

BAIL SLIP

The Appellant/Accused namely Sathya Selvam, S/o.Nalliyappan aged about 25 years was directed to be released on bail as per the Order of this Court dated 14.03.2013 in CrI.M.P.No.1 of 2013 in CrI.A.No.166 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-2-2016

CORAM

THE HONOURABLE MR.JUSTICE M. JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S. NAGAMUTHU

Criminal Appeal No.166 of 2013

Sathiya Selvam ... Appellant/Accused

Vs.

State by the Inspector of Police,  
Chinnasalam Police Station,  
Crime No.428 of 2010 ... Respondent/Complainant

This Criminal Appeal has been preferred under Section 374(2) of Code of Criminal Procedure, challenging the conviction and sentence imposed by the learned III Additional District and Sessions Judge, Kallakurichi, Villupuram District by judgment made in S.C.No.168 of 2011 on 19.2.2013.

For Appellant/Accused : Mr.A.G.Rajan

For Respndent/State : Mr.M.Maharaja  
Additional Public Prosecutor

S. NAGAMUTHU, J.

J U D G M E N T

The Appellant is the sole accused in S.C.No.168 of 2011 on the file of III Additional District and Sessions Judge, Kallakurichi, Villupuram District, who was charged for the offences under Sections 302, 201 r/w 302 and 506(ii) IPC. By Judgment dated 19.2.2013, the trial Court acquitted the accused from the charge under Section 506(ii) IPC and convicted him for the offences under Section 302 and 201 r/w 302 IPC. The

accused was sentenced to undergo life imprisonment and to pay a fine of Rs.500/-, i/d to undergo six months simple imprisonment for the offence under Section 302 IPC; and five years rigorous imprisonment and to pay a fine of Rs.500/-, i/d to undergo six months simple imprisonment for the offence under section 201 r/w 302 IPC. Challenging the said conviction and sentence, the accused is before this Court with this appeal.

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

(a) The deceased in this case was one Krishnamurthy @ Thangamani. One Sivakumar (PW-1) is the eldest son of Nalliappan (PW-6). The accused Sathiya Selvam is the second son and the deceased Krishnamurthy @ Thangamani is the third son of Nalliappan (PW-6). Nalliappan was living separately. Sivakumar got married and he was also living separately. The accused and the deceased were living along with their mother and grandmother.

(b) For quite sometime, there was a dispute between the family members in respect of partition of the joint family properties. The deceased Krishnamurthy @ Thangamani was insisting that the properties should be partitioned in four equal shares and one such share should be allotted to the father and mother. But the accused was not agreeable for the same, which resulted in ill-feeling between them. This is stated to be the motive for the occurrence.

(c) On 5.11.2010 at about 3.30 a.m., the deceased Krishnamurthy @ Thangamani was sleeping in the house of Sivakumar (PW-1). At that time, the accused entered into the house of Sivakumar and cut the deceased indiscriminately with Koduval (MO-1). Then the accused himself raised alarm, as though the deceased was cut by somebody else. This attracted the neighbours.

(d) The accused himself took the deceased to Sanjeevi Hospital, Kallakurichi, a private hospital, in 108 Ambulance, from where he was taken to JIPMER hospital, Puducherry. On the way near Villupuram, the deceased breathed his last.

(e) The body of the deceased Krishnamurthy @ Thangamani was brought to the Government Hospital at Kallakurichi. The hospital authorities refused to receive the body and directed to go to the Police Station. Therefore, the accused himself went to the Police Station and made a complaint (Ex.P-7) at 8.45 a.m. on 5.11.2010, in which he alleged that on hearing the alarm raised by the deceased, he went to the house of Sivakumar (PW-1) and found the deceased in a pool of blood.

(f) Based on the above complaint (Ex.P-7), the Sub-Inspector of Police (PW-16) registered a case in Cr.No.428 of 2010 under Section 302 IPC. Ex.P-8 is the printed FIR. In the FIR, the assailant was shown as an unknown person. PW-16

forwarded the FIR (Ex.P-8) and the complaint (Ex.P-7) to the jurisdictional Court.

(g) PW-20, the Inspector of Police took up the investigation and on 5.11.2010 at 10.15 a.m. proceeded to the place of occurrence and prepared observation mahazar and rough sketch in the presence of PW-5 and another witness. Then he conducted inquest over the body of the deceased and prepared Inquest report (Ex.P-13), and thereafter sent the body for post mortem.

