

Bail Slip:

The Appellants 1 to 7 / Accused were enlarged on bail in and by the order dated 10.01.2017 made in CrI.Mp.13770 of 2016 in CrI.A.841 of 2016 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.841 of 2016

1.Velu @ Tyrevandi Velu

2.Poondi @ Kulandaivel

3.Dharma @ Dharmadurai

4.Dharma @ Dharmaraj

5.Sengeni

6.Ravi @ Kulla Ravi

7.Suri @ Surya @ Suryaprakash

...Appellants/Accused

Vs

The State

Rep. By Inspector of Police,

Viruddhachalam Circle,

Cuddalore District.

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment of the learned III Additional District and Sessions Judge, Cuddalore at Viruddhachalam dated 09.09.2016 in S.C.No.270 of 2015.

For Appellants : Mr.AR.L.Sundaresan
Senior Counsel for
M/s.AL.Ganthimathi

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGEMENT

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

The appellants are the accused 1 to 7 in S.C.No.270 of 2015 on the file of the learned III Additional District and Sessions Judge, Cuddalore at Virudhachalam. They stood charged for various offences as detailed below:-

Charge No.	Accused	Section of law
1	A.1	148, 449, 324 & 302 I.P.C.,
2	A.2 & A.7	148, 449 & 302 r/w 149 I.P.C.
3	A.3 to A.6	148, 449 & 302 I.P.C.

By judgment dated 09.09.2016, the trial Court convicted all the seven accused and sentenced them as detailed below:-

Sl.No	Accused	Section of law	Sentence
1			
2	A.2 & A.7	302 r/w 149 I.P.C.,	Imprisonment for life and to pay a fine of Rs.1,000/- each in default to undergo rigorous imprisonment for two years
3	A.1 to A.7	449 I.P.C.,	Rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/- each in default to undergo rigorous imprisonment for two years
4	A.1 to A.7	148 I.P.C.,	Rigorous imprisonment for one year each
5	A.1	324 I.P.C.,	Rigorous imprisonment for one year
	A.1, A.3 to A.6	302 I.P.C.,	Imprisonment for life and to pay a fine of Rs.1,000/- each in default to undergo rigorous imprisonment for two years

A.1 & A.3 are not found guilty by the trial Court for the offence under Section 294(b) I.P.C., and accordingly they are

acquitted from the said charge. Challenging the said conviction and sentence, the appellants are before this Court with this Criminal appeal.

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

The deceased in this case was one Mr.Ashokkumar. P.W.1 is the wife of the deceased. P.Ws.2 & 3 are the father and mother respectively of the deceased. P.W.1 and the deceased were residing together in their house at Ramachandran Pettai at Virudhachalam. P.Ws.2 & 3 were living in a separate house at a distance in the same Village. It is alleged that there was a longstanding dispute in respect of the landed property between A.1 and his brothers on one side and the deceased and his son on the other side. Because of the said civil dispute, there was longstanding enmity between the two families. This is stated to be the motive for the occurrence.

3.It is alleged that on 01.08.2011, around 12.15 am when P.W.1, the deceased and P.Ws.2 & 3 were in the house of the deceased, all these seven accused, came to the house of the deceased armed with knives and veechu knives. They entered into the house of the deceased. Accused 1 and 3 shouted at the deceased in abusive language. It is further alleged that in the same transaction, the accused 1,3 to 6 attacked the deceased with knives repeatedly on various parts of the body. The accused 2 & 7 who were also in the crowd induced the others to do away with the deceased. When P.W.1 intercepted, A.1 attacked her with knife and caused simple hurt. The deceased fell down, in a pool of blood. The occurrence was witnessed by P.Ws.1 to 3. Then, all the accused ran away from the scene of occurrence with weapons.

4.It is alleged that P.W.1 along with P.W.2 went to Virudhachalam Police Station and made a complaint at 2.30 am on 01.08.2015. P.W.16, the then Special Sub Inspector of Police on receipt of the said complaint registered a case in Crime No.630/2015 for offences under Sections 147, 148, 294(b), 324 & 302 I.P.C. The complaint was made against only 6 accused including A.6 Mr.Ravi @ Kulla Ravi.

