

Bail Slip

That the accused namely

1. Shanmugam S/o. Kittan,
2. Manikandan S/o. Arumugam
3. Senthilkumar S/o. Selvaraj
4. Vellikizhamai @ Ramasamy S/o. Palanisamy
5. Veerasamy @ Saminathan S/o. Velusamy
6. Easwaran S/o. Raman
7. Subramanian S/o. Aaran
8. Murugesan S/o. Palani
9. Sekar S/o. Mani was directed to be released on bail on this Court dated 09.03.2016 in Crl.MP.No.460 of 2016 in Crl.A.No.35 of 2016 on the file of this Court.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.35 of 2016

1. Shanmugam (A1)
2. Manikandan (A2)
3. Senthilkumar (A3)
4. Vellikizhamai @ Ramasamy (A4)
5. Veerasamy @ Saminathan (A5)
6. Easwaran (A6)
7. Subramaniam (A7)
8. Murugesan (A8)
9. Sekar (A9)

.. Appellants

- Vs -

State rep by Inspector of Police,  
Avinashipalayam Police Station,  
Tiruppur District.  
(Cr.No.2 of 2014)

.. Respondent

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned II Additional District and Sessions Judge, Tiruppur in S.C.No.37 of 2015 dated 21.12.2015.

For Appellants : Mr.R.Sankarasubbu

For Respondent : Mr.E.Raja

Additional Public Prosecutor

J U D G M E N T

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

The appellants are accused 1 to 9 in S.C.No.37 of 2015 on the file of the learned II Additional District and Sessions Judge, Tiruppur. The accused 1 to 4 stood charged for offences under Sections 147, 148 and 302 r/w 149 I.P.C. and the accused 5 to 9 stood charged for offences under Sections 147 and 302 r/w 149 I.P.C. By judgment dated 21.12.2015, the trial Court convicted these appellants for various charges and accordingly sentenced them as detailed below:

| Rank of the Accused | Penal provision(s) under which convicted | Sentence                                                                                                                   |
|---------------------|------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
| A1 to A4            | 302 of IPC                               | Imprisonment for life and to pay a fine of Rs.1,000/- each and in default to undergo simple imprisonment for three months. |
| A1 to A4            | 148 of IPC                               | Simple imprisonment for six months.                                                                                        |
| A5 to A9            | 302 r/w 149 of IPC                       | Imprisonment for life and to pay a fine of Rs.1,000/- each and in default to undergo simple imprisonment for three months. |
| A5 to A9            | 147 of IPC                               | Simple imprisonment for three months.                                                                                      |

Challenging the said conviction and sentence, all the nine appellants are before this Court with this appeal.

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

2.1. The deceased in this case was one Mr.Swaminathan. He was residing at his farm house at Kovilpalayamputhur village in Tiruppur district. The accused belonged to Arunthathiyar community and they also belonged to the same village. Frequently, there were quarrels between the deceased and the people belonging to Arunthathiyar community of the said village. Thus there was no good relationship between the deceased and the people of Arunthathiyar community. This is stated to be the motive for the occurrence.

2.2. It is further stated that on 03.01.2014 around 11.30 p.m. on account of the above motive, all these nine accused came to Lakshmi Nagar at Kovilpalayamputhur village in an unlawful assembly. The accused 1 to 4 were armed with deadly weapons like iron pipe and steel rod and the others were unarmed. In prosecution of the said common object of killing the deceased, the accused 1 to 4 attacked the deceased with the weapons and the others aided them. As a result, the deceased died on the spot instantaneously. Abandoning the dead body, all the accused fled away from the scene of occurrence.

2.3. P.W.1 is the brother-in-law of the deceased. The deceased was a bachelor. According to him, on 04.01.2014 at around 05.45 a.m. when he was going to his farm, near Lakshmi Nagar Colony bridge, the motorcycle of the deceased was found parked. With anxiety, when he searched for him, he found the dead body of the deceased lying by the side of the road. There were two empty brandy bottles and two water bottles. Immediately, he rushed to his house and informed the family members of the deceased. Thereafter, he went to Avinashipalayam Police Station and made a complaint at 09.30 a.m. on 04.01.2014 (vide Ex.P1).

2.4. One Mr.Chinnathambi, the then Sub Inspector of Police on receipt of the said complaint registered a case in Crime No.2 of 2014 under Section 302 I.P.C. Since the assailants were not known, it was so mentioned. Ex.P17 is the F.I.R. He forwarded Ex.P1 complaint and Ex.P17 F.I.R. to the Court, which was received by the learned Magistrate only at 06.30 p.m. on 04.01.2014.

2.5. The case was taken up for investigation by P.W.10, the then Inspector of Police. He went to the place of occurrence prepared an observation mahazar and a rough sketch in the presence of P.W.4 and another witness. Then, he recovered bloodstained earth and sample earth from the place of occurrence. He conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.6. P.W.7 Dr.Muthusamy conducted autopsy on the body of the deceased on 04.01.2014 at 11.05 a.m. He found the following injuries:

"External injuries: Crush injury on the left side of scalp. Brain expelled out partially, left eye expelled out, injury on left side of scalp. Ear bleeds left side. Abrasion over left knee. Eye lids opened. Bloody discharge from nose. Mouth opened. Tongue inside the mouth. Teeth complete. Abdomen uniform. Ribs intact. Heart is pale contain clotted blood of about 20 gms in chambers. Weight 300 gms. Right lung 480 gram pale. Left lung 390 grams pale. Hyoid bone is intact. Liver is pale 1400 grams

spleen is 190 grams pale. Kidneys right 160 grams, left 170 grams. Stomach pale contains liquid material of 20 ml smells alcohol, yellow in colour. Intestines pale, distended with gas. Bladder empty, pale. Skull fracture on left side of frontal bone, parietal bone, occipital bone and temporal bone nearly half of brain expelled out. Half of the brain only present. SDH, EDH and SHH present."

