

BAIL SLIP

The Appellant herein/Accused viz., Idumban was Released on Bail Dated 25.11.2013 and made in CRL.MP.NO.1/2013 IN WA.NO.328/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.328/2013

Idumban

..Appellant/A1

Vs.

State by the Inspector of Police,
Omalur Police Station,
Salem District.

..Respondent/Complainant

Appeal filed u/s.374 Cr.P.C., against the judgment passed in SC.No.212/2012 dated 10.04.2012 by the learned I Additional District and Sessions Judge, Salem.

For Appellant : Mr.A.Natarajan, Senior Counsel for
M/s.A.Madhumathi

For Respondent : Mr.M.Maharaja
Addl. Public Prosecutor

JUDGMENT

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

The appellant is the first accused in SC.No.212/2012 on the file of the learned I Additional District and Sessions Judge, Salem. There were three other accused in the case, viz., A2 to A4, who are the sons of the appellant herein. All the four accused stood charged for the offences u/s.302 r/w 34 IPC and A1 alone stood further charged for the offence u/s.323 IPC. By the Judgment dated 10.04.2013, the Trial Court acquitted A2 to A4 and convicted the appellant/A1 alone u/s.302 IPC and acquitted him from the charge u/s.323 IPC and sentenced

him to undergo imprisonment for life and to pay a fine of Rs.5000/-, in default, to undergo simple imprisonment for one year. Challenging the said conviction and sentence, the appellant/A1 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 Venkatachalam. P.W.1 is his wife. P.Ws.2 and 3 are the sons of the deceased and P.W.1. P.W.4 is the daughter-in-law of the deceased / wife of P.W.2 and P.W.5 is the son-in-law of the deceased. The petitioner and P.W.1 were residing at Kamalapuram Periyakoundanur Kaatuvalavu village in Omalur Taluk. The accused party also belonged to the same village. There was a common well for the accused party as well as to the deceased party. They also had lands adjacent to the lands of each other.

[b] It is alleged that on 13.11.2009 at about 4.00 p.m., the goats belonging to the accused, had gone into the field of the deceased. On seeing the goats grazing in the field, P.W.1 [wife of the deceased] shouted at all the four accused for the same. In response to the same, A1/appellant herein abused her in filthy language. This infuriated the deceased to question him as to why he was using such abusive language. Immediately, it is stated that all the four accused had developed a common intention to kill the deceased instantaneously and in furtherance of the common intention, it is alleged that A1 took a crowbar and attacked the deceased on his forehead. It is further alleged that A2 to A4 attacked the deceased with their hands and legs. Then, it is also alleged that all the four accused pushed the deceased into the common well, referred to above. P.W.1 raised alarm. On hearing the alarm raised, P.Ws.2 to 5 rushed from their house to the place of occurrence. When they shouted, A1 kicked P.W.4 on her abdomen. Then all the four accused ran away from the scene of occurrence. A1 had taken the crowbar in his hands.

[c] Thereafter, P.Ws.1 to 5 lifted the deceased from out of the well and arranged for a vehicle and rushed the deceased to Manipal Hospital situate at Omalur-Salem Road. P.W.9-Dr.Devanthi, examined the deceased at 5.00 p.m. on 13.11.2009. At that time, the son of the deceased one Rajendran had informed her that the injured was attacked by three known persons with iron rod and he was pushed into the well. According to P.W.9, since the condition of the deceased was serious, the family members took him to Vinayaga Mission Hospital, for further treatment, without even obtaining permission from P.W.9, the doctor who examined the deceased at the earliest point of time. Ex.P.5 is the Case Sheet of the deceased given at Manipal Hospital. Since the health condition of the deceased was deteriorating at Vinayaga Mission Hospital

also, P.Ws.2 to 5 took the deceased to the Government Hospital, Salem.

