

Bail Slip

The Appellant/Accused Viz, K.C. Palani, aged about 25 year S/o. Chinnakulandai, was directed to be released on bail as per order of this court dated 09/11/2010 in M.P.No.1 of 2010 in Crl.A.NO.566 of 2010 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

Crl.A.No.566 of 2010

K.C.Palani

.. Appellant/Accused

Vs.

State, represented by
The Inspector of Police,
Katpadi Police Station,
Vellore District.(Crime No.617 of 2008) .. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence imposed in S.C.No.253 of 2009 dated 09.08.2010 on the file of Additional District and Sessions (Fast Track Court) Vellore.

For Appellant :Mr.R.Sankarasubbu
For Respondent :Ms.T.P.Savitha
Government Advocate (Crl.side)

J U D G M E N T

This appeal is directed against the conviction and sentence passed against the appellant in S.C.No.253/2009 on the file of Additional District and Sessions Judge, (Fast Track Court) Vellore. In the trial court, the accused stood charged for the offence under section 302 IPC. He denied the same and opted for trial. At the end of the trial, the learned Additional District and Sessions Judge held that the appellant is found guilty of the offence under Section 304(i) IPC, convicted and sentenced to undergo R.I for 7 years and to pay a fine of Rs.1000/- and in default to undergo R.I for further period of 3 months. Now challenging the conviction and sentence the appellant is before this Court with the present appeal.

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

i) P.W.1 Punitha is the wife of deceased Prabhudoss. She was working as a staff in V.I.T., Katpadi, and she used to go to work in the day hours. On 31.07.2008 at about 13.30 hours when the deceased and P.W.2 went to the house of appellant for collecting Rs.1,000/-, the appellant slit the neck of the

deceased and committed offence. Immediately, the same was informed to P.W.1 by P.W.2. After hearing the news, P.W.1 lodged a complaint before P.W.12 Sub Inspector of Police, Katpadi Police Station under Ex.P.1. After receiving the said complaint, P.W.12 registered a case in Crime No.617/2009 for the offence punishable under Section 302 IPC. Ex.P.18 is the printed F.I.R.

ii) After the registration of the case, the case records had been handed over to P.W.13 Arivazhagan who is the then Inspector of Police, Katpadi Police Station. After receiving the copy of F.I.R., P.W.13 went to the scene of occurrence and prepared observation mahazar and rough sketch in the presence of the witnesses Chakkarapani and Munusamy. The observation mahazar and rough sketch were marked as Exs.P.19 and P.20 respectively. Further, in the presence of the same witnesses, he recovered blood stained cement mortar piece, (M.O.6) and cement mortar piece, (M.O.7) through the recovery mahazar (Ex.P2), he preferred a inquest report under Ex.P22. After completing the above formalities, he examined the witnesses and recorded their statement. Thereafter, he entrusted the dead body to Government Vellore Medical College Hospital for conducting post-mortem.

iii) P.W.11 Dr.Vijayalakshmi, when she was working in Government Hospital, Vellore received a requisition given by P.W.13 and conducted autopsy on the dead body of Prabudoss. During the course of Post-mortem, she found the following injuries:-

Lacerations: An oblique gaping cut injury with regular margin measuring about 18cmx5cmxcervical vertebra bone depth on front of the upper part of the neck. Injuries of upper and right end of the wound was 5cm below and lateral to mastoid prominence, the lower and left end of the wound was 7cm below and lateral to the left mastoid prominence. The injury cutting the skin, subcutaneous tissues, trachea, carotid Arteries, jugular veins, nerves, muscles on both sides of the neck, cervical vertebra and spinal cord with intact skin at the nape of the neck.

iv) Finally she gave an opinion that the alleged death was happened due to the shock and haemorrhage of injury sustained by the deceased.

v) In the course of investigation, on 13.07.2008 at about 4.00 pm, the appellant surrendered before P.W.7, who is the Village Administrative Officer, and gave a confession statement in which he admitted the guilt. After recording the statement given by the appellant, P.W.7 prepared a special report under Ex.P6 and produced the same along with the accused before the P.W.13. After receiving the special report from

P.W.7, P.W.13 examined the appellant and recorded the confession statement, in which the appellant admitted the guilt and willing to produce blood stained cloth and the knife now hidden near to the theatre.

