

Bail Slip

The appellant Namely 1) Siva@Jeeva@Jeevanantam 2) Yuvaraj in CRL.A.NO.546/10 Accused 1&2 in SC.NO.343/09 on the file of the additional District & Sessions Judge (Fast Track Court No.2) Cuddalore were released on bail vide order of this court dated 08/10/2010 in CRL MP.1/10 in CRL.A.NO.546/2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2018

CORAM

THE HON'BLE MR.JUSTICE R. PONGIAPPAN
Criminal Appeal No. 546 of 2010

1. Siva @ Jeeva @ Jeevanandam
2. YuvarajAppellants/Accused 1&2

-Vs-

The State of Tamilnadu
Represented by:
The Inspector of Police,
Kadampuliyur Police Station
Villupuram District.
Crime No.27 of 2007 Respondent/Complainant

Prayer:

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the order of conviction and sentence dated 19.08.2010 made in S.C.No.343 of 2009 by the learned Additional District and Sessions Judge [Fast Track Court No.II], Cuddalore.

For Appellants/Accused 1&2 : Mr.M. Devaraj

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

J U D G M E N T

Challenging the order of conviction and sentence passed by the learned Additional District and Sessions Judge (Fast Track Court No.II), Cuddalore, in S.C.No.343 of 2009, dated 19.08.2010, the present Criminal Appeal has been filed. The appellants are the Accused Nos.1 and

2, they stood charges for an offence under sections 341, 364, 302, 394 r/w 397, 482 r/w 417 IPC. The trial court by a judgment, dated 19.08.2010 convicted the appellants under section 392 IPC and sentenced them to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/- each, in default to undergo 6 months rigorous imprisonment. Further, both the appellants are convicted under section 482 r/w 417 IPC and sentenced to undergo one year rigorous imprisonment. For the remaining charges, both the accused are acquitted. Now, challenging the above conviction and sentence the appellants are before this Court with this appeal.

2. The case of the prosecution is as follows:

On an information, at about 7.30 a.m. on 25.02.2007 PW1 [Saravanan] who is the Village Administrative Officer went to the Panrutti to Keelakuppam Road and found the dead body of a male person lying with blood stain. Thereafter, he lodged a complaint before the SHO, Keelakuppam Police Station under Ex.P1. On receipt of the complaint, PW7 [Tamilselvi] the then Sub Inspector of Police, Uthandikuppam Police Station registered a case in Crime No.27 of 2007 under section 302 IPC. Ex.P8 is the First Information Report. After the registration of the case, she despatched the FIR to the Court which having the jurisdiction. Further, she forwarded the copy of the FIR to PW8 for investigation.

3. PW8 [Kalimullahsha] the then Inspector of Police, Kadampuliyur Circle, received the copy of the FIR on 25.02.2007, and immediately on the same day, at about 9.30 a.m., he went over to the scene of occurrence and in the presence of PW6 [Saravanan] and one Renganathan, he prepared an observation mahazar under Ex.P2. He drew the rough sketch under Ex.P9. Further, he examined the witnesses and prepared an Inquest Report under Ex.P10. After completing the above formalities, he entrusted the dead body to the Head Constable Janakiraman for keeping the same in mortuary. He made a publication in respect to the occurrence.

4. On 26.02.2007, PW2 [Mythili], PW3 [Vasanthi] and one Mohan came to the Government Hospital, Panrutti and identified the deceased. They have stated before the Investigating Officer as the name of the deceased is Thulasireddiyar and PW2 Mythili is his wife. Subsequent to that PW8 [Kalimullahsha] examined them and recorded the statements. On enquiry, it reveals that the deceased was working as a car driver in Villupuram.

5. In continuation of investigation, PW8 [Kalimullahsha] altered the section of law as 302 and 379 IPC and sent the alteration report to the court. Ex.P11 is the alteration report. On the same day, he sent a

requisition to the hospital authorities for conducting autopsy.

6. PW6 [Dr.Saravanan] attached with the Government Hospital, Panrutti, on receipt of the requisition given by PW8 conducted the post-mortem and found the following injuries on the dead body of the Thulasiraman.

Internal examination:

1) Thorax no lib. 2) No blood collected in peritoneal cavity. 3) Heart congested and contains small clot of blood. 4) Hyoid bone intact and preserved. 5) Liver, spleen and both kidneys congested 6) Stomach contains 100ml yellow coloured fluid. 7) Intestine is empty. 8) Head skull bones fracture of left temporal bone with displacement producing gap of about 4 cm x 3 cm. 9) Membranes intact. 10) Brain - Pale.

