

BAIL SLIP

The Appellants herein/Accused Viz.(a) Gopal @ Gopalakrishnan (A1) (b) Mathan @ MathanKumar(A2) were directed to be released on bail as per order of this Court dated 27/2/2013 made in MP.No.2/13 in CA.No.855/2012 (for A1) and order dated 13/2/2013 made in MP.No.1/2013 in CA.NO.855/12 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.855 of 2012

1.Gopal @ Gopalakrishnan

2.Mathan @ Mathankumar

..

Appellants

Vs

The State represented by its
The Inspector of Police,
Karungalpalayam Police Station,
Erode District,
(Crime No.669/2010)

..

Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to call for the records and set aside the conviction and sentence imposed against the appellants in S.C.No.107 of 2012 dated 16.11.2012 on the file of the learned Principal Sessions Judge, Erode.

For Appellants

: Mr.A.Ramesh, Senior Counsel
for Mr.S.Manoharan

For Respondent

: Mr.M.Maharaja,
Additional Public Prosecutor

JUDGEMENT

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

The appellants are A.1 & A.2 in S.C.No.107 of 2012 on the file of the learned Principal Sessions Judge, Erode. There were two other accused by name Mr.Senthil @ Gopalakrishnan and Mr.Bharani and they were arrayed as A.3 and A.4 respectively. The trial Court framed as many as five charges against the accused as detailed below:-

Accused	Charges	Section of Law
A.1 & A.2	Murder	U/s302 I.P.C.,
A.3 & A.4	Murder in furtherance of common intention	U/s 302 r/w 34 I.P.C.,
A.1	Attempt to Murder	U/s 307 I.P.C.,
A.2 to A.4	Attempt to commit murder in furtherance of common intention	U/s 307 r/w 34 I.P.C.,
A.1 & A.2	Criminal intimidation	U/s 506(ii) I.P.C.,

By judgment dated 16.11.2012, the trial Court acquitted A.3 and A.4, but, convicted A.1 and A.2 alone. A.1 was convicted for offences under Sections 302, 307 and 506(ii) I.P.C. A.2 was convicted for offences under Sections 302 and 506(ii) I.P.C. Accordingly, the trial Court sentenced A.1 & A.2 to undergo imprisonment for life and to pay a fine of Rs.5,000/- each, in default to undergo simple imprisonment for three years, for the offence under Section 302 I.P.C., and A.1 was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one year for the offence under Section 307 I.P.C. A.1 and A.2 were sentenced to undergo rigorous imprisonment for three months and to pay a fine of Rs.500/- each in default to undergo simple imprisonment for one month, for the offence under Section 506 (ii) I.P.C. The trial Court acquitted A.1 and A.2 from the other charges. The trial Court has directed the sentence imposed on A.1 & A.2 to run concurrently. Challenging the said conviction and sentence, A.1 & A.2/appellants 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.Mani @ Manikandan @ Doyyamani. The accused are all his friends. On 26.08.2010, at 3.00 pm, all the four accused and the deceased had gone to a wine shop at Cauvery Road, Erode, for taking liquor. P.W.4 was already there in the wine shop taking liquor. While drinking liquor, there arose a quarrel between all these accused on one side and the deceased on the other side. In that quarrel, A.1 attacked the deceased with hands and also abused him in filthy language. P.W.4 and others who were in the wine shop separated them. Then all the four accused as well as the deceased left the said wine shop.

3.The deceased, around 8.30 pm on 26.08.2010, called P.W.1 over phone and wanted him to come to his house. Accordingly, P.W.2 went to his house. The deceased told him that it was a shame for him that A.1 pushed him down and attacked him in the wine shop at 3.30 pm on 26.08.2010. Therefore, he wanted P.W.1 to accompany him to go to the house of A.1 and to demand him to apologize. Therefore, the deceased and P.W.1 went to the house of A.1 at 11.00 pm on the same day. But, A.1 was not in his house. All the four accused were just standing in front of a shop belonging to one Mr.Nataraj. On seeing them, the deceased and P.W.1 went near them. The deceased questioned A.1 as to why he attacked and abused him in the wine shop. He wanted A.1 to apologize for the same. A.1 told him that he was not prepared to apologize. This resulted in a quarrel and there were exchange of blows between the accused persons on one side and the deceased and P.W.1 on the other side. In the said fight between two groups, it is alleged that A.1 took out a knife from his waist and stabbed the deceased on his chest. A.3 caught him hold. A.2 also took out a knife and stabbed the deceased repeatedly. In the same quarrel, P.W.1 when attempted to rescue the deceased, was stabbed by A.1 on his abdomen and on the back of chest. He also sustained injuries. Then all the four accused criminally intimidated the people who rushed to the place of occurrence, on hearing the alarm raised by the deceased and P.W.1. Immediately thereafter, all the accused persons ran away from the scene of occurrence.

