

Bail Slip:

The Appellant/accused 3 viz., Chinnadurai, was released on bail as per the Order of this Court dated 15.09.2016 and made in Crl MP(MD).No.5131 of 2016 in Crl A(MD).No.229 of 2016.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 07.09.2017

Delivered on : 14.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Criminal Appeal (MD) No.229 of 2016

and Crl.M.P. (MD) No.6715 of 2017

1.Gopi @ Devendran

2.Chinnadurai

.. Appellants/Accused 1 & 3

vs.

State represented by
The Inspector of Police,
Nachiyarkovil Police Station,
Thanjavur District.
(Crime No.110 of 2010)

.. Respondent/Complainant

Criminal appeal is filed under Section 374(2) of Criminal Procedure Code against the judgment and conviction dated 11.01.2016, by the learned I Additional District and Sessions Judge (PCR), Thanjavur in S.C.No.268 of 2011 and acquit the appellants.

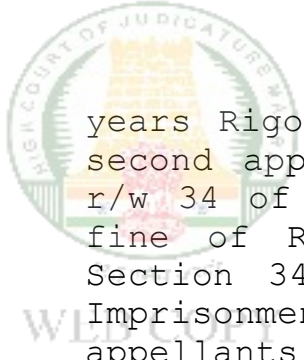
For Appellants : Mr.M.Karunanithi

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

JUDGMENT

**(Judgment of the Court was delivered by
M.M.SUNDRESH, J)**

The accused Nos.1 & 3 in S.C.No.268 of 2011 on the file of I Additional District and Sessions Judge (PCR), Thanjavur are the appellants before us. The first appellant is convicted for the offence under Section 302 of IPC and sentenced to undergo Life Imprisonment with a fine of Rs.10,000/- and convicted for the offence under Section 324 of IPC and sentenced to undergo three



years Rigorous Imprisonment and to pay a fine of Rs.5,000/-. The second appellant is convicted for the offence under Section 302 r/w 34 of IPC and sentenced to undergo Life Imprisonment with a fine of Rs.10,000/- and also convicted for the offence under Section 342 of IPC and sentenced to undergo one year Rigorous Imprisonment with fine of Rs.500/-. While convicting the appellants, the trial Court has acquitted the second accused. Challenging the same, the present appeal has been filed.

2.The case of the prosecution in nutshell:-

(i)The first appellant and A2 are husband and wife. The third appellant is the father of A2. P.W.1 is the relative of A2. She stayed in the house of A2 to attend the temple festival. There she met the deceased and fell in love with him. Thereafter, they married each other. This has created a misunderstanding between the parents of P.W.1 and the accused.

(ii)On 28.03.2010 all the accused came to the house of the deceased and P.W.1 and while the deceased was coming out, the first appellant attacked him. Even prior to the attack there was a quarrel for quite sometime. The wordy quarrel took place in a crowded place, being a street. Persons living nearby also gathered, but did not intervene. The first appellant attacked the deceased with hands and iron rod. When an attempt was made to take the deceased inside the house, the second appellant caught hold of the deceased. The second accused attacked the deceased with iron rod on the forehead. The first appellant thereafter, attacked P.W.2, who is the mother of the deceased, causing simple injuries.

(iii)The deceased was taken to the hospital by P.Ws.1 & 2. The occurrence was on 28.03.2010 at about 7.00 p.m., Thereafter, P.W.1 gave a complaint under Ex.P1 at 10.00 p.m. The first appellant was arrested on 31.03.2010. Ex.P.8 is the Postmortem Report. Ex.P.9 is the Mahazar. Ex.P.11 is the wound certificate. The observation mahazar is Ex.P12. The rough sketch has been prepared under Ex.P13. The inquest report is Ex.P15.

(iv)In pursuant to the confession statement given by the first appellant under Ex.P4, the recovery under Section 27 of the Indian Evidence Act has been made with respect to M.O.1 iron rod and M.O.2 knife.

3.Prosecution witnesses:-

i)P.W.1, as stated above, is the wife of the deceased. She speaks about the motive. According to her, the accused came to the house and called the deceased. Just in front of the house, the deceased was attacked. After the first attack she was constrained to take the deceased inside the house. At that point of time, he was caught by the third accused. The first appellant thereafter attacked the deceased further. He also attacked P.W.2. Thereafter, the deceased fell near the house of one Kannusamy. In

her cross-examination P.W.1 has stated that there was a wordy quarrel at the instance of the accused. The resident of the street gathered, but they did not defuse the situation. Initial shouting got turned into a quarrel. The deceased was lifted by both P.Ws.1 and 2. Their attire got stained with blood of the deceased.

ii) P.W.2 is the mother of the deceased. She also speaks about the occurrence place as just out side the house. She further states that there was a fight for an hour and crowd have not made any attempt to disburse the same. The deceased was found dead in front of the house. There was no blood stain in her dress or that of the P.W.1.

iii) P.Ws.3 & 9 being the eye witnesses turned hostile.

