

BAIL SLIP

The Appellant/Accused 1 & 2 Viz., 1) Raja @ Vilakku Raja, S/o.Muthusami, aged 30 years and 2) Kanagu @ Kanagaraj, S/o.Ramasamy, aged 26 years were directed to be released on bail as per Order of this Court dated 15.04.2013 in M.P.No.1 of 2013 in CrI.A.No.805 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Criminal Appeal No.805 of 2012

1. Raja @ Villakkuraja
2. Kanagu @ Kanagaraj

... Appellants/Accused
Nos.1 & 2

Vs

State rep. by Inspector of Police,
B9-Saravanampatti Police Station,
Coimbatore.

... Respondent

Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment of the learned I Additional District and Sessions Judge, Coimbatore in S.C.No.211 of 2010, dated 12.10.2012.

For Appellants : Mr.V.Gopinath,
Senior Counsel for Mr.S.Suresh

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G E M E N T

(Judgment of the Court was delivered by S.VAIDYANATHAN)

The appellants are the accused 1 and 2 in S.C.No.211 of 2010 on the file of the learned I Additional District and Sessions Judge, Coimbatore. There are four accused in this case. A.3 and A.4 were acquitted. A.1 and A.2 are the appellants herein. The trial Court framed charges against all the accused for offence under Section 302 r/w 34 IPC. By a judgment dated 12.10.2012, the trial Court acquitted A.3 and A.4 under Section 235(1) Cr.P.C. and convicted A.1 and A.2 for the offence under Section 302 I.P.C., and sentenced them to undergo imprisonment for life and to pay a fine of

Rs.10,000/- each, in default to undergo rigorous imprisonment for three months. Challenging the said conviction and sentence, the appellants/accused 1 and 2 have come up with the present Appeal.

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

On 07.05.2009, about 10.00 p.m., the deceased Durairaj, who was sleeping in the cattle shed, was attacked with a knife by the accused persons at Vivekananda Nagar, EB Colony, Ganapathy, Coimbatore. P.Ws.1 to 3, who are his relatives, were sleeping inside the house, which is at a considerable distance of about 20 feet. It is the evidence of P.Ws.1 to 3 that on hearing the alarm raised by the deceased, they opened the door of the house and went outside and found the accused 3 and 4 holding the deceased and accused 1 and 2 stabbing the deceased, repeatedly. On seeing P.Ws.1 to 3, all the accused fled away from the scene of occurrence. As a result of the injuries sustained, the deceased Durairaj died on the spot. Thereafter, P.Ws.1 to 3 took the deceased to the road and laid him there.

3. P.W.2, a relative of the deceased Durairaj, accompanied by P.W.4, went to the police station and preferred Ex.P-1, Complaint before P.W.9, Sub-Inspector of Police, B-9, Saravanampatty Police Station. P.W.9 registered Ex.P-11, F.I.R. and arranged it to be forwarded to the Judicial Magistrate. Thereafter, P.W.9 handed over the case to P.W.12, Inspector of Police. P.W.12 prepared Ex.P-2, Observation Mahazar and Ex.P-16, Rough Sketch in the presence of P.W.2 and P.W.4. He also seized M.Os.3 to 5 under Ex.P-3, Seizure Mahazar in the presence of the same witnesses. He forwarded the body of the deceased to Coimbatore Medical College Hospital and on the same day, about 10.00 a.m., he conducted inquest on the body of the deceased and prepared Ex.P-17, Inquest Report. He caused the SOC photographed and the photos are M.Os.9 to 20. He then caused the body to be forwarded for postmortem through P.W.11, Head Constable, along with Ex.P-7, Requisition for post-mortem.

4. On 08.05.2009, P.W.8 - Dr. Jeyasingh, conducted autopsy on the body of the deceased and found the following injuries:-

"The following anti mortem injuries noted on the body:

1. Vertically oblique stab wound 2 x 1 cm x cavity deep noted on back of right side chest at the level of 6th intercostals space, 9 cm right to back of mid line, 4 cm below to inferior border of right scapulation dissection the wound passes inwards downwards passing obliquely into the thoracic cavity and piercing into the back of lower lobe of right lung, measuring 2 x 1 x 1 cm and ending as a point. Margins of the wound are clean cut.

2. Vertically oblique stab wound 2 x 1 cm x cavity noted on back of left side chest at the level of 8th intercostals space, 9 cm left to mid line, 7 cm below to inferior border of left scapula, on dissection the wound passes inwards upwards obliquely into the thoracic cavity and piercing into the lower lobe of back of left lung, measuring 1.5x1x1 cm and ending as a point. Margins of the wound are clean cut. Both side plural cavity each contains 750 ml of fluid blood with clot.

