

Bail Slip

The Appellants/Petitioners accused namely 1. Anand @ Prem Anand S/o. Jayabal 2. Chinnamani @ Premnath S/o. Jayabal were released on bail as per the order of this Court dated 31.01.2019 made in CrI.M.P. No. 9497/2018 in CrI.A. No. 319/2018.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 22.01.2020

Judgment Delivered on : 07.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No. 319 of 2018

1. Anand @ Prem Anand
2. Chinnamani @ Prem Nath

.. Appellants/
Accused (A1&A2)

Versus

State rep. by
The Inspector of Police
Koradachery Police Station
Thiruvarur District.

.. Respondent/
Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C. against the judgment of conviction and sentence, dated 09.04.2018 imposed on the appellants in Sessions Case No.104 of 2010 on the file of the Principal District and Sessions Court, Thiruvarur.

For appellants : Mr. K. Doraisami, Senior Advocate
for M/s.Muthumani Doraisami

For respondent : Mrs. M. Prabhavathi
Additional Public Prosecutor

JUDGMENT

R.SUBBIAH, J

Among the four accused in S.C. No. 104 of 2010 on the file of the Principal District and Sessions Court, Thiruvarur, the appellants herein were arrayed as A1 and A2 respectively. They stood charged for the offence punishable under Section 302 read with 34 of Indian Penal Code (in short IPC). After conclusion of trial, the trial court, by judgment dated 09.04.2018, convicted the appellants/A1 and A2

under Section 302 read with 34 IPC and sentenced each of them to undergo life imprisonment and to pay fine of Rs.2,000/- each, in default, to undergo rigorous imprisonment for a period of three months. Challenging the said conviction and sentence, the appellants/A1 and A2 have come up with the present Criminal Appeal.

2. The case of the prosecution, as put forth before the trial court, is narrated below:

(a) The deceased in this case is one Ilayaraja. He was a staunch follower of ideologies of Dravidar Munnetra Kazhagam (DMK) political party, while the accused 1 and 2 belong to the opposition party. It is stated that there were serious disputes between the deceased and the accused 1 and 2 with respect to the policies of the political parties to which they belonged to.

(b) On 09.01.2007 at about 1 p.m., the deceased parked his two-wheeler near Murugan Tea Stall and was standing in front of Rajamanickam Fish Stall in Thanjavur to Thiruvarur Main Road. At that time, due to political rivalry, with an intention to murder the deceased, A1 and A2 came there. They voluntarily abused the deceased in filthy language, purportedly at the instigation of the other two accused viz., A3 and A4, with an intention to commit the murder of the deceased. Thereafter, the first accused attacked the deceased with Aruval and caused injuries to the deceased on the right ear, while the second accused attacked the deceased with patta-katthi (knife) and caused injuries on his shoulders. Even after the deceased fell down, the accused, in order to ensure that the deceased should die, once again started attacking him with the knife indiscriminately on his abdomen and on his back. On account of such injuries, the deceased fell down in a pool of blood.

(c) P.W.1, father of the deceased, who was standing near the place of occurrence, saw the deceased being attacked by the accused 1 and 2 and therefore he raised alarm and on seeing PW1, the appellants/A1 and A2 fled away from the scene of occurrence.

(d) P.W.2, who is an auto driver, and who was also present in the scene of occurrence near an auto stand, witnessed the occurrence. PW2 along with PW1 Pichaimuthu and Mathiazhagan took the deceased to the Tiruvarur Medical College and Government Hospital in a fish cart. On reaching the hospital, the Duty Doctor, upon examining the deceased, declared that the deceased had died.

(e) On receipt of the intimation from the hospital, P.W.12 Inspector of Police rushed to the hospital, where he recorded the statement from PW1 under Ex.P-1. He brought the complaint to the Police Station and registered a case in Crime No.5 of 2007 for the offences under Sections 294(b) and 302 IPC. The copy of the FIR is Ex.P-12, which was sent by P.W.12 along with a copy of the complaint to the

jurisdictional Judicial Magistrate's Court. Thereafter, P.W.12 once again proceeded to the hospital and conducted inquest over the body of the deceased in the presence of Panchayatdars and witnesses. Ex.P-13 is the inquest report. Subsequently, P.W.12 sent the body of the deceased through Head Constable, along with a requisition to conduct post-mortem. On completion of post-mortem, P.W.12 handed over the body of the deceased to his relatives.

