



BAIL SLIP

The Appellant/Accused, Saravanan(A1) S/o. Sachithanantham, and Raja(A2) S/o.Sachithanantham were released on bail granted as per order dated 22.10.2018 made in Crl.MP(MD)1084 & 1085 of 2018 in Crl.A(MD)73 & 74 of 2018.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl. A. (MD)Nos.73 and 74 of 2018

Saravanan ... Appellant/Accused No.1 in
Crl.A.(MD) No.73 of 2018

Raja ... Appellant/Accused No.2 in
Crl.A.(MD) No.74 of 2018

Vs.

State through:
The Inspector of Police,
Aruppukkottai Town Police Station,
Virudhunagar District.
(Crime No.279 of 2013)

... Respondent/Complainant

Common Prayer: Criminal Appeals filed under Section 374(2) of the Criminal Procedure Code, praying to set aside the Judgment dated 25.01.2018 passed in S.C.No.178 of 2013 on the file of the learned Additional District and Sessions Judge, Virudhunagar and to acquit the appellants/accused 1 and 2 of the charges levelled against them.

For Appellant

in both appeals

: Mr.R.Ramachandran

For Respondent

in both appeals

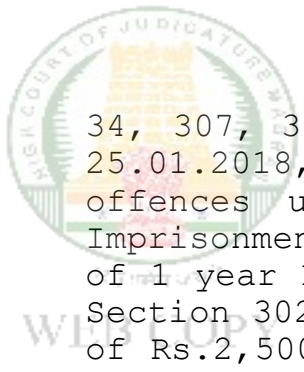
: Mr.R.Anandharaj

Additional Public Prosecutor

COMMON JUDGMENT

(Judgment of the Court was delivered by **T.RAJA, J.**)

The appellant in these appeals are accused Nos.1 and 2 in S.C.No.178 of 2013 on the file of the Additional District and Sessions Judge, Virudhunagar and the first accused stood charged and tried for the commission of offences under Sections 294(b), 302, 307 r/w 34 and 506(2) I.P.C. and the second accused stood charged and tried for the commission of offences under Sections 294(b), 302 r/w

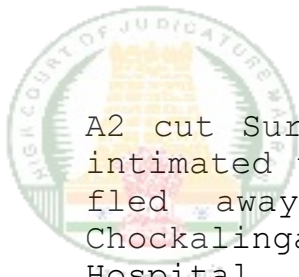


34, 307, 324 and 506(2) I.P.C. The trial Court vide judgment dated 25.01.2018, has found the first accused guilty for the commission of offences under Sections 302 and 307 r/w 34 I.P.C. and imposed Imprisonment for life and a fine of Rs.5,000/- with default sentence of 1 year Rigorous Imprisonment for the commission of offence under Section 302 I.P.C., and Rigorous Imprisonment for 7 years and a fine of Rs.2,500/- with default sentence of 1 year Rigorous Imprisonment for the commission of offence under Section 307 r/w 34 I.P.C. and has found the second accused guilty for the commission of offences under Sections 302 r/w 34 and 307 I.P.C. and imposed Imprisonment for life and a fine of Rs.5,000/- with default sentence of 1 year Rigorous Imprisonment for the commission of offence under Section 302 r/w 34 I.P.C., and Rigorous Imprisonment for 7 years and a fine of Rs.2,500/- with default sentence of 1 year Rigorous Imprisonment for the commission of offence under Section 307 I.P.C. and acquitted both of them for the commission of offences under Sections 294(b) and 506(2) I.P.C. and acquitted accused No.2 for the commission of offence under Section 324 I.P.C. The sentences were ordered to run concurrently. The sentences already undergone were ordered to be given set off under Section 428 I.P.C. The appellant in both appeals/accused Nos.1 and 2, aggrieved by the impugned judgment of conviction and sentence passed by the Trial Court, came forward with these Criminal Appeals.

2. Facts leading to the filing of these Criminal Appeals, relevant for the purpose of disposal of this case, briefly narrated, are as follows:

2.1. A1 is the younger brother of A2. P.W.1 - Sankar, is the son of the deceased, Chokalingam. One Somasundaram, the brother of the deceased is running a hotel opposite to Tamilmani Theatre in Aruppukottai, wherein P.W.1 and the deceased were working.

