

BAIL SLIP

Crl.A.No.419 of 2014

That the Appellant/Accused namely A.Prasanth, S/o. Anil Kumar, was directed to be released on bail as per Order of this Court dated 28.10.2014 in M.P.No.1 of 2014 in Crl.A.No. 419 of 2014.

Crl.A.No.446 of 2014

That the Appellant/Accused namely Prabakaran, S/o.Chandrasekaran, was directed to be released on bail as per Order of this Court dated 05.11.2014 in M.P.No.1 of 2014 in Crl.A.No. 446 of 2014.

Crl.A.No.666 of 2014

That the Appellant/Accused namely B.Kathiravan, S/o.Balaiyya, was directed to be released on bail as per Order of this Court dated 09.05.2015 in Crl.M.P.No.1 of 2014 in Crl.A.No. 666 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.419, 446 & 666 of 2014

1.A.Prasanth ... Appellant in Crl.A.419/2014

2.Prabakaran ... Appellant in Crl.A.446/2014

3.B.Kathiravan ... Appellant in Crl.A.666/2014

Vs

State represented by  
Inspector of Police,  
Thirupapuliyur Police Station,  
Cuddalore District.  
Cr.No.576/2012

... Respondent in all Crl.As

Common Prayer in all Criminal Appeals:- These Criminal Appeals have been filed under Section 374 Cr.P.C., to set aside the conviction and sence imposed against the appellants in S.C.No.7 of 2013 dated 11.12.2013 by the Principal Sessions Judge, Cuddalore.

In Crl.A.No.419 of 2014:-

For Appellant : Mr.P.Saravanan

For Respondent : Mr.M.Maharaja,  
Additional Public Prosecutor

In Crl.A.No.446 of 2014:-

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.M.Maharaja,  
Additional Public Prosecutor

In Crl.A.No.666 of 2014:-

For Appellants : Mr.P.Saravanan

For Respondent : Mr.M.Maharaja,  
Additional Public Prosecutor

COMMON JUDGMENT

(Common Judgement of the Court was delivered by  
V.Bharathidasan.J)

The appellant in Crl.A.No.419 of 2014 is A-2; the appellant in Crl.A.No.446 of 2014 is A1; the appellant in Crl.A.No.666 of 2014 is A3 in S.C.No.7 of 2013 on the file of the learned Principal Sessions Judge, Cuddalore. A1 and A2 stood charged for an offence under Section 302 IPC. A3 stood charged for an offence under Section 302 r/w.34 IPC. By judgment dated 11.12.2013, the trial Court convicted and sentenced A1 and A2 to undergo Imprisonment for life and to pay a fine of Rs.2,000/-, each in default to undergo four years Rigorous Imprisonment for the offence under Sections 302 IPC and convicted and sentenced A3 to undergo imprisonment for life and to pay a fine of Rs.2,000/- in default to undergo four years Rigorous Imprisonment for the offence under Sections 302 r/w.34 IPC. Challenging the said conviction and sentence, the appellants/A.1 to A.3 are before this Court with these Criminal Appeals.

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

The deceased one Sakthivel and the accused are friends. They used to steal motorcycles. On one occasion, there was a dispute in sharing the amount, after selling the stolen motorcycles., as the deceased had taken Rs.15,000/- without giving share to A1 to A3. Hence, the accused decided to murder the deceased. On 23.07.2012, A1 to A3, took the deceased in a motorcycle and went to one Kesavapillai's Cashew

Grove, at Ramapuram, thereafter, at 8.00 p.m., A1 attacked the deceased with a knife and A2 attacked him with an empty beer bottle. A3 caught hold of the deceased. A1 again attacked the deceased, indiscriminately and caused his death and escaped from the scene of occurrence.

3. On 24.07.2012, at about 7.00 p.m., a Village Assistant found a dead body in the Kesavapillai's Cashew Grove and informed the same to the Village Administrative Officer, P.W.1. After seeing the dead body, at about 8.00 p.m, P.W.1, gave a complaint to the respondent police at 8.30 p.m. P.W.12, Sub-Inspector of respondent Police, registered a case in Crime No.576 of 2012 under Section 302 IPC and he forwarded the First Information Report (Ex.P.15) to the concerned Judicial Magistrate Court and its copies to higher officials.