3. Vertically oblique stab wound 2 x 1 cm noted on back of right side chest at the level of 5th intercostals space, 7 cm right to mid line, 2 cm below to inferior border of right scapula. The wound passes obliquely in the muscle plane to a depth of 5 cm and ending as a point. Margins of the wound are clean cut.

4. Vertically oblique stab wound 2 x 1 cm noted on back of right side chest at the level of T-9 vertebrae, 1 cm right to mid line. The wound passes obliquely in the muscle plane to a depth of 4 cm and ending as a point. Margins of the wound are clean cut.

5. Vertically oblique stab wound 1.5 x 1cm noted on lateral aspect of left gluteal region 7 cm left to mid line. The wound passes obliquely in the muscle plane to a depth of 6 cm and ending as a point. Margins of the wound are clean cut.

6. Transversal oblique stab wound 1.5 x 1 cm noted on left supromedial aspect of left gluteal region. The wound passes obliquely in the muscle plane to a depth of 2 cm and ending as a point. Margins of the wound are clean cut. The left end is sharp.

7. Vertically oblique stab wound 2 x 0.5 cm noted on inferomedial aspect of left gluteal region. The wound passes obliquely in the muscle plane to a depth of 7 cm and ending as a point. Margins of the wound are clean cut. The upper end is sharp.

8. Vertically oblique stab wound 1.5. x 0.5 cm noted on lateral aspect of right thigh. The wound passes obliquely in the muscle plane to a depth of 3 cm and ending as a point. Margins of the wound are clean cut.

9. Transversely oblique stab wound 1.5 x 1 cm noted on lateral aspect of left side chest at the level of 8th intercostals

space, 10 cm below and lateral to left nipple, 11 cm left to mid line. The wound passes obliquely in the muscle plane to a depth of 3cm and ending as a point. Margins of the wound are clean cut. The lateral end is sharp.

10. Transversely oblique stab wound 1 x 0.5cm noted on left upper fore arm 7 cm below to elbow. The wound passes obliquely in the muscle plane to a depth of 1 cm and ending as a point. Margins of the wound are clean cut.

11. Transversely oblique stab wound 2.5 x 1 cm noted on inner aspect of upper border of left palm, the wound passes backwards, downwards and laterally, piercing the hand through and through and exited over the back of lateral aspect of lower border of left palm 2 x 1 cms. Margins of the wound are clean cut.

5. Ex.P.8 is the Post mortem certificate. P.W.8 gave opinion that the death of the deceased was due to shock and hemorrhage due to the stab injuries and its corresponding internal injuries. Ex.P-9 is the final opinion given by P.W.8. After postmortem, M.Os.6 to 8, dress materials on the body of the deceased were handed over to the Investigating Officer by P.W.11. P.W.12 sent the viscera samples taken from the body of the deceased during postmortem. Ex.P-10 is the Viscera Report, Ex.P-13 is the biological report, Ex.P-14 is the Serological Report obtained from Forensic Science Laboratory and Ex.P-15 is the Chemical Report of the Soil.

6. P.W.12 - Inspector of Police, continued the investigation and on 08.05.2009, about 7.00 p.m., he went to Gandhipuram Central Bus Stand and as identified by P.Ws.2 and 4, he arrested A-1 to A-3 at 4th platform in the presence of P.W.5 and one Ramachandran. A-1 and A-2 voluntarily confessed to the crime and Exs.P-5 and P-6 are the admitted portions thereof. On the basis of confession, A-2 took P.W.12 along with witness P.W.2 and P.W.4 to F.C.I. Road, Ganapathy and handed over M.O.1 and M.O.2 from a bush opposite to A.P.G. Matriculation School, which P.W.12 seized under Ex.P-4, Seizure Mahazar. Thereafter, on 02.07.2009, about 9.00 a.m., P.W.12 arrested A-4 at Ganapathy Textool Bus Stop. P.W.12 enquired the witnesses and recorded their statements.

7. On returning to the Police Station, P.W.12 forwarded all the four accused for judicial remand and also handed over the Material Objects to the Court. Thereafter, he handed over charge to his successor, P.W.13 for further investigation. On completing investigation, finally, P.W.13 laid charge sheet against all the accused under Section 302 r/w 34 I.P.C.

8. Based on the above materials, the trial Court framed the charges as stated 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 13 witnesses were examined and 17 documents were exhibited, besides 20 Material Objects.

