

Bail Slip

The Appellant/Accused Viz. Muthuraja (A3) S/o. Shanmugam, and Mr.Murugan (A1) S/o. Arumugam and Mr.Balakrishnan (A2) S/o. Arumugam, were directed to be released on bail as per the order of this court dated 03.08.2012, 27.03.2013 respectively in Crl.MP No.1+1/12 in Crl.A.No.429/12 and Crl.A.No.182/13 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN
AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.429 of 2012 and CRL.A.No.182 of 2013

Muthu Raj .. Appellant/A3 in Crl.A.No.429 of 2012
1. Murugan ..
2. Balakrishnan .. Appellants/A1&A2 in Crl.A.No.182 of 2013

Vs

State by
The Inspector of Police,
Vadavalli Police Station,
Coimbatore District. ... Respondent in both Crl. Appeals

Appeals filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional District Sessions Judge, Fast Track Court No.2, Coimbatore.

For Appellants in both appeals : Mr.K.M.Balaji

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

COMMON JUDGMENT

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

The appellant in Crl.A.No.429/2012 is the accused No.3 and the appellants in Crl.A.No.182/2013 are the accused 1 and 2 in S.C.No.14 of 2007 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.2, Coimbatore. Including these three appellants, totalling there were six

accused in this case. The trial court framed as many as 6 charges as detailed below:

Rank of the Accused	Charges framed
A1 Murugan	148, 341 read with 149, 302 and 324 of IPC
A2 Balakrishnan	148, 341 read with 149, 302 and 324 read with 149 of IPC
A3 Muthuraja	148, 341 read with 149 and 341 read with 149 and 302 read with 149 of IPC
A4 Marimuthu	148, 341 read with 149 and 341 read with 149 and 302 read with 149 of IPC
A5 Manikandan	148, 341 read with 149 and 341 read with 149 and 302 read with 149 of IPC
A6 Jayachandran	148, 341 read with 149 and 341 read with 149 and 302 read with 149 of IPC

By judgment dated 25.06.2007, the trial court convicted all the 6 accused and sentenced them as detailed below:

Name of the accused	Conviction	sentence
A1	Convicted u/s.148 of IPC	Sentenced to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.500/- in default to undergo simple imprisonment for 3 months.
	Convicted u/s.302 of IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for one year
	Convicted u/s.324 of IPC	Sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for 3 months
	Convicted u/s.341 read with 149 of IPC	Sentenced to undergo one month simple imprisonment and to pay a fine of Rs.100/- in default, to undergo simple imprisonment for one week.

Name of the accused	Conviction	sentence
A2	Convicted u/s.148 of IPC	Sentenced to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.500/- in default to undergo simple imprisonment for 3 months.
	Convicted u/s.302 of IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for one year
	Convicted u/s.324 read with 149 IPC	Sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for 3 months
	Convicted u/s.341 read with 149 of IPC	Sentenced to undergo one month simple imprisonment and to pay a fine of Rs.100/- in default, to undergo simple imprisonment for one week.
A3 to A6	Convicted u/s.148 of IPC	Sentenced to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.500/- in default to undergo simple imprisonment for 3 months.
	Convicted u/s.341 read with 149 of IPC	Sentenced to undergo one month simple imprisonment and to pay a fine of Rs.100/- in default, to undergo simple imprisonment for one week.
	Convicted under Section 302 read with 149 of IPC	Sentenced to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo simple imprisonment for one year

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

2. When these two appeals were taken up for hearing, it was brought to our notice that the accused 4 to 6 filed CrI.A.Nos.711 of 2008, 1151 of 2007 and 794 of 2007 respectively before this Court. A Division Bench of this Court, by a common judgment dated 03.07.2009, allowed all the three appeals and acquitted the accused 4 to 6 and the same has become final.

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

(a) The deceased in this case was one Mr. Mayakumar. His wife is one Mrs. Jaya. They had two children. They were residing in a Motor Room at Krishna School in Coimbatore. The deceased was employed in K.G. Mill at Coimbatore. P.W.1 is his brother. He was also employed in the same Mill and staying along with the deceased. They all hailed from Pudupatti Village in Tuticorin District. On account of employment, they were staying in Coimbatore.

(b) In due course of time, the deceased had developed illicit intimacy with one Ms. Kumudha who was also working in the same Mill. When this came to light, Mrs. Jaya questioned the deceased. This resulted in frequent quarrels between the deceased and Jaya. After some time, the deceased had taken Kumudha to Tuticorin and started living with her. Because of the same, there arose a matrimonial dispute between the deceased and Jaya. The deceased filed a case for divorce in a court in Tuticorin. There were also complaints made by Jaya against the deceased.

