

Bail Slip

Viz Anbazhagan

The Appellant/Accused-4 was enlarged on bail in and by the order dated 30/03/2016 made in CrI. Mp. 2015/16 in CrI. A 671/15 on the file of this Honble High Court, Madras.

Bail Slip

Viz Appu @ Muthukrishnan

The Appellant/Accused-5 was enlarged on bail in and by the Order dated 03/02/2016 made in MP.1/15 in CrI.A. 672/15 on the file of this Honble High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.07.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos. 661, 671, 672 of 2015

1. Logu @ Loganathan

2. Prabu @ Pattuvari

3. Vasanth
in

.. Appellants/A.1 to A3

CrI.A.661/2015

4. Anbazhagan

.. Appellant/A.4 in
CrI.A.671/2015

5. Appu @ Muthukrishnan

.. Appellant/A.5 in
CrI.A.672/2015

vs

State represented by
Inspector of Police,
M-1 Madhavaram Police Station,
Chennai - 600 060
Crime No.517 of 2009.

.. Respondent in
all CrI.As

Common Prayer in all Criminal Appeals:- These Criminal Appeals have been filed under Section 374 (2) Cr.P.C., to set aside the conviction and sentence imposed upon the appellants by the learned IV Additional District & Sessions Judge, Ponneri in S.C.No.123 of 2011 dated 01.10.2015.

In Crl.A.No.661 of 2015:-

For Appellant : Mr. S.Senthilvel,
Legal Aid Counsel

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

In Crl.A.No. 671 of 2015:-

For Appellant : Mr.J.Suresh Mahendran

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

In Crl.A.No.672 of 2015 :-

For Appellant :Mr.R.John Sathyan

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

COMMON JUDGMENT

The appellants in Crl.A.No.661 of 2015 are A.1 to A.3; the appellant in Crl.A.No.671 of 2015 is A4 and the appellant in Crl.A.No.672 of 2015 is A5 in S.C.No.123 of 2011 on the file of the learned Additional District Sessions Judge, Ponneri. A1 to A3 stood charged for an offence under Section 302 IPC. A4 and A5 stood charged for an offence under Section 302 r/w. 109 IPC. After trial, by judgment dated 01.10.2015, the trial Court convicted A1 to A3 under Section 302 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1000/- each, in default to undergo rigorous imprisonment for three months and convicted A4 and A5 under Section 302 r/w. 109 IPC and sentenced them to undergo imprisonment for life and also to pay a fine of Rs. 1000/- each, in default to undergo rigorous imprisonment for three months. Challenging the above said conviction and sentence, the appellants are before this Court with these Criminal Appeals.

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

The deceased, in this case, one Veeramani, is the husband of P.W.1. He was a former chairman of Madhavaram Municipality. There was a dispute between the accused and the deceased in respect of selling a marriage hall. When the

accused questioned the same, the deceased gave a complaint against A1 and A3 and they were arrested and remanded to judicial custody. Hence, in order to wreck vengeance, A1 to A3 decided to do away the deceased Veeramani, for which, A4 and A5 also abetted A1 to A3 to commit murder of the deceased. On 27.09.2009, in the morning, while both the deceased and P.W.1 were proceeding in a motorcycle, A1 to A3 kicked the bike down and A1 caused cut injury on the head of the deceased, following him A2 and A3 cut the deceased indiscriminately on his head, stomach and wrist and then, they ran away. P.Ws.2 and 3 saw the occurrence. Immediately P.W.1 and others took the deceased to Apollo Hospital, Tondiarpet. P.W.16, Doctor, working in the hospital, admitted the deceased and found multiple injuries on the body of the deceased. P.W.16 issued accident register, Ex.P.14 and admitted him in the Intensive Care Unit. Then, P.W.1 went to the police station, at about 10.30 a.m., and lodged a complaint .

