



BAIL SLIP

The Petitioner/Accused viz Srinivasan, was directed to be released on bail as per order of this Court dated 08.10.2018 in Crl.M.P.No.6834 of 2018 in Crl.A.No.288 of 2018 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.07.2021

Pronounced on : 02.09.2021

C O R A M

THE HON'BLE MR.JUSTICE P.N.PRAKASH
AND
THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal No.288 of 2018

Srinivasan

... Appellant/ Sole Accused

-vs-

The State Rep. By
Inspector of Police,
H-6, R.K.Nagar Police Station,
Chennai.
(Crime No.304 of 2017)

... Respondent/Complainant

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, to set aside the conviction and sentence passed by the learned Principal Sessions Judge, Chennai dated 07.04.2018 in S.C.No.166 of 2017.

For Appellant : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.M.Babu Muthu Meeran
Additional Public Prosecutor

J U D G M E N T

R.PONGIAPPAN, J.

This appeal is directed against the conviction and sentence dated 07.04.2018, passed in S.C.No.166 of 2017, on the file of



the learned Principal Sessions Judge, Chennai.

2. Before the trial Court, the accused stood charged for the offence under Sections 302, 324, 427, 336 and 506 (ii) IPC. After full-fledged trial, the learned Principal Sessions Judge, Chennai, found the accused guilty for the offences under Sections 302 and 324 IPC and accordingly, he has been convicted and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- under Section 302 IPC. He has been further convicted under Section 324 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-. In respect of default clause for non-payment of fine amount, no order has been passed by the trial Court.

3. Now, challenging the said conviction and sentence, the accused is before this Court, with the present Criminal Appeal.

4. The relevant facts of the case, which gave rise to filing of this appeal are necessary to be recapitulated for the disposal of this appeal.

(i) PW1-Manikandan is the resident of Korukkupet, Chennai. He is a driver by profession. The deceased Janarthanan is his elder brother. PW2-Prema is the mother of the deceased and P.W.1 - Manikandan. PW3-Rathinasamy is the brother of PW2. PW4-Susheela and PW5-Selvi are also related to the deceased. The accused is the brother of P.W.2 and is the maternal uncle of the deceased and P.W.1

(ii) On 26.02.2017 around 03.30 p.m., in order to enquire about the loan availed by the accused from his aunt [bghpak;kh], PW1-Manikandan went to the house of PW3-Rathinasamy along with PW2-Prema, deceased-Janarthanan, PW4-Susheela and the accused. While such time, PW3-Rathinasamy, PW5-Selvi and PW9-Vinoth Kumar and those who were already there also told themselves that the accused did not repay the chit amount and the amount paid as advance. At that time, since everyone ignored him, the accused scolded his aunt and the same was questioned by the deceased. In the meanwhile, the accused went to kitchen room and brought the knife and by using the same, stabbed the deceased on his chest and in the ribs and as a result of which, the deceased fell down. After seeing the same, when PW1 attempted to catch-hold the accused, by using the same knife, he attacked PW1 on his left forearm, further, by using the broken glass bottle, he criminally intimidated the public. Finally, after the incident, the deceased was taken to the Hospital, wherein PW14-Dr.Veeralakshmi examined the deceased and found the following injuries.

“ Patient - Drowsy



L/E Multiple Small stab wound 0.8 x 0.5cm and in chest 0.5 x 0.5cm"

For the said injuries, she had given treatment and admitted the deceased as in-patient. In this regard, she issued an Accident Register copy under Ex.P8. Similarly, the same Doctor viz., PW14 examined PW1-Manikandan and found the following injuries

"Patient Conscious

L/E Stab wound in 1 x 0.2cm and Lt arm 0.5 x 0.5cm"

According to her, the injury sustained by PW1 is simple in nature. In this regard also, she issued an Accident Register Copy under Ex.P9. In the meanwhile, after taking treatment in Stanley Medical College Hospital, PW1 reported the occurrence to the Police Station and lodged the complaint under Ex.P1.

