

BAIL SLIP

The Appellant herein/Accused Viz Selvam S/o.Mani was directed to be released on bail as per order of the Court dated 04/7/2013 made in MP.No.1/13 in CrI.A.384/2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE P.KALAIYARASAN
CrI.A.No.384 of 2013

Selvam Appellant/Accused

Vs.

State rep. by
The Inspector of Police
Tiruppur North Police Station,
Tiruppur District.
Crime No.802/2011.Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, against the Judgment passed in S.C.No.78 of 2012, dated 29.11.2012, by the learned II Additional District and Sessions Judge, Tiruppur convicting the Appellant/Accused Under Section 302 IPC.

For Appellant : Mr.B.Kumaraswamy for
Mr.P.Kalimuthu

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

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JUDGMENT

(Judgement of the Court delivered by P.KALAIYARASAN, J)

This criminal appeal is against the Judgment, dated 29.11.2012 made in S.C.No.78 of 2012 on the file of the II Additional District and Sessions Judge, Tiruppur.

2. The sole accused is the appellant herein. The appellant / accused has been convicted by the trial court for the offence under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.500/-, in default to undergo Rigorous Imprisonment for three months. Challenging the said conviction and sentence, the accused has come forward with this appeal.

3. The brief facts leading to filing of the appeal are as follows :

(a) The deceased-Sankar Ganesh and the accused-Selvam were working in Baby Fashion Company in Tiruppur, owned by one Murugan, the brother of the accused. On the fateful day, i.e., on 31.01.2011, both the deceased and the accused stayed in the company. During midnight, at about 2 'O' clock, on 31.01/01.02.2011, the owner of the company, Mr.Murugan informed P.W.1, the father of the deceased over phone that the deceased was lying in the factory with bleeding injuries. He further told that the accused, who was also injured had been taken to the Hospital. P.W.1 along with his son, P.W.3, went to the scene of crime and saw Sankar Ganesh dead. He along with P.W.3 went to the police station and lodged complaint, Ex.P.1 at 5.30 a.m on 01.02.2011.

(b) P.W.18, Muthukumar, Sub-Inspector of Police, on receipt of the complaint registered FIR. P.W.20, the Inspector of Police took up the case for investigation, went to the scene of crime, prepared an observation mahazar in the presence of P.W.2 and P.W.6, and also drew a rough sketch. He held inquest in the presence of panchayatdars and also recovered blood stained foot mat, blood stained sample earth and blood stained scissor under a mahazar in the presence of same witnesses. After inquest, he sent the body of the deceased to the Government Hospital, through Head Constable for postmortem. P.W.19, Dr.Jaisingh, conducted autopsy on 01.02.2011 at 3.45 p.m and found the following injuries :

"1) Vertically oblique stab wound with lacerated margins noted over left side upper neck measuring about 2 x 1.5 x 8 cm depth. The blunt upper end is 2 cm below to the left ear lobe and the lower sharp end is 4 cm left to angle of mandible. On dissection the wound passes obliquely, downwards, medially piercing the underlying neck muscle, nerves and vessels, including the left carotid sheath and its content then piercing into the junction between the thyroid and cricoids cartilage and enter into the larynx. Blood clot 50 grams noted over the superficial and deep palms of the muscles. Hyoid bone intact.

2) A transverse stab wound noted over upper left posterior auricular region measuring about 4 x 1 x 7 cm. The medial sharp end is 0.5 cm back of left ear lobe and the lateral blunt end is 14 cm from the back of midline. On dissection the wound passes obliquely, downwards and backwards piercing the underlying muscles, vessels and nerves and ends the posterior aspect of neck muscles.

3) Stab wound 1.2 x 0.5 cm x bone deep noted over left mid parietal region. The lateral end is sharp and medial end is blunt. On dissection a depressed fracture measuring 1 x 0.5 cm x cavity deep noted on left mid parietal bone.

4) Stab wound 1.2 x 0.5 cm x bone deep noted over left anterior parietal region. The medial blunt end is 3 cm left to midline and the lateral sharp end is 11 cm above the left ear lobe. On dissection the wound passing inwards, downwards and fractured the underlying outer table of parietal bone.

5) Vertical oblique stab wound 2 x 0.5 cm x scalp deep noted over right mid parietal region. The upper sharp end is 2 cm right to midline and the lower blunt end is 3 cm right to midline."

(c) The Doctor also sent viscera and blood preserved for chemical analysis. After receiving the report, he finally opined that the deceased would appear to have died of multiple stab wounds and the death would have occurred 12 to 24 hours prior to autopsy. He also opined that the deceased consumed ethyl alcohol, prior to death and could have been under its influence.

