

Bail Slip

The Accused namely viz., 1. R. Natesan S/o. Rathinasamy. 2. V.K. Moorthy S/o. Kannan and 3. S. Murugesan S/o. Sundaram were directed to be released on bail vide order dated 27.04.2016 made in CrI.MP.No.4373/2016 in CrI.A. 274/2016 by this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.274 of 2016

1.R.Natesan
2.V.K.Moorthy
3.S.Murugesan

..Appellants/Accused 1 to 3

Vs

State represented by
The Deputy Superintendent of Police,
Crime Branch CID, Metro Unit,
Chennai - 16
(R-5 Virugambakkam P.S
Crime No.1793/2011)

.. Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence passed by the learned XVI Additional Sessions Judge, Chennai in S.C.No.432 of 2013 dated 06.04.2016 against the appellants.

For Appellants : Mr.V.Gopinath, Senior Counsel for
Mr.R.Gunasekaran

For Respondent : Mr.V.M.R.Rajentren,
Additional Public Prosecutor
Mr. S. Sathiachandran
Assts. The PP

JUDGEMENT

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

The appellants are A.1 to A.3 in S.C.No.432 of 2013 on the file of the learned XVI Assistant Sessions Judge, Chennai. They stood charged for offences under Sections 147 & 302 r/w 34 I.P.C. There were two other accused by name Mr.Ashok Kumar and Mr.Rajmohan who were arrayed as A.4 & A.5. By judgment dated 06.04.2016, the trial Court acquitted A.4 & A.5 however, convicted A.1 to A.3/the appellants herein under both the charges and sentenced them to undergo imprisonment for life and to pay a fine of Rs.10,000/- each in default to undergo simple imprisonment for one year for offence under Section 302 r/w 34 I.P.C., and they were acquitted from the charge under Section 147 I.P.C. Challenging the same, the appellants/A.1 to A.3 are before this Court with this Criminal Appeal.

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

A.1/first appellant was the Inspector of Police of R.8 Vadapalani Police Station and A.2/second appellant was the Special Sub Inspector of Police; A.3/third appellant was a Head Constable attached to Virugambakkam Police Station; A.4 was a Constable attached to Virigambakkam Police Station and A.5 was a Constable attached to Valasaravakkam Police Station. There was a case registered in Crime No.1327 of 2011 on the file of the Vadapalani Police Station for offence under Section 380 I.P.C., on 07.08.2011 on the complaint of one Mr.Subamani, on the allegation that there was a theft committed in a hotel known as "Beemas Hotel" at Vadapalani. As per the allegation made in the complaint, 25 sovereign gold jewels and Rs.12,000/- cash were stolen away from the said hotel. In order to detect the crime, a special police team was constituted consisting of 10 Police personnel including A.1 to A.5 herein. The investigation was supervised by the then Assistant Commissioner of Police, Vadapalani Range (P.W.23).

3.During the course of investigation, P.W.7, Mr.Shahul Hameed was arrested in connection with the said case on 13.09.2011 at 11.00 pm. On such arrest, P.W.7, made a voluntary confession in which, he implicated the deceased Mr.Muthu also. Based on the materials collected during investigation, A.1 who was the Investigating Officer of the case arrested the deceased at 12.05 am on 01.10.2011 at the house of P.W.1 where he was residing on rent. P.W.2 was present at the time of arrest. On such arrest, in the presence of P.W.2 and another witness, the deceased Mr.Muthu gave a voluntary confession containing certain

disclosures. In the said confession, the deceased had disclosed that he had hidden some of the stolen properties in Cuddalore. Therefore, A.1 to A.5 took the deceased in a Tempo Traveller vehicle to Cuddalore which was driven by P.W.14. Since, the deceased-Mr.Muthu had disclosed that he had given some of the stolen properties to P.W.11, A.1 to A.5 went in search of P.W.11. But P.W.11 was not available. P.W.4 is the brother and P.W.5 is a relative of P.W.11. A.1 to A.5 enquired P.W.4 & P.W.5 about P.W.11 and came to know that he was not available. According to the further case of the prosecution, A.1 to A.5 returned to Vadapalani, Chennai. P.Ws.4 to 7 also accompanied them. They reached Vadapalani Police Station at 3.00 pm on 01.10.2011.

