

Bail Slip

That the Appellants herein/Accused 2&3 Viz., Gopi @ Gopinath, & Karvannan, Male 27 years was directed to be released on bail as per the order of this court dated 31.08.2015 in CrI.MP.NO.1 of 2015 in CrI.A.No.508 of 2015 and made herein.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.508 of 2015

1.Gopi @ Gopinath

2.Karvannan ... Appellants/Accused 2&3

Vs

State rep. By the Inspector of Police
Sathyamangalam Police Station,
(Crime No.13/2012)
Villupuram District.
Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment in S.C.No.43 of 2013 dated 23.07.2015 on the file of the learned III Additional District and Sessions Judge, Villupuram @ Kallakurichi.

For Appellants : Mr.L.Mahendran

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

JUDGEMENT

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

The appellants are A.2 & A.3 in S.C.No.43 of 2013 on the file of the learned III Additional District & Sessions Judge, Villupuram @ Kallakurichi. A.1 was one Mr.Manoharan. The trial Court had framed a lone charge against A.1 for offence under

Section 302 r/w 109 I.P.C and framed charges against A.2 & A.3 for offences under Sections 302 r/w 34, 506(ii) & 201 I.P.C. By judgment dated 23.07.2015, the trial Court acquitted A.1 from the charge under Section 302 r/w 109 I.P.C., however, convicted A.2 & A.3 under all the three charges and sentenced them to undergo imprisonment for life and to pay a fine of Rs.2,000/- each in default to undergo one year rigorous imprisonment for offence under Section 302 r/w 34 I.P.C., and to undergo rigorous imprisonment for six months and to pay a fine of Rs.500/- each in default to undergo simple imprisonment for three months for the offence under Section 506(ii) I.P.C., and to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- each in default to undergo rigorous imprisonment for six months for the offence under Section 201 I.P.C. The trial Court ordered the above sentences to run concurrently. Challenging the said conviction and sentence, the appellants/A.2 & A.3 are before this Court with this Criminal Appeal.

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

The deceased in this case was one Mr.Kothandaraman. There was a long standing enmity between A.1 and the deceased, in connection with the panchayat election held in the year 2011. In connection with the rights claimed by the villagers, in the celebration of the village festival also, there was enmity between A.1 and the deceased. In a meeting of the villagers held during the year 2011, to resolve the dispute in respect of the village festival, there arose a quarrel between A.1 and the deceased. A.2 is the son and A.3 is a close associate of A.1. In the meeting itself, it is alleged that, all the three accused challenged that they would not spare the deceased alive. This is stated to be the motive for the occurrence.

3.On 29.01.2012, at about 6.00 pm, the deceased had gone to his farm where he had raised watermelon. He had to return by 8.00 pm. But till 9.00 pm, he did not return. P.W.1 who is the son of the deceased got perplexed. He went to P.W.2, a retired Village Administrative Officer who also belonged to the group of the deceased in V.Nayampadi village. As a matter of fact, P.W.2 was very close to the deceased. Then, P.Ws.1 & 2 went in search of the deceased. After 9.00 pm when they were proceeding to R.Nayambadi Village near Olaganda Amman temple, they found blood stains on the road. They walked along the blood stains which led them to a nearby bush. In the bush, they found the dead body of the deceased and the same was tied with a big stone. The body was rolled into a brown colour bed sheet. There were cut injuries on the neck. The white shirt and lungi on the body of the deceased and the inner garment of the deceased were stained with blood.

4.Then, P.W.1 went to Sathyamangalam Police station and made a complaint on 29.01.2012 at 10.30 pm. P.W.12, the then Sub Inspector of Police, on receipt of the said complaint,

registered a case in Crime No.13/2012 for offence under Section 302 I.P.C. In the said complaint, P.W.1 had mentioned the names of A.1 & A.2 as the suspects. A.2 is the son of A.1. Ex.P.1 is the complaint and Ex.P.10 is the F.I.R. She forwarded both the documents to Court which were received by the learned Judicial Magistrate at 12.30 am on 30.01.2012.

5.P.W.19, the then Inspector of Police, took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of witnesses. He recovered the blood stained earth and the sample earth from the place of occurrence. Then he conducted inquest on the body of the deceased and forwarded the same for post mortem.

