



Bail Slip

Appellants 1&2 in CrI.A.61 of 2012 (Accused 1&2) in S.C.NO.52/11 on the file of I Additional District and Sessions Judge, The Sessions Judge, Bomb Blast Cases, Coimbatore (FAC) were released on Bail as per order of this Court dt. 13.03.2013 in MP.1 of 2013 in CrI.A.NO.61 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.JAICHANDREN
AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Criminal Appeal No.61 of 2012

1.Anandan

2.Kanagaraj @ Kannimuthu

... Appellants/Accused 1&2

-Vs-

State rep by

Inspector of Police

Udumalpet Police Station

Tiruppur District

Cr.No.5175/2010

... Respondent/Complainant

This Criminal Appeal has been preferred to set aside the judgment dated 30.09.2011 made in S.C.No.52/2011 on the file of First Additional District and Sessions Judge, The Sessions Judge, Bomb Blast Cases, Coimbatore (FAC).

For Appellants : Mr.A.Raghunathan
Senior Counsel
for Mr.K.Selvakumaraswamy

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.)

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The appellants are the accused 1 and 2 in S.C.No.52 of 2011 on the file of the learned Sessions Judge, Bomb Blast Cases, Coimbatore. They stood charged for offences under Sections 449, 302, 307 and 506(ii) IPC. By judgment dated 30.09.2011, the trial Court convicted the accused under Sections 302, 324 r/w 34 and 449 IPC and acquitted the accused from the charge under Section 506(ii) IPC. The trial Court sentenced both the accused to undergo imprisonment for life and to pay a fine of Rs.10,000/- each, in default to undergo rigorous imprisonment for six months for offence under Section 302 IPC and to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/- each, in default to undergo rigorous imprisonment for three months for offence under Section 324 r/w 34 IPC and to undergo rigorous imprisonment for three years for the offence under Section 449 IPC. 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:

The deceased in this case was one Mr.Nachimuthu. P.W.1 and accused are brothers. The deceased, P.W.1 and the second accused were born to the first wife of their father and the first accused was born to the second wife and their father. After their father had gone for second marriage, the deceased and P.W.1 were residing separately. The second accused was in the house of their relative. The first accused was with his father, i.e. with the second wife of the deceased. For a long time, P.W.1 and the deceased were cultivating 2 $\frac{1}{4}$ acres of land which was owned by the joint family. The accused 1 and 2 were cultivating 1 $\frac{3}{4}$ acres of land which also belonged to the joint family. The accused were demanding for actual partition of the joint family properties. Since all of them were not married at that time, the deceased and P.W.1 told them that the joint family properties could be partitioned after marriage was celebrated for all. But, the accused were not satisfied with the said explanation. They were quarrelling frequently with the deceased and P.W.1. This is stated to be the motive for the occurrence.

3. On 03.10.2010, at about 8.30 p.m., P.W.1 and the deceased were in their house watching Television. At that time, these two accused came in a motor cycle and parked it in front of the house and trespassed into the house of the deceased. On so entering into the house, the first accused attacked the



deceased with aruval near his right ear and back of his head. The second accused cut the deceased on the middle of his head. P.W.1 intervened. The second accused cut P.W.1 with aruval on his right hand. Then, both the accused fled away from the scene of occurrence. P.W.1 immediately gave a phone call to 108 ambulance and then proceeded to the police station to make a complaint.

4. P.W.14, who was the then Sub Inspector of Police of Udumalpet Police Station, reduced the oral complaint of P.W.1 into writing at 10.30 p.m. on 03.10.2010 at the police station. P.W.1 affixed his Left Thumb Impression on the same. On the said complaint, he registered a case in Cr.No.5175 of 2010 under Sections 302, 307 and 506(ii) IPC. Ex.P1 is the complaint and Ex.P22 is the FIR. He forwarded both the documents to Court and handed over the case diary to the Inspector of Police for investigation.

