

BAIL SLIP

The Petitioner/Accused viz., Jadeja @ Thiagarajan, was released on bail as per the order of this Court dated 17/02/2019 in CrI.Mp.No. 2168 of 2019 in CrI.A.No. 686 of 2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.07.2019

Date of Verdict: 02.08.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice M.NIRMAL KUMAR

CrI.A.Nos.686 of 2017 and 117 of 2019

Jadeja @ Thiagarajan ... Appellant/Accused No.1 in
CrI.A.No.686 of 2017

1.Santhakumar
2.Ayyanar ... Appellants/Accused No. 2 & 3 in
CrI.A.No.117 of 2019

Vs

State rep. by
The Inspector of Police,
Annathanapatti Police Station,
Salem District. ... Respondent in
both the appeals

(Crime No. 121 of 2013)

Appeals filed under Section 374 Cr.P.C. against the conviction and sentence imposed on the appellants by judgment dated 22.12.2014 by the I Additional District and Sessions Judge, Salem in S.C.No.55 of 2014.

For Appellants ... Mr.B.Vasudevan
in CrI.A.No.686 of 2017
Mr.S.Mohamed Ansar
in CrI.A.No.117 of 2019

For Respondent .. Mr.R.Prathap Kumar,
Addl. Public Prosecutor
in both the appeals

COMMON JUDGMENT

M.M.SUNDRESH, J.

Appellants, who stood charged for the offence punishable under Sections 364, 302, 506(ii) r/w 120B IPC and convicted accordingly except under Section 120B IPC for the major punishment of life among others, have filed these appeals seeking to set aside the same. CrI.A.No.686 of 2017 has been filed by the first accused and CrI. A.No.117 of 2019 has been filed by second and third accused respectively.

2.The case as projected by the prosecution is as follows:

(i) In view of the previous enmity which arose when the deceased who was working as Tea Master poured hot water on the appellants, they conspired together, took the accused at about 11.30 p.m. on 03.04.2013, made him to drink liquor, attacked him and thereafter poured kerosene over the body. The first accused attacked the deceased with stone while other two accused caught hold of the deceased and poured petrol and set fire. Thereafter, the appellants gave a threat to P.Ws.2 and 3 that any interference would result in serious consequence, brandishing knives.

(ii) P.W.1 - Village Administrative Officer got information about the burnt male body of the deceased, thereafter on seeing, he lodged the complaint - Ex.P1. P.W.12 Sub Inspector of Police received the complaint and registered the F.I.R. - Ex.P14 in Crime No.120 of 2013. Express F.I.R. was sent to the Judicial Magistrate No.IV, Salem through P.W.10 - Head Constable. Thereafter, P.W.12 sent a copy of the F.I.R. to P.W.13 Inspector of Police for investigation. P.W.13 went to the place of occurrence and in the presence of P.W.1 prepared observation mahazar under Ex.P2 along with Ex.P15 rough sketch. Thereafter, he collected M.Os.1 to 6 under Ex.P3 Mahazar. Inquest was conducted as per the inquest report under Ex.P16. After sending the body for post mortem, P.W.13 examined P.Ws.1 to 3 and recorded their statements. P.Ws.2 and 3 are the witnesses who spoke about the threat exerted by the appellants stating that anyone who comes near would be done away. Thereafter, they saw the dead body. Thus, they saw the accused running. P.Ws.4 and 6 are the witnesses who saw the deceased along with the accused in tune with the last seen theory. P.W.7 is a chance witness who overheard the conspiracy hatched by the appellants. P.W.8 is the doctor who conducted post mortem. He found alcohol in the body of the deceased and also opined that injury could have happened by using the backside of the knife.

(iii) P.W.12 is the Sub Inspector of Police, who registered the F.I.R.. Thereafter, P.W.13 being the investigating officer, took upon the investigation and filed the final report.

3.The Trial Court after framing charges asked the appellants about their plea. The appellants denied the charges framed against them. The prosecution examined 13 witnesses, marked 25 documents as Exs.P1 to Ex.P25 and 13 material objects - M.Os.1 to 13 have been marked. Recoveries were also made pursuant to the confession statement given before P.W.9.

