

**Bail Slip**

The Appellant/Accused No.1 viz., the name P.Balasankar was released on bail as per the order of this Court dated 26.09.2016 made in CRL MP (MD) No.6901/2016 in CRL A (MD) No.291/2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.12.2017

Pronounced on: 05.01.2018

CORAM:

THE HONOURABLE MR .JUSTICE R.SUBBIAH

AND

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.[MD].No.291 of 2016

P.Balasankar

.. Appellant/
Accused No.1

Vs.

State rep. by the
Inspector of Police,
Pettai Police Station,
Tirunelveli District.
(Crime No.306 of 2008)

.. Respondent/
Complaint

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the conviction and sentence, dated 10.12.2015, made in S.C.No.80 of 2009, by the learned III-Additional District and Sessions Judge, Tirunelveli.

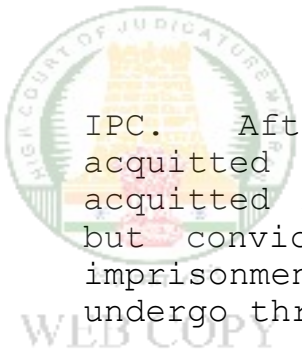
For appellant : Mr.A.R.Jeya Ruthran

For respondent : Mr.C.Ramesh,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by R.SUBBIAH, J.]

This appeal has been filed by the appellant / A1 against the conviction and sentence, dated 10.12.2015, made in S.C.No.80 of 2009 by the learned III-Additional District and Sessions Judge, Tirunelveli. There are totally two accused in this case and they were charged for the offences under Sections 294(b), 302 and 506(ii)



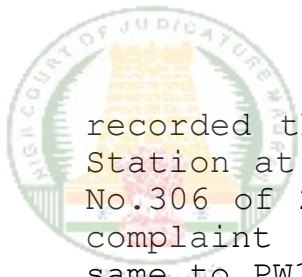
IPC. After trial, the second accused by name Chelladurai was acquitted from all the charges. The first accused was also acquitted from the charges under Sections 294(b) and 506(ii) IPC, but convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo three months rigorous imprisonment.

2.The case of the prosecution is consciously narrated below:

(a) The deceased by name Bhuvaneswari had three daughters and two sons. PW1 is the younger son of the deceased. The first daughter of the deceased by name Muthumari could not speak well and she was given in marriage to the second accused (A2) with 5 five sovereigns of gold jewels and a house. The second daughter by name Latha was given in marriage to the first accused (A1) with 20 sovereigns of gold jewels. Six months prior to the date of occurrence, the appellant / A1 borrowed a sum of Rs.60,000/- from the deceased viz., his mother-in-law to pay off his debts. One month prior to the occurrence, the deceased went to the house of A1 and asked him to return the money. At that time, a quarrel arose between them. While such a quarrel was going on between A1 and the deceased, A1's mother slipped inside the bathroom and died. Since the occurrence took place while the quarrel was going on, A1 developed an enmity towards the deceased saying that she is responsible for the death of his mother.

(b) Just one week prior to the occurrence, A1 and A2 told the sister of PW1 namely Latha, wife of A1, that they will not leave her mother and that they will kill her. In this situation, on 20.06.2008, there was a Kodai Vizha in Sudalai Madan Temple in the village. Hence, A1 came to the Village and stayed in the house of A2. A1 did not go to the deceased's house. PW2, who is the brother of the deceased, came to the deceased's house to participate in the festival. After attending the festival in the village, the deceased and PW1 returned to the house and slept on the veranda. While so, on 20.06.2008 at 2.15 a.m. A1 and A2 came to the house of the deceased. A1 took out an aruval from the hide out and cut the deceased indiscriminately saying that "you go to the place where my mother went". A2 also took out an aruval from the hide out and cut the deceased indiscriminately saying that "you have to die as you are not allowing me to marry another girl". On hearing the hue and cry of the deceased, PW1 woke up and raised an alarm. A1 and A2 threatened him with aruval. PW2 - brother of the deceased, PW3 and PW4, who were returning to the house after participating in the festival, shouted at the accused. On seeing them, the accused ran away from the place of occurrence. Thereafter, the deceased was taken to High-ground Hospital by PW1, PW2 and one Krishnamoorthy in an auto. The deceased was admitted in the hospital. During treatment, the deceased succumbed to the injuries on 21.06.2008 at 3.45 a.m.