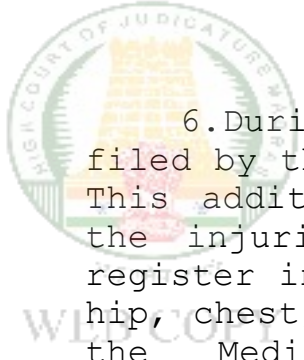
iv) The other witnesses, who signed the documents prepared by the investigation officer namely P.W.13 including arrest, confession and recovery also turned hostile. This include P.W.5, who is the Village Administrative Officer and P.W.6, his Assistant.

v) P.W.7 is the Doctor, who conducted Postmortem. He found four external injuries.

vi) P.W.13 is the investigating officer. He speaks about the registration of the First Information Report under Ex.P1 by the Sub Inspector followed by the investigation. He speaks about the arrest, preparation of mahazar and the further investigation made. P.W.13 in his cross-examination stated that the first appellant was admitted into the hospital after arrest by the police. However, he did not know how many days he was taking treatment as inpatient. An admission has been made that treatment was continuously given even during the period of incarceration.

4. Based on the materials, the Trial Court framed charges as mentioned above. During the trial, on the side of the prosecution, as many as 13 witnesses were examined and 18 documents were exhibited, besides 7 Material Objects. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On behalf of the accused no evidence was let in.

5. The trial Court convicted the appellants 1 and 2 while acquitting the accused No.2. The conviction was rendered by placing reliance upon the evidence of P.Ws.1 & 2. On the contention raised that the sketch and the statement of P.W.1 are to the effect that the body was found near Kannusamy's house, it was held that the same itself cannot be fatal as the the place of occurrence is in front of the house of the deceased and though the prosecution should have prepared the observation mahazar and rough sketch in respect of secondary scene of crime, it cannot be a ground to acquit the appellants. A finding has been given that the house of Kannusamy is situated just about two house from the house of the deceased.



6. During the pendency of this appeal, an application has been filed by the appellants seeking to record the additional evidence. This additional evidence is the accident register pertaining to the injuries suffered by the first appellant. This accident register indicates that the first appellant suffered injury on the hip, chest, little finger and forehead, though termed as simple by the Medical Officer on 29.03.2010, certified by the Superintendent, Government District Head Quarters Hospital, Kumbakonam.

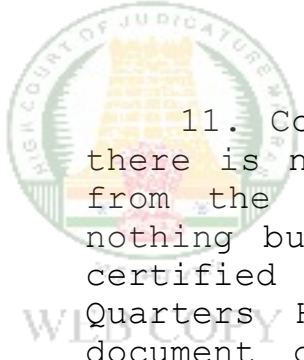
7. The learned counsel appearing for the appellants would submit that there are discrepancies in the evidence of P.Ws.1 & 2. Similarly there is a discrepancy in the evidence of P.W.2 as against the rough sketch under Ex.P13. Kannusamy house is situated in the next street. It is not even opposite to the house of the deceased. The rough sketch would clearly show that there are two group of houses. Even they are separated by open spaces. Thereafter, the house of Kannusamy comes. Except P.Ws.1 and 2, all other witnesses have turned hostile. The recovery said to have been made under Section 27 of the Indian Evidence Act has not been proved as even P.Ws.5 & 6 among other witnesses turned hostile. The additional document sought to be marked would show that the first appellant suffered injuries. Though P.W.13 has stated about it, it has been suppressed. The accident register relating to first appellant has not been marked. Therefore, the investigation is not fair. The prior information given has been suppressed.

8. In support of his contention, the learned counsel appearing for the appellant has made reliance upon the following decisions:-

- (i) AIR 1976 Supreme Court 2263 [Lakshmi Singh v. State of Bihar]**
- (ii) (2016) 1 MLJ (Crl) 129 [R.Velladurai v. State through Inspector of Police, V.K.Pudur.]**

9. The learned Additional Public Prosecutor would submit that nearly because P.Ws.1 and 2 are the wife and mother of the deceased, they cannot be termed as interested witnesses. They are the eye witnesses. They speak about the occurrence. However, the learned Additional Public Prosecutor did not dispute the genuineness of the accident register. It is further stated that here is a case where there is a recovery of M.Os.1 and 2. The motive has also been proved. The injuries suffered by the accused are very trivial. Therefore, the decisions relied upon by the learned counsel for the appellant are not applicable to the facts of the present case on hand.

10. We have considered the rival submissions and perused the evidence available on record.



11. Coming to the additional document sought to have marked, there is no serious objection to the genuineness of the document from the learned Additional Public Prosecutor. In fact it is nothing but a public document issued by the Medical Officer and certified by the Superintendent, Government District Head Quarters Hospital, Kumbakonam. We are of the view that this document ought to have been filed by the prosecution itself. Therefore, we allow CrI.M.P(MDD)No.6715 of 2017 and take this document on file as Ex.D1, since it is not questioned and also considering its relevancy.