4.After keeping the deceased in the police lock up, A.1 returned home. He again returned to the Police Station at 5.00 pm on 01.10.2011. When he interrogated the deceased, he gave a voluntary confession, in which, he disclosed that he would identify the Pawn Broker shop where the stolen jewels had been pledged by him. The said confession statement was recorded in the presence of P.W.3.

5.In pursuance of the said confession, the deceased took A.1 to A.5 to the Kamarajar Salai in Virugambakkam, in the Police Jeep driven by P.W.14. The deceased Muthu went along with A.1 to A.5 in the said Jeep. Since, the Jeep was stopped, the deceased Muthu got down from the Jeep along with the Police personnel. It is the further case of the accused that at that point of time, the deceased made an attempt to escape. A.1 to A.5 rounded him up. Then while bringing him back to the police station, according to the prosecution, all the five accused formed an unlawful assembly and beaten the deceased with hands and lathis between 3.00 pm and 6.00 pm. The deceased, due to shock fainted. He was taken by A.1 to Sooriya Hospital at Saligramam, chennai. On 01.10.2011, around 7.15 pm, P.W.12, Dr.Anandakumar, examined him and found him already dead. Then P.W.12, forwarded the body to the Government General Hospital at Royapettah.

6.On returning to the Police Station, A.1 made a Special report containing the details in respect of the death of the deceased. Based on the above, P.W.23, the Assistant Commissioner of Police, Vadapalani, registered a case at 8.30 pm on 01.10.2011 for offences under Sections 174 & 176 Cr.P.C., and Section 224 I.P.C., in Crime No.1793/2011. Then he forwarded a special report along with the F.I.R., to the learned Chief Judicial Magistrate for holding enquiry, as required under Section 176(1A) Cr.P.C.

7.P.W.24, the then Metropolitan Magistrate XXIV, Egmore, held enquiry as required under Section 176(1A) Cr.P.C., because, the deceased had died while in custody of the Police. Ex.P.14 is the Special report submitted by him. P.W.23 concluded that the deceased had sustained injuries at the hands of the accused and as a result of the same, he died while in custody.

8.P.W.23, the Assistant Commissioner of Police, commenced the investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of witnesses. He examined few witnesses and recorded their statements. While so, as per the order of this Court, in CrI.O.P.No.4356/2012 on 07.01.2013, the investigation was transferred to the Deputy Superintendent of Police, CB-CID, Chennai.

9.P.W.25, the then Deputy Superintendent of Police, CB-CID, Chennai, accordingly took up the case for investigation. He examined the Doctor who conducted autopsy and the Doctor who declared the deceased dead. He examined many witnesses. He concluded that the death of the deceased was caused by these accused. Therefore, on completing the investigation, on 24.10.2013, he filed final report against the accused.

10. Based on the above materials, the trial Court framed charges as stated in the first paragraph of this judgment against the accused. The appellants denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 25 witnesses were examined and 14 documents were exhibited.

11. Out of the said witnesses, P.W.1 is the landlord of the deceased where the deceased was residing. According to her, on 29.09.2011, between 1.30 am and 2.00 am, when the deceased was at his house, the Police came and took him for the purpose of enquiry. She has not even identified as to who were the police personnel came to her house and took the deceased. She has been therefore, treated as hostile. Thus, her evidence is of no use for the prosecution.

