

**BAIL SLIP**

The Appellants/Accuseds viz., 1)Ganesan, 2)Raja released on bail as per the order of this Court dated 21.09.2016 and made in Crl MP (MD)No.1/2015 in Crl.A.[MD].No.226 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 24.10.2016

PRONOUNCED ON : 22.11.2016

CORAM:

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

Crl.A.[MD].No.226 of 2015

1.Ganesan

2.Raja : Appellants/Accused Nos.1 and 2

Vs.

The State rep. by
The Inspector of Police,
Uppiliapuram Police Station,
Tiruchirappalli District.
(Ref. Crime No.334/2013)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment, dated 06.02.2015, made in S.C.No.106 of 2014, by the learned Principal Sessions Judge, Tiruchirapalli.

For appellants : Mr.D.Shanmugaraja Sethupathi
For respondent : Mr.K.S.Durai Pandian,
Additional Public Prosecutor

JUDGMENT

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

The appellants are the accused Nos.1 and 2 in S.C.No.106 of 2014 on the file of the learned Principal Sessions Judge, Tiruchirapalli. The trial Court framed as many as four charges against them as detailed below:

Charge Nos.	Against	Offence U/s.
1	A1 and A2	U/s.341 IPC
2	A1	U/s.294(b) IPC
3	A1 and A2	U/s.302 IPC
4	A1	U/s.506(ii) IPC

By judgment dated 06.02.2015, the trial Court convicted them under all the charges and sentenced them as detailed below:

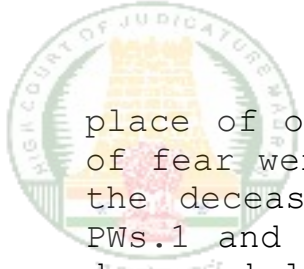
Accused	Conviction U/s.	Sentence
A1 & A2	U/s.341 IPC	A1 sentenced to undergo one month simple imprisonment.
A1	U/s.294(b) IPC	To pay a fine of Rs.500/-, in default to undergo simple imprisonment for one week.
A1 & A2	U/s.302 IPC	To undergo imprisonment for life and to pay a fine of Rs.1,000/- each, in default to undergo rigorous imprisonment for six months.
A1	U/s.506(ii) IPC	To pay a fine of Rs.500/-, in default to undergo simple imprisonment for a period of one week.

Challenging the said conviction and sentence, the appellants/A1 & A2 are before this Court with this appeal.

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

(a) The deceased in this case was one Mr.Subramanian. PW1 is his second wife. PW3 is their daughter. They were residing at Venkatachalapuram Village, in Thuraiyur Taluk, Trichy District. The first accused is the cousin of the deceased and the second accused is the son of the first accused. They were all residing in the same Village. It is alleged that there was a longstanding enmity between the two families on account of a property dispute. They were not in talking terms and they were inimical against each other. This is stated to be the motive for the occurrence.

(b) It is alleged that on 10.12.2013 at 6.30 p.m., the deceased accompanied by PW1 and PW2 had gone to the bazaar at Venkatachalapuram. The said bazaar is situated at a distance of about 2 to 3 kilometers from the house of the deceased. After purchasing some materials for their house, all the three were returning towards their house. The deceased was going ahead of PWs.1 and 2. Since the cycle tire had punctured, the deceased was walking and pushing the cycle. PWs.1 and 2 were following him on walk. Around 10.30 p.m. when they were nearing the maize field of one Chinnathambi, these two accused suddenly emerged there. Both of them were armed with aruval. They intercepted the deceased. The first accused cut the deceased with aruval on his hands. The deceased fell down. PWs.1 and 2 raised alarm. The first accused threatened them of dire consequences. He also hurled abusive and obscene words on PWs.1 and 2. Some, 3 to 4, persons rushed to the



place of occurrence from the southern direction. PWs.1 and 2 out of fear went to their house. Both the accused continued to attack the deceased with aruval indiscriminately. After half an hour, PWs.1 and 2 returned to the place of occurrence. They found the deceased lying dead in a pool of blood. There were a number of injuries on the dead body.

(c) Thereafter, PW1 went to Uppiliapuram Police Station which is situated at a distance of three kilometres away from the place of occurrence and made a complaint. The said complaint made by PW1 is Ex.P1. PW20, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No.334 of 2013 under Sections 341, 294(b), 302 and 506(ii) IPC. Ex.P22 is the FIR. He forwarded both the documents to the Court through a special messenger which was received by the learned Magistrate at his house at 4.00 a.m. on 11.12.2013.

