

BAIL SLIP

The Appellant/Accused viz., Alaguvel @ Alagumurugan, S/o.Balu Thevar was directed to be released on bail as per order of this Hon'ble Court dated 10.07.2012 and made in MP(MD)no.2 of 2012 in CrI.A(MD)No.255 of 2011.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.S.RAVI

CrI.A(MD)No.255 of 2011

Alaguvel @ Alagumurugan

..Appellant/ Sole Accused

Vs.

The Inspector of Police,  
Thadikombu Police Station,  
In Crime No.383 of 2005,  
Dindigul District.

..Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. praying this Court, to call for the records in S.C.No.151 of 2010 dated 21.07.2011 on the file of the learned Principal Sessions Judge, Dindigul, and set aside the same and allow this appeal and thus render justice.

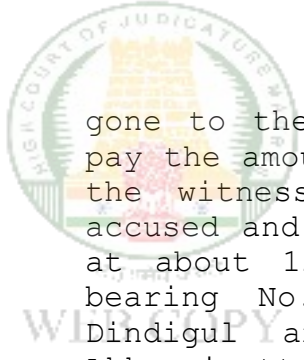
|                |                              |
|----------------|------------------------------|
| For appellant  | : Mr.M.Subash Babu, Advocate |
| For respondent | : Mr.A.Ramar                 |
|                | Additional Public Prosecutor |

## JUDGMENT

The appellant is the sole accused in Crime No.383 of 2005 and in S.C.No.151 of 2010 on the file of the learned Principal Sessions Judge, Dindigul. He has been charged for the offences under Sections 3(1)(x) and 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 and 302 I.P.C. The trial Court, by judgment dated 21.07.2011, acquitted him for the offence under Section 3(1)(x) and 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989, but convicted him under the charges for the offence under Section 302 I.P.C and sentenced him to undergo Life Imprisonment and also imposed fine of Rs.50,000/- and, in default, to undergo Rigorous Imprisonment for three years and also the fine amount is directed to be paid to the legal heirs of the deceased, for the loss caused to the family by the act of the accused u/s.357(3) Cr.P.C. Challenging the conviction judgment passed in S.C.151 of 2010, the appellant/accused in Crime No.383 of 2005 is before this Court with this present appeal and he has been enlarged on bail as per the order dated 10.07.2012 passed by this Court.

2.The brief case of the prosecution is as follows;

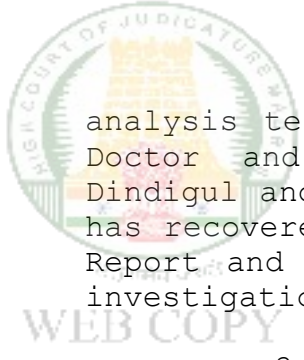
One Raju, has a Tailor shop on Palani-Dindigul road and western side of that Tailor shop, one Subbaiah Gounder has a Tea shop and on 11.08.2005 at about 20.00 hours, the accused Alaguvel @ Alagumurugan has



gone to the tea shop and purchased Mixture, and thereafter, refused to pay the amount and quarreled with said Subbiah Gounder, and at that time, the witness Raju and his brother deceased Vairavan have beaten the accused and after that, the accused has left the place and on 13.08.2005 at about 12.00 noon, the deceased Vairavan has travelled in the bus bearing No.TN 34-3755 by name Senthilmurugan from Muthanampatti to Dindigul and while the bus has gone near the western side of Akkaraipatti, the accused has boarded the bus at Koilpatti bus stop and due to previous enmity, the accused has insulted the community of the deceased and inflicted stab injuries with knife on his chest, stomach, flank, back of chest repeatedly and murdered the deceased Vairavan in the bus itself. Hence, according to the prosecution, the appellant / accused in Crime No.383 of 2005, is liable to be punished under Section 3(1)(x) and 3(2)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 and also under Section 302 I.P.C.

