

Bail Slip

The Appeals in Crl.A.NO.630 of 2011, Accused 1 and 3 namely Madhan Kumar, @ Madhan, Karuppusamy in S.C.NO.199/2008 on the file of the Additional District and Sessions Judge (Fast Track Court No.I, Erode) were released on bail as per order of this court dt. 3.02.2012 (name Madhan Kumar @ Madhan) and dt. 6.2.2013 (name Karuppusamy) in MP.1/12 & 1/13 in Crl.A.No.630/11.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2015

CORAM

THE HONOURABLE DR.JUSTICE S.TAMILVANAN
AND

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Crl.A. No.630 of 2011

1. Madhankumar @ Madhan

2. Karuppusamy ...Appellants/Accused 1&3

-vs-

State by Inspector of Police,
Thingalur Police Station,
Perundurai Taluk,
Erode District.
(Crime No.48/2008

... Respondent/Complainant

Appeal preferred under Section 374(2) of Cr.P.C. against the conviction and sentence imposed in S.C.No.199 of 2008 dated 20.09.2011 on the file of the Additional District and Sessions Judge (Fast Track Court No.I), Erode.

For appellants : Mr.A.K.Kumaraswamy

For Respondent : Mr.V.M.R.Rajendran, APP

JUDGMENT

(Judgment of the Court was delivered by S.TAMILVANAN,J.)

The appeal is directed against the conviction and sentence imposed in Sessions Case, S.C. No.199 of 2008 on the file of the learned Additional District and Sessions Judge (Fast Track Court No.I), Erode.

2. Appellants, who are arrayed as A1 and A3 out of three accused, stand convicted for the offence under Section 147 IPC and sentenced to undergo two years rigorous imprisonment; convicted u/s 302 r/w 34 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.500/- and in default to undergo further period of six months rigorous imprisonment; convicted u/s. 201 IPC and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.500/- and in default to undergo further 6 months rigorous imprisonment; and convicted u/s. 506 (ii) IPC and sentenced to undergo 3 years rigorous imprisonment. Aggrieved by the said conviction and sentence, the appellants have preferred this criminal appeal.

3. The case of the prosecution, in brief, is as follows :

(i) Deceased Suresh @ Angappan was the resident of Moongilpalayam village, Sangu Nagar. He worked as lorry cleaner. The accused and Rajeshkumar @ Gokulraj and Muthusamy, who are juvenile accused were friends. On 25.12.2007, as it was a Christmas day, the deceased Surech, father of A3/MGR @ Palanisamy and P.W.8 / Mariadass were drinking brandy. While so, the deceased Suresh had taken the cell phone of the father of A3, due to which there was a quarrel arose between them. Thereafter, though PW8 gave Rs.1000/- to father of A3, for taking the cell phone, A3 got angry with the deceased Suresh.

(ii) On 19.02.2008 at about 10.00 p.m., after taking dinner at the house of P.W.2 / sister of the deceased, the deceased Suresh went for a dancing programme, held at the Magaliyamman Temple, Periya Veerasangili. P.W.3 Saravanan / elder brother of the deceased and his friends Anandan and P.W.5 Periyasamy joined together for dancing in the temple. Accused and the aforesaid juvenile accused were also joined together for dancing in the temple. After dancing, P.W.3 returned home at 11.00 p.m. P.W.7, Shanmugam, P.W.11, Thangadurai, who are the Assistants of Village Administrative Officer, one Anbalagan and Raasu played melam (drum). P.W.10, Arumugam was the Priest in the temple. Lights and mike set had been fixed by P.W.16, Subramaniam and they stopped dancing at about 11.30 p.m. Thereafter, the deceased Suresh went to Grey Nagar. P.W.5 and Anandan followed the deceased and found that the accused and the juvenile accused were also present at the bridge, near Grey Nagar. Deceased Suresh asked A1 to give lift for him in his TVS 50 to go to Vijayamangalam. A1 quarreled with the deceased Suresh, saying he was a robber of cell phone. Due to the quarrel, that arose between themselves, they fell down in a pit. Then A1 called his friends and told them to beat the deceased with stones and accordingly, they threw small stones and A1 threw a big stone on the deceased. Subsequently, all the five accused proceeded on the way to a graveyard. After 15 minutes, only the accused returned. As per the prosecution case, the accused had threatened P.W.5, who is an eye witness and witness Anandan,

that they would beat them, if they disclose anything about the occurrence. Thereafter, P.W.5 and Anandan returned to their home.

(iii) While so, on the next day, 20.02.2008 at about 10.00 a.m, on hearing the information that the dead body of the deceased was found near the scene of occurrence in a well, owned by P.W.6, a retired Deputy Superintendent of Police, PWs. 2, 3, 5 and 11 went there and seen the dead body. Thereafter, P.W.11, Assistant to Village Administrative Officer, Vijayamangalam, gave information to P.W.1, Gunasekaran, Village Administrative Officer. P.W.1, after seeing the dead body, took steps for taking the dead body from the well with the help of P.W.9, Chandran, one Vijayan and Thangavel. Thereafter, P.W.1 gave Ex.P.1, written complaint to Thingalur Police Station. On the basis of the information received, on 20.02.2008, at about 12.30 p.m, P.W.21, Sub-Inspector of Police, registered the case, prepared Ex.P.2, Observation Mahazar in the presence of P.W.11 and the witnesses Anbalagan and also prepared Ex.P.17, rough sketch, conducted inquest and prepared Ex.P.18, Inquest report in the presence of witnesses and panchayatdars.

4. In order to establish the case, the prosecution has examined P.Ws. 1 to 22; marked Exs.P.1 to 22 and produced Material Objects, M.Os.1 to 19. On the side of the defence, Exs.D1 and D2 were marked.