(iii) PW19-Veerakumar, the then Inspector of Police, G1 Vepery Police Station, on 26.02.2017, received the complaint from PW1 and registered a case in Cr.No.304 of 2017 under Sections 341, 294(b), 324, 307, 336, 427 and 506(ii) IPC. A copy of the printed FIR was marked as Ex.P18. After the registration of the case, he himself took up the same for investigation.

(iv) On the same day, at about 19.45 hours, PW19 visited the scene of occurrence and in the presence of PW12-Chandrabose and PW13-Athiappan, he prepared the observation mahazar under Ex.P19. He drew the rough sketch and the same was exhibited as Ex.P20. In the occurrence place, he recovered a pair of blood stained chappals and broken glass bottle under the cover of two seizure mahazars, viz., Ex.P21 and P22. He examined the witnesses and recorded their statements. In the meantime, on the same day at about 11.30 hours, in spite of giving necessary treatment, the injured Janarthanan died and with respect to the same, PW15-Dr.Chandrasekar issued the certificate under Ex.P10. Thereafter, on the same day, around 23.30 hours, PW19 received the death intimation of Janarthanan and thereafter, altered the Sections of law as 341, 294(b), 324, 302, 336, 427 and 506(ii) IPC, vide alteration report under Ex.P23.

(v) In continuation of investigation, on 27.02.2017 between 8.00am and 9.30 am, in presence of witnesses, he made enquiry and prepared inquest report under Ex.P24. He submitted an application to the Hospital authorities through one Naveen Kumar, for conducting autopsy over the dead body of Janarthanan.

(vi) On receipt of the said requisition, PW16-Dr.Priyadharshini, attached with Government Stanley Medical College Hospital, conducted autopsy and found the following injuries.

"1. Horizontal Stab wound 2 x 0.1cm x cavity deep



WEB COPY

on the middle of the chest, 10 cm below the suprasternal notch and 3 cm above the plane of right nipple; outer end of the stab wound was acute and inner end was obtuse; the direction of the stab wound was backwards and downwards; on further dissection: The stab would pierces along the right third intercostal space and ends in stab wound of the lower part of upper lobe of the right lung; right lung collapsed; right thoracic cavity contained 650ml of fluid blood.

2. Oblique stab wound 1 x 0.1 x 0.1cm on the left side of the abdomen; 16cm below left nipple; outer end of the stab wound was acute and inner end was obtuse.

3. Sutured incised wound 4 cm on the right fourth intercostal space along the midaxillary line; on removal of sutures; wound margins were regular and gaping - intercostal drainage wound - therapeutic wound."

She collected the Visceral particles and sent the same for chemical examination. After examination, in the report, it was stated that there was no poisonous detected in the viscera. After seeing the same, PW16, issued a postmortem certificate under Ex.P12 stating that the deceased would appear to have died of shock and haemorrhage due to stab injury found in the chest.

(vii) In continuation of the investigation, on 27.02.2017, near to Bharathi Nagar Murugan Koil, PW19 arrested the accused and in the presence of PW17-Anbazhagan and one Ravi Chandran, he recorded the confession statement from the accused. In the confession statement, the accused had admitted the commission of offence and was willing to produce the knife, which was used by him at the time of occurrence. Pursuant to the confession statement, the accused brought the investigation team to Bharathinagar 2nd Street and identified the knife (M01). He has also produced the blood stained shirt, which was worn at the time of occurrence. The said material objects were recovered by PW19 under the cover of Mahazar Ex.P26. The admitted portion of the disclosure statement was marked as Ex.P25.

(viii) After making recovery as above, PW19 forwarded the material objects, which were collected during the time of investigation to the Court and submitted an application for sending the same for chemical examination. Upon the proceedings issued by the Court, PW18-M.Sreenivasan, the then Assistant Director, Forensic Science Department, Chennai, received the following items, for chemical examination.