3. P.W.20, Inspector of Police, on receipt of the complaint, registered a case in Crime No.517 of 2009 for offences under Sections 341 and 307 IPC and forwarded the First Information Report, Ex.P.20, to the Court. Thereafter, he commenced investigation and proceeded to the scene of occurrence at about 10.45 a.m., and prepared an Observation Mahazar, Ex.P.6, and a Rough Sketch, Ex.P.21, in the presence of P.W.8 and P.W.10. P.W.20 also recovered bloodstained earth, M.O.1, and sample earth, M.O.2, under a cover of mahazar, Ex.P.22. Then, P.W.20 went to the hospital and since the deceased was totally unconscious, he recorded the statement of other witnesses. At about 1.40 p.m., the deceased succumbed to injuries. After receipt of death memo, Ex.P.15, P.W.20 altered the charge into Section 302 IPC and the alteration report is Ex.P.23. P.W.20 conducted inquest on the dead body of the deceased, between 3.30 p.m. and 5.30 p.m., in the presence of panchayathars and prepared an Inquest Report, Ex.P.24 and he recovered pant, M.O.7 and shirt, M.O.8 of the deceased. Thereafter, he sent the dead body of the deceased for postmortem to the Government Stanley Medical College Hospital, through P.W.14, Head Constable.

4. P.W.17, Doctor working in Stanley Medical College Hospital, conducted postmortem on the dead body of the deceased at 10.30 a.m., on 28.09.2009 and found the following injuries:-

- 1) a) An oblique dark brown linear abrasion @ 10 x 0.2 cm on the umbilical region of the abdomen; the inner lower end of the abrasion was 3.5 cm below the umbilicus at the midline of the abdomen.
- b) 3 x 0.2 cm l on the upper part of left side of abdomen. 8 cm lateral to the midline of the abdomen;

- c) 2.5 x 1 cm on the outer aspect of lower third of left arm;
- d) 3 x 0.2 cm on the outer third left clavicle;
- e) 4 x 0.2 cm on the upper part of left scapular region;
- f) 3 x 0.1 cm on the upper part of left shoulder;
- g) 10. x 0.2 cm on the upper part of left side of back;
- h) 6 x 0.1 cm on the upper part of left side of back;
- i) 9 x 0.2 cm on the back of right shoulder;
- j) 7 x 0.5 cm on the upper part of right shoulder;
- k) vertically oblique cut wound 1.5 x 0.5-0.2 cm x 3 cm on the front of lower third of left index finger;
- 2) Multiple over lapping and gross intermittent sutured cut lacerations over an area of 16 x 6-3 cm on the occipital and both parietal region of the scalp. Oblique in the intermittently sutured cut laceration 10 x 1 cm x bone deep on the right frontal region of the scalp; oblique intermittently sutured cut laceration 11 x 0.5 x bone deep on the left parieto temporal region of the scalp."

Ex.P.16 is the postmortem certificate given by P.W.17. He gave opinion that the deceased would appear to have died of head injuries.

5. On 29.09.2009, A1 to A3 surrendered before V Metropolitan Magistrate, Egmore, and on 01.10.2009, P.W.20, took A1 to A3, to police custody. During police custody, A1 gave a voluntary confession and the admissible portion of his statement is Ex.P.7. A2 also gave a voluntary confession and the admissible portion of his statement is Ex.P.9. A3 also gave a voluntary confession and the admissible portion of his statement is Ex.P.11. Based on the disclosure statement of A1, P.W.20 recovered M.O.3 billhook, under a Mahazar, Ex.P.8. Based on the disclosure statement of A2, P.W.20 seized M.O.4 billhook, under a Mahazar, Ex.P.10. Based on the disclosure statement of A3, P.W.20 recovered another billhook, M.O.6, under a Mahazar, Ex.P.25 and also a motorcycle, M.O.5, which was used by the accused for committing the crime, under another Mahazar, Ex.P.12. Subsequently, on 03.10.2009, P.W.20

arrested A4. On 08.10.2009, A5 surrendered before VII Metropolitan Magistrate, George Town and on 20.10.2009, P.W.20, took A5 to police custody for one day and subsequently, he surrendered him before the court for judicial custody. Then, he recorded the statement of the doctor, who conducted postmortem on the dead body of the deceased and other witnesses. On 04.11.2009, he produced P.Ws.1, 2 and 3 before P.W.13, Judicial Magistrate, Tiruvallur for recording their statements under Section 164 Cr.P.C. After completion of investigation, P.W.20 laid charge sheet on 20.11.2009.

6. Based on the above materials, the trial Court framed charges against the accused, as detailed in the first paragraph of this judgment. In order to prove the case of the prosecution, as many as 20 witnesses were examined and 26 documents were exhibited besides 9 Material Objects were marked.

