

BAIL SLIP

The Appellants/Accused No.1 & 2, Viz., 1.Perumal, aged about 50 Years, S/o.Thukkan, 2.Alamelu, aged about 40 Years, W/o.Perumal, directed to released on bail as per order dated 25.04.2013 made in CrI.M.P.1 of 2013 in CrI.A.No.305 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2016

CORAM

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

CRL.A.No.305 of 2013

1.Perumal
2.Alamelu

... Appellants/A1 & A2

Versus

The State represented by
The Inspector of Police
Thiruppathur Taluk Police Station
Vellore District.

... Respondent/Complainant

Appeal filed under section 374 [2] Cr.P.C., against the judgment of the learned III Additional Sessions Judge, Thiruppathur, Vellore District, in SC.No.172/2012 dated 10.04.2013.

For Appellants : Mr.V.Paarthiban for
Mr.E.Kannadasan

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

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JUDGMENT

[Judgment of the Court was delivered by S. NAGAMUTHU, J,]

The appellants are arrayed as A1 and A2 in SC.No.172/2012 on the file of the learned III Additional Sessions Judge, Vellore at Thirupathur. A1 stood charged for the offences u/s.302, 323 and 506[ii] IPC and A2 stood charged for the offences u/s.302 and 323 IPC. By judgment dated 10.04.2013, the Trial Court

convicted A1 for the offence u/s.302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5000/-, in default, to undergo simple imprisonment for three months ; u/s.323 IPC and sentenced him to undergo simple imprisonment for three months and u/s.506[iii] IPC and sentenced him to undergo rigorous imprisonment for three years. The Trial Court also convicted A2 for the offence u/s.302 IPC and sentenced her to undergo imprisonment for life and to pay a fine of Rs.5000/-, in default, to undergo simple imprisonment for three months ; and u/s.323 IPC and sentenced her to undergo simple imprisonment for three months. Challenging the said conviction and sentence, the appellants/A1 and A2 are before this Court with this appeal.

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

[A] The accused are husband and wife respectively. The deceased one Mr.Govindan, was the brother of A1. For quite some time, there was enmity between A1 and the deceased, on account of the dispute relating to a land. On 08.12.2011, at about 16.30 hrs., it is alleged that when the deceased was proceeding from Kollaikottai to Puliur, and when he was nearing the land of one Mr.Lakshmana Thukkan, A1 and A2, suddenly emerged there, armed with aruvals. P.W.1-Nachi, the wife of the deceased was accompanying him. Both the accused cut the deceased indiscriminately. When P.W.1 intercepted to rescue the deceased, A1 attacked her with hands and A2 kicked her with legs. They also criminally intimidated P.W.1. The deceased died on the spot. P.W.1 went and informed her daughters. P.W.4, the son-in-law of the deceased, on hearing the information, went to the place of occurrence. Then, P.W.1 went to the Thiruppathur Taluk Police Station and made a complaint under Ex.P.1 on 08.12.2011 at 21.00 hrs.

[B] P.W.15, the then Special Sub-Inspector of Police attached to Thirupathur Taluk Police Station, during the relevant point of time, on receipt of the complaint under Ex.P.1, registered a case in Cr.No.801/2011 for the offences u/s.302, 323 and 506[iii] IPC at 21.00 hrs. on 08.11.2011. Ex.P.14 is the printed First Information Report. He forwarded both the documents, viz., Complaint-Ex.P.1 and the Printed FIR-Ex.P.14, to the Court and to his higher officials. The said documents were received by the learned Judicial Magistrate concerned at 05.30 hrs on 09.12.2011.

[C] Taking up the case for investigation, P.W.16, the then Inspector of Police attached to the said Police Station, went to the place of occurrence at 06.00 hrs. on 09.12.2011 and prepared the Observation Mahazar [Ex.P.15] and a Rough Sketch [Ex.P.16] in the presence of P.W.8 and another witness. He

recovered the blood-stained earth [M.O.3] ; the sample earth [M.O.4] ; and a blood stained saree [M.O.5] from the scene of crime, under the cover of Mahazar [Ex.P.17]. Thereafter, he went to the Government Hospital at Thirupathur, where the dead body of the deceased was kept and held inquest on the dead body of the deceased in the presence of the Panchayatdars and the said witnesses and prepared the Inquest Report [Ex.P.18]. Then he forwarded the body of the deceased for postmortem through one Mahendran, Head Constable attached to the said police station.