(c) On 28.07.2006, the deceased had returned to the Mill to join duty. At 8.00 a.m., Jaya found the deceased near K.G. Mill and holding his shirt, she started manhandling him. P.W.2 was residing near K.G. Mill. P.W.1 and P.W.2 came to the spot and separated them. In respect of the said occurrence, Jaya had complained against the deceased at the local police station. There was a police enquiry held into the same. After the enquiry, when the deceased was coming out of the police station, Jaya challenged him that she would wreck vengeance at the appropriate time. This is stated to be the motive for the occurrence.

(d) The accused 1 and 2 are the brothers of Jaya. They were aggrieved because of the above incidence in which their sister Jaya was made a destitute.

(e) On 29.07.2006, after his work was over in the Mill, the deceased came to the house of Senthur Pandian P.W.2 and slept. At that time, led by the accused 1 and 2, the accused 3 to 6 came in an unlawful assembly to the house of P.W.2. P.W.2 Senthur Pandian rushed into the Mill seeking help. P.W.1 who was in the Mill along with P.W.2 rushed to the place of occurrence. P.W.3, the wife of P.W.2 was also awakened. All the 6 accused started attacking the deceased. P.W.2 was also attacked. They took the deceased to a nearby bush where the accused 1 and 2 cut the deceased with Aruvals (M.Os.1 and 2). The accused 3 to 6 who were armed with steel rods surrounded the deceased. The deceased sustained multiple injuries near the

bush itself and died on the spot.

(f) P.Ws.1 to 3 returned to the house of P.W.2. According to them, out of fear, they did not go to their house for the whole night. Next day, early morning, at 06.00 a.m., P.W.1 went to the place of occurrence and found the deceased lying dead. Thereafter, P.W.1 went to Vadavalli Police Station and made a complaint. P.W.20, reduced the said complaint into writing under Ex.P.1 and registered a case in Crime No.478 of 2006 under Section 302 of IPC. Though in the said complaint under Ex.P.1, P.W.1 mentioned only about the accused 1 and 2 and four unknown persons, in the printed First Information Report under Ex.P.30, the names of all the 6 accused had been mentioned as the assailants.

(g) P.W.21 took up the case for investigation. On 30.07.2006, he proceeded to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch in the presence of P.Ws.4 and 5. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(h) P.W.9 Doctor conducted autopsy on the body of the deceased on 30.07.2006 at 04.00 p.m. and found the following injuries:

''External Injuries:

1. Left hand found severed at the level of wrist by a circular cut injury cutting through carpal bones. Margin of the cut injury regular and uniform and it is bruised. The injury measuring 8 x 4.5 c.m. x bone deep cut edges of bones are exposed;

2. An oblique linear cut injury extending from the tip of left ring finger and extended downwards up to the base of left thumb. Margins are clean cut and bruised. The distal phalanyx of ring finger. Proximal phalanyx of middle finger and meta carpal bone of index and middle finger and meta carpet bone of left thumb found cut, injury measuring 17 x 1 c.m. x bone deep;

3. An oblique circular cut injury of 8 x 7.5 x bone deep exposing the cut end of both bones of left fore arm 23 c.m. from the crease of left elbow severed left hand receiprocale with the cut end of the left fore arm;

4. An oblique bevelled type of cut injury seen on the back of right forearm extended from back of right wrist up to upper 3rd back of right forearm of 17 x 7 c.m. x bone deep exposing the cut ulnas bone along with muscle of back of right forearm. Margins are regular and bruised;

5. An oblique cut injury 7 x 1 c.m. x bone deep seen on front of right knee along the upper borders of pettala bone exposed and tendon found bruised;

6. An oblique cut injury 7 x 3 c.m. x bone deep seen on top of left shoulder with underlying lateral end of clavicle cut along the line of injury margins are clean cut and bruised;

7. An oblique horizontal linear scratch 7 cms. in length which is tailed of in its outer end wound is directed? Medial to lateral, 10.50 c.m. from the top of left shoulder;

8. An oblique incised wound 4 c.m. x 0.75 c.m. on middle of back of left arm wound directed? Below upward obliquely;

9. Punctured abrasion 2 x 0.5 c.m. seen at lower end of front of the left side of chest along the anterior axillary line, 14 c.m. from the left nipple;

10. Bevelled type of cut injury 13 x 8 c.m. x muscle deep extending from the top of left shoulder up to inner border of upper end of left scapular, inner end of wound is 6 c.m. from midline of back of chest muscle underneath found cut along the line of injury;

11. Horizontally oblique cut injury 18 x 3 c.m. x cranial cavity deep found at back of head extending 8 c.m. away from back of right ear up to 7 c.m. from outer angle of left eye. Skull found cut and fractured exposing brain along the line of injury;

