

Bail Slip

The Appellant/Accused No.1 Viz., Prabhu, aged 26 years S/O Chinnakannu, was directed to be released on bail as per order of this Court dated 25/04/2013 in M.P.No.1 of 2013 in CrI A. No.306 of 2013.

The Appellant/Accused No.2 to 6, Viz 1.Dhandapani aged 37 years, S/O Chinnakkannu, 2.Ramanathan, aged 27 years, S/O.Munusamy, 3.P.Raja, aged 45 years, S/O Periappaiyan 4.Chinnakannu, aged 68 Years, S/O Periappaiyan 5.Kannaiyan, aged about 50 years, S/O Periappaiyan be and hereby are directed to be released on bail as per order of this Court dated 07/03/2013 in M.P.No.1 of 2013 in CrI A 148 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2016

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN
Criminal Appeal Nos.306 and 148 of 2013

1. Prabhu	.. Appellant in CrI.A.No.306/2013 / A-1 in S.C.No.17 of 2012
2. Dhandapani	.. 1 st Appellant in
CrI.A.No.148/2013	/ A-2 in S.C.No.17 of 2012
3. Ramanathan	.. 2 nd Appellant in
CrI.A.No.148/2013	/ A-3 in S.C.No.17 of 2012
4. P.Raja	.. 3 rd Appellant in
CrI.A.No.148/2013	/ A-4 in S.C.No.17 of 2012
5. Chinnakannu	.. 4 th Appellant in
CrI.A.No.148/2013	/ A-5 in S.C.No.17 of 2012
6. Kannaiyan	.. 5 th Appellant in
CrI.A.No.148/2013	/ A-6 in S.C.No.17 of 2012

vs

State by Inspector of Police,
Tiruppathur Taluk Police Station
(Crime No.661 of 2010)

.. Respondent in both CrI. Appeals
/ Complainant in both CrI. Appeals

Criminal Appeals filed under Section 374 (2) of the Criminal Procedure Code against the judgement of the learned III Additional Sessions Judge, Vellore, Tiruppattur, in S.C.No.17 of 2012, dated 04.01.2013.

For Appellant in both Appeals : Mr. P.V.Selvarajan,
Legal-Aid Counsel
For Respondent in both Appeals : Mr. M.Maharaja, A.P.P.,

C O M M O N J U D G M E N T

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

The appellant in Criminal Appeal No.306 of 2013 is the first accused and the appellants in Criminal Appeal No.148 of 2013 are the accused 2 to 6 in S.C.No.17 of 2012 on the file of the learned III Additional Sessions Judge, Vellore at Tiruppattur.

2. By judgment, dated 04.01.2013, the trial court convicted the first accused for offences under Section 148 IPC and Section 302 read with 149 IPC and accused 2 to 6 under Sections 147 and 302 read with 149 IPC. The trial court sentenced the first accused to undergo Rigorous Imprisonment for two years for the offence under Section 148 IPC and to undergo Imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo one year Rigorous Imprisonment for the offence under Section 302 IPC. The trial court sentenced accused 2 to 6 to undergo Rigorous Imprisonment for one year for the offence under Section 147 IPC and to undergo Imprisonment for life and also to pay a fine of Rs.5,000/-, in default, to undergo Rigorous Imprisonment for one year, for the offence under Section 302 IPC. The trial Court has ordered the sentences to run concurrently. Challenging the said conviction and sentence, the appellants are before this Court with these Criminal Appeals.

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

The deceased in this case was one Mr.Annamalai. P.W.2 is his wife. The marriage between them was celebrated thirty-five years before his death. Before the marriage, P.W.2 and the deceased had fallen in love, which was not to the liking of the accused, who are the relatives of P.W.2. As against the wishes of the family members of P.W.2 and her relatives, she married the deceased and went away to Bangalore. They never returned to the occurrence village, namely, Vishamangalam for a long. In Bangalore, the deceased secured a job in Syndicate Bank. Therefore, they settled down in Bangalore for many years. Three years before his death, the deceased was transferred to Dharmapuri. Therefore, the family was shifted to Dharmapuri. Thereafter, the deceased and P.W.2 used to visit Vishamangalam Village rarely to attend some functions. Even on those occasions, they used to come in the morning and return in the same evening itself, without making any overnight stay.