2.1. In order to prove the case of the prosecution, the prosecution has examined 20 witnesses as P.W.1 to P.W.20 and also marked 18 exhibits as Ex.P.1 to Ex.P.18 and also Material Objects as M.O.1 to M.O.10.

2.2. P.W.1 Raju has stated about the occurrence and also he has gone to Dhadikombu police station and lodged a complaint as per Ex.P.1. P.W.2 Muniyandi, P.W.3 Kannan, P.W.4 Senthilmurugan, P.W.5 Subbaiya, P.W.9 Madhanagopal and P.W.15 Gopal have been treated as hostile witnesses, and they have not supported the case of the prosecution. P.W.6 Jeyabal and P.W.7 Manimaran have corroborated the evidence of P.W.1 witness. Further, P.W.8 has spoken about the knowledge of the death of the deceased Vairavan. P.W.10 Krishnaveni is the wife of the deceased and she has also spoken about the occurrence. P.W.11 Dr.Jeevan has conducted the Postmortem of the deceased Vairavan as per the Ex.P.2 requisition given by the Inspector of Police and issued Postmortem Certificate as per Ex.P.3. P.W.12 Thiru.Thirumalai has issued Community Certificate to the deceased Vairavan and the accused Alaguvel @ Alagumurugan as per Ex.P.4 and Ex.P.5 respectively and P.W.13 Manjamalai and P.W.14 Vairamuthu @ Annadurai have signed in the Observation Magazar as per Ex.P.6 and also, in Athatchi as per Ex.P.7 and Ex.P.8 respectively and they have been treated as hostile witnesses and they have not fully supported the case of the prosecution. P.W.16 Murugan has spoken about the occurrence and P.W.17 Thiru.N.Azhagarsamy, Head Constable has submitted the Express F.I.R to the learned Judicial Magistrate No.1, Dindigul. P.W.18, Thiru.Ammavasai, Sub Inspector of Police has gone to Dindigul Government Hospital and received the Ex.P.1 complaint and registered a case and the Ex.P.9 is the First Information Report and submitted the complaint of P.W.1 and F.I.R to the learned Judicial Magistrate, Dindigul and concerned Higher officials and P.W.19 Paulraj has stated that he and P.W.15 Gopal(Hostile Witness) have signed in the Athatchi as per Ex.P.10, for the recovery of knife and dresses and Ex.P.11 is the Athatchi, for the recovery of M.O.1 Knife and Ex.P.12 is the Athatchi, for the recovery of M.O.2 shirt and M.O.3 lungi. P.W.20 Thiru.Sugumaran has served as Deputy Superintendent of Police and on 13.08.2015, he has taken up the case for the investigation and he has prepared Inquest Report and Rough Sketch as per Ex.P.13 and Ex.P.14, in the presence of the witnesses and at 14 hours, he has arrested the accused and he has recovered the knife, shirt and lungi, in the Athatchi and submitted the said material objects to the Court and sent the said material objects for chemical



analysis test and on 15.08.2015, he has enquired the P.W.11, Postmortem Doctor and also received the Community certificates from the Thasildhar, Dindigul and Ex.P.15 is the requisition for chemical analysis test and he has recovered the M.O.Nos.4 to 10 and the Ex.P.17 is the Forensic Science Report and the Ex.P.18 is the Serology Report and after completing the investigation, he has filed the Final Report on 20.10.2005.

3. On completion of the evidences on the side of the prosecution, the accused has been questioned under Section 313 Cr.P.C., as to the incriminating circumstances mentioned in the evidences of prosecution witnesses and he has stated that he is an innocent person and he is not involved in the case.

4. Having considered all the above materials on record, the trial Court has convicted the appellant / accused and sentenced him as mentioned in the beginning of this judgment and challenging the said conviction and sentence, the appellant has come forward with the present appeal.

