



BAIL SLIP

The Appellants/Accused were directed to be released on bail in and by the Order of this Court dated 01.07.2015 and 22.12.2015 passed in M.P.Nos.1 & 3 of 2015 respectively in CrI.A.No.62 of 2012 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Criminal Appeal No.62 of 2012

1.Jothi Basu
2.Lenin

... Appellants

-Vs-

The State by Inspector of Police
Myladuthurai Police Station
Nagapattinam District
Crime No.92 of 2008.

... Respondent

This Criminal Appeal has been preferred under Section 374(2) of the Cr.P.C to set aside the conviction and sentence passed in S.C.No.225 of 2008 by the Hon'ble District and Sessions Judge, Nagapattinam District dated 14.11.2011.

For Appellants : Mr.Dalit Tiger C.Ponnusamy

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 have been convicted under Sections 342 and 302 r/w 34 IPC and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/- each, in default to undergo simple imprisonment for two months for offence under Section 342 IPC and to undergo imprisonment for life and to pay a fine of Rs.5,000/- each, in default to undergo simple imprisonment for three years under Section 302 r/w 34 IPC.



Originally, including these appellants, there were four accused. One Manoharan and Stalin, who were arrayed as the accused 1 and 3, died before the committal of the case to the Court of Sessions for trial. The appellants who were the accused 2 and 4 were re-arrayed as the accused 1 and 2 by the trial Court. Challenging the said conviction and sentence imposed by the learned Sessions Judge, Nagapattinam in S.C.No.225 of 2008, the accused/appellants are before this Court with these appeals.

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

[a] The second appellant Lenin and the deceased accused Manoharan and Stalin were brothers. The first appellant is their relative. The deceased in this case was one Ayyapillai. He was a resident of Sitharkadu Village. One Soundararajan was residing in the house opposite to the house of the deceased. He had a daughter by name Sathyavani. Sathyavani was already married, but deserted her husband and re-married one Kennedy. She deserted Kennedy also. After that, it is alleged that she developed illicit intimacy with one Kamalakannan. Kamalakannan is closely related to the deceased. The deceased therefore, wanted to put an end to the said relationship between Kamalakannan and Sathyavani. Some time before this occurrence, the deceased and his brother-in-law Kalaivanan had gone to the house of Sathyavani and informed her family members to advise her, to disconnect her relationship with Kamalakannan. This resulted in a quarrel. The accused Manoharan, Stalin and Lenin are the sons of Soundararajan.

[b] Subsequent to the above quarrel, it is alleged that these accused Lenin, Stalin, Manoharan and one Ramki had cut the brother of P.W.1, namely the brother-in-law of the deceased. In retaliation, the people belonging to deceased party had attacked the house of the accused and caused extensive damage. Because of these events, there was enmity between the two families. This is stated to be the motive for the occurrence.

[c] On 18.01.2008, at about 2.30 p.m., P.W.1 and the deceased wanted to go to the School where the daughter of the co-brother of the deceased was studying. P.W.1 and the deceased were therefore waiting in the bus stop near Anna Kalyanamandapam at Sitharkaadu village. At that time, suddenly, all the four accused emerged there with weapons. The deceased accused Stalin and the second appellant Lenin surrounded the deceased and caught him hold. The first appellant/Jothibas, with an aruval cut the deceased on his neck, head, face and other parts of the body. The deceased accused Manoharan stabbed the deceased with a knife on his chest. The deceased fell down in a pool of blood. All the accused fled away from the scene of occurrence. The deceased succumbed to the injuries instantaneously.

[d] This occurrence was witnessed by P.W.2, who is the sister's son of the deceased. At about 2.30 p.m., on



18.01.2008, when the Inspector of Police, [P.W.7] Myladuthurai Police Station was in the police station, somebody spoke to the Police Station over telephone and informed about the occurrence. Immediately, P.W.7 rushed to the place of occurrence. He found the deceased already dead and P.W.1 was available at the place of occurrence. He recorded the statement of P.W.1, returned to the police station and registered a case in Cr.No.92 of 2008 under Section 302 IPC. Ex.P1 is the complaint made by P.W.1 and Ex.P7 is the FIR. He forwarded both the documents to Court, which were received by the Judicial Magistrate at 7.00 p.m. on 18.01.2008.

