

Bail Slip

The Substantive Sentence of imprisonment imposed on the Petitioners/Accused namely Sekar and Anbu, were suspended is pursuance of the Order of this Court made in M.P.1/08 in Crl.M.P.1/2012 in Crl.A.No.758 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.758 of 2012

1.

1.Sekar

2.Anbu

... Appellants

Vs

State rep. By Inspector of Police,
Tiruppur South Police Station,
Tiruppur District.
Crime No.285 of 2007

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the order of conviction dated 31.08.2012 passed in S.C.No.29 of 2010 on the file of the learned I Additional District Judge, Tiruppur and acquit the appellants.

For Appellant

: Mr.M.Sankar, for

Mr.P.Venkatasubramanian

For Respondent

: Mr.M.Maharaja,

Additional Public Prosecutor,

JUDGEMENT

(Judgment of the Court was delivered by S.Nagamuthu.J)

The appellants are the accused 1 and 2 in S.C.No.29 of 2010 on the file of the learned I Additional District Judge, Tiruppur. The trial Court framed as many as four charges. The first charge was against A.1 for offence under Section 307 I.P.C; the second charge was against A.2 under Section 307 r/w

34 I.P.C; the third charge was against A.1 under Section 302 I.P.C., and the fourth charge was against A.2 for offence Under Section 326 I.P.C. By judgment dated 31.08.2012, the trial Court convicted both the accused for offences under Sections 324 & 302 I.P.C., respectively. The trial Court sentenced A.1 to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months, for offence under Section 324 I.P.C; sentenced A.2 to undergo imprisonment for life and to pay a fine of Rs.2,000/- in default to undergo simple imprisonment for six months for offence under Section 302 I.P.C. The trial Court acquitted A.1 from the charge under Section 302 r/w 34 I.P.C., and acquitted A.2 from the charge under Section 307 r/w 34 I.P.C. Challenging the said conviction and sentence, the appellants/A.1 & A.2 are before this Court with this Criminal Appeal.

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

The deceased in this case was one Mr.Babu Raj. P.W.1 is his brother. On 24.04.2007, P.W.1 had gone to a wine shop known as "Padayapa Wine Shop" at K.V.R Nagar in Tirupur. One Mr.Mottai @ Tamilan Sakthivel had come to the said wine shop. Mr.Mottai @ Tamilan Sakthivel went near to P.W.1 and questioned him, as to why he had taken his bag. This resulted in a quarrel. P.W.1 attacked Mr.Mottai @ Tamilan Sakthivel with hands. Mr.Mottai @ Tamilan Sakthivel challenged P.W.1 that he would not leave him. Mr.Mottai @ Tamilan Sakthivel then left the place of occurrence. P.W.1 also returned to home. This is stated to be the motive for the occurrence.

3.On 29.04.2007, at about 9.00 pm, P.W.1 and his brother, the deceased Mr.Babu Raj, were walking on the main road at K.V.R.Nagar to answer the nature's call. When they were nearing the shop belonging to one Mrs.Palaniammal, Mr.Mottai @ Tamilan Sakthivel along with these two accused, suddenly, emerged in front of them. Mr.Mottai @ Tamilan Sakthivel, took out a knife from his waist and attacked P.W.1 and stabbed him on his stomach. The blow fell on the left side of the stomach resulting in a deep stab wound. A.1 took out a knife and caused a stab injury on the head of P.W.1. The deceased intercepted with an attempt to save P.W.1. A.2 took out a knife and stabbed the deceased on his chest. All the three assailants ran away from the scene of occurrence with weapons. P.W.1 and the deceased were immediately taken to the Government hospital, Tirupur, by the people who gathered there.

4.P.W.11 - Dr.Shivakuamr, examined P.W.1 at the Government Hospital, Tirupur on 29.04.2007 at 11.55. P.W.1 told P.W.11 that on the same day, at 9.00 pm, he was stabbed by a known person. P.W.11 found the following injuries on P.W.1:-

"1.Stab injury 2x5 cm x2cm over abdomen
6 cm from wound incise.

2.Stab injury - incised wound over head
2x1x5cm."

5.Ex.P.7 is the wound certificate of P.W.1. P.W.11 gave opinion that the injuries on P.W.1 would have been caused by a weapon like knife. The deceased was declared dead. P.W.1 undergone treatment as inpatient. Due intimation was given by the Hospital Authorities to the Police.

