

Bail Slip

The Appellant/1st Accused namely Sundararajan, S/o.Dharman, was directed to be released on bail made in CrI.M.P.No.1 of 2014 in CrI.A.no.506 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 03.09.2018	Date of pronouncing Judgment 31.10.2019
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THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.A.No.506 of 2014

Sundararajan
S/o.Dharman

..Appellant/1st Accused

Vs.

State represented by
The Inspector of Police
Kottapatty Police Station
Dharmapuri District
(Cr. No.215 of 2010)

.. Respondent/Complainant

Appeal filed u/s.374 (2) of Cr.P.C. against the Judgment of conviction and sentence passed by the learned Principal Sessions Judge, Dharmapuri, in S.C. No.103 of 2012 dated 17.09.2014.

For Appellant : Mr.R.Thirugnanam

For Respondent : Mr.R.Ravichandran

Government Advocate (CrI. Side)

Judgment

The respondent police registered a case against the appellants and 4 others for the alleged offences under sections 25(1)(a) and 27(1) of the Arms Act and 302 IPC in Crime No.215 of 2010 and after investigating the case, laid the charge sheet before the learned Judicial Magistrate, Harur, Dharmapuri District and the learned Judicial Magistrate taken the charge sheet on file in PRC No.37 of 2011 and after completing the formalities, since the case is triable by the Court of Sessions, made over the case to the learned Principal Sessions Judge, Dharmapuri. The learned Principal Sessions Judge, Dharmapuri, after receiving the case file, taken the case on file in

S.C.No.103 of 2012 and after completing the formalities, framed the charges against all the accused for the above offences.

2. In order to prove the case of prosecution, during the trial, before the trial Court, on the side of prosecution, as many as 16 witnesses, viz., PW.1 to PW.16 were examined and 29 documents were marked as Exs.P1 to P29 besides 5 Material Objects M.Os.1 to 5. After completing the prosecution witnesses, when incriminating circumstances culled out from the evidence of prosecution witnesses were put before the accused, they denied as false. After completing the trial and hearing the arguments advanced on either side and perusing the oral and documentary evidences, the Sessions Judge found the appellant guilty for the offence not under Section 302 IPC, but under Section 304(2) IPC and also acquitted the appellant from the offences under sections 25(1)(a) and 27(1) of the Arms Act and also acquitted all other accused from all the offences extending the benefit of doubt in favour of the accused.

3. Challenging the judgment of conviction rendered by the Principal Sessions Judge, Dharmapuri, the convict has filed the present appeal before this Court.

4. The learned counsel for the appellant/A1 would submit that in this case, there is no eyewitness and no expert opinion would show that the bullet taken out from the body of the deceased was released from the gun of the appellant and in this case, except the confession made by one of the co-accused, no other materials would show that the appellant has committed the offence. Further it is only a piece of evidence, unless it draws corroboration, even though there is no eyewitness, the Court can find otherwise that the prosecution has not proved its case, beyond reasonable doubt. He would place reliance on the judgment of this Court reported in 2016 3 MLJ (Cr1.) 1 (Susila and another ..vs.. State by Inspector of Police, Padalur Police Station, Perambalur District) and submit that the trial Court failed to consider the case that in this case, there is no eyewitness and there is no motive established by the prosecution and therefore, in the absence of any eyewitness and motive, there is no chain of circumstances to show that the appellant alone caused injuries to the deceased and due to the injury caused by the appellant, the deceased died and therefore, in the absence of chain of circumstances, the trial Court failed to consider the facts and convicted the appellant only on mere conjunctions and probabilities and there is no sufficient evidence against the appellant, which warrants interference. Though in this case, the prosecution was not able to prove the chain of circumstances and also the circumstances of facts, the

learned Principal Sessions Judge, on technical grounds, acquitted the appellant for the offences under Arms Act, however, he believed that the appellant has caused injuries to the deceased. Though there is no motive established in this case, the commission of offence has been converted from 302 IPC to 304(ii) IPC and the appellant was convicted and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo further three months imprisonment, which warrants interference.