(c) On intimation from the hospital, PW13 - the Sub Inspector of Police, Pettai Police Station, rushed to the hospital and



recorded the statement of PW1 (Ex.P1). On returning to the Police Station at 7.30 a.m. on 21.06.2008, PW13 registered a case in Crime No.306 of 2008 under Sections 302 and 506(ii) IPC and forwarded the complaint (Ex.P1) and FIR (Ex.P8) to the Court and the copy of the same to PW15 - Inspector of Police for investigation.

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(d) On receipt of the copy of the FIR, PW15 took up the investigation at 8.00 a.m and proceeded to the deceased house and prepared an observation mahazar (Ex.P2) and rough sketch (Ex.P14) in the presence of PW9 and Muthusamy. Thereafter, he recovered bloodstained plastic mat and bloodstained piece of a brick and a sample brick under mahazar - Ex.P15. PW15 recorded the statement of witnesses PW3, PW4, PW9 & PW10. Then, he went to the hospital and conducted inquest on the body of the deceased in the presence of panchayatars and forwarded the body of the deceased through one Krishnan - Constable to conduct postmortem.

(e) PW11 - Prof.V.Paramasivan conducted postmortem on the body of the deceased on 21.06.2008 at 02.20 p.m. He found the following injuries on the body of the deceased:

"1.Transversely placed, gaping heavy cut injury at the level of epigastrium 18 x 6 cm. underlying structures found out.

2.Gaping heavy cut injury 26 x 12 cm left side of abdomen, 8 cm above the anterior superior iliac spine. The lateral end of the injury is 3 cm away from injury No.1. The intestine seen completely out through the gap and found cut.

3.Gaping heavy cut injury 16 x 4 cm back of left elbow, cutting the underlying bone and soft tissue.

4. Defence cut injury seen base of left ring finger and it is seen in pieces.

5.Gaping heavy cut injury at the level of chin, 7 x 1 cm. underlying bone found cut.

6.Transversely placed cut injury 3 x 1 cm left side of face along the lower jaw bone.

7.Cut injury 5 x 5 cm tip of nose cutting and underlying nasal bone.

8.Cut injury 13 x 1 cm with interruption on the right side.

9.Gaping heavy cut injury 13 x 3 cm center of right upper arm, cutting the soft tissues and bones.

10.Gaping heavy cut injury 14 x 3 cm seen on the inner aspect of right upper arm. The cut muscles hang as a flap.

11.Cut injury 3 x 2 cm close to injury No.10.

12.Cut injury 2 x 1 cm left armpit."



PW11 opined that the deceased would appear to have died of shock and hemorrhage due to multiple heavy cut injuries. Ex.P3 is the Postmortem Certificate.

(f) On 22.06.2008, PW15 constituted a special team to arrest the accused. But, the accused surrendered before the Judicial Magistrate No.V Court, Tirunelveli. On 03.07.2008 the Police took the accused under custody for investigation by filing a petition. On enquiry, both the accused gave a voluntary confession statements in the presence of PW12 - VAO and one Ramakrishnan - Assistant, in which they disclosed the place where they have hidden out the weapon used in the occurrence. In pursuance of the said disclosure statement, they took the Police and witnesses to the place of hide out and produced two aruval (MOs.1 & 2). PW15 recovered the same under a mahazar. On returning to the Police Station, PW15 forwarded both the accused to the Court for judicial remand and handed over the material objects under Form 95 to the Court. The admissible portion of the voluntary confession statements of A1 and A2 are marked as Exs.P4 and P6). At the request of PW15, the material objects were sent for chemical examination through Court. The chemical examination report (Ex.P12) and serological report (Ex.P13) disclosed that there was bloodstain of "O" blood group on most of the material objects including MOs.1 and 2 - aruvals.