6.P.W.18, Dr.Suresh, conducted autopsy on the body of the deceased on 30.01.2012 at 2.50 pm and he found the following injuries:-

"Cut injury of size 10x4x4cm present in front of neck with exposing the cut muscles, blood vessels and trachea margin is regular. Chop wound of size 13x3x2cm present over the right side hand it extends from right side ear upto just above the right eye brow invoking the right ear. Margin regular. Chop wound of size 6x2x2cm present over the right cheek (just below and front of the right ear). Chop wound of size 9x3x3 cm upto scapula bone present over the back of the shoulder. Lacerated wound of size 18x3x2 cm in the centre of right side of chest abrasion of size 1x1cm present over right little toe (norcal aspect)."

Ex.P.24 is the post mortem certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage due to the multiple injuries sustained. He further opined that the death would have occurred within 18 to 22 hours prior to the post mortem.

7.P.W.19 recovered the stone, clothes and other material objects from the dead body of the deceased. He made an arrangement for a Police sniffer dog. Accordingly, the sniffer dog has brought to the place of occurrence. But, it did not bring out any clue. On 31.01.2012 at 8.00 am, it is alleged that A.2 & A.3 surrendered before the Village Administrative Officer (P.W.14). They confessed that they had killed the deceased. According to the case, the confessions of both the accused were recorded by P.W.14. Then he produced them before P.W.19. [P.W.14 has turned hostile and he has not supported the case of the prosecution in any manner. The confessions said to have been given by A.2 & A.3 to P.W.14

have not been marked.] P.W.19 arrested A.2 & A.3. On such arrest, they gave independent voluntary confessions one after the other. In pursuance of the confessions made by both the accused, they took the Police and witnesses to the place of hide out and A.2 produced a Veecharuval (M.O.10) and A.3 produced a Veecharuval (M.O.11). The same were recovered under a mahazar. Then A.2 produced a hero honda motorcycle (M.O.12) and a blood stained shirt and a lungi (M.Os.2 & 3). A.3 produced a lungi with blood stains and a shirt (M.Os.14 & 15). P.W.19 recovered the same under a mahazar.

8. On returning to the Police Station, P.W.19 forwarded A.2 & A.3 to Court and also handed over the material objects to Court. At his request, the material objects were sent for chemical examination. The report revealed that there were blood stains on all the material objects including the Veecharuvals. On completing investigation, P.W.19 laid charge sheet against all the three accused.

9. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment, against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 20 witnesses were examined and 30 documents were exhibited, besides 16 Material Objects.

10. Out of the said witnesses, P.W.1 - the son of the deceased; P.W.2 - a friend of the deceased; P.W.3 - a Villager; P.W.4 - yet another Villager and P.W.5 another Villager, have stated about the motive between A.1 and the deceased. They have also stated about the quarrel that ensued in the Villagers meeting some time before the alleged occurrence. P.Ws.6 & 7 have stated that on 29.01.2012, around 6.45 pm, when they were proceeding in the motorcycle, in the flash of the head light of the motorcycle, they found A.2 & A.3 standing near the land of one Mr. Ramesh. Both of them were armed with one aruval each. There were blood stains on the same. On seeing them, P.W.6, stopped his motorcycle. A.1 shouted and asked A.2 & A.3 to attack them also. A.2 & A.3 rushed towards them. Out of fear, they abandoned the motorcycle and returned to their respective houses. After some time, according to them, again they went to the place of occurrence where this time, they did not see anybody. There were only blood stains found at the place. They took the motorcycle and returned home. But they did not disclose about the occurrence to anybody. They have further stated that on 31.01.2012, they disclosed the above facts to the Police during interrogation. P.W.9 has stated about the preparation of observation mahazar and rough sketch from the place of occurrence and the recovery of material objects. P.W.10, a Forensic Expert, has submitted that he examined the material objects and found blood stains on all the material objects including the billhooks. He has further stated that he examined the internal organs of the deceased and he has opined

that there was no alcohol or poison.