5.The case was taken up for investigation by P.W.18, the then Inspector of Police, Virudhachalam Police Station. On 01.08.2015 at 4.00 am, according to P.W.18, he visited the place of occurrence and prepared an observation mahazar and rough sketch in the presence of witnesses. He recovered the blood stained earth; sample earth and the other blood stained material objects from the place of occurrence, in the presence of witnesses under a mahazar. Then, he conducted inquest on the body of the deceased and forwarded the same for post mortem.

6.P.W.17 - Dr.Geethanjali conducted autopsy on the body of

the deceased on 01.08.2015 at 12 noon. She found the following injuries:-

"1.Upper part of right side of neck. Transversely placed 8x3x4-5 cms exposing the underlying cut tissues, Blood vessels, muscles and nerves.

2.2 superficial Transverse abrasions from below right ear of size 4 cmsx0.5cm (red in colour)

3.Back to neck, transverse 7x3x3-4 cms.

4.Back of right shoulder of size 13x6x4-4.5 cms.

5.Front of upper part of chest transverse 12x3x4-5 cms underlying fractured bone

6.Back of left shoulder oblique 6x3x2cms.

7.Back of right upper arm of size 17x4x3-4cms exposing the underlying cut tissues & fractured bone.

8.Entire back upper 2/3rd multiple transversely placed chop wounds one below the other. A 8cms below the Nape of neck 28x7x8-10 cms underlying ribs fracture on both side. B 4cms below above injury 22x2x1cms over centre and right side of back. C.(oblique) 3cms below above injury over centre and right side 25cmsx3x3cms underlying ribs fractured. D.Right lateral chest wall (3cms below above injury) e. 4 cms below above injury over centre of back 9x4x2cms with underlying vertebrae fractured tissues cut and contused. F.4cms below above injury over centre of back and right side 29x4x4-6 with underlying fractured vertebrae and ribs.

9.Transversely placed back of right knee 14cmsx4cmx4cm.

10.Back of lower 1/3rd of right leg transverse, 8x2x3cm.

11.Upper 1/3rd of right forearm oblique over back 8x2x2 cms.

12.Back of middle 1/3rd of left thigh transversely placed 18x3x4-5cm with fracture of underlying bone and cut tissues all the above injuries are mortem in nature. Margins are clean cut and regular"

Ex.P.23 is the post mortem certificate. P.W.17 gave opinion that the death of the deceased was due to shock and hemorrhage due to the multiple injuries.

7.During the course of investigation, P.W.18 recovered the blood stained clothes from the body of the deceased and forwarded the same to Court. On the same day, at 11.00 am, near Kolanjiappar College, he arrested the accused 1 to 6. While in custody, all the accused gave independent voluntary confessions, one after the other. Based on the same, they disclosed the place where they had hidden the knives and blood stained clothes respectively. In pursuance of the same, they took the Police and witnesses to the place of hide out and produced the material objects. They were all recovered under a mahazar.

8.On returning to the Police Station, P.W.18 forwarded the accused 1 to 6 to Court for judicial remand and also handed over the material objects to Court. The 7th accused was arrested on 02.08.2015. While in custody, he made a voluntary confession in which, he disclosed the place where he had hidden the knife and the blood stained cloth. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the knife and the blood stained cloth. The same were recovered under a mahazar.

9.All the material objects were sent to Court and all the accused were remanded to Court for judicial custody. At the request made by P.W.18, the material objects were sent to the Forensic Expert for chemical examination. The report revealed that there were blood stains on all the material objects including the knives. On completing investigation, he laid charge sheet against all the accused.

10.Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 18 witnesses were examined and 30 documents were exhibited, besides 24 Material Objects.

11.Out of the said witnesses, P.W.1 is the wife of the deceased. She was examined as eye witness. However, during the course of examination, she turned hostile and she has not supported the case of the prosecution in any manner. She has stated that some persons entered into the house; cut the deceased and killed him. She has further stated that when she tried to make alarm, A.1 attacked her with knife and she also suffered injury on her hand. She has not identified any of these accused as assailants. She has also disowned the complaint made by her, however, she has admitted her signature found in the complaint.