4. On 07.09.2010, the father of P.W.2, Mr.Munusamy, passed away. On receiving information about the same, P.W.2 and the deceased came to Vishamangalam village to participate in the

condolence. They reached Vishamangalam Village at 10.00 am. From the morning, they were at the house, near the dead body, participating in the condolence. By about 05.00 pm, the body was taken in a procession towards the graveyard in a palanquin. When the palanquin was carried with the dead body by the villagers, there was huge crowd both in front of the body as well as behind the palanquin. When the procession was nearing the place of occurrence, suddenly, it is alleged that, the accused 2 to 5 held the deceased and the first accused stabbed him on his abdomen. The deceased fell down. The palanquin was also brought down. There was a hue and cry. All the accused ran away from the scene of occurrence. Immediately, P.W.1, the cousin of the deceased and other relatives made arrangements for shifting him to the hospital. The occurrence was witnessed by many people in the procession, including P.Ws.1 to 3, 5 to 9 and 13.

5. Immediately, thereafter, P.W.1 took the deceased to Tiruppattur Government Hospital. At about 05.30 pm, on 08.09.2010, P.W.11, Dr.Meenakshi examined the deceased. At that time, the deceased was unconscious. P.W.1 informed the Doctor that the deceased was attacked by four known persons at 05.00 pm on 08.09.2010 at Vishamangalam Village. The Doctor found a single stab injury on the abdomen, measuring 5x3 cms. The depth of the injury was not measured by her. On further examination, she found the deceased dead. Therefore, she forwarded the body to mortuary and gave an intimation to the Police also.

6. P.W.1, immediately, rushed to Tirupattur Rural Police Station and made a complaint at 07.00 pm on 08.09.2010. P.W.21, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.661 of 2010 under Sections 147, 148, 120 (b), 294 (b) and 302 IPC. Ex.P-1 is the complaint and Ex.P-26 is the First Information Report. He forwarded both the documents to the Court, which were received by the learned Magistrate at 10.05 pm on 08.09.2010. P.W.22, the then Inspector of Police, took the case for investigation. He proceeded to the place of occurrence and in the presence of P.W.10 and another witness, he prepared an observation mahazar and a rough sketch at 06.00 am on 09.09.2010. He recovered blood stained earth and sample earth for analysis from the place of occurrence and then he conducted inquest on the body of the deceased and forwarded the same for post mortem. P.W.12, Dr.Senthilnathan, conducted autopsy on the body of the deceased on 09.09.2010 at 11.35 am. He found the following injuries:-

"External Injury

An incised wound (5 x 3 cm) present 8 cm from the umbilicus with clear margins and slightly bloodstain. Elliptical in shape with Yellowish fat protruding and

obstructing the wound site. A probe was sent into the wound and depth of the wound measured about 8 cm.

On Dissection

Head & Skull: Intact & Brain is found milky to be (1600 gms). Congested. Hyoid Bone: Intact. Thorax : Bony cage - Intact. Lungs: (800 gms) each, mild congested. Black colour matting seen over the lungs. Liver normal size. Congested on cut section. Spleen : Normal size, congested (1800 gms), Kidney (350 gms) : Normal adult size, congested. Stomach : Empty, filled with some fluid watery. Intestines : An incised wound seen in continuation the abdomen (extended to injury is present in the small intestine, Large Intestine distended filled Air peritoneal Vessel found to be torn. Mesenteric Air supply small intestine found to be severed and intra abdominal cavity filled with blood. Blood clots are also found in the abdominal cavity."

7. Ex.P-6 is the post mortem certificate. P.W.12 gave opinion that the death was due to shock and haemorrhage caused by the stab injuries on the abdomen of the deceased. On the same day, i.e., on 09.09.2010, at 01.00 pm, P.W.22 arrested the accused 1 and 2 at Tiruppattur Koot Road, in the presence of P.W.13 and another witness. On such arrest, the first and second accused made voluntary confession statements.

8. In the confession statement, the first accused disclosed the place where he had hidden the knife. In pursuance of the same, he took the police and witnesses to Tiruppattur-Thiruvannamalai Road and near a bridge, from the place of hide out, he produced the knife. P.W.22 recovered the same under a mahazar. In the confession given by the second accused, he had disclosed the place where he had hidden a blood stained Tee-shirt. In pursuance of the same, he took the police and the witnesses to the said place of hide out and produced the Tee-shirt. P.W.22 recovered the same under a mahazar. Then, on the same day, at 05.45 pm, in the presence of P.W.14 and another witness, he arrested accused 3 to 6. On returning to the Police Station, he forwarded all the accused to the Court for judicial remand and handed over the material objects to the Court. On his request, the material objects were sent for chemical analysis, which reveal that there was human blood on all the material objects, except on the sample earth recovered from the place of occurrence. He examined few more witnesses, recorded their statements, corrected the medical records and finally laid charge sheet against the accused.