7. Out of the witnesses examined, P.W.1 is the wife of the deceased and she is an eye-witness to the occurrence. According to P.W.1, on 27.09.2009, while she and the deceased went in a motorcycle to meet P.W.5, and when the deceased was about to park the bike near one Sathiyaraj Agencies, A1 to A3 came there and kicked the bike and hence she and the deceased fell down from the bike. At that time, according to her A1 cut the deceased with a billhook on his head and A2 and A3 also, indiscriminately, cut the deceased all over his body and ran away. P.W.5, came out of the shop and she informed about the occurrence to one Ananth, who is her brother-in-law and they took the deceased to Apollo Hospital, Tondiarpet and thereafter, she gave the complaint, Ex.P.1, before the respondent police and subsequently, at about 1.30 p.m., the deceased succumbed to injuries. According to P.W.1, A4 and A5 abetted A1 to A3 to commit the murder of the deceased.

8. P.W.2 is yet another eye-witness to the occurrence. He claims that he also saw the occurrence. According to him, on 27.09.2009, both the deceased and P.W.1 came in a bike and at that time, A1 to A3 kicked the bike and both of them fell down from the bike, immediately A1 to A3 cut the deceased, indiscriminately and then, he sent the deceased to the hospital. P.W.3 is also an eye-witness to the occurrence. He has also seen the occurrence. According to him A1 to A3 cutting the deceased with billhooks indiscriminately. P.W.4 is the brother of the deceased. He has stated that after hearing the news, he reached the scene of occurrence and took the deceased to the hospital. P.W.5 is the owner of a shop, near the scene of occurrence. According to him, he saw the deceased with injuries and took him to the hospital. P.Ws.6 to 9 are hearsay witnesses. P.W.10 is a witness to the Observation Mahazar and also recovery of M.Os.1 and 2, under Ex.P.6, Mahazer.

given by the accused before police and also recovery of M.Os 3 to 6. P.W.12 is also a witness to the Mahazar. P.W.13, the then Judicial Magistrate, No.II, Tiruvallur, has recorded the statements of P.Ws. 1 to 3 under Section 164 Cr.P.C. P.W.14, Head Constable, attached to the respondent police, has stated that he took the dead body of the deceased from Apollo Hospital to Stanley Medical College Hospital and identified the dead body for postmortem. P.W.15 is the photographer, who took photographs of the dead body of the deceased at Apollo Hospital, Tondiarpet. P.W.16 is the Doctor who admitted the deceased in the Apollo Hospital, Tondiarpet and issued Accident Register, Ex.P.14 and he has also issued Death Certificate, Ex.P.15, on the death of the deceased. P.W.17 is the Doctor working in the Stanley Medical College Hospital and he has stated that he conducted postmortem on the dead body of the deceased and gave postmortem Certificate, Ex.P.16.

10. P.W.18, Assistant Director, Forensic Science Lab, Chennai has deposed that he examined the blood stained material objects and gave a Report, Ex.P.17. P.W.19 is also an Assistant Director in the Forensic Science Lab, Chennai. He has stated that he made examination with regard to blood group found in the material objects and gave Serology Reports, Ex.Ps.18 & 19. P.W.20, Inspector of Police has stated that he registered the complaint, conducted investigation, arrested the accused, recovered material objects, recorded the statements of witnesses and after completion of investigation, laid charge sheet against the accused.

11. 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, 10 witnesses were examined and one document has been marked. Certified xerox copy of plaint in O.S.No.44 of 2008 was marked as Ex.C.1.

12. Eventhough the accused examined as many as 10 witnesses, D.W.1 to 3 have not spoken anything about the occurrence. D.W.4 has spoken about the previous enmity and motive. D.W.5 has spoken about the arrest of A1 to A3 and also examination of A4 and A5. All other witnesses have spoken only about the enquiry conducted by police against A4 and A5. Ex.D.1, marriage invitation, is no way helpful to A1 to A3. Xerox copy of plaint in O.S.44 of 2008, marked as Court document, only goes to show that the said suit is pending between the deceased and A4 and A5.

13. 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 5 are before this Court with these Criminal Appeals.