(f) On 09.01.2007 at about 9 p.m., P.W.12 visited the place of occurrence and prepared observation mahazar Ex.P-2 and rough sketch Ex.P-14. He collected blood stained soil, sample soil, pair of slipper, etc., under seizure mahazar Ex.P-3. Then, he recorded the statement of P.Ws.1 and 2 and other witnesses.

(g) When the investigation is in progress, A-1 and A-2 surrendered before the Judicial Magistrate No.2, Mayiladuthurai on 10.01.2007. P.W.12 filed a petition before the learned Judicial Magistrate and took the accused under Police custody on 21.01.2017 and recorded their statement. The admitted portion of the Confession statement of A-1 and A-2 is Ex.P-5 and Ex.P-7 respectively. Based on the confession statement given by A1 and A2, P.W.12 recovered the Aruval, knife, etc., from the thorn bush near Ammaiappan Adi Dravidar women's hostel, in the presence of witnesses Veeraiyan (PW6) and Muthaiyan (PW7). Thereafter, P.W.12 sent the accused to judicial custody. Subsequently, P.W.12 recorded the statement of P.W.10 Doctor who declared the deceased dead and P.W.11 Doctor who conducted post-mortem. Ex.P-11 is the post-mortem certificate. In his evidence, P.W.11 Doctor has stated that the deceased died of shock and profuse bleeding of blood in the brain and the liver. In continuation of the investigation, P.W.12 sent the piece of blood stained cement colour pant recovered from the body of the deceased, baniyan, etc., under Form 95 for chemical examination. On completion of the investigation, P.W.12 filed charge sheet against the accused under Sections 294(b), 302 read with 109 and 34 IPC.

3. Based upon the above materials, the trial Court framed charges against the appellants. In order to prove the charges, on the side of the prosecution, P.Ws.1 to 13 were examined, Exs.P-1 to P-16 were marked and M.Os.1 to 9 were produced. Exs.X-1 and X-2 were also marked during the course of trial. When the appellants/A1 and A2 were questioned under Section 313 Cr.P.C. in respect of incriminating materials, they pleaded innocence, denied their complicity in the crime and stated that the evidence on the side of prosecution is false. However, on the side of defence/accused, no oral or documentary evidence is adduced.

4. After hearing both sides and considering the oral and documentary evidence, the trial Court, by the impugned judgment, found the appellant/A1 and A2 guilty of the offence under Section 302 read with 34 IPC and sentenced them therein

as stated above. Challenging the said conviction and sentence, the appellants/A1 and A2 have preferred the present Criminal Appeal.

5. The learned Senior Counsel appearing for the appellants/A1 and A2 submitted that the First Information Report (FIR) was registered against four persons, namely the appellants/A1 and A2 as well as A3 and A4. Subsequently, the case against A3 and A4 was split up and they were tried in S.C.No.145 of 2009 for the offence under Section 302 read with 109 IPC. Both A3 and A4 were acquitted by the trial Court on 24.11.2010. The present appellants/A1 and A2 were tried subsequently in S.C.No.104 of 2010 for the offence under Section 302 read with 34 IPC. Both the appellants/A1 and A2 were convicted and sentenced for life on 09.04.2018, i.e. after 7-1/2 years from the date of judgment delivered in S.C.No.145 of 2009 in respect of A3 and A4.