12.P.Ws.2 & 3 the father and mother of the deceased respectively have stated that though they were living separately in a house, in the same street, they had come to the house of the deceased on 31.07.2015 and they had stayed there and they also witnessed the entire occurrence. They have stated that all the seven accused entered into the house of the deceased while they were sleeping and they attacked the deceased indiscriminately with knives and killed the deceased. P.Ws.4 to 8 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.9, the then Village Administrative Officer has spoken about the preparation of observation mahazar; rough sketch; the recovery of material objects; arrest of the accused 1 to 6 and the consequential recoveries made out of their disclosure statements.

13.P.W.10 - Dr.Sivasubramanian, has stated about the treatment given by him to P.W.1. On 01.08.2015 according to him, around 4.00 am, P.W.1 was brought to the hospital and he found a cut injury measuring 1x1 ½ cm, on her left leg. P.W.11 has spoken about the statements recorded from the witnesses under Section 164 Cr.P.C. P.W.12 a Forensic Expert has stated that he examined the internal organs of the deceased. He found ethyl alcohol in the internal organs of the deceased. P.W.13, a Forensic Expert has stated that he examined the material objects and he found blood stains on all the material objects including the knives recovered from the accused. P.W.14 has stated that he handed over the dead body of the deceased to Doctor for post mortem. P.W.15 has stated that on 01.08.2015, he was the Special Sub Inspector of Police at Virudhachalam Police Station. One Mr.Kupusamy was yet another Special Sub Inspector of Police. He has stated that P.W.1 made complaint at 2.30 pm on 01.08.2015 upon which, Mr.Kupusamy registered the present case. Then the F.I.R., was sent to the Court. P.W.16, the Special Sub Inspector of Police has spoken about the registration of the case by Mr.Kuppusamy on the complaint made by P.W.1. P.W.17 has spoken about the post mortem conducted and her final opinion regarding

the cause of death. P.W.18, has spoken about the investigation done and the final report filed.

14. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor did they mark any documents on their side.

15. Having considered all the above materials, the trial Court convicted the appellants/accused as stated in the first paragraph of this judgment. Challenging the same, the appellants/accused are before this Court with this Criminal Appeal.

16. We have heard the learned Senior Counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

17. As we have already narrated, the prosecution, in this case mainly relies on the eye witness account of P.Ws.2 & 3, viz., the parents of the deceased alone. P.Ws.2 & 3 were not residing along with the deceased. The deceased and P.W.1 alone were residing in their house. It is now stated by P.Ws.2 & 3 that they had come to the house of the deceased on 31.07.2015 and stayed there over night at his house. Thus, even according to the case of the prosecution, their presence at the place of occurrence was by chance. It is well settled that if the witnesses claim to have been present at the place of occurrence by chance, then, it is for them to explain to the satisfaction of the Court as to why and how they had been present at the place of occurrence. In this case, absolutely there is no explanation as to why P.Ws.2 & 3 had come to the house of the deceased and stayed there. It is not the fact that they were staying along with the deceased and P.W.1 in the past. Thus, the very presence of P.Ws.2 & 3 at the place of occurrence is doubtful.

18. As we have already pointed out, P.W.1 has not supported the case of the prosecution, and she has turned hostile. She has even disowned Ex.P.1 - complaint. P.W.2 in his evidence has stated that even he accompanied P.W.1 to the Police Station and the complaint was drafted in his very presence and the same was handed over to Mr. Kupusamy (P.W.16), the then Sub Inspector of Police, for registration of the case. P.W.2 is not an ordinary man. He is an Advocate by profession. So, it can be presumed that he knew the consequences of any omission made in the complaint. In this case, in the complaint, the name of A.6 has not been mentioned at all as one of the assailants. Only six

persons names have been mentioned as assailants. Had it been true that seven accused had participated in the crime, being an Advocate and knowing the consequences of such omission, P.W.2 would not have omitted to mention the name of 6th accused in the complaint, when it was drafted. The very fact that only six persons names have been mentioned in the complaint and the complaint was drafted in the presence of P.W.2 would go to show that the present complaint is a concocted document and at every stage, an attempt has been made to increase the number of assailants. P.W.2 has further stated that, he was not aware of the person who wrote the complaint also. This is yet another circumstance against the prosecution.

