

BAIL SLIP

CRL.APPL NO.372 OF 2012

That the Appellant herein/Accused Viz Stalin was directed to be released on bail as per the order of this Court in MP.No.1 of 2012 in Crl.Appl No.372 of 2012 dated 16.07.2012 and made herein.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.Nos.372/2012 and 40/2016

Stalin .. Appellant/A3 in  
Crl.A.No.372/2012/  
Accused

Pandiyan @ Pandi @ Pandiazhagu ...Appellant/A1 in  
Crl.A.No.40/2016/Accused

Vs

State by the Inspector of Police  
Tiruppur Rural Police Station,  
Tiruppur District. .. Respondent in both  
the appeals/Complainant

Appeals filed u/s.374 [2] Cr.P.C., against the conviction and sentence imposed by the learned Additional District and Sessions Judge, Fast Track Court, No.5, Tiruppur in SC.No.151/2011 dated 27.03.2012.

For Appellant in  
Crl.A.No.372/2012 : Mr.L.Mahendran

For Appellant in  
Crl.A.No.40/2016 : Mr.C.D.Sugumar

For Respondent in  
both the appeals : Mr.M.Maharaja  
Addl. Public Prosecutor

## COMMON JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellants are the first and third accused in SC.No.151/2011 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.5, Tiruppur. The 2<sup>nd</sup> accused in this case is one Mr.Praveenkumar and the 4<sup>th</sup> accused is one Mr.Mahendran. The Trial Court framed as many as four charges against the accused and first charge u/s.506[ii] IPC was against all the four accused, the second charge u/s.364 IPC was against all the four accused and third charge u/s.302 IPC was against the first accused and the fourth charge u/s.302 r/w 34 r/w 109 IPC was against A2 to A4. By the Judgment dated 27.03.2012, the Trial Court convicted and sentenced the accused as follows:-

| Sl.No . | Rank of the Accused | Conviction u/s. | Sentence Awarded                                                                                                                |
|---------|---------------------|-----------------|---------------------------------------------------------------------------------------------------------------------------------|
| 1       | A1                  | 302 IPC         | To undergo imprisonment for life and to pay a fine of Rs.500/, in default, to undergo 3 months rigorous imprisonment.           |
|         |                     | 364 IPC         | To undergo 10 years rigorous imprisonment and to pay a fine of Rs.500/-, in default, to undergo 3 months rigorous imprisonment. |
|         |                     | 506[ii] IPC     | To undergo 1 year rigorous imprisonment.                                                                                        |

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| Sl.No . | Rank of the Accused | Conviction u/s.        | Sentence Awarded                                                                                                                                                        |
|---------|---------------------|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 2       | A2, A3 and A4       | 302 r/w 34 r/w 109 IPC | Each of the accused were sentenced to undergo imprisonment for life and to pay a fine of Rs.500/, each, in default, to undergo 3 months rigorous imprisonment.          |
|         |                     | 364 IPC                | Each of the accused were sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.500/- each, in default, to undergo 3 months rigorous imprisonment. |

The sentences were ordered to run concurrently. Challenging the said conviction and sentence, the appellants/A1 & A3, are before this Court with this appeal.

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

[a] The deceased in this case was one Saravanan. On 27.09.2009, all the four accused went to a Mess by name Vinodhini Mess at Murukkampalayam village, in drunken state. The deceased had also come to the said Mess. He was also in a drunken state. While the accused were in the Mess, the deceased entered into a brawl with the accused and pushed A1 down. A1 got enraged over the same and shouted at the deceased. The deceased left the place soon. Thereafter, all the four accused went in search of the deceased. He was found near Sowbarnicka Company at Murukkampalayam Road. All the four accused took the deceased by force to the graveyard of the said village. At the said place, A1 pushed the deceased down. Since the deceased was in the drunken state, he easily lost his balance and fell on the cement floor. A1 shouted at the deceased that even his father had not beaten him once whereas the deceased had beaten him. So shouting, A1 directed A2 to A4 to ensure that the deceased did not get up. A2 to A4 stood around the deceased. A1 went to a nearby place, came with a huge stone and dropped the same on the head of the deceased. The head was crushed and the deceased died on the spot. Leaving the dead body at the said place, all the four accused fled away from the scene of occurrence.

[b] On 28.09.2009, at about 09.00 hours, P.W.2 [Jeevanandam]-Local Panchayat Board President of Murukkampalayam Village, found the dead body of the deceased. He did not even know the identity of the deceased. He immediately called P.W.1

[Arumugam]-Village Administrative Officer over phone and informed about the same. P.W.1 along with his Village Assistant, went to the graveyard. P.W.2 had also come by that time. They found the dead body which was unidentifiable by them. The head was found crushed. The stone [M.O.1] was lying by the side. The cheppals of the deceased were also lying there. Thereafter, P.W.1 went to Tiruppur Rural Police Station at 10.00 hours on 28.09.2009 and made a complaint [Ex.P.1].