(d) On 08.02.2011, the accused came with his friend, P.W.13, Sakthivel to the police station. The report given by Sakthivel, P.W.13 was received by the Inspector of Police and he in turn arrested the accused at 9.45 am. The Investigating Officer recorded the confession statement voluntarily given by the accused in the presence of P.W.15, Mr.Hari and another witness. The admissible portion of the confession statement, leading to recovery is Ex.P.10. Pursuant to the confession statement, the accused took the Investigating Officer and witnesses to a bush, near the scene of crime and took out the scissor, green colour shirt, plastic cover [M.Os.7 to 9] and handed over the same to the Investigating Officer, who in turn recovered the same in the presence of the same witnesses under mahazar, Ex.P.11. Then he sent the accused to the Court for remand. The properties recovered in this case were also sent to

the Court. As per the requisition of the Investigating Officer, the properties were sent for chemical examination by P.W.16, Head Clerk of the Judicial Magistrate Court.

(e) P.W.14, Director of Forensic Science of Coimbatore region, examined the properties and sent the report to the Court along with Serologist Report and Earth sample Report (Ex.P.6 to Ex.P.8). The Investigating Officer examined the witnesses and recorded their statements. His successor, P.W.21, continued the investigation and filed the final report.

4. During the course of trial, on the side of the prosecution, 21 witnesses were examined, 18 Exhibits and 12 Material Objects marked. The accused, while being questioned under Section 313 Cr.P.C, with reference to the incriminating materials, denied his complicity in the crime.

5. The Trial Court, after having considered the evidence, placed on record, concluded that the accused is liable to be convicted under Section 302 IPC and sentence thereunder. Hence, the appellant / accused is before this Court with this appeal.

6. Mr.B.Kumaraswamy, the learned counsel appearing for the appellant would contend that there is absolutely no evidence to link the accused with the crime. He further contends that the prosecution has suppressed the true version and that the prosecution case has to be thrown out for the reason that the injuries on the accused and the treatment he had as inpatient were not brought to light.

7. The learned Additional Public Prosecutor, per contra contends that the Chemical Examination Report and the Serologist Report, recording the presence of blood of the accused in the material objects do link the complicity of the accused with the crime.

8. We have given our anxious consideration to the rival contentions made by either side and perused the entire records.

9. The prosecution has established through the evidence of the Doctor, P.W.19, who conducted autopsy that the deceased had stab injuries and that those stab injuries could have been caused with the weapon like M.O.7, Scissor and that the death was caused due to multiple stab wound.

10. There is absolutely no ocular evidence in this case. P.W.1, father of the deceased, who lodged the complaint, went to the scene of crime, after getting information over phone from the owner of the company. When he had been to the scene of crime, he saw only the dead body of his son. P.W.3, the brother of the deceased, who went along with his father to the scene of

crime, wrote the complaint. Since occurrence took place inside the factory during night hours, there could not be any chance for any outsider or third person to witness the occurrence. Even the attempt of the prosecution to examine the persons, who were in neighbouring companies in the same building, to establish that the accused and the deceased were alone in that company became futile, as those witnesses turned hostile. P.W.13, the friend of the accused, whom extra judicial confession is alleged to have been given also turned hostile.

11. The available evidence to connect the accused with the crime is the admissible portion of the confession statement, leading to recovery of material objects and Serologist Report, disclosing the presence of blood group of the accused and the deceased in the blood stain, found on the scissors.

12. The evidence of P.W.14 along with reports, Ex.P.6 to Ex.P.8 depict the presence of human blood in the following material objects :

Blood stained mat (M.O.1)
& Red colour shirt (M.O.10) - Human blood "B" Group

Blood stained mat with human foot (M.O.2 series)
& Green colour shirt (M.O.8) - Human blood "A" Group

Scissor (M.O.6) wrapped handle
with cloth - Human blood "A" & "B" Group

13. The above material objects, except M.O.8 and M.O.10 were seized by the Investigating Officer from the scene of crime under mahazar, Ex.P.3. M.O.10, Red colour shirt was recovered from the body of the deceased after postmortem. The detection of deceased blood in the shirt (M.O.8) recovered from the accused and detection of blood of the deceased ("B" Group) along with ("A" Group) in the scissors, M.O.6 recovered from the scene of crime may be construed as material evidence to connect the accused with the crime.

14. This Court has to consider whether the conviction can be based on the above said factum, namely, connecting the accused with the crime through chemical examination report. No doubt, the prosecution should prove its case beyond all reasonable doubts and if any doubt arises, the benefit should go in favour of the accused.

15. In this case, the Investigating Officer, admits in his cross-examination that the accused was inpatient in CMC, Vellore, till he was arrested on 08.02.2011. The occurrence took place on 31.01.2011 midnight. Even as per Ex.P.1, complaint, the

accused had also had injuries. Thus, it is clear that the accused also sustained injuries during the occurrence and was treated as inpatient for about 8 days. The Investigating Officer further says that he could not get any statement from the accused in spite of his effort, as the accused was not conscious.