4.Then P.W.1 went to his house and from there, his father took him to the Government Hospital at Erode. P.W.8, Dr.Sasirekha examined P.W.1 at 12.05 am on 27.08.2010 at the Government Hospital, Erode. P.W.1 told her that on 26.08.2010, at 11.00 pm, he was attacked by unknown persons with knife at KNK Road, Thiru Nagar Colony. P.W.8 found the following two injuries on him.

"Injury No.1:- A stab injury measuring 2x2x3 cm on the middle of the back of the chest

Injury No.2:- A lacerated wound measuring 2x2x1 cm on the upper part of the abdomen."

5.P.W.8 admitted P.W.1 as inpatient. While he was in the hospital, on getting information from the Hospital, P.W.12, rushed to the hospital and obtained the complaint under Ex.P.1 from P.W.1 at 1.30 pm on 27.08.2010. On returning to the Police Station, he registered a case in Crime No.669/2010 for offence under Sections 341, 307, 302, 506(ii) I.P.C., at 2.30 am and forwarded both the documents (complaint & F.I.R.,) to Court and the same were received by the learned Judicial Magistrate at 6.00 am on 27.08.2010.

6.From the place of occurrence, the deceased was taken to the very same hospital. P.W.8 examined the deceased at 1.10 am on 27.08.2010. She declared that the deceased was already dead. P.W.8 made an entry in the Accident Register and kept the body in a mortuary (vide Ex.P.9).

7.P.W.17, took up the case for investigation. He proceeded to the place of occurrence at 3.45 am on 27.08.2010 and prepared an observation mahazar and a rough sketch in the presence of P.W.6 and another witness. He also recovered blood stained earth; sample earth; a chappal; a pair of chappal and a Yamaha motor cycle in the presence of same witnesses. Then, on going over to the hospital, he recovered blood stained clothes of P.W.1 under a mahazar. Then, he conducted inquest on the body of the deceased between 8.00 am and 11.00 am on 27.08.2010 and forwarded the body for post mortem.

8.P.W.9 conducted autopsy on the body of the deceased at 11.30 am on 27.08.2010 and he found the following injuries:-

"External Injuries:-

1. Elliptical lacerated wound 4x2 entering into the thoracic cavity (downward, backward and medially), 3rd left inter collar space.
2. Elliptical lacerated wound 3cmx1cmx3cm just lateral to the wound No.1
3. Elliptical lacerated wound 3x2x5cm just below the wound No.2
4. Elliptical lacerated wound 3x2xbone depth of fractured rib just below the left nipple.
5. Elliptical lacerated wound 3x3x entry into the thoracic cavity above the left nipple
6. 2x1x5 cm lacerated wound for later to neck on the front left side
7. Lacerated Elliptical wound 4x3x5 cm on

- the right shoulder.
8. Lacerated Elliptical wound 4x3x5cm behind the wound No.7
9. Another lacerated Elliptical wound 4x3x8cm below the wound No.8."

9.Ex.P.11 is the post mortem certificate. P.W.9 gave opinion that the injuries found on the body of the deceased would have been caused by a weapon like knife. He has further opined that the death was due to shock and hemorrhage due to the injuries sustained by the deceased.

10. During the course of investigation, P.W.17, arrested A.2 at 3.00 pm on 27.08.2010 in the presence of P.W.7 and another witness. On such arrest, he disclosed the place where he had hidden the blood stained shirt and knife. In pursuance of the same, he took the Police to the place of hide out and produced a blood stained shirt (M.O.4) and knife (M.O.10). P.W.17 recovered the same under a mahazar.

11. A.1 & A.4 had surrendered before the learned Metropolitan Magistrate, Saidapet on 31.08.2010. P.W.17 took police custody of A.1 on 05.09.2010. While in custody, at 11.00 am, in the presence of P.W.13, A.1 gave a voluntary confession, in which, he had disclosed the place where he had hidden a knife, shirt and an Aactiva motor cycle. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the knife (M.O.3); shirt (M.O.11); Aactiva motor cycle (M.O.12) and the blood stained clothes (M.Os.13 & 14).

