



BAIL SLIP

The Appellant/Accused Viz., 1.Selvam, S/o Nagarajan, 2.Senthilkumar, S/o Nagarajan, are released on bail by the order of this court in Crl MP No.7388 of 2017 in Crl.A(MD)No.318 of 2017 dated 14.09.2017 on the file of this court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 03.10.2019

JUDGMENT DELIVERED ON : 15.10.2019

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.A(MD)No.318 of 2017

1.Selvam

2.Senthilkumar

.. Appellants / Accused Nos.1&2

Vs.

State represented by,
The Inspector of Police,
Ganesh Nagar Police Station,
Pudukkottai.

(Crime No.98 of 2015)

.. Respondent / Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the Judgment, dated 28.07.2017, passed in S.C.No.14 of 2016 by the learned Additional District and Sessions Judge, Pudukkottai, and to acquit the appellants herein.

For Appellants : Mr.N.Anandakumar

For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

COMMON JUDGMENT

S.VAIDYANATHAN, J

AND

N.ANAND VENKATESH, J

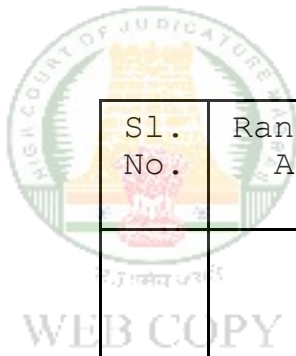
This Criminal Appeal has been filed by the appellants (A1 and A2) against the Judgment of the learned Additional District and

<https://hcservices.ecourts.gov.in/hcservices/>



Sessions Judge, Pudukottai, made in S.C.No.14 of 2016, dated 28.07.2017, wherein the appellants were convicted and sentenced as follows:

Sl. No.	Rank of the Accused	Offence under which convicted	Sentence of imprisonment	Fine amount
1.	A1	Under Section 294(b) IPC	----	Rs.500/-, in default, to undergo two weeks Simple Imprisonment
		Under Section 324 IPC	----	Rs.1,000/-, in default, to undergo one month Simple Imprisonment
		Under Section 342 r/w 34 IPC	Three months Rigorous Imprisonment	Rs.1,000/-, in default, to undergo one month Simple Imprisonment
		Under Section 302 IPC	Life Imprisonment	Rs.5,000/-, in default, to undergo three months Simple Imprisonment
		Under Section 506 (ii) IPC	Three months Rigorous Imprisonment	Rs.2,000/-, in default, to undergo two months Simple Imprisonment
2.	A2	Under Section 294(b) r/w 34 IPC	----	Rs.500/-, in default, to undergo two weeks Simple Imprisonment
		Under Section 324 r/w 34 IPC	----	Rs.1,000/-, in default, to undergo one month Simple Imprisonment
		Under Section 342 IPC	Three months Rigorous Imprisonment	Rs.1,000/-, in default, to undergo one month Simple Imprisonment



Sl. No.	Rank of the Accused	Offence under which convicted	Sentence of imprisonment	Fine amount
		Under Section 302 r/w 34 IPC	Life Imprisonment	Rs.5,000/-, in default, to undergo three months Simple Imprisonment
		Under Section 506 (ii) IPC	Three months Rigorous Imprisonment	Rs.2,000/-, in default, to undergo two months Simple Imprisonment

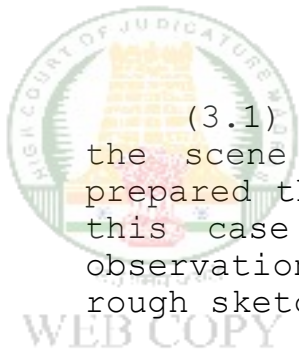
2. The case of the prosecution in brief are as follows:

On 15.03.2015, at about 4.00 p.m., P.W.1 along with his wife-P.W.2 and the deceased were sitting in front of the house of P.W.1 and were talking. The appellants had developed a quarrel with P.W.3 on the ground that P.W.3 had stolen the mobile phone and the first appellant used filthy language and abused P.W.3 and this was questioned by P.W.3. Immediately, the first appellant is said to have gone into his house and picked up a knife in his hand and asked the second appellant to caught hold of P.W.3. Seeing this, the deceased and P.W.1 shouted and attempted to prevent any untoward incident. Enraged by the same, the first appellant is said to have attacked P.W.1 with knife, in his left hand elbow and when the deceased

attempted to take away the knife from the first appellant, the second appellant is said to have caught hold of the deceased and the first appellant stabbed the deceased with the knife on his chest and he was pushed to the ground. The second appellant is said to have thrown a stone on the stomach of the deceased. Seeing this, the neighbours started shouting and the appellants ran away from the scene of occurrence. The deceased was taken to the hospital and he was declared brought dead.