(d) PW21 took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of PW9 and another witness. He recovered bloodstained earth and sample earth, a pair of chappel and an old cycle belonging to the deceased from the place of occurrence under a mahazar. Then, he held inquest on the body of the deceased in the presence of Panchayathars, during which he examined PWs.1 to 6. Then, he forwarded the body for postmortem.

(e) PW8 - Dr.Thamizharasi conducted autopsy on the body of the deceased on 11.12.2013 at 12.15 p.m. She found the following injuries on the dead body of the deceased:

"External Examination :

Body of male, lying on its back, arms by the side, legs extended.

Head & Neck : Eyes opened. Mouth partially closed.

1.Skull fracture in right side of occipital region.

2.Lacerated wound right side of neck 15 x 5 x 5 cm.

3.Lacerated wound lower law right side 15 x 2 x 2 cm.

4.Deep lacerated wound over front & right side of neck 10 x 5 x 3 cm tracheal cut present.

Arms :

1.Right shoulder - lacerated wound - 10 x 7 x 1 cm.

2.Right elbow - open bony cut injury at right elbow joint.

3.Closed fracture left forearm over the upper 1/3.

4.Left hand cut injury left palm and all 5 fingers.

Internal examination :



Thorax : Heart and Lungs pale.

Abdomen - stomach - 200 ml fluid, Dark brown coloured, semisolid, smell of alcohol present.

Genitalia - Normal."

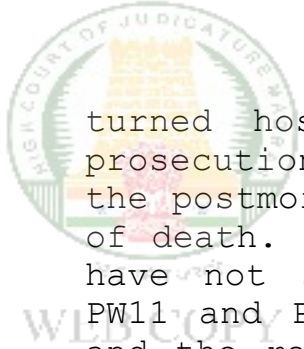
Ex.P3 is the Postmortem Certificate. She opined that the said injuries found on the body of the deceased could have been caused by a weapon like aruval (MO.1 series). She further opined that the death of the deceased was due to shock haemorrhage due to the multiple injuries.

(f) During the course of investigation, PW21 recovered the bloodstained clothes from the body of the deceased and forwarded the same to the Court. On 11.12.2013 at 3.00 p.m. at Kappampatti Village, PW21 arrested the first accused in the presence of the witnesses. On such arrest, he gave a voluntary confession in which he disclosed the place where he had hidden an aruval. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced an aruval. PW21 recovered the same under a mahazar. On returning to the Police Station, PW21 forwarded the first accused to the Court for judicial remand and also handed over the material objects to the Court.

(g) On 12.12.2013 at 9.00 a.m. PW21 arrested the second accused in the presence of witnesses. On such arrest, he gave a voluntary confession, in which he disclosed the place where he had hidden an aruval, a bloodstained shirt and a bloodstained T-shirt. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the said material objects. PW21 recovered the same under a mahazar. Then, he forwarded the accused to the Court for judicial remand and handed over the material objects to the Court. As per the request of PW21, the material objects were sent for chemical examination. The report revealed that there were bloodstains on all the material objects including the aruvals alleged to have been recovered from the accused. On completing the investigation, he laid charge sheet against the accused.

(h) Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgement. They denied the same. In order to prove the charges, on the side of the prosecution, as many as 21 witnesses were examined, 33 documents and 12 material objects were marked.

(i) Out of the said witnesses, PWs.1 and 2, the wife and daughter respectively of the deceased have spoken about the entire occurrence as eyewitnesses. They have stated that they accompanied the deceased and thus, they witnessed the attack made by both the accused. They have further stated that when the case was in progress, they went to the house and after half an hour, they returned to the place of occurrence and thereafter, PW1 went to the Police Station and made a complaint. PWs.3 to 7 have



turned hostile and they have not supported the case of the prosecution in any manner. PW8 - Dr.Thamizharasi has spoken about the postmortem conducted and her final opinion regarding the cause of death. PWs.9, 10, 16 and 17 have also turned hostile and they have not supported the case of the prosecution in any manner. PW11 and PW12 have spoken about the arrest of the first accused and the recovery of MO.1 aruval. Since PW11 did not support the case of the prosecution in full, he was treated as hostile.

