

Bail Slip

The petitioner /Accused,Namely Gajala Veerendra Kumar Reddy S/o Ravi Kumar Reddy was directed to be released on bail as per Order Dated 15.07.2009 in CRL.MPNO.1/09 IN CRL A.NO.374/2009 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.07.2018

Coram

The Honourable Mr.Justice R.PONGIAPPAN

Criminal Appeal No.374 of 2009

Gajala Veerendra Kumar Reddy

...Appellant / Accused

Versus

State rep. by Inspector of Police,
D1- Triplicane Police Station,
Chennai.

...Respondent/Complaint

This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure praying to set aside the judgment dated 02.07.2009 passed by the III Additional Sessions Judge, Chennai in S.C.No.498 of 2007 and acquit the accused.

For Appellant : Mr.D.S.Ramesh

For Respondent : Mrs.T.P.Savitha
Govt. Advocate (Crl.Side)

J U D G M E N T

The sole accused in S.C.No.498 of 2007 on the file of the learned III Additional Sessions Judge, Chennai is the appellant herein. He stood charged for the offence under Section 302 of I.P.C. By judgment dated 02.07.2009, the trial Court convicted the appellant for offence under Section 304(ii) of I.P.C and sentenced him to undergo five years R.I and to pay a fine of Rs.1,000/- in default to undergo six months rigorous imprisonment. Aggrieved over the conviction and judgment, the appellant is before this Court with the present Criminal Appeal.

2. The case of the prosecution in brief reads as follows:

P.W.1 Iqbal was working as a Manager in N.V.S.Mansion, Periya Theru, Triplicane. P.W.2, Babu and P.W.3, Saravanan are residing in the said Mansion in Room No.104. The deceased Jumma Khan is also a tenant in Room No.107 in the same Mansion. On 21.10.2007, the deceased bring the accused to his Room at about 09:30 hours. After consuming the liquor, the deceased compelled the accused for having homosex with him due to which a quarrel had happened between the deceased and the accused. As a result of which, the deceased took the knife and cut a finger of the accused. Immediately, the accused pluck the knife from the deceased and attacked the deceased all over the body and caused injuries.

3. Meanwhile, when P.W.1 wake up for natural call, he heard the noise from Room No.107, immediately he proceed into the said room and have had seen the quarrel. However, the accused using the knife attacking the deceased, so, P.W.1 intervened and asked the accused why he acted like this for which, the accused replied as the deceased cut his finger. Meanwhile, due to severe injuries, the deceased fell down. On seeing, Jumma Khan found dead, the accused ran away from the scene of occurrence. So on the instructions, P.W.1 lodged a complaint before the Inspector of Police which is Ex.P.1.

4. On receipt of the complaint, P.W.16, Inspector of Police, Triplicane registered a case in Crime No.2090 of 2007 under Section 302 of I.P.C. Ex.P.27, is the First Information Report. After registering the case, P.W.16 rushed to the scene of occurrence and he made arrangements for taking the photographs. P.W.10, Photographer have got instructions from P.W.16 and took the photographs in 30 angles. Photographs and negatives are marked as Ex.P.16. Further, in the presence of P.W.7, Mohamed Kasim and one Ashok Kumar, P.W.16 had prepared the Observation Mahazar under Ex.P.8 and he also drawn a rough sketch under Ex.P.28. Thereafter, P.W.16 instructed the Head-Constable, Manoharan for sending the dead body of the deceased to the Government Hospital. In the presence of some witnesses, P.W.16 recovered the blue colour blood stained lungi, bedsheet, blood stained cement pieces and also the cement pieces without blood stain from the place of occurrence under the cover of Seizure Mahazar. The same were marked as M.Os.2 to 5.

5. Further, P.W.16, recovered the Application submitted by the deceased to the Mansion, Voter ID and family card. Those documents were marked as Ex.Ps.10 to

12. Those documents were recovered by the Investigating Officer under the cover of Seizure Mahazar as Ex.P.9. He examined the witnesses and recorded the statement. On the same date, between 07:00 a.m to 08:30 a.m, he examined the witnesses in front of Panchayatdar and prepared a Inquest Report under Ex.P.29. Thereafter, he sent a request to the Doctors to conduct autopsy on the dead body of the deceased. Ex.B.22 is the Requisition Letter. After receiving the Requisition Letter, P.W.13 Doctor, Baskar attached with Royapettah Hospital conducted autopsy on the dead body of the deceased and found the following injuries:

External Injuries:

- 1) Incised cut injury 3x0.5x0.5 cm over left side of fore head seen above left ear, The angles are acute and the margins are clean cut.
 - 2) Cut injury 5x0.5x1 cm over back of right side of chest 8cms above angle of right scapula the angles are acute the margins are clean cut.
 - 3) Stab injury 2x0.6x3.5 cms over right side of neck, The inner end of which is 4.5cms away from mid line and 4cms above inner third of right clavicle. The angles are acute and the margins are serrated.
 - 4) Cut injury 3.5x1x1 cm over front and inner aspect of right wrist. The angles are acute and the margins are serrated.
- The above injuries are fresh and ante mortem in nature.