1. Chappals
2. Trousers



3. Jatti
4. 'T' Shirt
5. Knife
6. Shirt

WEB COPY

(ix) In the chemical examination, PW18 detected the blood in all the above items. Consequentially, he referred those material objects to Serology Department for finding out the nature and group. On examination, it was found that the blood stain found in Item No.2 Trouser, Item No.4 T.Shirt and Item No.6 Shirt are all human blood, however, the result of the grouping test was inconclusive. Biological Report and Serology Report, and the result of the grouping test are all marked as Ex.P15 to Ex.P17 respectively. After receiving the reports, PW19 examined the scientific experts, Doctors and recorded their statements. In fine, he came to the positive conclusion that the accused has committed the offences under Section 341, 294 (b) 324, 302, 336, 427 and 502 (ii) IPC and filed the final report accordingly.

5. Based on the above materials, the trial Court framed charges under Sections 302, 324, 427, 336 and 506 (ii) IPC. The accused denied the same as false. Hence, in order to prove their case, on the side of prosecution, 19 witnesses have been examined as PW1 to PW19 and 26 documents were marked as Ex.P1 to Ex.P26, besides material object (MO1).

(i) Out of the said witnesses, PW1-Manikandan is the brother of the deceased Janarthanan. He speaks about the occurrence as during the relevant point of time, as a result of wordy altercation, the accused took the knife from the kitchen room and attacked the deceased on his chest and rib. He has further stated that during the time of occurrence, PW2 to PW5 and PW9 were present in the occurrence place.

(ii) PW2-Prema is the mother of the deceased. She claims that while at the time of occurrence, as a result of wordy altercation, the accused took the knife from the house of the deceased and attacked the deceased on his chest and in the rib. She has further stated that in the occurrence, the accused by using the same knife assaulted PW1 also on his hand. According to her, after the occurrence, the deceased was admitted in the hospital, wherein he was declared as dead.

(iii) PW3-Rathinasamy is the brother of PW2. According to the case of the prosecution, he is the eye witness to the occurrence. He speaks about the occurrence as on 26.02.2017 at about 3.30pm, while he was in his house, PW4-Susheela came there and questioned him as to whether he asked Srinivasan, in respect of the loan availed by him from PW2-Prema. In the meantime, the



accused Srinivasan came there and said that he is ready to pay Rs.5,000/- per month. When at the time PW1-Manikandan questioned the accused about the loan availed from his mother, the deceased Janarthanan requested PW1 to come out from PW3's house. Later, the police officials examined him.

(iv) PW4-Susheela is the sister of the accused. She speaks about the occurrence as in respect of the loan availed by the deceased, both the accused and the deceased, developed wordy quarrel and at that time, on seeing the same, she fell unconscious. Thereafter, she came to know that the deceased was admitted in the hospital

(v) PW5-Selvi, PW6-Nagarajan and PW7-Seenivasan are the residents of the same locality. According to the prosecution, they are all witnesses to the alleged occurrence, but during the time of giving evidence, they did not support the case of the prosecution. Hence, all of them were treated as hostile witnesses. The learned Public Prosecutor after getting leave from the trial Court, cross-examined those witnesses and during such time also, they have not supported the case of the prosecution.

(vi) PW8-Pandian is also related to the deceased. He claims that after the occurrence, the deceased gave statement in the hospital as the accused herein assaulted him.

(vii) PW9-Vinoth kumar, who is the witness to the occurrence, has also not stated the occurrence before the trial Court. Hence, he was treated as an hostile witness.

(viii) PW10-Mahesh is a relative of the deceased. He has stated before the trial Court as after hearing the occurrence, when he and one Raja attempted to secure the deceased, the accused ran away from the occurrence place. He has further stated that in the hospital, the deceased has stated before him as the accused herein assaulted him.

(ix) PW11-Hari, who is the resident of the same locality, claims that when at the time, both the deceased and the accused developed wordy quarrel, he interfered and attempted to compromise the same.

(x) PW12- Chandrabose and PW13-Athiappan are the witnesses to the preparation of the observation mahazar, rough sketch and seizure mahazar in the occurrence place. While at the time of examining them as witness, they have not stated about the preparation of those documents and thereby, their signatures found in those documents alone were marked as Ex.P4 to Ex.P7.



