

Bail Slip:- Appellants 1 to 5 (Accused 1 to 5 in S.C.NO.92/2012 dated 7.8.2012 on the file of the Additional District and Sessions Judge No.1, Cuddalore District) were released on bail as per order of this court dtd 1.11.2012 in M.P.1/12 in CrI.A.No.599 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Criminal Appeal No.599 of 2012

1.Senthil
2.Balu @ Balamurugan
3.Balu @ Ammavasai
4.Panner
5.Karthik ... Appellants/ Accused

-Vs-

State rep by
The Inspector of Police
Cuddalore Old Town (O.T) Police Station
Cuddalore District
(Crime No.441/2011) ... Respondent / Complainant

This Criminal Appeal has been preferred to call for the records and set aside the conviction and sentence imposed in S.C.No.92 of 2012 dated 07.08.2012 on the file of the Additional District and Sessions Judge No.1, Cuddalore District.

For Appellants : Mr.S.Ashok Kumar
Senior Counsel
for Mr.K.Gandhi Kumar

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

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

The appellants are the accused 1 to 5 in S.C.No.92 of 2012 on the file of the learned Additional District and Sessions Judge-I, Cuddalore. By judgment dated 07.08.2012, the trial Court had convicted the accused and sentenced them as follows:

S. No.	Accused Charged u/s	Finding of the Court	Conviction & Sentence
1	Against A2 to A5 U/s 148 of IPC	Found Guilty	2 years Rigorous Imprisonment
2	Against A1 U/s 147 of IPC	Found Guilty	1 year Rigorous Imprisonment
3	Against A1 U/s 294(b) of IPC	Found Guilty	Fine of Rs.500 I/d 2 weeks Rigorous Imprisonment
4	Against A2 to A5 U/s 302 of IPC	Found Guilty	Life Imprisonment and to pay a fine of Rs.10,000/- I/d 1 year Rigorous Imprisonment
5	Against A1 to A5 U/s 506(II) of IPC	Found Guilty	2 years Rigorous Imprisonment
6	Against A1 U/s 302 r/w 149 of IPC	Found Guilty	Life Imprisonment and to pay a fine of Rs.10,000/- I/d 1 year Rigorous Imprisonment
7	Against A1 to A5 U/s 324 of IPC	Found Guilty	2 years Rigorous Imprisonment

Challenging the said conviction and sentence, the accused/appellants are 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 Mr.Pandian. The first accused and the deceased were in the same political party. In the local body election, from the party, the first accused as well as the deceased sought for an opportunity to contest as the party's candidate. The deceased was denied a seat, whereas, the first accused was offered an opportunity to contest the election on behalf of the said political party. The first accused contested the election and won the same. This is stated to be the initial enmity between the deceased and the first accused.

[b] It is also stated that on an earlier occasion, the deceased had cut the first accused, by which, the hand of the first accused was amputated. A case was registered in connection with the same and the same is also pending. This further aggravated the enmity between the deceased and the first accused. This is stated to be the motive for the occurrence.

[c] On 17.07.2011, at about 9.30 a.m., the deceased was travelling in a motor cycle driven by P.W.2 on the Imperial Road at Cuddalore. They were proceeding to a nearby market. At the place of occurrence, it is alleged that they were followed by a Tavera car bearing Registration No.TN-31-AD-0673. On reaching the place of occurrence, the car hit the motor cycle and as a result, P.W.2 and the deceased fell down from the motor cycle. The motor cycle also fell down. From the car, it is alleged, that all the five accused got down. The accused 2 to 5 were all armed with aruvals. The first accused was not armed with any weapon. Immediately, the first accused shouted and the others killed the deceased. The accused 2 to 5 started to attack the deceased. The deceased ran into a nearby workshop. The accused 2 to 5 did not spare him. They chased him and attacked him indiscriminately with aruvals. The deceased fell down in a pool of blood with injuries all over his body and died on the spot. P.W.2 also sustained injuries. The occurrence was witnessed by P.Ws.1 to 4. P.W.1 is none else than the brother of the deceased. Immediately, P.W.1 took the deceased as well as P.W.2 to the Government Hospital at Cuddalore. P.W.13-Dr.Latha examined P.W.2 at 3.15 p.m. on 17.07.2011. At that time, he told the Doctor that, when he was driving his motor cycle, the same was hit by a car, in which he sustained the injuries. He further told her that two known and three unknown persons attacked the deceased who was travelling along with him as a pillion rider in the motor cycle. P.W.13 found the following injuries:

- 1.Abrasion 6 x 3 cm left elbow
- 2.Abrasion 2 x 2 cm left knee
- 3.Abrasion 2 x 2 cm left thigh."