Internal Injuries: Bruising of scalp seen over back of head 5x4 cms and over right side of head 4x3.5 cms. Cranial vault and Meninges Intact. Brain C/S Pale. Hyoid bone and Laryngeal cartilage Intact. Severing of Platysma and superficial fascia of neck seen corresponding to external injury No.3 Bruising of surrounding soft tissues and para pharyngeal tissues and paralaryngeal tissues made out. Severing of superficial vessels and nerves partial severing of carotid sheath, Neck muscles of that region, Jugula vein and adjacent nerves made out. Thoracic cage Intact Heart normal in size, Chambers contained scant fluid blood.

6. After completing postmortem, as per the request made by the Investigating Officer viscera collected from the dead body was sent to the viscera examination. Finally, he gave opinion as the deceased would appear to have died of shock and hemorrhage due to the stab injuries

sustained by him. Ex.P.23 is the Postmortem Report. Meanwhile, on 22.10.2017 at about 01:40 p.m, P.W.12, Dr.Sampathkumar attached with the Government Stanley Hospital examined the accused and found the following injuries:

"Lacerated injury - 4x2x1cm over little finger
Linear Abrasions 3 in number
a) 4 x 1 cm
b) 6 x 1 cm
c) 3 x 0.5 cm over left fore arm."

7. In continuance of the investigation, on 22.10.2007 at about 09:45 a.m., P.W.16, Investigating Officer arrested the accused and on examination, he gave confession statement. In the confession statement, he had admitted the guilt and hand over the knife which was used for the commission of crime. The said knife was recovered by the Investigating Officer under the cover of Ex.P.14, Seizure Mahazar. Thereafter, he made arrangements for sending the accused to the judicial custody. On the same day, at about 02:00 p.m, Head Constable, Rajamanohar had handed over M.O.6, blood stained white colour half pant collected from the dead body to P.W.16 and P.W.16 sent the same to the Magistrate Court in Form 95. On 23.10.2007, P.W.16 submitted an Application before the Magistrate for sending the recovered material objects for chemical examination. As per the request made by P.W.16, the learned Magistrate passed orders for sending the material objects for chemical examination. P.W.14, Alamelu Mangai, Scientific Assistant in Madras Forensic Department received the following objects for chemical examination:

1. Lungi
2. Bedsheet
3. Cement Pieces
4. Cement Floor
5. Knife
6. Trouser

On examination, she found except in Item No.4, all the other material objects are having blood. After examination, she sent the report to the Court under Ex.P.26. Further, during the time of investigation, P.W.16 submitted an Application before the XIX Metropolitan Magistrate for recording statements of the witnesses (i.e. P.Ws.1 to 4).

8. Accepted the Application submitted by the Investigating Officer, P.W.15, the then XIX Metropolitan Magistrate recorded the statement under Section 164(5) Cr.P.C from P.W.1, 2, 3 & 5 to 7.

9. Further, P.W.11, Mr.John.R.D.Santhosam, then XXIst Metropolitan Magistrate conducted Identification Parade in which P.W.1 to 3, Zakir Hussain and Mohammed Yusuf stand as witnesses during the time of identification parade. P.Ws.1 & 2 identified the accused. Thereafter, P.W.16 sent a report in this regard under Ex.P.20. Finally, he recorded the statement from P.Ws.1 to 5 and after completing investigation, he filed a Final Report.

10. Based on the above materials, the trial Court framed the charges against the accused as indicated in paragraph No.1 of the judgment for which the accused denied the same and opted for trial. In order to brief the case of prosecution as many as 16 witnesses were examined as P.Ws.1 to 16 and 29 documents were exhibited as Ex.Ps.1 to 29, besides 6 material objects (M.Os.1 to 6).

11. Out of the said witnesses, P.W.1, Iqbal was working as a Manager in the N.V.S.Mansion, Periya Theru, Triplicane. On 21.10.20007 at about 09:30 hours, the deceased Jumma Khan brought a man aged about 20 years with him. When P.W.1 enquired deceased about the man whom he brought with him, deceased Jumma Khan said that the man is his friend and he will be staying with him this night as a guest. After that both the deceased and that man went into the room of the deceased. At about 01:00 p.m, when P.W.1 woke up for natural call, he had heard some loud noise. On hearing the noise, P.W.1 went to Room No.107 where he found that the man whom the deceased brought with him stabbing the deceased in the right side of his neck. When P.W.1 enquired that man about what happened, he told that the deceased Jumma Khan cut his right hand little finger and so he stabbed him. At the same time, the deceased unconsciously fell down and died. After the death of the deceased, that man ran away from the scene of occurrence.