(j) PW13 and PW14 have spoken about the arrest of the second accused, the disclosure statement made by him and the consequential recovery of the aruval, T-shirt and bloodstained shirt. PW15 a scientific expert has stated about the chemical examination conducted on the material objects. He has also stated that he found bloodstains on all the material objects including MO.1 series. PW18, a Police Constable, has stated that he handed over the FIR to the learned Magistrate, as directed by the investigating officer. PW19, yet another constable, has stated that he handed over the dead body to the doctor for postmortem, as directed by PW21. PW20 has spoken about the registration of the case on the complaint of PW1. PW21 has spoken about the investigation done and the final report filed.

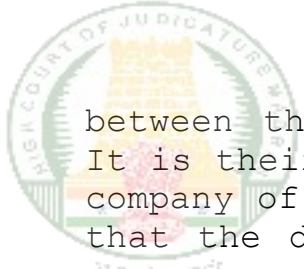
(k) When the incriminating materials were put to the accused under Section 313 of Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor to mark any document on their side. The defence of the accused was a total denial. Having considered all the above, the trial Court convicted them, as detailed in the first paragraph of this judgment. That is how they are before this Court with this appeal.

3. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the respondent and we have also perused the records carefully.

4. In the instant case, the alleged occurrence, as projected by the prosecution, had taken place at 10.30 p.m. on the ridge in the midst of maize field of one Chinnathambi. The house of PWs.1 and 2 and the deceased were not near the place of occurrence. It is not in evidence that there was light available at the place of occurrence. According to PW2, she had a torchlight in her hand and by flashing the said light, she witnessed the occurrence. But, PW1 has not stated that she had a torchlight in her hand. It is also not at all the case of the prosecution that PW2 had a torchlight in her hand and by flashing the same, she witnessed the occurrence. Thus, there is some initial doubt with regard to the availability of light at the place of occurrence.

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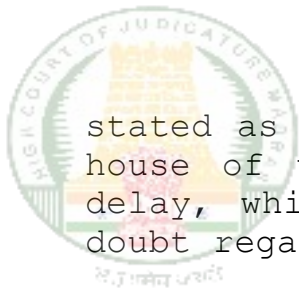
5. PWs.1 and 2 have stated that they accompanied the deceased to the bazaar. According to the evidence of PW1, the distance



between their house and the bazaar is around 2 to 3 kilometres. It is their evidence that from 6.30 p.m. onwards, they were in the company of the deceased. Both the witnesses have further admitted that the deceased used to take liquor. But, on the date of the occurrence, there is no evidence that the deceased drunk liquor, when he was in the company of PWs.1 and 2. But, the Doctor, who conducted autopsy, found that there was alcohol in the stomach of the deceased. Had it been true that PWs.1 and 2 accompanied the deceased from 6.30 p.m. onwards and had it been true that the deceased had not taken liquor, it is a mystery as to how there was alcohol in the stomach of the deceased. The presence of alcohol in a considerable quantity in the stomach of the deceased creates doubt in the evidence of PWs.1 and 2 that they accompanied the deceased from 6.30 p.m onwards.

6. The learned counsel for the appellants would next contend that the conduct of PWs.1 and 2 is highly unnatural and thus, their presence cannot be believed. We find some force in the said argument. According to these two witnesses, as soon as the first accused cut the deceased on both of his hands, the deceased fell down and then, the first accused threatened them. They have further stated that therefore, they simply abandoned the deceased and rushed to their house. They stayed back in the house for half an hour. Thereafter, they returned to the place of occurrence and found the deceased lying dead in a pool of blood. The conduct of PWs.1 and 2 viz., (a) they returned to the house without raising any alarm; (b) they did not raise any alarm even after going home; (c) they remained silent at their house without informing anybody about the occurrence; and (d) they returned to the place of occurrence after half an hour, would all go to show that they would not have witnessed the occurrence. Had it been true that they witnessed the occurrence, the above conduct would not have been exhibited by them at all. It would have been natural on their part to raise alarm seeking help at the place of occurrence or in the nearby place where there are houses and then, to return to the place of occurrence to help the deceased. Thus, the conduct of these two witnesses, as spoken by them during the cross examination, as narrated herein above, would go to show that it is highly unnatural on their part. The very presence of PWs.1 and 2 in the place of occurrence, in our considered view, is highly doubtful.