19. Now, turning to the time of registration of the case, it is stated that F.I.R., was registered at 2.30 am on 01.08.2015. The learned Senior Counsel appearing for the appellants would submit that the said fact spoken by P.W.16 is doubtful. In order to substantiate the said contention, he would point out that F.I.R., had reached the hands of the learned Judicial Magistrate on 01.08.2015 at 8.20 am. P.W.16 has admitted during cross examination that the distance between the Police Station and the house of learned Judicial Magistrate is hardly 500 feet. The distance between the Police station and the learned Judicial Magistrate Court is hardly 1 ½ kilometers. Here, in this case, the F.I.R., has reached at the hands of the learned Judicial Magistrate at his house on 01.08.2015 at 8.20 am. It is not explained to the Court as to why the complaint allegedly registered at 2.30 am on 01.08.2015 had reached the hands of the learned Judicial Magistrate only at 8.00 am on 01.08.2015, when the distance between the Police Station and the house of the learned Judicial Magistrate is hardly 500 feet. This delay in forwarding the complaint to the Court assumes much importance in the case because, there are multiple number of accused and also omission of one accused in the F.I.R. Above all, P.Ws.2 & 3 have got strong motive against the accused on account of civil dispute. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in Thulia Kali vs The State of Tamil Nadu [1973 AIR 501] wherein, in an identical situation, the Hon'ble Supreme Court has taken the view that such inordinate unexplained delay creates doubt in the case of the prosecution. Applying the same yardstick to the facts of the present case, we find no option but to suspect the facts spoken by P.W.16 that F.I.R., was registered at 2.30 am on 01.08.2015. It is quite obvious that F.I.R., would have come into being around 7.00 am on 01.08.2015 and Ex.P.1 complaint is nothing but a concocted document out of deliberations. We want to reiterate at this stage that P.W.2 is an Advocate who knows the importance of F.I.R.

20. In our considered view, the said ground itself is sufficient to acquit the accused. But, there are also other grounds about which we have already discussed. As we have already pointed out, the presence of P.Ws.2 & 3 at the place of occurrence is doubtful. P.W.1 has turned hostile. The presence of P.Ws.2 & 3 at the place of occurrence has not been explained to the satisfaction of this Court. There is inordinate delay in forwarding the F.I.R., to Court which remains unexplained. The F.I.R., is a suspicious document which would have come into being only out of deliberations and P.Ws.2 & 3 are motivated witness and lastly, P.W.3 has not identified any of the accused in Court.

21. Above all, the deceased was not a man of good virtues. P.W.2 has admitted during evidence that the deceased had involved in a murder case and he had several other cases to his credit. It is quite natural that the deceased would have had lot of enemies. When P.W.1 and the deceased alone were there at his house, the possibility of any one of the enemies entering into the house of the deceased and caused the death of the deceased cannot be ruled out. P.Ws.2 & 3 would not have witnessed the occurrence at all. Thus, in our considered view, the prosecution has failed to prove the fact that the accused/appellants are the perpetrators of the crime. Therefore, they are entitled for acquittal.

22. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused by the learned III Additional District & Sessions Judge, Cuddalore at Virudhachalam in S.C.No.270 of 2015, dated 09.09.2016, are set aside and the appellants/accused are acquitted. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the appellants/accused, shall stand discharged.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jbm

To

1.The III Additional District and
Sessions Judge, Cuddalore.

2. Do -thro- The Principal District Judge,
Cuddalore.

3.The Public Prosecutor,
High Court, Madras.

4.The Inspector of police,
Vriddhachalam Circle,
Cuddalore District.

5.The Superintendent,
Central Prison,
Cuddalore.

6.The District Collector,
Cuddalore District.

7.The Deputy General of Police,
Mylapore, Chennai-4.

8.The Section Officer,
Criminal Section, High Court,
Madras.

+1cc to M/s.Ganthimathi, Advocate, S.R.No.7282

Cr1.A.No.841 of 2016

AK(CO)
RS(21/04/2017)

सत्यमेव जयते

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