12. P.W.2 is a Carpenter residing at Nerkundram. He was working as a Carpenter under one Mr.V.N.Ravi at Virugambakkam. According to him, on 01.10.2011, between 1.30 am and 2.00 am, when he was at Pallikooda Street, he found a Tempo Traveller vehicle in which, there were 5 to 6 people. One person from the said vehicle, came down and enquired P.W.2 and wanted him to identify another man in the tempo traveller. P.W.2 told him that he did not know the said person. Then the said person in the Van told the other inmates of the Van that he had sold away the

jewels along with one Mr.Shakul Hameed at Villupuram and he further told that he would identify the place where he so sold the jewels. Thus, this witness has spoken about the alleged confession made by the deceased to the Police. He has also not identified any of the accused during trial.

13.P.W.3 is a resident of Porur and he was working as a Manager in a private concern. According to him, on 01.10.2011, around 5.30 pm, he was standing near Vadapalani bus stand along with his friend by name Mr.Dhanavel. At that time, according to him, the Inspector of Police, Vadapalani Police Station met him and requested him to come to the Police Station to be a witness in a criminal case. Accordingly, he went to the police station. In the police station, one Mr.Muthu was interrogated by the Inspector. Mr.Muthu gave a voluntary confession. According to P.W.3, he attested the same (vide Ex.P.2). He has not identified either any of these accused or the deceased Mr.Muthu during trial.

14.P.W.4 is a resident of East Pandi Street in Villupuram. His brother was one Mr.Jayakumar (P.W.11). According to him, on 01.10.2011, around 6.00 am, some Policemen came to his house and wanted to know as to where Mr.Jayakumar had gone. The Police wanted him to come and identify the house of Mr.Jayakumar. Accordingly, he took the Police to the house of Mr.Jayakumar. But, Mr.Jayakumar was not available. Therefore, the Police returned. He has also not identified either any of these accused or the deceased Mr.Muthu during trial.

15.P.W.5 is a relative of Mr.Jayakumar (P.W.11). He has also stated the same facts as spoken by P.W.4. P.W.6 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.7 is a resident of Athirampattinam Village in Thanjavur District. He has further stated that on 15.09.2011, he was also arrested and remanded to judicial custody by the Police personnel in connection with the said case. He has further stated that thereafter, the accused wanted him to identify Mr.Muthu, the deceased. Accordingly, he took the Police to the house of the deceased and identified him. Except that, he has not stated more and thus, he has turned hostile and thus, his evidence is of no use for the prosecution.

16.P.W.8 is the brother of the deceased. He has stated that he came to know that the deceased had died while in the custody of the accused. P.W.9 is an Advocate. He knew the deceased. According to him, on 01.10.2011, around 6.50 am, one Mrs.Bhuvaneswari contacted him over phone and informed that at 12.00 noon, Mr.Muthu was taken into custody by the Virugambakkam Police. He has further stated that at 8.30 am, he went to the Virugambakkam Police Station where one Mr.Rajendiran, the Inspector of Police attached to the said Police Station told him

that Mr.Muthu was not in his custody. Then he came to know that the deceased had been taken to Cuddalore in connection with the theft case for recovery of stolen properties. Then he came to know about the death of the deceased. He has also not stated anything incriminating against the accused.

17.P.W.10 is yet another Advocate. He has stated that on 01.10.2011, around 7.00 am, when he was in routine morning walk at Cuddalore Old Town, one Mr.Shanmugam was taken by the Police for enquiry. Thereafter, he came to know that one Mr.Muthu was also taken by the Police for enquiry. Then he came to know about the death of the deceased. P.W.11 has not stated anything incriminating against the accused and he has stated that he did not know as to how the deceased died.

18.P.W.12, Dr.Anandhakumar, has stated that on 01.10.2011, when he was on duty at Sooriya Hospital at Saligramam, the deceased was brought to him for treatment. At that time, he found the following injuries on the body of the deceased:-

- "(i)There were contusions from both the shoulders;
- (ii)There were contusions on both forearms and
- (iii)There were contusions on both the buttock."