Ex.P11 is the Accident Register. According to P.W.13, these injuries would have been caused by fall from the motor cycle. On the same day, P.W.12 examined the deceased at 10.50 a.m. The deceased was brought by P.W.1. On examining him, P.W.12 found that the deceased was no more. He forwarded the body to the mortuary and gave intimation to police in respect of the same. Ex.P.10 is the Accident Register.

[d] Then, P.W.1 proceeded to the police station and made a complaint at 11.30 a.m. under Ex.P1. P.W.15, the then Sub Inspector of Police attached to Cuddalore O.T. police station, on receipt of Ex.P1, registered a case in Cr.No.441 of 2011 under Sections 147, 148, 294(b) and 302 IPC. Ex.P14 is the FIR. He forwarded both the documents to the Court. From the records

available, it is seen from the endorsement made by the learned Judicial Magistrate, that Exs.P.1 and 14 were received by the learned Magistrate at 8.20 p.m. on 17.07.2011.

[e] P.W.18 took up the case for investigation. He proceeded to the place of occurrence at 1.00 p.m. and prepared an Observation Mahazar in the presence of P.W.6 and another witness. He also prepared a Rough Sketch showing the place of occurrence. [Ex.P12 is the Observation Mahazar and Ex.P18 is the Rough Sketch]. Then, he recovered blood stained earth and sample earth from the place of occurrence as well as from the workshop in the presence of the same witnesses under Ex.P3-Mahazar. Then, he conducted inquest on the body of the deceased and forwarded the body for post-mortem. P.W.14 conducted autopsy on the body of the deceased on 18.07.2011 at 11.30 a.m. He found the following injuries:

"External injuries:

1.A deep cut injury transversely on center of head at the junction of paraito occipital region, with size 12 x 3 x 3 cm., cutting the skull bones with sharp margins, exposing the under lying membranes and brain substances.

2.A similar deep cut injury with size 7 x 3 x 3 cm vertically on the center of head, touching the right ends of the inquiry No.1 exposing membranes and brain.

3.A deep cut injury cutting the skull bones transversely with size 7 x 3 x 3 cm just 2 cm beyond the injury No.2, exposing the under lying membranes and brain.

4.A deep transverse cut injury on back of head below the injury No.3 with size 9 x 3 x 3 cm., cutting the occipital bones, exposing the membranes and brain substance about 4cm below the injury No.3.

5.A deep cut injury extending vertically from injury No.4 and ended at the back of the ear. Size 10 x 5 x 3 cm cutting occipital bones.

6.A transverse cut injury on back of head and neck junction extending from lower part of back of left ear, ending at right side of the neck junction extending from lower part of back of left ear, ending at right side of the neck with size 10 x 5 x 3 cm cutting the occipital bone (lower part) and muscles.

7.A bone deep cut injury on right side of back of head 3 cm behind the right ear, with size 7 x 3 x 2 cm exposing the under lying bone.

8.A cut injury with size 2 x 2 x 1 cm at

the left angel of mouth.

9.A cut injury with size 3 x 1 x 1 cm near the right angel of mouth.

10.A cut injury on pinna of right ear with size 2 x 1/2 x 1/2 cm.

11.A deep cut injury on the back of right shoulder, with 4 x 1 x 2 cm in size.

12.A cut injury 4 x 2 x 1cm over the left shoulder plate.

13.The right hand completely cut into two pieces. Obliquely from base of little finger, cutting all the structures of the right hand including the bones.

14.Cut injury-little finger with hanging of the cut little finger.

15.A complete cut injury left hand-5 inches long severing all structures including bones into two pieces.

16.Ring finger (Rt) cut as its base with little skin attachment.

17.Little finger right hand chipped off at its tip.

18.A bone deep cut injury on left wrist 3 x 1 x 2cm.

19.A bone deep cut injury cutting ulna bone and all soft tissue structures 6 x 3 x 3cm on left forearm.

20.A bone deep cut injury severing muscles, nerves and vessels and ulna bone size 11 x 5 x 3 cm above the injury no.19.

21.A bone deep cut injury 5 x 2 x 2cm on the outer aspects of left elbow.

22.A small cut injury 2 x 2 x 1cm just below the injury No.21.

23.A cut injury 2 x 2 x 1cm in size on left side of lower chest."