5. P.W.15 took up the case for investigation. He proceeded to the place of occurrence at 12.45 a.m. on 04.10.2010 and prepared an Observation Mahazar and a Rough Sketch in the presence of P.Ws.3 and 4. He also prepared a Rough Sketch showing the place of occurrence. Then, he recovered the blood stained earth and sample earth from the place of occurrence. He also recovered the motor cycle [M.O.1], which was parked in front of the house of the deceased. He conducted inquest on the body of the deceased and forwarded the same for post-mortem. P.W.6 - Dr.Jothi Mani conducted autopsy on the body of the deceased on 04.10.2010 at 12.10 p.m. She found the following injuries:

"External injuries:

(1) Cut injury measuring 15 x 10 cm extending deep to the brain, over right occipital bone, behind right ear, exposing brain matter. (2) Cut injury measuring about 5 x 3 cm extending deep to the brain present just below the injury No.2 exposing the brain matter. (3) Small cut injury centre of parietal region 1 x 1cm. (4) Lacerated wound 3 x 2 cm right shoulder. (5) Lacerated wound 3 x 2 x 1 cm left thigh."

Ex.P7 is the Post-mortem Certificate. She gave opinion that the death was due to the shock and haemorrhage due to the injuries. P.W.15 examined a few more witnesses and then handed over the case diary to his successor.



6. P.W.16 took up the case for investigation on 04.10.2010. On 06.10.2010 at 10.30 a.m., he arrested the second accused at Nenjamadai Village in the presence of P.W.11 and another witness. At that time, the second accused was wearing a lungi. P.W.16 recovered the same from the second accused. He made voluntary disclosure and stated that he had hidden the aruval in the bank of a tank. Accordingly, he took the police and the witness to the said place and produced the aruval. On returning to the police station, P.W.16 forwarded the second accused to the Court for judicial remand and handed over the Material Objects also to the Court. On 09.10.2010 at 3.30 p.m., he arrested the first accused in the presence of P.W.12 and another witness. On such arrest, the first accused disclosed the place where he had hidden the aruval. In pursuance of the same, he took the police and the witness to the said place and produced the aruval. P.W.16 recovered the same under the Mahazar. On returning to the police station, he forwarded the first accused to the Court for judicial remand and handed over the Material Objects also to the Court. On request, the Material Objects were sent for chemical analysis. It revealed that there were blood stains on the Material Objects, including the aruval recovered from the accused. On completing the investigation, P.W.16 laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed the above charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 16 witnesses were examined and 24 documents were exhibited, besides 21 Material Objects.

8. Out of the said witnesses, P.Ws.1 and 2 are the eye witnesses to the occurrence. P.Ws.3 and 4 have spoken about the Observation Mahazar, the Rough Sketch and the recovery of Material Objects from the place of occurrence. P.W.5 has spoken about the photographs taken by him at the place of occurrence. P.W.6 has spoken about the post-mortem conducted by him and the final opinion regarding the cause of death. P.W.7 has stated that, on 04.10.2010 at 3.15 a.m. P.W.1 was brought to the police station for treatment. According to this witness, the injuries were simple in nature. P.W.8- Dr.Kavitha has stated that, on 06.10.2010 at 7.30 p.m., she examined the second accused on being produced by the police after arrest. She noticed a healed cut injury measuring 3.5 x 0.3 x 0.3 cm on the left thumb. P.W.9 has spoken about the chemical examination done on the Material Objects. P.W.10 has turned hostile. He has not supported the prosecution case in any manner. P.W.11 has spoken about the arrest of the second accused and consequential recovery of aruval on the disclosure statement made by him.



P.W.12 has stated about the arrest of the first accused and the disclosure statement made by him as well as the consequential recovery of aruval at his instance. P.W.14 has spoken about the registration of the case. P.Ws.15 and 16 have spoken about the investigation done respectively and the Final Report submitted.

9. 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.

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

11. 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.

12. In this case, P.Ws.1 and 2 have claimed that they witnessed the entire occurrence. P.W.1 is an injured eye witness. Therefore, his presence in the place of occurrence cannot be doubted. P.W.1 has stated in his evidence that, he and the deceased alone were there in their house at the time of occurrence. P.W.1 has not even spoken about the presence of P.W.2. P.W.2 is only a neighbour. Where there is no mention about the presence of P.W.2 by P.W.1, it has to be examined whether P.W.2 would have been present at the time of occurrence. P.W.2 has stated that he was also inside the house of the deceased watching Television along with the deceased. This is quite contrary to the evidence of P.W.2. As we have already pointed out, P.W.1 has stated that he alone was present along with the deceased and they were watching Television. Having considered the same, the trial Court itself has rejected the evidence of P.W.2. The trial Court has concluded that, P.W.2 would not have seen the occurrence at all. In the said conclusion arrived at by the trial Court, we do not find any infirmity warranting interference.