He has further stated that when he was examined him, the deceased was found dead. He made entry in the Accident register (vide Ex.P.3) and then forwarded the dead body to the Government Royapettah Hospital for further proceeding.

19.P.W.13, Dr.Jithender Singh has spoken about the post mortem conducted by him on 02.10.2011 at 4.15 pm on the body of the deceased. He conducted post mortem along with yet another Doctor by name Dr.M.Seethalakshmi. He found the following injuries on the body of the deceased:-

"External Injuries:-

- I. Irregular reddish abrasions
 - 1.1x0.2 cm on the centre of upper part of forehead.
 - 2.1x0.2 cm on the upper part of right cheek.
 - 3.1x1cm on the back of lower third of right arm
 - 4.4x0.6-0.2cm on the back of lower third of right arm
 - 5.0.7x0.4cm on the back of right elbow
 - 6.0.5x0.5cm on the back of right elbow
 - 7.1x0.5cm on the back of middle third of right forearm

8.0.3x0.3cm on the front of centre of right knee

9.0.3x0.3 cm on the outer aspect of upper part of right knee

10.1x1cm on the outer aspect of lower part of left knee

11.0.3x0.3cm on the front of lower part of right knee

12.2x1-0.5cm on the centre of back of left hand

13.1x0.5cm on the back of upper part of left elbow

14.0.5x0.3cm on the outer aspect of left shoulder

15.0.3x0.2cm on the outer aspect of left shoulder

16.0.2x0.1cm on the outer aspect of left shoulder

17. Seven horizontal, almost parallel, linear reddish abrasions 0.4- 2x0.1-0.8 cm on the middle part of left buttock

18.0.7x0.1cm oblique, linear reddish abrasion on the upper part of centre of chest.

II Blush diffuse swelling of right upper eyelid. On dissection, dark red diffuse bruising of underlying subcutaneous soft tissues.

III Bluish contusion 1x0.5x0.5cm on the inner aspect of left side of the upper lip.

IV Bluish bruising

1. 3x2x1-0.5cm on the upper part of right cheek.

2. On dissection of bluish diffuse swelling of right arm and right shoulder, 24x10-6x3-0.5cm dark red bruising of subcutaneous soft tissues and underlying muscles. On further dissection, the underlying bones were intact.

3. On dissection of bluish diffuse swelling of right forearm 12x6-3x2-0.5cm dark red bruising on the upper half of front and outer aspect of right fore arm. The underlying bones were intact. 12x5-4x1.5-0.5cm dark red bruising on the back and outer border of lower half of right forearm and on the back of right wrist. On further dissection, the underlying bones were intact.

4. On dissection of bluish diffuse

swelling on the back of right hand 9x8-6x2-0.5cm dark red bruising on the back of entire right hand. On further dissection, underlying bones were intact.

5. Diffuse swelling with patchy areas of bluish discolouration of right palm and fingers. On dissection,

5.1) 4x2x1-0.5cm dark red bruising on the upper part of thenar eminence of right palm.

5.2) 3x2x1-0.5cm dark red bruising on the upper part of thenar eminence of right palm

5.3) 2x1x1-0.5cm dark red bruising on the lower half of right thumb.

5.4) 3x2x1-0.5cm dark red bruising on the lower part of base of right ring and middle fingers.

5.6) 2.5x1x1-0.5cm dark red bruising on the middle third of right ring finger.

5.7) 3x1.5x1-0.5cm dark red bruising on the upper half of right little finger

5.8) 2x1x0.5cm dark red bruising on the lower half of right little finger.

6) On dissection of bluish diffuse swelling on the outer aspect of upper third of right leg, 12x10-6cmx1.5-0.5cm dark red bruising on the underlying sub-cutaneous soft tissues and muscles. On further dissection, the underlying bones were intact.