5. It is stated in the Grounds of Appeal, that the judgment of the Lower Court is against facts and weight of evidence, contrary to the provisions of law and probabilities of the case. The prosecution has failed to prove its case beyond the element of reasonable doubt. The P.W.1's shop is at southern side and therefore, they could not hear the quarrel that has taken place near the place of occurrence. The Lower Court has failed to note that P.W.1 has not stated at the time of the police investigation about the shouting made by the appellant to the deceased by using his caste name. The Lower Court has failed to appreciate the evidence of P.W.2, regarding the details that he has not travelled in the bus, though the P.W.1 has stated that he has travelled along with him. The Lower Court failed to note that the P.W.6 Subbiah has stated that he has no knowledge regarding the dispute between the appellant and the deceased, though the prosecution stated occurrence has taken place before his shop. P.W.9 has admitted that at the time of occurrence in the Subbiah shop, he has attended the business at his shop and therefore, he could not have seen the occurrence. The Lower Court has failed to note that the evidence of P.W.10 is in contradiction to the evidence of P.W.1. The Lower Court has erred in law by not taking into the consideration in the delay of despatch of the F.I.R. Though the distance between the police station and the Magistrate Court is only 10 K.M, the reason for delay is not properly explained. The Lower Court has failed to note that the P.W.18 has categorically stated that he has received the written complaint from the hospital and no one has made any attestation. The Lower Court has failed to note that the evidence of P.W.19 to the effect that the knife has been recovered from the accused house. Further, the P.W.20 has stated that it is recovered from push and also P.W.19 admitted that he is the relative of the deceased. The Lower Court has failed to note that the P.W.20 admitted that he has not recovered the newspaper which has been used to keep the bloodstained cloth.

6. *The points that arise for consideration in the present Criminal Appeal are as follows:-*

1) Whether the Lower Court has passed the impugned judgment, after properly appreciating the materials on record, in the proper perspective?



2) Whether the Criminal Appeal has to be allowed for the reasons and grounds stated in the Memorandum of Appeal and also for the submissions made on behalf of the appellant?

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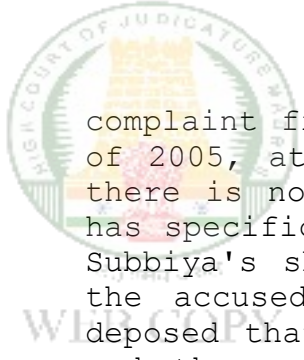
7. *Analysis, discussions and findings with regard to the above mentioned points:-*

The learned counsel for the appellant has vehemently submitted that there is no clinching and trustworthy testimony of the eyewitnesses. According to the learned counsel for the appellant, that there is no reliable eye witnesses to establish the guilt of the accused. Further, the learned counsel for the appellant has submitted that the circumstances have not been established by the prosecution, in an acceptable manner. Further, the learned counsel for the appellant has stated that there are discrepancies and contradictions in the evidences of the prosecution and there is a serious doubt about the genuineness of Ex.P.1. Further, the learned counsel for the appellant has stated that the prosecution witnesses have not come forward with the true version and the appellant is entitled to acquittal.

8. On the other hand, the learned Additional Public Prosecutor for the respondent has submitted that the evidences of prosecution are reliable and trustworthy and the fact remains that the genesis of the crime is not suppressed and the presence of the prosecution witnesses at the scene of occurrence is not doubtful. Further, there is no serious infirmity or inconsistency in the evidences of the prosecution witnesses and the prosecution has established the case, beyond reasonable doubt and there are cogent evidences to connect the appellant to the said crime.

9. P.W.1, Raju has admitted in his evidence that he has already got knowledge about the accused and also he is the brother of the deceased Vairavan. Further, regarding the previous enmity between the accused and the deceased, P.W.1 has deposed that on 11.08.2005, the accused came to the shop of Subbiya and purchased some Mixture and also the dispute arose between Subbiya and the accused. Hence, in the said circumstances, his evidence has to be examined with care and caution. Further, P.W.1 has clearly mentioned that on 13.08.2005, they have gone in the bus bearing Registration No.TN 34-3755, which has been driven by the P.W.4, Senthilmurugan, driver and P.W.3, Kannan, conductor of the said bus and at that time, his brother Vairavan and the P.W.2 Muniyandi and P.W.16 Murugan have also entered into the said bus and thereafter, they have travelled to Kovilpatti point of diversion, and the bus has stopped, and at that time, the accused has entered into the bus and thereafter, the accused has assaulted his brother, namely, the deceased Vairavan with knife and he has given complaint as per Ex.P.1 to the police.