12.Discussion:-

i) P.W.1 being the wife of the deceased has stated that the entire occurrence has taken place in-front of her house. In fact, it is the specific case of the prosecution that the accused went to the house of the deceased and picked up a quarrel. According to P.W.1, there is a shouting followed by a quarrel in the presence of residents of the locality. However, she has stated that the body of the deceased was found near the house of Kannusamy. Similarly, she has stated that both the attire of herself and P.W.2 got blood stained. However, P.W.2 has stated that the entire occurrence has taken place just in-front portion of the house of the deceased. She has further stated that the deceased was found dead in front of the house. Dress owned by the P.Ws.1 and 2 did not have any blood stains. On a perusal of Ex.P13 we could see that the house of the deceased is situated on the main road namely the Sembiyavarambal main road (Colony street). After the house of the deceased there are two group houses with some gap. From the said road on the west there is a another road called Mela Theru. In this road Kannusamy house is situated. Therefore, we find a contradiction in the evidence rendered by the P.W.2 on one hand and P.W.1 and sketch under Ex.P13 on the other hand. P.W.2 has not stated that the deceased moved thereafter. Unlike, what the trial Court has observed, the house of the Kannusamy is not next or immediately thereafter. Therefore, we unable to accept the evidence of P.Ws.1 and 2.

ii) P.W.13 in his cross-examination clearly states that A1 was injured. He further states that A1 was admitted in the hospital after arrest. However, it was only stated that, it was not known how long he has treated as inpatient. P.W.13 also states that treatment was given continuously in the prison. From the evidence of P.W.13, we are constrained to hold that the aforesaid factum has been suppressed. Ex.D1 as stated above, speaks about 4 injuries though simple. If this document is taken into consideration, then the evidence of P.Ws.1 and 2 would not be believable. Though we are quite aware of the legal position that mere non-explanation of the injuries by itself cannot be a ground for acquittal. In the case of the prosecution, it is the case of not only the injuries but also suppression of accident register, among other things.



iii) One more shocking factor has to be seen from of Ex.D1. Ex.D1 speaks about the date of admission. The date has been mentioned therein as 29.03.2010 at about 2.00 a.m. The Medical Officer has also signed in the said document on 29.03.2010. According to P.W.13, arrest was made on 31.03.2010. Therefore, starting from arrest followed by the confession statement and recovery, can never be true. Perhaps, that is the reason why, this document has not been marked. This also would cause serious doubts on the evidence of P.Ws.1 and 2.

iv) On a perusal of the records we also find that the learned Magistrate at the time of remand of 1st appellant noted certain external injuries. Therefore, we are unable to uphold the conviction rendered by the trial Court. But, we are constrained to hold that the prosecution has not conducted the case in a fair manner.

13. In view of the same, we are of the view that the learned Trial Judge has not considered the factors in proper perspective. Unfortunately, though P.W.13 has stated about the injuries suffered by the first appellant, the trial Court did not look into it, coupled with the further fact that Ex.D1 which has been marked before us has not been placed before the trial Court. Hence, we are inclined to set aside the conviction and sentence imposed on the appellants by the trial Court.

14. In the result, the Criminal Appeal is allowed and the order of conviction and sentence passed by the learned I Additional District and Sessions Judge (P.C.R.), Thanjavur made in S.C.No.268 of 2011, dated 11.01.2016, are set aside. The appellants are acquitted of all the charges. The first appellant is now undergoing sentence in the Central Prison, Trichy. In view of this judgement acquitting him, the jail authorities are directed to set him at liberty forthwith, if he is not required in connection with any other case or proceedings. Fine amount, if any, paid shall be refunded to the appellants.

Documents Marked on the side of the appellants:

1.Ex.D1- 29.03.2010- Accident Register relating to the treatment of first appellant.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar



To

1. The I Additional District and Sessions Judge (P.C.R.),
Thanjavur.

2.-Do-Thro'The Principal District Judge, Thanjavur.

3.The Judicial Magistrate, Kumbakonam.

4.-Do-Thro'The Chief Judicial Magistrate,
Thanjavur @ Kumbakonam.

5.The District Collector,
Thanjavur.

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

7.The Superintendent of Prison,
Trichy Central Prison,
Trichy.

8.The Inspector of Police,
Nachiyarkovil Police Station,
Thanjavur District.

9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.M.Karunanithi , Advocate in SR.No. 78725

am

AE/KP/SAR2/26.09.2017/7P/11C

order in
Criminal Appeal (MD) No.229 of 2016
and Crl.M.P. (MD) No.6715 of 2017
Delivered on
14.09.2017