7) Bluish bruising 15x3-2x1-0.5cm on the front and outer aspect of lower half of right leg. On dissection, the underlying bones were intact.

8) Bluish bruising 5x4-2x1.5-0.5cm on the outer aspect of middle third of dorsum of right foot. On dissection the underlying bones were intact.

9) Bluish bruising 21x8-3x1.5 cm on the outer aspect of lower half of left leg and the back of the upper half of the left leg. On further dissection, the underlying bones were intact.

10) Bluish bruising 29x12-2x2-1cm on the outer aspect of lower half of left leg and the back of the upper half of the left leg. On further dissection, the underlying bones were intact.

11) Bluish bruising 14x11-6x2-0.5cm on the outer aspect of lower third of left thigh and the adjoining outer aspect of left

knee. On further dissection, the underlying bone was intact.

12) Bluish bruising 4x3-2x2-0.5cm on the outer aspect of upper third of left thigh. On further dissection, the underlying bone was intact.

13) On dissection of bluish diffuse swelling of back of left forearm, 30x11-7x3-0.5cm dark red bruising on the subcutaneous soft tissues and muscles on the back of left forearm. On further dissection, the underlying bones were intact.

14) On dissection of bluish diffuse swelling of left shoulder and the left arm, dark red bruising 31x14-8x3-0.5cm on the outer aspect and the back of upper third of the left arm and on the left shoulder. On further dissection, the underlying bones were intact.

15) Bluish bruising 3x2x0.5cm on the lower part of centre of the back.

16) Bluish bruising 12x4-3x2-0.5cm on the lower end of left side of the back.

17) On dissection of the bluish diffuse swelling of the both buttocks, dark red diffuse bruising of subcutaneous soft tissues and the underlying muscles of both the buttocks.

18) On dissection of the bluish diffuse swelling of the left scapular region of the back, 18x16-7x2-0.5cm dark red bruising of the subcutaneous soft tissues and the underlying muscles on the left scapular region. On further dissection, the underlying bone was intact.

19) On dissection of the bluish diffuse swelling of the right scapular region of the back, dark red bruising 12x10-7x2-0.5cm on the subcutaneous soft tissues and the underlying muscles on the right scapular region. On further dissection the underlying bone was intact.

20) Bluish bruising 8x7x1-0.5cm on the upper part of right side of neck, right sub-mandibular region and the lower aspect of the chin.

21) Bluish bruising 6x6-4x1-0.5cm on the upper part of left side of chest."

Ex.P.5 is the post mortem certificate. He gave opinion that the

death was due to shock and haemorrhage due to the multiple injuries found on the body of the deceased.

20.P.W.14 was the Driver of the Tempo Traveller in which, the deceased was taken to Cuddalore. He has spoken about the entire facts. He has further spoken about the fact that at the place of occurrence, when the vehicle was stopped, the Police personnel in the Tempo Traveller got down, suddenly, the deceased jumped out of the said vehicle and tried to escape. While running, he fell down at 2 to 3 places however, the Police managed to catch him hold and brought him back. According to him, the injuries found on the body of the deceased were sustained in the said process.

21.P.W.15 has spoken about the treatment given to one Mr.Shakul Hameed who was the co-accused of the deceased. His evidence is not much importance for the issues involved in this case. P.W.16 has spoken about the entry made in the New Mail Remand Prisoners Book on 01.10.2011, in the Central prison. However, his evidence is of no use for the prosecution in any manner.

22.P.W.17, a Grade I Constable has stated that he heard about the death of the deceased later. P.W.18 was the resident of Virugambakkam. He was doing real estate business. According to him, on 01.10.2011, around 6.45 pm, at Virugambakkam, Kamarajar Salai, when he was coming in the motorcycle, one person from a police Jeep jumped and ran away. The Policemen chased him. He has neither identified these accused nor the deceased.

