

BAIL SLIP

The accused viz. Anbujothi @ Jothi was directed to be released on bail as per order of this Court dated 8.4.2013 made in CrI.MP.No.1/2013 in CrI.A.No.209/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.07.2016

CORAM

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

CRL.A.No.209/2013

Anbujothi @ Jothi

..

Appellant/A1

Versus

The State represented by
The Inspector of Police
Mayiladuthurai Police Station
Mayiladuthurai 609001.

.. Respondent

Appeal filed under section 374[2] Cr.P.C., against the judgment of Conviction and sentence dated 09.08.2011 pronounced and imposed by the learned District and Sessions Judge, Nagapattinam in SC.No.218/2008.

For Appellant : Mr. John Sathyan assisted by
Mr. Ilayaraja Kandasamy
Legal Aid Counsel

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.218/2008 on the file of the learned District and Sessions Judge, Nagapattinam. There were six other accused in the case arrayed as A2 to A7. Yet another accused by name Balamurugan @ Murugan, who was arrayed as one of the accused in the Final Report, was not tried as he passed away before the charges were framed against him. The Trial Court framed charges as against all the seven accused as detailed below:-

Rank of the Accused	Charges framed
A2, A6 and A7	120-B IPC
A1 to A5	148 IPC
A1 to A5	302 @ 302 r/w 34 IPC
A1 to A5	506[ii] IPC
A6 & A7	302 r/w 114 IPC

By judgment dated 09.08.2011, the Trial Court acquitted A2 to A7 from all charges ; but convicted A1 alone u/s.148 and 302 read with 34 IPC and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.2000/-, in default, to undergo simple imprisonment for 3 months for the offence u/s.148 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.5000/-, in default, to undergo simple imprisonment for 3 years for the offence u/s.302 read with 34 IPC. Challenging the said conviction and sentences, the appellant 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 Giri @ Shankar. The mother of Mr.Balamurugan @ Murugan [one of the accused in the case] was murdered by the deceased Giri @ Shankar. On account of the same, there was enmity between Balamurugan @ Murugan and Giri @ Shankar. A3 is a close relative of Balamurugan @ Murugan. Thus, he also had enmity with the deceased Giri @ Shankar. The other accused are the associates of the accused Balamurugan @ Murugan and A3 [Anandan @ Anand]. It is stated that on account of the above enmity, two months prior to the occurrence, A6 and A7 along with A2 had conspired to do away the deceased. In pursuance of the said conspiracy, it is alleged that on 27.05.2003, at about 19.10 hrs, when the deceased was sitting in front of the tea shop of one Mr.Selvam at Pottalveli Street in Mayiladuthurai-Tharangambadi Road, A1 to A5 came there in an unlawful assembly. All were armed with aruvals. Balamurugan @ Murugan was also in the assembly armed with an aruval. On reaching the deceased, A1 to A5 and the deceased / accused Balamurugan @ Murugan indiscriminately cut the deceased with aruvals. The deceased sustained multiple injuries on his body and died instantaneously. Abandoning the dead body in a pool of blood, all the accused fled away from the scene of occurrence.

[B] The occurrence was witnessed by P.Ws.1 and 2. P.W.1 is the sister and P.W.2 is the father of the deceased. P.W.1 immediately went to Mayiladuthurai Police Station and made a complaint under Ex.P.1 at 20.15 hrs on 27.05.2003.

[C] P.W.14, the then Inspector of Police, on receipt of the said complaint, registered a case in Cr.No.868/2003 for the alleged

offences u/s.147, 148, 302 IPC. Ex.P.12 is the FIR. Balamurugan @ Murugan and A1 to A5 herein were arrayed as the accused in the FIR. He forwarded both the documents, viz., the complaint [Ex.P.1] and FIR [Ex.P.12], to the Court, which were received by the jurisdictional Magistrate at 22.15 hrs on the same day.

