

Bail Slip

The Appellant/Accused, namely M.PRABHU S/o.MUTHUSWAMY was directed to be released on bail as per order dated 20.07.2012 in MP.NO.1/12 IN CRL A.NO.400/2012 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.T.SELVAM
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Criminal Appeal No.400 of 2012

M.Prabhu
S/o.Muthuswamy ... Appellant/Accused

Vs

State represented by
The Inspector of Police,
Thiruchengode Police Station.
Crime No.320/2003 ... Respondent/Complainant

Criminal Appeal filed u/s.374(2) Cr.P.C. against the judgment of learned Additional District Judge, Fast Track Court, Namakkal, passed in S.C.No.41 of 2004 on 22.03.2012.

For Appellant : Mr.N.R.Elango, senior counsel
for Mr.R.Vivekananthan

For Respondent : Mr.K.Prabhakar
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by C.T.SELVAM, J]

This appeal arises against judgment of learned Additional District Judge, Fast Track Court, Namakkal, passed in S.C.No.41 of 2004 on 22.03.2012, convicting appellant/accused for offences u/s.341 and 302 IPC and sentencing him to 1 month S.I. for offence u/s.341 IPC and life imprisonment and fine of RS.5,000/- for offence u/s.302 IPC.

2. There are three accused in the case. Since A1 was a minor, the case against him was split up and referred to Juvenile Justice Board. The case against A3 was also split up. Case of the prosecution is that one year prior to the occurrence, deceased borrowed a sum of Rs.2,000/- from A1. A1 demanded repayment on several occasions but they were of no avail. There was a quarrel between A1 and deceased two days prior to the occurrence on this score. On 30.07.2003 at about 8.15 p.m., while the deceased and his brother were coming near 'Chitra Textiles Powerloom Factory' in separate two wheelers, accused, with intention to murder the deceased, intercepted the deceased and assaulted him using aruval and knives, owing to which the deceased died. The accusation is that A1 stabbed the deceased on the left side of forehead and neck using an aruval; A2 stabbed him on his stomach using a knife; and A3 stabbed him on his back and near the left ear using a knife. A case was registered in Crime No.320 of 2003 on the file of respondent for offences u/s.341, 302 r/w 34 IPC on the complaint of brother of deceased. On completion of investigation and filing of charge sheet, the case, on committal, was tried against appellant in S.C.No.41 of 2004 on the file of learned Additional District Judge, Fast Track Court, Namakkal.

3. Before trial Court, prosecution examined 14 witnesses and marked 19 exhibits and 13 material objects. None were examined on behalf of defence nor were any exhibits marked.

3.1. PW-1, a resident of Kilaripatti, spoke to knowing the deceased, his brother and accused and of he and his father - PW-6 as also PW-2 chatting before their textile mill viz., 'Chitra Textiles Powerloom Factory' on 30.07.2003 between 08.00 and 08.15 p.m. PW-1 spoke to having seen the deceased and his brother approaching on two separate motorcycles and of deceased having been intercepted by accused, of A1 assaulting him using an aruval and A2 and A3 stabbing him using knives resulting in the death of deceased. PW-1 spoke to all of them including the brother of deceased shouting and of accused running carrying their weapons. Though PW-1 initially deposed that he could not identify the weapons owing to lapse of time, he later identified the same. PW-1 also spoke to the brother of deceased, who preferred Ex.P1, complaint, having died in a road accident. PW-1 spoke to having no knowledge of the registration number of the vehicle ridden by deceased but identified the same in Court.

3.2. PW-2, a resident of Kilaripatti, spoke to knowing deceased and his brother as also the accused. PW-2 spoke to chatting with PW-1 and PW-6 on the occurrence day, of deceased and his brother coming on separate motorcycles, of accused intercepting them and assaulting deceased using weapons, resulting in his death. PW-2 spoke to all of them having shouted at the accused and of accused running away with the

weapons. PW-2 spoke to ability to identify the weapons but not remembering which accused used what. PW-2 also spoke to the de facto complainant/brother of deceased having died.

3.3. PW-3, wife of deceased, spoke to knowing A1 but not A2 and A3. PW-3 spoke to having been informed by the brother of deceased, of rushing to the scene and of seeing the deceased lying with multiple injuries. PW-3 spoke to having been informed by deceased of borrowal from A1 two days prior to the occurrence and of her telling him that she would arrange money by pledging her jewels. PW-3 also spoke to identifying the body of deceased.

3.4. PW-4 spoke to knowing the deceased, his brother and A1 and A2. PW-4 spoke to attending his work at 'Chitra Textiles Powerloom Factory' on 30.07.2003, of coming out of the shop, of seeing a crowd and of deceased lying in a pool of blood. PW-4 also spoke to having seen the de facto complainant/brother of deceased crying stating that the deceased had died. PW-4 has been treated hostile.

3.5. PW-5 deposed that deceased and his family were his tenants. PW-5 deposed that deceased was working as a driver under him, of having given his motorcycle to deceased upon his request, of rushing to the scene upon hearing of the occurrence and of seeing the deceased lying in a pool of blood. PW-5 also deposed that he was the owner of the vehicle seized in the case, of having taken back the vehicle by filing appropriate petition in Court and of producing the same before the Court on the hearing date.