7. After returning to the place of occurrence, according to PW1, she went to the Police Station and made a complaint. The FIR, according to the prosecution, was registered at 12.15 a.m. on 11.12.2013 and the same reached the hands of the learned Magistrate at 4.00 a.m. According to PW18, the distance between the Police Station and the house of the learned Magistrate is 1.5 kilometres. He has further stated that the said distance could be covered within half an hour. But, PW18, who carried the FIR to the house of the learned Magistrate, has not



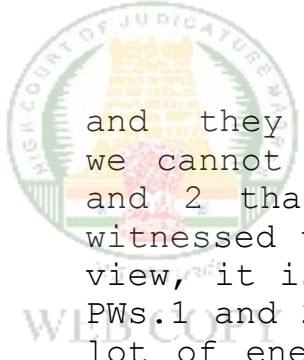
stated as to why he took about more than 3-1/2 hours to reach the house of the learned Magistrate and to hand over the FIR. This delay, which remains unexplained by PW18, also creates some more doubt regarding the case of the prosecution.

8. PW1, during the cross examination, has admitted that PW2 drafted a complaint at the Police Station and presented the same to the Police. PW1 has also admitted that she does not know to read and write the Tamil and she is a malayalee by birth. But, PW20 has stated that no such complaint was ever drafted at the Police Station and already drafted complaint was brought by PW1 and the same was presented at the Police Station. The learned counsel appearing for the appellants would submit that the original complaint written by PW2 at the Police Station has been suppressed. We are not persuaded by the said argument. But, on one aspect, we are convinced that Ex.P1 would not have come into being at the time as it is projected by the prosecution.

9. The learned counsel for the appellants would point out that the injuries found on the body of the deceased were all lacerated injuries and that they would not have been caused by MO.1 (series) - aruvals, which are sharp edged weapons. In our considered view, PW8 - Dr.Tamizharasi, who conducted autopsy, had opined that the injuries could have been caused by the weapons like MO.1 (series). She was the one who noticed the shape and length of the injuries and opined that these injuries could have been caused by the weapons like MO.1 (series). We find no reason to reject the said opinion of the Doctor. Therefore, the argument of the learned counsel that the medical evidence does not corroborate the eyewitness account needs to be rejected.

10. The learned counsel for appellants brought to our notice that PW1 has admitted that the deceased used to interfere with the disputes between various parties and try to settle the same. According to the learned counsel, the deceased was a katta panchayatar. PW1 has admitted during cross examination that there were several persons, who had developed a grudge against the deceased for his intervention in the disputes involving them and the verdict given by him. She has further stated that some persons, who were dissatisfied with the verdict of the deceased in their disputes, were responsible for the death of the deceased. This admission of PW1, according to the learned counsel, would go a long way to show that PWs.1 and 2 would not have witnessed the occurrence. It is the defence of the accused that the deceased who was coming alone had been done to death by some of the enemies and the same has not been witnessed by any one. PWs.1 and 2, who were at their house, later on, informed to the place about lying of the dead body and thereafter only the complaint has been filed for prosecution. This theory, as projected by the accused, appears to be reasonable.

11. Above all, since the evidences of PWs.1 and 2 are doubtful



and they are not corroborated from any other independent source, we cannot act upon their evidence. Though it is stated by PWs.1 and 2 that some people rushed to the place of occurrence and witnessed the occurrence, no one has stated so. In our considered view, it is not safe to act upon the uncorroborated testimonies of PWs.1 and 2. Thus, we are of the view that since the deceased had lot of enemies, the possibility of his enemies killing him, when he was coming alone in the ridge in the midsts of maize field, cannot be ruled out. At any rate, we hold that the prosecution has failed to prove the case beyond reasonable doubts.

12. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/ A1 and A2 are set aside and they are acquitted from all the charges. The bail bond, if any, executed by them shall stand terminated. The fine amount, if any, paid by them shall be refunded.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Sessions Judge, Trichy.
2. The Judicial Magistrate, Thuraiyur.
3. do through The Chief Judicial Magistrate, Trichy.
4. The Superintendent, Central Prison, Trichy.
5. The District Collector, Trichy.
6. The Commissioner of Police, Trichy.
7. The Director General of Police, Chennai.
8. The Inspector of Police,
Uppiliapuram Police Station,
Tiruchirappalli District.
9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.D.SHANMUGARAJA SETHUPATHI, ADVOCATE IN SR No. 71323
GCG

TE/KM/SAR-I : 12/12/2016 : 9P/11C

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judgment in
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Dated: 22.11.2016