(g) During the course of investigation, PW15 collected the medical records and examined medical witnesses and few more witnesses, and recorded their statements. Due to transfer, PW15 handed over the investigation to his successor - PW16. PW16, after completion of investigation, laid charge sheet against both the accused.

3. Based on the above materials, the trial Court had framed as many as two charges against the accused. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, on the side of the the prosecution as many as 16 witnesses were examined as PWs.1 to PW16 and Exs.P1 to P17 were exhibited, besides eight Material Objects (MOs.1 to 8).

4. When the accused were questioned under Section 313 of Cr.P.C. with reference to the incriminating materials adduced by the prosecution, the accused denied their complicity in the crime and pleaded innocence. On the side of the accused, one Dr.Babitha Devi was examined as DW1. DW1 has stated that during her examination, the deceased died at 3.45 a.m. and one Dr.Krishnamoorthy had admitted the deceased in the hospital at 3.15 a.m. The staff of the Tirunelveli Medical College Hospital was examined as DW2. Ex.D1 - accident register of the deceased, was marked through DW2.

5. The trial Court, after considering the oral and documentary evidence, has acquitted A2 from all the charges and A1 from the charge under Sections 294(b) and 506(ii) IPC. But, the trial Court



found A1 guilty of the charge under Section 302 IPC and accordingly, convicted and sentenced the accused, as stated supra. Challenging the said conviction and sentence, the appellant/accused has come up with this appeal.

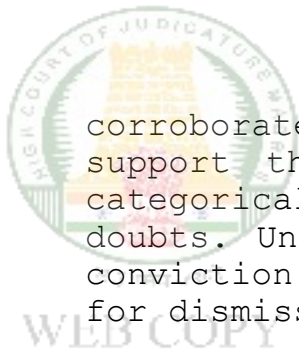
6. The learned counsel for the appellant / A1 would submit that in order to prove the case of the prosecution, PW1 and PW2 were examined as eyewitnesses. But, PW2 has turned hostile and he did not support the case of the prosecution. The evidence of PW1 is full of contradictions. Though in Ex.P1 - complaint, PW1 has stated about the separate overtacts of A1 and A2, contrary to the same, in his chief examination, PW1 has stated that A1 alone cut the deceased. Therefore, the testimony of PW1 cannot be believed.

7. The learned counsel for the appellant / A1 would further submit that PW1 has admitted in the cross examination that he has given the complaint only against A1. The deliberate inclusion of A2 in Ex.P1 creates doubt about the credibility of Ex.P1. Thus, the real complaint has been suppressed. He has further submitted that if Ex.P1 is believed, it can be stated that the deliberate exclusion of the involvement of the 2nd accused in the commission of the offence is a material contradiction, which would create doubt about the credibility of PW1 - sole eyewitness in this case.

8. The learned counsel for the appellant / A1 would further submit that though PW1 has stated in his cross examination that while taking the deceased to the hospital, his dress had bloodstains, the investigating officer has not seized the same and the absence of which would disprove the presence of PW1 at the time of occurrence. He would further submit that in Ex.D1 - accident Register of the deceased, it is mentioned that one Mupidathi - mother-in-law of the deceased brought the deceased to the hospital at 3.15 a.m. on 21.06.2008, which would go to show that PW1 did not bring the deceased to the hospital and therefore, the presence of PW1 at the time of occurrence is highly doubtful.

9. The learned counsel for the appellant would further submit that the witnesses PW3 and PW4 are only chance witnesses and their evidences were introduced only for the case of the prosecution. Further their evidences are contradictory to each other and therefore, their evidences cannot be believed. He would further submit that the mahazar witness and recovery witnesses have turned hostile and therefore, the recovery of material objects at the place of occurrence cannot be believed. PW5 and PW6 who were examined to speak about the motive for the accused have also turned hostile. Thus, the learned counsel for the appellant/accused prayed to set aside the conviction and sentence passed by the trial Court and to acquit the accused.