(h) PW-19 Dr. Padmavathy conducted autopsy on the body of the deceased on 5.11.2010 at 4.00 p.m. and found the following injuries:

"Ante-mortem injuries:

1. An oblique cut injury over left mid parietal region starting from behind the left ear extending to mid line of scalp over frontal region size 15x2x2 cm., red in colour.
2. A cut injury over (L) frontal region 3x1x1 cm, red in colour
3. A cut injury over forehead left side, horizontal 5x1x1 cm, red in colour.
4. Contusion over left eye covering left eye brow, eye lids, infra orbital region, dark brown in colour, left eye ball dark brown in colour and congested.

Internal examination:

|            |   |                                                                                                                                                      |
|------------|---|------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ribs       | : | Intact                                                                                                                                               |
| Hyoid bone | : | preserved                                                                                                                                            |
| Lungs      | : | Pale (R) 400 gms (L) 350 gms                                                                                                                         |
| Liver      | : | Pale (1200 gms)                                                                                                                                      |
| Heart      | : | 250 gms Pale                                                                                                                                         |
| Kidney     | : | each 120 gms pale                                                                                                                                    |
| Spleen     | : | 90 gms pale                                                                                                                                          |
| Stomach    | : | Dark coloured semi solid partially digested food particles present.                                                                                  |
| Intestine  | : | Distended with gas                                                                                                                                   |
| Bladder    | : | Empty                                                                                                                                                |
| Skull      | : | Oblique fracture of skull over left mid fronts parietal region 10x1x1 cm underlying brain membrane torn, irregular, congested, dark brown in colour. |

Brain matter: Solid, congested (1400 gms) 50 ml of fluid blood found over parietal region left side of brain, dark brown in colour.

The following viscerae are preserved for analysis:

1. Sample of liver & kidney
2. Sample of intestine & contents
3. Sample of stomach & contents
4. Hyoid bone
5. Sample of blood"

Ex.P-9 is the post mortem certificate. PW-9 opined that the deceased would appear to have died of head injury, 8 to 16 hours prior to post mortem.

(i) During investigation it turned out that the accused was the perpetrator of the crime. Therefore, on 9.11.2010 at 10.15 a.m. at Bangaram Milk Society, PW-20 arrested the accused in the presence of PW-13 Village Administrative Officer and another witness. On such arrest, the accused gave a voluntary confession statement, in which he disclosed the place where he had hidden the Koduval (MO-1). In pursuance of the same, he took the police and witnesses to the place of hide out and produced the Koduval (MO-1). PW-20 recovered the same under the cover of mahazar. On completion of investigation, PW-20 laid charge sheet against the accused.

3. Based on the above materials, the trial Court framed charges as detailed in paragraph No.1 above. The accused denied all the charges. In order to prove the charges, prosecution examined 20 witnesses, marked 14 exhibits and produced 8 material objects.

4. PWs.1 and 2 have turned hostile and they have not supported the prosecution case in any manner. PW-3 has stated that he came to the place of occurrence after some time, and he called 108 ambulance service and accompanied the deceased to the hospital. PW-4 has stated that on hearing alarm raised by the accused, he came to the place of occurrence and he was told by the by-standers that some unidentified person attacked the deceased. PW-5 has stated that he went to the place of occurrence on hearing the alarm raised, and that he accompanied the deceased to the hospital. PW-6 has spoken about the motive. PW-7 has spoken about the preparation of observation mahazar and rough sketch. He has also spoken about the recovery of material objects from the place of occurrence. PW-8 has also spoken about the same facts. PW-9 has spoken about the dispute in partitioning the joint family properties between the accused

and the deceased. PW-10 has turned hostile and he has not supported the prosecution case in any manner. PW-11 has not stated anything incriminating against the accused. PW-12 has spoken that he heard about the occurrence. PW-13, Village Administrative Officer of Rayappanur village has stated that the accused was arrested on 9.11.2010 and on such arrest, he made a voluntary confession statement in which he disclosed the place where he had hidden the Koduval (MO-1), half sleeve shirt (MO-2) and Lungi (MO- 3). Pursuant to the same, from the place of hide out, the accused took out and produced the same (MOs.1 to 3) and the same were recovered by PW-20 in the presence of PW-13 and another witness. PW-14 has also spoken about the same facts. PW-15 Head Clerk of the Court has spoken about forwarding of the material objects for chemical analysis. PW-16 has spoken about the registration of case and PW-18 has taken the dead body to the hospital for postmortem. PW-19 has spoken about conduct of post mortem by her, and that, she has given final opinion as to the cause of death. PW-20 has spoken about the investigation conducted by him.

5. When the incriminating circumstances against the accused were put to the accused under section 313 Cr.P.C., he denied everything. Further, he did not choose to examine any witness on his side.

6. After considering all the materials and hearing both sides, the trial Court convicted the accused as detailed in the first paragraph, and therefore the accused is before this Court by filing the present appeal.

