



Bail Slip

That the Appellant/ Accused namely P.Vijayakumar, was directed to be released on bail as per order of this court dated 21.3.2013 and made in CrI.MP.No.1/13 in CrI.A. No.12/2013 in CrI.A.No.12 of 2013;

That the 2nd appellant/Accused namely Chinthamani, W/o. Ganeshan was directed to be released on bail as per order of this court dated 21.3.2013 in CrI.MP.No.2 of 2013 in CrI.A.NO.11 of 2013;

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2016

CORAM:

THE HON'BLE MR.JUSTICE S.NAGAMUTHU
and
THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

Criminal Appeal Nos.11 and 12 of 2013

1.Chinthamani

2.Ganeshan

..Appellants in CrI.A.No.11/2013
/Accused 1 and 2

3.P.Vijayakumar

.. Appellant in CrI.A.No.12/2013
/Accused No.4

Vs.

State by the
The Inspector of Police,
Dharamangalam Police Station,
Crime No.201 of 2010
Salem District.

..Respondent/Complainant in both appeals

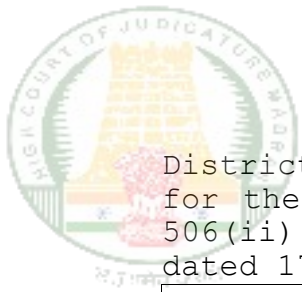
Prayer: Appeals filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 17.12.2012 made in S.C.No.135/2011, passed by the III Additional District and Sessions Judge, Salem.

For Appellants : Mr.N.Manoharan
in both appeals
For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

COMMON JUDGMENT

(Judgment of the Court was delivered by
M.SATHYANARAYANAN, J.)

<https://hcservices.ecourts.gov.in/hcservices/>
Accused 1 and 2 are the appellants in CrI.A.No.11 of 2013
and fourth accused is the appellant in CrI.A.No.12 of 2013 in
S.C.No.135 of 2011 on the file of the learned III Additional



District and Sessions Judge, Salem. They were charged and tried for the commission of offences under Sections 120(B), 341, 302, 506(ii) and 302 r/w.120(B) IPC. The trial Court, vide judgment dated 17.12.2012, convicted and sentenced them as follows:

Accused	Conviction under Section	Sentence
A1, A2 and A4	120-B IPC	3 months rigorous imprisonment with a fine of Rs.1,000/- in default to undergo 1 month rigorous imprisonment for each of the accused
A1 and A2	341 IPC	1 month simple imprisonment for each of the accused
A4	341 r/w. 120(B) IPC	2 month simple imprisonment
A1 and A2	506(ii) IPC	3 months rigorous imprisonment for each of the accused
A1, A2 and A4	302 IPC (as against A1 and A2) 302 r/w. 120B IPC (as against A4)	Life imprisonment with a fine of Rs.10,000/- in default to undergo 3 months rigorous imprisonment for each of the accused.

The trial Court further ordered that all the sentences to run concurrently and granted set-off under Section 428 CrPC. The third accused, who was charged for offences under Sections 120 (B), 341 and 302 r/w. 120(B) IPC was found not guilty and acquitted and the State did not prefer any appeal challenging the said order of acquittal.

2. Factual matrix of the case is as follows:

2.1. Accused 1 and 2 are wife and husband and there was land dispute between accused 1 and 2 and Palaniswamy (deceased). Therefore, accused 1 and 2 hatched a conspiracy in the house of the third accused to do away with the life of Palaniswamy and on 05.04.2010 at about 12.00 noon, with a view to execute the same, had wrongfully restrained Palaniswamy while he was riding bicycle and the first accused cut Palaniswamy with Koduval/M.O.1 and the second accused cut him with Veecharuval/M.O.8 and as a consequence, Palaniswamy died on the spot. The accused 1 and 2 escaped in an Omni Van brought by the fourth accused.

2.2. PW1 is the wife of Palaniswamy and at about 1½ years prior to the trial of the case, during Tamil month of 'Panguni', she and her husband and son/PW2, Suseela and Mallika, took tea at Chinnampatti Tea Shop and were proceeding to their house and Palaniswamy was going in front of them and at that juncture, the accused 1 and 2 waylaid him near Muniappan Temple and cut him with lethal weapons and it was about 6.30 p.m. and the said persons raised alarm and immediately, the accused fled away from the scene of occurrence and when they went near Palaniswamy, he was in precarious condition and died on the spot.