6. The learned Senior Counsel appearing for the appellants/A1 and A2 further submitted that according to prosecution, P.Ws.1 to 3 are the eye-witnesses to the occurrence. P.W.1 is none other than the father of the deceased. According to P.W.1, he came from his residence to the shop near the place of occurrence to buy cigarette and while he was standing near the shop, he witnessed the occurrence. On seeing his son being attacked by the appellants, he rushed to the place of occurrence by raising alarm not to attack his son. It is the further case of the prosecution that at that time, P.W.2 who was an auto driver, happened to be at the place near the scene of occurrence and rushed near the deceased. P.W.2 took the deceased in a fish cart along with P.W.1 and others. P.W.2 is the son of the younger sister of the wife of P.W.1, i.e. the son of junior paternal aunt of the deceased. In fact, the occurrence took place in the broad day light at about 1 p.m. in a place where number of shops are situated. However, the prosecution has not chosen to examine any independent witnesses. P.Ws.1 and 2 are only close relatives of the deceased, and they are chance witnesses. Yet another witness who was said to have witnessed the occurrence is P.W.3, who is the owner of a Tea Shop where the deceased parked his two-wheeler. According to the learned Senior Counsel, P.W.3 was not examined as a witness in the previous trial in respect of A3 and A4 in S.C.No.145 of 2009 arising out the same FIR. Thus, except P.Ws.1 to 3, no other independent eye-witness was examined, though in the place of occurrence, several shops are situated. The learned Senior Counsel appearing for the appellants/A1 and A2 further submitted that though in the chief examination, P.W.3 has stated that he had witnessed the occurrence, in his cross-examination, he has stated that since he was concentrating on his business, he did not witness the occurrence. Therefore, the evidence of PW3 is not trustworthy.

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

7. The learned Senior Counsel further contended that there was an attempt by the prosecution to stage-manage the

recovery of the Material Objects (M.Os) under Section 27 of the Indian Evidence Act. To substantiate the recovery of material objects, the Village Administrative Officer (VAO) and Village Assistant were examined as P.Ws.6 and 7. But the same P.Ws.6 and 7 herein were examined in the previous trial relating to A3 and A4 and they did not support the case of the prosecution for recovery under Section 27 of the Indian Evidence Act, and therefore, they were treated as hostile witnesses in the previous trial. However, when P.Ws.6 and 7 were examined in the present trial, they supported the prosecution case. When they were confronted with the certified copies of their deposition in the previous trial in S.C.No.145 of 2009, they went to the extent of falsely deposing that they were not examined as prosecution witnesses in the previous trial. Therefore, no reliance could be placed on the evidence of P.Ws.6 and 7, who denied their own evidence tendered in the earlier trial as against the accused 3 and 4 and hence, the recovery said to have been made as contemplated under Section 27 of Indian Evidence Act fails.

8. Further, the learned Senior Counsel appearing for the appellants/A1 and A2 submitted that according to the prosecution, the motive for the occurrence is political rivalry between the appellants/A1 and A2 and the deceased, but in order to prove the motive, no witness was examined. P.W.1 has also admitted in his cross-examination that there was no ensuing Election at the time of occurrence of the crime. P.W.12 investigating officer, in his cross-examination, admitted that political party membership cards of the appellants/A1 and A2 were not recovered or produced. Though in the FIR, it is stated that the deceased was standing in front of Rajamanickam Fish Stall, the owner of the said shop was not examined.

9. As a next fold of his submission, the learned Senior Counsel appearing for the appellants/A1 and A2 submitted that the evidence of P.Ws.1 and 2 is falsified by the evidence of P.W.11 post-mortem Doctor. According to P.Ws.1 and 2, several stab injuries were indiscriminately inflicted on the deceased Ilayaraja, but the medical evidence shows that all the injuries were cut injuries. Thus, the learned Senior Counsel appearing for the appellants/A1 and A2 submitted that the prosecution has not proved its case by cogent and convincing evidence and prayed for setting aside the conviction and sentence imposed on the appellants/A1 and A2.

10. The learned Additional Public Prosecutor appearing for the respondent submitted that in this case, out of 13 witnesses examined on behalf of the prosecution, three witnesses are eye-witnesses. The evidence of all the three eye-witnesses corroborated and complemented with each other in unequivocal terms, which was weighed with by the trial Court to convict the appellants. P.W.2 is the auto driver, who is the star witness in this case. His deposition in this case established the motive to the crime, besides he also witnessed the occurrence. Further, the evidence of P.W.3

supports the evidence of P.W.2. Moreover, P.W.4 is an independent witness, who is the owner of a Mess. The evidence of P.W.4 corroborates with the evidence of P.W.3.