(xi) PW14-Dr.Veeralakshmi speaks about the injuries sustained by the deceased and PW1. PW15-Chandrasekar, who is a Doctor attached with Government Stanley Medical College Hospital, claims that the deceased Janarthanan has died at 11.30am on 26.02.2017. PW16-Priyadharshini, who is also a Doctor, speaks about the process of autopsy conducted over the dead body of the deceased Janarthanan.

(xii) PW17-Anbazhagan is the witness attested in the confession statement given by the accused. Before the trial Court, he has also not supported the case of the prosecution and thereby, he was treated as a hostile witness.

(xiii) PW18-M.Srinivasan, who is an expert working in Forensic Science Department, speaks about the examination of material objects, which were collected during the time of investigation.

(xiv) PW19-T.Veerakumar, who is the police officer, speaks about the receipt of complaint, details of investigation, arrest of accused and about the filing of the final report.

6. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. On his side, the accused examined three witnesses as DW1 to DW3.

(i) DW1-Balamurugan has stated in his evidence as during the time of occurrence, three women and a man pushed the accused from the house of the deceased.

(ii) Similarly, DW2-Devaraj has also stated in his evidence as during the relevant point of time, three women and a man pushed the accused from the house of the deceased.

(iii) DW3-Vinoth Kumar has claimed that during such time, when he was in Bharathi Nagar II Cross Street, the accused was taken in a autorickshaw and on enquiry, he came to know that there was a family quarrel.

7. Having considered all the above, the trial Court convicted and sentenced the accused as stated in paragraph No.2 of this judgment. Challenging the same, the accused is before this Court with this Appeal.

8. We heard Mr.R.C.Paul Kanagaraj, learned counsel appearing for the appellant and Mr.Babu Muthu Meeran, learned Additional Public Prosecutor, appearing for the State. We have also perused the records carefully.



9. The learned counsel appearing for the appellant would contend that before the trial Court, in order to prove their case, on the side of prosecution, six witnesses [P.W.1 to P.W.6] have been examined as occurrence witnesses, in which, some of them have not supported the case of the prosecution. The remaining witnesses, who supported the case of prosecution, gave evidence with lot of contradictions and therefore, it cannot be held that the prosecution has proved their case beyond reasonable doubt.

10. Per contra, the learned Additional Public Prosecutor appearing for the State would contend that minor contradictions found in the evidence given by the occurrence witnesses cannot be looked into very seriously. He would further contend that since the occurrence witnesses had given evidence after a long gap from the date of occurrence, it is natural on their part to give evidence with minor contradictions and therefore, interference of this Court in the findings arrived at by the trial Court is not necessary.

11. On considering the said submissions with the relevant records, it is true, before the trial Court, in order to prove the occurrence, six witnesses [P.W.1 to P.W.6] have been examined on the side of the prosecution as occurrence witnesses. In otherwise, it is admitted by either side that they are all related to each other. In the said situation, it is not in dispute that the alleged occurrence had happened in a thickly populated area, particularly, during the time when the deceased and PW1 demanded the accused to repay the chit and advance amount. In the said situation, with respect to the occurrence, PW1 had given evidence in support of the complaint given by him before the police officer. Accordingly, the evidence given by P.W.1 is clear and narrow that during the relevant point of time, the accused stabbed the deceased. Now, on going through the entire cross examination done by the defence counsel, for assailing the validity of the evidence given by PW1, in respect of the occurrence, nothing is found available. Further, after narrating the occurrence, PW1 had identified the weapon, which is alleged to be used for the commission of offence. Therefore, we are of the firm opinion that the evidence given by PW1 in respect of the alleged occurrence, is fully in support of the case of the prosecution.

12. As far as the remaining witnesses are concerned, the mother of the deceased has been examined as PW2, in her chief-examination, she gave evidence fully in support of the prosecution, but in her cross-examination, she has given evidence as only on hearing the noise, she went to the occurrence place, further, she has specifically stated that one Palammal had given information in respect of the occurrence.



