

BAIL SLIP

The Appellant/Accused namely Srinivasan, aged about 22 years, S/o.Gandhi, was directed to be released on bail as per order of this Court dt.23.6.2015 made in MP.No.1/2014 in CrI.A.No.599/13

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.06.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.Nos.599 of 2013 and 593 of 2015

Srinivasan .. Appellant in C.A.No.599/2013/2nd Accused
Gundu @ Tamilselvan.. Appellant in C.A.No.593 of 2015/1st accused

Vs

State by
The Inspector of Police,
Kurinjippadi Police Station,
Cuddalore District. .. Respondent/Complainant

Appeals filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned I Additional Sessions Judge, Cuddalore, made in S.C.No.267 of 2012 dated 26.03.2013.

For Appellant in C.A.No.599/2015 : Mr.G.Hariharan,
Legal Aid Counsel
For Appellant in C.A.No.593/2015 : Mr.M.Senthamizhselvan
For Respondent in both Appeals : Mr.M.Maharaja,
Addl. Public Prosecutor

C O M M O N J U D G M E N T

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellants are the accused 1 and 2 in S.C.No.267 of 2012 on the file of the learned I Additional Sessions Judge, Cuddalore. The 3rd accused in this case was one Mr.Arun Pandian. All the 3 accused stood charged for offence under Section 294-b of IPC. The accused 1 and 2 stood charged for offence under Section 302 of IPC. The 3rd accused stood charged for offence under Section 302 read with 34 of IPC. The 1st accused stood further charged for offence under Section 506(ii) of iPC. By judgment dated 26.03.2013, the trial court acquitted the 3rd accused and convicted the accused 1 and 2 under

Section 302 of IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for 6 months. The trial court acquitted the accused 1 and 2 from the rest of the charges. Challenging the same, the appellants are before this Court with these appeals.

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

(a) The deceased in this case was one Mr.Velmurugan. P.Ws.1 to 3 are his friends. On 27.04.2012, at about 09.45 p.m., P.Ws.1 to 3 and the deceased went to Anna Nagar, Kurinchippadi, in a motorcycle. When they were passing through Anna Nagar, these 3 accused along with few others, who were having wooden logs in theirs hands, intercepted them and they all attacked the deceased. Then, the accused and others fled away from the place of occurrence. The deceased wanted P.W.3 to get his supporters from Kurinchippadi. Therefore, P.W.3 Manikandan left for Kurinchippadi in the motorcycle. The deceased and P.Ws.1 and 2 went to a nearby Panchayat Union Office and concealed themselves behind the said office. After the accused left the place of occurrence, the deceased and P.Ws.1 and 2 came to Perumal Temple. P.W.3 had just returned to Perumal Temple. It was around 10.45 p.m. The deceased enquired with P.W.3 as to whether his supporters had come. P.W.3 told that their supporters were not available. Therefore, P.Ws.1 to 3 and the deceased were sitting at Perumal Koil for about 2 hours.

(b) Thereafter, all the four were proceeding towards Anna Nagar. When they were nearing Anna Nagar, again these 3 accused came there. They intercepted the deceased. Again, the deceased wanted P.W.3 to go to Kurinchippadi and get his supporters there. Accordingly, Manikandan-P.W.3 left the place. The accused gave a chase to P.Ws.1 and 2 and the deceased. P.Ws.1 and 2 ran ahead of the deceased. The accused 1 to 3 surrounded the deceased. The 3rd accused took out a Vitchu Aruval from his Two Wheeler and gave the same to the 1st accused. The 1st accused cut the deceased on his head and hand. The 2nd accused snatched the Aruval from the 1st accused and cut the deceased on his neck. The deceased fell down in a pool of blood. The accused 1 to 3 were still standing near the deceased. At that time, P.Ws.4 and 5 came from Kurinchippadi. When they tried to rescue the deceased, the 1st accused intimidated him with brandishing the Aruval. Then P.W.1 went to Kurinchippadi and informed his supporters. Then, all of them came to the place of occurrence. The accused fled away from the scene of occurrence. Then, P.W.1 went to Kurinchippadi Police Station and made a complaint at 01.30 a.m. on 28.04.2012.

(c) P.W.13, the then Sub-Inspector of Police, on receipt of the said complaint under Ex.P.1, registered a case in Crime No.273 of 2012 under Section 302 of IPC against all the three accused. Then, he forwarded the complaint and the First Information Report to the court which were received by the learned Magistrate at 09.20 a.m. on 30.04.2012.

(d) P.W.14, 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 P.W.7 and another witness. He recovered blood stained earth and sample earth from the place of occurrence. He recovered 2, Hundred Rupee Currency Notes, found near the place of occurrence under a Mahazar. Then, he examined P.Ws.1 to 6 and recorded their statements. He held inquest on the dead body of the deceased between 06.30 a.m. and 09.30 a.m. on 28.04.2012 and forwarded the body for postmortem.