2.3. PW1 and his son/PW2 went to Dharamangalam Police Station and lodged a complaint/Ex.P1 to PW27, Sub-Inspector of Police attached to the said police station, who, on receipt of the same, registered a case in Crime No.210/2010 at 19.30 hours for the commission of offences under Sections 341, 302 and 506 (ii) IPC. The printed FIR was marked as Ex.P18. The Inspector of Police (In-Charge), Dharamangalam Police Station, namely PW29, took up the investigation and proceeded to the scene of occurrence at about 9.15 p.m. and prepared Observation Mahazar and a Rough Sketch, marked as Ex.P2 and Ex.P19 respectively in the presence of PW5 and another and also availed the services of photographer, namely PW27 and took photograph, marked as Ex.P15. PW29 examined PW5 and one Kumar and also recovered M.Os.1 and 2 from the scene of occurrence as well as M.Os.3 to 6 under Ex.P3/Mahazar. PW29 conducted inquest on the body of the deceased and the Inquest Report was marked as Ex.P11.

2.4. PW29 examined PWs.1 to 4 and recorded their statements and through PW26/Head Constable, sent the body for postmortem to the Government Hospital, Salem. PW22, Doctor attached to Government Hospital, Salem on receipt of the body, placed the same in the postmortem room and issued Accident Register/Ex.P10. PW23, Tutor in Forensic Medicine, Mohan Kumara Mangalam College Hospital, Salem, on receipt of the body, commenced postmortem at about 10.40 a.m on 06.04.2010 and noted the following features:

- "1. An oblique cut injury extending from left parietal eminence downwards 7 cms behind the left ear measuring 12 x 3 cms. bone deep.
2. An oblique cut injury extending from the left parietal eminence downwards 8 cms behind the left ear, 1 cm below the wound (1) measuring 7 x 2 cms. bone deep.
3. An oblique cut injury extending from the vertex to the left parietal eminence measuring 11 x 3 cms. bone deep.
4. A transverse linear cut injury over left side of the temporal region extending from the outer aspect of left eyebrow measuring 6 x 1 cms. bone deep.
5. An oblique cut injury over left zygomatic region 6 cms in front of left ear measuring 7 x 3 cms. bone deep.
6. A vertical cut injury measuring 5 x 4 cms bone deep crossing the wound (5) undelying zygomatic bone found in pieces.
7. Left ear separated into 2 by transverse cut injury measuring 5 x 3 cms.x 12 cms.
8. A deep cut injury extending from the left angle of mouth backwards measuring 16 x 5 cms. cavity deep.
9. A cut injury (transverse) extending from the left angle of mouth backwards 1 cm below the wound (8) measuring 5 x 0.5 cms. x 0.5 cms.
10. A transverse cut injury measuring 8 x 2.5 cms. bone deep extending from left lateral aspect of chin to lower left side of mardible.



11. An oblique cut injury over the mid occipital region measuring 11 x 3 cms bone deep.

12. A vertical cut injury over right elbow measuring 9 x 6 cms. bone deep.

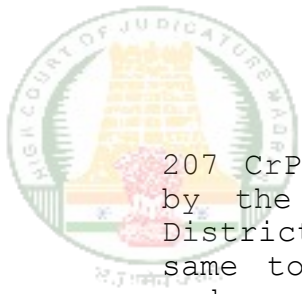
13. A lacerated injury over left shoulder measuring 4 x 0.5. x 0.5 cms.

14. A lacerated injury over right shoulder measuring 6 x 0.75 x 0.5 cms.

PW23 reserved her opinion, pending Chemical Analysis Report and on receipt of the same, had issued the Postmortem Certificate, marked as Ex.P11, opining that Palaniswamy died on account of head injuries.

2.5. PW29 seized the cloth worn by the deceased, namely M.Os.9 to 13 under Form 95, dispatched to the Court and proceeded with further investigation and handed over investigation to PW31, who continued with the investigation. PW31, on coming to know that the first accused surrendered before the Court at Erode on 06.04.2010, approached the Court of Judicial Magistrate, Omalur on 08.04.2010 and got her custody and examined her on 13.04.2010 in the presence of PWs.12 and 13 and recorded her statement and thereafter, altered the Sections from 341, 302, 506(ii) IPC to 342, 302, 506(ii) and 120(B) IPC and filed Alteration Report, marked as Ex.P23. As per the confession statement, the third accused has shown the scene of occurrence and thereafter, he arrested the third accused and sent him for remanding him to judicial custody. PW31 effected the arrest of the fourth accused on 16.04.2010 at 10.00 a.m. in the presence of PW20 and another and he voluntarily came forward to give confession statement and as per the admissible portion of his confession under Ex.P7, PW31 recovered Veecharuval/M.O.8 under Mahazar/Ex.P8 and dispatched the same to the Court under Form-95, marked as Ex.P24.

