

Bail Slip

The Appellants/Accused Nos. 2 and 3 in Crl.Appeal No.476/2015 viz., Babu, aged 41 years, S/o Ramamoorthi and Sathish, aged 39 years, S/o Ramamoorthi and the Appellant/Accused No.1 in Crl.Appeal No.514/2015 viz., Murugan, aged 41 years, s/o Subramani, directed to be released on bail as per order of this court dated 12/08/2015 made in Crl.M.P. 1/2015 in Crl.Appeal No.476/2015 and an order dated 8/9/2015 made in Crl.M.P.1/2015 in Crl.Appeal 514/2015 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.476 and 514 of 2015

1.Babu
2.Sathish

... Appellants/A2 and A3 in
Crl.A.No.476/2015

Murugan

... Appellant/A1 in
Crl.A.No.514/2015

-vs-

State
Rep. by Inspector of Police
E3, Minjur Police Station,
Tiruvallur District.

... Respondent in both Appeals

These Criminal Appeals have been preferred to set aside the conviction and sentence imposed vide judgment dated 16.07.2015 made in S.C.No.165 of 2011 on the file of the IV Additional District and Sessions Judge, Ponneri, Thiruvallur District, by allowing these appeals.

For Appellants

in Crl.A.No.476/2015 : Mr.V.Murugesan

in Crl.A.No.514/2015 : Mr.N.R.Elango

Senior Counsel for
Mr.K.R.Rameshkumar

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

C O M M O N J U D G M E N T

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

The appellant in CrI.A.No.514 of 2015 is the first accused and the appellants in CrI.A.No.476 of 2015 are Accused 2 and 3 in S.C.No.165 of 2011 on the file of the IV Additional District and Sessions Judge, Ponneri, Thiruvallur District. They stood charged for offences under Sections 302, 307 and 326 r/w 34 IPC. By judgment dated 16.07.2015, the Trial Court convicted and sentenced them as follows:-

Accused	Section of law	Sentence
A.1	307 r/w 34 IPC	Rigorous imprisonment for 10 years and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for 3 months
	302 r/w 34 IPC	To undergo Life Imprisonment and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for 3 months.
A.2	307 r/w 34 I.P.C.	Rigorous imprisonment for 10 years and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for 3 months
A.3	302 r/w 34 IPC	To undergo imprisonment for life and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for 3 months

Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

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

The deceased in this case was one Mr.Karthikeyan. P.W.1 - Mr.Margazhi alias Manikandan and P.W.2 - Mr.Manikandan are his brothers. These three had a sister by name one Meena. Meena was given in marriage to one Mr.Arunagiri, who was residing in

Athipattu Village. All the accused were residing in Minjur. The first accused viz., Murugan is a friend of Arunagiri. Arunagiri used to visit the house of the first accused frequently. In the course of time, Arunagiri had developed illicit intimacy with the wife of the first accused. It is alleged that Arunagiri used to carry the wife of the first accused in the motorcycle to various places and to roam around with her. Meena was aggrieved by the same. She informed her brothers namely P.Ws.1 and 2 and the deceased about the same and they wanted to settle the issue.

3. It is further alleged that in response to the said call made by Meena, P.Ws.1 and 2 and the deceased had gone to Athipattu village on 19.06.2008 around 8.00 p.m. They went to the house of the first accused. They told the first accused to warn his wife not to have any illicit intimacy with Mr.Arunagiri, because the life of Meena was spoiled. The first accused got enraged over the same. He shouted at them. P.Ws.1 and 2 and the deceased shouted at the first accused that he allowed his wife to lead a wavered life, more particularly to have illicit intimacy with Arunagiri. This resulted in a quarrel between them. At that time, the second accused was also present at the scene of occurrence. The second accused suddenly held P.W.2 by his hands. The first accused took out a knife from the hide out and stabbed P.W.2 on his chest and left side of the stomach. The third accused, who came there suddenly held the deceased. The first accused stabbed the deceased below the abdomen near the penis. The deceased cried for help. P.W.1 went near them to rescue. These three accused held him also. Then on hearing the alarm raised, the neighbours rushed to the place of occurrence. On seeing them, all the three accused took to their heels.

4. With the help of the neighbours, P.W.1 took P.W.2 and the deceased to a nearby private hospital viz., Sugam Hospital at Thiruvottiyur. On the way to hospital, Karthikeyan [deceased] died. P.W.2 was admitted in the hospital and given treatment. Thereafter, P.W.1 went to Minjur Police Station and made a complaint at 12.30 a.m. on 20.06.2008. P.W.14 - the then Inspector of Police on receipt of the said complaint registered a case in Crime No.619 of 2008 under Sections 120-B 326, 302 r/w 34 IPC against all the three accused. Ex.P7 is the FIR. He forwarded both the documents viz., Complaint [Ex.P1] and FIR [Ex.P7] to the Court, which were received by the learned Magistrate at 2.00 p.m., on 20.06.2008.