3.6. PW-6, father of PW-1, spoke to knowing the deceased, his brother and accused and of not knowing the name of A3. PW-6 spoke to his conversing with PWs.1 and 2 before their textile shop on 30.07.2003 at about 8.00 p.m., of having been informed by PW-1 that accused stabbed the deceased, of rushing to the scene, of not seeing the accused there, of seeing the deceased lying with multiple injuries and of having been informed by the de facto complainant/brother of deceased that the deceased had been done to death. PW-6 has been treated hostile.

3.7. PW-7, Doctor, who conducted postmortem, has stated that the deceased appeared to have died due to shock and hemorrhage due to multiple injuries about 12 to 18 hours prior to autopsy. PW-7, in cross, has deposed that the injuries sustained by deceased would not have been caused by MO-1, Soori Knife.

3.8. PW-8, a weaver, spoke to knowing deceased and accused 1 and 2 and of not knowing A3. PW-8 spoke to visiting the scene upon hearing of the incident, of seeing the deceased lying with injuries and of attesting Ex.P3, observation mahazar and Ex.P4, seizure mahazar for MOs.9 and 10, blood stained earth and sample earth.

3.9. PW-9, Village Administrative Officer, spoke to visiting Tiruchengode Police Station along with his Assistant upon information obtained from Inspector of Police through a person, of accompanying police to Karuveppampati Road, Sangagiri, of a person identifying accused 2 and 3, of police arresting them, of attesting confession of A2 and A3, of seizure of soori knives by police on the confession of A2 and A3 and of attesting seizure mahazars. PW-9 also identified MO-3, soori knife, in Court.

3.10. PW-10, Village Administrative Officer, spoke to having been informed by police that they have received information of whereabouts of A1, of accompanying them with his assistant to Kootapalli Kilaripatti, of a person identifying A1, of police arresting him, of attesting confession of A1, of seizure of aruval by police on the confession of A1 and of attesting Exs.P8 and P10, seizure mahazars for MOs.2, 11 and 12 - aruval, blue colour full hand shirt and cement colour pant.

3.11. PW-11, photographer, spoke to having taken photographs of deceased and handing over the same to police.

3.12. PW-12, Sub-Inspector of Police, spoke to handing over the body of deceased towards conduct of postmortem and on completion thereof, handing over the same to his relatives and of handing over MOs.5 and 6 - half-hand shirt and banian, under a report.

3.13. PW-13, Head Clerk, spoke to forwarding case properties towards chemical examination. Exs.P13 to P14 are reports of the Forensic Sciences Department.

3.14. PW-14, Investigation Officer, spoke to registration of case in Crime No.320 of 2003 on the file of respondent for offences u/.341 and 302 IPC on the basis of complaint given by brother of deceased and to de facto complainant having died. PW-14 spoke to visiting the scene of crime, preparation of mahazars, making arrangements to photograph the body of deceased, conducting inquest in the presence of witnesses, forwarding the body of deceased towards conduct of postmortem, seizure of material objects, examining witnesses, arrest of accused, recording of confession of accused, forwarding the accused to judicial custody, obtaining various reports, forwarding material objects to Court under Form 95 and

on completion of investigation, filing of charge sheet informing commission of offences u/s.341 and 302 r/w 34 IPC.

4. Appellant/A2 was charged for offences u/s.341 and 302 IPC. On questioning u/s.313 Cr.P.C., appellant/A2 denied charges. On appreciation of evidence, oral and documentary, trial court, under judgment dated 22.03.2012, convicted

appellant/accused for offences u/s.341 and 302 IPC and sentenced him to 1 month S.I. for offence u/s.341 IPC and life imprisonment and fine of Rs.5,000/- i/d 1 year R.I. for offence u/s.302 IPC. Hence, the present appeal.

5. Heard learned senior counsel for appellant and learned Additional Public Prosecutor for respondent. Perused the materials on record.