7. Heard the learned counsel appearing for the appellant as well as the learned Additional Public Prosecutor appearing for the State.

8. The learned Counsel appearing for the appellant submitted that there is no evidence against the accused and the trial Court has convicted the accused only on surmises. Learned Additional Public Prosecutor is not in a position to dispute the claim made by the learned counsel for the appellant.

9. As already narrated, except the fact that there was some misunderstanding between the accused and the deceased regarding partitioning of joint family properties, there is absolutely no evidence against the accused. The trial Court however relied on the recovery of MOs.1 to 3 on the disclosure made by the accused on 9.11.2010. First of all, the link between MOs.1 to 3 and the crime has not been established by the

prosecution. Assuming that some link has been established by the prosecution, it cannot be believed that the accused was arrested and then these material objects were recovered on the disclosure made by the accused, because in the cross-examination, PW-13 admitted that MOs.1 to 3 were found at the place of occurrence, and they were recovered from there itself, when the Investigating Officer visited the place of occurrence after registration of the case. Thus, the only piece of evidence, upon which the trial Court placed reliance, is also to be rejected.

10. There is absolutely no evidence against the accused. Therefore as rightly contended by the learned counsel for the appellant/accused, the trial Court convicted the appellant/accused only on surmises. It is well settled law that no amount of suspicion shall take the place of proof.

11. In the result, this criminal appeal is allowed. The conviction and sentence imposed on the appellant/accused are set aside. The appellant/accused is acquitted of all the charges.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The III Additional District and Sessions Judge,  
Kallakurichi.
- 2.The Judicial Magistrate,  
Kallakurichi.
- 3.The Chief Judicial Magistrate,  
Villupuram. (For Information)
- 4.The Inspector of Police,  
Chinnasalam Police Station,  
Kallakurichi.
- 5.The Superintendent of Police,  
Villupuram.

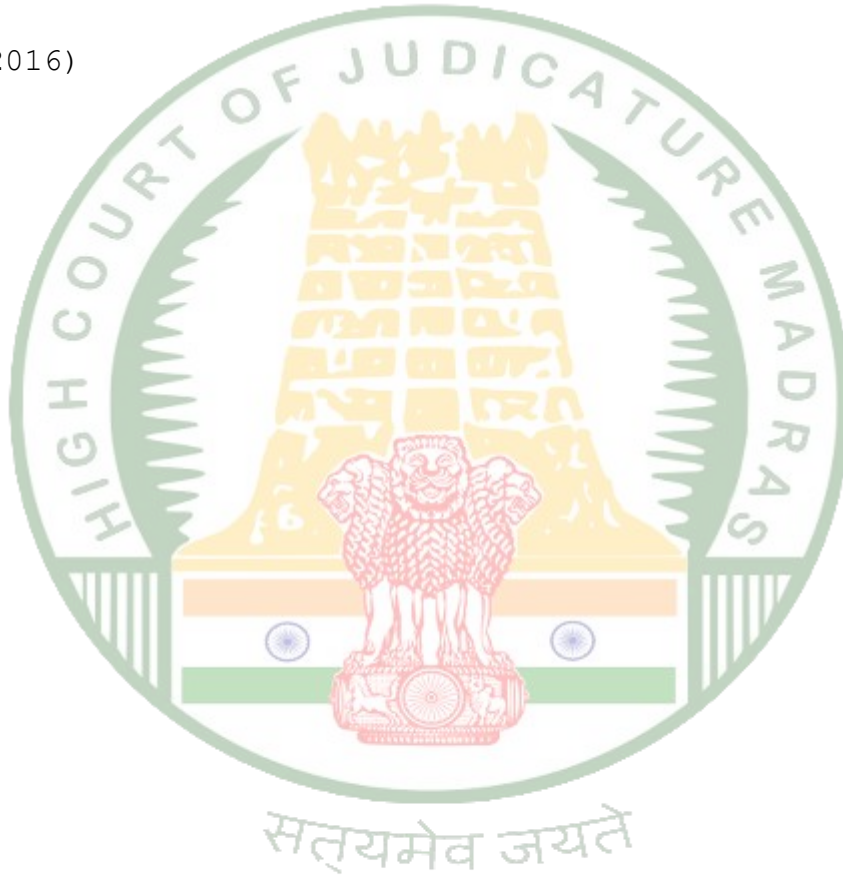
6.The Superintendent,  
Central Prison,  
Cuddalore.

7.The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.A.Thiyagarajan, Advocate, S.R.No.10028

Cr1.A.No.166 of 2013

SAI (CO)  
CA(18/03/2016)



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