2.6. PW31, on coming to know that the fourth accused surrendered before the Judicial Magistrate No.II, Mettur on 14.04.2010, filed necessary application and got his custody and in the presence of PW7 and another, recorded his confession statement and as per the admissible portion of his confession statement under Ex.P5, PW31 recovered the Maruti Van/M.O.7 under Ex.P4/Mahazar. PW31 also made arrangements to conduct Test Identification Parade. Accordingly, Judicial Magistrate No.II, Mettur/PW21 conducted test Identification Parade, wherein PWs.1, 5 and 7 identified the second accused and the proceedings of the Test Identification Parade has been marked as Ex.P9. Thereafter, PW31, on completion of investigation, filed the final report on 04.06.2010, charging all the accused for the commission of offences under Sections 120(B), 341, 302, 506(ii) and 302 r/w. 120(B) IPC on the file of the Court of District Munsif cum Judicial Magistrate, Omalur, who took it on file and the committal Court, issued summons to the accused and on their appearance, furnished to them copies of documents under Section



207 CrPC and having found that the case is exclusively triable by the Sessions Court, committed the same to the Principal District and Sessions Judge, Salem, who in-turn made over the same to the III Additional District and Sessions Judge, Salem and was taken on file in S.C.No.135/2011. The trial Court, on appearance of the accused, had framed charges for the offences as stated above and they pleaded not guilty to the charges framed against them.

2.7. The prosecution, in order to sustain their case, examined PWs.1 to 31, marked Exs.P1 to P27 and also marked M.Os.1 to 11. Both the accused were questioned under Section 313 (1)(b) CrPC with regard to incriminating circumstances made out against them in the evidence rendered by the prosecution and they denied it as false. No witness was examined and no document was marked on behalf of the accused. The trial Court, on consideration and appreciation of oral and documentary evidence and other materials, convicted and sentenced the accused 1, 2 and 4 as stated above and acquitted the third accused. Hence, these appeals.

3. Mr.N.Manoharan, learned counsel appearing for the appellants made the following submissions:

(i) There is absolutely no legal proof to establish the conspiracy between the accused 1 to 4 and none of the witnesses had also implicated the fourth accused in any manner.

(ii) As per Ex.P1/complaint given by PW1, the second accused was not named, though he happen to be husband of the first accused, who is also closely related to PWs.1 and 2. Similarly, PW2 also did not name the second accused and Test Identification Parade conducted was only in respect of the second accused alone.

(iii) The testimonies of PWs.1 and 2 are inconsistent with regard to overt acts on the part of the accused 1 and 2 especially as to the weapons used.

(iv) PW1 has deposed that while he lifted her husband, her saree got blood stains, however it was not seized and PW29 and PW31/Investigating Officers failed to offer any plausible explanation as to the non-seizure of important material object and therefore, presence of PW1 at the time of occurrence was also highly doubtful.

(v) The alleged owner of the Maruti Omni van/M.O.7, namely PW17 has got an axe to grind and therefore, his evidence cannot be relied upon.



(vi) PW7, another alleged eye witness, had turned hostile. In sum and substance, it is the submission of the learned counsel appearing for the appellants that the prosecution case is full of infirmities and inconsistencies and the trial Court, having acquitted the third accused on the same set of evidence, ought to have awarded benefit of doubt to the accused 1, 2 and 4 also and prays for allowing of these appeals.

4. Per contra, Mr.M.Maharaja, learned Additional Public Prosecutor would contend that the testimonies of eyewitnesses corroborate with each other on material particulars and coupled with the recovery of incriminating materials in pursuant to admissible portion of confession statements of the accused and scientific evidence, the prosecution had amply proved its case beyond reasonable doubt and the trial Court, has rightly reached the conclusion to convict the accused 1, 2 and 4 and therefore, prays for dismissal of these appeals.

5. This Court paid its best attention and anxious consideration to the rival submissions and also perused the oral and documentary evidence as well as the original documents.