6. Case of the prosecution is of three accused attacking and doing to death the deceased. The offending acts attributed to the accused are that the first accused, a juvenile, caused a cut injury with an aruval to the right side of the head of the deceased and that he sat upon the chest of the deceased and slit his throat, A3 caused an injury to the right shoulder using a knife and A2/appellant caused two stab injuries to the stomach of the deceased. PWs.1 and 2 have been examined initially on 10.05.2010 when they have spoken to having witnessed the occurrence. Pursuant to orders passed in C.M.P.No.406 of 2011 on 09.09.2011 both of them have been subjected to further cross-examination on 28.09.2011 when they have spoken to not having direct knowledge of the occurrence and of having earlier deposed in keeping with the instructions of the police. Hence, they have been treated hostile. Given the time lag between their initial deposition on 10.05.2010 and subsequent one on 28.09.2011, suspicion necessarily would arise on whether they have been won over by the accused. Such is one possibility. The other is that it is their later deposition that is true. The second is more likely if we keep in mind the fact that PW-6, who also according to the prosecution, had witnessed the occurrence and who is none other than the father of PW-1, has not supported the prosecution case in the course of his examination on 11.05.2010 and had hence been treated hostile. PW-4, another alleged eye witness, had also turned hostile. The possibility of none of the alleged eye witnesses having witnessed the occurrence is rendered probable not only by the fact that even in the course of their original cross-examination on 10.05.2010, PW-1 had deposed to the presence of 100 persons at the scene, while PW-2 has asserted that none other than the alleged four eye witnesses were present as also by that while Ex.P18, topo sketch, notes the presence of a tube light burning bright at the entrance of 'Chitra Textiles Powerloom Factory', PW-11, the photographer categorically has admitted to the photograph of the frontage of such mill not reflecting the presence of any tube light. The occurrence allegedly took place at 08.15 p.m., the First Information Report was registered at 09.00 p.m. and has reached the Judicial Magistrate by 10.10 p.m. on 31.07.2003. While delay in registration of case and particularly in the First Information Report and complaint reaching the Magistrate raises suspicion over the veracity of many a prosecution case, too much promptitude is to be viewed, not with suspicion, but with caution. When so viewed, this Court cannot ignore the original

deposition of PW-1, in cross, that police were on the scene within twenty minutes of the occurrence. PWs.1 and 6, father and son, are owners of 'Chitra Textiles Powerloom Factory' as spoken to by both of them. PW-2 has admitted to being their employee. PW-4, the other eye witness, who has turned hostile, has before he was treated so, admitted to being an employee of 'Chitra Textiles Powerloom Factory'. PWs.1 and 2 have spoken to the place of occurrence being 100 feet from the textile mill. The occurrence admittedly had taken place at night. The evidence of PW-11, photographer, rules out the possibility of light as would have enabled clear viewing thereof. One of the weapons allegedly recovered at the instance of the accused is a rambo knife but PW-7, Postmortem Doctor, has spoken to none of the injuries on the body of the deceased reflecting usage thereof. In his first deposition on 10.05.2010, PW-2 has spoken to the other alleged eye witnesses and himself raising an alarm on seeing the first accused cutting the neck of the deceased and of others arriving at the scene, whereupon the accused ran away. It is not in evidence that the accused threatened either the alleged eye witnesses or others. Ex.P18 informs the occurrence spot to be a mere 9 feet from 'Chitra Textiles Powerloom Factory'. Ex.P2, Postmortem Report, informs injury No.4 to be 'deep cut injury elliptical in shape 10cm x 6cm x 6cm deep over the front side of neck. Thyroid bone fractured, muscles of neck, blood vessels and nerves on both sides of neck severed. Trachea totally cut.' Causing of such an injury not with an axe but with an aruval as informed by the prosecution would take sometime and makes difficult acceptance of viewing of the occurrence from a distance of 9 feet as suggested by the topo sketch. Allegation of infliction of such injury by the accused, who have not threatened those nearby and who allegedly have run away on witnesses raising an alarm does not ring true. The body has been found at the entrance of the 'Chitra Textiles Powerloom Factory' and the owners thereof and persons employed thereat have been put up as eye witnesses. Where a prosecution case is pieced together after finding the body it is to be expected that the time of occurrence and registration of First Information Report would reflect closeness. The First Information Report and complaint reaching the Magistrate at the earliest would be no surprise.

7. Dealing as we are with the case of appellant/A2, point has been made of by learned senior counsel for appellant that PW-1 had spoken to the appellant/A2, having using MO-1, a rambo knife, i.e., a knife having an uniform outer edge and a saw like inner one, whereas PW-7, Doctor, who conducted postmortem and issued Ex.P2, postmortem report, had admitted that MO-1 could not have caused injuries found on the body of deceased. Learned Additional Public Prosecutor has explained that PW-1 has merely made a mistake since what had been recovered from this appellant/A2 was a soori knife i.e., a knife evenly edged on both sides and the rambo knife had been recovered from A3 as reflected in Ex.P11 - requisition for forensic Examination. Even so, the fact remains that none of

the injuries found on the body of victim are such as could have been caused by use of a rambo knife. This aspect is being referred to only for completion as for the other discrepancies noted and reasons stated above, this Court would allow this appeal.

The Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Additional District Judge, Fast Track Court, Namakkal, in S.C.No.41 of 2004 on 22.03.2012, are set aside and appellant is acquitted of all charges. Fine amount, if any, paid shall be refunded to him. Bail bond(s), if any, executed by him shall stand cancelled.

Sd/-/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional District Judge,
Fast Track Court,
Namakkal.
- 2.The Inspector of Police,
Thiruchengode Police Station,Namakkal.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Judicial Magistrate,
Tiruchengode.
- 5.The Chief Judicial Magistrate,
Nammakal.
- 6.The Superintendent
central Prison,Salem
7. The section officer,
Criminal Section,
High court
Madras

+1cc to Mr.R.Vivekananthan , Advocate SR.No. 89070

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A.SK(12/02/2019)