

BAIL SLIP

i)The accused Sathiyaraj Viz; Appellants/Accused No.3, S/o.Nagappan was already directed to be enlarged on bail by the order of this court dated 07/02/2019 made in Crl.MP.No.3565 of 2017 in Crl.A.No.125 of 2017.

ii) The accused No.1 The Appellant No.1 Viz; i) Vasu @ Muruganandham S/o.Sambar @Ranganathan was directed to be enlarged on bail by the order of this court dated 07/02/2019 made in Crl.MP.No.13911 of 2017 in Crl.A.No.709 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.07.2019

Pronounced on : 16.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.A.Nos.125 & 709 of 2017

1.Sathiyaraj ..Appellant/A3 in
Crl.A.No.125 of 2017

2.Vasu @ Muruganandham

3.Gunasekaran ...Appellants/A1,A2
in Crl.A.No.709 of 2017

-Vs-

State rep by Inspector of Police,
Naduveerapattu Police Station,
Cuddalore. ... Respondent in both Crl.As

PRAYER in Crl.A.No.125 of 2017 : Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to set aside the conviction of Simple Imprisonment for one week and life imprisonment imposed on the convict and also to set aside the fine amount of Rs.1.000/- imposed by the District and Sessions Judge, Cuddalore in S.C.No.262 of 2014 on 2nd December 2016 and also pleased to acquit the appellant herein.

PRAYER in Crl.A.No.709 of 2017 : Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to set aside the conviction and sentence of life imprisonment by the order dated

02.12.2016 made in S.C.No.262 of 2014 on the file of the Sessions Court, Cuddalore.

For Appellant in
Crl.A.No.125 of 2017 : Mr.R.Sankarasubbu

For Appellants in
Crl.A.No.709 of 2017 : Mr.S.Y.Masood

For Respondent in Crl.As.: Mr.R.Prathap Kumar
Additional Public Prosecutor

COMMON JUDGMENT

[Judgment of the Court was made by M.NIRMAL KUMAR, J.]

The appellants in C.A.No.709 of 2017 are A1 and A2 and the appellant in C.A.No.125 of 2017 is A3 in S.C.No.262 of 2014 judgment dated 02.12.2016 rendered by the Principal District and Sessions Judge, Cuddalore. The appellants were charged for the offence under Sections 294(b), 341, 506(ii) and 302 of IPC. The trial Court acquitted the appellants for offence under Section 341 and 506(ii) of IPC but convicted them for the offence under Section 294(b) and sentenced them to undergo imprisonment for one week and also convicted and sentenced to undergo imprisonment for life and ordered to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months for offence under Section 302 of IPC. The above sentences have been ordered to run concurrently.

2.The case of the prosecution is that there was money transaction between the deceased Radhakrishnan and A1. About two months prior to the occurrence, A1 borrowed a sum of Rs.10,000/- from the deceased and he failed to repay the same, despite repeated demands made. On 13.09.2013 in the evening hours, the accused herein were chatting with each other in front of A1 house. At that time, the deceased demanded back the money due. There was a wordy quarrel between them and the same was pacified by PW1, who is the brother of the deceased who had come to his native to lay the foundation for construction and others pacified them and thereafter they left. On the same day at about 10.30 p.m, when the deceased was sleeping in pail of his grand mother's house, all the accused abused him in filthy language, A1 pulled him out and stabbed with knife on his head on both side, A2 inflicted cut on his neck and face with knife and A3 inflicted cut on his neck and shoulder with knife. PW1 and the grand mother tried to prevent the same, all the accused criminally intimidated them with knives and left the scene. The

deceased sustained bleeding injury and he was taken to Government Hospital, Cuddalore by 108 Ambulance Service, where he was referred to JIPMER Hospital, Puducherry and thereafter he was shifted to Rajiv Gandhi Government Hospital, Chennai. The injured died on 23.10.2013. When the injured was taken to Government Hospital, Cuddalore, PW8 the Sub-Inspector of Police went to the Hospital, received the complaint [Ex.P1] from PW1, registered an F.I.R in Crime No.196 of 2013 for the offence under Sections 294(b), 342, 506(ii) and 307 of IPC. On 24.10.2013 getting information about the death of the deceased through Ex.P11, the case was altered to offence under Sections 294(b), 506(ii) & 302 of IPC. On completion of investigation charge sheet came to be filed.

3.Before trial Court, prosecution examined 9 witnesses and marked 20 exhibits and 5 material objects. None were examined on the side of defence but marked Ex.D1 through PW9.