16. Learned counsel appearing for the appellant contents that the prosecution has not come out with the true version of the occurrence, by citing our Supreme Court decision in Lakshmi Singh v. State of Bihar, reported in (1976) 4 SCC 394. The Supreme Court, following the ratio in the decision of Mohar Rai v. State of Bihar, [(1968) 3 SCR 525], clearly observed as follows:

"This Court clearly pointed out that where the prosecution fails to explain the injuries on the accused, two results follow: (1) that the evidence of the prosecution witnesses is untrue; and (2) that the injuries probabalise the plea taken by the appellants.

...

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."

17. In the case on hand, though the accused sustained injuries in the occurrence and was treated as inpatient in a private hospital in unconscious state for about a week, the prosecution has suppressed the true version. Therefore, the prosecution version of the occurrence is highly doubtful. When the prosecution has suppressed the genesis and the origin of the occurrence, we are of the considered view that only because of the detection of blood group of the deceased in the shirt recovered from the accused and the blood group of the deceased with another blood group in a scissor, recovered from the scene of crime, culpability cannot be fastened on the accused, when there is reasonable doubt on the prosecution case.

18. In view of the foregoing discussion, we hold that the prosecution has failed to prove the case against the accused beyond all reasonable doubt and therefore, the accused is entitled for acquittal.

In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant / accused by the learned II Additional District and Sessions Judge, Tiruppur in S.C.No.78 of 2012, dated 29.11.2012, is set aside and the appellant / accused is acquitted from the charge. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by the appellant / accused, shall stand cancelled.

-s/d-

Assistant Registrar

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Sub-Assistant Registrar

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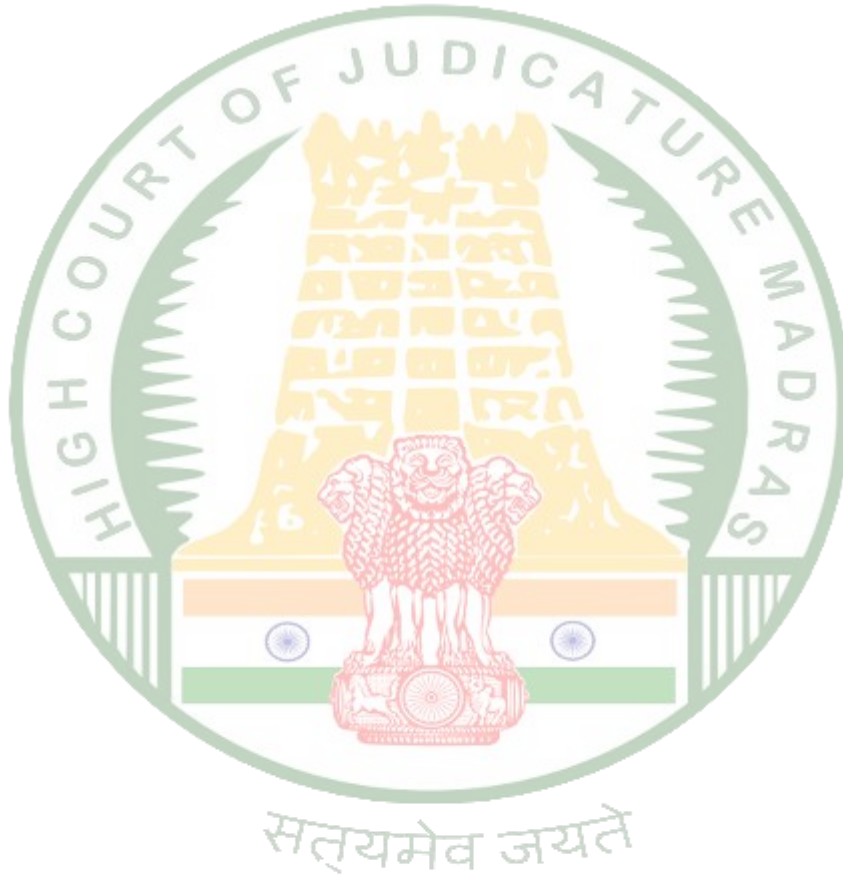
1. The II Additional District and Sessions Judge,
Tiruppur
2. The Inspector of Police
Tiruppur North Police Station,
Tiruppur.
3. The Public Prosecutor
High Court, Madras.
4. The Judicial Magistrate No.I. Tiruppur
5. The Chief Judicial Magistrate Tiruppur
(for information)
6. The Superintendent of Central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

8.The Director General of Police, Chennai-4

9.The Superintendent of Police, Tiruppur
Tiruppur District

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