[d] P.W.15-Dr.Sivakumar, who was on duty in the Casualty Department of the Government Hospital, Salem, examined the deceased at 00.00 hours on 13/14.11.2009. The son-in-law of the deceased, P.W. 5-Sekar, told the doctor that the deceased was attacked by four persons with a crowbar and threw him into the well. At that time, according to P.W.15, the deceased was unconscious. He admitted the deceased as an In-patient in the said hospital. Then, he gave intimation to the police about the same.

[e] P.W.4-Poongodi [daughter-in-law of the deceased] had gone to the Government Hospital, Omalur, on 14.11.2009 at about 9.30 a.m., for treatment and P.W.10-Dr.Padmalakshmi attached to the said Hospital examined P.W.4. At that time, the doctor was informed that P.W.4 was attacked by a known person on her stomach by kicking with legs at 4.00 p.m. on 13.11.2009. Ex.P.6 is the Accident Register in respect of P.W.4.

[f] On receiving the intimation from the hospital, P.W.11, the Head Constable attached to the Omalur Police Station rushed to the Government Hospital, Salem at 00.00 hours on 13/14.11.2009. Since the deceased was unconscious, he recorded the statement of P.W.1 at 01.00 hours on 14.11.2009 under Ex.P.1. On returning to the Police Station, he handed over the statements recorded in the hospital and the complaint under Ex.P.1 to P.W.12-Sub Inspector of Police attached to the said Police Station, who on receipt of the same, registered a case in Cr.No.1271/2009 for the offences u/s.294[B], 323, 307 IPC. Ex.P.7 is the printed FIR. She forwarded both the documents to Court and also sent the Xerox copies of the same to the higher officials for investigation. The complaint [Ex.P.1] and the FIR [Ex.P.7] was received by the learned Judicial Magistrate at 07.30 hours on 14.11.2009, though the FIR was registered at 03.00 hours on 14.11.2009.

[g] P.W.17, the then Inspector of Police attached to Omalur Police Station, received the Case Diary in respect of Cr.No.1271/2009 from P.W.14-the Sub Inspector of Police and took up the case for investigation. He proceeded to the place of occurrence and prepared Observation Mahazar [Ex.P.2] and a Rough Sketch [Ex.P.13] in the presence of P.W.6-Village Assistant and one Muthuramasamy, the Village Administrative Officer, under a cover of Mahazar and also examined the said witnesses and recorded their statements. In the meanwhile, the deceased who was taken to the Government Hospital, Coimbatore, died on 17.11.2009 at about 02.45 hours and on receipt of the Death Intimation [Ex.P.9], P.W.17 altered the case into one u/s.294[B], 323 and 302 IPC. The altered FIR is marked as

Ex.P.14 and the same was sent to the Court of Judicial Magistrate, Omalur. He also conducted inquest on the dead body of the deceased in the presence of panchayatdars and other witnesses under Ex.P.15-Inquest Report. He sent the dead body for postmortem.

[h] P.W.16, Dr.Jayasingh, who was the Professor as well as the Head of the Department of Forensic Science, at the Government Hospital, Salem, during the relevant point of time, on receipt of the requisition under Ex.P.9, conducted autopsy on the dead body of the deceased at 4.30 p.m. on 17.11.2009. She found the following injuries:-

"External Injuries:-

[1] Infected curved sutured laceration 6x2x1 cm noted on left forehead.

[2] Sutured laceration 3x1 cm noted on front of left knee, on dissection the underlying patella found fractured into multiple pieces and upper end of tibia found fractured with surrounding tissue contusion of variegated colour. Knee joint contains about 100 ml of altered fluid blood.

[3] Contusion 6x4x1 cm noted on back of left mid forearm.

[4] Abrasion with brownish scab 6x4 cm noted on left elbow and 30x4 cm noted on lateral aspect of left arm.

On dissection of Scalp, Skull and Dura:- Sub Scalpal Contusion of variegated colour 15x7 cm noted on left fronto temporo parietal region. Depressed fractured 4x3 cm noted on left frontal bone. A crack fracture 4 cm in length noted on left fronto parietal bone. Diffuse Epidural clot of variegated colour weighing about 50 grams noted on left frontal region. Laceration of brain with softening and pus material noted over an area of 15x10x4cm on right cerebral hemispheres.

