

Bail Slip

The Appellants/Accused 2 & 3 Namely
1.Mayilvel @ Mayilsamy S/O.Rangasamy Gounder 2.Radhamani @
Sundarambal W/o.Mayilvel @ Mayilsamy be and hereby are directed
to be released on bail vide Court order dated 1/4/2016 in
Crl.M.P.No.2738/16 in Crl A No.499/2014.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.499 of 2014

1. Panneerselvam (A1)
2. Mayilvel @ Mayilsamy (A2)
3. Radhamani @ Sundarambal (A3) ... Appellants

- Vs -

State rep by Inspector of Police,
Negamam Police Station,
Coimbatore District.
(Cr.No.115 of 2012) ... Respondent

Prayer:- Appeal filed under Section 374 of the Code of Criminal
Procedure against the judgment passed by the learned III
Additional District and Sessions Judge, Coimbatore in S.C.No.40
of 2013 dated 30.07.2014.

For Appellants : Mr.V.Gopinath
Senior Counsel for Mr.M.N.Balakrishnan

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

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

The appellants are the accused 1 to 3 in S.C.No.40 of 2013
on the file of the learned III Additional District and Sessions
Judge, Coimbatore. They stood charged for offences under

Sections 449 and 302 I.P.C. By judgment dated 30.07.2014, the trial Court convicted all the three accused under both the charges and sentenced them to undergo rigorous imprisonment for seven years and pay a fine of Rs.5,000/- each in default to undergo rigorous imprisonment for six months for offence under Section 449 I.P.C. and to undergo imprisonment for life and pay a fine of Rs.10,000/- each in default to undergo rigorous imprisonment for six months for offence under Section 302 I.P.C. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

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

2.1. The first accused is the father of the second accused and the third accused is the wife of the second accused. They were all residing at Poosaripatti village in Pollachi taluk in Coimbatore district. The deceased Mr.Rajendran was also a resident of the same village. P.W.1 is his brother.

2.2. The accused have got lands adjacent to the lands belonging to the deceased. In connection with laying of pipelines in the land of the accused, there was some dispute between the deceased and the accused as the accused objected to the laying of the pipeline. The accused party, put up a syntax tank on their land. This was also objected to by the deceased. The deceased wanted them to remove the syntax tank as they had no right to put up the syntax tank at the said place. In this regard, there was a panchayat, but the issue could not be resolved. The deceased continued to insist upon the accused to remove the syntax tank. The accused got wild over the same. This is stated to be the motive for the occurrence.

2.3. On 20.03.2012, the deceased was alone in his house at Sundaragoundanoor, Poosaripatti village. The house of the accused is also situated by the side of the same. Around 11.30 p.m., on account of the above motive, it is alleged that all the three accused trespassed into the house of the deceased. The accused 1 and 2 were armed with sticks and the third accused was in possession of chilli powder. They dragged the deceased out of his house. The third accused throw chilli power on him and the accused 1 and 2 attacked him indiscriminately. The first accused, dropped a huge stone on the head of the deceased. Thus, the head of the deceased was completely disfigured. He died instantaneously. All the three accused then fled away from the scene of occurrence. The occurrence, according to the prosecution was witnessed by P.Ws.2 to 4.

2.4. P.W.1 the brother of the deceased was a driver by profession. On 20.03.2012, he was on duty in the bus at Pollachi. Around 06.00 a.m. on 21.03.2012, when he was in the

Pollachi bus stand, he heard about the occurrence. After taking leave from his office, he came down to the occurrence village at around 08.30 a.m. After having heard about the details of the occurrence, P.W.1 went to Negamam Police Station and made a complaint at 09.30 a.m. on 21.03.2012.

2.5. P.W.15 the then Sub Inspector of Police on receipt of the said complaint, registered a case in Crime No.115 of 2012 under Sections 448 and 302 I.P.C. against all the three accused. Ex.P17 is the F.I.R. He forwarded the complaint (Ex.P1) and the F.I.R. (Ex.P17) to the Court, which were received by the learned Magistrate at 04.00 p.m. On 21.03.2012.