[e] P.W.7 took up the case for investigation. He prepared an Observation Mahazar and a Rough Sketch at the place of occurrence. Then, he recovered blood stained earth and sample earth from the place of occurrence in the presence of P.W.4 and another witness. Then, he conducted inquest on the body of the deceased and forwarded the same for post-mortem. P.W.3 Dr.Sivakumar conducted autopsy on the body of the deceased on 19.01.2008 at 10.15 a.m. He found the following injuries:

"External injuries:

A cut injury obliquely accorsed 5 cms x 1 cms spindle shaped. Edges are regular. Hairs across the edge were also clean cut. Skull bone was seen through the wound.

2.Cut injury 5 x 1 cms from external nares to the chin cutting across the lips also.

3.Horizontal cut injury across the front of the neck for a length of 10cms width was 10cms in the middle.

4.Oblique cut injury across the right side of neck extending from just below the air to the supras terminal notch. Length 10cms. Morgines were regular with gaping in the middle.

5.A punctured wound over the left side of abdomen just below the costal margin 5 x 1.5 cms depth 10cms."

Ex.P.3 is the Post-mortem Certificate. He gave opinion that the death was due to shock and haemorrhage due to the injuries. He further opined that the injury - 4 was sufficient to cause the death of the deceased.

[f] P.W.7 arrested the deceased accused Manoharan on 23.01.2008 in the presence of witnesses. On such arrest, he disclosed the place where he had hidden the aruval. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the aruval [M.O.1]. On 07.02.2008, P.W.7 arrested the first appellant/Jothibas and



sent him for judicial remand and on his request, the material objects were sent for chemical examination. The chemical examination report revealed that there was human blood of "A" group in all the material objects, including the bill hook recovered from the first accused. On completing the investigation, P.W.7 laid charge sheet against all the four accused.

[g] As we have already mentioned, the accused Manoharan and Stalin died before trial. Thus, these two appellants alone faced the trial. In order to prove the charges, on the side of the prosecution, as many as 7 witnesses were examined and 14 documents were exhibited, besides 9 Material Objects.

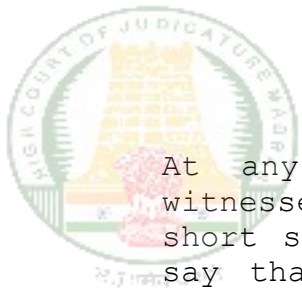
3. Out of the said witnesses, P.Ws.1 and 2 are the eye witnesses to the occurrence, who have spoken about the entire occurrence. P.W.3 has spoken about the post-mortem conducted and P.W.4 has spoken about the preparation of the Observation Mahazar, Rough Sketch and recovery of the material objects from the place of occurrence. P.Ws.5 and 6 are the police constables, who carried the dead body for post-mortem and FIR to the Court. P.W.7 has spoken about the registration of the case and investigation done by him.

4. 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.

5. Having considered all the above, the trial Court convicted both 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.

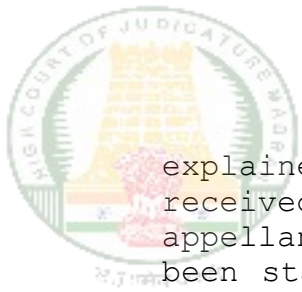
6. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. The learned counsel for the appellants would submit that P.Ws.1 and 2 would not have been present at the time of occurrence at all and therefore, their evidence should be rejected. In this regard, we have considered the evidence of P.Ws.1 and 2 who have stated that they were at the bus stand only by chance. As a matter of fact, P.W.1 has stated that she was waiting at the bus stop along with the deceased waiting for the bus. P.W.2 has stated that he was standing near the STD booth near the Kalayanamandapam. He has not explained as to what made him to be present at the time of occurrence by chance.



