

BAIL SLIP

The Appellant/Accused namely Selvam @ Selvaraj (30 Years), S/o.Kuppusamy, was released on bail in M.P.No.1 of 2014 in CrI.A.No.741 of 2013 by order dated 24.01.2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.06.2016

CORAM

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

Criminal Appeal No.741 of 2013

Selvam @ Selvaraj ... Appellant/Accused

-Vs-

State of Tamil Nadu,
rep.by the Inspector of Police,
Kilianur Police Station,
Villupuram. ... Respondent/Complainant

Appeal under Section 374 r/w 382 of the Code of Criminal Procedure, against the judgment of conviction and sentence passed by the First Additional District Sessions Judge, Tindivanam in S.C.No.124 of 2013 dated 04.09.2013.

For Appellant : Mr.G.M.Ramasubramanian

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

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

The appellant is the first accused in S.C.No.124 of 2013 on the file of the learned I Additional District Sessions Judge, Tindivanam. His wife Mrs.Parvathi is the second accused in the case. The first accused stood charged for the offences under Sections 294(b) and 302 IPC and the second accused stood charged for the offences under Sections 294(b) and 302 r/w 34 IPC. The Trial Court acquitted the second accused and convicted the appellant under Section 302 IPC alone and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-

in default to undergo simple imprisonment for 6 months. The Trial Court acquitted the appellant from the charge under Section 294(b) IPC and acquitted the second accused from all the charges. Challenging the conviction and sentence imposed, the appellant is before this Court with this appeal.

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

The deceased is none other than the brother of the appellant herein. For quite sometime, they were in inimical terms. On 01.07.2012 at about 2.00 p.m., the daughter of the deceased and the daughter of the accused were playing in front of the house of the deceased. While so playing, the daughter of the accused kicked the daughter of the deceased. On seeing the same, the deceased made a single blow on the back of the daughter of the accused. The daughter of the accused rushed to her house and informed her parents. This is stated to be the motive for the occurrence. Immediately thereafter, it is alleged that the accused 1 and 2 came to the house of the deceased. The second accused was carrying one stick (M.O.1). On reaching the house of the deceased, they developed quarrel. The second accused handed over the stick to the first accused and the first accused, in turn, attacked the deceased on various parts of his body. The deceased rushed out of the house and he chased the accused. When the accused were nearing the Tea Stall belonging to one Subramani, the deceased, accompanied by P.W.1, reached the place of occurrence. Again it is stated that the first accused attacked the deceased with a stick and the deceased fell down and died on the spot. After the occurrence was over, P.W.1, who is the wife of the deceased, went to Kilianoor Police Station and at 4.00 p.m.on 01.07.2012, she made a complaint under Ex.P1. P.W.11- Sub-Inspector of Police, on receipt of Ex.P1, registered the case in Crime No.369 of 2012 under Sections 294(b) and 302 IPC against both the accused. Ex.P13 is the First Information Report. Exs.P1 and P13 were produced before the Court which was received by the Magistrate at 11.00 p.m.on 01.07.2012.

3.The case was taken up for investigation by P.W.13. He proceeded to the place of occurrence and prepared Observation Mahazar between 05.30 to 06.30 p.m.on 01.07.2012. He also prepared the rough sketch at the place of occurrence. He went to the nearby tea shop, viz.Subramani Tea Shop and prepared yet another observation mahazar and rough sketch in the presence of the same witnesses. He recovered the blood stained earth and sample earth from the place of occurrence and also a red coloured blood stained lungi and from 08.30 p.m.onwards, he conducted inquest on the body of the deceased, in which he examined P.Ws.1 to 4 and recorded there statements. He forwarded the body for post mortem. P.W.7, Dr.Sajil Slater, conducted autopsy on the body of the deceased on 02.07.2012 at 08.35 p.m.and he found the following injuries:

(1)Laceration over the left parietal eminence of 4 cms x 2.5

cms x bone depth.

(2) Laceration over the right parietal eminence, of 2 cms x 1.5 cms x bone depth.

(3) Vertically placed laceration, over forehead, 2 cms right of midline, of 4.5 cms x 2 cms x dura depth.

(4) Vertically placed laceration, top of head, 1.5 cms right of midline, of 6 cms x 2 cms x dura depth.

O/D of SSD:

Sub-scalpal contusions, over the right fronto-parietal and both parietal eminence areas.

(Below wounds 3 and 4) Fracture starting from the right eyebrow, running upwards 3 cms from midline, extending until the top of cranium, of 13 cms x 1 cms x dura depth and divided into two parts. First part, a depressed fracture of 6.5 cms x 3 cms x brain depth with underlying dural tear of 3 cms and second part, a depressed fracture (separate chip) of 2 cms x 3 cms x dura depth noted.