Therefore, in view of the above, since PW2 visited the occurrence place only after getting information from some other person, it cannot be held that she saw the occurrence.

13. In the same way, PW3 and PW4 did not say anything about the attack made by the accused. More than that, PW5-Selvi and PW6-Gurusamy, being the relatives of the accused have also not stated anything in support of the prosecution and thereby, they were treated as hostile witnesses.

14. Therefore, in the said circumstance, the testimony of P.W.1 alone found available to determine the issue raised in the appeal. In this regard, the specific contention raised by the appellant's counsel is that PW1, being the brother of the deceased, gave false evidence in support of the prosecution.

15. Now, on considering the said submissions with the relevant records, as already observed, the details available in the rough sketch prepared by the investigation officer, establish the fact that the alleged occurrence had happened in a thickly populated area, particularly, near to the house of PW3. On the other hand, it is not in dispute that before the occurrence, the members of two sides had been arguing in respect of the money received by the accused. In this connection, the evidence given by PW1 is quite clear that before the occurrence, he and others present there, demanded the accused to repay the loan and other amounts, which had been received by the accused. In otherwise, it is true that the evidence given by P.W.1 in respect of the occurrence is not corroborated through the other witnesses.

16. However, it is the settled law only because of the reason that the witness is the relative of the victim, his evidence cannot be discarded for flimsy reasons. As a general rule, a Court can and may act on the testimony of a single witness though uncorroborated. Unless corroboration is insisted upon by the statute, the Courts should not insist on corroboration except in cases where the nature of testimony of the single witness itself requires as a rule of prudence. Accordingly, on a whole reading of the evidence given by P.W.1, it is clear that the evidence given by him is wholly reliable.

17. Here, it is a case that though the evidence given by PW1 is not corroborated through the occurrence witnesses, the evidence given by medical officers is fully in support of the evidence given by P.W.1. In this regard, before the trial court, the Doctor, who initially treated the deceased, gave evidence as when at the time of admitting the deceased, the deceased reported the occurrence as during the time of occurrence one known person assaulted him by using the knife. Further, PW16,



who conducted postmortem, had given evidence as there is an antemortem incised wound found in the chest, she had given opinion that the deceased would appear to have died of shock and haemorrhage due to stab injury found in the chest. Accordingly, it is quite clear that the evidence given by PW1, in respect of the occurrence, is corroborated through the evidence of Doctor, who treated the deceased as well as the Doctor, who issued the opinion in respect of the cause of death.

18.Yet another thing, which has necessitated, to be decided in this case is that the material objects, which have been collected during the time of investigation, i.e., the chappals, trousers, T-Shirt and Jatti are also having the human blood and the same is in support of the prosecution.

19.The learned counsel appearing for the appellant would contend that at the time of giving evidence by the occurrence witnesses, except P.W.1, the inmates i.e., P.W.2 to P.W.6, who are all found available in the house, in which, the occurrence had happened, have not stated about the picking of knife by the accused from the kitchen and therefore, the evidence given by PW1 in respect of the occurrence cannot be taken into account for accepting the case of prosecution.

20.Now on considering the said submission with the relevant records, it is true that in respect of possession of weapon, PW1 alone has stated in his chief-examination as during the time of wordy altercation, the accused went to the kitchen and after taking the Knife (M01), came there and committed the offence. The said evidence is cogent and inspires the confidence of this Court. In otherwise, it cannot be said that merely because of the reason that the inmates of the occurrence house have not stated about the possession of the knife by the accused, that alone is not sufficient to disbelieve the evidence given by PW1.

21.Yet another submission made by appellant's counsel is that at the time of occurrence, PW1 to PW6, who are relatives to each other, are present in the occurrence place. But, while at the time, the accused attacked the deceased, none of them interfered and prevented to avoid the attack made by the accused and hence, the said situation creates a doubt over the entire case of the prosecution.