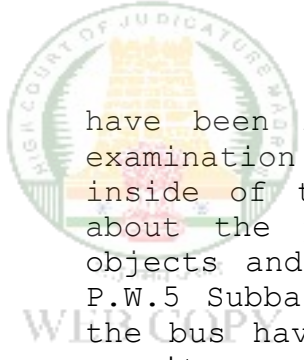
10. However, P.W.2 Muniyandi has clearly pointed out that he has not travelled in the said bus during the date of occurrence. Further, P.W.1 has admitted in his evidence that Ex.P.1 has been written by the police in the hospital, as per dictation given by him. However, the P.W.18, Thiru.Ammavasai, Sub Inspector of Police has deposed that in his evidence that on 13.08.2005 at 13.20 hours, only he has received the



complaint from the hospital and registered the complaint in Crime No.383 of 2005, at 14.00 hours. Further, P.W.1 has categorically deposed that there is no dispute between the P.W.1 and the accused. Furthermore, he has specifically deposed that the previous incident has happened at P.W.5 Subbiya's shop on 11.08.2005, and it has caused previous enmity between the accused and the deceased. However, P.W.5 Subbiya has undeniably deposed that he has no knowledge about the dispute between the deceased and the accused. Even, P.W.6 Jeyabal has pointed out that when the dispute has arisen at the Subbiya's shop, between the accused and the deceased, he has not seen the said dispute. Further, P.W.7 Manimaran has specifically deposed that he has no knowledge about the previous enmity between the accused and the deceased in Subbiya's shop. Further, P.W.7 has admitted in his evidence that the Vairavan(deceased) and P.W.1 and the father of the P.W.7 are brothers. Hence, the evidences of P.W.1 and P.W.7 have to be examined with carefulness and prudence. However, on a careful scrutiny of the said evidences of the prosecution witnesses, it is found that the evidences of the prosecution witnesses and materials on record are not clear and cogent. Further, the P.W.7 has categorically deposed in his cross examination that he has not directly seen the brutal assault caused by the accused on the body of the deceased.

11. Further, P.W.8 Jeyaraj has evidently deposed that he came to know about the death of the deceased Vairavan and he has no knowledge about the dispute between the accused and the deceased, in the shop of Subbiah. Further, P.W.10, Krishnaveni has manifestly deposed that the deceased is the husband of P.W.10 and she has informed about the accused, beating Subbiah, in the shop of Subbiya Gounder, to the police and the cycle shop of P.W.10 and also the tea shop of Subbiya Gounder are situated in the adjacent place. However, P.W.1 has not specifically stated these details in his evidence and also in the Ex.P1 complaint. Further, P.W.11 Dr.Jeevan who has conducted Postmortem on the body of the deceased Vairavan has stated that he has issued Ex.P.3 Postmortem Certificate and also mentioned in the said Postmortem Certificate that the deceased would appear to have died of shock and Haemorrhage due to multiple injuries sustained. However, the prosecution has failed to prove that only the accused has caused the said multiple injuries on the body of the deceased, with the help of the believable evidences and also acceptable exhibits and material objects.

