

Crl.A.No.496 of 2013:- That the Appellant herein/Accused Viz., Anthony John Paul was directed to be released on bail as per the order of this court dated 26.9.2013 and made in Crl.A.No.496 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2016

CORAM:

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.496 of 2013

Anthony John Paul ... Appellant/ Accused

Vs.

The State rep. by it's
Inspector of Police
Karimangalam Police Station
Dharmapuri District
Crime No.1044 of 2010

.. Respondent/ Respondent

Prayer : Criminal Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment of conviction and sentence made in S.C.No.20 of 2013 by the learned Additional District and Sessions Judge, Dharmapuri, dated 25.04.2013.

For Appellant : Mr.R.Muniyapparaj

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

(The judgment of the Court was made by S.NAGAMUTHU, J.)

The appellant is the 2nd accused in S.C. No.20 of 2013 on the file of the learned Additional District & Sessions Judge, Dharmapuri. Including the appellant, there were totally three accused in the present case in Crime No.1044 of 2010. The Trial Court framed eight charges against the accused Nos. 1 to 3, as detailed below:-

Sl.No.	Charge No.	Rank of Accused	Charged for the Offence
1	Charge No.1	Accused Nos.1 & 2	U/s. 307 IPC
2	Charge No.2	Accused No.3	U/s. 307 r/w. 109 IPC
3	Charge No.3	Accused No.2	U/s. 302 IPC

Sl.No.	Charge No.	Rank of Accused	Charged for the Offence
4	Charge No.4	Accused No.3	U/s.302 r/w. 109 IPC
5	Charge No.5	Accused No.1	U/s.302 r/w.34 IPC
6	Charge No.6	Accused No.2	U/s. 307 IPC
7	Charge No.7	Accused No.3	U/s. 307 r/w. 109 IPC
8	Charge No.8	Accused No.1	U/s. 307 r/w. 34 IPC

By judgment, dated 25.04.2013, the Trial Court acquitted the 3rd accused and convicted the accused Nos.1 & 2. So far as the 1st accused is concerned, the Trial Court convicted him under Section 323 IPC and sentenced him to undergo simple imprisonment for three months and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for one month. So far as the appellant/2nd accused is concerned, the Trial Court convicted him for the offences under Sections 302 and 307 (2 counts) IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 302 IPC and to undergo rigorous imprisonment for ten years for each count and to pay a fine of Rs.1000/- for each count, in default to undergo rigorous imprisonment for six months for each count for the offence under Section 307 (2 counts) IPC. The sentences were directed to run concurrently. Challenging the said judgment of conviction and sentence, dated 25.04.2013, the 2nd accused is before this Court with this Criminal Appeal.

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

(i) The deceased in this case was one Mr. Tonybrad. He was the son of P.Ws. 1 and 2, viz., Baggyanathan and Jayarani respectively. They were all residing at Kethanahalli Village in Dharmapuri District. The 1st accused is none other than the brother of P.W.1; the 2nd accused is the son of the 1st accused; and 3rd accused is the friend of the 1st accused. Earlier, P.W.1 had purchased a land from the 1st accused for the purpose of using the same as pathway to reach his land. Subsequently, the 1st accused got it reconveyed to him. Thus, according to the 1st accused, P.W.1 and his family members have no right to use the said land as a pathway. This gave rise to a dispute between two families and as a result, there was enmity between them. This is stated to be the motive for the occurrence.

(ii) On 21.12.2010, at about 7.30 a.m., it is alleged that P.Ws. 1 and 2 and the deceased were walking along the said disputed land using the same as a pathway. At that time, all the three accused emerged there. They questioned the authority of P.Ws. 1 and 2 and the deceased, to use the property as a pathway, as they had no right. P.W.1 replied that in the alternative way, there was a pit digged, and therefore, he was not able to use the alternative pathway. He explained that out of necessity, he had to use the disputed property as a pathway, atleast temporarily. When this conversation was going on, the 1st accused, suddenly took

out a koduval and attacked P.W.1. The appellant/2nd accused also attacked him. When P.W.2, who is the wife of P.W.1, intercepted, they attacked her also with koduval. The deceased tried to save his parents. At that time, the 2nd accused cut the deceased on his neck with koduval. All the three fell down. They all sustained serious injuries. The occurrence was witnessed by P.W.4. All the three accused ran away from the place of occurrence. On hearing the commotion, the Villagers gathered at that spot. P.W.5-Baggyanathan, the local Priest, rushed to the place of occurrence, on hearing the information. He found all the three lying down with injuries. The deceased died instantaneously. P.Ws. 1 and 2 were taken to the Government Hospital, Palacode, in 108 Ambulance.

