



BAIL SLIP

Kamsarajan, S/o.Mahamuni Accused No.2 was released on bail vide order of this Court dated 16/7/2012 in MP(MD)No.1/12 in CrI.A(MD) No.165/2011.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2015

CORAM

THE HONOURABLE MR. JUSTICE A.SELVAM
and
THE HONOURABLE MR. JUSTICE V.S.RAVI

CrI.A.(MD)Nos.165 of 2011 and 49 of 2015CrI A(MD)No.165 of 2011

Kamsarajan

.. Appellant/A2

Vs.

State rep.by
The Inspector of Police,
Sernthamaram Police Station,
Tirunelveli District
Crime No.45 of 2009.

.. Respondent/Complainant

Criminal appeal filed under Section 374(2) of Cr.P.C. against the conviction and sentence dated 22.03.2011 passed in Sessions Case No.406 of 2009 by the Additional District and Sessions Court/Fast Track Court No.II, Tirunelveli.

For Appellant : No appearance
For Respondent : Mr.A.Ramar
Addl.Public Prosecutor

CrI A(MD)No.49 of 2015

Janakaraj

.. Appellant/PW1

Vs.

1.State rep.by
<https://hcservices.ecourts.gov.in/hcservices/>
The Inspector of Police,
Sernthamaram Police Station,



Tirunelveli District
Crime No.45 of 2009.

..1st Respondent/Complainant

2.Mahamani

3.Navamani

4.Thangarathinam

..Respondents 2 to 4/Accused 1, 3 & 4

WEB COPY

Criminal appeal filed under Section 374(2) of Cr.P.C. against the Judgment dated 22.03.2011 passed in Sessions Case No.406 of 2009 by the Additional District and Sessions Court/Fast Track Court No.II, Tirunelveli.

For Appellant : Mr.A.Thiruvadikumar

For R - 1 : Mr.A.Ramar
Addl.Public Prosecutor

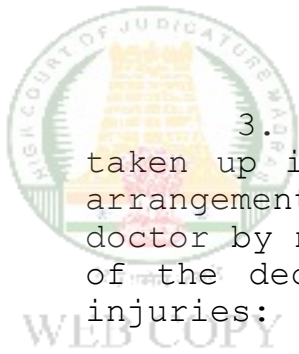
For RR - 2 to 4 : No appearance

COMMON JUDGMENT

(Judgment of the Court was made by A.SELVAM, J.)

The conviction and sentence passed in Sessions Case No.406 of 2009 by the Additional District and Sessions Court/Fast Track Court No.II, Tirunelveli are challenged in Criminal Appeal No.165 of 2011 and with regard to conviction and sentence passed against the accused 2 to 4 and also for non framing a charge under section 34 of the Indian Penal Code along with other sections, CrI A(MD)No.49 of 2015 has been preferred.

2. The case of the prosecution is that the first accused by name Mahamani is residing near the house of the defacto complainant by name Janakaraj and in between two families, frequent tussles have occurred. The second accused is the son of first accused. The accused 3 and 4 are the sons of one Muthaiah Nader. On 26.05.2009, at about 10.00 pm, with regard to demolition of a pial, a tussle has arisen in between the defacto complainant, his brother by name Krishnamoorthy and deceased Pushpam and accused. During the course of occurrence, the first accused has hurled invectives by using filthy words. Further the first accused has attacked the said Krishnamoorthy and thereby tried to murder him. Further the first accused has instigated the accused 3 and 4 to attack the defacto complainant and others. The accused 3 and 4 have attacked the defacto complainant. The second accused has attacked the deceased Pushpam by using deadly weapons. After occurrence, the said Janakaraj has given a complaint to the Sub Inspector of Police, (PW12) and the same has been registered in Crime No.45 of 2009. The complaint given by the said Janakaraj (defacto complainant) has been



3. On receipt of Ex.P1, the Investigating Officer (PW14) has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and the doctor by name Senthilsekar (PW13) has conducted autopsy on the body of the deceased and he found the following external and internal injuries:

External Injuries:

A cut injury of 28 cms length and 5 cms breadth was found from the left ear through the backside of the neck till the right side of artery. The spinal bone of the neck was found cut between C1 and C2. Muscles and blood vessels were found cut. On dissecting the body, the liver, spleen, lungs, pancreas and kidneys were found pale. Heart was found pale and was empty. There was about 300 gms of partly digested food particles in the stomach. There was no specific odour. The small intestine and the large intestine were found empty. On dissection of the uterus, it was found empty. On breaking the skull, the brain was found pale and soft. Hyoid bone was not found broken. There was no other fracture.

4. The post-mortem certificate has been marked as Ex.P20. After completing investigation, the Investigating Officer has laid a final report on the file of the Judicial Magistrate, Tenkasi and the same has been taken on file in PRC No.48 of 2008.

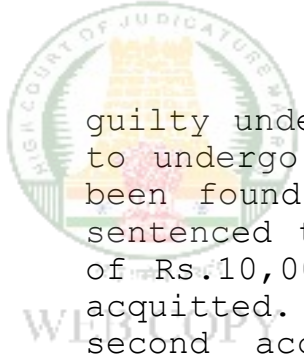
5. The Judicial Magistrate, Tenkasi after considering the fact that the offences alleged to have been committed by all the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Tirunelveli Division and the same has been taken on file in Sessions Case No.406 of 2009.