OTHER FINDINGS:-

- Pleural and Peritoneal cavities : empty
- Lungs, cut section congested with patchy areas of consolidation in all lobes on both sides.
- Heart : Right side chambers contain few cc of

- fluid blood, left side chambers empty.
Coronaries Ptent
- Hyoid Bone : intact
 - Stomach contains about 120gms of greenish yellow coloured digested food material with few cooked rice particles, no specific smell, mucosa congested.
 - Small intestine contains about 20 ml of bile stain fluid. No specific smell, mucosa congested.
 - Liver, Spleen and Kidneys : cut section congested.
 - Urinary Bladder empty"

Ex.P.11 is the Postmortem Certificate and Ex.P.12 is the Final Opinion of the doctor regarding the cause of death. According to him, the death was due to shock and haemorrhage and due to cumulative effect of all the injuries.

[i] P.W.17, during the course of investigation, came to know all the four accused surrendered before the learned Judicial Magistrate No.3, Salem on 17.11.2009 and on the orders of the learned Magistrate, he took the police custody of the accused persons on 24.11.2009 and while in the police station, at about 17.30 hours, in the presence of P.W.7, A1 came forward to give a voluntary confession in which he disclosed the place where he had hidden the crowbar. The admissible portion of the said confession is marked as Ex.P.3. Pursuant to the same, A1 took the police and the witnesses to the said place and produced M.O.1-Crow Bar from the hideout. P.W.17 recovered the same under a cover of Mahazar [Ex.P.4]. On returning to the Police Station, he sent the accused persons for judicial remand and the material object for chemical analysis under Form 95 [Ex.P.19]. On completion of investigation, he laid charge-sheet against the accused.

[j] Based on the above materials, the Trial Court framed charges 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 17 witnesses were examined, 17 documents and 1 material object were also marked.

[k] Out of the said witnesses, P.W.1 is the sole eyewitness to the occurrence. P.Ws.2, 3, 4 and 5 have stated that on hearing the alarm raised by P.W.1, they rushed to the place of occurrence where they found all the four accused and when they questioned them, A1/appellant kicked P.W.4 on her abdomen. Thereafter, it is stated that they lifted the deceased from the well and took him to Manipal Hospital, from where, he was taken to Vinayaga Mission Hospital, from where he was taken to the Salem Government Hospital and finally to the Government

Hospital, Coimbatore, where he breathed his last. 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 spoken about the disclosure statement made by A1/appellant on 25.11.2009 at 6.30 a.m., and the recovery of M.O.1-Crowbar. P.W.8 is a relative of the deceased who has stated that he helped P.W.1 and others to lift the deceased from the well. P.W.9 has spoken about the treatment given to the deceased at Manipal Hospital, Omalur Taluk. P.W.10, Dr.Padmamakshmi has spoken about the treatment given to P.W.4 at the Government Hospital at Omalur. P.W.11 has stated that he went to the Hospital, recorded the statement of P.W.1 [Ex.P.1] and handed over the same to the Sub Inspector of Police, P.W.12. P.W.12 has spoken about the registration of the case on the basis of Ex.P.1. P.W.13, the then Head Constable attached to the Omalur Police Station has spoken about the handing over of the altered FIR to the learned Judicial Magistrate concerned on 17.11.2009 at 12.15 p.m. P.W.15 has spoken about the treatment given to the deceased at Salem Government Hospital. P.W.16-Dr.Jayasingh has spoken about the postmortem conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.17 has spoken about the investigation done by him and his filing of the final report.

3. When the above incriminating materials were put to the accused, they denied the same as false. Their defence was a total denial.

4. Having considered all the above, the Trial Court acquitted A2 to A4 from all the charges and acquitted A1 from the charge u/s.323 IPC and convicted A1, the appellant herein for the charge u/s.302 IPC. Challenging the said conviction and sentence, the appellant/A1 is before this Court.