12. P.W.17 took police custody of the fourth accused on 06.09.2010, as per the order of the learned Magistrate. While in custody, he gave a voluntary confession in which, he had disclosed the place where he had hidden a cell phone and a shirt. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the cell phone (M.O.16) and shirt (M.O.15). P.W.17 recovered the same under a mahazar.

13. During the course of investigation, P.W.17 examined P.W.10 who had treated A.3 for the injuries sustained by him in the very same occurrence. According to him, on 27.08.2010, at 8.30 pm, A.3 came to Seeraga Padi Annapoorna Medical College and Hospital and he found the following injuries on him:-

"Right hand - 2 x 0.5 x 0.5 cm laceration in the anterior aspect. 2 x 0.5 x 1 cm laceration in the posterior aspect.

2. Left hand - Dorsal aspect near left wrist joint lacerated wound 2 x 1 cm."

14.Ex.P.12 is the Accident Register. P.W.10 gave opinion that the injuries found on A.3 would have been caused by using a weapon like knife. Further, there were fractures suffered by A.3 and the injuries are grievous in nature. P.W.3 who took x-ray on A.3 found that there were fractures. On completing investigation, P.W.17 laid charge sheet against these accused.

15.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 as false. In order to prove the case of the prosecution, on the side of the prosecution, as many as 17 witnesses were examined and 32 documents were exhibited, besides 20 material objects.

16.Out of the prosecution witnesses, P.Ws.1 to 3 are the eye witnesses to the occurrence, who have vividly spoken about the entire occurrence. P.W.4 has spoken about the incident which took place in the wine shop between the accused party and the deceased party and he has further spoken about the motive. P.W.5 has stated that he drafted Ex.P.1 complaint as dictated by P.W.1 in the hospital and handed over the same to the Police. P.W.6 has spoken about the preparation of observation mahazar and rough sketch, recovery of blood stained earth, sample earth, chappal, a motor cycle and also a pair of chappal on the place of occurrence. P.W.7 has spoken about the arrest of A.2 and the consequential recovery of knife (M.O.4) and shirt (M.O.10). P.W.8 has spoken about the treatment given by her to P.W.1 at the Government Hospital, Erode. P.W.9 has spoken about the post mortem conducted by her on the dead body of the deceased and her final opinion regarding the cause of death. P.Ws.10 & 11 have spoken about the treatment given to A.3 in the very same occurrence. According to them, A.3 had suffered three fractures and the injuries sustained by him were grievous in nature. P.W.12 has spoken about the registration of the case on the complaint of P.W.1. P.W.13 has spoken about the surrender of A.1 and the consequential recoveries of knife (M.O.3) and shirt (M.O.11) on the basis of disclosure statement of A.1. P.W.14 has spoken about the recovery of M.O.12. P.W.15, the then Village Administrative Officer has spoken about the recovery of M.Os.15 & 16, on the disclosure statement made by A.4. P.W.16 has spoken about the fact that he took the dead body of the deceased to hospital for post mortem. P.W.17 has spoken about the investigation done and the final report filed by him.

17.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side, one Mr.Rajkumar was examined as D.W.1 and he has spoken about the injuries sustained by him in the very same occurrence. However, no document was marked. Their defence was a total denial.

18. Having considered all the above, the trial Court found the accused guilty under the said charges and accordingly, sentenced them as detailed in the first paragraph of this judgment. Aggrieved over the same, A.1 & A.2/appellants are before this Court with this Criminal Appeal.

19. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

20. As we have already narrated, in this case, there are three eye witnesses to the occurrence. Among them, P.W.1 is an injured eye witness, whose evidence can never be doubted. Similarly, the presence of P.Ws.2 and 3 also cannot be doubted. Further, they have admitted during cross examination that A.3 also sustained injuries in the very same occurrence. As per the evidences of P.Ws.10 and 11, the Doctors, who treated A.3 have told that he had suffered three fractures and according to them, these injuries would have been caused by a weapon like knife.