11. With regard to the submission made by the learned Senior Counsel appearing for the appellants/A1 and A2 that P.Ws.6 and 7 have turned hostile in the previous trial relating to A3 and A4, but in the present case relating to the appellants/A1 and A2, they have supported the case of the prosecution with respect to recovery of material objects, it is replied by the learned Additional Public Prosecutor that notwithstanding the deposition of PW6 and 7, the evidence of P.W.12 investigating officer itself is sufficient to prove the recovery of the weapons.

12. It is the further submission of the learned Additional Public Prosecutor that P.W.8 who is a photographer and P.W.9 who is a wireman in the Tamil Nadu Electricity Board, have supported the prosecution and their evidence is cogent and convincing. Further, the evidence of P.W.10 Doctor who declared the deceased as dead when brought to the hospital and P.W.11 Doctor who conducted post-mortem, corroborates with the evidence of the eye-witnesses. The First Information Report itself was registered upon an intimation given by the hospital authorities about the death of the deceased and on receipt of such information, PW12 rushed to the hospital and recorded the statement from PW1. Thus, when once the evidence of the eye-witness is corroborated by medical evidence, that itself is sufficient for recording a conviction by the fact finding Court. The learned Additional Public Prosecutor therefore submitted that the prosecution has proved its case beyond all reasonable doubts and prayed for dismissal of the Criminal Appeal.

13. Heard both sides and perused the materials available on record. We have given our anxious consideration to the submissions made by the learned counsel on either side.

14. In order to prove the case against the accused, the prosecution mainly relied on the evidence of P.Ws.1 to 3 who have witnessed the occurrence. The case of the prosecution is that on the fateful day, i.e. on 09.01.2007 at about 1 p.m., while the deceased was standing in front of the Rajamanickam Fish Shop, the appellants/A1 and A2, purportedly at the instigation of A3 and A4, came there and attacked the deceased with deadly weapons indiscriminately, which resulted in his death. Now, it is the submission of the learned Senior Counsel appearing for the appellants/A1 and A2 that P.W.1 is none other than the father of the deceased and his presence in the place of occurrence is highly doubtful. Further, P.W.2 is a close relative of the deceased and PW1. According to the learned Senior Counsel appearing for the appellants/A1 and A2, the evidence of P.Ws.1 and 2 ought not to have been relied upon by the Court

below, inasmuch as they are interested witnesses. It is also the contention of the learned Senior counsel for the appellants that even though the occurrence was said to have happened at 1.00 pm in the afternoon in a bustling locality, the prosecution has not chosen to examine any independent

witness and therefore the manner in which the occurrence was said to have occurred, is unbelievable.

15. But we find that merely because P.W.1 is the father of the deceased, his evidence cannot be simply brushed aside, rather, his testimony requires a close scrutiny and if it inspires the confidence of this Court, then, his evidence, as a father of the deceased, can always be looked into. PW1 narrated the sequence of events that led to the attack of the deceased by the appellants herein, the presence of PW2 and PW3 in the place of occurrence and the fact that the deceased, who was lying in a pool of blood, was taken to the hospital in a fish cart along with PW2. His evidence is also supported by the manner in which the First Information Report came to be registered by the Inspector of Police, PW12. In fact, when the deceased was pronounced dead at the hospital, an information was given to the Police authorities by the hospital authorities. Based on such information, PW12 rushed to the hospital and recorded the statement of PW1. Based on such statement of PW1, the case in Crime No.5 of 2007 was registered on 09.01.2007. It is seen that the First Information Report came to be registered without any loss of time and therefore, we conclude that the prosecution succeeded in establishing the initial burden on their part in registering the First Information Report at the quickest possible time.

16. We have also scrutinised the deposition of PW1, including his cross-examination. We find that PW1 withstood the cross-examination and reiterated his deposition in chief. He has specifically deposed that he was standing at a distance of 15 meters from the place of occurrence and that he had witnessed the appellants assaulting his son with deadly weapons. According to PW1, he came near the scene of occurrence to buy cigarette and at that time, he witnessed the occurrence. He also further deposed that he shouted at the aggressors not to attack his son, but unmindful of the same, the appellants indulged in acts of butchery. He also deposed that there was previous enmity between his son and the appellants due to political rivalry. On going through the deposition of PW1, we are satisfied that merely because he is the father of the deceased, there is nothing to discredit his deposition. In other words, his deposition is natural and trustworthy.