6. The trial Court after hearing both sides and upon perusing relevant records has framed first charge against the first accused under Section 294(b), second charge against him under Section 307, third charge against him under Section 325 r/w 109, fourth charge against the accused 3 and 4 under Section 325 and fifth charge against the second accused under Section 302 of the Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

7. On the side of the prosecution PWs.1 to 14 have been examined and Exs.P1 to P27 and M.Os.1 to 13 have been marked.

8. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. On the side of the accused, DW1 has been examined and Ex.D1 has been marked.

9. The trial Court after hearing both sides and upon perusing relevant evidence available on record has found the first accused



guilty under Section 324 of the Indian Penal Code and sentenced him to undergo 1½ months rigorous imprisonment. The second accused has been found guilty under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and also imposed a fine of Rs.10,000/- with usual default clause. Accused Nos.3 and 4 are acquitted. Against the conviction and sentence imposed upon the second accused, Crl A(MD)No.165 of 2011 has been preferred. Likewise, against the quantum of punishments awarded upon the accused 1, 3 and 4 and also non framing of charge under Section 34 of the Indian Penal Code, Crl A(MD)No.49 of 2015 has been filed.

10. Since common questions of law and facts are involved in both Appeals, common Judgment is pronounced.

11. The learned counsel appearing for the appellant in Crl A (MD)No.165 of 2011 and also appearing for the respondents 2 to 4 in Crl A(MD)No.49 of 2015 has filed a memo so as to withdraw his appearance and the same is recorded.

12. The learned counsel appearing for the appellant in Crl A (MD)No.49 of 2015 has advanced his argument mainly on the basis of the following legal point. Since the learned counsel appearing for the appellant in Crl A(MD)No.49 of 2015 has raised a legal point, along with Crl A(MD)No.49 of 2015, Crl A(MD)No.165 of 2011 is also disposed of.

13. The contention put forth by the learned counsel appearing for the appellant in Crl A(MD)No.49 of 2015 is that during the course of occurrence, the first accused has instigated the remaining accused to attack PWs.1 and 2 and their mother and all the accused have acted in furtherance of common intention and the trial Court without adding Section 34 suitably, has simply framed the charges as mentioned therein and therefore, the trial Court has committed a stupendous mistake. Under the said circumstances, the entire Judgment passed by the trial Court is liable to be set aside and the matter is liable to be remanded to its file.

14. On the basis of the argument advanced by the learned counsel appearing for the appellant in Crl A(MD)No.49 of 2015, this Court has perused Ex.P1, complaint, wherein it has been clinchingly stated that during the course of occurrence, the first accused has instigated other accused to attack PWs.1 and 2 and their mother. Therefore, all the accused have come to the place of occurrence with common intention and they attacked PWs.1 & 2 as well as deceased only in furtherance of their common intention.

15. As rightly pointed out by the learned counsel appearing for the appellant in Crl A(MD)No.49 of 2015, the trial Court has not mentioned Section 34 of the Indian Penal Code in the charges. Therefore, it is needless to say that the trial Court has committed serious error in framing charges. Since the trial Court has failed to add section 34 of the Indian Penal Code in the charges and each accused has been dealt with individually and that too with regard to



their individual act, this Court is of the view that the Judgment passed by the trial Court in Sessions Case No.406 of 2009 is liable to be set aside and the matter is liable to be remitted to the file of the trial Court.

16. In fine, both Criminal Appeals are allowed. The Judgment passed in Sessions Case No.406 of 2009 by Additional District and Sessions Court/Fast Track Court No.II, Tirunelveli is set aside and Sessions Case No.406 of 2009 is remitted to the file of the trial Court. The trial Court is directed to take appropriate steps so as to secure appearance of all the accused. Further, the trial Court is directed to alter charges appropriately by way of adding Section 34 of the Indian Penal Code. If necessary, the trial Court is at liberty to record further evidence and also directed to dispose of Sessions Case No.406 of 2009 before the end of September 2015 and report the same to the Registry without fail. The Registry is directed to send all the records immediately to the trial Court.

Sd/-

Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Additional District and Sessions Court/
Fast Track Court No.II, Tirunelveli
- 2.The Principal District and Sessions Judge, Tirunelveli
- 3.The Judicial Magistrate, Tenkasai
- 4.The Chief Judicial Magistrate, Tirunelveli
- 5.The Inspector of Police, Sernthamaram Police Station,
Tirunelveli District
- 6.The Addl. Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 7.The Superintendent, Central Jail, Palayamkottai

Copy to:-

The Section Officer, Criminal Section
Madurai Bench of Madras High Court, Madurai
(To return records to trial Court forthwith)

+One cc to Mr.P.Samuel Gunasingh, Advocate, SR.No.36073

+One cc to Mr.P.Gunasekaran, Advocate, SR.No.36072

+One cc to Mr.A.Thiruvadikumar, Advocate, SR.No.35197

mj

RL/12c - 7/8/2015