



BALI SLIP

The Appellant/Accused Viz., Sundarraaj @ Raja was released on bail as per the order of this Court dated 25.01.2016, made in CrI.MP(MD)No.425/2016 in CrI.A(MD)No.201/2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**
AND
THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**

CRL.A[MD].No.201 of 2015

Sundarraaj @ Raja : Appellant

Vs.

State, represented by
Inspector of Police,
Kallidaikurichi Police Station,
Crime No.289 of 2010,
Tirunelveli District. : Respondent

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction, dated 04.08.2015, made in S.C.No.375 of 2011, on the file of the learned First Additional District and Sessions Judge, Tirunelveli.

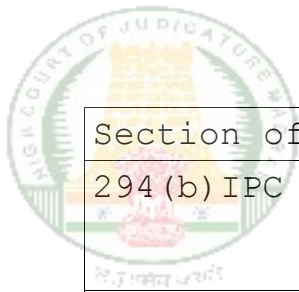
For Appellant : Mr.V.Kathirvel
Senior Counsel
For Mr.K.Prabhu

For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

JUDGMENT

[JUDGMENT of the Court was delivered by **S.NAGAMUTHU, J**]

The appellant is the sole accused in S.C.No.375 of 2011, on the file of the learned First Additional District and Sessions Judge, Tirunelveli. He stood charged for the offences punishable under Sections 341, 294(b), 302 and 506(ii) of the Indian Penal Code. By Judgment dated 04.08.2015, the Trial Court convicted the accused, as detailed below:-



Section of Law	Sentence	Fine amount
294 (b) IPC	To undergo simple imprisonment for one week.	No fine.
506(ii) IPC	To undergo simple imprisonment for six months.	No fine.
302 IPC	To undergo imprisonment for life.	Rs.1,000/- in default to undergo simple imprisonment for three months.

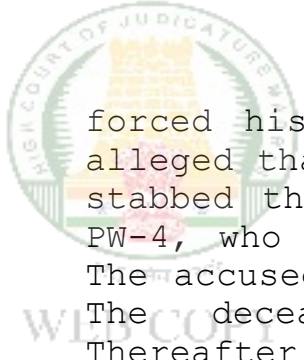
However, the Trial Court has acquitted the accused from the charge under Section 341 of the Indian Penal Code. The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

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

The deceased, in this case, was one Mr.Sankaranarayanan. He was a resident of Vayiravikulam Village in Tirunelveli. His wife was Mrs.Anitha. The accused is none else than the brother of Mrs.Anitha. Out of the wedlock between the deceased and Mrs.Anitha, they had two children. It is alleged that few days before the occurrence, when Mrs.Anitha served coffee to her son, by accident, it fell on the shoulder of her son. This resulted in injuries to him. The deceased found fault with Mrs.Anitha and scolded her for her negligence. This resulted in a quarrel between her and the deceased.

2.1. Depressed over the said quarrel, it is alleged that Mrs.Anitha consumed sleeping tablets in excess, on 16.12.2010 around 12.00 noon. Her father-in-law took her immediately to the hospital and admitted her as a patient. This was informed to the accused and the other family members. The accused rushed to the hospital and then, on returning to the house of the deceased, on finding the father of the deceased, he scolded him and also warned that in the event anything happened to his sister - Mrs.Anitha, he would not spare the deceased. Then, the accused left the house of the deceased. At that time, the deceased was not at home. When he returned home, his father informed him about the above occurrence. The deceased got wild. He removed all the belongings of her wife - Mrs.Anitha and dropped them at the house of the accused, along with his wife. This further infuriated the accused.