[c] P.W.9, the then Sub Inspector of Police attached to Tiruppur Rural Police Station, on receipt of such complaint, registered a case in Crime No.1496/ 2009 u/s. 302 IPC. Ex.P.18 is the printed FIR. He forwarded Ex.P.1 and Ex.P.18 to the higher officials and to the Court, which were received by the learned Magistrate at 20.00 hours on 28.09.2009.

[d] P.W.20, the then Inspector of Police attached to the said Police Station, on receipt of the Case Diary and complaint [Ex.P.1], took up the case for investigation. He proceeded to the place of occurrence and prepared Observation Mahazar [Ex.P.2] and a Rough Sketch [Ex.P.19] in the presence of P.W.4 [Suresh] and another witness, under a cover of Mahazar. He also recovered Blood stained earth [M.O.1], sample earth [M.O.2], stone [M.O.3] ; a pair of chappals [M.O.4]; empty cool-drink bottle [M.O.5] and currency notes [M.O.6 series] under the cover of Mahazar [Ex.P.3]. He also held inquest on the dead body of the deceased in the presence of the Panchayatdars and others and prepared the Inquest Report [Ex.P.20]. The identity of the deceased was still not known. He sent the dead body for postmortem.

[e] P.W.18, Dr.Jayasingh, who was the Professor as well as the Head of the Department of Forensic Science, at the Government Hospital, Coimbatore, during the relevant point of time, on receipt of the requisition under Ex.P.17, conducted autopsy on the dead body of the deceased at 12.30 p.m. on 30.09.2009. He found the following injuries:

"The following antemortem injuries seen in the body:-

[1] Head is crushed from left to right side with the following open type of laceration noted on the following region:-

- Vertical laceration 8x3 cm x cavity deep noted on left side forehead including eyebrow.
- Laceration 4x2 cm x bone deep noted on left temporal region.
- Laceration 2x1 cm x bone deep noted over left parietal region.
- Vertical laceration 4x1 cm x cavity deep noted on right frontal region, the lower end is 6 cm



- in above to right eyebrow.
- Laceration 3x1 cm x cavity deep noted on right side frontal region.

[2] Contusion 15x7 cm noted on left side cheek including left eye.

On dissection of skull, scalp and dura:- Sub scalpal contusion noted on entire scalp, underlying skull and all facial bones found fracture into multiple pieces. Diffused sub dural and sub arachnoid hemorrhages noted on bth cerebral hemispheres. Sub dural clot weighing 50 grams of noted on left temporal region. Multiple laceration noted on entire brain.

Other findings:-

- Plural and peritoneal cavity-empty. Pericardium contains 15 ml of straw colour fluid.
- Heart:right side chambers contain few cc of fluid blood, left side chambers:-empty
- Hyoid Bone intact.
- Larynx and Trachea:normal-cut section-congested
- Stomach contains 100 grams of partially digested cooked rice particles with unpleasant smell. Mucosa congested.
- Lungs, liver, spleen and kidneys cut section congested.
- Small intestine contains 20ml of bile stained fluid with unpleasant smell. Mucosa congested.
- Urinary Bladder-empty."

Ex.P.16 is the Postmortem Certificate. The chemical examination of the internal organs revealed that there was alcohol in the internal organs. According to the doctor, the injuries on the deceased would have been caused by a stone like M.O.3.

[f] P.W.20, during the course of investigation, ascertained the identity of the dead body of the deceased from P.W.5, who was the employer of the deceased. On 02.10.2009, at about 19.00 hours, the Panchayat President of Murukkampalayam village produced A2 [Praveenkumar] before the respondent Police and P.W.20 arrested A2 in the presence of the witnesses. A2 came forward to give a voluntary confession statement, the admissible portion of which is marked as Ex.P.9. Pursuant to the said confession, a blue-white coloured jeans pant was recovered from the place of hide out under the cover of Mahazar [Ex.P.21]. Upon the identification of A2, P.W.20 arrested A3 and A4 in the presence of the witnesses and recorded their

independent, voluntary confession statements, in pursuance of which, the material objects were recovered under the cover of Mahazars. The accused were sent for judicial remand. On 18.12.2010, P.W.20 effected formal arrest of A1 and took police custody of him. A1 also came forward to give a voluntary confession statement in the presence of P.W.4 and another witness. Pursuant to the said confession statement, M.O.14 -blood stained lungi was recovered under the Mahazar [Ex.P.22]. All the recovered articles were sent for chemical examination under Form 95. On completion of investigation, he laid charge-sheet against the accused.