6.On receiving the said intimation, P.W.14, the then Sub Inspector of Police of Tirupur South Police Station, reached the hospital and recorded the statement of P.W.1 under Ex.P.1. On returning to the Police Station, at 1.00 am on 30.04.2007, he registered a case in Crime No.255/2007 for offence under Sections 307 & 302 I.P.C. Ex.P.10 is the F.I.R. He forwarded both the documents (Ex.P.1 and Ex.P.10) to Court and the same were received by the learned Judicial Magistrate at 8.30 am on 30.04.2007.

7.Thereafter, P.W.15, the then Inspector of Police took up the case for investigation. He proceeded to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of Mr.Raguvaran and Mr.Angappan. He recovered the blood stained earth and the sample earth from the place of occurrence under Ex.P.13 mahazar, in the presence of the same witnesses. On going over to the Government Hospital, Tiruppur, he conducted inquest on the body of the deceased in the mortuary and then, he forwarded the dead body for post mortem.

8.P.W.12 conducted autopsy on the body of the deceased at 4.00 pm on 30.04.2007. He found the following injuries:-

"External Injuries:-

- 1.Abrasions below the left eye 2cmx1cm
- 2.An abrasion on left cheek in front of the ear 2cm x 5cm
- 3.A stab injury 2cmx1cm elliptical size at right 6th costo chamber junction 17 cm below right stereo chamber junction at 18 cm above the umbilical region depth of the wound 1 cm below the skin level."

9.Ex.P.8 is the post mortem certificate. P.W.12 gave opinion that the death was due to shock and hemorrhage due to

the injuries. He further opined that the said injuries would have been caused by a weapon like knife (M.Os.1 to 3).

10.P.W.15 examined P.Ws.1 to 8 and few more other witnesses and recorded their statements. He recovered the blood stained cloth from the body of the deceased at 8.00 pm on 30.04.2007. He arrested Mr.Mottai @ Tamilan Sakthivel and A.1 at Palladam Road in the presence of P.W.9 and another witness. On such arrest, Mr.Mottai @ Tamilan Sakthivel gave a voluntary confession in which, he disclosed the place where he had hidden a knife. In pursuance of the same, he took the Police and witness to the place of hide out and produced the knife from a bush. On returning to the Police Station, P.W.15 forwarded both A.1 and the Mr.Mottai @ Tamilan Sakthivel (Juvenile) to the Court for judicial remand. The investigation was thereafter taken by P.W.17. On completing investigation, P.W.17 laid charge sheet against the accused.

11.Based on the above materials, the trial Court framed the 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 17 witnesses were examined and 17 documents were exhibited, besides 11 material objects.

12.Out of the said witnesses, P.W.1 is the injured eye witness. He has stated about the entire occurrence and he has also spoken about the complaint made by him to the Police. P.Ws.2 and 3 who were examined as eye witnesses have turned hostile and they have not supported the case of the prosecution in any manner. P.W.4 is the father of the deceased. He has spoken only on the hearsay information about the death of the deceased. P.W.5 is the wife of the deceased. The marriage between the deceased and P.W.5 was celebrated hardly one year before to the occurrence. She is not an eye witness to the occurrence however, she has stated that she found the dead body of the deceased in the hospital. P.W.6 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.7 is the mother of the deceased who has stated that on the day of occurrence, around 9.30 pm, P.W.1 and the deceased had gone out from their house for attending nature's call. P.W.8 has not stated anything incriminating against the accused. P.W.9 has spoken about the arrest of A.1 as well as the other accused Mr.Mottai @ Tamilan Sakthivel and the consequential recovery of the suri knife on the disclosure statement made by A.1. P.W.10 has also not stated anything incriminating against the accused. P.W.11 has stated about the treatment given by him to P.W.1. P.W.12 has spoken about the post mortem conducted by him on the

body of the deceased and his final opinion regarding the cause of death. P.W.13 is the Head Clerk of the learned Magistrate Court concerned and he has stated that he forwarded the Material Objects for chemical examination by an Expert on the orders of the Court, as requested by the Investigating Officer. P.W.14 has spoken about the registration of the case on the complaint of P.W.1. P.W.15 has spoken about the investigation done by him in this case. P.W.16 has spoken about the fact that he took the dead body of the deceased to the Government Hospital, Tirupur for post mortem, on the instruction of P.W.15. P.W.17 has spoken about the further investigation done by him and the final report filed.