2.2. It is alleged that on 17.12.2010, around 09.50 AM, the deceased was proceeding towards east, on the Kallidaikurichi Main Road. When he was nearing a shop, known as "Chennai Musical Shop", the accused suddenly emerged there. He intercepted the deceased, scolded him in filthy language and pointed out the incident, which

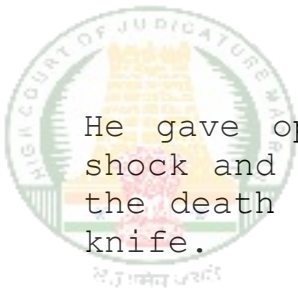


forced his sister to consume sleeping tablets in excess. It is alleged that in the said quarrel, the accused took out a knife and stabbed the deceased repeatedly. The deceased fell down. PW-1 to PW-4, who were present at the scene of occurrence, raised alarm. The accused ran away from the scene of occurrence with the knife. The deceased succumbed to the injuries instantaneously. Thereafter, PW-1 went to the Kallidaikurichi Police Station and made a complaint at 10.30 AM, on 17.12.2010. On the said complaint, PW-14, the then Sub-Inspector of Police, registered a case in Crime No.289 of 2010, under Sections 294(b), 302 and 506 (ii) of the Indian Penal Code. EX-P1 is the complaint and EX-P15 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

2.3. Taking up the case for investigation, at 11.30 AM, on 17.12.2010, PW-15 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of the witnesses. He recovered bloodstained earth and sample earth from the place of occurrence. Then, between 01.10 PM and 03.10 PM, he conducted inquest on the body of the deceased. EX-P17 is the inquest report. Then, he forwarded the dead body for postmortem.

2.4. PW-11 - Dr.S.Venkatajalapathi conducted autopsy on the body of the deceased, at 04.00 PM, on 17.12.2010. EX-P14 is the postmortem certificate. He noticed the following injuries:-

- "1. Stab injury measuring 3 X 1 X 7 CM in the centre of neck. 3 CM above the mid sternum.
2. A Stab injury measuring 3 X 1 X 6 CM just below the left clavicle [middle 1/3rd].
3. A Stab injury measuring 3 X 1 X 7 CM between the clavicle and first rib just left of sternum.
4. A Stab injury measuring 1 X 1 X 1/2 CM over the left fourth rib near nipple.
5. Two Stab injuries measuring 3 X 1 X 6 CM sizes over the left 8th rib are at mid clavicular line and are 2 cm left to the above wound.
6. 1 X 1 X 1 CM size stab injury about 7 cm lateral left to umbilicus [left mid clavicular line].
7. 1 X 1 X 1 CM size stab injury in epigastric region.
8. A Stab injury measuring 1 X 1 X 2 CM in the right lateral side of chest about 5 cm below the middle of axilla.
9. A lacerated injury measuring 1 X 2 X 1/2 CM in the right arm upper 1/3rd middle side.
10. A Stab injury measuring 1 X 1 X 1 CM in the chest middle at Xiphisternum".



He gave opinion that the deceased would appear to have died of shock and hemorrhage due to multiple injuries. According to PW-11, the death of the deceased could have been caused by a weapon, like knife.

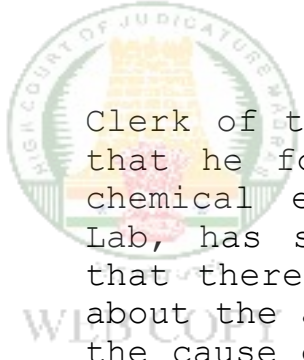
2.5. PW-15 recovered the bloodstained clothes from the dead body of the deceased and forwarded the same to the Court for chemical examination. When the investigation was in progress, it is alleged that the accused went to the office of the Village Administrative Officer at Kallidaikurichi, around 04.00 PM, on 17.12.2010. On such appearance, the accused wanted to make a voluntary confession. PW-8 allowed him to confess voluntarily and he reduced the same into writing. EX-P14 is the said confession. Then, he took the accused along with EX-P14 and produced him before PW-15.

2.6. On such production, PW-15 arrested the accused. While in custody, he made a voluntary confession. In pursuance of the same, the accused took the police and the witnesses to the hide out and produced MO-1, knife. PW-15 recovered the same under a mahazer, in the presence of the same witnesses.