9. 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 of the prosecution, as many as 22 witnesses were examined and 33 documents were exhibited, besides marking 10 Material Objects.

10. Out of the said witnesses, P.Ws.1 to 3, 5 to 9 and 13 are the eye-witnesses to the occurrence. They have vividly stated that when the procession was going on, suddenly the accused 2 to 5 held the deceased and the first accused stabbed the deceased with knife in his stomach. P.W.4 is not an eye witness to the occurrence. He has spoken only on hearsay information. P.W.10 has spoken about the preparation of observation mahazar and rough sketch. P.W.11 has spoken about the fact that she examined the deceased on 08.09.2010 at 05.30 pm at Tiruppattur Government Hospital and declared dead. She found a single stab wound on the abdomen of the deceased and she did not measure the depth of the wound.

11. P.W.12 has spoken about the post mortem conducted on the body of the deceased and his final opinion regarding the cause of the death. He has further stated that the death of the deceased was due to shock and haemorrhage caused by the wound on the stomach. He has further deposed that the said injury on the deceased would have been caused by stabbing with a weapon like knife. P.W.14 has spoken about the arrest of accused 2 to 6. P.W.15 has spoken about the photographs taken by him at the place of occurrence. P.W.16 has stated that he brought the dead body of the deceased to the hospital for post mortem. P.W.17 the Head Clerk of the Court has stated that he forwarded the material objects for chemical analysis. P.Ws.18 and 19, Chemical Analysts, have spoken about the analysis conducted. According to P.Ws.18 and 19, there were blood stains found on all the material objects, including the knife recovered allegedly from the accused. P.W.21 has spoken about the registration of the case on the complaint of P.W.1 and P.W.22 has spoken about the investigation done in this case and the final report filed.

12. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, no witnesses was examined on their side nor marked any documents. The defence was total denial.

13. Having considered all the above, the trial Court convicted and sentenced the accused, as stated in the first paragraph of the judgment. Challenging the same, the appellants are before this Court with these Criminal Appeals.

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

15. During the pendency of these appeals, the sixth accused / fifth appellant in Criminal Appeal No.148 of 2013 died on 16.12.2015. No one has come on record to prosecute this appeal, in so far as the sixth accused is concerned. Thus, Criminal Appeal No.148 of 2013 shall stand dismissed as abated in so far as it relates to the sixth accused / fifth appellant is concerned. Now, therefore, we have to consider the appeals filed by accused 1 and 2 to 5 alone.

16. The learned counsel appearing for the appellants, in both the appeals, would submit that none of the eye-witnesses examined by the prosecution would have witnessed the occurrence at all. He would submit that the occurrence had taken place in the midst of a crowd of people and therefore, these witnesses, who were also in the crowd, would not have witnessed the occurrence. He would further submit that there are material contradictions in the evidences of the eye-witnesses, in respect of their position in the procession, when the occurrence had taken place in the midst of the crowd. He would further submit that it is highly unbelievable that the accused 2 to 6 would have held the deceased, so as to enable the first accused to cause the injury. He would further submit that there is delay in lodging First Information Report, which has not been explained at all. Thus, according to the learned counsel appearing for the appellants, all the accused are entitled for acquittal.

17. The learned Additional Public Prosecutor appearing for the respondent would vehemently oppose these appeals. According to him, there was no motive for any of the eye witnesses to speak falsely against the accused; they have vividly spoken about the entire occurrence; after the deceased was taken to the hospital by P.W.1, he was declared dead; this would also go to show that P.W.1 was present at the time of occurrence; the presence of these eye witnesses in the procession, at the place of occurrence, is quite natural; their evidences do draw corroboration from the medical evidence; virtually, there is no delay in preferring the complaint also. Thus, according to the learned Additional Public Prosecutor, there is no reason to interfere with the judgment of the trial court.

18. We have considered the aforesaid submissions made by the learned counsel for the appellants and the learned Additional Public Prosecutor for the respondent, in both the appeals.

