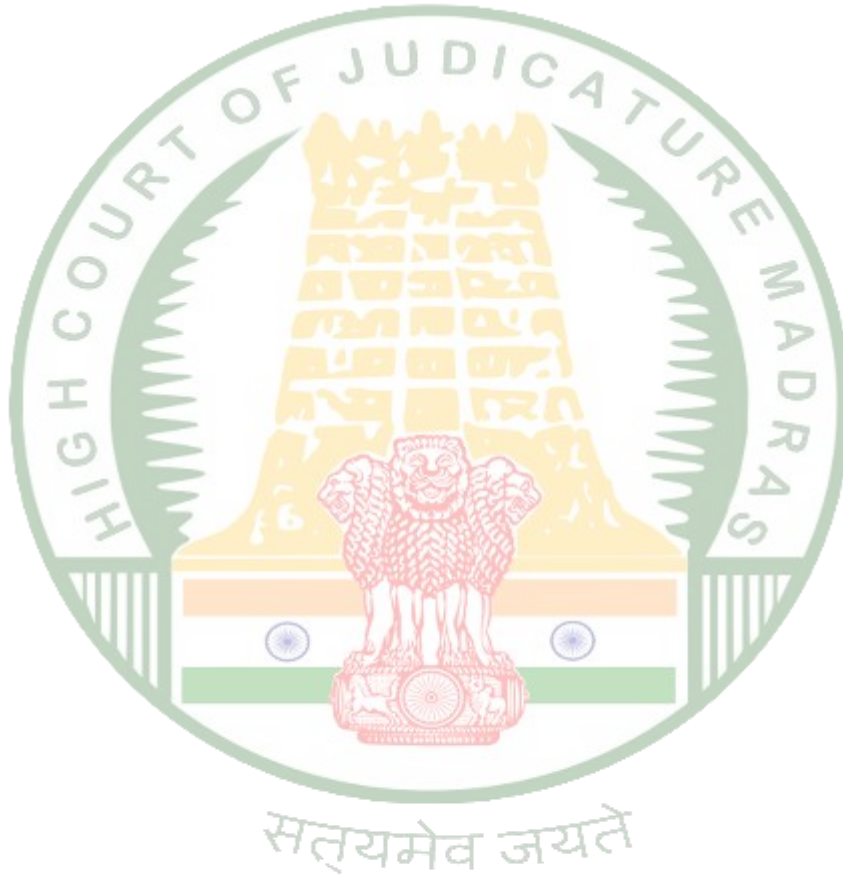
3. The Superintendent of Central Prison,
Erode

4.The Public Prosecutor,
High Court, Chennai.

1 cc to Mr.N.A. Nissar Ahmed, Advocate, Sr. 25184

CRIMINAL APPEAL NO. 151 OF 2013

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