2.7. The investigation was, thereafter, continued by PW-16. He examined few more witnesses, recorded their statements and collected the medical records. At his request, the material objects were sent for chemical examination. The report revealed that there were human bloodstains on all the material objects, including the knife recovered from the accused. On completing the investigation, he laid charge sheet against the accused.

2.8. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on the side of the prosecution, 16 witnesses were examined, 17 documents and 7 material objects were marked. Out of the said 16 witnesses, PW-1, PW-2, PW-4, the brothers of the deceased and PW-3, the father of the deceased, have spoken about the occurrence as eye-witnesses. According to them, they were, by chance, standing near the place of occurrence and at that time, they saw the occurrence. PW-5 and PW-6 have turned hostile and they have not supported the case of the prosecution in any manner. PW-7 has spoken about the preparation of Observation Mahazer and the Rough Sketch and the recovery of material objects from the place of occurrence.

2.9. PW-8, the Village Administrative Officer, has spoken about the extra judicial confession allegedly made by the accused and the disclosure statements made to the police and the consequential recovery of material object - MO-1. PW-9, the Head



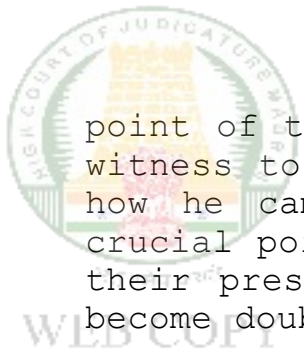
Clerk of the Court of the learned Judicial Magistrate, has stated that he forwarded the material objects to the Forensic Lab for chemical examination. PW-10, an Assistant Director of Forensic Lab, has stated that he examined the material objects and found that there was human blood including the knife. PW-11 has spoken about the autopsy conducted by him and his final opinion regarding the cause of death. PW-12 has spoken about the photograph taken by him at the place of occurrence from various angles, as directed by PW-15. PW-13, a Head Constable, has spoken about the forwarding of the dead body to the hospital, as directed by PW-15. PW-14 has spoken about the registration of the case, on the complaint made by PW-1. PW-15 and PW-16 have spoken about the investigation conducted by them and the filing of final report.

2.10. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. However, he did not choose to examine any witness. On his side, the deposition of an witness in S.C.No.123 of 2009, on the file of the learned Principal Sessions Judge, Tirunelveli, has been marked. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

3. We have heard the learned Senior Counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for the respondent and we have also perused the records carefully.

4. The alleged occurrence, in this case, was around 09.50 AM, on 17.12.2010. The First Information Report, in this case, is stated to have been registered at 10.30 AM, on the same day and the same had reached the hands of the learned Judicial Magistrate at 12.00 noon, on the same day. Thus, there is no delay either in preferring the complaint or forwarding the First Information Report to the Court. But, on that score, we cannot rush to the conclusion that everything, as stated in EX-P1, is plausibly true and therefore, the accused is liable for conviction. *De hors* the fact that prompt launching the First Information Report, we have to examine as to whether PW-1 to PW-4 are believable and trustworthy.

5. The learned Senior Counsel appearing for the appellant would submit that PW-1 to PW-4 are the brothers and father respectively of the deceased and thus, they are interested in the affairs of the deceased. Their houses are not situated anywhere near the place of occurrence. According to the case of the prosecution, their presence, at the place of occurrence, is by chance. At this juncture, we need to state that when a witness claims to have present at the place of occurrence, at the crucial

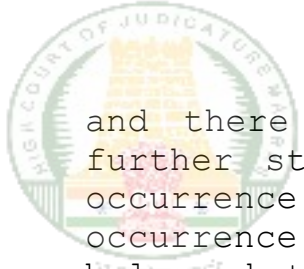


point of time, by chance, it is absolutely necessary for the said witness to explain to the satisfaction of the Court as to why and how he came to be present at the place of occurrence, at the crucial point of time. If there is no satisfactory explanation for their presence at the place of occurrence, then, their evidences become doubtful.