[D] P.W.13-Dr.Sivakumar, the Assistant Surgeon attached to the Government Hospital at Thiruppathur, at the relevant point of time, conducted the autopsy on the body of the deceased on 09.12.2011 at 13.00 hrs. He found the following injuries:-

"External Injuries:-

- [1]De-arranged facial skeleton and skull.
- [2]Sharp cut injury which runs deep into brain with 16x4x2cm.
- [3]Diffused swelling on the left side face with unstable mandible.
- [4]Abrasion front chest, abdomen and both flanks except in the auxilla.
- [5]Incised wound about 3 in numbers in left side of chest about 2x1x1cm.
- [6]Lacerated wound on the right ear lobule.
- [7]Depressed skull on right tempero frontal region.

On Dissection:-

Brain matter out of skull on left side. Hyoid fractured with contusion nect and blood clot. Heart:-empty. Lungs:-congested. Stomach:-contains rice material. Intestines:-gas filled. Liver, Spleen, Kidneys:-Congested, normal. Hyoid sent for forensic analysis. Stomach with contents, small intestine, liver, kidneys sent for chemical analysis."

Ex.P.12 is the Postmortem Certificate. He gave the opinion that the death was due to shock and hemorrhage due to the head injury.

[E] P.W.1, who had sustained injury, had been taken to the Government Hospital, Thiruppathur. P.W.12, the Assistant Surgeon attached to the Government Hospital, Thiruppathur, examined her on 08.12.2011 at 21.30 hrs. P.W.1 told him that at 16.30 hrs., on the same day, she was attacked by two male and one female with hands. There were no external injuries found on the body of P.W.1. She only complained of pain. Ex.P.11 is the Accident Register of P.W.1.

[F] Continuing the investigation, P.W.16, recovered blood-stained lungi [M.O.6] and blood stained trouser [M.O.7] under a cover of Mahazar. He also examined P.Ws.1 to 5 and 9 and recorded their statements. On 09.12.2011, at about 14.00 hrs. he arrested A2 near Pudurnadu Bus Stand in the presence of P.W.8 and another witness. On such arrest, A2 came forward to give a voluntary confession statement in the presence of the said witnesses. In the said confession, she disclosed the place where she had hidden the aruvals. In pursuance of the said disclosure statement, she took the police and the witnesses to the place of hide out, viz., to her house, and produced M.O.1-vettu aruval ; M.O.2-Aruval, which were recovered under the cover of Mahazar [Ex.P.20] and on returning to the Police Station, P.W.16 forwarded A2 to the Court for judicial remand and also handed over the material objects under Form 95. During the course of investigation, P.W.16 came to know that A1 was undergoing treatment in the Government Hospital at Thiruppathur. He made formal arrest of A1 in the said hospital itself and later, he was remanded to judicial custody by the Court. In respect of the injuries sustained by A1, P.W.16 registered a case in Cr.No.802/2011 for the offence u/s.307 IPC. On completion of the investigation, P.W.16 laid charge-sheets in both the cases, viz., in Cr.Nos.801/2011 and 802/2011.

[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 16 witnesses were examined, 25 documents and 7 material objects were also marked.

[H] Out of the said witnesses, P.W.1 is the only eyewitness to the occurrence and she is also an injured eyewitness. She has vividly spoken about the injuries caused on the deceased as well as on her by these two accused. P.W.2 is the son of the deceased and he has spoken about the motive. He has further stated that he heard about the occurrence later on and went to the place of occurrence. P.W.3 is yet another son of the deceased. He has also spoken about the motive. P.W.4 is the son-in-law of the deceased, who had stated that on hearing about the occurrence, he went to the place of occurrence and took P.W.1 to the Police Station for making a complaint. P.W.5 is yet another son-in-law of the deceased and he has spoken about the hearsay information about the occurrence. P.W.6 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. P.W.7 has also spoken about the same facts. P.W.8 has spoken about the arrest of A2 and the consequential recovery of M.Os.1 and 2 [aruvals] on her disclosure statement. P.W.9 has spoken again about the motive.