4. P.W.13, Inspector of Police, on receipt of the First Information Report, commenced investigation and reached the scene of occurrence, along with Finger Print Expert and dog squad, prepared an Observation Mahazar (Ex.P.2) and a Rough Sketch (Ex.P.16), and recovered a beer bottle, glass pieces, one bloodstained button and also recovered bloodstained earth and sample earth in the presence of P.W.2 and another witness. On 25.07.2012, at 12.15 p.m., he conducted inquest over the dead body in the presence of panchayathars and prepared Inquest Report (Ex.P.17) and sent the body for postmortem, through one Saravanan, Head Constable, to the Government Hospital, Cuddalore. After recording statements of witnesses, he handed over the investigation to P.W.14, Inspector of respondent police station.

5. P.W.14, Inspector of the respondent police, published the photographs of the deceased and on seeing the photograph, relatives of the deceased came to the police station and identified the body of the deceased at the hospital. On 29.07.2012, on receipt of information, P.W.14 went to K.T.R. Signal, Cuddalore Imperial Road and conducting vehicle check-up, he intercepted the Hero Honda Motor cycle No.TN 31 L7841, which was driven by A1 and in which A2 and A3 were the pillion riders. On enquiry, the accused stated that as they were having previous enmity with the deceased, they have committed the murder of the deceased. Hence, P.W.14, arrested A1 to A3 in the presence of Village Administrative Officer, P.W.6 and another witness. On such arrest, all the accused gave confession statements. Based on the disclosure statement of A1, P.W.14 recovered a knife (M.O.13), which was used for the commission of the crime. Based on the disclosure statement of A3, P.W.14 recovered bloodstained pant (M.O.14) and Motorcycle (M.O.15).

6. P.W.10, the Doctor, working in the Government Hospital, Cudedalore, conducted postmortem on the dead body and found the following injuries:

" External injuries:

1) Skinpeeling over both thighs, lower abdomen genitals and back of marbling of veins seen.

2) Multiple blobs seen in both lower limbs.

3) Asymmetry of face deep laceration extending from left angle of mouth to back of (L) ear measuring 20 x 5 x 4 cm exposing underlying bones.

4) Lacerated wound below the lower lip measuring 8 x 3 cm bone depth exposing underlying bones.

5) Deep lacerated wound measuring 30 x 8 x 5 cm extending from the R upper eyelid across the nose crossing L eye over the L ear in the L temporal region.

6) Deep incised wound extending from parietal & L occipital region 15 x 4 cm x bone depth exposing the underlying bone (occipital bone)

7) Deep incised wound in the nape of the neck 15 x 3 x 5 cm.

8) L eye busted.

9) Bruise seen in all wound edges. "

P.W.10 gave Ex.P.9, postmortem certificate. He gave opinion that the deceased appear to have died due to multiple injuries sustained on the head, face and hypovolume shock.

7. P.W.15, Inspector of Police, conducted further investigation and also examined one Santhoshkumar, P.W.8, who purchased the stolen bike. P.W.8 gave a statement under Section 164 Cr.P.C, Ex.P.30, before the Judicial Magistrate, NO.II, Cuddalore. P.W.15 recorded the statement of the doctor, who conducted postmortem on the dead body of the deceased and other witnesses. After completing investigation, P.W.15 laid a final report on 02.11.2012.

8. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. In order to prove the case of the prosecution, as many as 15 witnesses were examined and 30 documents were exhibited, besides 19 Material Objects.

9. Out of the said witnesses, P.W.1, who is the Village Administrative Officer, has stated that after hearing the news from the Village Assistant, P.W.2, he went to the scene of occurrence and saw the dead body and had given Ex.P1, complaint. P.W.2, who is the Village Assistant and amahazar witness, has spoken about the preparation of the Observation Mahazar and the rough sketch at the place of occurrence. He has also spoken about the recovery of material objects, such as, beer bottle, glass pieces, bloodstained hair, bloodstained button, bloodstained earth and sample earth (M.Os. 1 to 9). P.W.3, lessee of the cashewnut grove, where the dead body was found, has stated that he saw the dead body at the scene of occurrence. P.W.4, the father of the deceased, has stated that on 23.07.2012, about 4.30 p.m, the accused took the

deceased in a motorcycle. He also identified the body of the deceased. P.W.5, the brother of the deceased, has spoken that on 23.07.2012, at 6.00 p.m, all the accused took the deceased in a motorcycle.