3. Complaint and evidence collected in the course of investigation:

P.W.1 and P.W.4 thereafter went to the police station and gave a complaint (Ex.P.15) at about 7.00 p.m., to the Sub Inspector of Police (P.W.17) and and FIR came to be registered in Crime No.98 of 2015 (Ex.P.16). The express FIR was immediately sent to the Judicial Magistrate, Pudukkottai.



(3.1) The investigation was taken up by P.W.20 and he went to the scene of occurrence on 15.03.2015 at about 8.15 p.m., and prepared the observation mahazer (which has not even been marked in this case and only the signature of P.W.9 and P.W.10 in the observation mahazer has been marked as Ex.P2 and Ex.P.5) and the rough sketch (Ex.P.19).

(3.2) The body of the deceased was sent for postmortem with the requisition through P.W.16. Thereafter P.W.20 recorded the statement of P.W.1 in the Government Hospital and the blood stained clothes were collected from him under mahazer. The investigating officer also proceeded to record the statements of the witnesses under Section 161(3) of Cr.P.C.

(3.3) On 16.03.2015, at about 2.00 p.m., A2 was arrested and based on the confession made by him in the presence of P.W.13, the material objects were recovered (M.O.12 and M.O.13) and he was sent for judicial custody. A1 had surrendered before the Court and he was taken on police custody on 23.03.2015 and based on his confession made in the presence of P.W.13, M.O.4, the knife was recovered.

(3.4) The statements of all the other witnesses were also recorded under Section 161(3) of Cr.P.C., and after collecting the postmortem report (Ex.P.13) and after completing the investigation, the charge sheet was laid before the Judicial Magistrate Court, Pudukkottai and the same was taken on file in PRC.No.34 of 2015.

4. The case was committed to the file of the learned Additional District and Sessions Judge, Pudukkottai and it was taken on file in S.C.No.14 of 2016 and charges were framed against the accused persons. The prosecution examined P.W.1 to P.W.20 and marked Ex.P.1 to Ex.P.20 and M.O.1 to M.O.13.

5. After the completion of the examination of witnesses on the side of the prosecution, the Court below questioned the appellants under Section 313(1)(b) of Cr.P.C., by putting all the incriminating materials collected against them during the course of trial and they denied the same as false.

6. The trial Court after taking into consideration the entire facts and circumstances of the case, and after analysing the oral and documentary evidence, found that the prosecution has proved the case beyond reasonable doubts and proceeded to convict and sentence the appellants in the manner indicated supra.



Submissions:

7. Mr.N.Ananda Kumar, learned Counsel appearing on behalf of the appellants/A1 & A2, made the following submissions:

- The prosecution suppressed the very genesis of the case and it has not brought forth the true version of the entire incident.
- A2 had sustained injuries in his head and the same has been spoken to by P.W.1, P.W.2, P.W.3 and P.W.11 and this injury is said to have been sustained when he fought with P.W.3 and this has not been explained by the prosecution.
- P.W.1 had specifically deposed in the cross-examination that the police came to the hospital at about 5.30 p.m., and examined the witnesses and he also gave a complaint. This earliest version of the complaint has been completely concealed.
- P.W.2, P.W.3, P.W.5, P.W.8 and P.W.11 have all admitted the fact that the police was present in the scene of occurrence around 4.30 p.m. to 5.00 p.m., and they had examined the witnesses and whereas it is the specific case of the prosecution that the complaint itself was given on 15.03.2015 only at 7.00 p.m., and the witnesses were all examined only on 16.03.2015 at about 10.00 a.m.
- The entire recovery is artificial since P.W.1 has admitted that the knife and the stone were taken from the scene of occurrence on the date of occurrence itself. This was also spoken to by P.W.2, P.W.5 and P.W.11.
- P.W.1, P.W.8 and P.W.11 had specifically stated that the knife (M.O.4) was not the actual knife with which the deceased was stabbed.
- P.W.1 had only sustained an abrasion wound and therefore his version that he was stabbed with the knife on his elbow is false.
- It is clear from the evidence of the witnesses that there was a wordy quarrel and an altercation between A2 and P.W.3 and this was intervened by the deceased and therefore, even if the case of the prosecution is taken to be true and proved, the case will fall within exception-1 to Section 300 of