23.P.W.19 is a resident of Virugambakkam. He has stated that on 01.10.2011, between 6.30 pm and 6.45 pm, when he was proceeding to Kamarajar Salai, one person who escaped from the police custody was chased and brought back by the Police Personnel to the police station. However, he has not identified any of these accused or the deceased during trial.

24.P.W.20 is a resident of Saligramam. He has stated that on the day of occurrence, when he was in the Kamarajar Salai at Virugambakkam around 6.30 pm, he heard an alarm raised. When he turned to that direction, he found a person running towards a vacant site and few people were chasing. The said person scaled down on the building materials heaped in the said vacant site and sustained injuries. The persons who gave chase brought him back. Later, he came to know that the said person was an accused and the persons who caught him hold were all Policemen. He has not either identified the accused or the deceased.

25.P.W.21 has also spoken about the same facts as spoken by

P.W.20. P.W.22 is the resident of Virugambakkam. He has stated that on 01.10.2011 around 6.30 pm, when he was in his shop, the deceased who already known to him jumped from the Jeep and was found running. Few Policemen in uniform gave a chase. He has further stated that later on, he witnessed the preparation of observation mahazar and rough sketch. P.W.23, the then Assistant Commissioner has spoken about the registration of the case and the investigation done. P.W.24 has spoken about the final report filed.

26. 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 Dr.Thangaraj was examined as D.W.1. On examining the contents of the post mortem certificate, he has given evidence stating that the cause of death of the deceased was not due to external injuries found on the body which were minor in nature. Bleeding in the brain which could have been due to the cause relating to over anxiety. Two documents were exhibited as Exs.D.1 & D.2. Ex.D.1 is the letter sent by the learned XXI Metropolitan Magistrate to the Chief Metropolitan Magistrate on 11.07.2012 and Ex.D.2 is the requisition letter given by the mother of the deceased, wherein, she has stated that there was no truth in the allegations that the deceased had tried to escape from the clutches of the Police. In effect, the defence of the accused was a total denial.

27. It is the admitted case of the prosecution that the deceased was in the custody of the Vadapalani Police. According to the case of the prosecution, on the heap of stone and construction materials while escaping from the clutches of the Police, the deceased fell down and in that process sustained injuries and hence, the appellants/Police personnel were not responsible for the death of the deceased.

28. Having considered all the above materials, the trial Court convicted the appellants/accused as stated in the first paragraph of this judgment. Challenging the same, the appellants/A.1 to A.3 are before this Court with this Criminal Appeal.

29. We have heard Mr.Gopinath, learned Senior Counsel appearing for the appellants and Mr.V.M.R.Rajentren, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

30. Today, the younger sister of the deceased has filed a Criminal Miscellaneous Petition in CrI.M.P.No.8951 of 2016 before this Court seeking permission of this Court to assist the prosecution in this case. Permission was granted. Accordingly,

Mr.S.Sathia Chandran, the learned counsel assisted the learned Additional Public Prosecutor. We have heard him also.

31.The learned Senior Counsel appearing for the appellants would submit that absolutely, there is no evidence that any of these appellants had either manhandled or attacked the deceased resulting in injuries. He would further submit that absolutely there is no evidence that the external injuries found on the body of the deceased which were minor in nature were caused before he was taken into police custody. He would further submit that D.W.1 Dr.Thangaraj who is an expert in Forensic Medicine has stated that the death of the deceased was not due to the injuries found on the body but, due to natural cause. He would further submit that the medical evidence further would go to prove that the external injuries found on the body of the deceased and the corresponding contusions would have been caused by a fall.

32.The learned Senior Counsel would further submit that the eye witnesses have categorically stated that the deceased tried to escape from the clutches of the Police and while making such an attempt, he fell on the heap of stones and the other construction materials and sustained injuries. He would further submit that the accused/appellants have got no motive against the deceased. For these reasons, according to the learned Senior Counsel, the accused/appellants are entitled for acquittal.