12. P.W.2, Babu and P.W.3, Saravanan were residing in the N.V.S.Mansion, Periya Theru, Triplicane. P.W.2 is a driver. On the fateful day, at about 01:00 hour, both P.Ws.2 & 3 have heard some noise from Room No.107 and so they went there. There they found that a man aged about 20 years and the deceased were fought with each other.

13. P.W.4 & P.W.5 are friends. On the fateful day, when P.W.4 and P.W.5 were chatting, the deceased brought a man aged about 20 years with him and introduced him to P.W.4 and P.W.5. At about 01:00 hour, on hearing the noise from Room No.107, P.W.4 and P.W.5 went there and found that man was attacked the deceased by using a knife.

14. P.W.6, Jahangir is a colleague of the deceased. On 22.10.2007, P.W.6 heard about the murder of the deceased. On the very same day, at about 08:00 hours, when P.W.6 was in duty, the appellant/accused came there and met him. When P.W.6 met the appellant/accused, he found that the accused wear a band aid on his right hand. When P.W.6 asked the accused about the reason for the band aid, the accused/appellant narrated the entire thing and he asked P.W.6 to give him Rs.200 as a debt in order to go his native place. P.W.6 refused to give him money and therefore, the accused/appellant ran from the place.

15. P.W.7, Mohammed Kashim and his friend Ashok Kumar were signed in both the Observation Mahazar and the Seizure Mahazar prepared by P.W.16, Inspector of Police.

16. P.W.8, Kamaraj was working as a Room boy in the Jupiter Guest House. On 22.10.2007, at around 05:00 hours, P.W.6 informed him about the death of the deceased. On the very same day, at 09:00 hours, Police came to the lodge in which I had stayed. When Police searched for the accused in Room No.406, he was not there and they asked about the accused. When the accused was standing in front of the Saravana Bhavan Hotel in Central Railway Station, P.W.8 identified him as accused.

17. P.W.9, Julpikar and one Sulaiman were signed in the confession statement given by the accused/appellant and also in the Seizure Mahazar i.e., Ex.Ps.13 & 14.

18. P.W.10, Anandaraj is working as a Photographer in Police Photo Section, Egmore. He took photographs on the dead body of the deceased in 30 angles.

19. P.W.11, Mr.John.R.D.Sandhosham, then XXI Metropolitan Magistrate, Egmore Chennai conducted Identification Parade in which P.W.1 to 3, Zakir Hussain and Mohammed Yusuf stood as witness during the time of identification parade. P.Ws.1 & 2 identified the accused.

20. P.W.12, Dr.Sampathkumar attached with the Government Stanley Hospital examined the accused and found some injuries. P.W.13, Dr.Baskar attached with the Government Stanley Hospital conducted autopsy on the dead body of the deceased and gave the postmortem report.

21. P.W.14, Alamelumangai was working as a Scientific Assistant in Madras Forensic Department received the material objects for chemical examination.

22. P.W.15, then XIX Metropolitan Magistrate, Chennai recorded the statement of P.Ws.1, 2, 3, & 6.

23. P.W.16, Mr.Mohan, Investigating Officer arrested the accused/appellant, prepared the Observation Mahazar, Seizure Mahazar and drawn the Rough Sketch. Then finally, he laid a Charge Sheet against the accused.

24. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false, however, he did not choose to examine any witnesses nor did he mark any documents on his side.

25. Having considered all the above, the trial Court convicted the accused/appellant as stated in the first paragraph of the judgment. Challenging the same, the appellant is before this Court with this Criminal Appeal.

26. Heard the learned counsel for appellant and learned Government Advocate for respondent and also perused the records carefully.

27. In the trial Court, the prosecution has attempted to prove its case through the eyewitness for which P.W.1 to 5 have been examined as eyewitnesses to the alleged occurrences.

28. In the chief examination, all the above witnesses have stated that before the occurrence, accused and deceased were stayed in a same room. On the date of occurrence, during midnight, there was a quarrel happened between them. As a result of which accused attacked the deceased all over the body by using a knife.

29. In this regard, the learned counsel appearing for the appellant would submit that in the Cross Examination of P.W.2 & 3, they categorically mentioned that when they saw the deceased, he is found dead. Thereby, considering the said evidence with every circumstances, it is impossible for them to see the quarrel happened between them and the assault made by the accused.