5. We have heard Mr.A.Natarajan, learned Senior counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6. This is a case where the prosecution relies on the evidence of a solitary eyewitness, viz., P.W.1. Learned Senior Counsel for the appellant/A1 would submit that the said witness cannot be believed and her evidence is to be rejected. As rightly pointed out by him, the evidence of P.W.1 has been rejected by the Trial Court as against A2 to A4 and as against A1 in respect of the charge u/s.323 IPC. There has been no appeal preferred as against acquittal of A2 to A4 and the acquittal of A1 from the charge u/s.323 IPC. Thus, it is crystal clear that the evidence of P.W.1 is only partly believable.

7. Now, the presence of P.W.1 is seriously assailed by the learned Senior Counsel for the appellant. The occurrence had not taken place anywhere near the house of the deceased. It is the positive case of the prosecution itself that the occurrence has taken place in the garden which is situated at a considerable distance from the house of the deceased. P.W.1 claimed to have been present at the place of occurrence by chance along with her husband. She has got sufficient motive against the accused on account of the property dispute. Thus, she is not an independent witness ; but an enmical and interested witness. Since she also happened to be a chance witness, as per the settled law, her evidence requires close scrutiny. Keeping this in mind, let us now go into the evidence of P.W.1.

8. After the occurrence, the deceased was taken to Manipal Hospital where P.W.9 examined him. At that time, the doctor was informed that only "three" persons attacked the deceased with iron rods and pushed him into the well. This information was furnished to P.W.9 at 5.00 p.m. Thus, till 5.00 p.m. the number of assailants was only "three". Thereafter, he was taken to the Government Hospital at Salem. P.W.15, Dr.Sivakumar examined him at 00.00 hours on 13/14.11.2009. At that time, the deceased was unconscious. P.W.5 told the doctor that the deceased was attacked by "four" persons with crowbar and then, he was pushed into the well. Thus, within few hours, after the earlier statement, when a subsequent statement was made, the number of assailants swelled into "four". Thereafter, at 3.00 a.m. on 14.11.2009, when FIR was registered, again the number of assailants was shown as "four". It is not explained to the Court as to why the presence and participation of the 4th accused was not mentioned all through. Had it been true that the 4th accused had participated in the occurrence, by all means, it would have been told to P.W.9 that four persons participated in the occurrence and all the four attacked the deceased. Absolutely there is no explanation for the same.

9. Yet another point urged by the learned Senior Counsel for the appellant is that P.W.2 has admitted in the cross-examination that at 7.00 p.m. on 13.11.2009 itself, he along with another person by name Murugan had gone to Omalur Police Station and made a complaint and that complaint has been suppressed. The FIR in this case was registered only at 3.00 a.m. on 14.11.2009. It is not explained to the Court as to what had happened to the complaint which was given in writing by P.W.2 at Omalur Police Station. It is not known as to how many persons had been arrayed as accused in the said complaint by P.W.2.

10. Next the learned Senior Counsel for the appellant would point out that though it is the case of the prosecution that on

25.11.2009 after the accused was taken into police custody and on the disclosure statement made by A1, M.O.1-Crowbar was recovered, P.W.1 has admitted in the cross-examination that on 14.11.2009 itself, the crowbar was shown to her while she was examined by the Inspector of Police. This would again falsify the theory that A1 gave a disclosure statement out of which the crowbar was recovered.

11. From the foregoing discussion, it is crystal clear that there are lot of doubts surrounding the evidence of the solitary eyewitness, viz., P.W.1 who also happens to be the interested, enmical and a chance witness. At this juncture, it may be useful to refer to the judgment of the Hon'ble Apex Court in Vadivelu Thevar Vs. State of Madras reported in AIR 1957 SC 614, wherein the Hon'ble Apex Court has held that if a witness happened to be partly believable and partly unbelievable, as a rule of caution, the Court will look for corroboration and if there is no corroboration, it would not be safe to act upon such uncorroborated testimony of the solitary witness. In the instant case, as we have already pointed out, the evidence of P.W.1 does not drawn corroboration of material particulars from any other source. Instead, there are lot of doubts in the evidence of P.W.1 as at every stage, there had been an attempt to increase the number of accused and also because the complaint made by P.W.2 at 7.00 p.m. on 13.11.2009, has been suppressed. Thus, in our considered view, the evidence of P.W.1 does not inspire confidence of this Court at all. Above, all the evidence of P.W.1 does not draw corroboration from any other source. For these reasons, we hold that the prosecution has failed to prove its case beyond reasonable doubt and that the appellant/A1 is entitled for acquittal.