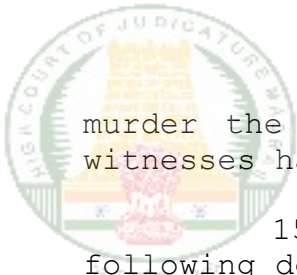
12. Further, P.W.16 Murugan has undeniably deposed that he has not directly seen the accused, assaulting the deceased and he has also admitted that the deceased is related to him. P.W.18 Thiru.Ammavasai, Sub Inspector of Police has manifestly deposed that he has received the Ex.P.1 complaint and registered the said complaint. However, he has evidently admitted in his cross examination that he has not informed to the Learned Deputy Superintendent of Police about the incident through the Very High Frequency instrument. Further, he has specifically admitted that in the Ex.P.1 complaint, nothing has been stated about the boarding of the bus at Muthanampatti into the bus by the P.W.7 Manimaran and the P.W.6 Jeyabal. Further, P.W.19 Balraj has undoubtedly deposed in his evidence that the accused has given the confession statement and he has signed in the said confession statement as a witness and Ex.P.10 is the admissible portion of the confession statement and the police have recovered the M.O.1 knife in the Athatchi as per the Ex.P.11 and as per the Ex.P.12 Athatchi, the dresses of the accused, namely, M.O.2 and M.O.3



have been recovered. However, he has clearly admitted in his cross examination that the accused has taken the said material objects from the inside of the house of the accused and he could not specifically say about the particular place, the accused has taken the said material objects and also handed over to the police. The Prime eyewitnesses of P.W.5 Subbaiya, owner of the shop, P.W.3, conductor and P.W.4, driver of the bus have been treated as hostile witnesses and the other important eyewitnesses of P.W.2 Muniyandi, P.W.9 Madhanagopal and P.W.15 Gopal have also been treated as hostile witnesses, as they have not supported the case of the prosecution. Further, P.W.13 Manjamalai and P.W.14 Vairamuthu @ Annadurai have signed in the Observation Magazar as per Ex.P.6 and also they have signed in the Athatchi as per Ex.P.7 and Ex.P.8 respectively, and they have also been treated as hostile witnesses as they have also not supported the case of the prosecution.

13. Further, the P.W.20 Thiru.Sugumaran, Deputy Superintendent of Police has deposed that on 13.08.2005, he has taken up investigation of the present case and he has prepared Inquest Report as per Ex.P.13 and Rough Sketch as per Ex.P.14 and he has recorded the confession statement from the accused as per the Ex.P.10 admissible portion of the confession statement of the accused and the accused has taken the M.O.1 knife from Vailadichampatti Ottukulam, near the bush of Karuvelam trees and he has recovered the M.O.1 knife in the Athatchi as per Ex.P.11, in the presence of P.W.15 Gopal and P.W.19 Balraj. Further, P.W.19 has clearly pointed out in the cross examination that it is not correct to say that Gopal, S/o. Kandhasamy has signed along with him in the Athatchi. However, P.W.20 has specifically stated that he has recovered the material objects as per the Athatchi, in the presence of P.W.15 Gopal and P.W.19 Balraj only. Further, P.W.20 has clearly admitted in his cross examination that a person, namely, Annadurai, who has signed in the Observation Magazar has not been included in the witness list and also in the confession statement, Prabhu name has been scored out and Raju name has been written and no initial has been made for the said correction and he has not recovered the paper used for keeping the bloodstained cloth and submitted to the Court. Further, he has manifestly admitted in his cross examination that he has no knowledge about Gopal, S/o.Vairavan mentioned in the list of witnesses and in the list of witnesses, Murugan, S/o.Kandhasamy has been mentioned. Further, P.W.20 has admitted in the cross examination that P.W.7 Manimaran has not stated during the course of the investigation of P.W.20, with regard to the assault of the deceased with knife by the accused and the P.W.1 Raju has caught hold of the said deceased at the time of falling down.

14. On a careful scrutiny of the entire materials on record of the present case, it is seen that the evidences of the prosecution witnesses are not cogent and are not in tune with the probabilities of the case of the prosecution. Further, it is pertinent to point out that the evidences of prosecution witnesses, namely, P.W.2 Muniyandi, P.W.3 conductor, P.W.4 driver of the bus, P.W.5 Subbaiya, owner of the shop, P.W.9 Madhanagopal, P.W.13 Manjamalai, P.W.14 Vairamuthu @ Annadurai and P.W.15 Gopal are not supporting the evidence of P.W.20, namely, the Investigation Officer, with regard to arrest, confession, recovery of material objects and also with the case of the prosecution as pointed out on behalf of the prosecution.. Further, there is no believable evidence to prove the motive, as projected by the prosecution for the accused to



murder the deceased. Further, many of the above mentioned prosecution witnesses have also not supported the case of the prosecution.