I.P.C., and it is punishable only under Section 304 (ii) of I.P.C.

- M.O.11, which is the stone that is said to have been recovered by the investigating officer weighs about 13 kilograms and it is the case of the prosecution that A2 had thrown the stone on the stomach/abdomen of the deceased. However, the Doctor-P.W.14 had only identified an abrasion wound on the left side abdomen. If really M.O.11 had been thrown on the abdomen, it would have caused serious injuries and not a mere abrasion.

8. Per contra, the learned Additional Public Prosecutor appearing on behalf of the State made the following submissions:

- The prosecution had examined P.W.1, P.W.2, P.W.3, P.W.5, P.W.8 and P.W.11 as eyewitnesses and they have all spoken about the incident and the overtacts of the accused persons. The complete turn around by these witnesses, when they were recalled for cross-examination at a later point of time, could not be taken into consideration by this Court.
- The prosecution has examined both the Accident Register Doctor-P.W.19 and the postmortem Doctor-P.W.14 and they clearly explained the injuries sustained by the deceased and P.W.1.
- The knife(M.O.4) and the stone(M.O.11) has been recovered by the investigating officer based on the confession of the accused persons in the presence of the Village Administrative Officer (P.W.13).
- The cumulative reading of the entire evidence let in by the prosecution along with the materials collected and marked before the Court below, clearly makes out a case against the accused persons, beyond reasonable doubts and there are absolutely no grounds to interfere with the judgment passed by the trial Court.

Discussion:

9. The prosecution in this case has mainly relied upon the evidence of P.W.1, P.W.2, P.W.3, P.W.5, P.W.8 and P.W.11. These witnesses were examined as eyewitnesses. Therefore, it is important for this Court to assess the evidence of each of these witnesses.

10. P.W.1 is the father of the deceased. He has specifically stated in his evidence that there was a quarrel between the appellants and P.W.3 on the ground that the appellants alleged P.W.3 to have taken the mobile phone. The quarrel continued, at one stage,

A1 is said to have brought a knife (M.O.4). P.W.1 and the deceased are said to have attempted to stop the fight and it is stated that at that point of time A1 stabbed the deceased on his left side chest and A2 throw the stone (M.O.11) on the abdomen of the deceased. The deceased is said to have been taken to the hospital by P.W.1, P.W.2 and P.W.8. The Doctor(P.W.19) informed them that the deceased is brought dead. He also noticed an injury in the left hand elbow of P.W.1. P.W.1 has stated that the incident took place around 4.00 p.m., and the deceased was taken to the Government Hospital between 4.15 p.m. To 4.30 p.m.

11. P.W.1 has further stated in the evidence that there was a fight between A2 and P.W.3. At that time, P.W.3 had pushed down A2 resulting in an injury to A2 in his head. That apart, the police were present at the hospital at 5.30 p.m., and a complaint was also given to the police and statements were also recorded from the witnesses. He further states that the knife and the stone were recovered from the scene of occurrence on the date of incident itself and it was there even when P.W.1 went to the police station for giving complaint.

12. P.W.2, who is the mother of the deceased almost reiterated the evidence of P.W.1. She also specifically states that the police were present in the scene of occurrence at 4.30 p.m., and they also examined the witnesses and also collected information from P.W.1. She also states that there were 50 to 60 persons, who were present at the time of occurrence and there was a very serious fight that was going on between P.W.3 and A2 for nearly half-an-hour and PW3 pushed down A2 as a result of which he sustained injury.

13. P.W.3 is the friend of the deceased and he was also the neighbour. He gives a parrotted version of the incident. It is important to note that even P.W.3 talks about the fight with A2 and he being pushed down and sustaining injury on the back of his head. He also states about the presence of the police in the scene of occurrence at about 4.30 p.m., and the recovery of the knife and the stone, when they came to the scene of occurrence.