2.6. P.W.16 took up the case for investigation. He went to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.6 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.7. P.W.13 Dr.Amirthalingam, conducted autopsy on the body of the deceased on 21.03.2012 at 04.50 p.m. He found the following injuries:

"External Injuries: (1) Asymmetry of face; left side of face deformed and flattened 8 x 8 cm involving deformed cheek left side deeper dissection shows comminuted fracture of all facial bones left side namely zygoma, maxilla and mandibular bone.

(2) Lacerated wound 14x2 cm mid forehead to frontal parietal region in the middle - carinal cavity depth.

(3) Lacerated wound 5x2 cm coronal cavity deep with brain matter out over left parietal region.

(4) Lacerated wound 5 x 3 cm left parieto occipital region with brain matter out.

(5) Lacerated wound 6x2 cm with brain matter out over right parietal region.

(6) lacerated wound 4x2 cm over occipital region midline with brain matter out.

(7) Deeper dissection of skull : subscalpal haematoma frontal and occipital region 100 gms each.

(8) Multiple abrasions over middle of chest 8 x 2 cms left clavicle 4 x 3 cm left arm 4 x 2 cm right flank 4 x 2 cm right shoulder 6 x 2. Comminuted fracture involving left frontal parietal, temporal and occipital bone. All bones broken into many pieces;

meningeal tear present all over the brain surface; subdual haematoma 200 g over left pivotal lobe; crushed brain matter involving whole of left cerebrum.

Internal exam: Abdomen distended - pleural and peritoneal cavity. No free fluid; no fractured ribs; both lungs pale; heart normal; chambers empty; hyoid intact; stomach contains 1.5 liter of digested food particles no chemical smell. Liver, spleen, kidneys normal and c/s pale; urinary bladder normal; spinal cord intact."

Ex.P14 is the postmortem certificate. He gave opinion that the death of the deceased was due to the injuries found on the body of the deceased. He further opined that the injuries 2 to 6 could have been caused by attack with a stick and the injury on the head could have been caused by a stone.

2.8. P.W.16, arrested all the three accused on 22.03.2012 at 06.30 a.m. in the presence of P.W.9 and another witness. On such arrest, all the three accused gave independent voluntary confessions. In the said confession, the first accused disclosed the place where he had hidden the stick, a stone and also the bloodstained clothes. In pursuance of the same, he took the police and the witnesses to the place of occurrence and produced the said material objects. The second accused in his disclosure statement has disclosed the place where he had hidden the clothes. In pursuance of the same, he produced the same and P.W.16 recovered the same. The third accused in her disclosure statement disclosed the place where she had hidden the stick and the bloodstained clothes. In pursuance of the same, they were also recovered.

2.9. P.W.16, then forwarded the accused to the Court and handed over the material objects also to the Court. On his request, the material objects were sent for chemical examination. The report revealed that there were human blood on all the material objects. On completing the investigation, he laid chargesheet against the accused.

2.10. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, which the accused denied. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined, 19 documents and 23 material objects were marked.

2.11. Out of the said witnesses, P.W.1 the brother of the deceased has spoken about the motive and the complaint made by him to the police. P.W.2 has stated that on 20.03.2012, at around 11.30 a.m. when he had gone to the occurrence village in

order to engage workers for agricultural work, he witnessed the entire occurrence. He has further stated that he remained at the place of occurrence till the next day until P.W.1 arrived at the scene of occurrence and then informed him about the same. P.W.3 has stated that around 11.00 p.m. He found these three accused attacking the deceased in front of his house. He also did not inform the occurrence to anybody. P.W.4 has also stated that while he had gone to the occurrence village to meet a customer, at that time, he witnessed the entire occurrence. He also did not disclose about the occurrence to anybody.

2.12. P.W.5 was a doctor at the Government Hospital at Pollachi. According to him, around 03.15 a.m. on 21.03.2012, all these three accused appeared before him for treatment. The first accused stated that around 12.00 midnight on 20.03.2012, he was attacked by known persons, but there was no injury found on him. Similarly, the second accused also, but there were no injuries on him. The third accused also stated that she was attacked at around 12.00 midnight by known person. He found lacerated injury on the lower middle finger and there is injury to the upper jaw. All the three accused left the hospital without the knowledge of the doctor. P.Ws.6 and 7 have spoken about the motive. P.W.8 has stated that he took the accused to the hospital for treatment. P.W.9 has stated about the arrest of all the three accused and the consequential recovery of the material objects.