[D] Taking up the case for investigation, P.W.14 proceeded to the place of occurrence and prepared the Observation Mahazar [Ex.P.3] in the presence of P.W.4 and another and also prepared a Rough Sketch [Ex.P.13]. He recovered blood-stained earth [M.O.2] and sample earth [M.O.3] from the place of occurrence under a Mahazar [Ex.P.4]. Thereafter, he held inquest on the dead body of the deceased in the presence of the panchayatdars and witnesses between 22.30 hrs and 01.30 hrs on 27.05.2003/28.05.2003 and prepared Ex.P.14-Inquest Report. He also examined few witnesses in the scene of crime and recorded their statements. Thereafter, he sent the body of the deceased for postmortem.

[E] P.W.10, Dr.Sankar, the Assistant Surgeon attached to the Government Hospital, at the relevant point of time, conducted autopsy on the body of the deceased on 28.05.2003 at 02.00 hrs. He found the following injuries:-

"External Injuries:-

1. A curvilinear incised wound 18x2x5 cms in the right side of the head going backwards in the occipital region. Right parietal. Right occipital bones were cut the brain was seen out side. Laceration seen on the brain.
2. A curvilinear incised wound in the right side of the head going backwards to the base of the neck in the posterior region, cutting the right temporal bone, right occipital bone and neck muscles. The muscles were deeply cut in the same line the vertebrae were seen. The brain is also seen exposed.
3. Three incised wounds transverse in the right side temple, forehead region one by one from the above onwards.
4. 15x2x4 cms transverse incised wound in the right face cutting the muscles angle of the mouth. Fracture of teeth on right lower jaw present, fracture mandible right side seen.
5. 3 to 4 multiple incised wounds on the right shoulder, right supra clavicular region and right supra scapular regions, the right shoulder joint exposed. The right clavicle bone was cut. The right scapula bone was cut and fractured.
6. Linear incised wound right back 4x1x1 cms muscles were cut.

7. 2 incised wounds right buttock, transverse 4x1x1 cms, muscles were cut.
8. Transverse incised wound right knee region lateral aspect 3x2x1 cms muscles were cut.
9. Incised wound left back 3x2x1 cms muscles were cut.
10. Transverse incised wound left buttock 4x1x1 cms muscles were cut.
11. 2x1x1 cms incised wound in the right upper arm.
12. 6x3x1 cms incised wound in the left chest wall anterior aspect.
13. Transverse incised wound left hand 8x2x3 cms cut in the 2,3,4 and 5th meta carpal bones, muscles were cut.
14. A slicing cut injury on the left fore arm inner aspect 10x4x1 cms muscles were cut.
15. Amputation of right wrist with hand at the right fore arm lower third. Muscles and bones were cut.
16. 8x1x1 cms transverse incised wound in the left upper neck. Muscles fibres were cut."

Ex.P.7 is the Postmortem Certificate. He gave his opinion that the injuries found on the body of the deceased could have been caused by a weapon like M.O.1 series [aruvals]. He further opined that the death of the deceased was due to shock and hemorrhage due to multiple injuries found on the body of the deceased.

[F] During the course of investigation, P.W.14 arrested the deceased / accused Balamurugan @ Murugan and Anbujothi @ Jothi [A1] near Dharmapuram Arch Bus Stop on 28.05.2003 at 16.00 hrs, in the presence of P.W.6 and another witness. On such arrest, the deceased / accused Balamurugan @ Murugan gave a voluntary confession, [the admissible part of which is marked as Ex.P.15], in which, he disclosed the place where he had hidden two aruvals. In pursuance of the same, he took the police and the witnesses to the said place of hide out and produced two aruvals and the same was recovered under a Mahazar [Ex.P.16]. The accused also produced M.Os.12 to 14 [Blood stained shirts [2 Nos] and a lungi], which were recovered under the same Mahazar. On the same day at 19.30 hrs., P.W.14 arrested the accused Prabakaran [arrayed as A4] at Moongil Thottam Nallathukudi in the presence of the same witnesses. On such arrest, he gave a voluntary confession, [the admissible part of which is marked as Ex.P.17] and on such disclosure statement, yet another aruval and a blood-stained shirt [M.O.4] were recovered under a Mahazar [Ex.P.18], on being produced by him. On returning to the Police Station, P.W.14 forwarded the accused to the Court for judicial remand. On 31.05.2003, he arrested the accused Selvakumar @ Kumar [arrayed as A5]. On such arrest, he gave a voluntary confession, [the admissible

portion of which is marked as Ex.P.19] in which he disclosed the place where he had hidden one aruval. In pursuance of the same, he took the police and witnesses to the place of hide out and produced one aruval, which was recovered by the investigating officer under a Mahazar [Ex.P.20]. On 08.06.2003, P.W.14 arrested Natarajan and Murali [arrayed as A6 and A7] and forwarded them to the Court for judicial remand. On 16.06.2003, the accused by name Suresh [arrayed as A2] surrendered before the Court. He took police custody of the said accused. But no discovery of any fact was made out of the same. On receipt of the Postmortem certificate and chemical analysis report and serology report and on completion of the investigation, P.W.14 laid the final report against the accused.