6. In the instant case, PW-1 has stated that PW-1 to PW-4 and the others came to Kallidaikurichi in a bus and got down from the bus at the bus stop. At that time, they heard the noise from the northern direction. Therefore, they went towards the said direction. When they reached near the Chennai Musicial Shop, they found the accused stabbing the deceased. The occurrence had taken place in a busy locality. There are number of shops situated in the said locality. But, no independent witness has been examined to speak about the occurrence. In our considered view, the presence of these four family members of the deceased, at the crucial point of time, is highly doubtful, as the explanation offered by them is not satisfactory. Had it been true that they came in the bus, either the conductor or the driver of the bus could have been examined. Thus, according to these witnesses, the occurrence was not anywhere near the bus stop, where they got down from the bus. They have stated that they heard some noise from the northern direction. When they were aware of the accused, it is again doubtful as to why they should go in such a long distance to the Chennai Musical Shop, where the occurrence is stated to have been taken place. The distance between the bus stop and the Chennai Musical Shop is not known. It is nowhere in evidence that at the place of occurrence, before stabbing the deceased, there arose quarrel between the deceased and the accused and there was also a commotion. But, there was no commotion and there was no occasion for the accused immediately proceeding with the stabbing incident. If that is so, the story projected by PW-1 to PW-4 that they heard the noise, which prompted them to rush to the place of occurrence is highly doubtful.

7. It is the case of the defence that the deceased was attacked by an unknown person and the same was not witnessed by anybody. It is in further evidence that the identity of the deceased was not known for sometime. In this regard, the learned Senior Counsel has taken us through the evidence of PW-7.

8. PW-7, the Village Administrative Officer, has stated that he has been examined to speak about the preparation of the observation mahazer and the rough sketch and the recovery of the material objects. But, during cross-examination, he has stated that at 10.00 AM, on 17.12.2010, when he was at his office, somebody informed him that there was a murder near the Chennai Musical Shop. Therefore, along with his Village Assistant, he proceeded to the place of occurrence. When he reached the place of occurrence, he found the deceased dead in a pool of blood

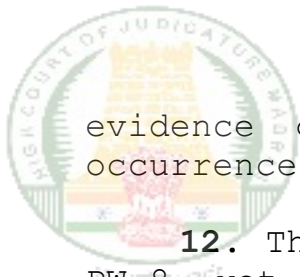


and there were number of people around the dead body. He has further stated that he made a detailed enquiry at the place of occurrence from the persons, who were standing there about the occurrence. The people in the crowd told him that the deceased belonged to Vairavikulam Village. He has further stated that he was told by somebody in the crowd that the deceased was stabbed by somebody and nobody in the crowd has stated that the deceased was stabbed by this accused. Nobody has stated that they saw the occurrence. They had only stated that the deceased was found in a pool of blood.

9. This witness, namely, the Village Administrative Officer, is an independent Government Official. There is no need for him to depose something in favour of the accused. This witness has not been treated as hostile also. Thus, we find no reason to reject his evidence. Had it been true that PW-1 to PW-4, who were present and witnessed the occurrence and PW-1 alone had gone to the Police Station, certainly, when the Village Administrative Officer came to the place of occurrence, i.e., immediately after the occurrence, PW-2 to PW-4 must have been present. If they were really present at the place of occurrence, PW-7 would have been informed by them that the deceased was stabbed by the accused. The very fact that in the crowd PW-1 to PW-4 were not present, the very fact that the people in the crowd only identified that the deceased belonged to Vairavikulam Village and the very fact that nobody had claimed that he saw the occurrence would all go to show that the occurrence was not witnessed by PW-1 to PW-4 and they have been, later on, put up by the prosecution as eye-witnesses.

10. PW-7 has further stated that after visiting the place of occurrence, at 10.00 AM, on 17.12.2010 and after making a thorough enquiry, he went to the Police Station and made a complaint. The said complaint has not seen the light of the day. Thereafter, a complaint [EX-P1] has been obtained from PW-1 as though PW-1 to PW-4 had witnessed the occurrence.

