

Bail Slip

The Appellant/Accused namely Anbazhagan (A1), and Arunagiri (A2) were directed to be released on bail as per order of this court dated 14.03.2013 made in MP.No.1/2013 in CrI.A.164 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2016

CORAM:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU
and
THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

Criminal Appeal No.164 of 2013

1.Anbazhagan
2.Arunagiri ..Appellants/Accused 1 and 2

Vs.

State Rep by
The Inspector of Police,
Chinnasalem Police Station,
Villupuram District.
Crime No.57 of 2011 .. Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 12.02.2013 made in S.C.No.57/2012, passed by the III Additional District and Sessions Judge, Kallakurichi, Villupuram District.

For Appellants : Mr.S.Kaithamalai Kumaran

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by
M.SATHYANARAYANAN, J.)

Appellants are the accused 1 and 2 in S.C.No.57/2012 on the file of the learned III Additional District and Sessions Judge, Kallakurichi, Villupuram. First accused was charged and tried for the commission of offence under Section 302 IPC and second accused was charged and tried for the commission of offence under Section 302 r/w. 34 IPC. The trial Court, vide impugned judgment dated 12.02.2013, convicted both of them and imposed the sentence of imprisonment for life with a fine of Rs.1,000/- in default, to undergo one month simple imprisonment for each of the accused. Challenging the legality of the said conviction and sentence, the present appeal has been filed.

2. Facts briefly stated, necessary for the disposal of this appeal are as follows:

2.1. Maniyaayi/PW1 is the second wife of the deceased, namely Durairaj. Appellants/accused were born to the first wife of Durairaj, namely Angammal and on account of misunderstanding, Durairaj and his first wife's family are living separately. During the year 2011, Durairaj married Maniyaayi/PW1 and started living separately. Appellants/accused were pestering Durairaj to partition the land and in that regard, there was some dispute and difference of opinion between them. The second wife of Durairaj, namely PW1 became pregnant and apprehending that in the event of any child born to the second wife of Durairaj, he/she may claim right over the land in question, developed enmity and decided to do away with the life of their father, namely Durairaj.

2.2. Durairaj incurred debts and borrowed money from various persons and they started pestering him to repay it and therefore, Durairaj along with PWs.2 and 3 and Lakshmanan, decided to meet his sons, namely accused to get some money so that he can repay the debts and apprehending that there may not be proper response, also took the above said persons with him and met his sons and there was a wordy altercation and three person, who accompanied Durairaj, namely PWs.2 and 3 and Lakshmanan tried to pacify them and at that time, Durairaj told his sons/accused that even if they do not pay money, the tractor which was bought by him can be sold for realizing money and accordingly, he made an attempt to drive the tractor. At that time, both the accused pulled Durairaj down for the purpose of murdering him and the second accused caught hold of Durairaj and the first accused took a sharp iron rod from the tractor and stabbed him on his stomach. PWs.2 and 3 tried to save Durairaj and accordingly took him in their motorcycle to the house of PW1 and informed the incident to PW1 and Durairaj died on account of injuries sustained.

2.3. Muniyaayi/PW1 - second wife of the deceased/Durairaj proceeded to Chinnasalem Police Station and lodged a complaint/Ex.P1 at about 5.00 a.m. on 12.02.2011 and on receipt of the complaint, PW7, Sub-Inspector of Police attached to the said police station, registered a case in Crime No.57/2011 under Section 302 IPC at about 5.00 a.m. and forwarded the original copy of the complaint as well as the FIR to the jurisdictional Magistrate and also dispatched a copy of the same to his immediate superior officials.

2.4. PW12, Inspector of Police, Chinnasalem Police Station, on receipt of the FIR, proceeded to the scene of occurrence at about 6.00 a.m. on 12.02.2011 in the presence of PW9 and another and prepared Observation Mahazar and Rough Sketch, marked as Exs.P8 and P9 respectively. PW12 conducted inquest on the body of the deceased in the presence of panchatdars and prepared Inquest Report, marked as Ex.P10 and examined PWs.1 to 3 and two others and recorded their statements. PW12 having formed an opinion as to the nature of case, searched for the accused and

on information, effected the arrest of both the accused at 14.00 hours on 12.02.2011 in the presence of PW4/Village Administrative Officer and as per the admissible portion of the confession statement of first accused, marked as Ex.P2, M.O.1/Iron Rod was recovered under Mahazar/Ex.P3. PW12 continued with the investigation and examined Angammal, Thangamani, Lakshmanan and Murugesan and also sent the body for postmortem through PW8/Head Constable, who took the body to the Government Headquarters Hospital, Kallakurichi.