11.P.W.11, is the then Judicial Magistrate No.1, Dindivanam, who recorded the statements of three witnesses viz., P.Ws.6 & 7 and another witness under Section 164 Cr.P.C. P.W.12 has spoken about the registration of the case on the complaint of P.W.1. P.W.13, the then Village Administrative Officer, has stated that two persons came to him on 31.01.2012 and wanted him to help them. Then he produced them before the Police however, he did not record any extra judicial confession from them. He was treated as hostile as he had not supported the case of the prosecution.

12.P.W.14, the then Village Administrative Officer, has stated about the disclosure statement made to the Police and the arrest of A.2 & A.3 and the consequential recoveries made. P.W.15 is the Head of the Police Dog Squad. He has stated that he brought the Police Sniffer dog to the place of occurrence. After taking scent, the dog rushed to the house of A.1 and then to the house of A.3. A.3 was very much available in his house. The dog barked at him and immediately he was taken to the police station for interrogation. P.W.16, the Head Constable has stated that he handed over the dead body to the Doctor for post mortem. P.W.17 has spoken about the photographs taken by him at the place of occurrence. P.W.18 has spoken about the post mortem conducted and his final opinion regarding the cause of death. P.W.19 has spoken about the investigation done and the final report filed in this case. P.W.20 is the Head Constable who has stated that he accompanied P.W.19 to the place of occurrence, at the time of investigation.

13.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. On their side, one Mr.Ravi, Mr.Pazhani & Mr.Arumugam were examined as D.Ws.1 to 3 respectively and four documents were marked as Exs.D.1 to D.4. D.W.1 is the then Head Clerk of the learned Judicial Magistrate's Court, Gingee. He has stated that A.1 was granted bail by the learned Principal Sessions Judge, Villupuram in CrI.M.P.No.3293/2012 on 17.04.2012 in connection with Crime No.13/2012 on the file of the Sathyamangalam Police Station. The said order copy is marked as Ex.D.1. D.W.2 is the then Supervisor of a TASMAL shop at Gingee Taluk. He has stated that A.1 was working in the said shop. According to him, on 29.01.2012 A.1 was on duty between 4.00 pm to 10.00 pm. Ex.D.3 is the movement register. D.W.3 is the Salesman in the same shop and he has also stated so. Thus, from the evidences of the defence witnesses and the defence documents, A.1 had pleaded alibi.

14.Having considered all the above, the trial Court acquitted A.1 from the charge under Section 302 r/w 109 I.P.C., however, convicted A.2 & A.3 as detailed in the first paragraph of this judgment. Challenging the same, the appellants/accused 2 & 3 are before this Court with this

Criminal Appeal.

15. We have heard the learned counsel appearing for the appellants/A.2 & A.3 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

16. As we have already narrated, this is a case based on circumstantial evidence. The prosecution has of course succeeded in proving the motive, inasmuch as out of the election dispute and out of the dispute regarding the village festival, there was enmity between A.1 and the deceased. A.2 & A.3 are the son and a close associate of A.1 respectively. Thus, we can hold that the prosecution has proved that there was enmity between A.1 and the deceased.

17. According to P.W.1, the deceased left for his farm around 6.00 pm on 29.01.2012. When he along with P.W.2 went in search of him, around 9.00 pm, he found the dead body of the deceased in a near by bush. Thus, the prosecution has proved that the deceased had died some time between 6.00 pm and 9.00 pm on 29.01.2012. According to the Doctor who conducted autopsy, the death was due to homicidal violence. To this extent, the prosecution has succeeded.

18. Now, the question is "Who caused the death of the deceased?". In order to prove the same, the prosecution mainly relies on the evidences of P.Ws.6 & 7 alone. P.Ws.6 & 7 have stated that on 29.01.2012 around 6.45 pm, when they were proceeding to V.Nayampadi village, at the place of occurrence, they found A.2 & A.3 standing and they were holding one Veecharuval each. The Veecharuvals were stained with blood. P.Ws.6 & 7 could see them in the flashing of the head light of the motorcycle. On seeing them, they shouted at them that they would do away with them also. Out of fear, they escaped from the place of occurrence abandoning the motorcycle in the said place itself.