9. Out of the said witnesses, P.Ws.1 to 3 are the eye witnesses to the occurrence. They have vividly spoken about the same. P.W.8, Doctor has spoken about the autopsy conducted by him on the body of the deceased and he also gave opinion regarding the cause of the death of the deceased. P.Ws.12 & 13 have spoken about the investigation done by them and the final report filed by P.W.13.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. They did not choose to examine any of the witnesses on their side. However, 6 documents were exhibited on their side.

11. Having considered all the above, the trial Court found the accused 1 and 2 guilty under the said charges and acquitted accused 3 and 4 and accordingly, sentenced accused 1 and 2 as detailed in the first paragraph of this judgment. Aggrieved over the same, the accused 1 and 2/appellants are before this Court with this appeal.

12. We have heard the learned Senior Counsel appearing for the accused 1 & 2/appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

13. As we have already pointed out, P.Ws.1 to 3 are the eye-witnesses to the occurrence. P.W.1 admits that though there were two street lights on the date of occurrence, they were not glowing. It is also an admitted fact that there was no light in the cattle shed, where the deceased was sleeping. The evidence of D.W.1, Regional Manager of 108 Ambulance Service shows that he received intimation at 3.02 a.m., which means occurrence would have taken place around 2.30 a.m. and not at 3.30 a.m., as alleged by the prosecution witnesses. According to P.Ws.1 to 3, immediately after the occurrence, intimation was given to the nearby Police Station and Police arrived at the scene of occurrence within half-an-hour. It is the evidence of P.W.3 that he narrated the entire occurrence which was reduced into writing and signature was obtained from him, which information was suppressed.

14. P.W.1 also admits that the Police arrived at the scene of occurrence, more particularly, the Inspector of Police himself came within half-an-hour of the occurrence. P.W.1 also gave a statement in respect of the occurrence and the same was recorded by the Inspector of Police, which information was also suppressed. P.W.1 also admits during

cross-examination that all the accused were arrested at 12.00 midnight, whereas, the arrest of the accused has been shown as 6.00 p.m., and that material objects were recovered thereafter.

15. It is further evidenced by P.W.1 that two other persons, viz. Mr.Ayappan and Mr.Nagaraj were brought to the police station out of suspicion in the alleged occurrence. Had it been true that the accused 3 and 4 have caught hold of the deceased and the accused 1 and 2 have stabbed the deceased repeatedly as alleged by P.Ws.1 to 3, there would have been no occasion for the Inspector of Police to bring two other persons to Police Station out of suspicion. So, it creates doubt as to the version of P.Ws.1 to 3, since they witnessed the alleged occurrence only in darkness, i.e. there was no light in the cattle shed, where the deceased was sleeping.

16. We feel that it is difficult to sustain the conviction imposed on the accused 1 and 2 for the simple reason that the statements made by the prosecution and the defence are contrary. The prosecution says that the alleged occurrence took place on 08.05.2009 around 3.30 a.m. But, P.W.1, brother of the deceased, who witnessed the occurrence, during his cross-examination has averred that the accused have been arrested at 12.00 midnight. But, as per records, the accused have been arrested at 6.00 p.m. on 08.05.2009. Undoubtedly, the accused can be arrested only after an alleged occurrence. But, according to P.W.1, the murder took place around 3.30 a.m., but the accused were arrested at 12.00 midnight.

17. Thus, it is clear that the prosecution has not come forward with clean hands. The prosecution version is highly doubtful. When the Trial Court acquitted accused 3 and 4 disbelieving the evidence of P.Ws.1 to 3, it should have applied the same principle while convicting the other two accused, viz. accused 1 and 2 also.

18. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the accused 1 and 2/appellants by the learned I Additional District & Sessions Judge, Coimbatore in S.C.No.211 of 2010 vide judgment dated 12.10.2012, is set aside and the accused 1 and 2/appellants are acquitted. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the accused 1 and 2/appellants, shall stand discharged.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,
Coimbatore.
2. The Chief Judicial Magistrate,
Coimbatore.
3. The I Additional District and Sessions Judge,
Coimbatore.
4. Do Through the Principal District Judge,
Coimbatore.
5. The District Collector,
Coimbatore.
6. The Director General of Police,
Mylapore, Chennai.
7. The Superintendent,
Central Prison,
Coimbatore.
8. The Inspector of Police,
B-9, Saravanampatti Police Station,
Coimbatore.
9. The Public Prosecutor,
High Court, Madras.
10. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.S.Suresh, Advocate, S.R.No.9464

Cr1.A.No.805 of 2012

CA(CO)
CA(19/06/2017)

WEB COPY