15. Furthermore, in this regard, it is useful to refer the following decisions:-

(I) *Srikanth & others V. The State, rep. by Inspector of Police, K-10, Koyambedu Police Station*, reported in 2006(2) MWN (Cr.) 10 (DB), it is clinchingly observed as follows:-

*"Motive part of prosecution case, therefore, not acceptable, recovery effected pursuant to confession allegedly given by accused in police custody, cannot be given much importance, prosecution miserably failed to establish its case."*

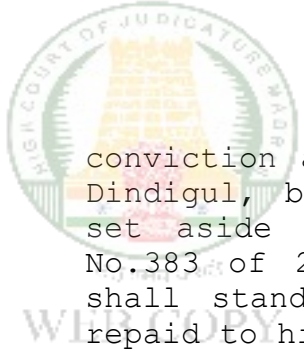
(ii) In the decision of Hon'ble Supreme Court, in the case of *Dr. Sunil Kumar Sambhudayal Gupta and Others V. State of Maharashtra*, reported in (2010) 13 SCC 657, it is significantly held as follows:-

*"Where the omissions amount to a contradiction, creating a serious doubt about the truthfulness of a witness and other witnesses also make material improvements before the Court in order to make the evidence acceptable, it cannot be safe to rely upon such evidence."*

(iii) In the decision of Hon'ble Supreme Court, in the case of *Jagroop Singh V. State of Punjab*, reported in (2013) 1 SCC (CRI) 1136, it is precisely held as follows:-

*"Aspects which have to be taken care of are nature of circumstances, time when confession is made and credibility of witnesses who speak of such confession. Before relying on such confession, Court has to be satisfied that it is voluntary and it is not result of inducement, threat or promise."*

16. In view of the above discussion, this Court has no hesitation to hold that the prosecution has not established the guilt of the appellant beyond reasonable doubts and the above mentioned circumstances also create serious doubt in the case of the prosecution. The doubts have not been clearly explained by the prosecution in any manner and thus, the appellant is entitled to get the benefit of such doubts. For the above mentioned reasons, facts and circumstances and situations, it is found that the Lower Court has not passed the impugned Judgment after properly appreciating the materials on record in proper perspective and in the present appeal has to be allowed for the reasons and grounds stated in the Memorandum of Appeal and also for the submissions made on behalf of the appellant and thus, the points are answered in favour of the appellant herein. Hence, it is found that the prosecution has failed to prove the case beyond all reasonable doubts and the appellant, is entitled for acquittal.



17. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed by the learned Principal Sessions Judge, Dindigul, by judgment dated 21.07.2011 passed in S.C.No.151 of 2010 is set aside and the appellant/accused/Alaguvel @ Alagumurugan in Crime No.383 of 2005 is acquitted. The bail bond, if any, executed by him shall stand cancelled and fine amount, if any, paid by him shall be repaid to him.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To

1. THE PRINCIPAL SESSIONS JUDGE, DINDIGUL.
2. THE JUDICIAL MAGISTRATE NO.II, DINDIGUL.
3. -do-thro'THE CHIEF JUDICIAL MAGISTRATE,DINDIGUL.
4. THE SUPERINTENDENT,CENTRAL PRISON, MADURAI.
5. THE INSPECTOR OF POLICE,THADIKOMBU POLICE STATION, DINDIGUL DISTRICT.
6. THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1cc to M/s.M.Subash Babu, Advocate in SR.No.54036

Cr1.A.(MD)No.255 of 2011  
11.09.2015

pmu

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