2.2. It is the case of the prosecution that on 25.05.2013 during night hours when P.W.1 and the deceased were working as usual in the hotel, i.e., the deceased was making parotta and P.W.1 was supplying food items, at about 22.45 hours, A2 came to the hotel and ordered for parcel of dhosa. On account of some delay in giving the parcel, A2 started quarrel by abusing both P.W.1 and the deceased. Feeling insulted as the customers, who are also sitting inside the hotel and taking food, were looking at both, the deceased asked A2 to be patient. As A2 did not show any patience and again quarrelling with the deceased, P.W.1 and others present therein brought A2 out of the hotel by holding his hand. Feeling insulted, A2 went out and at about 23.00 hours, A2 again come back to the hotel with his brother A1, each carrying a knife. Again both A1 and A2 abused the deceased with filthy languages and A1 stabbed the deceased on his left upper abdomen with the knife saying that 'let you die with this'. Resultantly, the deceased fell down. Thereafter, when P.W.1, P.W.7 - Suresh, a waiter and others rushed to rescue the deceased,



A2 cut Suresh on his head with the knife and A1 and A2 criminally intimidated the crowd by showing the knives and thereafter, A1 and A2 fled away from the scene of occurrence. Then the deceased Chockalingam and P.W.2 - Suresh were taken to the Government Hospital, Aruppukottai, in the auto of P.W.8 - Alagu Kannan, where Chockalingam was declared dead and P.W.2 - Suresh was admitted as inpatient.

2.3.Immediately, P.W.1 rushed to the Aruppukottai Town Police Station and lodged Ex.P.1 - complaint to P.W.12 - Ramachandran, the Sub-Inspector of Police on 24.05.2013 at about 00.15 hours. Based on the complaint, P.W.12 has registered a case in Crime No.279 of 2013 under Sections 294(b), 302, 307 and 506(2) I.P.C. The printed F.I.R. was marked as Ex.P15.

2.4. P.W.12 despatched the original F.I.R. and original complaint to the Court of jurisdictional Magistrate and copy of the same to P.W.13 - Balachandar, Inspector of Police and the higher officials. P.W.13 after receiving the copy of the F.I.R., at about 1.00 hours on 24.05.2013, he proceeded to the scene of crime and in the presence of P.W.5 - G.Sankar and one Jothibas, prepared Observation Mahazar and Rough Sketch marked as Exs.3 and 16 respectively. He recovered M.O.6 - bloodstained cement floor pieces and M.O.7 - sample floor pieces in the presence of those witnesses under Ex.P.4 - Seizure Mahazar. At about 07.00 hours, he conducted inquest on the body of the deceased and prepared Ex.P.17 - inquest report and he sent the dead body for postmortem with requisition.

2.5. P.W.11 - Dr.Chitra Devi, was the doctor attached to Government Hospital, Aruppukottai and she conducted postmortem on 24.05.2013 at 12.15 hours and she found the following external injury:

"External stab incision wound measuring 2.75cm x 0.5cm, found 1cm below left costal margin in left hypochondrium."

The postmortem report is marked as Ex.P.14. She opined that the deceased would appear to have died of shock and haemorrhage.

2.6. P.W.13 examined P.W.1 - Sankar, Nagaraj, Panneerselvam, P.W.2 - Suresh, Nagarajan, P.W.7 - Marimuthu, P.W.3 - Sankar, Jothibas and P.W.12 - Ramachandran and recorded their statements. He arrested both the accused on 25.05.2013 at about 05.30 hours in Old Bus Stand, Aruppukottai and recorded the confession voluntarily given by A1 at about 05.45 hours in the presence of Chellakaliammal, V.A.O. and P.W.9 - Boomirajan, Village Assistant and recorded the confession voluntarily given by A2 at about 07.20 hours in the presence of the said witnesses. The admissible portions of their confession statements are marked as Exs.P.9 and P.10 and pursuant to the same the accused took them to Malaiyarasan Kovil, where he recovered M.Os.1 and 2 and sent the seized articles under form 95 to the Court of jurisdictional Magistrate and sent the accused for judicial custody. Further, he examined P.W.6 - Vairamuthu, Scientific Assistant, P.W.10 - Dr.Jeyasimman and P.W.11 - Dr.Chitra



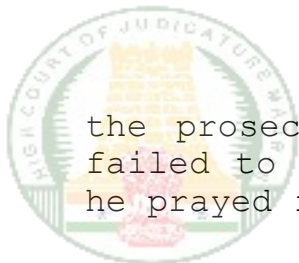
Devi and recorded their statements. After completing the investigation, P.W.13 had filed the Charge Sheet on the file of the Court of Judicial Magistrate, Aruppukottai, charging the appellants/accused for the aforesaid offences, who took it on file in P.R.C. No.43 of 2013.