On the surface of brain, diffuse sub-dural haemorrhages present. Sub-arachnoid haemorrhages on the right frontal and both occipital lobes present. Cut section showed multiple petechial haemorrhages.

(5) Abrasions, middle of forehead (1), bridge of nose (1), of 2 cms diameter each.

4.Ex.P4 is the Post Mortem Certificate. The doctor gave opinion that the death was due to shock and haemorrhage due to injuries found on the body of the deceased.

5. During the course of investigation, on 02.07.2012 at about 03.15 p.m., P.W.13 arrested the first accused at Eraiyannur Bus Stand. The first accused gave voluntary confession in the presence of P.W.6 and another witness. He disclosed the place of hideout where the stick was present in the presence of the same witnesses and the same was also recovered. He produced the first accused before the Court and also handed over material objects. The second accused was also arrested on the same day. On his request, material objects were sent for medical examination which revealed that there were blood stains on the material objects. On completing the investigation, P.W.13 laid the charge sheet.

6. Based on the above materials, the Trial Court framed the issues. In order to prove the case, as many as 13 witnesses were examined, 16 documents and 4 material objects were marked, on the side of the prosecution. P.Ws.1 to 4 are the eye-witnesses to the occurrence P.W.5, brother of the accused has stated that he wrote the complaint as dictated by P.W.1. P.W.6-Village Assistant was examined to speak about the arrest of the first accused and the consequential recovery of M.O.1. P.W.7 has spoken about the autopsy done on the body of the deceased. P.W.8 has spoken about the chemical examination conducted on the

material objects and stated that there were blood stains on the material objects except the stick. P.W.9 has spoken about the observation mahazar and rough sketch and recovery of material objects. P.W.10 has also spoken about the arrest of the first accused and the consequential recovery of M.O.1 on the disclosure statement made by the first accused. P.W.11 has spoken about the registration of the case. P.W.12 is the one who carried the dead body to the hospital for post mortem. P.W.13 has spoken about the investigation done by him.

7.D.W.1-Dr.Latha has stated that on 01.07.2012 at about 04.30 p.m., the first accused came to the Government Hospital, Dindivanam with injuries and he told that he was assaulted by known persons on 01.07.2012 at 04.30 p.m. Dr.Latha found the following three injuries on the body of the accused:

(1)Lacerated wound on the right occipital parietal region of the skull measuring 5 x 3 x 2 cm.

(2)Lacerated wound on the left hand middle finger measuring 7 x 1 x 2 cm.

(3)Lacerated wound on the left thumb measuring 5 x 2 x 1 cm. She opined that the injuries were simple in nature.

8.The defence of the accused is that the second accused was not present at the time of occurrence The first accused sustained injuries in the very same occurrence and the same has not been explained properly.

9.We have heard the learned counsel for the appellant, learned Additional Public Prosecutor for the respondent and also perused the records carefully.

10.Though several grounds are raised, the learned counsel for the appellant would mainly contend that the prosecution has not come forward with clean hands and they have suppressed the injuries sustained by the first accused in the very same occurrence. He relied on the decision of the Hon'ble Supreme Court in (1976) 4 SCC 394, in Lakshmi Singh and others v. State of Bihar. He would further submit that P.Ws.1 to 4 would not have been present at the time of occurrence at all and hence the appellant is entitled for acquittal at the hands of this Court.

11.According to the learned Additional Public Prosecutor, there is no reason to reject the evidences of the eye-witnesses, ie. P.Ws.1 to 4. Though it is true that the appellant had also sustained injuries, there is no proof that those injuries were sustained in the very same occurrence He further submitted that the Trial Court has rightly believed P.Ws.1 to 4 and convicted the appellant. Thus, according to the learned Additional Public Prosecutor, the appeal is liable to be rejected.

12. We have considered the above submissions.

13. According to D.W.1, it is crystal clear that the accused had sustained injuries. The appellant / accused went to the doctor at about 04.30 p.m. He told the doctor that he sustained injuries at the hands of known persons. Though it is stated by the learned Additional Public Prosecutor that there is no proof that those injuries were sustained in the very same occurrence, the fact remains that when the accused was arrested, the injuries would have been seen by the Investigating Officer. When that be so, there should have been investigation in respect of those injuries. But unfortunately in this case, P.W.13 has admitted that he did not do any investigation in respect of the injuries found on the body of the deceased. From the evidence of P.Ws.1 to 4, it is clear that the first accused would have sustained injuries only in the very same occurrence. When that be so, the failure of the prosecution to explain those injuries on the accused, is vital, which would create serious doubt in the evidence of P.Ws.1 to 4.