Ex.P12 is the Post-mortem Certificate. He gave opinion that the deceased would appear to have died of shock and haemorrhage due to the multiple injuries found on the body. On 18.07.2011, P.W.18 handed over the investigation to his successor. P.W.19 took up the case for investigation. He examined P.Ws.3 and 15 and a few more witnesses. He recovered the blood stained belongings of the deceased found on his body under Ex.P21-Mahazar.

[f] During the course of investigation, P.W.19 came to know that the accused 2 to 5 had surrendered before the Court on 18.07.2011 and the first accused surrendered before the Court on 20.07.2011. He took police custody of the accused on 27.07.2011.

While in custody, the fifth accused gave voluntary confession to P.W.19 in the presence of P.W.10 and another witness. In the said confession, he disclosed the place where he had hidden M.Os.1 and 2 aruvals. In pursuance of the same, they were recovered from the place of hide out as produced by the fifth accused. The second accused, in his confession, disclosed the place where he had hidden M.Os.3 and 4. In pursuance of the same, as produced by the second accused, from the place of hide out, M.Os.3 and 4 were recovered under Ex.P9-Mahazar. On completing the investigation, he laid charge sheet against all the five accused.

3. Based on the above materials, the trial Court framed appropriate charges, which the accused denied. In order to prove the case of the prosecution, on the side of the prosecution, as many as 20 witnesses were examined and 27 documents were exhibited, besides 12 Material Objects.

4. Out of the said witnesses, P.Ws.1 to 5 claim to be the eye witnesses to the occurrence. P.W.2 has spoken about the presence and participation of the accused 2 to 5. The others have spoken about the presence and participation of all the five accused. P.W.1 has further spoken about the fact that he took the deceased and P.W.2 to the hospital. He has further stated that the case was registered on his complaint. P.W.6 has spoken about the preparation of Observation Mahazar and Rough Sketch and also the recovery of the Material Objects, including the motor cycle found at the place of occurrence. P.W.7 has also been examined to speak about the same facts. P.W.8 has spoken that, on 17.07.2011, at 8.30 p.m., the police seized the car bearing Registration No.TN-31-AD-0673, which was left abandoned near the bank of a lake at Vadalur. P.W.9 is the owner of the car bearing Registration No.TN-31-AC-0552. He has stated that the vehicle belongs to him. P.W.10 has spoken about the disclosure statement made by the fifth accused and consequential recovery of the M.Os.1 and 2. P.W.11 has spoken about the disclosure statement made by the second accused and the consequential recovery of M.Os.3 and 4. P.W.12 is the Doctor who declared the deceased dead at 10.50 a.m. on 17.07.2011. P.W.13 examined P.W.2 at 3.15 p.m. on 17.07.2011 and he has spoken about the injuries found on him. P.W.14 is the Doctor who conducted autopsy on the body of the deceased. He has spoken about the injuries and his final opinion regarding the cause of death. P.W.15 has spoken about the complaint made by P.W.1 and the case registered by him on Ex.P1. P.W.16 has spoken about the chemical examination conducted on the Material Objects. He has stated that there were blood stains on all the Material Objects, except one aruval and the sample earth taken from the place of occurrence. P.W.17 has spoken about the chemical examination conducted on the visceral organs of the deceased. He has stated that there was no poison or alcohol found in the internal organs of the deceased.

P.Ws.18, 19 and 20 have spoken about the investigation done and the final report filed.

5. 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 choose to examine any witness nor they did mark any documents in their favour. Their defence was a total denial.

6. Having considered all the above, the trial Court convicted all the five accused as detailed in the first paragraph of this judgment. Aggrieved over the same, the accused/appellants are before this Court with this appeal.

7. We have heard the learned Senior Counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. From the narration of the facts, it is crystal clear, that it is a very sensational murder having political overtones. There is no denial of the fact that the deceased and the first accused were politically inimical towards each other. There is also no denial of the fact that on an earlier occasion, the deceased had cut the hand of the first accused and severed the same. Thus, the prosecution has clearly established that the deceased and the first accused were in inimical terms.

9. It is the positive case of the prosecution, that at the time of occurrence, all these accused came in a Tavera car. The car hit the motor cycle. P.W.2 and the deceased fell down and thereafter, as directed by the first accused, the accused 2 to 5 cut the deceased indiscriminately and the deceased died on the spot. It is not as if these accused were unknown persons to P.Ws.1 and 2. They admit during cross examination, that A1 to A5 were known persons and they were also politically inimical towards the prosecution party.