External injuries:

1. incised wound of size 3 cm x 2 cm behind left ear.
2. Two abrasion of size 2 cm x 1 cm and 3 cm x 1 cm on back of neck.
3. Abrasion of size 3 cm x 1 cm over Anterior aspect of neck.
4. Contusion size 10 cm x 6 cm over right parotid region.
5. Bleeding from both ear and nose.
6. Abrasion of size 2.5 cm x 1 cm over right shoulder.
7. Abrasion 2 cm x 1 cm over left forearm.
8. Abrasion 2 cm x 1 cm over right side of chest.
9. Contusion of 3 cm x 2 cm over right side of chest.
10. Abrasion of 1 cm x 0.5 cm over right thigh.
11. Abrasion 2 cm x 1 cm over left knee.
12. Contusion 6 cm x 5 cm over left chest. PM concluded 5 pm on 26.02.2007. Time of death 64 to 72 hrs. prior to PM

7. After completing the post-mortem, he gave an opinion as the deceased would appear to have died on shock and haemorrhage due to the injuries sustained all over the body. Ex.P7 is the post-mortem certificate.

8. In the meantime, on 07.03.2007 on information PW8 along with his team went to the Mankannu oodai and on identification arrested both the accused and brought to the police station. Further, he requested the PW5 [Purushothaman] and one Royar for standing as a witness to the examination made before the accused. On interrogation the first accused in this case gave a voluntarily confession statement and the same was recorded by PW8 in the presence of the above witnesses. In the confession statement, he admitted the guilt and produced the car, which was driven by him at the time of occurrence bearing Registration No.TN-32-C-3918 (MO1) and one wheel spanner (MO2) and the same was recovered by the Investigation Officer through the seizure mahazar. Further, he recorded the confession statement given by the second accused in the presence of same witnesses. He also admitted the guilt and willing to produce the number plates (MO3 Series) which was given by the other accused to him, now, hidden in a bush situated near to the Pennai river. Pursuant to the confession statement, PW8 recovered the number plates (MO3 Series) through the seizure mahazar.

9. Thereafter, he made an arrangements for sending the recovered material objects to the Court. In the said circumstances, since he was transferred from the said post, he handed over the case records to PW9 for further investigation.

10. PW9 [Sirajini] the then Inspector of Police, Kadampuliur on 28.02.2008 received the case records from PW8 and on the same day, he examined the doctor and recorded the statement. He sent a letter to the Regional Transport Officer for verifying the engine number and chassis number found in the MO1 and thereafter, on receipt of reply from the said officer, he came to the positive conclusion that the accused committed the offence under sections 341, 364, 302, 394 r/w 397, 482 r/w 417 r/w 34 IPC and filed a final report.

11. Based on the incriminating materials, the trial court framed the charges as detailed in the first paragraph of this judgment and the accused denied the same. In order to prove its case, the prosecution examined 9 witnesses as PW1 to PW9 and marked 13 documents as Ex.P1 to Ex.P13, besides 3 material objects.

12. Out of the said witnesses, PW1 [Saravanan] was working as Village Administrative Officer in Vallar Village, he has stated on 25.02.2007 at about 7.30 a.m.,

when he was in his office he heard a news about the lying of the dead body in cashew nut grove. Immediately, he rushed to the place in which the dead body was found and thereafter, he lodged a complaint before Police Station. Further, he has stated that after the registration of the case, the Police Officer came to the scene of occurrence and prepared an observation mahazar and rough sketch. Further, he has stated that on the same day, at about 11.30 a.m. the Police Officer recovered the blood stained soil and the sample soil through the mahazar.

13. PW2 [Mythili] is the wife of the deceased, she has stated that the deceased was working as a driver in an ambassador taxi, bearing Registration No.TN-32-C-3918, she has stated further during the time of working hours the deceased occasionally contacted her through the mobile phone, but from 23.02.2007 onwards, the deceased had not contacted her. She has further stated that on 26.02.2007, she received an information about the unidentified dead body and went to the Government Hospital, Panrutti. In the Hospital, she identified her husband's dead body before the Police Officers.

14. PW3 [Vasanthi] is the daughter of the deceased Thulasiraman, she gave evidence in support of the evidence given by PW2 without any contradiction. According to her, she has also came along with PW2 to the Government Hospital, Panrutti and identified the deceased.

15. PW4 [Paramaguru] is the resident of Keezhakuppam Village. On 25.07.2007 at about 7.00 a.m., when he was on the way to attend the natural call, he found the dead body lying near to the cashewnut grove. He has further stated that the blood was found all over the dead body. So, immediately, after seeing the dead body he informed the same to the Village Assistant one Renganathan.