14. In an identical circumstance, the Hon'ble Supreme Court in (1976) 4 SCC 394, in Lakshmi Singh and others v. State of Bihar, has held as follows:

"It seems to us that 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 to as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

15. Applying the same yardstick in the present case, we are of the opinion that P.Ws.1 to 4 have not offered any explanation in respect of the injuries sustained by the first accused, and

they have suppressed the fact that the accused had also sustained injuries.

16.Turning to the First Information Report, though it is alleged that the case was registered at 04.00 p.m., the First Information Report has reached the Court only at 11.00 p.m. Absolutely, there is no explanation in respect of the said delay. This also creates a doubt in the case of the prosecution.

17.Apart from that, as rightly pointed out by the learned counsel for the appellant, since there are two occurrences, the presence of P.Ws.1 to 4 is also doubtful. Even assuming that the said contention has no basis and the presence of P.Ws.1 to 4 could be believed, even then, the conviction cannot be sustained in view of the fact that P.Ws.1 to 4 has not explained the injuries sustained by the appellant. In such view of the matter, we find force in the contention of the learned counsel for the appellant that the prosecution has not come forward with true version of the occurrence. On this ground, we are inclined to allow the appeal.

18.In the result, the appeal is allowed and the conviction and sentence imposed on the appellant are set aside and he is acquitted of the charges. The bail bond, if any executed by him, shall stand cancelled. The fine amount, if paid, shall be refunded to the appellant.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KM

To

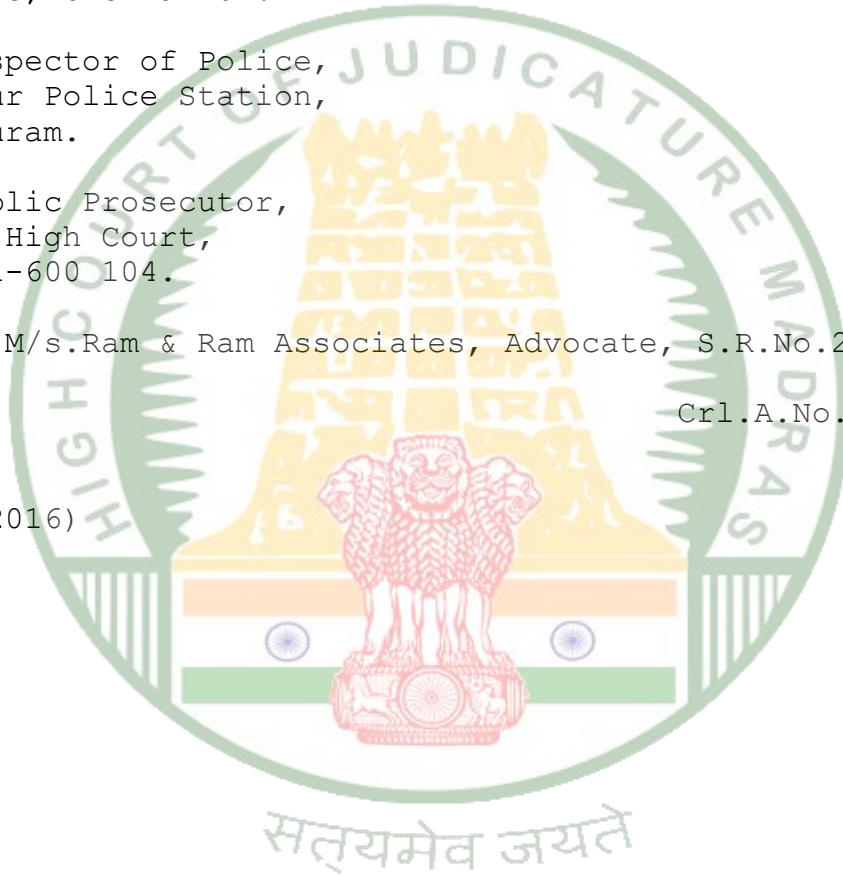
1. The Judicial Magistrate,
Vanur.
2. The Chief Judicial Magistrate,
Villupuram.
3. The I Additional Sessions Court,
Tindivanam.
4. The Judicial Magistrate No.I,
Thiruchirapalli.
5. The Chief Judicial Magistrate,
Thiruchirapalli.

6. The Superintendent,
Central Prison, Cuddalore.
7. The District Collector,
Villupuram.
8. The Superintendent of Police,
Villupuram.
9. The Director General of Police,
Mylapore, Chennai 04.
10. The Inspector of Police,
Kilianur Police Station,
Villupuram.
11. The Public Prosecutor,
Madras High Court,
Chennai-600 104.

+2cc's to M/s.Ram & Ram Associates, Advocate, S.R.No.29052

CrI.A.No.741 of 2013

PVS(CO)
CA(13/07/2016)



WEB COPY