(e) P.W.9 conducted autopsy on the body of the deceased on 28.04.2012 at 09.20 a.m. He found the following injuries:

'External Injuries :

1. Laceration - clean edge on left side neck of mandible measuring 6 x 1 x 1 c.m.
2. Laceration in the parietal region left side to right side measuring 6 x 1 x 1 c.ms.
3. Laceration in right hand measuring 5 x 1 x 1 c.ms.
4. Laceration in right elbow measuring 3 x 1 x 1 c.ms.
5. Laceration in left fore arm 4 x 1 x 1 c.m.
6. Laceration in right chest 1 x 1 x 1 c.ms.
7. Laceration in midlim measuring 1 x 1 x c.m.

Internal Examination :

Abdomen, Peritoneal Cavity, Ribs - no injury.
Heart - Empty. Lungs - Pale. Hyoid bone- Preserved.
Stomach and contents : Empty. Liver Pale. Spleen pale.
Kidney pale.
Intestine : Distended with gas. Bladder - No injury.
Head - Laceration measuring 6 x 1 x 1 c.ms. from right peritoneal to left peritoneal bone. Skull - Fracture at peritoneal bone. Membrane injured.'

Ex.P.11 is the Postmortem Certificate. He gave opinion that the injuries found on the body of the deceased would have been caused by a weapon like M.O.1 Aruval. He further opined that the death of the deceased was due to shock and hemorrhage due to the injuries found on his body.

(f) When the investigation was in progress, on 28.04.2012, at 10.00 a.m., the accused 1 and 2 appeared before P.W.8, the then Village Administrative Officer of Ellanpettai Village. On such appearance, they want to confess. Having ascertained that they had come to confess voluntarily, P.W.8 recorded the confessions of the accused 1 and 2. Ex.P.5 is the Extra judicial confession given by the 1st accused and Ex.P.6 is the Extra judicial confession given by the 2nd accused. Along with a Special Report, he took both the accused to the police station and produced them before P.W.14.

(g) P.W.14 arrested the accused 1 and 2. On such arrest, they gave independent voluntary confessions. P.W.14 recovered the blood

stained lungi which the 1st accused was wearing. Then, in pursuance of the confession statements, the 1st accused took the police and the witnesses to a place, near a Vetrernity Hospital in Kurinchippadi-Bhuvanagiri Road and produced M.O.1 Aruval in the presence of the same witnesses. P.W.14 recovered the same under a Mahazer. Then, from his house, he produced a Motorcycle M.O.8 and P.W.14 recovered the same also. Then, he arrested the 3rd accused on the same day and recovered a full hand shirt from him. Then, he forwarded the accused to court and also handed over the material objects to court. At his request, the material objects were sent for chemical examination which revealed that there were blood stains found on all the material objects including the M.O.1 Veetchu Aruval. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above, the trial court framed charges against the accused as detailed in the first paragraph of the judgment. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as we have already pointed out, 14 witnesses were examined and 19 documents and 14 material objects were marked.

4. Out of the said witnesses, P.Ws.1, 2, 4 and 6 are the eye-witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.W.3 has spoken only about a part of the occurrence, because, according to him, on two occasions, he was sent by the deceased to go to his street to get his supporters to the place of occurrence. P.W.4 has spoken about the preparation of the Observation Mahazar and the Rough Sketch and the recovery of the blood stained earth and sample earth from the place of occurrence. P.W.8 has spoken about the extra-judicial confessions given by the accused. P.W.9 has spoken about the postmortem conducted and his final opinion regarding cause of death. P.W.10 is the Forensic Expert who has stated about the chemical analysis conducted on the material objects. P.W.11 has spoken about the arrest of the 3rd accused. P.W.12 has spoken about the motive for the occurrence. P.W.13 has spoken about the registration of the case on the complaint of P.W.1 and P.W.14 has spoken about the investigation done and his final report.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not choose to examine any witness nor to mark any document on their side. Having considered all the above, the Trial Court convicted the accused 1 and 2/appellants herein as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellants are before this Court.

6. We have heard Mr.G.Hariharan, the learned Legal Aid Counsel for the appellant in CrI.A.No.599 of 2013 and Mr.M.Senthamizh Selvan, the learned Counsel for the appellant in CrI.A.No.593 of 2015 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. In this case, the prosecution mainly relies on the eye-witness account of P.Ws.1, 2, 4 to 6. They have vividly spoken about the entire occurrence. P.W.3, who accompanied the deceased to the place of occurrence, has narrated only about a part of the occurrence. Since he was sent to his street to bring the supporters of the deceased, he could not witness the actual occurrence. The deceased was cut by the accused 1 and 2.

8. The learned Counsel for the appellants would submit that the lower court has rejected the evidences of these witnesses as against the 3rd accused. Applying the same, according to the learned Counsel for the appellants, the trial court ought to have acquitted these accused also.