17. P.W.2 is an auto driver, who was in the auto stand nearby Murugan Tea Stall at the time of occurrence. PW2 is also related to the deceased as well as PW1. In his cross-examination, he has clearly stated that he witnessed the occurrence from a distance of about 10 meters. He also

deposed that he, along with PW1 and one Mathiyalagan have taken the deceased to the hospital in a fish cart. When a specific question was asked as to why he did not go near the deceased to prevent the appellants from assaulting the deceased, he deposed that out of fear that he may also be attacked, he did not attempt to rescue the deceased from the onslaught of the appellants, who were armed with deadly weapons. On scrutiny of deposition of PW2, we find that it is not only natural but it corroborates with the deposition of PW1. There is nothing to discredit the deposition of PW2, which is natural and cogent.

18. P.W.3 is an independent eye-witness who is running a tea stall near the place of occurrence. In his deposition, he has stated that the appellants shouted towards the deceased in a filthy language and the first appellant inflicted cut injuries on the right side ear, while the second appellant stabbed the deceased, leaving him in a pool of blood. He also referred to the presence of PW1 and PW2 in the scene of occurrence and that the deceased was taken in a fish cart to the hospital by PW1 and PW2. Even though in his cross-examination, PW3 has stated that he did not know as to the type of weapon used by the appellants, thereby retracted from his statement made in the chief examination, he proceeded to state about the presence of the accused at the time of occurrence and their overt act in causing injuries. At the same time, he denied the suggestion that the accused are not in any way connected with the crime. Such an evidence of PW3, in our opinion, need not be discredited and it only supports the case of the prosecution.

19. Further, the medical evidence of P.Ws.10 and 11 is also corroborated by the evidence of P.Ws.1 to 3. Though there may be some inconsistencies between the evidence of ocular witnesses and the evidence of the medical witnesses, with respect to the number of injuries sustained by the deceased, those minor inconsistencies will not affect the case of the prosecution in any manner. It is quite natural that there may be some minor contradictions while describing the number of injuries inflicted on the deceased especially when the eye-witness will be in a traumatic condition while witnessing the occurrence. As per the medical evidence, there are 18 cut injuries inflicted on the deceased and there is no stab injury. However, it is true that PW1 and 2 have stated that the second appellant stabbed the deceased with the knife. The nature of injuries inflicted on the deceased by the appellants, as narrated by the prosecution witnesses 1 to 3, is inconsistent with the medical evidence. In such circumstances, the witnesses may also exaggerate in describing the manner in which the injuries were inflicted or the nature of injuries caused to the deceased, but it will not be a ground to disbelieve the version of the prosecution case. The fact remains that the appellants are the aggressors and they have caused injuries to the deceased with a lethal weapon. When that was proved, the inconsistency with respect to the stab injury sustained by the deceased

will not assume any significance.

20. It is yet another submission of the learned Senior Counsel appearing for the appellants/A1 and A2 that the recovery of weapons under Section 27 of the Indian Evidence Act, has not been proved by the prosecution. According to the learned Senior Counsel, P.Ws.6 and 7, Village Administrative Officer and Village Assistant, have turned hostile in the previous trial relating to A3 and A4 however, when they were confronted with the deposition recorded in the previous trial, by producing Exs.X1 and X2, they went to the extent of falsely deposing that they were not examined as prosecution witnesses at all in the previous trial. Therefore, according to the learned Senior Counsel, the evidence of P.Ws.6 and 7 in the present case is not reliable.

21. We are of the opinion that in the trial against the accused 3 and 4, the prosecution attempted to only prove the overt act of the accused 3 and 4 in instigating the accused 1 and 2 to commit the offence. In such circumstances, the issue relating to recovery of weapon from the accused 1 and 2 might not have cropped up for consideration in the trial against accused 3 and 4. In other words, in the trial against accused 3 and 4, the recovery of weapon or the deposition of PWs 6 and 7 might have been considered insignificant. Whether PW6 and 7 were examined in the previous trial or not, it will not help the appellants herein to advance their case in any manner. Be that as it may. Even if the evidence of P.Ws.6 and 7 did not support the recovery of weapon, still we find that P.W.12 investigating officer has clearly stated that he had recorded the confession statement of the accused in the presence of P.Ws.1 and 2 and other witnesses and pursuant to the same, he has recovered the knife and Aruval from a thorny bush. Such deposition of PW12, in our view, is sufficient to prove the recovery and it needs no corroboration in the facts and circumstance of this case.