5. The Trial Court, after analysing the oral and documentary evidence, convicted and sentenced the accused as already stated above.

6. Mr.A.K.Kumarasamy, learned counsel appearing for the appellants submitted that the prosecution has not established the guilt against the appellants beyond reasonable doubt and that the Judgement of conviction suffers from serious infirmities and inconsistencies. Learned counsel for the appellants drew the attention of this Court to the FIR, which is marked as Ex.P.16, wherein it is seen that the occurrence had taken place on 19.02.2008, during night hours, but the case was registered only on 20.02.2008 at 12 hours. He would further submit that there is an inordinate delay in registering the case and that the delay was not satisfactorily explained by the prosecution. Learned counsel for the appellants also drew the attention of this Court to the contents of FIR, wherein it is seen that the dead body was recovered from the well, belonged to P.W.6, who is a retired Deputy Superintendent of Police and the injuries found on the body of the deceased was also noted by conducting inquest report and that the witnesses examined during the inquest, had spoken about the occurrence and concluded that it was a murder. He would further submit that the FIR had been registered only after the dead body was recovered from the well. Learned counsel further contended that there is no specific overtact against appellants and that one eye witnesses, who was

examined as P.W.5, would also state that he has not spoken to about the incident till he was examined by the Inspector of Police on the next day. On behalf of the appellants, it was further contended that the entire prosecution case rests on the solitary testimony of P.W.5, though P.W.5 could not have witnesses the occurrence, as he has clearly admitted in the cross-examination that he did not state, as to which accused attacked the deceased with stones, hence, he could not have witnesses the alleged occurrence and even according to P.W.5, both the accused party and the deceased party were dancing, during the temple festival and thereafter, there was a wordy quarrel in which the accused and the deceased were pushing and pulling each other and there was a scuffle and both A1 and the deceased fell down. It is contended that the conduct of P.W.5 is also unnatural, as he had not informed about the occurrence to anyone else and he has simply left his house and according to him, he was examined only on the next day by the police. Hence, the evidence of the alleged eye witness is unreliable and not trustworthy to base the conviction.

7. Learned Additional Public Prosecutor would submit that merely because the defence has pointed out certain discrepancies, the whole version of P.W.5 need not be rejected. He would further submit that the evidence of P.W.5 is cogent and corroborated by medical evidence and the chemical analysis report tallied with the blood group of the deceased.

8. We have carefully considered the contentions put forward by either side and perused the impugned Judgment of conviction and other materials available on record.

8. We are of the view that the learned counsel for the appellants has pointed out several infirmities in the prosecution case. It is stated that the entire prosecution case rests on the sole testimony of P.W.5, however, it is strange that P.W.5 has not informed about the occurrence to anyone, till he was examined by the police on the next day and the said conduct of the witness is unnatural. P.W.5 has categorically admitted in the cross-examination that he could not state as to which accused caused injuries on the deceased, hence, the inference is that he had not witnessed the occurrence. P.W.12, Village Administrative Officer deposed that on 23.02.2008 at about 10.00 a.m, on the information received from his Assistant, P.W.11, he went to the scene of crime and found the blood stained yellow colour shirt and he further deposed that the dead body of the deceased was recovered from the well and P.W.12, Inspector, commenced the investigation. After registering the FIR, the police officials could visit the scene of occurrence and recovered the body from the well. As contended by the learned counsel for the appellants, it is seen from the evidence that without following the legal procedure, P.W.12, himself had unreasonably took out the dead body from the well, which cannot be justified by the prosecution, as the same was

not taken out from the well to save the person. Hence, the conduct of P.W.12 seems to be not justified, since his evidence would show that without registering the FIR, investigation could have been commenced, though the same was not warranted and the legal procedure has not been followed properly. He was examined by the police by 10.30 a.m. Even without registering the case, P.W.5 was examined by the police and the FIR was registered only after the commencement of investigation. P.W.3, brother of the deceased has categorically deposed in his cross-examination that the deceased had number of criminal cases and in one such case, he was also taken out on bail, which would show that the deceased could have number of enemies for causing the death. Having considered the fact that the evidence adduced by P.W.5, the contents of the FIR, Inquest report and the fact that before registering the case, the investigation was conducted by the officer, by proceeding to the scene of occurrence and the evidence is that the dead body was recovered from the well, even without preparing the FIR, to suit his convenience, which would show that an illegal procedure being followed by the prosecution, as argued by the learned counsel for the appellants and for which, there is no satisfactory explanation from the prosecution. Having gone through the evidence on record, relating to the facts and circumstances of the case, we are of the considered view that the prosecution has not established the case against the appellants beyond all reasonable doubts and hence, benefit of doubt has to be given in favour of the appellants.

9. In the result, the Criminal Appeal is allowed and the conviction and sentenced imposed in Judgment, dated 20.09.2011 made in S.C.No.199 of 2008 on the file of the learned Additional District and Sessions Judge / Fast Track Court No.I, Erode is set aside. The fine amount, if any paid already is ordered to be refunded to the appellants. The bail bond if any, executed by the appellants shall stand cancelled.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vga/tsvn

To

1. The Additional District and Sessions Judge,
(Fast Track Court No.I), Erode.
2. The Judicial Magistrate Perundurai.
- 3.-do- The Chief Judicial Magistrate, Erode.
4. The Superintendent Central Prison, Coimbatore.
5. The Inspector of Police, Thingalur Police Station,
Perundurai Taluk, Erode District.
6. The Public Prosecutor, High Court, Madras.

Crl.A. No.630 of 2011

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