9. We are not persuaded by the said argument. The principle falsus in uno, falsus in omnibus, has not been recognised by Indian Courts. It is the law that if the Court is able to separate the grain from the chaff, then, there should be no legal impediment for the Court to act upon the grain. In the instant case, all these witnesses have vividly spoken about the entire occurrence. Though they have been cross-examined at length, nothing has been elicited to doubt their credibility. The evidence of P.W.3 also duly corroborates the eye-witness account. From these evidences, in our considered view, the prosecution has clearly established that it was these two accused, who caused the death of the deceased by cutting him with M.O.I Aruval.

10. The prosecution relies also on the extra-judicial confessions given by the accused 1 and 2 to P.W.8. The learned Counsel for the appellants would submit that there would have been no reason for these accused to repose confidence in P.W.8 as P.W.8 is a stranger. Therefore, according to him, these two accused would not have made any such voluntary confessions as it is projected by the prosecution.

11. But, we find it difficult to accept the said contention. These two accused, from the narration of the facts, would go to show that are not new to the criminal cases. For their own reasons, they have gone to P.W.8 to confess. P.W.8 is a Village Administrative Officer. He is a very responsible Government Officer, who has got no act to grudge against these accused. Therefore, we are unable to doubt the credibility of P.W.8. We hold that the extra-judicial confessions of the accused 1 and 2 are true and voluntary. Thus, the extra-judicial confessions, which were recorded by P.W.8, would duly corroborate the eye-witness account. The recovery of the material

objects on the disclosure statement made by the accused also further strengthens the case of the prosecution. Thus, in our considered view, the prosecution has proved the guilt of the accused beyond all reasonable doubts. Further, the act of the accused would squarely fall under the first limb of Section 300 of IPC and therefore, they are liable to be punished under Section 302 of IPC.

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

13. In the result, the Criminal Appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellants by the trial court are hereby confirmed.

14. While parting with the case, we appreciate the services rendered by Mr.G.Hariharan, the learned Counsel, who appeared on behalf of the appellant in Crl.A.No.599 of 2013 as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1. The Inspector of Police,
Kurinjippadi Police Station,
Cuddalore District.
2. The I Additional District and Sessions Judge,
Cuddalore.
- 3.The Judicial Magistrate,
No.III, Cuddalore.
- 4.-do- thro'The Chief Judicial Magistrate,
Cuddalore.
- 5.The I Additional District & Sessions Judge,
Cuddalore.

6.The Superintendent,
Central prison, Cuddalore.

7.The Director General of Police,
Mylapore, Chennai.

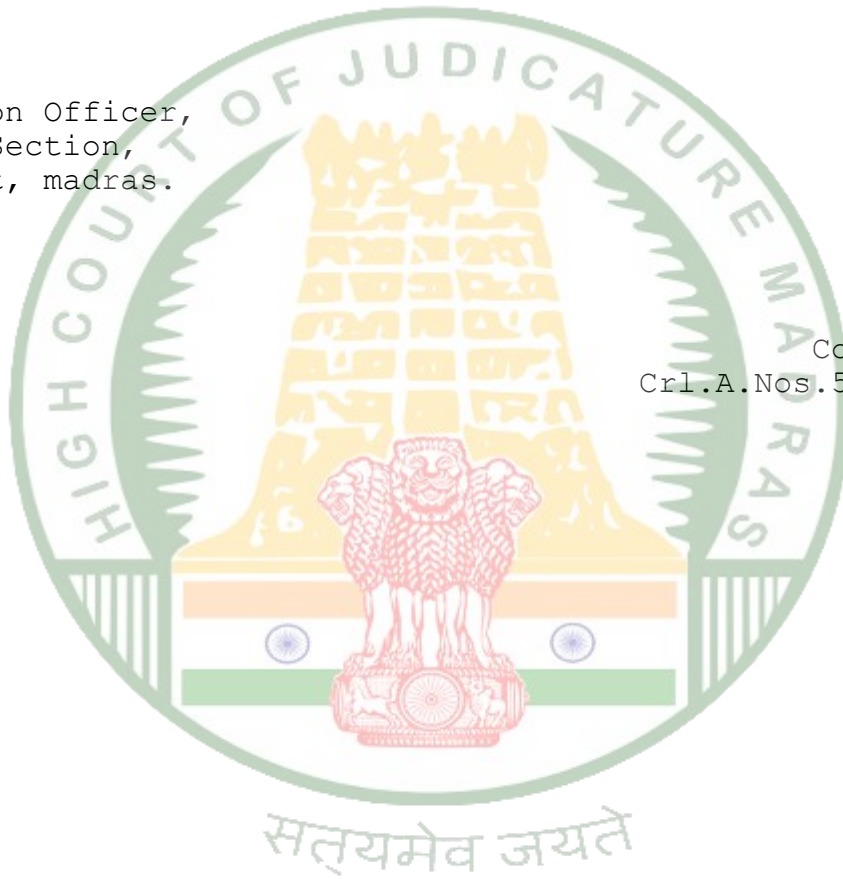
8.The District Collector,
Cuddalore.

9.The Public Prosecutor,
High Court, Chennai.

Copy to:

The Section Officer,
Criminal Section,
High Court, madras.

gj(co)
krd 21/7



Common Judgment in
Crl.A.Nos.599/13 & 593/2015

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