Ex.P5 is the postmortem certificate and Ex.P6 is his final opinion. He gave opinion that the death of the deceased was due to shock and hemorrhage due to the injuries found on the body of the deceased. P.W.10, recovered the bloodstained clothes from the body of the deceased and forwarded them also to the Court.

2.7. On 05.01.2014, he arrested all the nine accused in the presence of P.W.8 and another witness. The accused 1 to 5 made independent voluntary confessions. Out of such disclosure statements, few material objects were also recovered. Then, he forwarded the accused to Court for judicial remand. The investigation was thereafter continued by his successor P.W.11. At his request, the material objects were sent for chemical examination. The report revealed that there were human bloodstains on all the material objects except some clothes. On completing the investigation he laid the chargesheet against the accused.

2.8. Based on the above materials, the trial Court framed charges against the accused as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 11 witnesses were examined, 20 documents and 29 material objects were marked.

2.9. Out of the said witnesses, P.W.1-the brother-in-law of the deceased, P.W.2-the sister of the deceased and P.W.3-a neighbour have all stated that they saw the dead body of the deceased on the early morning of 04.01.2014. P.W.4 has spoken about the preparation of the observation mahazar and the rough sketch and recovery of material objects from the place of occurrence. P.W.5 is a resident of the same locality. He has stated that on 03.01.2014 around 11.30 p.m. when he was passing through the place of occurrence, there were 7 or 8 persons sitting on the culvert and they were fighting among themselves. P.W.5 stopped his motorcycle and watched the happenings. He found that the deceased was attacked by the accused. Then he went away. He did not inform the same to anyone.

2.10. P.W.6 has spoken about the chemical examination conducted on the visceral organs. She has stated that there was ethyl alcohol found in the internal organs of the

deceased. P.W.7 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.8 has spoken about the arrest of the accused and the disclosure statements made by the accused 1 to 5 and the consequential recoveries of few material objects. P.W.9 has spoken about the fact that he handed over the dead body of the deceased to the Doctor for postmortem as directed by the investigating officer. P.Ws.10 and 11 have spoken about the investigation done and the final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness. On their side they marked Form-95 as Ex.D1. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how, they are before this Court with this appeal.

4. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and also perused the records, carefully.

5. As we have already pointed out, in this case, P.Ws.1 to 3 have stated that they saw the dead body of the deceased on the early morning of 04.01.2014. They have not stated anything incriminating against the accused. P.W.5 is the only eyewitness in this case. He has stated that on 03.01.2014 at around 11.30 p.m. when he was passing through Lakshmi Nagar colony, he found few people sitting on the culvert and they were exchanging abusive words. He stopped the vehicle at a distance of 20 ft. At that time, he found some people from the crowd, attacking the deceased with iron pipe. This witness has stated that in the crowd the first accused attacked the deceased with iron pipe and the accused 8 and 9 held the deceased and the accused 6 and 7 held the hands of the deceased. He has further stated that the others attacked the deceased. But he did not inform the occurrence to anyone including the family members of the deceased. There is no explanation at all for the same. The complaint in this case was made at 09.30 a.m. on 04.01.2014. Till such time, the assailants were not known. The F.I.R. has reached the Court only at 06.30 p.m. on the same day. There is no explanation for such inordinate delay also. According to P.W.5, along with him, one Appusamy and Mohanraj also witnessed the occurrence. But none of them informed about the occurrence to the family members of the deceased till 09.30 a.m. Had it been true that these persons had really witnessed the occurrence, by all natural human conduct, they would have informed the same to the family members of the deceased. He has stated that on returning to his house, he kept silence till 02.00 p.m. on the same day. Thereafter only at 03.00 p.m. he informed the occurrence to the family members. This conduct of P.W.5 which is highly unnatural, renders him

unbelievable. Therefore, we find it difficult to act upon the evidence of P.W.5.

6. Apart from the above evidence, the prosecution relies on the evidence of P.W.8, who has spoken about the arrest of the accused and the consequential recoveries of the weapons. Since the connection between the weapons recovered and the crime has not been established, the alleged disclosure statements made by the accused are inadmissible in evidence. At any rate, based on the said recovery of material objects alone, we cannot conclusively hold that these nine accused were the perpetrators of the crime. Thus, in our considered view, the prosecution has failed to prove the case beyond reasonable doubts and therefore the appellants / accused 1 to 9 are entitled for acquittal.

7. In the result,

(i) The appeal is allowed, the conviction and sentence imposed on the appellants / accused 1 to 9 by the learned II Additional District and Sessions Judge, Tiruppur in S.C.No.37 of 2015 dated 21.12.2015 is set aside and they are all acquitted.

(ii) The fine amount, if any paid, shall be refunded to them.

(iii) The bail bond, if any executed, by them, shall stand discharged.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Dixit/kk

To

1. The Judicial Magistrate, Tiruppur.
2. -do- Through The Chief Judicial Magistrate, Tiruppur.
3. The II Additional District and Sessions Judge, Tiruppur.
- 4.-do- Through The Principal Sessions Judge, Tiruppur.
5. The Superintendent, Central Prison, Coimbatore.
6. The District Collector, Coimbatore.
7. The Director General of Police, Mylapore, Chennai-4.

8. The Inspector of Police,  
Avinashipalayam Police Station,  
Tiruppur District.

9. The Public Prosecutor,  
Madras High Court.

Cr1.A.No.35 of 2016

CTR(CO)  
Eu 24.10.16



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