30. It is true, P.W.2 had stated in his cross examination as at the time of seeing the deceased, he found dead. However, in the course of the cross examination, he clearly elucidated that in the midnight at about 01:00 a.m after hearing the noise from the room in which the deceased was stayed, he along with P.W.3 went there and saw the accused and the deceased. At that time, it was found that

the door was opened and both of them were quarreled with each other. Furthermore, the said evidence now admitted by the witness P.W.2. However, the same have not been put before the Investigating Officer as P.W.2 stated as lie. Since the Investigating Officer is recorded 161 of Cr.P.C statement, he alone the capable person for dealing with the particulars which have been recorded during the time of recording statement. In the said circumstances, the omission is not clarifying with the Investigating Officer. The evidence given by the eyewitnesses cannot be thrown away easily. Accordingly, eventhough some of the contradictory evidences are given by P.Ws.1 to 3. Those are all only minor in nature. As per the evidence given by P.W.13, Doctor who conducted the postmortem has stated that at the time, when the postmortem was progressed, he found 4 injuries. If really the accused had attacked the deceased as stated by P.Ws.1 to 4, it would result as stated by the Doctor.

31. In this regard, the learned counsel appearing for the appellant would submit that, the knife used for attacking the deceased is not having the smooth space, but the injuries stated by the P.W.13, Doctor is not in accordance with the nature to the description of the weapon marked in this case. Now on going through the particulars, of the injuries sustained by the deceased, one is in the left forehead, another is in the right back side, the third injury is the wound found in the right side of the neck and the fourth injury is a cut injury found near the wrist. So it can be possible if the weapon like M.O.1, Knife have caused the said injuries, so the said minor contradictions is no way connected to the case of prosecution.

32. The next contention raised by the counsel for the appellant is that in FIR, the name of the accused had not been mentioned. If really that P.Ws.1 to 4 saw the accused at the time of occurrence, it is very easy for them to mention the name of the accused in the complaint. It is true, in the complaint given by P.W.1, the name of the accused is not mentioned. However, on going through the entire evidences given by P.W.1 who is the author for the complaint, it appeared few hours before the occurrence, the accused had come to the room with the deceased. Further, the deceased introduced the accused as his friend to P.W.1. A human being with normal memory power can remember the name of a person whom he met occasionally. So it cannot be accepted that a man is unable to remember the name of a person whom he met few hours ago. However, P.Ws.2 to 4 are the eyewitnesses in this case identified the accused, particularly, P.W.1 & 2 identified the accused in the presence of Magistrate in Prison which leads to take a

conclusion as non mentioning of the name of the accused in the FIR alone is not a ground for allowing the Appeal.

33. The next contention raised by the counsel appearing for the appellant is as per the case of prosecution, the knife which was alleged to be used for the commission of offence was recovered one day after the occurrence. As per the evidence of Investigating Officer, the same would have been recovered near the Central Railway Station. Further, he added a normal man cannot possess the blood stained knife for the period of one day. So in this regard, the evidence given by P.W.6 and the witnesses who attested in the Seizure Mahazar is nothing but a false. It is true, no man in the situation of the accused/appellant cannot possess the blood stained knife for a period of one day. The said aspect put forth by the prosecution may be in the form of convincing. However, as per the report given by the chemical examiner and as per the evidence of P.W.14, blood stained knife, and the other materials recovered from the scene of occurrence and the clothes found over the dead body of the deceased are all contains human blood. Eventhough the said report is not an conclusive one, the contents of the document supported the evidence given by P.W.1 to 4. So merely for the reason that the accused possessed the knife for one day is not sufficient to throw away the prosecution case as entirely. Moreover, in the trial Court, the injury sustained by the accused/appellant were also properly explained by way of examining the Doctor who treated him.

34. In the light of the above submissions, this case is not having any merits. Therefore, this Criminal Appeal is dismissed and the judgment passed by the learned III Additional Sessions Judge in S.C.No.498 of 2007 dated 02.07.2009 is confirmed. The Trial Court is directed to take steps to secure the custody of the appellant for undergoing the remaining period of sentence. It is also directed that the period of sentence already undergone by the appellant shall be given set off, as required under Section 428 Cr.P.C.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

mrr

To

1.The III Additional Sessions Judge,
Chennai.

2.The Inspector of Police,
D1- Triplicane Police Station,
Chennai.

3.The Public Proscutor,
High Court, Madras.

4.The metropolitan magistrate No.XIII,
Egmore, Chennai.

5.The Chief metropolitan magistrate ,
Egmore, Chennai.(For Information).

6.The Superintendent,
Central Prison,
Puzhal. Chennai.

7.The District Collector,
Chennai.

8.The Director General of Police,
Chennai.

+1cc to Mr.D.S.Ramesh , Advocate SR.No. 47801

Cr1.A.374 of 2009

ASK(26/10/2018)

सत्यमेव जयते

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