10. It is admitted that the police station is at a distance of about 500 mts. from the place of occurrence. It is also in the evidence of P.Ws.1 and 2 that immediately after the occurrence, that too within 15 minutes, police arrived at the scene of occurrence. It would have happened that some information would have been passed on to the police by some bystanders, which would have attracted the police to the place of occurrence. To this extent, the presence of the police at the place of occurrence need not be doubted. After having come over to the place of occurrence, certainly, reliable information would have been given to the police officer who was present at the scene of occurrence. But, no such information had been reduced

to writing. It is explained by the learned Additional Public Prosecutor that everyone was anxious to take the deceased to the hospital, because they still believed that there was life in the body of the deceased. This explanation may also be accepted. The deceased was taken to the hospital and he was declared dead at 10.50 a.m. by P.W.12. After that, it is the case of the prosecution that the complaint was made at 11.30 a.m., upon which the case was registered by P.W.15. Had it been true that the FIR had come into existence at 11.30 a.m. itself, the FIR would have reached the hands of the learned Magistrate in the same town within a few minutes. It is in evidence that the distance between the police station and that of the Magistrate's Court is hardly 3 kms. But, unfortunately, the FIR and the complaint had reached the hands of the learned Magistrate only at 8.20 p.m. The person who carried the FIR from the police station to the Court also has not been examined. Absolutely, there is no explanation for this inordinate delay of 9 hrs. This delay creates doubt in respect of the very origin of the FIR.

11. Before that, P.W.2 was examined by P.W.13 at 3.15 p.m. on that date. It is not explained to the Court as to why P.W.2 did not go to the hospital immediately along with the deceased. But, the fact remains that he had some abrasions on his body which would have been sustained by a fall from motor cycle, as he had claimed. At 3.15 p.m., when he was examined by P.W.13, he told him that he sustained injuries by a fall from the motor cycle, when it was hit by a car. To this extent, there may be truth in his statement. But, he had further gone to tell the Doctor that Mr. Pandian, the deceased, who was travelling along with him as a pillion rider in the motor cycle, was brutally attacked by two known and three unknown persons. Thus, as we have already pointed, it is not as if any of these accused were unknown to P.W.2. He has admitted that all the five accused were known to him and also inimical towards him. It is not explained to the Court as to why P.W.2 had told the Doctor that among the five assailants, three were unknown. If really three assailants were unknown, it is not explained to the Court as to who are those three unknown assailants.

12. As per the said earliest statement of P.W.2, only two assailants were known to him, whereas, before this Court, there are five accused who are all known to him. These five accused have been projected as the assailants. Out of the five assailants, who are those two persons, who had been mentioned at the earliest point of time by P.W.2 to P.W.13, the Doctor, is not known. This lapse would only go to show that till 3.15 p.m. some of the assailants were not known or at least three assailants were unknown persons. Therefore, logically, it has to be concluded that the FIR would not have come into being at 11.30 a.m., as it is projected, since the FIR carries the names of accused 1 to 4 and a few unknown persons.

13. In the FIR, curiously, the names of the accused 1 to 4 alone have been mentioned. There is no mention about the fifth accused. Had it been true that the fifth accused was present and he participated in the brutal murder of the deceased, certainly, P.W.1, who is none else than the brother of the deceased, would not have omitted to mention the said fact in Ex.P1. From the very fact that the presence and participation of the fifth accused has not been mentioned in Ex.P1; the FIR itself states that a few unknown persons also participated in the occurrence, which has been duly used for contradiction and P.W.2 had told the doctor that out of the 4 assailants, two were unknown, it is crystal clear that the prosecution parties were not sure as to who were all the assailants.

14. During evidence, P.W.2 has not mentioned anything about the presence and participation of the first accused. Had it been true that the first accused was present at the time of occurrence and he directed the rest of the accused to kill the deceased, certainly, P.W.2 would have mentioned about the same in his evidence before the Court. There is no explanation as to why P.W.2 has not spoken anything about the presence and participation of the first accused. This also further creates doubt in the case of the prosecution. In this background, let us go into the relationship of the parties.

15. P.W.1 is the brother of the deceased. P.Ws.1 to 4 are all politically inimical towards the deceased. It is settled law that when the witnesses examined by the prosecution are partisan, inimical and interested, then their evidences require very close scrutiny. Unless they pass the test of close scrutiny, it is not safe to base conviction on the uncorroborated testimony of these witnesses alone. In the instant case, in our considered view, it is too difficult to sustain the conviction of these appellants and evidence of P.Ws.1 to 4, in view of the above doubts, which we have dealt with elaborately, more particularly, the delay in forwarding the FIR to the Court.