[G] Based on the above materials, the Trial Court framed charges against the accused 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 14 witnesses were examined, 23 documents and 14 material objects were also marked.

[H] Out of the said witnesses, P.Ws.1 and 2 have been examined as eyewitnesses and they have supported the case of the prosecution only in part. P.Ws.3, 5 to 9 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.4 has spoken about the preparation of the Observation Mahazar and the Rough Sketch in the place of occurrence. P.W.10 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.11 has spoken about the chemical analysis conducted on the material objects which revealed that there was human blood on all the material objects and on grouping, it revealed that the blood group was "B" group. P.W.12 has stated that he carried the FIR and handed over the same to the learned Magistrate at 22.15 hrs on 27.05.2003. P.W.13, an employee of TNEB has stated that there was enough light at the time and place of occurrence. P.W.14 has spoken about the investigation done by him and the filing of the final report.

3 When the above incriminating materials were put to the accused under section 313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not chose to examine any witness nor marked any documents on their side.

4 Having considered all the above, the Trial Court acquitted A2 to A7 ; however convicted the appellant alone for the offences u/s.148 and 302 read with 34 IPC. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

5 We have heard Mr.John Sathyan, learned counsel for the appellant assisted by Mr.Ilayaraja Kandasamy, learned Legal Aid

Counsel and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6 As we have already pointed out, this appellant has been convicted solely based on the evidence of P.Ws.1 and 2. P.W.1 is the sister of the deceased. During the relevant period, she was residing in Madurai and on the day of occurrence, she had come to the house of the deceased. The tea shop of Mr.Selvam, where the occurrence had taken place, is situated five houses away from the house of the deceased. Approximately, the distance is 250 metres. P.W.1 has stated that she went to the tea shop to take his brother back home for having dinner. At that time, according to her, a huge crowd of assailants came in an unlawful assembly in which, she noticed the deceased / accused Balamurugan @ Murugan and A1 and A7 herein. All the members in the crowd were armed with aruvals. She has further stated that the deceased / accused Balamurugan @ Murugan cut the deceased on the neck and all the other assailants also cut the deceased indiscriminately. She could identify only A1 and A7 as the assailants. She has also stated that she did not know others at all. P.W.2 is the father of the deceased and he has stated that crowd of people had attacked his son. In Court, he could identify only A1 and A7. He was not able to identify any other accused. He was 76 years old, at the time of occurrence. During examination in Court, he was not able to identify the accused from the witness box. The records show that he went near the box where the accused were standing and after seeing all the accused, he identified only A1 and A7. He was not able to identify anybody else. From these facts, in our considered view, it would not be safe to rely on the identification made by P.W.2. Obviously, he had poor eyesight and therefore, he would not have noticed the assailants.

7 Similarly, turning to the evidence of P.W.1, in Ex.P.1, she has mentioned the name of the deceased / accused Balamurugan @ Murugan and A1 to A5 herein as the assailants. She had not disowned the complaint. She has stated in the Court that none of the assailants, other than A1, A7 and the deceased / accused Balamurugan @ Murugan, were known to her at all. When that be so, it is not known as to how she was able to mention the names of A2 to A5 herein in the FIR. She has further stated that immediately after the occurrence, on receiving a phone call, the police had arrived at the place of occurrence. The Trial Court had disbelieved her and acquitted the rest of the accused. Thus, even according to the Trial Court, rightly, P.W.1 can be believed only in part. It is a settled law that when a witness is believable only in part, prudence require that the evidence of such witness should draw corroboration from other sources. Here, in the instant case, there is no other evidence available to corroborate adequately, the evidence of P.W.1. In our considered view, the presence of P.W.1 as well as P.W.2 at the place of occurrence itself is doubtful. For these reasons, we find that it is not safe to sustain the conviction of the appellant alone based on the evidence of P.Ws.1 and 2. We hold that the prosecution has

failed to prove the case beyond reasonable doubts. Therefore, the appellant is entitled for acquittal.

