



BAIL SLIP

1) Saravanakumar alias Kumar, S/o Shokudevar, Accused No.1,
2) Dhinesh Babu, S/o, Vellaisamy, are directed to be released on
bail vide order of this Court in dated 01/08/2018 in CRL MP(MD)
No.4496 of 2018 in Crl.A(MD) No.278 of 2018.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2021

CORAM

THE HONOURABLE MR. JUSTICE V. BHARATHIDASAN

AND

THE HONOURABLE MRS. JUSTICE J. NISHA BANU

CRL.A (MD) No.278 of 2018

1. Saravanakumar alias Kumar

2. Dhinesh Babu

.. Appellants/Accused Nos.1 and 2

-vs-

State represented by,
The Inspector of Police,
Thirupalaikudi Police Station,
Thirupalaikudi,
Ramnad District.

.. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed in S.C.No.126 of 2015 on the file of the Additional District and Sessions Judge, Ramnad, dated 01.11.2017 and allow the criminal appeal.

For Appellants : Mr.R.Sundar

For Respondent : Mr.A.Thiruvadikumar,
Standing Counsel for State

JUDGMENT

(Judgment of the Court was delivered by V.BHARATHIDASAN, J.)

The appellants, are A-1 and A-2, in S.C.No.126 of 2015, on the file of the learned Additional District and Sessions Judge, Ramanathapuram. They stood charged and convicted for the offence under Section 302 r/w 34 I.P.C and sentenced to undergo Life Imprisonment and to pay a fine of Rs.5,000/- each, in default to undergo one year simple imprisonment. Challenging the aforesaid conviction and sentence, the appellants are before this Court with this Criminal Appeal.



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

The deceased by name Ramanathan, is the son of P.W.1. The deceased and the accused belong to same village. On 11.06.2014, at about 3.00 p.m., there was a quarrel between A-1 and the deceased, in which, the deceased said to have taken the two-wheeler belongs to A-1. Subsequently, there was a mediation by P.W.1 and the vehicle was handed over to A-1. With that motive, in the intervening night of 11.06.2014 and 12.06.2014 at about 2.15 a.m., while the deceased was sleeping in the terrace of his house, both A-1 and A-2 attacked him with a Bill Hook. When the deceased raised alarm, P.W.1-mother of the deceased and P.W.2, related to the deceased, who were sleeping downstairs, came out and saw both A-1 and A-2 ran away with Bill Hook. Immediately, they called P.Ws.9 and 10, who are the neighbours. Since P.W.1 is a old lady and could not climb to upstairs, P.W.2 along with P.Ws.9 and 10, went to the upstairs and saw the deceased found dead with serious injuries, then, P.W.1 filed a complaint before the respondent police at about 7.00 a.m.

3. P.W.23, the Sub-Inspector of Police, received the complaint and registered the F.I.R(Ex.P13) in Crime No.52 of 2014, for the offence under Section 302 I.P.C., and sent the F.I.R to the Judicial Magistrate Court, and the copy to the Inspector of Police, for investigation.

4. P.W.24, the Inspector of Police of the respondent police station, on receipt of the First Information Report, commenced the investigation and visited the place of occurrence at about 7.30 a.m., prepared Observation Mahazar (Ex.P.16) and Rough Sketch (Ex.P.14) and collected bloodstained bed sheet (M.O.1), bloodstained cement slab(M.O.4), Ordinary cement slab (M.O.5) in the presence of witnesses. On the same day, between 8.00 a.m., and 10.00 a.m., he conducted inquest on the dead body in the presence of Panchayatars and witnesses and prepared Inquest Report (Ex.P.15) then, he sent the dead body to Government Hospital at Ramanathapuram,through P.W.20.P.W.19-Dr.Subalakshmi, conducted autopsy on the dead body and prepared postmortem report (Ex.P.12) and she was of the opinion that the deceased appeared to have died due to the injuries to the vital parts of the body. Subsequently, A-1 and A-2, surrendered before the Judicial Magistrate Court, and P.W.24 took police custody, and A-1 voluntarily came forward to give confession admitting his guilt. He recorded the confession of the accused in the presence of witnesses and based on his confession, he recovered a Bill Hook (M.O.2) and sent the same to the Court under Form - 95 (Ex.P.21), and handed over the investigation to P.W.25.

5. P.W.25, the Investigating Officer, continued the investigation and recorded the statements of other witnesses and



after completing the investigation, he filed the final report before the Court.