12. An oblique horizontal cut injury 15 x 3c.m. X cranial cavity deep extending from middle of naphe of neck up to left molar region underlying bone found cut and fractured along the line of injury with brain found exposed. Upper portion of left external ear found severed cut portion is found along with cut margin of injury No.11;

13. Cut injury 4 x 1 c.m. x scalp deep found just beneath the inner end of the previous injury;

14. Horizontally oblique cut injury seen on the palmar surface of right little, middle ring finger. Injuries are found on the middle of each finger (defence wound) bones underneath are intact; and

15. Cut injury horizontal oblique in direction measuring 3 x 1.5 c.m. x muscle deep seen on back of left forearm 13 c.m. below the back of left elbow. Internal injuries:

Localised contusion seen in the left parieto occipital lobe of the brain 9 x 4 c.m. with laceration of the posterior part of occipital lobe of left. Hemisphere left cerebellar hemisphere is contused and lacerated 5 x 2.5 c.m. corresponds with cut injury of

the back of the head fracture base of skull involving posterior cranial fossa on left side and posterior part of middle cranial fossa involving petrous part of temporal bone.

Other findings:

Pleural and peritoneal cavities empty.

Lungs cut section pale.

Heart - all chambers empty. Coronaries patent.

Hyoid bone intact.

Stomach contains about 300 gms. Of undigested cooked rice particles.

No specific smell. Mucosa pale.

Small intestine contains 30 ml. Of bile stained fluid. No specific smell. Mucosa pale.

Liver, Spleen, Kidneys and brain cut section pale.

Urinary bladder filled with 120 ml of clear urine.

External genitalia normal."

He gave opinion that the deceased died due to shock and hemorrhage due to the injuries.

(i) The accused 1, 2 and 3 were arrested on 30.07.2006 itself and the material objects were recovered. On completing the investigation, P.W.21 laid charge sheet against the accused.

4. 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 21 witnesses were examined and 39 documents and 15 material objects were also marked.

5. Out of the said witnesses, P.Ws.1 to 3 are the eye-witnesses to the occurrence. They have vividly spoken about the same. P.W.2 is an injured eye-witness. P.W.2 was treated by P.W.7 Doctor Yuvaraj Muruganandan on 30.07.2006. He found the following injuries on him:

1. Cut injury 1 x 2 c.m. in the web spore between left ring and middle finger;

2. Cut injury in left cheek below left ear 1 x 1 c.m. size; and

3. Abrasion 3 x 2 c.m. over left orbital fossa."

He told him that he was attacked by six known persons with Aruvals.

6. P.W.6 has treated the 1st accused for the injuries found on him on his arrest. P.W.7 has treated P.W.2. P.W.11 has spoken about the arrest of the 3rd accused and the

consequential recovery of the Material objects. P.W.12 has spoken about the arrest of the 2nd accused and the consequential recovery of the material objects. Similarly, P.W.13 has spoken about the arrest of the 1st accused and the consequential recovery of the material objects. P.W.10 has spoken about the registration of the case in respect of the earlier occurrence. P.W.16 has spoken about the motive. P.W.20 has spoken about the registration of the case and P.W.21 has spoken about the investigation done and the final report filed by him.

7. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not choose to examine any witness nor mark any document on their side.

8. Having considered all the above, the Trial Court convicted all the six accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, as we have already narrated, the appeals filed by the accused 4 to 6 in CrI.A.Nos.711 of 2008, 1151 of 2007 and 794 of 2007 were allowed and they have been acquitted by the Division Bench of this Court. Following the accused 4 to 6, the appellants/accused 1, 2 and 3 are before this Court with these appeals.

9. We have heard the learned Counsel for the appellants/accused 1 and 2 and 3 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

10. A copy of the common judgment dated 03.07.2009 in CrI.A.Nos.711 of 2008, 1151 of 2007 and 794 of 2007 respectively, has been placed before us for our consideration. A perusal of the said judgment would go to show that the Division Bench of this Court has acquitted the accused 4 to 6 mainly on the ground that their names were not mentioned in the Ex.P.1 whereas in Ex.P.30, the Printed F.I.R., they have been shown as accused. The Division Bench of this Court has further held that there was enormous delay in preferring the complaint which has also not been explained away. The Division Bench has also held that there are lot of discrepancies in the Identification made. Though, according to the case of the prosecution, the accused 3 to 6 were put up for Identification Parade, the learned Magistrate has stated that the accused 1 to 4 were identified in the said Identification Parade. For these reasons, the Division Bench has acquitted the accused 4 to 6.

11. The learned Counsel for the appellant/3rd accused would submit that the 3rd accused also stands in the same footing.

Admittedly, the 3rd accused was not previously known to any of these eye-witnesses. As held by this Court in the above common judgment, he also stands in the same footing like the accused 4 to 6 and therefore, he is entitled for acquittal.