vi) Pursuant to the confession statement given by the accused, in the presence of P.W.7 Dayalam and one Jakob, P.W.13 recovered the blood stained green colour banian and blood stained lungi (MO4 and MO5) through a Mahazar Ex.P.8.

vii) Further, all of them proceeded to the back side of the theatre and thereafter on identification, the blood stained knife was recovered by investigation officer through the mahazar Ex.P.9. The admitted portion of the confession statement given by the accused is marked as Ex.P.7. Subsequently, the investigation officer made arrangement for taking the photograph of the occurrence place. In continuance of investigation, P.W.13 produced blood stained material objects which are recovered during the time of investigation in the Court through Form 95 (Ex.P.23). Further, he submitted the requisition letter before the Magistrate for sending the material object for chemical examination.

viii) After receiving the chemical examination report, he came to the positive conclusion that the accused committed an offence of murder and thereby, he filed a final report under Section 302 IPC against the accused.

ix) Based on the materials, the trial Court framed the charges against the accused under Section 302 IPC, the accused denied the same. In order to prove the case of prosecution as many as 13 witnesses were examined as P.W.1 to P.W.13 and 23 documents were exhibited, besides 6 material objects.

x) Out of the said witnesses P.W.1 Punitha is the wife of deceased Prabhudass, she was working in a VIT College, she has stated in the trial court as on 31.07.2008, when she was about to going to her office the deceased and her brother Shanmugam talking with each other about the receiving of Rs.1,000/- from the accused. She has further stated on the same day at about 1.30 pm., his brother Shanmugam informed about the occurrence. Immediately, she rushed to the occurrence place and saw the dead body of her husband and then she lodged the complaint before the police under Ex.P.1.

xi) P.W.2 Shanmugam is the brother of P.W.1. He is the witness to the occurrence has stated on 31.07.2008 at about 6.00 am., he discussed with the deceased about the loan of Rs.1,000/-availed by the accused. He has further stated on the very same day at about 11.30 am., when he was standing near to

the house of accused heard a sound from the accused house, so, he entered into the house of accused and found that the accused is attempted to cut the neck of deceased Prabhudoss by using the MO1 knife. Further he has stated due to the said assault, his brother in law is went to the stage of unconscious and thereafter, he informed the same to the P.W.1.

xii) P.W.3 Chakkkarapani is the neighbour to the accused, according to the case of prosecution he is the witness to the occurrence but he has stated in the trial Court only about the preparation of observation mahazar and about the recovery of MO1 and MO2 from the scene of occurrence. Since he has not supported the prosecution in other aspect, he was treated as a hostile witness.

xiii) P.W.4 Munasamy is also an eye witness to the occurrence has not stated anything in support of the prosecution. In the same way P.W.5 Sasikala also not supported the case of prosecution.

xiv) P.W.6 is the photographer, he has stated about the taking of photograph in the occurrence place in 3 angles.

xv) P.W.7 Dayalan is working as Village Administrative Officer in Karesam Village, he has stated on 31.07.2008 at about 4.00 pm., when he was in his office, the appellant/accused came and gave the confession statement in which, he admitted the guilt. He has further stated as the statement given by the accused was recorded and thereafter, the accused was produced before the investigation officer along with the confession statement and with the special report preferred by him.

xvi) P.W.8 Jagannathan now working as a chemical examiner has stated on 07.08.2008, when he was working in a Forensic Science Department, he received the following material objects for chemical examination:-

- 1.Blue colour lungi
- 2.Pale green colour banian
- 3.A knife in the length of 45 cm
- 4.Cement mortar pieces
- 5.Cement mortar pieces
- 6.Blue colour lungi
- 7.A sandal colour pollster T.shirt

xvii) He has further stated on examination except in S.No.5 all other objects are having the blood. Further, the blood stained objects are referred to Forensic Science Department, Chennai for further examination. In Chennai it was identified the blood found in item Nos.6 and 7 are A and B group respectively. He issued a biology report under Ex.P.12 and Serology Report under Ex.P.13.

xviii) P.W.10 R.Ashokkumar working in a Forensic Science Department, Thiruvannamali has stated on 10.11.2008, he examined a viscera collected from the dead body and found there is no poisonous substance present in the dead body. He issued a report under Ex.P.15.

xix) P.W.11 Dr.Vijayalakshmi has stated about the details of injury sustained by the deceased and about the process of post-mortem.

xx) P.W.12 and 13 are the police officers has stated about the particulars in respect of the registration of the case, details of investigation and about the filing of final report.

xxi) 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 of the witnesses nor did he mark any documents on his side.

xxii) Having considered all the above, the trial Court convicted him as stated in the first paragraph of the judgment. Challenging the same, the appellant is before this Court with this criminal appeal.