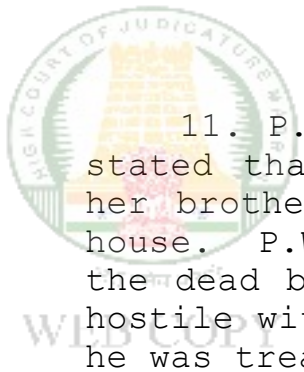
6. Considering the above materials, the trial Court framed charges as mentioned above and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 25 witnesses, marked 21 documents and also produced 9 material objects.

7. Out of the witnesses examined, P.W.1 is the mother of the deceased. According to her, on 11.06.2014, at about 3.00 p.m., while the deceased was in his house, A-1, came there and there was a wordy quarrel between them, and, the deceased had taken A1's two-wheeler. Thereafter, P.W.3, mediated between them and got the two-wheeler from the deceased and handed over to A-1. With that motive, while the deceased was sleeping in the terrace of his house, at the intervening night of 11.06.2014 and 12.06.2014 at about 2.15 a.m., both A-1 and A-2, attacked the deceased with a Bill Hook. When the deceased raised alarm, she along with P.W.2, who was sleeping along with her in the downstairs, came out of the house and saw A-1 and A-2 came down from the upstairs and ran away. She immediately called her neighbours, and P.W.2 along with P.Ws.9 and 10, who are her neighbours, went to the upstairs and found the deceased dead with serious injuries. On the next day, at about 7.00 a.m. she has given a complaint before the respondent police. P.W.2, is the relative of the deceased and an eyewitness to the occurrence, she said to have stayed along with P.W.1 on the date of occurrence. However, she turned hostile.

8. P.W.3 is the person, who had mediated between the accused and the deceased. According to him, on the date of occurrence, at about 7.00 a.m., he saw the deceased found dead, and turned hostile. P.W.4 neighbour of P.W.1, according to him, he saw the deceased found dead at about 6.45 - 7.00 a.m. He was treated as hostile witness. P.W.5 is the neighbour of P.W.1, he had turned hostile.

9. P.W.6, is the neighbour of P.W.1. According to him, on 11.06.2014 at about 11.00 p.m., he saw both A-1 and A-2 speaking together, and at about 2.00 a.m., after hearing the noise, he went to the P.W.1's house where he was informed that A-1 and A-2 attacked the deceased and caused his death.

10. P.W.7, is the sister of the deceased, who was residing at Keelakottai. According to her, on 12.06.2014, at about 6.00 a.m., P.W.1/her mother called her over phone and informed that her brother was murdered. Immediately, she rushed there and she was told that A-1 and A-2 attacked the deceased and caused his death.



11. P.W.8 is the another sister of the deceased, she has also stated that at about 7.00 a.m., P.W.1/her mother, informed that her brother was murdered, thereafter, she went to the deceased's house. P.W.9 is the neighbour of P.W.1, he has stated that he saw the dead body of the deceased at about 6.00 a.m., and treated as hostile witness. P.W.10, saw the dead body at about 6.00 a.m., and he was treated as hostile.

12. P.W.11, is the brother-in-law of the deceased and the husband of P.W.8. According to him, on 12.06.2014, at about 3.00 a.m., his mother-in-law called him over phone and informed him that his brother-in-law was murdered. Thereafter, he went to the scene of occurrence at 4.00 a.m., along with P.W.8. P.W.12 is the attessor to Ex.P2 and Ex.P3 and he had turned hostile.

13. P.W.13, is the witness to Ex.P4 and Ex.P5 and he had also turned hostile. P.W.14 is the Village Administrative Officer, he is the witness to the confession of A-1. According to him, he has signed the statement in the police station, and he had turned hostile. P.W.15 is the witness to the Observation Mahazar and recovery of material objects and he had also turned hostile.

14. P.W.16 is the Bench Clerk working in the Judicial Magistrate Court No.I, Ramanathapuram, he received the material objects. P.W.17 is a Scientist working in the Forensic Laboratory, Ramanathapuram, he examined the material objects and given a report-Ex.P10. P.W.18 is the Head Constable, who handed over the express F.I.R to the Judicial Magistrate Court.

15. P.W.19 is the Doctor working in the Government Hospital, Ramanathapuram, conducted autopsy on the dead body and prepared postmortem certificate (Ex.P.12), which reads as follows:

"External Injuries

(1)A linear lacerated wound of size 7x1x0.5 present over Hypochondrium.

(2)Skin peeled off over left wrist.

(3)Contusion of size 7x0.5x3cm.

(4)Constriction mark over the neck.

(5)Bleeding from nose and both ears.

(6)A lacerated wound of size 5x3x2cm present over left mastoid region extends to left ear

(7)A lacerated wound of size 11x4x4cm present over frontal, temporal and occipital region with



fracture of left parietal, temporal and occipital bone and left frontal bones.