(iii) P.W.12-Dr.Manimegalai of Government Hospital, Palacode, examined P.W.2, on 21.12.2010, at 9.40 a.m. P.W.2 told her that she was attacked by five known persons, with aruval. P.W.12 found the following injuries on P.W.2 :-

"O/E.Conscious, oriented, PERL.

(1) 8 x 4 x 3 cm incised wound left shoulder. Bone deep oblique in direction.

(2) 3 x 2 x 1 cm incised wound, left middle finger near medial and middle phalanx.

(3) 8 x 5 x 2 cm incised wound left dorsum of hand from middle of left index finger exposing bones irregular shape and direction.

(4) 10 x 4 x 3 cm incised wound left side of neck exposing trachea extending from right side of neck to below ear lobe.

(5) 2 cm lateral to the injury No. (4). 15 x 5 x 3 cm incised wound runs obliquely upto left side of occiput.

(6) 10 x 4 x 3 cm incised wound on the right side of occiput, 5 cm above the ear lobe runs obliquely."

P.W.6 is the Accident Register relating to P.W.2.

(iv) P.W.12 examined P.W.1, on 21.12.2010, at 9.45 a.m. P.W.1 told her that he was attacked by three known persons, with aruval, knife, wooden log, hands and legs. P.W.12 found the following injuries on P.W.1 :-

"Injuries: Conscious, oriented, PERL.

(1) 10 x 4 x 2 cm incised wound left side of occipital region nearly horizontal in direction 3 cm above the hair line and 5 cm below the left ear lobe.

(2) 3 cm medial to the 1st injury 6 x 3 x 2 cm incised wound runs obliquely, extending upto middle of left mandible.

(3) 6 x 4 x 2 cm incised wound left lower and middle 1/3 of leg.

(4) Complaint of pain back, abdomen, chest.

(5) Loss of tissue left ear lobe."

Ex.P.7 is the Accident Register relating to P.W.1.

(v) On receiving intimation from the Government Hospital, Palacode. P.W.16-Mr.Jeganathan, the then Inspector of Police of Karimangalam Police Station, rushed to the said hospital and recorded the statement of P.W.1, at 11.15 a.m. On returning to the Police Station, P.W.16 registered a case on 21.12.2010, at 12.30 p.m., on the complaint (Ex.P.1) of P.W.1, under Sections 302 and 307 IPC, against all the three accused. Ex.P.13 is the First Information Report. He forwarded both the documents to the Court, which were received by the learned Judicial Magistrate, Palacode, on 21.12.2010, at 6.15 p.m.

(vi) P.W.16 took up the case for investigation. He proceeded to the place of occurrence and prepared an Observation Mahazar (Ex.P.14) and Rough Sketch (Ex.P.15), at the place of occurrence, in the presence of P.W.6-Lasar and another witness. He recovered the bloodstained earth (M.O.11) and sample earth (M.O.12), under a Mahazar-Ex.P.16, from the place of occurrence. Then, P.W.16 conducted inquest on the body of the deceased and forwarded the same for postmortem.

(vii) P.W.7-Dr.G.Gopinath of Government Medical College & Hospital, Dharmapuri, conducted autopsy on the body of the deceased, on 21.12.2010, at 5.00 p.m. He found the following injuries on the body of the deceased :-

"External Examinations: Cut injury 14 x 7 cm bonedepth extending left side-anterior border of the trapezius to right side anterior border of the sternocleido mastoid muscle.

Internal Examinations: Skull-vault, meninges, base of the skull-Normal, Brain-pale.

Neck: Cut through injury trachea, oesophagus, internal jugular vein, carotid artery. Strap muscles with exposing cervical vertebrae - 3.

Hyoid bone-Intact.

Thorax: Ribs normal.

Lungs -both lungs - pale.

Heart-pale, chambers empty.

Abdomen - stomach - Empty.

Liver-pale.

Spleen-pale.

Both kidneys pale.

Bladder-Empty.

External genitalia-Normal."

Ex.P.3 is the Postmortem Certificate. He opined that the single cut injury found on the neck of the deceased would have been caused by a weapon like M.O.1-koduval. He further opined that the death was due to the shock and haemorrhage, due to the injuries.

(viii) On 22.12.2010, at about 9.30 a.m., P.W.16 arrested the accused Nos.1 and 2 in the presence of P.W.10-Madhayan, the Village Administrative Officer, and another witness. On such arrest, the 2nd accused gave a voluntary confession, in which, he disclosed the place where he had hidden the koduval. In pursuance

of the same, he took the police and the said witnesses to the place of occurrence and produced M.O.1-koduval and M.Os. 8 & 9-pant & shirt respectively. P.W.16 recovered the same under a Mahazar-Ex.P.5. On returning to the Police Station, he forwarded the accused Nos. 1 and 2 to the Court. He recovered the bloodstained clothe materials from the body of the deceased and forwarded all the Material Objects to the Court. The 3rd accused surrendered before the Judicial Magistrate No.II, Dharmapuri, on 28.03.2011. On completing the investigation, he laid the chargesheet against the accused Nos.1 to 3.