3. Today, when the appeal is taken up for hearing, I have heard Mr.R.Sankarasubbu learned counsel for the appellant and Ms.T.P.Savitha learned Government Advocate for the respondent.

4. The learned counsel for the appellant would contend that even though 13 witnesses were examined on the side of prosecution, only one witness (P.W.2) has stated about the alleged occurrence, further, he would contend that the cross-examination of the said witnesses impeach the credibility of the chief examination about the occurrence. Moreover, the extra judicial confession given by the appellant before P.W.7 have not been marked as exhibit. Thereby, the prosecution fails in its attempt to prove his case beyond reasonable doubt.

5. On the other hand, the learned Government Advocate would submit that the sole testimony of P.W.2 is sufficient to hold that the findings of the trial Court is absolutely correct one.

6. I have considered the submissions made on either side.

7.Initially, on going through the evidence available in this case, it seems that P.W.1 who is the defacto complainant lodged a complaint before the police, only after knowing the

occurrence from P.W.2. So, she cannot be treated as a eye witness to the occurrence.

8. Secondly, P.W.2 who is the eye witness to occurrence has stated only in his presence, the appellant by using the knife, slit the neck of the deceased. Even though, the evidence of P.W.2 in the chief-examination is in favour of the prosecution as above, during the time of cross examination, he has stated that during the time of slitting the neck of the deceased, he was standing out side the house in which the alleged occurrence had happened. Further, he deposed in the cross-examination that he does not know the conversation which had happened between appellant and the accused. Accordingly, the chief examination of P.W.2 is falsified through his cross examination. In order to clarify the said contradictions found in the cross examination of P.W.2, the other eye witnesses, examined on the side of the prosecution have not supported the case of prosecution. In the said circumstances, the attempt made by the prosecution to prove the case through the eye witness is failed as above.

9. Secondly, the prosecution has attempted to prove the case by way of circumstantial evidence, for which, P.W.7 who is the V.A.O has been examined as P.W.7. In his chief examination, he narrated as on 31.07.2008 at about 14.00 hours, when he was in his office, the present appellant surrendered before him and gave confession statement in which he admitted the guilt. Thereafter, he produce the accused before the P.W.13 for investigation. In this regard, the special report which was prepared by P.W.7 addressed to the Inspector of Police alone was marked as Ex.P.6 and the extra judicial confession recorded by P.W.7 has not been marked as exhibit. Neither the P.W.7 nor the investigating officer has not produced the extra judicial confession alleged to be given by the accused as a exhibit. Even though, the chemical examination report would show that the material object recovered in this case is having the blood stain that alone is not sufficient to prove the entire case of prosecution. It is the settled law that result of the chemical examination reports are not conclusive proof for proving the case of prosecution.

10. Therefore, in the light of the discussion stated above, the prosecution fails in its attempt in proving the case either through the eye witness nor by way of circumstantial evidence. Now, on going through the judgment rendered by the Assistant Sessions Judge, it is seen without considering this aspect, the trial Court convicted the accused which is liable to be set aside.

11.In the result, the criminal appeal is allowed and the conviction and sentence imposed upon the appellant in S.C.No.253/2009 dated 09.08.2010 by the learned Additional District and Sessions (Fast Track Court) Vellore is set aside and the appellant/accused is acquitted of the charges. The bail bond, if any, executed by the appellant/accused shall stand cancelled. The fine amount, if any, paid by appellant/accused shall be refunded to him.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions (Fast Track Court) Vellore.
 2. The Judicial Magistrate, Katpadi.
 3. The Inspector of Police,
Katpadi Police Station, Vellore District.
 4. The Superintendent, Central Prison, Vellore.
 5. The Public Prosecutor, High Court, Madras.
 6. The Chief Judicial Magistrate, Vellore.
 7. The Superintendent of Police, Vellore, District.
 8. The Section Officer, Criminal Section, High Court, Madras.
- + 1 cc to MR. R. Sankaraubbu, Advocate Sr.37333

Crl.A.No.566 of 2010

SSD(CO)
EU(01/11/2018)



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