[g] Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case on the side of the prosecution, as many as 20 witnesses were examined, 25 documents and 14 material objects were also marked.

[h] Out of the said witnesses, P.W.2 has stated that when he found the dead body of the deceased on 28.09.2009 in the morning, he informed P.W.1 over phone. P.W.1, the Village Administrative Officer, has stated that at 9.00 a.m. on receiving telephonic information from P.W.2, he visited the place of occurrence, found an unidentifiable dead body and then, went to the Police Station, made a complaint at 10.00 a.m. P.W.3 has stated that on 27.09.2009, around 08.00 to 09.00 hours, he found four to five persons standing near Mariamman Temple at Murukkampalayam village and were quarreling with yet another person. According to him, he wanted those people not to quarrel there and leave the place. Then, they left the said place. He has identified in Court, these four accused are the persons who were quarreling with the other person. P.W.11 has stated that on 27.09.2009 at about 18.00 hours, when he went to the Cracker shop of one Jeeva, they found these four accused quarreling with the deceased. He warned them not to quarrel and thereafter, they left the place. P.W.4 has spoken about the preparation of the Observation Mahazar and the Rough Sketch and also the recovery of the material objects from the place of occurrence, including the stone [M.O.3]. P.W.5 is the employer of the deceased, who has stated that on 27.09.2009, lastly, the deceased came to him, received a sum of Rs.300/- at about 18.00 hours and left the place and thereafter, he did not turn up for employment at all. P.W.6 is the employer of A1 and A2, who has stated that after 27.09.2009, these accused did not turn up for work. P.W.7 is the employer of A4 who has stated that A4 did not turn up for work after 27.09.2009. P.W.8, who is the co-employee of A1 and A2, also stated that A1 and A2 did not turn up for employment after 27.09.2009. P.Ws.9, 10 and 12 have turned hostile. P.W.13 has spoken about the arrest of A4. P.W.14 is the Constable who has taken the dead body of the deceased for postmortem to the hospital. P.Ws.15 and 16 have

turned hostile and not stated anything about the occurrence. P.W.17 has stated about the arrest of A1 and the consequential recovery of the material object, viz., lungi. P.W.18 has stated about the autopsy conducted by him on the dead body of the deceased and his final opinion regarding the cause of death. P.W.19 has spoken about the registration of the case on the complaint of P.W.1. P.W.20 has spoken about the investigation done by him and his filing of the final report.

3 When the above incriminating materials were put to the accused under section 313 Cr.P.C., they denied the same as false. Their defence was a total denial.

4 Having considered all the above, the Trial Court convicted the appellants as detailed in the first paragraph of this Judgment. That is how the appellants/A1 and A3 are before this Court with this appeal.

5 We have heard the learned counsels appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6 This is a case based on the circumstantial evidence. According to the case of the prosecution, these four accused had gone to Vinodhini Mess in drunken state, where the deceased had also come. It is the further case that in the said Mess, the deceased pushed A1 down which was the cause for these accused to abduct the deceased to the graveyard at Murukkampalayam to commit the murder. Absolutely, there is no evidence in respect of the said quarrel at Vinodhini Mess, as no witness has been examined to speak about the same. Similarly, for abduction also, absolutely there is no evidence, though it is alleged that when the deceased was standing near Sowbarnicka Company at Murukkampalayam Village, these four accused had abducted him.

7 In respect of the death of the deceased, the prosecution relies only on the evidences of P.Ws.3 and 11. P.W.3 has stated that he saw these four accused quarreling with the deceased on the night of 27.09.2009. But, it is not as though the accused were previously known to this witness. There was no Test Identification Parade conducted at all. P.W.3 did not even know the deceased. He did not disclose about this fact to anybody, until he was examined long after the occurrence. In the absence of the Test Identification Parade and in the absence of any explanation as to why he did not disclose about the above fact to anybody for such a long time, it is difficult to believe the evidence of P.W.3.

8 Then comes the evidence of P.W.11. He has also stated that he found all the four accused quarreling with near the



Jeeva Cracker Shop at 20.30 hours on 27.09.2009. This witness also did not know these accused persons as well as the deceased previously. But, there was no Test Identification Parade conducted in respect of P.W.11 also. Further, P.W.11 did not disclose about the above fact for such a long time. It is the admitted case of the prosecution that even when the dead body was sent for postmortem, the identity of the deceased was not known. In view of the above, it is difficult to place any reliance on the evidences of P.Ws.3 and 11.

9 Apart from that, the prosecution relies only on the recoveries of the clothes of the accused, on the disclosure statement made by each of the accused. This is very seriously disputed by the learned counsels appearing for the appellants. Assuming that these clothes were recovered based on the disclosure statements made by these accused, that would not, in any manner, help the prosecution because there is no link established between the recovered articles and the crime. Thus, the statements of these accused would not attract the ingredients of section 27 of the Evidence Act, as the relevancy of the fact discovered, has not been established.