10. Per contra, the learned Additional Public Prosecutor submitted that the prosecution has clearly proved its case by examining the eyewitness PW1 and the version of PW1 is clearly



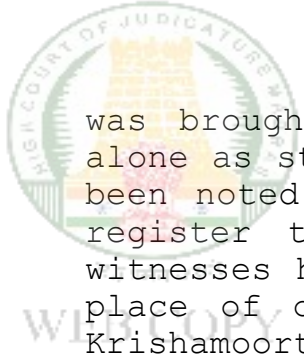
corroborated by PW3 and PW4. The medical evidence also clearly support the case of the prosecution. Thus, the prosecution has categorically proved the guilt of the accused beyond reasonable doubts. Under such circumstances, no infirmity can be found on the conviction and sentence passed by the trial Court. Thus, he prayed for dismissal of the appeal.

11. We have given our anxious considerations to the rival submissions made on either side and perused the materials available on record.

12. It is a case of brutal murder. The accused Nos.1 and 2 are said to have murdered their own mother-in-law. Though PW1 has given the complaint - Ex.P1 against both the accused, PW1 and other witnesses have not spoken about A2 and therefore, A2 was acquitted by the trial Court. Though PW1 and PW2 were examined as eyewitnesses to the occurrence, PW2, who is the brother of the deceased and uncle of PW1, has turned hostile and he did not support the case of the prosecution. Therefore, the entire case of the prosecution rests upon the sole testimony of PW1, who is the son of the deceased. It is a settled law that merely because an eyewitness is a relative of the deceased, his evidence cannot be rejected and it requires only a close scrutiny. Now let us analyse the submission of the learned counsel for the appellant and the entire evidences.

13. PW1, who is the author of the complaint - Ex.P1, has categorically stated in Ex.P1 about the overtacts of both the accused and also about the words used by them at the time of attack. But, strangely, in his chief examination, PW1 had stated that A1 alone came to the place of occurrence and indiscriminately cut the deceased. As PW1 has given different version in his evidence contrary to his earliest statement in Ex.P1, the evidence of PW1 creates grave doubt. More over, though in the chief examination PW1 has admitted his signature in Ex.P1, in the cross examination, he has stated that he gave the complaint - Ex.P1 only implicating A1 alone, which creates doubt not only on Ex.P1 but also on the evidence of PW1. Thus, the evidence of PW1 does not inspire the confidence of the Court.

14. It is seen that PW1 has admitted in his cross examination that while taking the deceased to the hospital, his dress had bloodstains and to arrest the flow of blood they covered the body of the deceased with a blanket, whereas no bloodstained clothes were recovered from PW1 by the investigating officer - PW15. It is fatal to the case of the prosecution. As contended by the learned counsel for the appellant, it also creates doubt about the presence of PW1 at the time of occurrence. Further, it is also seen that in Ex.D1 - Accident Register of the deceased, which was not brought to the notice of the Court by the prosecution, it is clearly stated that one Mupidathi - mother-in-law of the deceased, brought the deceased to the hospital. Thus, if it is true that the deceased

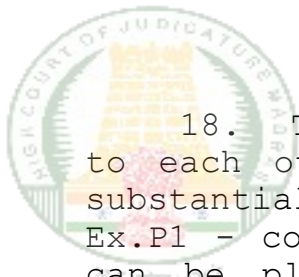


was brought to the hospital by PW1, PW2 and one Krishnamoorthi, alone as stated by PW1, the name of either of the three would have been noted in the Accident Register - Ex.D1. But, in the accident register the name of Mupidahi has been mentioned. None of the witnesses have stated about the presence of Mupidathi either in the place of occurrence or in the hospital. The said Mupidathi and Krishnamoorthi were not examined by the prosecution for the reasons best known to them. It would further strengthen the doubt with regard to the presence of PW1 at the time of occurrence and at the hospital where the deceased was taken for treatment.