5. P.W.14 took up the case for investigation. He proceeded to the place of occurrence at 5.00 a.m., and prepared an Observation Mahazar and a rough sketch in the presence of P.W.12 and another witness. Then he recovered blood stained earth and

sample earth from the place of occurrence. At 8.00 a.m., he examined P.W.2 and recorded his statement. Between 9.30 and 11.30 a.m., he conducted inquest on the body of the deceased and forwarded the same for Post-mortem.

6. P.W.10 - Dr.Sridevi conducted autopsy on the body of the deceased on 20.06.2008 at 3.30 p.m. She found the following injuries:

- "1. 8 x 5 x 1 cm punctured wound on the medial aspect of left thigh. Edges well defined On further dissection, muscle found lacerated. Femoral vessels cut and severed oozing of blood.
2. Abrasion 3 x 2 cms over the left upper arm.
3. Abrasion 2 x 1 cm over the left forehead."

Ex.P4 is the post-mortem certificate. She gave opinion that the injuries found on the body of the deceased could have been caused by a weapon like M.O.1 - Knife.

7. P.W.14 arrested all the three accused on 21.06.2008 at 6.00 a.m near Ashipattu Railway Station. On such arrest, the first accused gave voluntary confession, in which he disclosed the place where he had hidden the knife. In pursuance of the same, he took the Police and other witness to the place of hide out and produced M.O.1 knife. On returning to the Police Station, he forwarded all the three accused to the Court and also handed over the material object. At his request, the material object was sent for chemical examination. On completing the investigation, he laid charge sheet against the accused.

8. Based on the above materials, the trial Court framed charges as detailed in the first para of this judgment against all the accused. They denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 14 witnesses were examined; 11 documents were exhibited, and 1 Material Object was marked.

9. Out of the said witnesses, P.Ws. 1 and 2 are the eye witnesses to the occurrence. P.W.2 is an injured witness. He has also spoken about the complaint made by him. P.W.3 has stated that she heard about the occurrence. P.W.4 has stated that on 19.06.2008 when he was in his shop, there was a huge crowd in front of the shop and one person was taken in the auto. P.W.5 has stated that he went to the place of occurrence on hearing about the same. P.W.6 has spoken only about the arrest of the first accused and the consequential recovery. P.W.7 has spoken about the same. P.W.8 has spoken about the treatment given to P.W.2. P.W.9 has stated that he handed over the dead body to the doctor for post-mortem. P.W.10 has spoken about the post-mortem conducted by her and her final opinion regarding the

cause of death. P.W.11 has stated that he examined the internal organs of the deceased and found that there was neither poison nor alcohol. P.W.12 has spoken about the preparation of Observation Mahazar, Rough sketch and recovery of material objects from the place of occurrence. P.W.13 has spoken about the registration of the case on the complaint of P.W.1. P.W.14 has spoken about the investigation done and final report filed in this case.

10. 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 on their side nor marked any document in their favour. Their defence was a total denial.

11. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment. Aggrieved over the same, the appellants are before this Court with these appeals.

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

13. The alleged occurrence in this case is stated to have been occurred at 8.00 p.m on 19.06.2008. It is alleged that the case was registered at 12.30 a.m. on 20.06.2008. But the FIR has reached the hands of the learned Magistrate at 2.00 p.m on 20.06.2008. The learned counsel for the appellant would submit that this inordinate delay in forwarding the FIR to the Court would create doubt as to whether the FIR could have come into existence at 12.30 a.m. on 20.06.2008 itself. We find some force in the said argument. A perusal of the records would go to show that absolutely there is no explanation as to why it took about 12 1/2 hrs for the FIR to reach the hands of the learned Magistrate. This inordinate delay creates initial doubt in the case of the prosecution, more particularly, there are multiple number of accused in this case.