19. The learned counsel for the appellants would submit that P.Ws.6 & 7 cannot be believed because of their conduct. We find force in the said argument. Had it been true that they had seen the occurrence, certainly, on returning to the village, they would have raised hue and cry or at least informed the family members of the deceased. It is not as though, P.Ws.6 & 7 are total strangers to the deceased. They are very close relatives of the deceased. The said fact has also been admitted by them. But, they did not either inform the family members of the deceased or anybody else. The only explanation offered by them is that, out of fear, they did not disclose about the occurrence to anyone. But, they have stated that after some time, they went again to the place of occurrence where they found blood stains. Earlier, when they had seen A.2 & A.3, they found a person lying covered with a cloth also. Even after that, they did not disclose about the

same to anybody. They claim that they took the motorcycle back to their house. Even thereafter, they claim that they did not say anything to anybody. When the wife of P.W.6 enquired him, he did not disclose anything even to her also. On the next day, when the dead body of the deceased was kept at the house of the deceased for condolences, these two witnesses participated. They were present when the Police came to the village and interrogated. They participated in the funeral of the deceased also. After funeral was over, when they were returning, they claim that they informed P.W.2 about the occurrence. This happened on 30.01.2012. Even thereafter, P.W.2 did not inform the Police about the same. It was only on the next day, these two witnesses were interrogated by the Police. Going by the above unnatural conduct of these two witnesses, we find it difficult to attach any weightage to the evidences of these witnesses. Further, in the absence of any other corroboration, in our considered view, it would not be safe to sustain the conviction of A.2 & A.3 solely based on the above evidences of P.Ws.6 & 7 alone.

20.The prosecution, next, relies on the recoveries of the incriminating material objects from the possession of A.2 & A.3 on the basis of the disclosure statements made on their arrest on 31.01.2012. But, P.W.15, the head of the Sniffer dog squad has stated that on 30.01.2012, at 7.00 am, he had brought the police sniffer dog to the place of occurrence. After taking cent from the place of occurrence, it went to the house of A.1 and the house of A.3 and it barked at A.3. Thus, A.3 was very much present at his house, and then out of suspicion, he was taken by the Police into custody.

21.P.W.1, during cross examination, has admitted that around 7.00 or 8.00 am on 30.01.2012, the Police took A.3 into their custody and took him to the Police Station. P.W.2 has also stated so. From these admissions made, more particularly, the evidence of the Head of the dog squad, it is crystal clear that A.3 was in the police custody from 30.01.2012 onwards. Therefore, the so-called arrest of A.2 & A.3 on 31.01.2012 and the alleged disclosure statements made and the consequential recoveries of material objects, cannot be believed.

22.In view of the foregoing discussions, we hold that the prosecution has failed to prove the case beyond reasonable doubts. As it has been guaranteed under Article 21 of the Constitution of India, life and liberty of an individual cannot be deprived of without following the procedure established by law. The Court's of law, cannot convict an accused on mere surmises and conjectures. Suspicion, however strong it may be, cannot take the place of proof. In this case, the prosecution has not even been able to succeed in creating a very strong suspicion against these accused. For these reasons, we hold that the conviction and sentence imposed on A.2 & A.3/appellants are not sustainable and hence, the same are liable to be set aside.

23.In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/A.2 & A.3 by the learned III Additional District & Sessions Judge, Villupuram @ Kallakurichi in S.C.No.43 of 2013, dated 23.07.2013, are set aside and the appellants/A.2 & A.3 are acquitted. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the appellants/A.2 & A.3, shall stand discharged.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jbm
To

- 1.The III Additional District & Sessions Judge, Villupuram @ Kallakurichi.
- 2.-do- Thro' The Principal Sessions Judge, Villupuram @ Kallakurichi.
3. The I Additional District Court, Tindivanam.
4. -do- Thro' The Principal District Judge,.
5. The Judicial Magistrate, Villupuram.
6. -do- Thro' The Chief Judicial Magistrate, Villupuram.
7. The Inspector of Police, Sathyamangalam Police Station, (Crime No.13 of 2012) Villupuram District.
8. The Superintendent, Central Prison, Cuddalore.
9. The District Collector, Cuddalore.
10. The Director General of Police, Mylapore, Chennai-4.
11. The Judicial Magistrate, Gingee.

Crl.A.No.508 of 2015

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