22. The learned Senior counsel for the appellants would contend that the prosecution has not chosen to examine any independent witness when the occurrence had taken place in broad day light. We wish to observe that the deposition of the close relatives and eye-witnesses, at the first blush, cannot be discarded merely because they are the relatives of the deceased. Their evidence has to be considered with due care and caution. Further, in a case like this, independent witnesses may not come forward to depose out of fear of retaliation by the appellants. In fact, PW2, who is closely related to the deceased himself, refrained to go near the appellants to even attempt to rescue the deceased fearing that he will also be attacked. While so, in a case of this nature, when prosecution witnesses 1 to 3 have deposed against the appellants clearly, the prosecution need not examine any independent witness. In this context, we are fortified by the decision of the Division Bench of this Court in which one of us (R. Subbiah, J) was a member in the

Division Bench, in the case of S. Mareeswaran vs. State through Inspector of Police, Virudhunagar Police Station reported in 2018 (4) CTC 825. In that case, the appellant therein (A1) had stabbed a young student in the class room in the presence of about 20 students. On seeing the occurrence, the students ran helter-skelter. It was argued in that case that even though the prosecution has stated that 20 students were present at the time of occurrence, all of them were not examined and it is fatal to the case of the prosecution. By rejecting such contention, the Division Bench held as follows:-

"39. Thus, the prosecution has roped in several witnesses to prove the presence of the first accused as well as the second accused at the time of occurrence. Therefore, the submission of the learned counsel for the first accused/appellant that the prosecution has not examined the 20 students who were present in the class room at the time of occurrence is without any substance. The witnesses examined on behalf of the prosecution have given detailed account of the presence of the first accused in the school at the time of occurrence and at the time of his exit from the school by scaling the compound wall. Their evidence is natural, cogent and corroborative. Merely because there were several students present at the time of occurrence, the prosecution need not examine each and every one of the student present in the school. This is more so when the witnesses examined by the prosecution have given a clear and cogent narration of the incident that had taken place at 8.30 am in the morning. While so the prosecution cannot be expected to conduct a lengthy trial to examine all those who were present in the school at the time of occurrence. It is needless to state the prosecution, in order to prove the case projected against the accused, need not examine whoever present at the scene of occurrence as to whether they have witnessed the incident or otherwise, but the credibility of the witness is material to prove the case projected by them. If this principle is applied in this case, we are satisfied that the prosecution has successfully proved the case projected by them as against the accused....."

23. We also hasten to add that PW3 himself is an independent witness, a tea stall owner, who has also deposed clearly about the overt act on the part of the appellants. Therefore also, the argument of the learned Senior counsel for the appellants that no independent witness was examined by the prosecution cannot be accepted. In a case of this nature, the purity and quality of the deposition of the

prosecution witness is significant and not the quantity of the prosecution witnesses.

24. For all the above reasons, we find no infirmity in the impugned judgment of the trial Court. The Criminal Appeal is liable to be dismissed. Accordingly, the same is dismissed. The conviction and sentence imposed on the appellants/A1 and A2 are confirmed. Since the appellants/A1 and A2 are on bail, the trial Court is directed to secure their custody to undergo the remaining period of imprisonment.

Sd/-

Assistant Registrar (MD)

//True Copy//

Sub Assistant Registrar

cs/rsh

To

- 1.The Principal District and Sessions Judge, Tiruvarur.
- 2.The Chief Judicial Magistrate, Tiruvarur.
- 3.The Superintendent, Central Prison, Tiruchirappalli.
- 4.The District Collector, Tiruvarur.
- 5.The Director General of Police, Chennai - 5.
6. The Inspector of Police,
Koradachery Police Station,
Thiruvarur District.
7. The Public Prosecutor, High Court, Madras.

+1cc to M/s.Muthumani Dorasami, Advocate, S.R.No.9659.

Cr1.A.No.319 of 2018

GMK (CO)
VSI-2 (28.05.2020)
SP (16/07/2020)

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