(ix) Based on the above materials, the Trial Court framed the charges as detailed in paragraph No.1 of this judgment. The accused Nos. 1 to 3 denied the same. During the trial, in order to prove the case of the prosecution, on the side of the prosecution as many as 16 witnesses were examined and 21 documents and 12 material objects were exhibited. Out of the said witnesses, P.Ws.1 and 2 are the injured eye witnesses and they have vividly spoken about the entire occurrence. P.W.1 has also spoken about the complaint made by him to the police. P.W.3 is the local resident of the Kethanahalli Village. He has stated that he heard the commotion, rushed to the place of occurrence and found that the deceased was lying dead with cut injuries on his neck and P.W.1 and 2 lying down with injuries. P.W.4 is the local resident of Kethanahalli Village. He has stated that he had witnessed the entire occurrence. P.W.5, the local Priest, attached to Church Eriyur, has stated that on hearing about the information, he went to the place of occurrence and found that the deceased lying dead with cut injuries and P.Ws.1 & 2 lying down with injuries. P.W.6 has spoken about the preparation of Observation Mahazar (Ex.P.14) and Rough Sketch (Ex.P.15) by P.W.16 and also the recovery of bloodstained earth and sample earth from the place of occurrence. P.W.7-Dr.G.Gopinath of Government Medical College & Hospital, Dharmapuri, has spoken about the postmortem conducted on the dead body of the deceased and his final opinion regarding the cause of death. P.W.8-Arokiyasamy has spoken about the fact that he took P.Ws.1 and 2 to the hospital in 108 ambulance. P.W.10-Mathaiyan, the Village Administrative Officer, has spoken about the arrest of the accused Nos.1 and 2 and the disclosure statement made by the 2nd accused, and the consequential recovery of M.O.1-koduval, M.O.8-pant and M.O.9-shirt. P.W.11-Venkatraman, the then Head Constable, has spoken about the fact that he took the dead body of the deceased and handed over the same to the Doctor for postmortem. P.W.12-Dr.Manimegalai of Government Hospital, Palacode, has stated about the treatment given by her to P.Ws. 1 and 2. P.Ws. 13 and 15, the Doctors, have also spoken about the treatment given by them to P.Ws. 1 and 2. P.W.14-Gubendran has spoken about the photographs taken at the place of occurrence. P.W.16-Mr.Jeganathan, the then Inspector of Police, has stated about the registration of the case on the complaint of P.W.1. He has also spoken about the investigation done by him and the filing of the final report by him.

(x) When the accused Nos.1 to 3 were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, they denied them as false. On the side of the defence, one Mr.Shankarprakash, who is the son of the 3rd accused, was examined as D.W.1, and through him, they have marked Exs.D.1 to D.4. D.W.1 in his evidence has stated that on 21.12.2010, at 7.00 a.m. itself, accused No.3, who is his father, had gone to the medical shop. Thus, from the evidence of D.W.1, the defence has attempted to prove the plea of alibi. He has also spoken about the previous motive between the family of the deceased and the accused Nos.1 and 2. Having considered all the above, the Trial Court acquitted the accused No.3 and found the accused Nos.1 and 2 alone guilty and convicted and sentenced them to undergo imprisonment as stated in paragraph No.1 of this judgment. That is how, the appellant/accused No.2 alone is now before this Court with this appeal.

3. We have heard Mr.R.Muniyapparaj, learned counsel appearing for the appellant; Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State; and we have also perused the records carefully.

4. In this case, so far as the motive is concerned, P.Ws. 1 and 2 have vividly spoken about the same. P.W.5 is the local priest attached to the Church Eriyur. He has also spoken about the motive for the occurrence. The motive has not been seriously disputed by the defence. The dispute was in respect of a land, over which there was a rival claim for the pathway right. In our considered view, the prosecution has succeeded in establishing the enmity between the accused Nos.1 & 2 and the deceased.

5. Now, turning to the occurrence, the prosecution relies on the evidence of P.Ws.1, 2 and 4. P.Ws. 1 and 2 are the injured eye witnesses to the occurrence. They infact sustained serious cut injuries at the hands of the 1st accused as well as the 2nd accused. Their presence cannot be disputed. The injured eye witnesses have stated about the participation of all the three accused in the crime. The learned counsel for the appellant/2nd accused would contend that the 3rd accused was acquitted by disbelieving the evidence of P.Ws. 1 and 2. Referring to the same, the learned counsel for the appellant would contend that the evidence of P.Ws.1 and 2 has to be rejected, as against this appellant/2nd accused also, as there are contradictions.