4.All the incriminating materials were placed before the appellants. The appellants once again merely denied the evidence placed before them. The Trial Court, on analysis of the evidence before it, convicted the appellants for the offences charged except under Section 120B IPC.

5.Learned counsel appearing for the appellants in both the appeals would submit that the motive has not been established. There is no material to substantiate the motive part. Recoveries made cannot be sustained in the eye of law. P.Ws.2 and 3 though stated that they saw the accused threatening have not named them specifically during inquest. No test identification parade has been done with P.Ws. 2 and 3. The evidence of P.Ws.4 and 6 to substantiate last seen theory cannot be believed. The injuries mentioned under Ex.P5 post mortem certificate do not tally with the overt act. Since it is a case of circumstantial evidence, chain of events have not been linked with each other pointing to the guilt of the appellants. The Trial Court thus has erred in convicting them. Therefore, the conviction and sentence will have to be set aside.

6.Learned Additional Public Prosecutor appearing for the State would submit that the evidence of P.Ws.2 and 3 is clear enough for seeing the accused after the occurrence. P.Ws.2 and 3 have also seen the dead body of the deceased. P.Ws.4 and 6 have seen the accused lastly with the deceased. There is nothing to interdict the evidence of P.Ws.1 and 9. P.W.9 clearly speaks about the recovery part. Therefore, the same is admissible as provided under Section 27 of the Indian Evidence Act. As the Trial Court considered all these aspects, the appeals will have to be dismissed.

7.We are quite conscious of the fact that we are dealing with the case of circumstantial evidence. Motive does play an important role that the accused is implicated based upon circumstantial evidence but the same cannot be a sole factor. In the case on hand, there is nothing to discredit the evidence of P.Ws.4 and 6, who have seen the deceased going along with the appellants. P.W.4 has clearly stated that the deceased was seen going along with the appellants. Merely because he is the distant relative of the deceased, he cannot be treated as an interested witness. Similarly, P.W.6 is a cashier who worked along with the deceased. He also deposed that he saw the deceased going along with the accused. He has further deposed in

his cross examination that the deceased used to go and have liquor with the appellants. Therefore, from the evidence of P.Ws.4 and 6, it is clear that the appellants were the one seen along with the deceased lastly.

8.The evidence of P.Ws.2 and 3 assume greater importance. They have stated clearly that they saw the accused running on the street threatening others not to come near them. They also saw the dead body thereafter. Merely because P.Ws.2 and 3 have stated that the accused were known to them, non mentioning of the names at an earlier point of time would not vitiate the statements made. It is not necessary that a person will have to necessarily know the names of all the persons whom he could identify. Similarly, non-conduct of test identification parade can never be said to be fatal as this is a process to aid the investigation.

9.P.W.9 has spoken about the recovery part. Pursuant to the confession made, recoveries have been made. These recoveries would constitute a link with the chain of events. The evidence of P.W.8 coupled with Ex.P5 would not help the case of the appellants. P.W.8 has clearly stated about the nature of injury caused. He speaks about the head injury and injury caused by fire. He further speaks about the existence of ethyl alcohol in the body and brain of the deceased. These injuries would lend credence to the case of the prosecution.

10.The Trial Court, in our considered view, has rightly considered the evidence available on record. As there are sufficient evidence for the last seen theory coupled with the subsequent fact that the appellants were seen by P.Ws.2 and 3, the prosecution has clearly established its case.

11.Thus, in the light of the aforesaid discussion, we do not find any reason to interfere with the conviction and sentence rendered by the Trial Court. Accordingly, the conviction and sentence rendered in S.C.No.55 of 2014 on the file of I Additional District and Sessions Judge, Salem shall stand confirmed and the criminal appeals shall stand dismissed. The trial court is directed to take steps to secure the custody of the first accused/appellant in CrI.A.No.686 of 2017 to undergo the remaining part of the imprisonment.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Inspector of Police,
Annathanapatti Police Station,
Salem District.
- 2.The Superintendent,
Central Prison, Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The I Additional District and Sessions Judge,
Salem.
- 5.The Chief Judicial Magistrate,
Salem.
- 6.The Judicial Magistrate No.IV,
Salem

Through

The Chief Judicial Magistrate,
Salem.

CRL.A.Nos.686 of 2017
and 117 of 2019

RSK(CO)
GN(21/08/2019)

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