22.Now, on considering the said submission with the other aspects found in the prosecution case, we are of the opinion that said submission is not having any valid force. As already stated, only due to the reason that PW1 attempted to prevent the attack made by the accused, he sustained injury. More than that, every person who witnesses a murder reacts in his own way. Some are stunned, become speechless and stand rooted to the



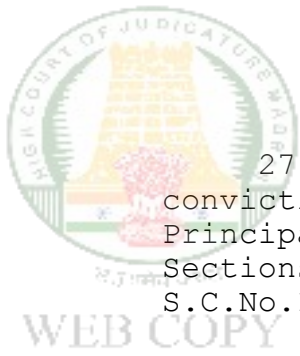
spot. Some become hysteric and start wailing. Some start shouting for help. Others run away to keep themselves as far removed from the spot as possible. Yet others rush to the rescue of the victim, even going to the extent of counter-attacking the assailants. Every one reacts in his own special way.

23. In this case, overruling the said circumstances, PW1 made attempt to avoid the occurrence. Therefore, we are of the opinion that only due to the reason that other inmates have not attempted to prevent the attack made by the accused, we cannot come to the conclusion that the entire occurrence is a false one.

24. Finally, the learned counsel appearing for the appellant would contend that the alleged occurrence had happened due to the result of wordy altercation, which was arose due to money transaction and therefore, the said situation picturised the occurrence that the accused herein is not having any motive to kill the deceased. He would further contend that the entire case of the prosecution reveals the fact that in a quarrel between the accused and the deceased, the latter was attacked by a knife and thus, the injuries to the deceased were caused by the accused without premeditation and allegation of the acting in a cruel or unusual manner, is without evidence.

25. On deciding the said submissions with the relevant records, it is true that during the time of occurrence, the appellant/accused herein without any intention, caused injury to the deceased with the knowledge that it was likely to cause death, even though each injury may not be individually sufficient to cause death. Considering the fact that the said injury was caused by the accused without any intention, we are of the opinion that it is necessary to record conviction under Section 304 (II) of IPC.

26. Therefore, in the light of the above observations, we are of the opinion that during the relevant point of time, without premeditation, the accused took a knife, stabbed the deceased and caused injuries with the knowledge that they are likely to cause death, but without an intention to cause death and therefore, the accused is found guilty for the offence punishable under Section 304(II) of IPC. Further, in respect of the offence under Section 324 IPC, particularly, for causing simple hurt to PW1, in the cross-examination of PW1, nothing was suggested on the side of the accused that the accused has not attacked PW1. Therefore, in this connection also, we are of the opinion that during the time of occurrence, the accused voluntarily attacked PW1 by using dangerous weapon and caused simple injury. Therefore, he is also guilty of offence under Section 324 of IPC.



27. In fine, the Criminal Appeal is partly allowed. The conviction and sentence imposed upon the accused by the learned Principal Sessions Judge, Chennai, for the offences under Sections 302 and 324 IPC, vide judgment dated 07.04.2018, in S.C.No.166 of 2017, is modified as hereunder:

(i) The conviction and sentence imposed by the trial Court for the offence under Section 302 IPC is set aside.

(ii) The accused is found guilty under Section 304(II) IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for six months.

(iii) He is further convicted for the offence under Section 324 of IPC and sentenced to undergo simple imprisonment for one year and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one month.

(iv) The sentences are directed to run concurrently.

(v) Further, the sentence already undergone by the accused shall be given set off under Section 428 Cr.P.C.

(vi) The fine amount, if any, already paid by the accused has to be adjusted, for the sentence now imposed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Chennai.
2. The XVI Metropolitan Magistrate,
George Town, Chennai.



3. The Inspector of Police,
H-6, KK Nagar Police Station,
Chennai.

4. The Superintendent,
Central Prison,
Puzhal.

5. The Public Prosecutor,
High Court, Madras.

Pre-delivery judgment in
Criminal Appeal No.288 of 2018

RR(CO)
SU(20/09/2021)