33.Mr.S.Sathya Chandren, learned counsel assisted the learned Additional Public Prosecutor appearing for the State. He would vehemently oppose this appeal. According to them, there is no denial of the fact that the deceased was in the custody of these accused and therefore, according to him, it is the burden of the accused/appellants to prove that the injuries found on the body of the deceased were not caused by them. The learned Additional Public Prosecutor would submit that P.W.15, who conducted autopsy on the body of the deceased, has categorically stated that the death was only due to shock and hemorrhage due to the injuries found on the body of the deceased. When, that be the medical evidence, it should be held that the death was caused only by the accused, the learned Additional Public Prosecutor contended. He would further submit that the report of the learned Judicial Magistrate submitted under Section 176(1A) Cr.P.C., would also prove that the deceased was done to death only by these accused. Thus, according to the learned Additional Public Prosecutor, the conviction and sentence imposed on the appellants are liable to be confirmed.

34.We have considered the above submissions.

35. There is no denial of the fact that the deceased was an accused in a criminal case registered on the file of the Vadapalani Police Station. There is also no denial of the fact that the deceased was taken to the place of occurrence in a Police Jeep driven by P.W.14. P.W.14 has stated that at the place of occurrence, as soon as the vehicle was stopped, the deceased tried to escape and thereafter, he was rounded up by the Police and brought back to the Jeep. Similarly, P.Ws.20,21 & 22 have also stated that the deceased tried to escape and while running, he fell repeatedly on the construction materials heaped on the vacant site and sustained injuries. The medical evidence also supports this part of evidence of these witnesses. Thus, the defence of the accused that the deceased fell down and sustained the external injuries is probable. Above all, if we look into the evidence of P.W.15, it is crystal clear that the external injuries were all minor abrasions. There was no injury to any vital part. It is common knowledge that these kinds of small abrasions on the body could be caused by fall repeatedly that too on construction materials.

36. The next contention of the learned Senior Counsel that there is no evidence that the deceased was manhandled by any of these accused, also deserves consideration. Absolutely, there is no evidence anywhere that the deceased was attacked by the Police. It is not as though the deceased was the only person in the custody of the police. As a matter of fact, P.W.7 Mr. Shakul Hameed was also in the custody of the police along with the deceased. He has not stated that the deceased was attacked by any of these accused. He has turned hostile. Since, he has turned hostile and since, there is no other evidence to show that the deceased was attacked by any of these accused/appellants, it cannot be safely held that the injuries on the body of the deceased were caused by these accused/appellants. Similarly, the possibility that these injuries had been caused before he was taken into custody also cannot be ruled out. Thus, in our considered view, absolutely, there is no evidence to prove the case beyond reasonable doubt that the external injuries and the corresponding injuries found on the body of the deceased were caused by these accused/appellants.

37. The next contention of the learned Senior Counsel appearing for the appellants is in respect of the cause of death of the deceased. P.W.15 has given opinion that the death of the deceased was due to shock and hemorrhage due to the injuries found on the body. It is the admitted case that when the deceased was brought to the hospital, the injuries were not noticed by the Doctor. Even an expert like P.W.12 could notice that there were external injuries, when the deceased was alive.

These external injuries, so minute, could be noticed only at the time of post mortem. P.W.12 had found bleeding through the nose. P.W.15, has also admitted that the external injuries found on the body of the deceased could have been caused by fall. He has further stated that he found internal bleeding in the brain. This according to him was the cause for the death. He has admitted during cross examination that when a person runs in a considerable speed, due to acute coronary spasm, bleeding in the brain could occur which may result in the death. Here, in this case, the possibility of the deceased suffering from acute coronary spasm while he was escaping from the clutches of the accused/appellants with anxiety, has not been ruled out by the prosecution. The fact that there was no corresponding injury on the head would also go to further strengthen the case of the defence that the death of the deceased had occurred due to acute coronary spasm.