6. PW1 is the wife of the deceased and in the chief examination, she would depose that the first accused and her husband/second accused waylaid Palaniswamy and cut him with Koduval and his son/PW2 told him that his father was attacked and immediately, she ran there and when they went near the occurrence, the accused threatened them with dire consequences. PW1 would further admit that she is an illiterate and she affixed her left hand thumb impression in the complaint. In the cross examination, she denied the suggestion that she and her husband are living separately and police came to the spot at about 6.00 p.m. and got her signature and she was not examined by police and she do not know the contents of the same and during the course of investigation she has stated that she was following her husband and also also other persons and would further depose that she lifted her husband and placed him at her lap and therefore, her saree got blood stains and it was also seized by the police.

7. PW2 is the son of PW1 and she was aged about 14 years and after ascertaining his capability to depose, he was examined and in the chief examination, he would state that he had studied upto 8th standard and his aunty, namely Chinthamani/first accused caught hold of his father and another person cut him with Koduval and he witnessed the occurrence at a distance of 10 feet and he identified them before the Court as accused 1 and 2 and it was done because of land dispute. In the cross examination, PW2 would state that at about 6.30 p.m. he along with his father and mother were proceeding and complaint was lodged at about 7.00 p.m. and police came to the spot even at about 7.00 p.m. and examined his mother/PW1 at the scene of occurrence and also at the police station and got her left hand thumb impression in a paper and denied the suggestion that he was not aware of the contents of the same. It is to be noted at this juncture that the first accused is closely related to PWs.1 and 2 and since



the second accused happen to be her husband, they are supposed to know/identify him, but none of the witnesses had disclosed/revealed the identity of the second accused in their oral evidence.

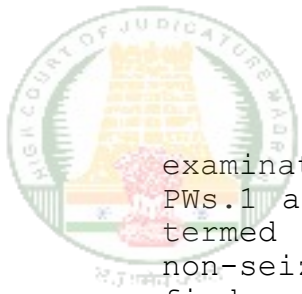
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8. The testimonies of PWs.1 and 2 would also disclose that police came to the spot much prior to the registration of FIR and got left hand thumb impression of PW1 in a paper and according to PW1, police did not examine her on the spot and she was not aware of the contents of the same and whereas PW2 would depose that police came to the spot at 7.00 p.m. and her mother was examined there itself and thereafter at the police station and her left hand thumb impression was obtained in a paper.

9. Ex.P1/complaint was received by PW27 and a case was registered at 19.30 hours and in the cross examination, PW27 would depose that he received the information at about 7.30 p.m. and in Ex.P1, except the name of the first accused, other person name have not been stated and denied the suggestion that he went to the scene of occurrence and got the left hand thumb impression of PW1. PW29/Investigating Officer-I would depose that PW1 told him that accused are related to her, but did not state so while her statement was recorded and PW1 is the second wife of the deceased. PW29 would further depose that either in Ex.P1/complaint or in the statement recorded during investigation, PW1 has deposed that the first accused caught hold of the deceased and immediately, another person accompanied him, cut him, but she did not name him in the complaint. PW29 would further admit that he did not sent the handle of M.Os.1 and 2 to the Finger Print Bureau. Thus, it is revealed that the first accused is related to PW1 and the second accused, being husband of the first accused, he should have been known to PW1 as well as PW2, but curiously they did not name them in the complaint.

10. PW5 would depose in the chief examination that the first accused caught hold of Palaniswamy and the second accused cut him and the occurrence took place at about 6.30 p.m. and after the commission of crime, accused 1 and 2 escaped in a green colour Ombi van and 20 days thereafter, in Salem Jail, he participated in the Identification Parade and he identified the second accused. In the cross examination, PW5 would admit that the deceased was his uncle and PWs.1 and 2 are also related to him through his wife. PW5 made a crucial admission that at the time of commission of offences, PWs.1 and 2 were not present as they were proceeding and his signature as well as the signature of Kumar were obtained by police in the spot itself and he put his signature after reading the contents and prior to the commission of offences, he has seen the first accused and not the second accused and nearly after one year, PW5 was recalled and he has given a complete go by to the chief examination as well as the cross examination.