5. Heard both and perused the records.

6. The case of the prosecution is that the appellant/A1 and other acquitted accused, viz., one Ilaiyaraja, Mani, Azhagesan and Kalaimamani, arrayed as A2 to A5 in this case, and the deceased are friends and they used to go for hunting in the neighbouring forest area with their unlicensed country made guns. Likewise, on 30.09.2010 also, all the above persons went to the forest in the morning for hunting. Since the deceased Arunachalam did not return to the house in the evening along with the accused, his wife PW.1 went to the house of the appellant and enquired about her husband, for which the appellant informed that her husband will come back. As the said Arunachalam did not return to the house, his wife PW.1 along with others went to the house of the appellant and enquired and also told him that she is going to give a complaint to the police, for which, the appellant told them that her husband was shot dead by them in the forest and ran away from the village. When PW.1 and others went to the forest, in search of the body of Arunachalam, they spotted his body with bullet injuries and she went to Kottapatty police station and lodged a complaint against the appellant and 4 others, viz., A1 to A5. On the basis of the complaint made by PW.1, wife of the deceased, at about 10 a.m on 01.10.2010, the Sub-Inspector of Police, Kottapatty police station - PW.9, registered the case in Crime No.215 of 2010 as against the appellant herein and 4 others for the offence under sections 302 IPC and 25(1)(a) of the Arms Act. PW.15, Inspector of Police, Harur, and incharge of Kottapatty police station, took over the investigation and arrested Ilaiyaraja (A2) in this case on 01.10.2010 and recorded extra-judicial confession voluntarily made by him and thereafter, the investigation was taken over by PW.13 and as the other accused A1, A4 and A5 surrendered before the Court, they were taken on police custody on 13.10.2010 and A1 and A4 voluntarily gave extra judicial confessions, wherein, it was stated that when they went to the forest, the gun in the hands of the appellant accidentally went off and Arunachalam sustained bullet injuries and died on the spot. PW.16, Inspector of Police, Kottapatty

police station, who took over the investigation from PW.15, after completing the investigation, filed the charge sheet against all the accused before the learned Principal Sessions Judge, Dharmapuri and the case was taken on file in S.C.No.103 of 2012 and after completing the trial, the learned Principal Sessions Judge, acquitted A2 to A5 from all the charges and acquitted the appellant/A1 from the charges under Sections 25(1) (A) and 27(1) of the Arms Act and convicted the appellant/A1 alone under Section 304(ii) IPC and sentenced him to undergo 10 years rigorous imprisonment and also to pay fine of Rs.5,000/- in default to undergo three months imprisonment.

7. On reading of the evidence of PW.1, which clearly shows that on 30.09.2010, all the accused, including this appellant, came to her house and taken her husband for hunting despite her resistance and subsequently, when all the accused came to the village in the evening, her husband did not return to her house and therefore, she enquired about her husband. Though initially they have not revealed the fact, subsequently when PW.1 along with villagers stated that if they do not reveal the fact, she will go to the police station and give the complaint, they stated that during the hunting, inadvertently her husband died. Therefore, immediately, she rushed along with her relatives to the forest and spotted her husband in the place as the appellant informed. Then, they went to Kottapatty police station and made a complaint. PW.2 also has stated that they received the information from the appellant and they went to the place of occurrence, where the deceased was found dead.

8. Though in this case there is no eyewitness, as stated by PW.1, all the accused are belonging to Tribal community and they used to go for hunting and on 30.09.2010, as usual, all the accused came to her house and took her husband for hunting. According to her, her husband went along with the accused for hunting. She has lastly seen her husband only with the accused and subsequently, in the evening all the accused came to the village, but her husband did not come, hence she enquired about her husband. Though initially they have not revealed, but subsequently, the appellant revealed the fact, which shows that the evidences of PW.1 and PW.2 also corroborated the case of prosecution that they asked about the deceased from the appellant and the appellant informed the same and they went to the spot and located the body of the deceased.

9. When there is no eyewitness, as stated by the wife of the deceased, who had seen her husband lastly, on 30.09.2010 morning, went along with the accused, but subsequently, she did not see, which itself shows that the deceased went along with

the appellant and it is the duty of the appellant to explain the whereabouts of the deceased. Though the confession statements were made by the appellant and 4th accused, that may not be a sole ground, but it cannot be simply brushed aside. Though it is a piece of evidence, it corroborates the evidence of PW.1 that her husband went along with the appellant. Therefore, to that extent, the Court can take that the deceased was lastly seen only with the appellant and other accused by PW.1.

10. The Doctor, PW.8, who conducted autopsy on the body of the deceased, himself has deposed that the deceased died due to hemorrhage and blockage of blood circulation in the heart due to the shock and the gunshot on the heart. The postmortem report also reveals that the deceased sustained the following injuries:-

"External Examination :

- (i) Three punched wounds in L.Mid & intra axillary region each measuring 1.5 cm in Diameter c. Black discoloration of margins.
- (ii) A punched wound in L.Arm 1.5 inch Diameter
- (iii) A punched wound in L. side of centre of chest wall close to midline 3 cm in diameter Maggots Swarming around wound orifice
- (iv) Peeling of skin from L. Thigh to L.Knee
- (v) Peeling of skin in L. Arm
- (vi) Peeling of skin in chest wall.