6. In our considered opinion, the minor contradictions are quite natural. Therefore, the argument of the learned counsel for the appellant does not persuade us at all. Though, the evidence of the injured eye witnesses, viz., P.Ws. 1 and 2, has been disbelieved by the Trial Court as against the 3rd accused, on that score, so far as the appellant/2nd accused is concerned, their evidence cannot be rejected in toto. The principle Falsus in uno, falsus in omnibus, is not recognised by the Indian Courts. The well settled law of the land is that if in the evidence of the eye

witnesses the truth and falsity are mixed with each other and in the event, the Court is able to separate the grains from the chaff, it is well within the power of the Court to act upon the truth, thereby rejecting the falsity and convict the accused. To put it otherwise, where the grains and the chaff cannot be separated, the Court is left with no option except to disbelieve the evidence of the eye witnesses in toto and to give the benefit of doubt in favour of the accused.

7. Here in this case, simply because the involvement of the 3rd accused has not been believed by the Trial Court based on the evidence of P.Ws. 1 and 2, it cannot be contended that the evidence of P.Ws. 1 and 2 should be rejected in toto. As we have already pointed out that P.Ws. 1 and 2 have sustained injuries in the very same occurrence and therefore, their presence cannot be doubted. It is only the veracity of the testimony of these witnesses, which can be tested, so as to establish that the death of the deceased was caused only by the 2nd accused. P.W.4 is a resident of Kethanahalli Village and he is an independent witness. He has stated that he witnessed the entire occurrence. According to him, when P.Ws. 1 and 2 and the deceased were walking along the disputed pathway, the 1st accused questioned them. This had resulted in a wordy duel between the 1st accused and P.W.1. When the said wordy duel was going on, according to P.W.4, the 2nd accused suddenly came to the place of occurrence with koduval and started mounting attack on P.Ws. 1 and 2 and the deceased. We do not find any reason to reject the evidence of P.W.4. If the evidence of P.W.4 and P.Ws. 1 and 2 are conjointly appreciated, we do not find any difficulty to come to the conclusion that it was this appellant/2nd accused, who attacked the deceased on his neck with koduval and caused his death and also caused injuries on P.Ws. 1 and 2. The medical evidence duly corroborates the eye witness account. Thus, we find that absolutely, there is no reason to reject the evidence of the eye witnesses, viz., P.Ws. 1, 2 and 4, in respect of the attack made by this appellant/2nd accused on the deceased. From these evidences, we hold that the prosecution has clearly proved that it was this appellant/2st accused, who attacked the deceased on his neck with koduval and caused his death and also caused injuries on P.Ws.1 and 2.

8. The learned counsel for the appellant would submit that at the earliest point of time, when P.W.1 was taken to the Doctor (P.W.12), he told the Doctor that he was attacked by three known persons. When P.W.2 was taken to the Doctor (P.W.12), she told the Doctor that she was attacked by five known persons. Thus, there is a discrepancy. But, these former statements have not been used by the accused to contradict P.Ws.1 and 2, when they were examined as witnesses by the prosecution, by affording them an opportunity to explain the same. These former statements of P.Ws. 1 and 2 cannot be used as substantive evidence. In such view of the matter, we reject the said argument of the learned counsel in this regard.

9. As rightly pointed out by the learned Additional Public Prosecutor, there was no delay in registering the case and forwarding the complaint-Ex.P.1 to the Court, which further strengthens the case of the prosecution. The recovery of the Material Objects at the instance of the disclosure statement made by the appellant/2nd accused also further strengthens the case of the prosecution. From these evidences, we have no hesitation to hold that the prosecution has clearly proved the guilt of the 2nd accused.

10. Now, turning to the quantum of punishment, the Trial Court has imposed only a minimum punishment on the 2nd accused, which does not require any interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

11. In the result,
- i. the appeal fails and the same is dismissed and the conviction and sentence imposed on the appellant/2nd accused by the Trial Court, in S.C.No.20 of 2013, dated 25.04.2013, stands confirmed.
 - ii. Since, the appellant/2nd accused is on bail, the Sessions Court is directed to take steps to secure his custody to commit him to prison to undergo the remaining period of sentence.
 - iii. The period of detention already undergone, if any, by the appellant/2nd accused shall be given set off under Section 428 Cr.P.C.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

paa

To

1. The Inspector of Police
Karimangalam Police Station
Dharmapuri District.

2. The Additional District and Sessions Judge
Dharmapuri

3. do thro the Principal Sessions Judge
Dharmapuri

4. The Judicial Magistrate
Palacode

5. do thro the Chief Judicial Magistrate
Dharmapuri

6. The Superintendent
Central Prison,Vellore

7. The District Collector,
Dharmapuri

8. The Director General of Police
Myalpore, Chennai-4

9.The Additional Public Prosecutor,
High Court, Chennai.

CRIMINAL APPEAL No.496 of 2013

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