21. The motive for the occurrence is the occurrence which had taken place at 3.00 pm in the wine shop, in which, the deceased was pushed down and attacked by A.1 in a drunken mood. After that, the deceased had come to his house by about 8.30 pm. The deceased called P.W.1 to come to his house. When P.W.1 came to his house, the deceased told him that he felt ashamed of the happening at 3.00 pm in the wine shop. Therefore, he wanted to go to the house of A.1 to demand for apology. Thus, the deceased and P.W.1, instead of going over to the Police Station to make a complaint, had gone all the way to the house of A.1 in search of him. Even after knowing that A.1 was not there, they did not return, but, they went in further search of him. They found all the four accused standing near a shop and there, the deceased wanted A.1 to apologize. A.1 refused. P.W.1 has admitted that this resulted in a quarrel and there were exchange of blows also. Further, these four accused were not standing there with any premeditation. It was only the deceased and P.W.1 who had gone all the way to the house of A.1. Thus, it is crystal clear that the deceased and P.W.1 were the aggressors. At the place of occurrence, there was a fight, in which, A.3 had been attacked by the deceased and suffered serious injuries, including three fractures. P.Ws.1 and 2 have explained the same. According to them, when A.1 was attacking the deceased, A.3 intercepted and at that time, he sustained these injuries at the hands of A.1. This is too difficult to believe. Going by the nature of the injuries sustained by A.3, it cannot be believed that such serious injuries could have been caused accidentally, that too when A.1 was stabbing the deceased. The non explanation of the injuries sustained by A.3 would make the evidences of P.Ws.1 to 3 doubtful, inasmuch as they are suppressing an important part of the occurrence. In this regard

we may refer to the judgment of the Hon'ble Supreme Court in Lakshmi Singh and others vs. State of Bihar, [(1976) 4 Supreme Court Cases 394], wherein, it has been held that if the injuries sustained by an accused have not been explained, then the veracity of the witnesses who have not given any explanation about the same becomes doubtful. Applying the said principle to the facts of the present case, we have to hold that the evidences of P.Ws.1 to 3 is doubtful.

22. In this case, though, the accused have not pleaded the right of private defence explicitly, as per the settled law, from the materials available on record, if the Court is able to come to the conclusion that the accused would have acted in exercise of private defence, then, the Court is bound to consider the same. In this regard, as we have already narrated, the deceased and P.W.1, motivated by the occurrence which took place at 3.00 pm on the same day, got aggrieved and had gone to the house of A.1 and even when A.1 was not there in his house, they went in search of A.1 and when they found A.1 and other accused near a Shop, the deceased had developed quarrel with A.1 in which, the deceased attacked A.3 and thus, in the same process, they had received the injuries also at the hands of the accused party. It is crystal clear that the deceased and P.W.1 were the aggressors.

23. The next question is as to whether the accused had exceeded the right of private defence? Going by the serious nature of the injuries sustained by A.3; going by the fact that the deceased would have gone with a wooden log and knife to the house of A.1 with a view to take revenge on A.1, we find that the accused had not exceeded the right of private defence. In our considered view, as has been repeatedly held by the Hon'ble Supreme Court, one cannot expect these accused to measure the amount of force that could be used to protect themselves from the aggression of the deceased. Therefore, we hold that the accused has not exceeded their right of private defence. Though, the prosecution has proved that A.1 & A.2 caused the death of the deceased by causing injuries and also caused injuries on P.W.1, their act is not an offence, as the same would fall within the ambit of Section 100 I.P.C. Therefore, the appellants are entitled for acquittal.

24. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/A.1 & A.2 by the learned Principal Sessions Judge, Erode in SC.No.107 of 2012 by the judgment dated 16.11.2012 are hereby set aside. The appellants are acquitted of all the charges levelled against them and they are directed to be set at liberty, forthwith, unless their presence is required in connection with any other

case. Fine amount, if any, paid by the appellants, shall be refunded to them. Bail bond, if any, shall stand discharged.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Principal Sessions Judge,
Erode.

2.The Public Prosecutor,
High Court, Madras.

3.The Section officer
Crl.Section High Court, Madras

4.The Judicial Magistrate No.I,
Erode

5.The Inspector of police
Karungalpalayam Police station,
Erode District

6.The Director General of Police,
Mylapore Chennai-4

7. The District Collector Erode

8. The Superintendent Central Prison,
Coimbatore

+1 cc to Mr.S.Manokaran Advocate sr.16569

Crl.A.No.855 of 2012

aa29/04/2016