14. We have heard Mr.S.Senthilvel, learned Legal Aid Counsel, appearing for the appellants in CrI.A.No.661 of 2015,

Mr.J.Suresh Mahendran, learned counsel for the appellant in CrI.A.No.671 of 2015 and Mr.R.John Sathyan, learned counsel for the appellant in CrI.A.No.672 of 2015 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

15. The prosecution has examined P.Ws.1 to 3 as eye-witnesses to the occurrence. P.W.1 is the wife of the deceased. In her evidence, she has stated that P.W.1 and her husband, deceased, went in a motorcycle to see one Charles, P.W.5, at that time, A1 to A3 kicked the bike and A1 attacked her husband with a knife on his head and A2 and A3 also attacked him, indiscriminately, all over his body and then, they ran away. P.W.2 is a person known to the deceased as well as to the accused. According to him, A1 kicked the bike, due to which, the deceased and P.W.1 fell down from the bike, at that time, A1 attacked the deceased with a knife on his head and A2 and A3 also attacked him, indiscriminately all over his body. P.Ws.4, 5 and others sent the deceased to the hospital in an auto. It is the consistent evidence of P.Ws.1 to 3 that when the deceased and P.W.1 came to the scene of occurrence in a motorcycle, A1 to A3 have cut the deceased, indiscriminately. Though P.W.1 is the wife of the deceased, P.Ws.2 and 3 are independent witnesses and no motive can be attributed against them. The medical evidence also corroborates the evidence of the eyewitnesses. Hence, in the above circumstances, there is no reason to disbelieve the presence of P.Ws.1 to 3 in the scene of occurrence and the evidence adduced by them, is consistent and cogent.

16. Apart from that, the complaint has been given, immediately after the occurrence, clearly mentioning the names of A1 to A3. In the above circumstances, in our considered view, the prosecution has clearly proved that it is only these accused A1 to A3, who attacked the deceased and caused his death. So far as A4 and A5 are concerned, they have been charged with for an offence under Section 302 r/w.109 IPC. It is settled principle of law that to prove the charge of abetment, the prosecution is required to prove that the abettor has instigated any person to do a particular thing or engaged with one or more other persons in any conspiracy for doing of that thing. Intentionally aids, by act or illegal omission of doing that thing.

17. Hon'ble Supreme Court in Kishori Lal /vs/ State of M.P. In (2007) 10 Supreme Court Cases 797 has held as follows:

" 6. Section 107 IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in IPC. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3)

intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. 'Abetted' in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence "

18. But, in the instant case, except the bald statement of P.W.1, that the occurrence had taken place only on the instigation of A4 and A5, there is no evidence available to prove the existence of any of the ingredients of Section 107 IPC, to bring home the offence of Section 109 IPC against A4 and A5. Apart from that, their names were also not found in the First Information Report. In the above circumstances, the prosecution has miserably failed to prove the charge against A4 and A5. Hence, they are entitled for acquittal and the appeal filed by the appellants/A4 and A5 in CrI.A.Nos.671 and 672 of 2015 are liable to be allowed and the conviction and sentence imposed on them is to be set aside.

19. In the result, CrI.A.No.661 of 2015 is dismissed and (a) the conviction and sentence imposed by the trial Court on A.1 to A.3 are confirmed. It is reported that A.1 to A.3/appellants are in jail. A.1 to A.3/appellants are directed to undergo the remaining period of sentence as imposed by the trial Court, and (b) CrI.A.Nos.671 & 672 of 2015 filed by A.4 & A.5, respectively, are allowed, conviction and sentence imposed on them are set aside and they are acquitted from all the charges. Fine amount, if any paid by A.4 & A.5, shall be refunded to them. Bail bonds, if any, executed by A.4 & A.5, shall stand discharged.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To
<https://hcservices.ecourts.gov.in/hcservices/>
1. The Additional and Sessions Judge,

Ponneri

2.The Public Prosecutor,
High Court, Madras.

3.The JUdicial Magistrate,
Thiruvottiyur.

4.-Do- thro the Chief Judicial Magistrate,
Thiruvallur.

5.The Superintendant Central Prison,
Puzhal, Chennai.

6.The Inspector of Police,
M-1, Madhavaram Police Station
Chennai - 600 060

7.The Collector, Thiruvallur.

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

9.The Record Keeper
Criminal Section, High Court,
Madras.

+1cc too Mr.J. Suresh, Advocate SR. 43328/16

+1cc to Mr.R. John Sathyan, Advocate SR. 42850/16

+1cc to M/S.S. Senthivel, Advocate SR. 42862/16

Cr1.A.Nos.661, 671 & 672 of 2015

AD(CO)
VR(21/02/2017)

सत्यमेव जयते

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