(8) Sub galeal Hemorrhage size 10x5x2cm present over the above region.

Internal Examination

Thorax: lungs, ribs, pleura is normal

Abdomen: Stomach contains undigested food particles. Liver spleen, Intestine is normal.

Neck: Fracture of Hyoid bone and crushed blood clot of size 10x7cm present over front of neck.

Skull:

1. Fracture of left frontal, parietal, temporal and occipital bones.

2. Intra cerebral hemorrhage also present beneath the above said area.

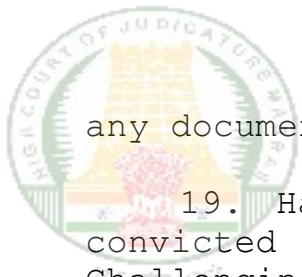
The deceased appear to have died of Assault with injury to vital organs about 14-16 hours prior to autopsy."

He was of the opinion that the deceased would have died due to the injuries to the vital organs.

16. P.W.20 is the Head Constable, who sent a postmortem request to the Doctor and handed over the body of the deceased to the Government Hospital for conducting autopsy, after postmortem, handed over the dead body to his relatives and handed over the dress of the deceased to the Investigating Officer.

17. P.W.21 is the Head Constable, sent the material objects to Forensic Laboratory for examination. P.W.22 is the Constable, who recorded the statement of witnesses in his laptop. P.W.23 is the Sub-Inspector of Police, Thiruppalaikudi Police Station, registered the F.I.R. P.W.24 is the Investigating Officer, who has conducted the investigation and recorded the statement of witnesses and recovered the material objects and handed over the investigation to P.W.25, who, on completion of investigation, filed the final report.

18. The above incriminating materials were put to the accused under Section 313 Cr.P.C.. The accused denied the same as false. <https://hcservices.hcs.gov.in/cse> they have not examined any witnesses and not marked



any documents.

19. Having considered the above materials, the trial Court convicted and sentenced the appellants as stated above. Challenging the aforesaid conviction and sentence, the appellants are before this Court with this Criminal Appeal.

20. Mr.R.Sundar, learned counsel appearing for the appellants, would submit that, all the independent witnesses had turned hostile, only witness namely P.W.1, who is the mother of the deceased, an interested witness, said to be the eyewitness to the occurrence, and believing her testimony, the trial Court convicted the accused. Even according to P.W.1, she only said to have seen the accused coming from the terrace with a Bill Hook, her evidence is not supported by any other independent witnesses. He would further submit that the motive attributed by the prosecution is also very trivial. P.W.2, who is the relative of the deceased and said to have stayed along with P.W.1, initially saw the dead body, had turned hostile. That apart, P.Ws.9 and 10, also said to have seen the body of the deceased immediately after the occurrence, had also turned hostile. Likewise, P.Ws.7 and 8, the two sisters of the deceased, who were residing somewhere else, also stated that they got information only at about 6.00 a.m. Therefore, considering those testimonies and the fact that the complaint has been given at 7.00 a.m., it is clear that all the witnesses, including P.W.1, saw the deceased only in the early morning at 6.00 a.m., and P.W.1 could not have seen the accused at the time of occurrence. That apart, the official witnesses for recovery of material objects had also turned hostile. Absolutely, there is no motive against A-2 and he has been deliberately dragged into the crime. Without considering those circumstances, the trial Court erroneously convicted the accused.

21. Opposing the same, Mr.A.Thiruvadimumar, learned Additional Public Prosecutor would submit that, P.W.1, who is the mother of the deceased is an eyewitness to the occurrence. The occurrence took place in the house of P.W.1 and she has categorically stated that on the date of occurrence, the deceased was sleeping in the upstairs and after hearing the noise, she came out of the house and saw the accused came down from the upstairs and ran away. P.W.1 is an old lady, she called the neighbours and other relatives, thereafter, she has given the complaint at about 7.00 a.m., and the delay in giving the complaint has also been properly explained by the prosecution. That apart, P.W.6 is an important independent witness. He saw both A-1 and A-2 speaking together at about 11.00 p.m., prior to the occurrence. He also went to the scene of occurrence immediately after the occurrence and from his evidence, it could be seen that both the accused were together before the occurrence. Since A-2 is the friend of A-1, he



accompanying A-1, attacked the deceased and caused his death. Hence, it cannot be stated that he has been falsely implicated in this case. The trial Court after considering the entire materials, rightly convicted the accused and there is no reason to interfere with the well considered judgment of the trial Court.