Internal Examination:

Hyoid bone, sternum R.side ribs - intact. Fracture of L.side 4,5,7 & 8 ribs in Anterior Aspect. Hemctome of about 10 x 5 x 1 cm in anterior aspect of L.chest wall. Thoracic cavity - above one line of partly clotted blood in thoracic cavity L.Lung in a torn, cutted and partly decomposed state. Heart - partly decomposed in a pool of blood clot in thoracic cavity c tearing of R. Atrium and L.Ventricles. One metal ball of 0.5mm diameter removed from R. Atrium. R.Lung partly decomposed in a pool of blood. Liver, Spleen, both kidneys - pale and partly decomposed. Stomach empty. Intestine partly decomposed. Urinary Bladder - Empty - Skin - Cranial rows - intact. Meninges - intact, Brain - partly liquified. Based skull - no fracture.

Postmortem Doctor opined that cause of death is due to shock injury and heart injury received from gunshot and hemorrhage No.1 & 3."

11. The expert opinion (Ex.P6) of Forensic Science Department, Chennai reads as follows:-

" i) The above item is a country made, smooth bore, Single Barrel Muzzle Loading (SBML) gun; it is a fire arm as defined in the Arms Act, 1959; it is a lethal fire arm;

ii) Combustion products of gun power were detected in the barrel of the above gun indicating that the gun was used for firing previously; there is no reliable scientific method to determine the exact time of firing;

iii) The above gun was found to be in working condition."

12. Though the Forensic Science Report stated that it is only the bullet, but in the said Report it is not specifically stated that the bullet went out from the gun, which was used by the appellant, but at the same time, the opinion reveals that the deceased died due to the gun shot. Further, the evidence and records would show that the appellant was having unlicensed gun and the opinion also shows that there is possibility of making shoot and admittedly, it is a country made gun. In the hills area, in and around, the Tribal people are residing and they used to have unlicensed country made gun and having the unlicensed country made gun is also an offence. But in this case, the prosecution has established that the deceased was lastly seen with the appellant and subsequently, the expert opinion would also show that there is possibility of causing death through the country made gun and the injury was also made by the gun shot. Though the appellant himself admitted that even he has not intentionally shot, it is an unexpected one, one of witnesses, viz., the co-accused, who accompanied the appellant, in his confession, has stated that the appellant was having gun and he asked the deceased to go into the thick bush area and find out whether any animal is there and at that time, the appellant shot and the deceased received the gun and died on the spot. The gun was recovered from the appellant, based on the confession and the witnesses to the observation mahazar, recovery and confession have been examined and established it and they corroborated the evidence of PW.1. Therefore, though there is no eyewitness, the circumstantial evidence reveals that the appellant caused injuries to the deceased. Under these

circumstances, this Court also finds that the prosecution has established its case through circumstantial evidence, namely, "last seen theory", that the deceased went along with the appellant and subsequently, the deceased did not come to the house when all the accused, who took the deceased to the forest for hunting, came to the house without the deceased.

13. From the evidence of Village Administrative Officer (PW.8), who was the attesting witness to the extra-judicial confession statements, it is proved that the appellant has given confession statement stating that he has hidden the gun in a bush in Kalkuttai Mountain and, if he was taken to that place, he will take and give the same; the Inspector took the appellant along with him to Kalkuttai Mountain and he also went along with them; the appellant and A4 took two guns from the bush and gave them to the Inspector and the Inspector seized the guns and recorded the same in the Mahazars. The evidence of Village Administrative Officer (PW.8) shows that the confessions and recovery were made in the presence of him. Therefore, the evidence of "last seen theory" of PW.1 is established through the confession statements. The evidences of PW.1, PW.2, PW.7- Assistant Director of Forensic Science Department (Pistol Section), PW.8 - Village Administrative Officer, PW.12 - Assistant Director of Forensic Science Laboratory, and PW.14 - Dr. Ramesh Babu, Assistant Professor proved the case of prosecution. Therefore, this Court finds that the prosecution has proved its case with circumstantial evidence. It has also been coined as a Complete Chain Link Theory, the chain of events which lead to only one conclusion, namely, the culpability of the appellant/first accused.