4.The available evidence from the prosecution witnesses are as follows:

4.1.PW1, the brother of the deceased lodged a complaint [Ex.P1] and spoke about A1 and the deceased being friends, A1 had borrowed a sum of Rs.10,000/- from the deceased. On 13.09.2013 at about 05.00 p.m, there was heated arguments and fight between the deceased and A1 regarding demand of money and the same pacified by PW1. On the same day at about 10.30 p.m, when the deceased was sleeping in the pail of his grand mother's house, PW1 and grand mother were sitting nearby and chatting, all the accused came there pulled the deceased, assaulted him with knife on his head and neck. When PW1 attempted to intervene, the accused fled away from the scene of occurrence. Due to the said act of the accused, the deceased sustained injuries, taken to Government Hospital, Cuddalore by 108 Ambulance. On the same day at about 03.00 p.m the deceased was taken to JIPMER Hospital, Puducherry and thereafter he was shifted to Rajiv Gandhi Hospital, Chennai, where the deceased died on 23.10.2013. PW1 identified MO1 to MO3 the knives used by the accused and stated that the deceased was in Coma for the past 24 days before he died.

4.2.PW2 the Aunt of the deceased residing nearby the scene of the occurrence, stated that PW1 and the deceased was sleeping together and hearing the shout of PW1 about his brother being assaulted, she had gone to the scene where she saw the accused with knives moving away and the injured was battling for his life who was taken to Government Hospital, Cuddalore and where he was referred to JIPMER Hospital, Puducherry and thereafter he was shifted to Rajiv Gandhi Government Hospital, Chennai, but the injured had died on 23.10.2013.

4.3.PW3 the Village Administrative Officer, in his presence, A1 and A2 gave confessions [Ex.P2] and [Ex.P3]. Pursuant to which, MO1 to MO3 the knives were seized in a Cashew grow in Pathirakottai Village through Seizure Mahazar [Ex.P4].

4.4.PW4 the Doctor attached to the Government Hospital, Cuddalore had recorded the injuries seen on the deceased. In the Accident Register [Ex.P6] it is mentioned that the deceased was assaulted by the three known persons with knife as stated by PW1.

4.5.PW6 the Doctor attached to the JIPMER Hospital, Puducherry had given treatment to the deceased on 14.09.2013 at about 02.00 a.m. Based on the request of the brother of the deceased, Rajini Kumar, the deceased was referred to Rajiv Gandhi Government Hospital, Chennai. Further, PW9 sent intimation to the Police through Ex.P9 and his final opinion is Ex.P10.

4.6.PW7 the Doctor attached to Rajiv Gandhi Government Hospital, Chennai has stated that on 14.09.2013 at about 10.27 p.m, the deceased was brought by Ambulance by his brother and had recorded the cause of the death of the deceased through Ex.P11.

4.7.PW5 the Postmortem Doctor, on the request [Ex.P7] made by the Police had conducted Postmortem on the body of the deceased on 24.10.2013 and noted nine injuries and issued Postmortem certificate [Ex.P8]. PW5 has stated that the cause of death is due to the injuries sustained on the head. Further the injuries Nos.4, 5, 6, 7 are the reason for the death.

4.8.PW8 the Sub Inspector of Police on receipt of information, went to the Government Hospital, Cuddalore. Since the deceased was not in a conscious state, PW8 enquired PW1, received the complaint [Ex.P1], registered a case in Crime No.196 of 2013 [Ex.P12] for the offence under Sections 294(b), 342, 506(ii) and 307 of IPC.

4.9.PW9 the Investigating Officer on receipt of F.I.R in Crime No.196 of 2013 at about 07.00 a.m on 14.09.2013, visited the scene of occurrence, prepared Observation Mahazar [Ex.P13], Rough Sketch [Ex.P14] seized the blood stained articles and soil without blood stain through Ex.P15 which are MO4 and MO5. Thereafter examined PW1 and other witnesses in the scene of occurrence. A1 and A2 had surrendered before the Court coming to know about it. On 26.09.2013, the appellants were taken into Police custody. During the police custody, they confessed about their involvement in the case. Pursuant to which, MO1 to MO3

were recovered in the presence of PW3 VAO and thereafter MO1 to MO3 were produced before the Court. The seized articles were sent for forensic study. In the meanwhile on 23.10.2013, on receipt of intimation of the death of the deceased, the case was altered to offence under Sections 294(b), 506(ii) & 302 of IPC through Ex.P16. On 24.10.2013, PW9 conducted the inquest about the murder of the deceased and prepared inquest report Ex.P17 in the presence of witnesses. On 09.11.2013, PW9 examined PW4, on 10.11.2013, he examined PW5 and PW8. Thereafter, on receipt of the Forensic report and on completion of investigation charge sheet came to be filed on 14.12.2013.