10 The prosecution has succeeded in proving that the deceased came to his employer, viz., P.W.5, on 27.09.2009 in the evening, received money and went away. That was the last occasion that the deceased was seen. After that, the movement of the deceased was not proved. Absolutely, there is no other evidence to connect the accused with the death of the deceased.

11 It is too well settled that in a case based on circumstantial evidence, the prosecution has to prove the circumstances projected by it beyond reasonable doubts and all such proved circumstances should form a complete chain without any break and the same should unerringly point to the guilt of the accused and there should not be any hypothesis which is inconsistent with the guilt of the accused. In the instant case, the prosecution has not proved any of the circumstances against the accused, so as to prove the guilt of the accused. Though the prosecution has succeeded in creating the suspicion against these accused, such suspicion, however, great it may be, shall not take the place of proof. This Court cannot act on mere surmises. In such view of the matter, the prosecution has failed to prove the case beyond reasonable doubts and therefore, the appellants/A1 and A3 are entitled for acquittal.

12 It is brought to the notice of this Court that A2 [Praveenkumar] had filed an appeal in CrI.A.No.596/2014. During the pendency of the said appeal, A2 filed a Habeas Corpus Petition in HCP No.3258/2014, wherein he pleaded that the entire trial conducted against him was non-est in the eye of law as he was a juvenile as on the date of the commission of the alleged



crime. In the said Habeas Corpus Petition, the Division Bench of this Court, vide order dated 22.09.2015, declared that A2 was a juvenile and thus, the conviction of A2 in the trial, was held as vitiated. On that ground, the Division Bench has directed the release of A2. Thus, as of now, the conviction and sentence imposed on A2 [Praveenkumar] stands set aside as per the order in HCP No.3258/2014.

13 Turning to A4 [Mahendran], he has not filed any appeal. For a person not to approach this Court by filing an appeal, there may be a number of reasons, such as poverty, ignorance, illiteracy, lack of wherewithal and lack of support etc. This Court, being the creator of Constitution, to protect the human rights of the citizens and to ensure that the life and liberty of the citizens are not deprived of without following the procedure established as enshrined in Article 21 of the Constitution of India, cannot omit to do justice to a person who has not approached the Court by filing an appeal. Taking a similar view, the Hon'ble Apex Court in Dandu Lakshmi Reddy Vs. State of A.P. reported in 1999 [7] SCC 69, has held as follows:-

"25.The mother of the appellant Narayanamma is languishing in jail at present pursuant to the conviction and sentence awarded to her in this case. Of course her conviction is not before us as she did not file any special leave petition. But this Court has set up a judicious precedent for the purpose of averting miscarriage of justice in similar situations. On the evaluation of a case, if this Court reaches the conclusion that no conviction of any accused is possible the benefit of that decision must be extended to his co-accused also though he has not challenged the order by means of an appeal petition to this Court, (vide Raja Ram and Ors. v. State of M.P. {1994 (2) SCC 568})."

14 In the instant case, as against A4 [Mahendran], absolutely there is no evidence to sustain his conviction. Therefore, though A4 has not filed an appeal, we are inclined to set aside the conviction and sentence imposed on A4 also.

15 In the result, the criminal appeals are allowed and the conviction and sentence imposed on the appellants/A1 and A3 are set aside and they are acquitted of all the charges leveled against them. It is reported that A3 [Stalin] is on bail. The bail bond, executed by him, shall stand terminated.

16 So far as A1 [Pandiyar @ Pandi @ Pandiazhagu] is concerned, he is in jail. Hence, he is directed to be set at liberty forthwith, unless his presence is required in connection with any other case and fine amounts, if any paid by the

appellants/A1 and A3, shall be refunded to them.

17 The conviction and sentence imposed on the fourth accused [Mr.Mahendran] are set aside and he is acquitted of all the charges leveled against him.

18 Since A4 [Mahendran] is reported to be in prison, he is also directed to be set at liberty forthwith, unless his presence is required in connection with any other case and fine amount, if any paid by him, shall be refunded to him.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Inspector of Police  
Thirupur Rural Police Station.  
Thirupur District.

2.The Additional District and Sessions Judge  
Fast Track Court, No.5, Tirupur.

3.The Judicial Magistrate No.2,  
Tiruppur.

4.The Public Prosecutor,  
High Court, Chennai.

5.The Superintendent Central Prison,  
Coimbatore

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

7.-do-Thro The Principal Sessions Judge,  
Tiruppur

8.-do- Thro The Chief Judicial Magistrate  
Tiruppur

9.The District Collector Coimbatore

CRL.A.Nos.372/2012 and 40/2016

aa6/04/2016