38. Now, turning to the evidence of D.W.1, the expert and Head of the Department of Forensic Medicine in a Medical College, he was working in the said Department from 1995 onwards. He has stated that he conducted several autopsys. Thus, he is an expert in the field of forensic medicine. He has stated that there were neither fracture on any bone nor any injury on the internal organs of the deceased. He has also stated that these injuries could have been caused by fall. He has further corroborated the evidence of P.W.15. A person while running may suffer bleeding in brain resulting in his death. This again supports the defence. During cross examination, he has stated that the other external injuries found on the body of the deceased had not attributed any thing for the cause of death. On our part, we have carefully gone through the descriptions of injuries found on the body of the deceased. In our considered view, these injuries which are very minor in nature, mostly abrasions, would not have attributed to the death of the deceased. Therefore, we accept the opinion offered by D.W.1. From these evidences, it is crystal clear that the death of the deceased was not caused by these accused/appellants. As we have already pointed out, the prosecution has not ruled out the possibility of the death in this case due to natural cause i.e., due to acute coronary spasm.

39. The learned Additional Public Prosecutor appearing for the respondent would submit that the report submitted by the learned Judicial Magistrate under Section 176(1A) Cr.P.C., would indict these accused/appellants. In our considered view, the said report of the learned Judicial Magistrate cannot be treated as substantive evidence at all. It is after all the opinion given by the learned Judicial Magistrate by holding necessary enquiry to assist the police to take the investigation

in a right direction. This report is based on the statements recorded during enquiry. The said report cannot have any better position than the inquest report filed by P.W.15. Therefore, the said report cannot be treated as substantive evidence so as to convict the accused/appellants solely based on the same.

40.From the foregoing discussions, it is crystal clear that though, it is an admitted case that the deceased was in the custody of the Police when he was brought to the hospital, the prosecution has failed to prove that the death of the deceased was caused by these accused/appellants. As we have already pointed out, the death due to natural cause has also not been ruled out by the prosecution. Thus, in our considered view, the prosecution has failed to prove the case beyond reasonable doubt and therefore, the accused/appellants are entitled for acquittal.

41.But, a perusal of the judgment of the trial Court, from paragraph No.67 onwards, would go to show that the trial Court has relied on the statements of witnesses recorded by the learned Judicial Magistrate under Section 176(1A) Cr.P.C., as though, these statements are substantive evidence. It is needles to point out that even the statements being the former statements of the witnesses, can be used either to contradict or to corroborate the makers of the statements as they can never be treated as substantive evidence. The trial Court was thus, committed an illegality in looking of these statements of the witnesses recorded by the learned Judicial Magistrate under Section 176(1A) of Cr.P.C., during trial.

42.In the result, this Criminal Appeal is allowed and the conviction and sentence passed against the appellants/A.1 to A.3 are set aside and the appellants/A.1 to A.3 are acquitted from all the charges. The fine amount, if any paid, shall be refunded to them. The bail bond, if any, executed by the appellants/A.1 to A.3, shall stand discharged.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jbm

1 The XVI Additional Sessions Judge,
Chennai

2 The XXIII Metropolitan Magistrate
Saidapet, Madras

3 The Chief Metropolitan Magistrate Chennai

4 The Sessions Judge, Chennai

5 The Inspector of Police
R5 Virugambakkam Police Station,
Chennai

6 The Deputy Superintendent of Police
CBCID Metro Unit, Chennai

7 The Director General of Police,
Mylapore, Chennai

8 The District Collector, Chennai

9 The Superintendent of Police,
Central Prison, Puzhal, Chennai

10 The Public Prosecutor,
High Court, Madras

+5cc to Mr. R. Gunasekaran, Advocate, S.R.No.49351
+1cc to Mr. S. Sathachandran, Advocate, S.R.No.49428

scd (CO)
md (07/11/2016)

सत्यमेव जयते

Cr1.A.No.274 of 2016

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