2.7. The Committal Court issued summons to the accused and on their appearance, furnished them copies of documents under Section 207 CrPC and having found that the case is exclusively triable by the Sessions Court, had committed the same to the Principal District Court. Virudhunagar, which in turn made over the same to the Additional District and Sessions Court, Virudhunagar, which took it on file in S.C.No.178 of 2013. The appellants/ accused were issued with summons and on their appearance, charges under Sections 294(b), 302 r/w 34, 307 r/w 34 and 506(2) IPC have been framed.

2.8. The prosecution, in order to sustain its case, examined PWs.1 to 13, marked Exs.P1 to P17 and also marked M.Os.1 to 7. The appellants/accused was questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances made out against him and he denied it as false and the case has been foisted against them along with another case in C.C.No.163 of 2013 on the file of the Judicial Magistrate, Aruppukottai in order to detain them as Goondas. The appellants/accused did not examine any witness, but marked one document as Ex.D1.

2.9. The Trial Court, on a consideration of oral and documentary evidence and other materials, had found the appellants/accused guilty of the offences and sentenced them as stated above, vide impugned judgment dated 25.01.2018 and challenging the same, the present Criminal Appeals are filed.

3. Mr.R.Ramachandran, learned counsel appearing for the appellants/ accused argued that the evidence of P.W.9 - Boomirajan, the Village Assistant did not help the prosecution case. The learned trial Court by referring to some of the decisions, which has no relevance, applied to the case on hand and has convicted the appellants. Therefore, the impugned conviction and sentence cannot be sustained. When there is no strong motive exists between the deceased and the appellants to commit the offence of murder, the learned trial Court convicted the appellants, accepting the evidence of P.W.1, who is the son of the deceased, being an interested witness, which suffers from serious infirmities. There is a delay of 1¼ hours delay in lodging the complaint, which was not properly appreciated by the trial Court. When P.W.1 deposed that he identified A1 and A2 at Police Station on 24.05.2013 at 01.00 hours, but at that time he was actually in the hospital. This was not properly considered. There was contradiction with regard to the place of attack as to whether the deceased was attacked inside the shop or outside the shop. P.W.2 has turned hostile stating that he had sustained injury only by falling on Dhosa stone and the same was also admitted by P.W.10 that such injury is possible by falling on Dhosa stone. The trial Court ought to have disbelieved the case of



the prosecution for the reason that the prosecution has miserably failed to prove the case beyond all reasonable doubts and as such, he prayed for allowing these appeals.

4.Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondent submitted that P.W.1 - Sankar, the defacto complainant, who is also also an eyewitness and the son of the deceased clearly spoke about the murder of his father. P.W.4, who is a customer of the hotel and an eyewitness consistently spoke about the manner in which the occurrence took place. Although P.W.1 is the son of the deceased, P.W.4 is a customer of the hotel, where the occurrence is said to have taken place. P.Ws.1 and 4 consistently explained the cause of death of the deceased. Therefore, the Trial Court accepted their evidence as they spoke in unison about the presence of the deceased in the hotel, arrival of A2 to Police Station and asking for parcel of Dhosa, delay in supplying dhosa and A2 abusing the deceased in filthy language, quarrel between them, sending of A2 out of the hotel by holding his hands, arrival of A2 with A1 with knives and stabbing of the deceased A1 and stabbing of P.W.2 by A2. The trial Court on proper appreciation of the oral and documentary evidence rightly reached the conclusion to record the conviction and sentence and in the absence of any infirmities in the judgment of the trial Court, in exercise of its appellate jurisdiction, this Court may not interfere with the impugned judgment and prays for dismissal of this appeal.