14. P.W.5 is the father of P.W.3. He also states that the police were present in the scene of occurrence at around 4.15 p.m., and the deceased was sent in a van to the hospital. He states that the police took two knives from the scene of occurrence at about 4.30 p.m.

15. P.W.8 is the tenant of P.W.3 and he states that the knife shown to him is not the knife with which A1 stabbed the deceased. He



further states that P.W.3 was taken to the police station for interrogation and the father of P.W.3 along with some of the influential persons in the locality went to the police station and they brought back P.W.3 from the police station.

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16. P.W.11 is also a neighbour, who was examined as an eyewitness. He states that there was an altercation between A2 and P.W.3 and P.W.3 attacked A2 in his head with tiled stone and he sustained injuries. The police came to the scene of occurrence at about 5.00 p.m., and he saw the knife and the stone at that time.

17. All these witnesses turned hostile when they were recalled at a later point of time. The Court below rightly did not take that into account and therefore, this Court is not going to give credence to the further cross-examination conducted by recalling them at a later point of time, where all of them turned hostile.

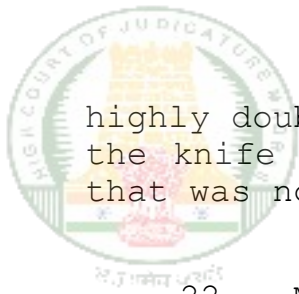
18. A close assessment of the evidence of P.W.1, P.W.2, P.W.3, P.W.5, P.W.8 and P.W.11 shows the following:

- There was an altercation between A2 and P.W.3 and P.W.3 attacked A2 with a tiled stone.
- The police were there in the scene of occurrence between 4.30 p.m., and 5.00 p.m., and P.W.1 had informed them about the incident and the police had also examined some witnesses.
- Some of the witnesses clearly state that the knife and stone were taken away on the date of incident itself by the police.

19. According to the case of the prosecution, the complaint was lodged by P.W.1 only at 7.00 p.m and FIR came to be registered and P.W.20 came to the scene of occurrence in the course of investigation only at 8.15 p.m. This version given by the prosecution is highly questionable. There was an earlier complaint and witnesses were examined by the police and the knife and the stone were taken away from the scene of occurrence, on the same date of occurrence.

20. The earliest statement given to the police and the police who were present in the scene of occurrence were not examined by the prosecution. The injury sustained by A2 in his head was not explained by the prosecution. Therefore, it creates a very serious doubt on the very genesis of the case.

21. As a consequence, the recovery of M.O.4, after the arrest of A1 and the recovery of M.O.11, after the arrest of P.W.2 becomes



highly doubtful. Infact, P.W.1, P.W.8 and P.W.11 were not sure about the knife that were shown to them in the Court and had stated that that was not the knife used by A1 to stab the deceased.

22. M.O.11-stone according to the investigating officer (P.W.20) weighed about 13 Kilograms. Postmortem Doctor, who was examined as P.W.14 had stated that there was an abrasion wound in the abdomen of the deceased.

23. It will be relevant to extract the injuries as described in the postmortem certificate (Ex.P.13).

External Examination:

1. Punctured wound (Lt) anterior chest wall 5x3x12 cm.
2. Abrasion over (Rt) forearm 5x2 cm.
3. Abrasion over (Lt) side abdomen 3x2 cm.

Internal Examination:

1. Blood clot present in pleural cavity.
2. Punctured wound upper part of (Lt) side of head 5x3x3cm.
3. Punctured wound (Lt) lung 5x2x2cm.
4. Sternum punctured 5x3x3cm.
5. Hyoid bone intact.
6. Liver, Spleen, Kidney-congested.
7. Stomach contained food materials.
8. Intestine, bladder empty.
9. Brain and its membrane (N).

The postmortem Doctor opined that the deceased would appear to have died of Punctured injuries to chest wall, heart, lung and hypovolumic shock cardiorespiratory arrest."