12. So far as the accused 1 and 2 are concerned, they are admittedly brothers of Mrs. Jaya. The motive for the occurrence has been clearly spoken by P.Ws.1 to 3. P.W.2 is an injured eye-witness. The occurrence had taken place just in front of the house of P.W.2. P.W.2 had also sustained injuries. The presence of P.Ws.1 to 3 cannot be doubted at all.

13. The learned Counsel for the appellants/accused 1 and 2 would submit that the conduct of P.Ws.1 to 3, in not coming out from the house of P.W.2 for the whole night, creates doubt about their eye-witness account. According to their evidence, only on the next day morning, P.W.1 had gone to the place of occurrence, found the deceased lying dead in the bush and then went to the police station to make the complaint. This conduct of P.W.1 to P.W.3 creates doubt in the case of the prosecution.

14. This doubt in the case of the prosecution may be a genuine doubt, provided, that there was no injured eye-witness. Here in this case, P.W.2 had sustained cut injuries which would go to vouch for his presence at the time of occurrence. He has spoken about the presence of P.Ws.1 and 3. It was he, who had gone into K.G. Mill seeking help at the time of occurrence. That is how, all the eye-witnesses were present at the time of occurrence. Simply because, out of fear, P.Ws.1 to 3 did not come out of the house of P.W.2 on the whole night, that would not make their evidence unbelievable. We hold that from the eye-witness account of P.Ws.1 to 3, the prosecution has clearly proved that these accused had cut the deceased with M.Os.1 and 2 and caused his death.

15. On the arrest of the accused, the weapons used in the crime were also recovered which also lends assurance to the case of the prosecution. The accused 3 to 6 have been acquitted because the prosecution had not proved their credibility. There was no explanation as to how the names of the accused 3 to 6 had come to be mentioned in Ex.P.30 First Information Report, though in Ex.P.1, P.W.1 had not mentioned their names. Therefore, the benefit given to the accused 4 to 6 are not available for these appellants/accused 1 and 2. As we have already concluded, the prosecution, by means of the eye-witness account of P.Ws.1 to 3, which is duly corroborated by the medical evidence, has clearly proved that it was these two accused, namely, accused 1 and 2, who caused the death of the deceased and also caused injury on P.W.2. Thus, the trial court was right in convicting these two

accused, namely, A1 and A2.

16. Now, an argument was advanced by the learned Counsel for the appellants/accused 1 and 2 that since the accused 4 to 6 were acquitted, these appellants cannot be convicted for rioting under Section 148 of IPC. This argument does not persuade us for the simple reason that according to P.Ws.1 to 3, including these two appellants, a total number of 6 persons came to the spot in an unlawful assembly and attacked the deceased as well as P.W.2. Because the identity of the other assailants, who were also the members of the unlawful assembly, has not been established, it cannot be held that there was no unlawful assembly at all. For these reasons, the argument of the learned Counsel for the appellants in this regard is rejected and we find that the trial court is right in convicting the accused 1 and 2 for rioting under Section 148 of IPC and also for invoking Section 149 IPC.

17. Now turning to the quantum of punishment, in our considered view, the trial court has imposed only a very reasonable punishment which also does not require any interference at the hands of this Court.

18. In the result, so far as the Crl.A.No.429 of 2012 is concerned, it stands allowed. The conviction and sentence imposed on the appellant/3rd accused are set aside and he is acquitted from all the charges. The bail bond, if any, executed by him, shall stand discharged. The fine amount, if any, paid, shall be refunded to the 3rd accused.

19. So far as the Crl.A.No.182 of 2013 is concerned, the appeal stands dismissed and the conviction and the sentence imposed on the appellants/accused 1 and 2 by the trial court are confirmed. The trial court is directed to secure the accused 1 and 2 to undergo the remaining period of sentence.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.VI, Coimbatore.
- 2.The Chief Judicial Magistrate, Coimbatore (for information)
- 3.The Additional District and Sessions Judge,
Fast Track Court No.2,
Coimbatore
- 3.a) The Principal Sessions Judge, Coimbatore.
- 4.The Public Prosecutor,
High Court, Chennai.
- 5.The Inspector of Police,
Vadavalli Police Station,
Coimbatore District.
- 6.The Superintendent, Central Prison,
Coimbatore.
7. The Superintendent of Police,
Coimbatore District.
- 8.The District Collector,
Coimbatore Dt.

+2 ccs to Mr.K.M.Balaji, Advocate, sr.20738, 20739

Cr1.A.Nos.429 of 2012 and
182 of 2013

ad co
kra 27.04.2016

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