5.This Court paid its anxious consideration to the rival submissions made and also perused the oral and documentary evidences and other materials placed on record including the impugned Judgment as well as the original records.

6.The question arises for consideration is whether the prosecution has proved the guilt of the accused beyond any reasonable doubt in the light of the evidence let in?

7.The prosecution in order to substantiate that Chockalingam, father of P.W.1 - C.Sankar, was done to death in an incident that took place at 23.00 on 23.05.2013, has relied on the evidence of postmortem doctor Dr.Chitra Devi examined as P.W.11 and also the contents of the postmortem certificate marked as Ex.P14 issued by P.W.11. Following the inquest made by P.W.13 - K.Balachandar, the investigating officer, the dead body was subjected to postmortem by P.W.11, who has deposed before the Court and the contents of the postmortem certificate issued by him were also proved. She also deposed that the injury is antemortem injury. However, the defence has miserably failed to establish its version that even before the occurrence, the deceased was admitted at Selvam Hospital for his ailment and on account of such ailment, the deceased died in Selvam Hospital and the injury was caused after his death. Hence the trial Court was perfectly correct in recording the finding that the deceased died out of homicidal violence.



8. In order to substantiate that the accused/appellants inflicted injury on the deceased and P.W.2 at the time of occurrence i.e. at 23.00 hours on 23.05.2013, the prosecution has examined P.Ws.1 and P.W.4 as eyewitnesses and also relied upon other circumstances. According to P.W.1, during night hours on 23.05.2007, when his father was making parotta and he was supplying food items, at about 22.45 hours, A2 ordered for a parcel of dhosa and on account of some delay in making such parcel, A2 started quarrelling, abusing in filthy language and feeling insulted, his father asked A2 to be patient and since A2 continue to quarrel, they sent him out by holding his hands and feeling insulted, A2 went out and at about 23.00 hours, A2 came back to the hotel along with his brother - A1, each holding a knife and on their arrival, A1 abused his father in filthy language and stabbed him on his left upper abdomen with knife, as a result his father fell down to earth and when he and other waiters, Nagaraj and P.W.2 - Suresh, rushed to rescue his father, A2 cut P.W.2 on his head with the knife he had and when they were taken to Government Hospital, Aruppukottai, his father was declared dead. A careful consideration of his evidence in his cross-examination would show that nothing contrary has been elicited. Hence, the evidence of P.W.1 has got to be accepted by the Court since it inspires the confidence of the Court.

9. P.W.4 - P.Valliyin Selvan, a customer present in Somasundaram Hotel at the time of occurrence deposed that on 23.05.2013, at about 22.30 hours, he went to Somasundaram Hotel to get food parcel and ordered for parotta, at that time A2 came to the hotel and asked dhosa parcel and when the deceased refused, A2 started quarrelling with the deceased by scolding him in filthy language, in turn the deceased also scolded A2 in filthy language, asking him to go out of the hotel and the persons present in the hotel pushed A2 out of the hotel and when he asked the deceased about such refusal, the deceased replied that it is an usual practice for him to cause such troubles and within 10 minutes, A1 and A2 visited the hotel with knives and asked to come out and in response thereto, the deceased came out and A1 stabbed on the left abdomen of the deceased with the knife and on hearing the noise, the employees of the hotel came out and A2 hit on the head of P.W.2 with the knife. Nothing has been elicited in the cross examination to disbelieve his evidence.

10. P.Ws.1 and 4 have given evidence in unison without any contradiction with regard to the presence of the deceased in the hotel at the time of occurrence, the earlier arrival of A2, the demand by A2 of parcel of dosha, the consequent quarrel by A2, the departure of A2 with anguish, the arrival of A2 with A1 with knives, attack by A1 on the left abdomen of of the deceased and cut by A2 on the head of P.W.2. Hence, the evidence of P.W.1 and P.W.2 corroborates each other.



11.The occurrence took place at about 23.00 hours on 23.05.2013. Thereafter, the deceased and P.W.2 were taken to hospital, where deceased Chockalingam was declared dead. Thereafter, P.W.1, the son of the deceased went to the Police Station and lodged the complaint at about 00.15 hours on 24.05.2013 with only a delay of 75 minutes and the F.I.R. reached the jurisdictional Magistrate at about 06.45 hours on 24.05.2013. Such delay would not affect the case of the prosecution, since such delay is moderate and it is explained.