10. P.W.6, Village Administrative Officer, Thirupapuliyur Village, has spoken about the arrest and the confession statement given by the accused and also the recovery of the material objects, such as, motorcycle, knife, blood stained pant, splendor motor cycle (M.Os.12 to 15). P.W.7, a resident of Kurinjinagar village, has spoken about the fact that all the accused took the deceased in a motorcycle before the occurrence. P.W.8, a mechanic, has stated that he purchased the bike from the deceased. P.W.9, who is also a resident of Kurinjinagar village, has spoken that he saw all the accused in a drunken mood on the date of occurrence. P.W.10, has spoken about the postmortem conducted on the body of the deceased and his final opinion regarding the cause of death. He has opined that the deceased appears to have died due to multiple injuries sustained on the head, face and hypovolume shock. P.W.11 is the Scientific Assistant at Forensic Science Department, Villupuram. He has spoken about the issuance of chemical analysis report. P.W.12, the Sub-Inspector of Police, has spoken about the registration of the case. P.W.13, Inspector of Police, has spoken about the investigation with regard to recovery of material objects (M.Os.17 & 18). P.W.14, has deposed that he continued the investigation and arrested the accused and on the basis of the confession of the accused, recovered M.O.13-knife, M.O.14-bloodstained pant and M.O.15-Motorcycle. P.W.15, on completion of investigation filed the final report in this case.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not chose to examine any witness on their side.

12. Having considered all the above, the trial Court convicted all the accused as detailed in the first paragraph of this judgment. Challenging the same, the appellants/accused 1 to 3 are before this Court with these Criminal Appeals.

13. We have heard Mr.P.Saravanan, learned counsel for the appellants in Crl.A.No.419 of 2014 and Crl.A.No.666 of 2014; Mr.R.Sankarasubbu, learned counsel for the appellants in Crl.A.Nos.666 of 2014 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

14. Learned counsel for the appellants would submit that there is no eye witness to the occurrence and based on the last seen theory, the appellants/accused were convicted. Except that, there is no circumstances available to prove the guilt of the accused and prayed for acquittal of the accused.

15. Per contra, the learned Additional Public Prosecutor would submit that all the accused are involved in motorcycle theft and there was a dispute between among them. Hence, they have murdered the accused. There are evidence to prove that the accused and the deceased were going together before the occurrence. Hence, prosecution proved all the circumstances and sought for dismissal of the appeals.

16. We have considered the above submissions.

17. It is a case of circumstantial evidence. It is settled principle that in a case of circumstantial evidence, the prosecution must prove all the circumstances beyond all reasonable doubt and the proved circumstances should form a chain and it should unerringly point to the guilt of the accused. In the instant case, the first circumstance relied upon by the prosecution was motive, that is, the accused and the deceased are friends and they used to steal the motorcycles and there was a dispute in sharing the money. But, there is no evidence to prove the motive. P.W.8, the mechanic, who purchased the stolen bike, has only spoken about the money given to the deceased. Apart from that, there is no evidence to prove the motive.

18. The second circumstance is the last seen together with accused. P.W.4 is the father of the deceased. On 23.07.2012, at about 4.30 p.m., he saw all the accused took the deceased in a motorcycle. P.W.5 is the brother of the deceased. He also saw the accused with the deceased on 23.07.2012 at about 6.00 p.m. P.W.7, who is a resident of Kurinjinagar village, saw all the accused and the deceased going in a bike. Hence, the prosecution has established the fact that the accused and the deceased were together going in a motorcycle at or about the time of occurrence.

19. Apart from that, the stolen motorcycle was recovered based on the confession of the accused. Except that, there is no other circumstances available to prove the guilt of the accused. In a case of circumstantial evidence, the motive plays a vital role. But, in the instant case, the prosecution has failed to prove the motive. Admittedly, all the accused and the deceased are friends and in the absence of any evidence that there is a dispute between themselves, we cannot presume that the accused have murdered the deceased. The other circumstance, namely, the accused and the deceased were seen together before the occurrence. In a similar case reported in 2014 (12) SCC 279 : LNIND 2014 SC 406 - Krishnan V. State of Tamil Nadu , the Hon'ble Supreme Court has held as follows:

"The conviction cannot be based only on circumstance of last seen together with the deceased. In Arjun Marik v. State of Bihar (1994) Supp (2) SCC 372).