2.5. PW5, Civil Surgeon attached to the Government Headquarters Hospital, Kallakurichi, on receipt of the body, commended the postmortem at 01.30 p.m. on 12.02.2011 and noted the following features:

External Injuries:

1. A sharp incised wound about 3 x 0.5 cm. Present 2 cm. below the left subcostal over the epigastrium
2. Hypochondriac region running obliquely sharp inverted edge to subcutaneous region.

Internal Injuries:

Incised wound 3 x 0.5 cm over present abdominal cavity filled with 400ml of blood .
Stomach: Penetrating wound present 2.5 x 0.5 cm inverted edge. Stomach empty.
Intestines: 1 x 0.5 cm erected edge.

After completion of postmortem, PW5 opined that the deceased would appear to have died due to injury sustained to vital organs, penetrating injury to stomach and small intestine. The postmortem report was marked s Ex.P4.

2.6. PW12 examined PW5/Doctor and recorded his statement and also examined PW8, who took the body for postmortem as well as PW11, who took the FIR to the jurisdictional Magistrate Court and after completion of investigation, had filed the charge sheet on 30.05.2011 on the file of the Judicial Magistrate, Kallakurichi and the said Court, took it on file in P.R.C.No.26/2011 and issued summons to the accused and on their appearance, furnished to them copies of documents under Section 207 CrPC and the committal Court having found that the case is exclusively triable by the Sessions Court, committed the same to the Principal Sessions Judge, Villupuram, who in-turn made over the same to the learned III Additional District and Sessions Judge, Kallakurichi, Villupuram District and was taken on file in S.C.No.57/2012. The trial Court, on appearance of the accused, had framed charges for the offences as stated above and questioned them and both of them pleaded not guilty to the charges framed against them.

2.7. The prosecution, in order to sustain their case, examined PWs.1 to 12, marked Exs.P1 to P10 and also marked Ex.P11. Both the accused were questioned under Section 313(1)(b) CrPC with regard to incriminating circumstances made out against them in the evidence rendered by the prosecution and they denied

it as false. No witness was examined and no document was marked on behalf of the accused. The trial Court, on consideration and appreciation of oral and documentary evidence and other materials, convicted and sentenced both the accused as stated above and hence this appeal.

3. Mr.Kaithamalai Kumaran, learned counsel appearing for the appellants made the following submissions:

(i) The alleged occurrence took place between 18.00 to 19.30 hours on 11.02.2011 and PW1, second wife of the deceased, lodged a complaint at 5.00 a.m. on 12.02.2011 and thus there was a considerable delay in lodging the complaint for which, no explanation has been offered by them.

(ii) Ex.P1/complaint given by PW1 came to be registered at about 5.00 a.m. on 12.02.2011 and the original complaint as well as FIR were dispatched to the jurisdictional Magistrate, who received it only at 18.30 hours on 12.02.2011 and hereagain, there was a considerable delay in dispatching the FIR. PW11, who took the original complaint as well as the FIR, has failed to offer any explanation as to the belated submission of vital documents to the jurisdictional Magistrate and therefore, grave doubt has been created as to the manner in which the occurrence said to have taken place.

(iii) PW1, admittedly, did not witness the occurrence and PWs.2 and 3 are said to be eye witnesses and PW3 had turned hostile. According to PWs.1 and 2, police came to the spot even during night hours on 11.02.2011 and whereas the FIR was registered on the next day at 05.00 a.m. on 12.02.2011 and therefore, the complaint given at the earliest point of time has been burked by the prosecution and therefore, the genesis of the occurrence itself became highly doubtful.

(iv) The prosecution relied upon the recovery of M.O.1, in pursuant to the admissible portion of confession given by the first accused and M.O.1 was not even sent for chemical analysis and except the alleged confession and recovery, no other incriminating material have been adduced by the prosecution to connect both the accused with the commission of offences.

In sum and substance, it is the submission of the learned counsel appearing for the appellants that since the case of the prosecution bristles with very many infirmities and inconsistencies, the trial Court at least ought to have ordered benefit of doubt and acquitted them and hence prays for setting aside the conviction and sentence and allowing of the appeal.

4. Per contra, Mr.M.Maharaja, learned Additional Public Prosecutor would contend that no doubt, complaint was lodged belatedly since PW1 is hailing from a rural place and reasons have been adduced as to the belated lodging of the complaint both by PWs.1 and 2. It is the further submission of the learned Additional Public Prosecutor that PW2 was the solitary eyewitness and since his evidence was truthful and trustworthy, coupled with the recovery of incriminating article, namely M.O.1/Iron Rod and further that motive aspect has been proved, the trial Court has rightly recorded a well considered judgment of conviction and sentence and hence, prays for dismissal of this appeal.