5. In conclusion of the trial, the learned trial Judge put the incriminating materials to the appellants under Section 313 Cr.P.C., and the appellants denied the same. Upon appreciating the evidence let-in by the prosecution, the trial Court found the appellants guilty and convicted them as stated above. As against the conviction and sentence, appeals are filed.

6. The contention of the learned counsel for the appellants is that PW1 and PW2 could not be present at the place of occurrence. Further the theory of money transaction between the deceased and A1 is not proved by the prosecution. On the medical report as found in Ex.D1 in which the endorsement of the Doctor is that the deceased sustained injuries in an accident, hence, the accused have been falsely implication in this case. The recoveries have not been proved as could be seen from the evidence of PW3, who has not identified MO1 to MO3 and place of recovery. The Doctors viz., PW4, PW6, PW7 have been examined in this case. Later the deceased health condition improved, he was in a speaking condition as could be seen from the medical records, but the police never recorded the statement of the deceased, which would throw light of the happenings.

7. PW2 admits that at that time of occurrence, the deceased and PW1 was sleeping in pail of his grand mother's house, but the said grand mother of the deceased has not been examined in this case. Further in this case no independent witnesses have been examined. Only PW1-the brother, PW2-the Aunt, PW3-VAO and other official witnesses have been examined. It is an admitted fact that the nearby houses were there at the scene of occurrence but none of the them have been examined as witnesses in this case. PW1 presence is highly doubtful and also Ex.P1 coming into the existence. PW1 is not the author of Ex.P1 and he had only affixed his signature. Further he admits that the contents in the complaint were read over to him and thereafter he signed, for which no such endorsement is available in Ex.P1 and PW8 is silent about it.

8. Further as could be seen from the Observation Mahazar [Ex.P13] and Rough Sketch [Ex.P14], there was no light in the scene of occurrence. PW3 admits that he has signed as witness for the seizure of the material objects on 26.09.2013. In this case, the witnesses for Observation Mahazar [Ex.P13], Rough Sketch [Ex.P14] and seizure of articles in the scene of occurrence Ex.P2 have not been examined. Except PW1 and PW2, no other independent witnesses have been examined in this case. Further the medical evidence is contra and against the case of the prosecution. There is no specific overtact corresponding to injuries found. The trial Court had convicted the appellants merely on surmises.

9. Per contra, the learned Additional Public Prosecutor appearing for the respondent Police would submit that it is not the number of witnesses that is required in a case. PW1 and PW2, who are the brother and Aunt of the deceased have categorically stated about PW1 being present in the scene of occurrence along with him grand mother, at that point of time, the accused had come there, pulled him out and used abusive words and had cut him on his face and neck. Further prior to the occurrence at about 05.00 p.m there was a fight between the deceased and A1 and the same was pacified by PW1. In continuation of the same, the occurrence has taken place. On the side of the defence, they were not able to discredit the evidence of PW1.

10. PW2 has categorically stated that when she reached the scene of occurrence she saw the accused with the knife leaving the place. PW3 VAO witnessed the confession and recovery of MO1 to MO3. PW4 Doctor attached to the Government Hospital, Cuddalore had stated about PW1 accompanying the deceased at about 12.45 a.m to the hospital for treatment and the deceased was in a unconscious state after initial treatment he was referred to JIPMER, Puducherry, where PW6 along with other Doctors treated him. On the request of the brother of the deceased, the deceased was transferred to Rajiv Gandhi Government Hospital, Chennai where PW7 had treated him and finally on 23.10.2013 after 24 days of treatment, the deceased had died.

11. PW5 the Postmortem Doctor who conducted the Postmortem on the body of the deceased on 24.10.2013 noted nine injuries and issued Postmortem certificate [Ex.P8]. PW5 has stated that the cause of death is due to the injuries sustained on the head. PW8 the Sub Inspector of Police on receipt of the information, went to the Government Hospital, Cuddalore. Since the deceased was not in a conscious state, PW8 enquired PW1, received the complaint [Ex.P1], registered a case in Crime No.196 of 2013 [Ex.P12] for the offence under Sections 294(b), 342, 506(ii) and

307 of IPC.