15. Further, in Ex.P1 - PW1 has stated that on seeing the accused attacking the deceased, his uncle - PW2, PW3 and PW4, who were returning from the temple, rushed to the place of occurrence shouting at the accused and hence, A1 ran away with aruval from the place of occurrence. But, contrary to Ex.P1, PW1 has stated in his chief examination that after the occurrence, PW3 and PW4 came to the place of occurrence and thereafter, PW2 came to the place of occurrence. But, PW2 has turned hostile.

16. PW3, who is alleged to have seen A1 immediately after the occurrence, has stated in her evidence that on hearing the hue and cry, she rushed to the spot and at that time, A1 was running towards west and when she asked as to why he is running, A1 replied that he cut the deceased. The time of occurrence was in the wee hours at 2.15 a.m. and PW3 was aged about 50 years. PW3 has categorically admitted in her evidence that her left eye is not functioning from the age of 10 and that in the night hours, she could identify the persons only through the brightness of electric light. PW3 did not state anything about the availability of light or that she saw A1 in the brightness of electric light. A perusal of the rough sketch - Ex.P14 would go to show that there was no electric light post available in between the house of PW1 and PW3. More over, PW3 did not state anything about the arrival of PW4 in the place of occurrence. In view of the above, it is not safe for the Court to come to the conclusion that immediately after the occurrence, PW3 saw A1.

17. PW4, who is also alleged to have seen A1 immediately after the occurrence, has stated in her evidence that she along with PW3 saw A1 and at that time, A1, who was running with aruval, informed that he cut the deceased. Such a version stated to be made by A1 before PW3 and PW4 is very hard to believe, as the general attitude of the accused would be only to hide his act and identity. Further, PW3 did not state anything about the presence of PW4. More over, PW4 has stated that the deceased was taken to the hospital by the son of the deceased, one Moorthi and Murugan and she did not state anything about the presence of PW2 and Krishnamoorthi. PW7, in whose auto the deceased was taken to the hospital, has stated in his evidence that PW1 and one Moorthi took the deceased to the hospital. But, PW1 did not state about the arrival of Moorthi at the place of occurrence.



18. Thus, the evidences of PW1, PW3 and PW4 are contradictory to each other. As stated earlier, since the version of PW1 is substantially in departure from the earlier version as contained in Ex.P1 - complaint and in the First Information Report, no reliance can be placed on the sole testimony of PW1 for recording the conviction of A1 also. Further, the evidences of PW3 and PW4 are not only contradictory but also artificial in nature. The evidences of PW1, PW3 and PW4 do not inspire the confidence of the Court. Thus, the conviction and sentence passed by the trial Court on the appellant / A1 based on the testimonies of these witnesses cannot be sustained and therefore, the same are liable to be set aside.

19. In the result, this criminal appeal is allowed; the conviction and sentence passed by the trial Court in S.C.No.80 of 2009 under Section 302 IPC are set aside and the appellant is acquitted from the said charge. The fine amount, if any, paid by the appellant is directed to be refunded forthwith. It is represented that the appellant is in prison and therefore, he is directed to be set at liberty forthwith, unless his detention is required in connection with any other case.

Sd/-

Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

To

1. THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, TIRUNELVELI.
2. THE PRINCIPAL DISTRICT JUDGE, TIRUNELVELI.
3. THE JUDICIAL MAGISTRATE NO.V, TIRUNELVELI.
4. THE CHIEF JUDICIAL MAGISTRATE, TIRUNELVELI.
5. THE DISTRICT COLLECTOR, TIRUNELVELI.
6. THE DIRECTOR GENERAL OF POLICE, MYLAPORE.
7. THE SUPERINTENDENT OF POLICE, PALAYAMKOTTAI.
8. THE INSPECTOR OF POLICE, PETTAI POLICE STATION, TIRUNELVELI DISTRICT.
9. THE ADDITIONAL PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO:

THE RECORD KEEPER, CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1CC to Mr.A.R.Jeya Ruthran, Advocate, SR.No. 41127

Judgment made in
Crl.A.[MD].No.291 of 2016
Dated: 05.01.2018