16. In this regard, we may refer to the judgment of the Supreme Court in Thulia Kali vs The State of Tamil Nadu [1973 AIR 501] wherein, the Hon'ble Supreme Court, in an identical situation held that though there are some witnesses who claim to have sustained injury, still, it is difficult to sustain the conviction when there are a lot of doubts in the case of prosecution, on account of the unexplained delay in forwarding the FIR to the Court. In the instant case, we have got every doubt about the very origin of the FIR. As we have already pointed out, till 3.15 p.m., only two were known assailants and two were unknown assailants. Therefore, we find it difficult to sustain the conviction of these appellants. In a case of this nature, if it is possible to separate the grain from the chaff,

then, it may not be difficult for this Court to act upon the grain and to convict the accused. But, in this case, we have already pointed out as to who are those two known persons who participated in the occurrence and whether those two persons are among these five accused or not, has not been found out, as it is not possible to separate the grain from the chaff.

17. For these reasons, we hold that the prosecution has failed to prove the case beyond any reasonable doubt and the appellants are entitled to acquittal. Though it is a gruesome murder and the same would have created a lot of sensation in that area, with pains, we have to record that the real culprits could not be convicted so as to do justice to the victim.

In the result, the appeal is allowed and the conviction and sentence imposed on the appellants are set aside and they are acquitted of all charges. The fine amount, if any paid by the accused, shall be refunded to them.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

gms

To

1. The Judicial Magistrate No.II
Cuddalore

2. do thro the Chief Judicial Magistrate
Cuddalore

3.Additional District and Sessions Judge No.1,
Cuddalore District.

4. do thro the Principal Sessions Judge
Cuddalore

5.The Inspector of Police
Cuddalore Old Town (O.T) Police Station
Cuddalore District.

6. The Superintendent
Central Prison,
Cuddalore

7.The District Collector
Cuddalore

8. Th Director General of Police
Mylapore, Chennai

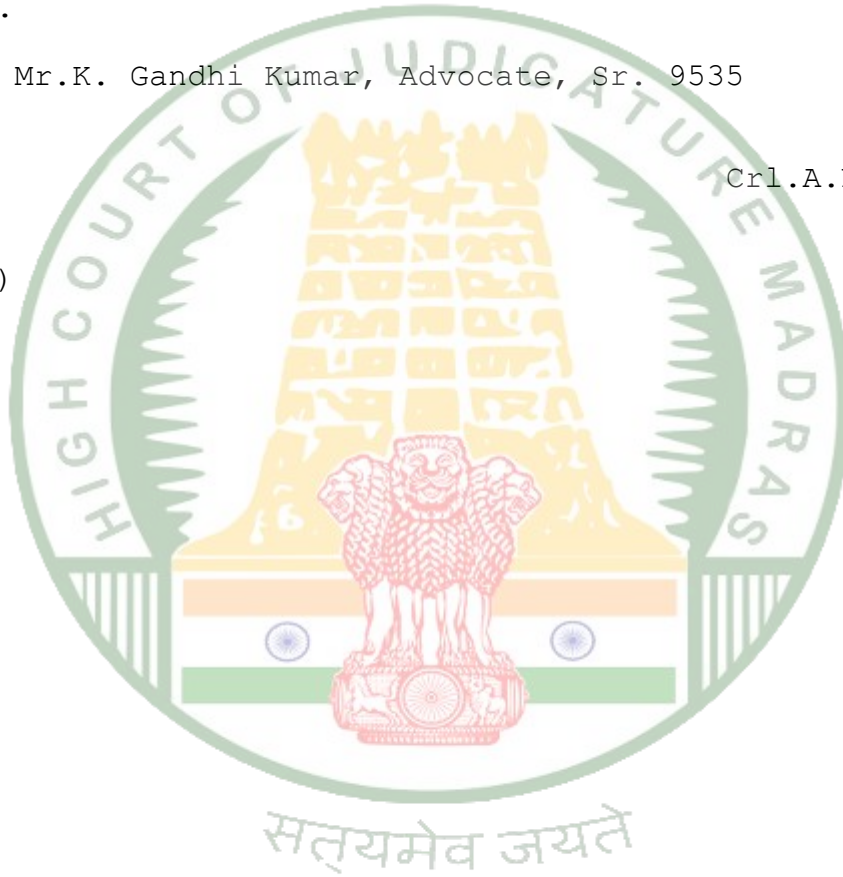
9. The Section Officer
Criminal Section,
High Court, Madras

10.The Public Prosecutor,
Madras High Court,
Chennai.

1 cc to Mr.K. Gandhi Kumar, Advocate, Sr. 9535

Crl.A.No.599 of 2012

TEJ (CO)
kk 11/3



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