13. 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 of the witnesses nor did they mark any documents on their side.

14. Having considered all the above, the trial Court found both the accused guilty under the said charges and accordingly sentenced them as detailed in the first paragraph of this judgment. Aggrieved over the same, the accused/appellants are before this Court with this appeal.

15. 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.

16. According to the final report filed by P.W.17, these two accused and one Mr. Mottai @ Tamilan Sakthivel were the assailants. It turned out that Mr. Mottai @ Tamilan Sakthivel was a juvenile and therefore, he was proceeded against before the Juvenile Justice Board. The appellants herein alone faced trial before the trial Court. Though, P.Ws. 2 & 3 were examined as eye witnesses, they have turned hostile and they have not supported the case of the prosecution in any manner. The prosecution relies only on the evidence of P.W.1 who also happens to be the injured eye witness.

17. The learned counsel for the appellants would submit that the evidence of P.W.1 cannot be believed, as he is an interested witness. We do not find any force at all in the said argument. There is no denial of the fact that in one and the same occurrence, in which, the deceased sustained injuries, P.W.1 also sustained injuries. Thus, the presence of P.W.1 at the

place of occurrence cannot be doubted at all. At the earliest point of time, in the complaint itself, P.W.1 has mentioned about the presence and participation of all the three accused including the juvenile delinquent. Though, P.W.1 has been extensively cross examined by the defence, we do not find any material at all so as to doubt the credibility of P.W.1. There was no delay in preferring the complaint and also in forwarding the same to Court. We find that there is truth in the allegations made by P.W.1 against the accused. At the earliest opportunity when P.W.1 was taken to the hospital, he had told the Doctor that he was stabbed by a known person with knife. This former statement also corroborates the present version as the medical evidence also fully corroborates the eye witness account of P.W.1.

18. The learned counsel for the appellants would further submit that it would not be safe to act upon the solitary evidence of P.W.1. In our considered view, as has been well settled, it is not the quantity of evidence that matters, but, it is only the quality. It is the settled law that if, the evidence of a solitary witness, inspires the fullest confidence of this Court, there is no legal impediment, to act upon the same so as to convict the accused. Here, in this case, the evidence of P.W.1 who is an injured eye witness, inspires the fullest confidence of this Court and the same has been fully corroborated by the medical evidence. In our considered view, the trial Court was right in holding that the injuries found on P.W.1 was either caused by A.1 or by the Juvenile and the injury on the deceased was caused by A.2.

19. Having appreciated the evidence let in, the trial Court had found that there was no common intention among the accused so as to invoke Section 34 of the Indian Penal Code. Though, we find that the very fact that all the three accused had gone to the place of occurrence, in search of P.W.1, with weapons and though, there are materials to prove that there was premeditation and pre-meeting of mind among all the accused, so as to satisfy the requirements of Section 34 I.P.C., the prosecution has not chosen to file any appeal against the judgment of the trial Court wherein, the trial Court had acquitted A.1 from the charge under Section 302 r/w 34 and A.2 for the charge under Section 307 r/w 34. Therefore, we are not in a position to reverse the said finding. As we have already pointed out, the trial Court convicted A.1 only for offence under Section 324 I.P.C., which in our considered view deserves to be confirmed. So far as A.2 is concerned, the trial Court convicted him for offence under Section 302 I.P.C., which also deserves to be confirmed.

20.Now, turning to the quantum of punishment, the trial Court has imposed only a minimum punishment which does not require any interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

21.In the result, the Criminal Appeal fails and accordingly, the same is dismissed. It is reported that the accused/appellants are in bail. The trial Court is directed to take steps to secure the presence of the accused/appellants to commit them to prison to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The I Additional District and Sessions Judge,
Tiruppur.
- 2.The Judicial Magistrate No.2,
Tiruppur.
- 3.The Chief Judicial Magistrate,
Tiruppur (for Information)
- 4.The Superintendent of Police,
Central Prison,
Coimbatore.
- 5.The Inspector of Police,
Tiruppur South Police Station,
Tiruppur District.
- 6.The Public Prosecutor,
High Court, Madras.

CrI.A.No.758 of 2012

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