At any rate, these two witnesses are admittedly inimical witnesses and also interested witnesses. It is not on this short score that their evidences are to be discarded. We only say that their evidence requires close scrutiny. Keeping in mind, the said settled position of law, let us now go into the evidence of P.Ws.1 and 2. P.W.1 has stated that at the place of occurrence, the deceased accused Stalin and the second appellant herein caught hold of the deceased and the deceased accused Manoharan stabbed him with knife. She has not stated anything about the first appellant. But, P.W.2 has stated that the first appellant attacked the deceased with aruval on his head and neck. Had it been true that the first appellant was present and he attacked the deceased with aruval, P.W.1 would not have omitted to state the same. This material contradiction between the evidence of P.Ws.1 and 2 has not been explained by the prosecution. According to the evidence of P.W.1, all the injuries on the deceased were caused only by the deceased accused Manoharan and the first appellant had nothing to do with any of the injuries on the deceased. Thus, there is a doubt as to whether the first appellant would have participated in the occurrence and caused any injuries on the deceased at all. So far as the second appellant is concerned, P.W.1 has stated that the second appellant along with the deceased accused Stalin caught hold the deceased to facilitate the deceased accused Manoharan to stab him. But, P.W.2 has stated that the second appellant and the deceased accused Stalin only surrounded the deceased and he has not stated that this accused caught him hold. This contradiction also has not been explained by the prosecution.

8. In the background of these major contradictions between the evidence of P.Ws.1 and 2, let us now look into the FIR. According to P.W.7, he received information over phone regarding the occurrence and then, he went to the place of occurrence, obtained Ex.P1 statement from P.W.1 and registered the case. It is not known as to what was the earliest information to P.W.7 over phone. It is not even explained to the Court, as to whether it was only a cryptic information or a detailed information. Had it been a cryptic information and had it been the case that the informant had not disclosed his identity, P.W.7 would have made entry of the same in the General Diary and then, he would have gone to the place of occurrence to obtain an authenticated information. P.W.7 has not at all stated whether he made any such entry in the General Diary at all. Had it been a detailed information regarding the occurrence and if the informant's identity had also been disclosed over phone, that information would have been the basis for registration of the case and the present Ex.P1 cannot be admitted in evidence, as the same is hit by Section 162 Cr.P.C. Thus, it is not



explained to the Court as to what was the earliest information received by P.W.7 over phone. The learned counsel for the appellants would submit that in that information, it would have been stated that the dead body was found there and identity was not even known. In order to ascertain the nature of the said information, the prosecution ought to have produced the General Diary. Strangely, in this case, P.W.7 has not even stated as to whether he made any such entry in the General Diary. Thus, we find force in the argument of the learned counsel that the earliest information in this case has been suppressed. This also creates enormous doubt in the case of the prosecution.

9. P.W.1 has admitted that there were a number of persons who were independent, present at the place of occurrence. But, no independent witness has been examined by the prosecution at all. As we have already pointed out, the presence of P.Ws.1 and 2 is also doubtful, more particularly, the presence of P.W.2 cannot be believed, for, he has not explained to the Court as to what made him to be present at the crucial time at the place of occurrence. In the light of the major contradictions about which we have discussed elaborately hereinabove and the suppression of the earliest information to P.W.7 assumes much importance and it adds more doubt in the case of the prosecution.

10. In view of the said doubts which are very reasonable, we find that it is not safe to sustain the conviction of these appellants acting on the evidence of P.Ws.1 and 2 alone. In view of the same, we hold that the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellants are entitled to acquittal.

In the result, the appeal is allowed and the conviction and sentence imposed on the appellants/accused 1 and 2 by the trial Court are set aside and both the accused are acquitted of all the charges. The fine amount, if any paid by the accused, shall be refunded to them.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

gms



To

- 1.The Inspector of Police
Myladuthurai Police Station
Nagapattinam District
- 2.The District and Sessions Judge,
Nagapattinam District.
- 3.The Judicial Magistrate No.I,
Mayiladuthurai.
- 4.Through The Chief Judicial Magistrate,
Nagapattinam.
- 5.The Public Prosecutor
High Court, Chennai.

Copy To

The Section Officer,
Criminal Section(Records),
High Court, Madras.

+1cc to Mr.Dalit Tiger C.Ponnusamy, Advocate, S.R.No.11210

Cr1.A.No.62 of 2012

LRS (CO)
CA(04/04/2016)