11. The learned counsel appearing for the appellants would submit that though PW5 has given a complete go by to his chief examination and even prior to that, during the course of cross



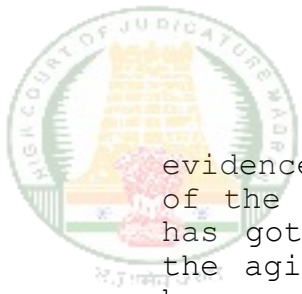
examination done on 06.11.2012, made a crucial admission that PWs.1 and 2 were not in the spot and therefore, they cannot be termed as eyewitnesses and it is also fortified on account of non-seizure of blood stained saree worn by PW1. This Court finds considerable force in the said submission made by the learned counsel appearing for the appellants for the reason that PW1 in the cross examination would admit that immediately after her husband fell down, she lifted and put him on her lap and her saree got stains and it was also seized by police, whereas the evidence of PW29 would disclose that it was not seized and as a consequence, not sent for chemical analysis. Admittedly, PW1 is related to the first accused and the second accused is none other than her husband and curiously she as well as his son/PW2 did not name the second accused except by saying that he had assaulted the deceased with a lethal weapon. Therefore, the presence of PWs.1 and 2 at the time of occurrence was highly doubtful coupled with the non-identification of the second accused by them.

12. As per the proceedings of the Test Identification Parade marked as Ex.P19, PWs.1 and 5 identified the second accused, but PW1 did not whisper anything about her participation in the test Identification Parade and as already pointed out, she had made improvements as to the identify of the second accused from that of her complaint, marked as Ex.P1 and of her statement recorded during investigation so also by her son, namely PW2.

13. PW27, who registered the F.I.R would also depose that in Ex.P1/complaint, name of the first accused alone has been given. Neither PW1 nor PW2 had spoken about the presence of PW5 and PW5 also had not spoken about the presence of PWs.1 and 2. Therefore, the presence of PW5 at the time of commission of offence was also doubtful. It is also to be pointed out at this juncture that PW5 was recalled after one year on 06.11.2012 and he had given a complete go by to his chief examination and cross examination and therefore, it is not safe to rely on his testimony.

14. PW7 was the another eyewitness and he had turned hostile. Insofar as the fourth accused is concerned, he said to have contacted PW17 and got his Omni van as he require the same for the purpose of dropping his grandparents at Salem. In the cross examination, PW17 would depose that he is running a power loom and denied the suggestion that the fourth accused agitated as to the bonded labour employed by him and would admit that he did not give his vehicle on hire to the fourth accused. PW17 would further admit that at the time of seizure of Maruti Van, nothing in writing has been given to him and he has handed over xerox copy of the R.C. Book and no acknowledgment was given for having handed over the vehicle.

15. The role of fourth accused is that of a conspirator and the only evidence available is PW17 and it cannot be believed for the reason that no document evidencing the ownership of the Maruti Van/M.O.7 has been seized and marked and even as per his



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evidence, no seizure mahazar was prepared at the time of seizure of the vehicle and his testimony would further disclose that he has got an axe to grind against the fourth accused, as he led the agitation with regard to bonded labour employed by him and hence, it is unsafe to rely on his evidence to connect the fourth accused with the commission of crime.

16. The trial Court, on the same set of evidence, has acquitted the third accused, who was said to have been present along with the accused 1 and 2 and also being the conspirator.

17. This Court, on a careful scrutiny of the entire materials placed before it, is of the considered view that the prosecution has failed to prove its case beyond reasonable doubt and therefore, benefit of doubt shall enure in their favour.

18. In the result, both the Criminal Appeals are allowed and the conviction and sentence imposed on the appellants/accused 1, 2 and 4, vide Judgment dated 17.12.2012 made in S.C.No.135 of 2011 passed by the III Additional District and Sessions Judge, Salem are hereby set aside and the appellants/accused are acquitted of the charges levelled against them. It is reported that the appellants/accused are on bail. The bail bonds shall stand terminated/discharged. Fine amount, if any paid, shall be refunded to the appellants.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. III Additional District and Sessions Judge, Salem.
2. The Superintendent Central Prison, Coimbatore.
3. The Inspector of Police, Dharamangalam Police Station, Salem District.
4. The Public Prosecutor,
Madras High Court, Chennai.
5. The District Munsif cum Judicial Magistrate, Omalur.
6. The Chief Judicial Magistrate, Salem.
7. The Superintendent of Central Prison, Vellore.
8. The Collector, Coimbatore.
9. The Director General of Police, Mylapore, Chennai.

+ 1 cc to Mr.N. Manokaran, Advocate Sr.17960

Criminal Appeal Nos.11 and 12 of 2013