12. In the result, the criminal appeal is allowed and the conviction and sentence imposed on the appellant u/s.302 IPC is set aside and he is acquitted of all the charges leveled against him. The bail bond, executed by him, shall stand terminated and fine amount, if any paid, shall be refunded to him.

AP

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

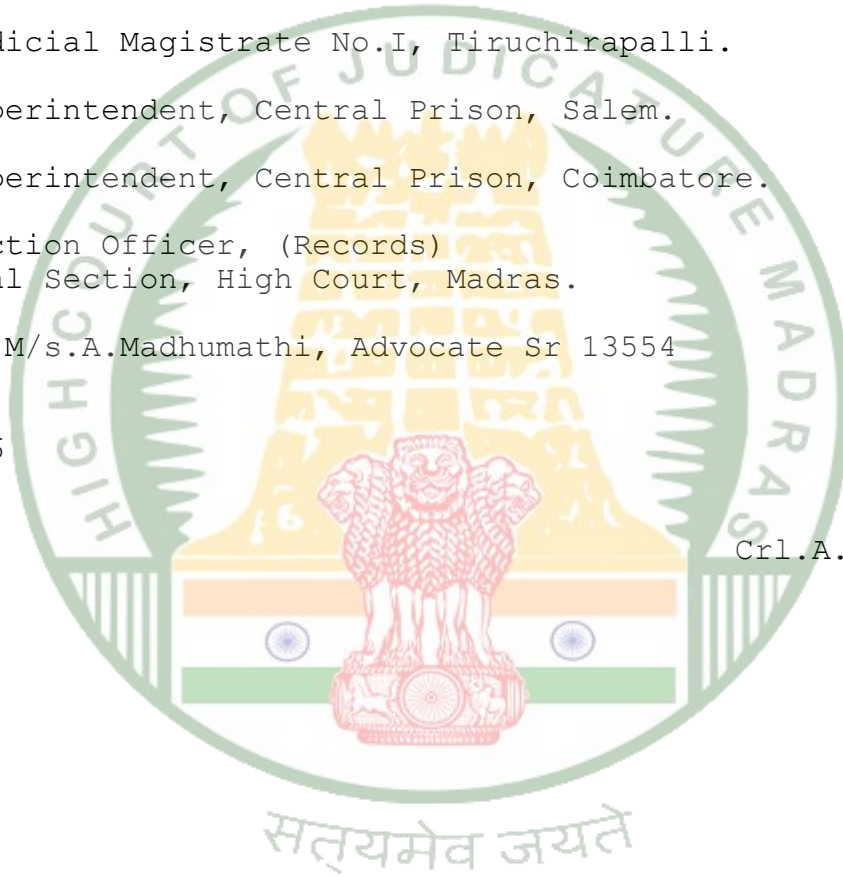
To

1.The Inspector of Police,
Omalar Police Station,
Salem District.

2. The I Additional District and Sessions Judge,
Salem.
3. The Judicial Magistrate,
Omalur, Salem District.
4. The Public Prosecutor,
High Court, Chennai.
5. The Chief Judicial Magistrate, Salem.
(For Information)
6. The Judicial Magistrate No.I, Tiruchirapalli.
7. The Superintendent, Central Prison, Salem.
8. The Superintendent, Central Prison, Coimbatore.
9. The Section Officer, (Records)
Criminal Section, High Court, Madras.
- + 1 cc to M/s.A.Madhumathi, Advocate Sr 13554

KR/18/3/16

Cr1.A.No.328/2013



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