P.W.10 is the daughter of the deceased. She has also spoken about the motive. P.W.11 has spoken about the Chemical Analysis conducted by him on the properties. P.W.12 has spoken about the treatment given to P.W.1 on 08.12.2011 at 21.30 hrs. P.W.13 has spoken about the postmortem conducted on the dead body of the deceased and his final opinion regarding cause of death. P.W.14 has spoken about the fact that he examined the Hyoid Bone of the deceased and it revealed that there is no fracture. P.W.15 has spoken about the registration of the case on the complaint of P.W.1. P.W.16 has spoken about the investigation done by him in the case in Cr.No.801/2011 [arraying the appellants herein as the accused] and in the counter-case in Cr.No.802/2011 [arraying P.Ws.2 and 3 as the accused] and filing of the final reports in both the cases.

3. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness on their side nor marked any document.

4. Having considered all the above, the Trial Court convicted and sentenced them as detailed in the first paragraph of this judgment. Challenging the said conviction and sentence, the appellants/accused are before this Court.

5. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6. In this case, the prosecution relies only on the evidence of P.W.1, who claims to be an injured eyewitness. But, according to the doctor [P.W.12], there were no injuries found on her. She had complained of pain on her body. Further, the occurrence had taken place at a lonely place. Thus, the presence of P.W.1 itself is doubtful. Assuming that she was present at the place of occurrence, her evidence deserves rejection for more than one reason. It is the positive case of the prosecution that in the very same occurrence, A1 sustained serious injuries and few injuries were grievous in nature. In respect of the injuries sustained by A1, a case was registered in Cr.No.802/2011 for the offence u/s.307 IPC. P.Ws.2 and 3 are the accused in the said case. On completing the investigation, P.W.16 laid charge sheet against P.Ws.2 and 3 in the said case for the offence u/s.307 IPC. The trial went on against them. But, unfortunately, neither the Wound Certificate of A1 nor the treatment records have been produced as evidence in this case. Neither the doctor who treated A1 was examined. Apart from that, the records pertaining to the counter-case in

Cr.No.802/2011 have not been produced as evidence in this case. P.W.1 has not explained the injuries sustained by A1. It is not as if A1 had sustained minor injuries, which could have been unnoticed by P.W.1. A1 had sustained grievous injuries and the attempt made on him was murderous one and that is why, charge-sheet was laid against P.Ws.2 and 3 for the offence u/s.307 IPC. It is not explained to the Court as to why the counter-case details have been completely suppressed in the present case. In view of the fact that the grievous hurts sustained by A1 have not been explained by the prosecution, it is inferable, as laid down by the Hon'ble Apex Court in LAKSHMI SINGH AND OTHERS Vs. STATE OF BIHAR, reported in 1976 [4] SCC 394, that the prosecution has not come forward with true version and the prosecution has suppressed the material documents and evidences in this case. In Lakshmi Singh's case, in an identical situation, the Hon'ble Supreme Court has held as follows:-

"12.....It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the court can draw the following inferences :

- (1)that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version ;
- (2)that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable ;
- (3)that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case."

Applying the same yardstick to the facts of the present case, acting on the evidence of P.W.1, whose presence itself is doubtful and in the light of the suppression of the material facts, it is not safe to sustain the conviction of these two accused. In our considered view, the true version of the occurrence has not been placed before this Court by the prosecution. In such view of the matter, the appellants/A1 and A2 are entitled for acquittal.

8. In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellants by the Trial Court for the aforesaid offences, in SC.No.172/2012, vide judgment dated 10.04.2013, are hereby set aside and the appellants/A1 and A2 are acquitted of the charges leveled

against them. Since it is reported that the appellants/A1 and A2 are on bail, the bail bonds executed by them, shall stand discharged. Fine amounts if any paid, shall be refunded to the appellants.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Principal Sessions Judge,
Vellore.
2. The III Additional Sessions Judge
Vellore at Thiruppathur.
3. The Judicial Magistrate No.II,
Thiruppathur.
4. The Chief Judicial Magistrate,
Vellore.
5. The Superintendent
Special Prison for Women,
Vellore.
6. The Superintendent,
Central Prison, Vellore.
7. The Inspector of Police
Thiruppathur Taluk Police Station
Vellore District.
8. The Public Prosecutor
High Court, Chennai.
9. The Superintendent of Police,
Vellore.

+1cc to Mr.E.Kannadasan, Advocate, S.R.No.21866

CRL.A.No.305 of 2013

VGI (CO)
CA(26/04/2016)