5. This Court, after considering the rival submissions and on a careful scrutiny and analysis of oral and documentary evidence, other materials and also original records, is of the considered view that this appeal is to be allowed for the following reasons.

6. It was a partition dispute and according to the prosecution, motive was the marriage of PW1 to their father - the deceased/Durairaj by way second marriage and non-compliance of demand for partition of land. According to the prosecution, the deceased incurred heavy debts and to repay the same, he had decided to approach his first wife as well as his two sons (appellants/accused) born through his first wife and apprehending some problem, he went along with PWs.2 and 3 and one Lakshmanan to the house of the appellants/accused and when he asked for money to his sons, they put a pre-condition that unless he partitions the land, money cannot be given and immediately, the deceased/Durairaj told them that since he purchased the tractor out of his own earnings, he would like to sell it away and accordingly made attempt to start the tractor and enraged by the same, both the accused pulled the deceased down and the second accused caught hold of him and the first accused took a sharp iron rod found inside the tractor and stabbed him on the stomach and immediately, PWs.2 and 3 took Durairaj to the house of PW1. The people of the locality in which the PWs.2 and 3 were residing asked them to take the body and further fearing that they may be implicated, handed over the injured Durairaj at the house of the deceased, where PW1 found Durairaj dead. PW1 proceeded to Chinnaasalem Police Station on the next day at 5.00 a.m on 12.02.2011 and lodged the complaint. Thus, according to the prosecution, PWs.2 and 3 were eye witnesses to the occurrence and PW3 had turned hostile and therefore, the sole witness to support the case of the prosecution was PW2.

7. It is to be pointed out at this juncture that both PWs.1 and 2 would depose that police came to the spot even during night hours on 11.02.2011 and whereas Ex.P1/complaint was given by PW1 on the next day morning at 05.00 a.m. on 12.02.2011 and absolutely, no explanation whatsoever has been offered as to how prior to registration of the case, police came to the spot. Not only there was a delay in lodging the complaint, even while dispatching the original complaint/Ex.P1 as well as the

FIR/Ex.P7 also there was a delay and both the documents had reached the jurisdictional Magistrate at 18.30 hours on 12.02.2011 and PW11, who took those documents, has failed to offer any explanation.

8. It is a settled position of law that belated dispatch of material documents such as complaint and FIR would not per se lead to the presumption that the case is a foisted one, when proper and tenable explanation is offered. In the case on hand, no reason/explanation has been given as to the belated dispatch of vital material documents.

9. The prosecution heavily relied on the testimony of PW2 and according to him, immediately after Durairaj sustained injury, he along with PW3 took him in their bike and came to the house of PW1 and handed over him and the residents of the locality asked them to take back Durairaj and from there, they took him back and placed the body to the house of the deceased. PW1 would state that since PWs.2 and 3 apprehend that they may be implicated, placed the body in the house of the accused and till the lodging of complaint, she was also in the house of the accused along with their mother. In the light of the said evidence, coupled with the belated lodging of the complaint as well as belated dispatch of FIR, the origin and genesis of the occurrence is highly doubtful. M.O.1/Iron Rod, seized pursuant to the admissible portion of the confession of the first accused, was also not subjected to chemical analysis and once again PW12/Investigating Officer has not given any explanation as to the non sending of the material object for chemical analysis.

10. The trial Court, without proper consideration and appreciation of oral and documentary evidence, has convicted and sentenced the accused as stated above and in the light of the infirmities pointed out above, it is not safe to sustain the conviction and sentence passed by the trial Court and therefore, this criminal appeal deserves to be allowed.

11. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused 1 and 2, vide Judgment dated 12.02.2013 made in S.C.No.57 of 2012 passed by the III Additional District and Sessions Judge, Kallakurichi, Villupuram District are hereby set aside and the appellants/accused are acquitted of the charges framed against them. It is reported that the appellants/accused are on bail. The bail bonds shall stand terminated/discharged. Fine amount, paid if any, shall be refunded to the appellants.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

To

1. The Judicial Magistrate, Kallakurichi.
 2. -do- Through The Chief Judicial Magistrate, Kallakurichi.
 3. The Superintendent, Central Prison Salem.
 4. III Additional District and Sessions Judge, Kallakurichi, Villupuram District.
 5. The Inspector of Police, Chinnasalem Police Station, Villupuram District.
 6. The District Collector, Villupuram District.
 7. The Superintendent of Police, Villupuram District.
 8. The Public Prosecutor, Madras High Court, Chennai.
 9. The Section Officer, Criminal Section, High Court, Madras.
- + 1 cc to Mr.A.K. Kumarasamy, Advocate SR.18203 (29.04.2016)

Criminal Appeal No.164 of 2013

EV(CO)
Eu 22.04.2016

सत्यमेव जयते

WEB COPY