Thus the evidence that the appellant had gone to Sitaram in the evening of 19.07.1985 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and therefore, no conviction on that basis alone can be founded"

20. In view of the above said decision, we are of the considered opinion that this circumstance alone is not sufficient to convict the accused in the absence of any other proved circumstance. Hence, the prosecution has miserably failed to prove the guilt of the accused. In the said circumstances, the appellants are entitled for acquittal.

21. In the result, these Criminal Appeals are allowed and the conviction and sentence imposed on the appellants by the learned Principal Sessions Judge, Cuddalore, in S.C.No.7 of 2013, by the judgment dated 11.12.2013 are hereby set aside. The appellants are acquitted of the charges levelled against them. The fine amount, if any paid by the accused, shall be refunded to them. Bail bond, if any, shall stand discharged.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mrp

To

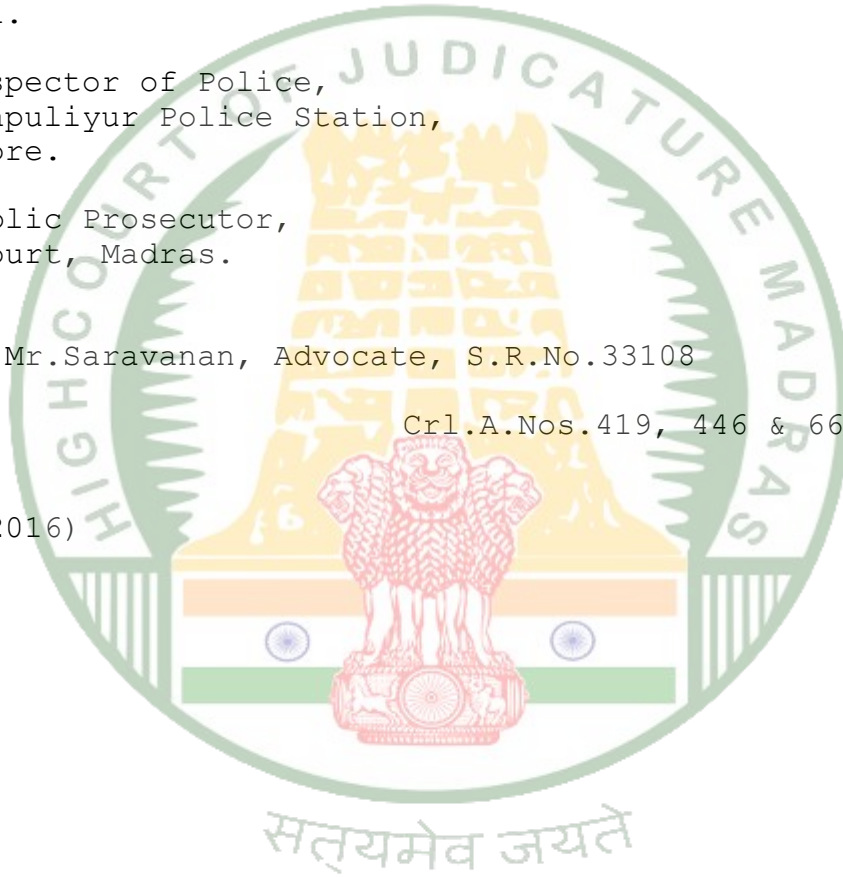
1. The Judicial Magistrate I,  
Cuddalore.
2. The Judicial Magistrate II,  
Cuddalore.
3. The Judicial Magistrate III,  
Cuddalore.
4. Do Through the Chief Judicial Magistrate,  
Cuddalore.
5. The Principal Sessions Judge,  
Cuddalore.

6. The Superintendent,  
Central Prison,  
Cuddalore.
7. The District Collector,  
Cuddalore.
8. The Director General of Police,  
Mylapore, Chennai 04.
9. The Judicial Magistrate,  
Madurai.
10. The Inspector of Police,  
Thirupapuliyur Police Station,  
Cuddalore.
11. The Public Prosecutor,  
High Court, Madras.

+2cc's to Mr.Saravanan, Advocate, S.R.No.33108

Crl.A.Nos.419, 446 & 666 of 2014

MG(CO)  
CA(30/12/2016)



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