13. Now, the prosecution is left only with the evidence of P.W.1. It is settled law that, if the evidence of a solitary witness inspires the confidence of Court, then even without expecting any corroboration from any other independent source,



the Court can act upon the same. The Hon'ble Supreme Court, in the case of VADIVELU THEVAR vs STATE OF MADRAS (1957 AIR 614, 1957 SCR 981), has held that, if a solitary eye witness is partly believable and partly unbelievable, then his evidence cannot be the foundation for conviction, unless it draws corroboration from any other independent source. Here in this case, we find it difficult to fully believe P.W.1. First of all, according to him, immediately after the occurrence at 8.30 p.m., he went to the police station and made a complaint at 8.45 p.m. But, P.W.1 has stated that, the complaint was obtained only at 10.30 p.m. Ex.P1 is the complaint which came into being at 10.30 p.m. If that be so, there is no explanation as to what had happened to the complaint which was made at the earliest point of time at 8.45 p.m. P.W.1 is an illiterate person. He has only affixed his Left Thumb Impression. Though we cannot attach much importance for the time sense of P.W.1, yet on that score, we cannot ignore the positive evidence of P.W.1 that, immediately after the occurrence, he rushed to the police station and made the complaint at 8.45 p.m. It is seen from the records that the distance between the police station and the place of occurrence is hardly 8 km. The FIR has reached the hands of the learned Magistrate at 12.00 a.m. on 04.10.2010. After all, the police station and the house of the learned Magistrate are in the very same town within a short distance. Thus, there is initial doubt in the prosecution case in respect of the FIR itself.

14. Secondly, P.W.1 had gone to the Doctor only at 3.15 a.m. on 04.10.2010. At that time, he had told the Doctor that he was attacked by a single known person, whereas, according to the prosecution case, two accused participated in the crime. Though his attention was drawn to the said statement made in the Accident Register, he did not give any explanation as to why he told the Doctor that only one person participated in the occurrence. This also creates doubt. The motor cycle [M.O.1] was seized from the place of occurrence, but, there was no investigation as to whom the motor cycle belonged to. The owner of the motor cycle was also not examined. Had he been examined, some light would have been thrown as to whether these two accused came in the motor cycle to the place of occurrence or not. These infirmities in the case of the prosecution raises some doubt in the veracity of P.W.1. Though the presence of P.W.1 cannot be doubted, his veracity is doubtful. Going by the very strong motive on account of the property dispute between the two families, the possibility of roping in of the entire family of the accused cannot be ruled out. On one side, the deceased and P.W.1 were residing as one family, whereas these two accused were residing separately. The dispute was in respect of the ancestral property. Therefore, the possibility of P.W.1 to rope in both the accused to wreak vengeance cannot



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be ruled out at any rate. In our considered view, it is too difficult to act solely upon the uncorroborated testimony of P.W.1 alone. Therefore, we find it difficult to sustain the conviction. We hold that the prosecution has failed to prove the case beyond reasonable doubt.

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

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

gms

To

1. The Judicial Magistrate-I, Udumalpet.
 2. -do- Thro the Chief Judicial Magistrate Coimbatore.
 3. First Additional District and Sessions Judge,
The Sessions Judge, Bomb Blast Cases, Coimbatore (FAC).
 4. The Principal Sessions Judge, Coimbatore.
 5. The Superintendent Central Prison, Coimbatore.
 6. Inspector of Police
Udumalpet Police Station,
Tiruppur District.
 7. The District Collector, Tiruppur.
 8. The Director General of Police Mylapore Chennai.
 9. The Public Prosecutor
High Court, Chennai.
- + 1 cc to MR.K. Selvakumarasami, Advocate sr.8989

CrI.A.No.61 of 2012

TEJ(CO)
Eu 01.03.16