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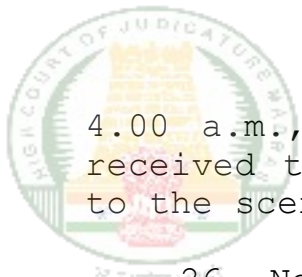
22. We have considered the rival submissions and also perused the records carefully.

23. The one and only evidence available to support the case of the prosecution is P.W.1, who is the mother of the deceased. The other witnesses have turned hostile including P.W.2, who also said to be an eyewitness to the occurrence. According to the prosecution, there was a quarrel between the deceased and A-1 at about 3.00 p.m., on the previous day and P.W.3 mediated between them, some other witnesses also spoke about the quarrel, though they were treated as hostile. To that extent, the prosecution has proved that on the previous day, there was a quarrel between the deceased and A-1, and that was the motive attributed against A-1. So far as A-2 is concerned, no motive was attributed against him, and the only reason for implicating him is that he is the friend of A-1 and accompanied him.

24. According to P.W.1, the occurrence had taken place at about 2.15 a.m., in the intervening night of 11.06.2014 and 12.06.20214. According to her, when she heard the alarm of the deceased, immediately, she called P.W.9, P.W.10, one Balakrishnan, and Boominathan, her neighbours and all of them with P.W.2, went to the upstairs where the deceased was found dead with serious injuries. However, all the three witnesses have turned hostile. That apart, according to P.W.1, she immediately informed her daughters, P.W.7 and P.W.8 residing somewhere else. However, P.Ws.7 and 8, have stated that they were informed by P.W.1 at about 6.00 a.m., on 12.06.2014, immediately, they rushed to P.W.1's house. Even though P.Ws.9 and 10, have turned hostile, they have clearly stated that they saw the dead body about 6.00 a.m., in the morning. To that extent, we can consider their evidence that, they saw the dead body only at 6.00 a.m. The other witnesses namely P.Ws.3 and 4, also stated that they have seen the dead body at about 7.00 a.m., from their testimony, it could be seen that they came to know about the occurrence only between 6.00 a.m. and 7.00 a.m., in the morning.

25. That apart, the complaint has been filed only at about 7.00 a.m. Considering all those circumstance, it raises a serious doubt whether P.W.1 could have seen the accused at 2.00 a.m., Even though P.W.11, who is the husband of P.W.8-Annakili, stated that he received a phone call from P.W.1, at about 3.00 a.m., and

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4.00 a.m., it was contradicted by P.W.8, according to her, she received the phone call at about 6.00 a.m., thereafter, she went to the scene of occurrence.

26. Next, the last seen witness namely, P.W.6. According to him, he only saw both A-1 and A-2 speaking together at about 11.00 p.m., prior to the occurrence, apart from that, there is no substance in his evidence, he has not spoken anything about the conspiracy between A-1 and A-2. Merely because A-1 and A-2 were together before the occurrence, it cannot be presumed that they have hatched a conspiracy and attacked the deceased. Apart from that, even though the occurrence said to have taken place at about 2.00 a.m., the complaint was registered only at about 7.00 a.m. Further, P.W.1 in her cross examination has stated that she did not know, who has written the complaint and she is also not aware of the contents of the F.I.R, she only put her thumb impression in the complaint.

27. Considering all those circumstances, we are of the considered view that, it is highly unsafe to convict the accused based on the singular testimony of P.W.1, who is an interested witness, and the prosecution has not proved the guilt of the accused beyond any reasonable doubt, therefore, the accused are entitled for acquittal, the conviction and sentence imposed by the trial Court is liable to be set aside.

28. In the result, Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused, by the Additional District and Sessions Judge, Ramnad, in S.C.No.126 of 2015 by the judgment dated 01.11.2017, are hereby set aside. The appellants/accused are acquitted of the charges levelled against them. Fine amount, if any, paid by the appellants/accused shall be refunded to them. Bail bonds executed by them also shall stand cancelled.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

Pm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

<https://hcses.hcses.org.in/>



To

1.The Additional District and Sessions Judge,
Ramanathapuram.

2.The Judicial Magistrate No.1,
Ramanathapuram.

3.Do through, The Chief Judicial Magistrate,
Ramanathapuram District.

4.The Superintendent,
Central Prison,
Madurai.

5.The Inspector of Police,
Thirupalaikudi Police Station,
Thirupalaikudi,
Ramnad District.

6.The District Collector,
Ramanathapuram.

7.The Director General of Police,
Chennai 600 004.

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

Copy to

The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

Criminal Appeal No.(MD) No.278 of 2018
13.09.2021

RK/PM (08/11/2021) 9P 11C