12.PW9 the Investigating Officer on receipt of F.I.R in Crime No.196 of 2013 at about 07.00 a.m on 14.09.2013, visited the scene of occurrence, prepared Observation Mahazar [Ex.P13], Rough Sketch [Ex.P14] and seized the blood stained articles and soil without blood stain through Ex.P15 which are MO4 and MO5. The witness for seizures were not available and hence they could not be examined. Likewise, the Doctors who had treated the deceased were not available and hence, a petition was filed before the Court and thereafter only the other Doctors who are familiar with the signature of Doctors who treated the deceased, have been examined as witnesses in this case. During police custody, the accused confessed about their involvement in the case. On receipt of the Forensic report and on completion of investigation charge sheet came to be filed on 14.12.2013. During the trial all the witnesses have supported the case of the prosecution. The lower Court based on the evidences and materials on proper analysis had rightly convicted the appellants.

13.This Court considered the rival submissions and perused the available materials.

14.The only witness to the occurrence is PW1. PW1 has stated that he was sitting along with his grand mother, at that time the accused had come and attacked the deceased on his face and neck. PW1 has not given any specific overtact of the accused about the injuries on the deceased. Though the grand mother who was present and cited as witness, she has not been examined in this case. Further four others who have been cited as witnesses to the occurrence, have not been examined in this case. PW2 the Aunt of the deceased who stated that at about 10.30 p.m she saw the deceased and PW1 were sleeping together, which is contra to the evidence of PW1. Further on hearing the cry of PW1 when she came to the scene of occurrence she saw the accused moving out with MO1 to MO3, PW2's evidence is of no use. PW1 has stated about Police receiving the complaint [Ex.P1] from the hospital. According to PW8 the complaint was written by PW1, but PW1 stated that somebody around there had written the complaint and he had signed after reading the same, no such mention in Ex.P1. Though the complaint was received at about 01.00 a.m on 14.09.2013, the same came to be registered at about 03.30 a.m and thereafter it was sent to the Court only at 10.30 a.m. Though the hospital as well as the Court are nearby, no reason was given for the delay.

15.PW1 stated that the accused had assaulted the deceased with knives [MO1 to MO3] and thereafter with knives [MO1 to MO3] they had ran away, but no blood stains correspondingly could be

seen in Ex.P3 the observation mahazar. From Ex.P14 it is seen that there is no light facility in the scene of occurrence. PW1 has stated that the accused had inflicted cut injury on the face and neck of the deceased. On the medical evidence Ex.P6 and Ex.P10 it is seen that there are only lacerated injuries and there was no cut injuries found on the head of the deceased. Further the deceased was in Alcoholic state which fact has been suppressed, the manner in which the injuries have been inflicted as spoken by PW1 is contra to the medical records. Coupled with the fact that none of the independent witnesses have been examined at the scene of occurrence to corroborate the evidence of PW1. The evidence of PW1 is contra and doubtful with regard to the manner in which the occurrence is said to have taken place and does not inspire confidence to be acted upon.

16. Further on perusal of Ex.P6, Ex.P10 and Ex.P11, which are total contrary to the evidence of PW1. The uncorroborated evidence of PW1, coupled with Ex.D1 in which the Provisional Diagnosis on Admission of the deceased has been written as RTA/Head Injuries and thereafter it has been struck down, for which no explanation has been given and the injuries are laceration. Further the deceased was in a drunken state as could be seen from Ex.P10.

17. In this case no independent witnesses have been examined for Observation Mahazar [Ex.P13], Seizure Mahazar, Rough Sketch [Ex.P14] and witnesses from the scene of occurrence, for which no reasons have been given. PW3 VAO in whose presence MO1 to MO3 have been recorded does not inspire confidence to be acted upon. On his admission, he is not certain from where the recoveries are made.

18. Thus in this case right from the lodging of complaint [Ex.P1] and thereafter preparation of other documents are doubtful and in the absence of corroboration, the version of PW1 is not in conformity with the medical evidence. Thus the evidence of PW1 does not inspire confidence to be acted upon.

19. In view of the same, the prosecution has not proved the case beyond any reasonable doubt. Hence, these Criminal Appeals shall stand allowed. The conviction and sentence passed by the learned Principal Sessions Judge, Cuddalore in S.C.No.262 of 2014 on 02.12.2016, are set aside and appellants are acquitted of all charges. Appellants are directed to be released forthwith unless their presence/custody is required in

connection with any other case. Fine amount, if any, paid shall be refunded.

-Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

vv2

To

1.TheSessions Judge, Cuddalore

2. Principal District and Sessions Judge,
Cuddalore.

3.The Inspector of Police,
Naduveerapattu Police Station,
Cuddalore.

4. The Superintendent
Central Prison, Cuddalore

5.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.S.Y.Hasood Advocate sr69501

+1 cc to M/s.R.Sankara Subbu Advocate sr70795

Crl.A.Nos.125 & 709 of 2017

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