24. It is clear from the postmortem certificate that there was only an abrasion over the left side abdomen. Throwing a 13 Kilograms stone on the abdomen of the deceased could have caused very severe injuries and not merely an abrasion. Therefore, the overtact attributed against A2 also becomes highly doubtful. It is to be noted that none of the material objects were sent for chemical analysis and a serology report has not been obtained in this case. Therefore, it is not clear as to whether there were blood stains in the knife and the stone. In the considered view of this Court, not sending any of the material objects for chemical analysis to get a



serological report, seems to be intentional and it is surprising that it has not been done in a murder case.

25. The fight is said to have taken place between A2 and P.W.3 for nearly half-an-hour and A2 had infact sustained injury in his head. It is therefore not known as to why A1 will pick up a knife and attack the deceased in his chest without any provocation. This act, as attempted to be portrayed on the part of A1, is very artificial and since the genesis of the case has been suppressed, it becomes even more suspicious with regard to the participation of A1 in the entire incident.

26. In this case, the mahazer witnesses P.W.9 and P.W.10 also did not support the case of the prosecution and they were treated as hostile witnesses. Since the recovery of the material objects itself becomes doubtful, the evidence of the Village Administrative Officer (P.W.13) also does not assume any significance.

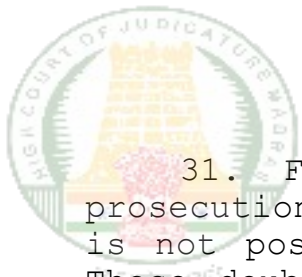
27. P.W.20, who is the investigating officer specifically states in his evidence that P.W.1 was examined in the hospital at 10.00 a.m., on 16.03.2015 and his blood stained clothes were recovered from him under mahazer. These clothes were also not sent for chemical analysis and no serological report was received.

28. He further states that information was received in the police station from the hospital and it is not known as to who went to the hospital and whether any one was examined and any statements were taken. The investigating officer did not even want to refer to the general diary in order to ascertain these facts.

Conclusion:

29. A cumulative reading of the entire incident clearly shows that the prosecution has intentionally concealed the genesis of the case. The first complaint recorded, the statements recorded from the witnesses and the police, who were present between 4.30 and 5.00 p.m., on the date of incident were not examined. There was also no explanation for the injury sustained by A2. In view of these serious discrepancies in the evidence collected on the side of the prosecution, it will not be safe to convict the appellants for the charges framed against them.

30. When the origin of the prosecution case is suppressed, then the prosecution case must fail and the benefit of doubt must be given to the accused persons. In this case, for more than one reason, we find that the prosecution is definitely guilty of suppressing the origin of the case.



31. For all the reasons stated above, we find that the prosecution is suppressing the origin of the case and therefore, it is not possible for us to find out where exactly the truth lies. These doubts in our mind are not speculative doubts or doubts on mere surmises and conjectures, but is based on sound principles of appreciation of evidence.

32. In the result, this Criminal Appeal is allowed. The Judgement of the Court below, made in S.C.No.14 of 2016 dated 28.07.2017, is hereby set aside. The appellants are acquitted from all the charges. Bail bond executed by them shall stand terminated forthwith and the fine amount, if any paid by them shall be refunded forthwith.

Sd/-

Assistant Registrar (co)

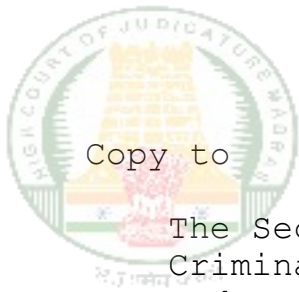
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Sub Assistant Registrar(CS)

PJL

To

1. The Additional District and Sessions Judge,
Pudukkottai.
2. The Judicial Magistrate, pudukkottai.
3. -Do- Through The Chief Judicial Magistrate,
Pudukkottai.
4. The Superintendent Central Prison,
Trichy.
5. The Inspector of Police,
Ganesh Nagar Police Station,
Pudukkottai.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



Copy to

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

+1 CC to M/s.N.ANANDA KUMAR, Advocate (SR-91535[F] dated 04/10/2019)

+1 CC to M/s.N.ANANDAKUMAR, Advocate (SR-92296[F] dated
16/10/2019)

Judgment made in

Crl.A(MD)No.318 of 2017

15.10.2019

VB(25.10.2019) 12P 11C