16. PW5 [Purushothamman] is also a Village Administrative Officer by profession on 07.03.2007 on the request made by the PW8, he went to the police station and stand as a witness to the confession statement given by both the accused. Further, he stand as a witness for the recovery of material object (i.e.) MO1 to MO3.

17. PW6 [Dr.Saravanan] attached with the Government Hospital, Panrutti has stated about the details of injuries sustained by the deceased and gave an opinion in respect to the cause of death to the deceased.

18. PW7 to PW9 are the Police Officers have stated about the registration of the case, details of investigation, arrest of accused, and about the filing of the final report.

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

20. Having considered all the materials available on record, the trial court convicted and sentenced the appellants/accused as stated above.

21. I have heard the arguments advanced by Mr.M.Devaraj, learned counsel appearing for the appellants and Mrs.T.P.Savitha, learned Government Advocate (Crl. Side) appearing for the respondent and also perused the records carefully.

22. The learned counsel appearing for the appellants would contend that in the trial court, the case of the prosecution have been projected through the circumstantial evidence. The learned trial Judge on believing the recovery of MO1 to MO3 came to the conclusion that the appellants are found guilty. He would further contend that mere proving the recovery alone is not sufficient to hold that the entire prosecution case is true one. He would contend that there are a lot of contradictions available in the evidence of PW1 to PW9 and accordingly, he prayed for allowing this appeal.

23. Per contra, the learned Government Advocate (Crl. Side) for the respondent would contend that the evidence given by the prosecution witnesses and the recovery made by the investigation officer will clearly prove the charge framed against the accused. According to him, the interference is not necessary in the judgment rendered by the trial Court.

24. I have considered the rival submissions made by the learned counsel appearing on either side.

25. Now, on going through the contents of charge framed against the accused, it appears during the time of occurrence both the accused with an intention to stolen away the car driven by the deceased bearing Registration No.TN-32-C-3918 on 23.02.2007 took the car for rent and went to the Panruti. Thereafter, in the scene of occurrence, by using the wheel spanner (M.O.3), both the accused attacked the deceased on his head and causing the death to the deceased. Consequently, they changed the number plate of the car, and using the said car, for their personal use.

26. In the said occasion, according to the evidence of PW2 and PW3, the owner of the stolen property is one

Kuppuraj, in the trial court for the reason best known to the Investigating Officer, he has not been examined as a witness to the prosecution. In otherwise for connecting the accused, with the crime, the evidence given by the PW8 alone available.

27. According to the prosecution, the car MO1 have been recovered by PW8 in the presence of PW5 [Purushothaman] in the chief examination he has specifically stated about the recording of confession statement from the first accused and about the recovery of car. In otherwise, except the said recovery, absolutely there is no evidence is available from the prosecution witnesses for connecting the accused with the alleged crime. Even, to prove ownership of the car nothing was recovered by the Investigation Officer. In the said situation on close scrutiny of the evidence given by PW8, the car was recovered only after recording the confession statement from the first appellant in the presence of PW5. But at the same time, the evidence given by PW5 appears that before he entered into the police station the car now under dispute was recovered by the Investigating Officer. So, for proving the recovery of stolen property two set of evidences is put forth by the prosecution. Though the recovery of number plate is a piece of evidence it has to be necessarily corroborated by the some other evidence.

28. In this case, according to the evidence of Investigating Officer at the time of recovering the car, the same is having the Registration No.TN-21-W-5786 but at the same time as per the case of the prosecution the actual Registration Number of the Car is TN-21-W-5786. In the said circumstances, without any evidence from the owner of the stolen property, we cannot come to the conclusion that the accused committed the robbery. Particularly, to find out whether the car was handed over to the deceased by the owner, his evidence is having great importance. Therefore, for proving the offence of this nature cogent evidence is necessary.

29. The evidence given by the P.W.1 to P.W.4 established that the name of the deceased is Thulasiraman, further, his dead body is found near to the cashewnut grove. In otherwise, the said evidence did not connect the accused with the alleged crime. Even though P.W.5 is a witness to the confession statement given by the A.1 and A.2, since the car was recovered before he entering into the Police Station, we cannot hold that the Investigation Officer found the car in consequence of the information received from the accused. So, this evidence is also insufficient to hold the accused is involved in this case. The remaining witnesses are all the Officers, they have stated about the process of post mortem and

about the investigation conducted in this case. So, their evidence alone is not sufficient to accept the case of prosecution entirely.