8 In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant by the Trial Court in SC.No.218/2008 dated 09.08.2011 is set aside. He is acquitted of the charges levelled against him.

9 It is reported that the appellant is on bail. The bail bonds executed, shall stand discharged. Fine amounts, if any paid, shall be refunded to him.

10 Before parting with the matter, this Court appreciates the role played by Mr.Ilayaraja Kandasamy, the Legal Aid Counsel, in assisting the learned counsel appearing for the appellant, in properly projecting the case. The Tamil Nadu State Legal Services Authority, is requested to pay him the remuneration as per norms.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

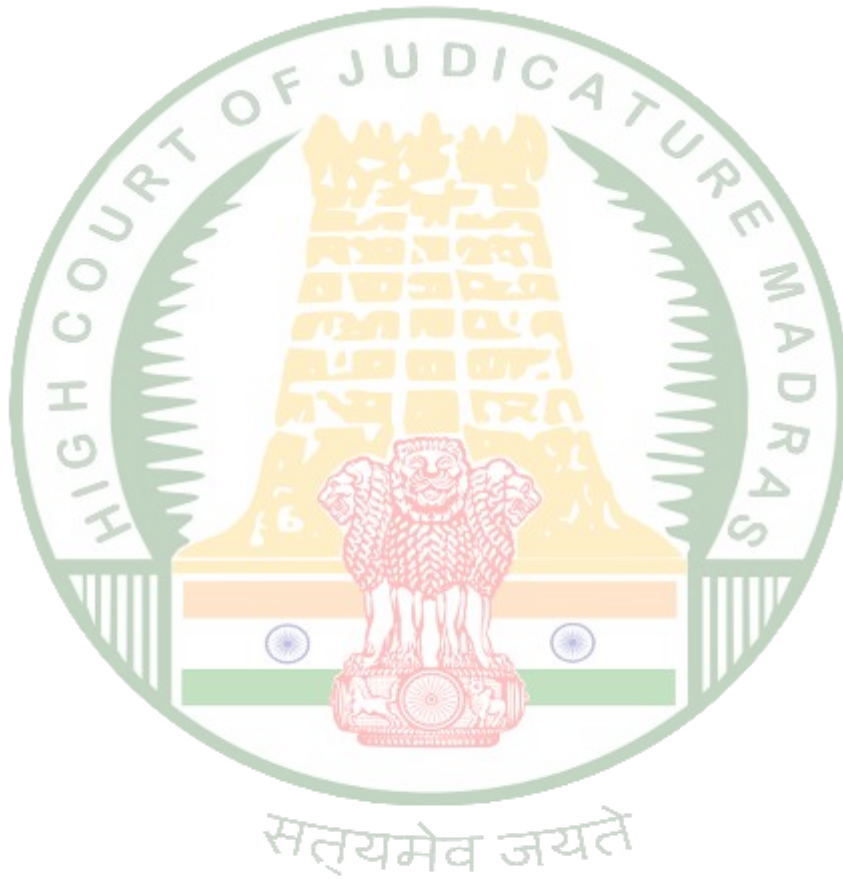
- 1 The District and Sessions Judge
Nagapattinam.
- 2 The District Collector,
Nagapattinam.
- 3 The Judicial Magistrate No.1,
Mayiladuthurai.
- 4 The Chief Judicial Magistrate
Nagapattinam.
- 5 The Superintendent,
Central Prison, Cuddalore.
- 6 The Director General of Police,
Chennai.
- 7 The Secretary,
Tamil Nadu State Legal Service Authority,
High Court Campus, Chennai.
- 8 The Inspector of Police
Mayiladuthurai Police Station
Mayiladuthurai 609001.

9 The Public Prosecutor
High Court, Madras.

+1 cc to Mr.R.John Sathyan, Advocate,sr.38142.

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Judgment in
Cr1.A.No.209/2013



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