2.13. P.W.10 has spoken about the preparation of the observation mahazar, the rough sketch and the recovery of the material objects from the place of occurrence. P.W.11 the photograph has spoken about the photographs taken by him. P.W.12 the police constable has stated that he took the dead body of the deceased and handed over the same to the doctor for postmortem. P.W.13 the Doctor has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.14 the forensic expert has spoken about the examination made on the material objects and according to him human blood was found on all the material objects. P.W.15 has stated about the registration of the case on the complaint made by P.W.1. P.W.16 has spoken about the investigation done and the final report filed.

3. 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 choose to examine any witness nor to mark any document on their side. Their defence was a total denial. Having considered all the above, the trial Court convicted all the accused as detailed in the first paragraph of this judgment and that is how, they are before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully.

5. As we have already pointed out, the prosecution relies on the evidences of P.Ws.2 to 4, who have been examined as eyewitness. P.W.3 has turned hostile. But he has stated about the occurrence in part. According to P.Ws.2, 3 and 4 the alleged occurrence took place at 11.30 p.m. on 20.03.2012. But they did not disclose about the occurrence to anybody. They did not raise any alarm. They did not make any attempt to even inform the relatives of the deceased. P.W.2 states that he was waiting at the place of occurrence till 08.30 a.m. continuously until the arrival of P.W.1 to the place of occurrence. This conduct of P.W.2 is highly unnatural. Further, his presence in the place of occurrence itself is doubtful. He has stated that he had gone to the occurrence place to fix workers for agricultural operations. It is difficult to believe that he would have gone for the said purpose at around 11.30 p.m. in the night. P.W.3 is also not a resident of that locality. He has stated that since there was no electricity and it was dead dark, he has not fully witnessed the occurrence. P.W.4 has stated that he went to the place of occurrence by chance to meet his customers. His presence also is highly doubtful. Above all, like P.W.2 he also did not raised any alarm on seeking the occurrence. He did not inform anybody about the occurrence. He did not made any attempt to save the deceased. He has stated that he simply left for his village. The conduct of this witness also is highly unnatural, which make his evidence unbelievable.

6. In our considered view, the presence of P.Ws.2 to 4 at the crucial point of time at the place of occurrence is doubtful and in view of the unnatural conduct of P.Ws.2 to 4, we find it difficult to believe them. Thus, in our considered view, the prosecution has failed to prove the case beyond any reasonable doubt.

7. Apart from that, though it is stated that P.W.1 made a complaint at 09.30 a.m., on 21.03.2012, the case was registered and the F.I.R. reached the hands of the learned Magistrate at 04.00 p.m, for which, absolutely there is no explanation. This also adds to the doubt in the case of the prosecution. Therefore, we hold that the appellants are entitled for acquittal.

8. In the result,

(i) The appeal is allowed, the conviction and sentence imposed on the appellants / accused 1 to 3 by the learned III Additional District and Sessions Judge, Coimbatore in S.C.No.40 of 2013 dated 30.07.2014 is set aside and they are acquitted.

(ii) The fine amount, if any paid, shall be refunded to them.

(iii) The bail bond, if any executed, by the appellants 2 and 3 / accused 2 and 3, shall stand discharged.

(iv) Since the first appellant / first accused is in jail, he is directed to be set at liberty forthwith, unless his detention is required in connection with any other case.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No-II,
Pollachi.
- 2.-Do- Thro The Chief Judicial Magistrate,
Coimbatore.
- 3.The Principal District & Sessions Judge,
Coimbatore.
- 4.The III Additional District and Sessions Judge,
Coimbatore.
- 5.The Inspector of Police,
Negamam Police Station,
Coimbatore District.
- 6.The Superintendent,
Central Prison,
Coimbatore.

7.The District Collector,
Coimbatore District.

8.The Director General of Police,
Mylapore, Chennai-4.

9.The Public Prosecutor,
Madras High Court.

+1cc to Mr.M.N.Balakrishnan, Advocate Sr.41478

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srg 05/10/2016



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