30. In the trial court, both the accused are convicted under section 392 and 482 r/w 417 IPC. For proving the offence of robbery the prosecution must necessarily prove the following ingredients:

"to establish the offence of robbery the prosecution is to prove (1) all the elements required to prove theft, (2) the accused while committing the aforesaid theft or in order to commit aforesaid theft voluntarily caused or attempted to cause to any person either death, or hurt, or wrongful restraint, or fear of instant death or instant hurt or instant wrongful restraint."

31. In this case, in order to prove the said ingredients, absolutely there no evidence is available on the side of the prosecution. Moreover, for convicting the accused under section 482 r/w 417 IPC, the prosecution has to prove the intention of the accused. Strictly speaking the learned trial judge without knowing the particulars of charge framed against the accused, convicted the accused, thereby, I am of the considered view that the prosecution has not proved their case beyond reasonable doubt.

32. Thus, this Court is of the view that the prosecution has failed to prove their case beyond reasonable doubt and hence, the judgment of conviction passed by the trial court is liable to be set aside.

33. In the result, the Criminal Appeal is allowed, the conviction and sentence imposed upon the appellants by the learned Additional District and Sessions Judge [Fast Track Court No.II], Cuddalore in S.C.No.343 of 2009, dated 19.08.2010 is hereby set aside and the appellants are acquitted from the charges. Bail bonds executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellants.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

msm

To

The Additional District and Sessions Judge,
Fast Track Court No.II,
Cuddalore.

2.The Chief Judicial Magistrate,
Cuddalore.

3.The Judicial Magistrate No.1,Panruti.

4.The Superintendent ,Central Prison,Cuddalore.

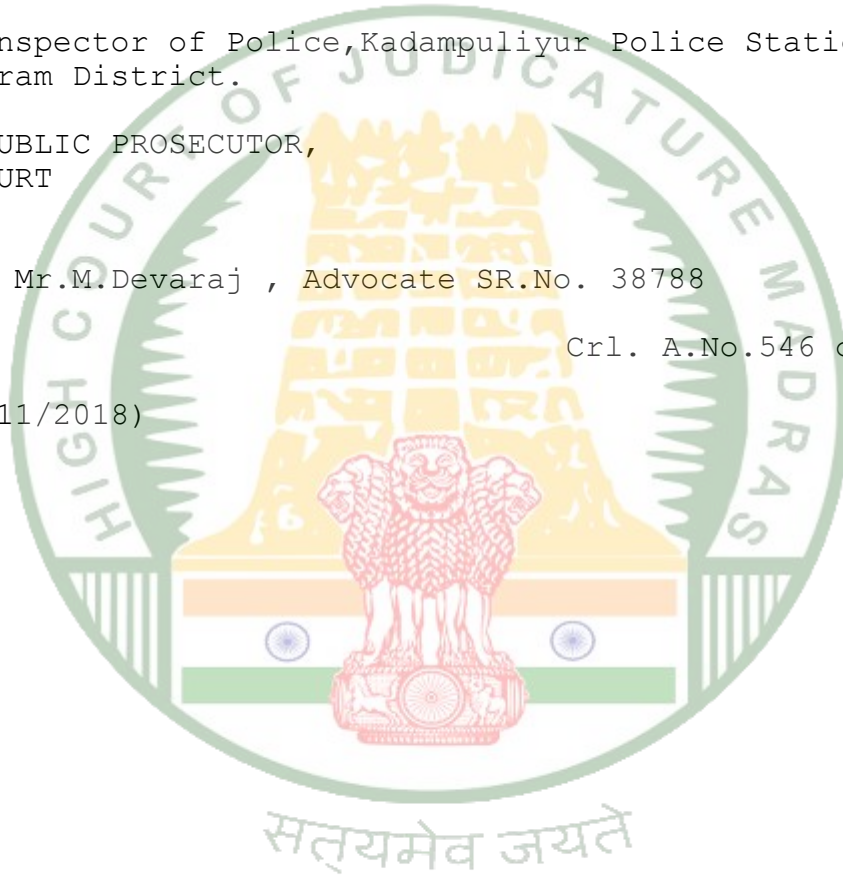
5.The Inspector of Police,Kadampuliyur Police Station,
Villupuram District.

6.THE PUBLIC PROSECUTOR,
HIGH COURT
MADRAS.

+1cc to Mr.M.Devaraj , Advocate SR.No. 38788

Crl. A.No.546 of 2010

ASK(12/11/2018)



WEB COPY