12.P.W.2 - Suresh, who is said to have sustained a cut injury caused by A2, though has turned hostile and deposed that he sustained a head injury on account of his accidental fall down on earth while he was rushing, P.W.10 - Dr.Jeyasimman, Doctor attached to Government Hospital, Aruppukottai, who has given treatment to P.W.2 - Suresh, deposed that on 23.05.2013, at about 23.55 hours, P.W.2 came to the hospital on his own by an auto rickshaw and he told that he was hit by an unknown person with a knife on his forehead at about 22.30 hours at Communist Hotel, situate opposite to Tamilmani Theatre and that he found on him a laceration measuring 5 x 1 x 0.5 cm over the center of frontal scalp and he certified that the injury is simple and the AR copy is Ex.P.13.A perusal of Ex.P.13 would clearly indicate the place of occurrence and also the time. Thus, this documentary evidence adduced by the prosecution through Ex.13 and also the evidence of medical person who examined P.W.2, would clearly corroborate the evidence of P.Ws.1 and 4.

13.Apart from this, the accused/appellants have given confessional statements and the same were recorded in the presence of P.W.9, pursuant to which, the weapons of crime were recovered. P.W.9 - K.Boomirajan, Village Assistant, Aruppukottai, witnessed the confession of the accused and consequent recovery deposed that on 25.05.2013 at about 05.30 hours, he went to Aruppukottai Town Police Station on the instruction of his officer and the police took him to the Old Bus Stand in Aruppukottai, where the Inspector of Police made an enquiry on A1 and A2 and they voluntarily gave confession statements and pursuant to the admissible portion of the confession statements they went to Malayarasan Kovil, where A1 took M.O.1 knife under a rock situate on the southern side of the temple and A2 took M.O.2 - knife under a bush situate on the eastern side of the temple and P.W.13 recovered the knives under seizure mahazars Exs.P.11 and P.12. During the cross-examination, the defence is not able to bring out anything either to impeach his evidence or to disprove the admissible portions of the confessional statements of the accused or the consequent recovery of M.Os.1 and 2. However, he has been declared as hostile only on his evidence as to the absence of his Village Administrative Officer. In the considered opinion of the Court, this is a strong piece of evidence as against the appellants/accused.



14.Regarding the evidence of eyewitnesses and the recovery of weapons of crime, certain discrepancies were brought to the notice of the Court. Such discrepancies, in the considered opinion of the Court, cannot be given much weight to shake the evidence of P.Ws.1 and 4 or the circumstances noticed by the Court. Thus, in the instant case the ocular testimony put-forth by P.Ws.1 and 4 coupled with the recovery of the weapon of crime and also the medical opinion canvassed through P.Ws.11 and 12, would suffice to point the guilt of the accused.

15.Thus, the act of the A1 would attract the penal provisions of sections 302 and 307 r/w 34 and the act of A2 would attract the penal provision of sections 302 r/w 34 and 307 and the trial Judge was perfectly correct in taking a correct decision and found the appellant guilty of offences under the above Sections and awarded the punishment referred to above, which, in the considered opinion of the Court, is reasonable, and it does not require interference either legally or factually.

16.In the result, these Criminal Appeals are dismissed confirming the judgment dated 25.01.2018, made in S.C.No.178 of 2013 by the Additional District and Sessions Judge, Virudhunagar. The period of imprisonment already undergone by the appellants/accused shall be given set off. The bail bonds executed by the accused shall stand cancelled and the respondent/police is directed to forthwith secure the appellants/accused for committing them to custody so as to undergo the remaining part of sentence.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

sj

To

1.The Additional District and Sessions Judge,
Virudhunagar.

2.The Judicial Magistrate,
Aruppukottai.



3. The Superintendent Central Prison, Madurai.

4. The Inspector of Police,
Aruppukkottai Town Police Station,
Virudhunagar District.

5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+1 CC to Mr.R.RAMACHANDRAN, Advocate (SR-104315[F]dated
10/12/2019)

Crl. A. (MD)Nos.73 and 74 of 2018
09.12.2019

VB (21.07.2020) 9P 9C