14. The learned counsel would next contend that according to P.Ws.1 and 2, who claim to have witnessed the occurrence, the first accused stabbed the deceased only once on the lower abdomen near the penis. But according to the doctor, the death was due to the depressed fracture of the skull coupled with other injuries. The said injury has not been explained away by the prosecution. From the opinion of the doctor, the said injury on the head of the deceased could have been caused by a blunt object and force should have been enormous, that is how the fracture of the skull was a depressed fracture. The said

injury, in our considered view, could not have been caused by a simple stab by knife. Above all, P.Ws.1 and 2 have not at all stated that any of the accused caused any injury on the head. This creates further doubt in the case of the prosecution. Thus, the presence of P.W.1 in our considered view is doubtful. Though P.W.2 is an injured witness in the case, and though his presence at the place of occurrence cannot be doubted, the credibility of the said witness is doubtful. He has stated that only one single stab was made by the first accused on the deceased. He has not stated any injury was caused by any of the accused on the head. At the earliest point of time, when he was treated by P.W.8, P.W.2 has stated that only two persons involved in the occurrence and they attacked him. Now there are three accused before the Court. Further, according to the medical opinion, on the deceased, there was only one stab injury and the other was a depressed fracture on the skull. P.W.2 has not accounted for these injuries properly. Therefore, we are of the view that though P.W.2 sustained injuries in the said occurrence and his presence at the place of occurrence cannot be doubted, the credibility of the said witness is doubtful. False implication of the accused in this case cannot be ruled out in view of the inconsistency between medical evidence and the eye witness account. In such view of the matter, we find it difficult to sustain the conviction of the accused. For all these reasons, we hold that the prosecution has failed to prove the case beyond reasonable doubts. Thus, the appellants are entitled to acquittal.

15. In the result, the Criminal Appeals are allowed and the conviction and sentence imposed on the appellants by the learned IV Additional District and Sessions Judge, Ponneri in S.C.No.165 of 2011 are hereby set aside and the accused/appellants are acquitted. Fine amount, if any, paid by the appellants, shall be refunded to them. Bail bond, if any, shall stand discharged.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

(svki)

To

1 The Judicial Magistrate,
No.II, Ponneri

2. The Chief Judicial Magistrate,
Thiruvallur

3. 2.The IV Additional District and Sessions Judge, Ponneri,
Thiruvallur District

4. The Superintendent, Central Prison, Puzhal, Chennai

5. 3.The Public Prosecutor
High Court, Chennai.

6.The Inspector of Police
E3, Minjur Police Station,
Tiruvallur District.

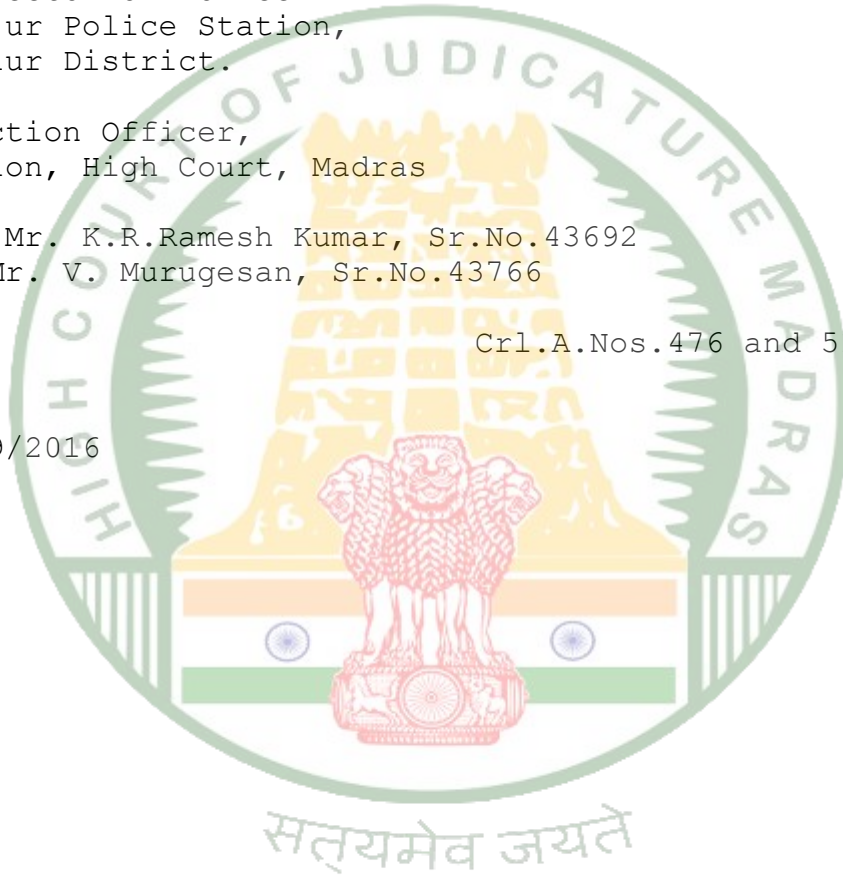
7. The Section Officer,
Crl. Section, High Court, Madras

+1 CC to Mr. K.R.Ramesh Kumar, Sr.No.43692

+1 CC to Mr. V. Murugesan, Sr.No.43766

Crl.A.Nos.476 and 514 of 2015

VGI (CO)
MD : 14/09/2016



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