11. The learned Senior Counsel for the appellant would, then, take us through the evidence of PW-12, the photographer. He has stated that he went to the place of occurrence along with PW-15, at 08.00 AM. He has further stated that at that time, the Village Administrative Officer and the others were present. The learned Senior Counsel would point out that the doctor had found rigor mortis on all the four limbs of the deceased. Thus, according to him, the occurrence would not have taken place at 09.50 AM, as it is projected by the prosecution. In our considered view, the estimation of time by an individual depends upon his perception. The estimation of time may differ from person to person depending upon his perception. In the instant case, it is not as though PW-12 had referred to the time of visit by referring to the clock or
<https://hcservices.courts.gov.in/hcservices/> was based on the estimation made by him on his own perception. Therefore, we cannot attach any weightage for the



evidence of PW-12 that the police had visited the place of occurrence at 08.00 AM itself.

12. The learned Additional Public Prosecutor would submit that PW-8, yet another Village Administrative Officer, has spoken about the extra judicial confession made by the accused on 17.12.2010, at 04.00 PM, wherein he has confessed that he killed the deceased. The learned Additional Public Prosecutor would point out that the said extra judicial confession [EX-P4], by itself would be sufficient to convict the accused.

13. But, we do not find any force in the said argument at all. It is not as though the accused had any acquaintance with PW-8. He was not the Village Administrative Officer of the village, to which the accused belonged to. Therefore, it is highly doubtful as to whether the accused would have chosen a total stranger to make the confession. Though it is stated that the accused appeared before him and confessed to PW-8, we find it very difficult to believe PW-8. Therefore, the evidence of PW-8 is also rejected.

14. There is yet another reason to doubt the credibility of PW-8. EX-D1 is the deposition of PW-8 in Sessions Case No.123 of 2009. PW-8 has admitted, during cross-examination, that he deposed as eye-witness in the said case, which is also a murder case. In the said case, he deposed before the Court that the accused in the said case appeared before him at 06.00 PM at his office and made a confession voluntarily. Similarly, he was a witness in S.C.No.410 of 2002, on the file of the First Additional Sessions Court, [Fast Track Court], Tirunelveli. He has tacitly admitted that in many such cases, he had given evidence before the Courts of law that the accused in the respective cases appeared before him and gave voluntary confessions. Thus, though PW-8 is a Government Official, it is crystal clear that he is a stock witness for the prosecution, who has been used for several occasions to speak about the confessions. For these reasons, we reject the evidence of PW-8.

15. In view of the foregoing discussions, we hold that the prosecution has failed to prove the case beyond reasonable doubts and the Trial Court has failed to appreciate these improbabilities and the inconsistencies in the case of the prosecution. Therefore, we hold that the accused is entitled for acquittal.

16. In the result, this Criminal Appeal is allowed; the conviction and sentence imposed on the appellant by Judgment dated 04.08.2015, made in S.C.No.375 of 2011, on the file of the learned First Additional District and Sessions Judge,



Tirunelveli, is set aside and the appellant is acquitted. Fine amount, if any, paid by the appellant shall be refunded to him. Bail bond executed by the appellant and the sureties shall stand terminated.

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/True Copy/

Sd/-

Assistant Registrar (CS-II)

Sub Assistant Registrar

NB

To

1. The Judicial Magistrate, Ambasamudram,
- 2 The Chief Judicial Magistrate, Tirunelveli.
- 3.The First Additional District and Sessions Judge, Tirunelveli.
- 4 .The Inspector of Police, Kallidaikurichi Police Station, Tirunelveli District.
- 5.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.
- 6 The Superintendent of Central Prison, Palayamkottai.
- 7 The Director General of Police, Mylapore, Chennai.
- 8 The District Collector, Tirunelveli District.

+1CC to Mr.K.Prabhu, Advocate Sr.No.59424

GJM/SS3/SAR-I-24.10.16-9p-10C

JUDGMENT MADE IN
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