14. But the prosecution has not established premeditation or enmity. The appellant, as a prudent man would know if any shot through the gun, the person, who received the shot would die. The appellant only asked the deceased to go and search as to any animals are found in the bushes, after that even without verifying the fact that as to deceased has come out of the place or not, shot on the direction where the deceased went into the forest. Further, from the evidence, it is seen that the appellant was not having any licence or permission from the competent authority, despite he has using the gun for hunting the animals. To prosecute the appellant for the offence under sections 25(1)(a) and 27(1) of the Arms Act, the sanction of prosecution or authorisation from the District Collector has to be obtained, but in this case, it is not done. The trial Court acquitted the accused for the offence under sections 25(1)(a) and 27(1) of the Arms Act, but convicted the appellant for the offence under Section 304 (ii) IPC. Since the motive or

premeditation are not established, this Court does not find any sound ground to interfere with the judgment of the trial Court.

15. The citation referred to by the learned counsel for the appellant is not applicable to the present case on hand, whereas in that case, only based on the confession statement alone, the accused was convicted and there was no corroboration with reference to the extra-judicial confession, whereas in this case, the wife of the deceased has clearly spoken about the "last seen theory" and PW.2 also corroborated that the appellant revealed the fact before the wife of deceased PW.1. Subsequently PW.8, Village Administrative Officer has clearly spoken about the confession leading to recovery, which also corroborates the evidence of PWs.1 and 2. Therefore, the citations referred to by the learned counsel for the appellant is not applicable to the present case on hand.

16. The Criminal Appeal deserves to be dismissed and accordingly, the Criminal Appeal is dismissed and the judgment of conviction and sentence passed by the learned Principal Sessions Judge, Dharmapuri, in S.C. No.103 of 2012 dated 17.09.2014 is hereby confirmed. The period of sentence already undergone, if any, by the appellant/A1 shall be set off under Section 428 Cr.P.C. and the trial Court is directed to take effective steps to secure the appellant/A1 to undergo the remaining period of sentence.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

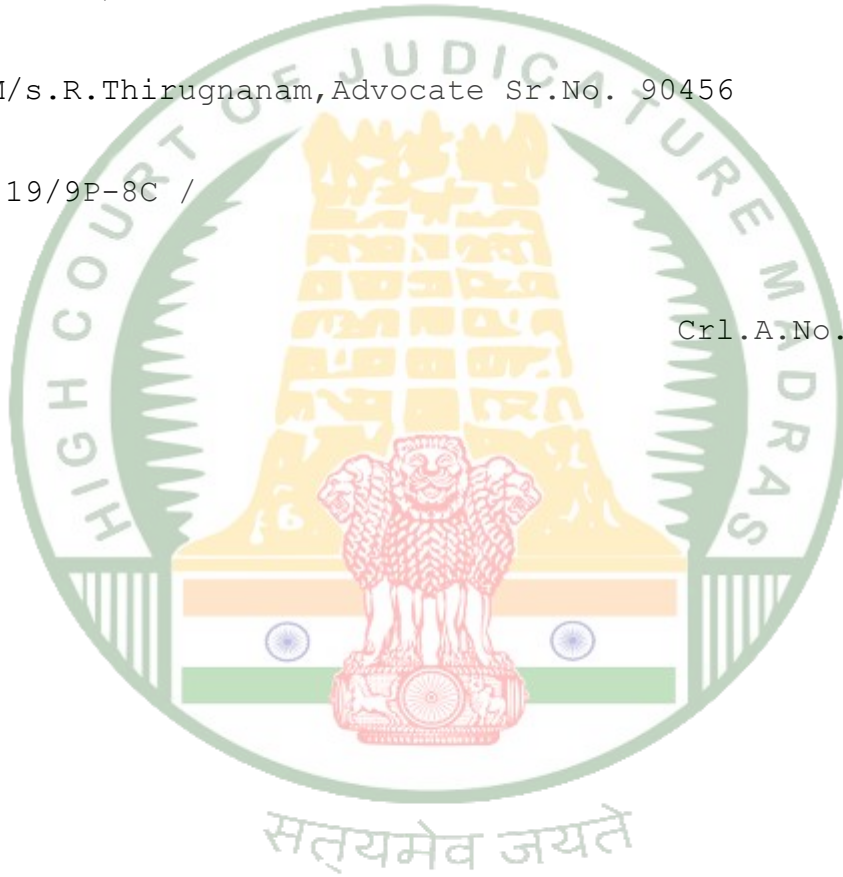
1. The Principal Sessions Judge,
Dharmapuri.
2. The Judicial Magistrate,
Harur, Dharmapuri.
3. The Chief Judicial Magistrate,
Dharmapuri.

4. The Superintendent,
Centrl Prison, Vellore.
5. The Inspector of Police
Kottapatty Police Station
Dharmapuri District.
6. The Public Prosecutor,
High Court, Chennai.

+1 cc to M/s.R.Thirugnanam, Advocate Sr.No. 90456

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Judgment in
Crl.A.No.506 of 2014



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