19. Admittedly, the marriage between P.W.2 and the deceased was a love marriage, which was celebrated thirty-five years before the occurrence. All these thirty-five years, the deceased and P.W.2 were not living in Vishamangalam Village. They were living in Bangalore for a long time and after transfer of the deceased to Dharmapuri, they started living in Dharmapuri. It is in evidence that P.W.2 had only a few occasions to visit Vishamangalam village, that too, to participate in some functions and they had returned in the evening itself, on every such occasion, without making overnight stay. There is no dispute at all that the accused are the relatives of P.W.2. They did not accept the marriage.

20. It is also stated that, on an earlier occasion, the fifth accused (father of the first accused) was bitten by the deceased. In that incident, the lips of the fifth accused was cut off. This has given a bad look to the fifth accused. He suffered disfigurement. For this, there was a Panchayat in the village, in which, the deceased paid a sum of Rs.35,000/-, as compensation. This is stated to be yet another motive. In our considered view, because these motives are remote in point of time and in our considered view the occurrence would not have happened because of these two motives.

21. It is in evidence that on the day of occurrence, on hearing about the demise of Munusamy, the deceased had come along with P.W.2 to his house. They arrived at 10.10 am on 08.09.2010. They were there till the evening. These accused were also present. Had it been true that these accused had motive, as projected by the prosecution case, they would not have allowed P.W.2 and the deceased to participate in the condolence. The very fact that they allowed both of them to peacefully participate in the condolence from 10.00 am to 05.00 pm on 08.09.2010 itself would go to show that these accused had no motive at all against the deceased.

22. As far as the presence of the eye-witnesses to the occurrence is concerned, we cannot have any doubt, because they are very closely related to the deceased Munusamy and therefore, they would have quite naturally participated in the funeral procession of the deceased.

23. The argument of the learned counsel for the appellants that the eye-witnesses are closely related and therefore, their evidence should be rejected also deserves a simple rejection, because it is not the law that the evidence of close relatives should be out-rightly rejected. Prudence requires that their evidences require close scrutiny. Here, in this case, the presence of the eye-witnesses cannot be doubted and though they are closely related, on that score alone, we cannot reject the

entire evidence of the eye-witnesses, notwithstanding the fact that they have made improvements in their evidences.

24. Now, turning to the actual occurrence, when the procession was going on, it is stated that suddenly accused 2 to 6 held the deceased to enable the first accused to stab him. Then the first accused inflicted a single stab injury on the abdomen of the deceased. Since there was no motive for any of these accused and since the motives projected by the prosecution are too remote in point of time, in our considered view, the evidence of these eye-witnesses that accused 2 to 6 held the deceased to enable the first accused to stab him deserves rejection. Further, we find that there is no consistency in the evidence of these witnesses as against A-2 to A-6. There are material contradictions in their evidence. Therefore, we are not prepared to believe these eye-witnesses that accused 2 to 6 held the deceased. To that extent, we are inclined to reject their evidence.

25. Next, turning to the case against the first accused, there can be no doubt that the first accused stabbed on the abdomen of the deceased. All the eye witnesses have spoken elaborately about the same. Though these witnesses have made some embellishments by implicating accused 2 to 6 also, on that score alone, we cannot reject their evidences as against the first accused. As we have already concluded, the presence of these eye witnesses cannot be doubted and the fact that they witnessed the occurrence also cannot be doubted.

26. The learned counsel for the appellants has taken us through the evidences of these witnesses to point out certain contradictions. In our considered view, these contradictions, which were pointed out by the learned counsel are only minor in nature which would not in any manner create doubt in the evidence of these witnesses. From these evidences, we hold that it was the first accused, who caused the single stab on the stomach of the deceased. The medical evidence has established that the death of the deceased was due to shock and haemorrhage caused by the stab injury on the abdomen of the deceased by the first accused. In such view of the matter, we find that the prosecution has proved the case against the first accused beyond all reasonable doubts.

27. Now the next question is, "what was the offence that was committed by the first accused by the said act"? As we have already concluded, there was no motive for the said act. But the eye-witnesses have not stated as to what preceded actually before the said act of stabbing. It appears that they have not come forward with the true version of the entire occurrence. But for some provocation, the first accused would not have made a single stab on the deceased. It is not as if the first

accused was not available in the village from the morning. It is in evidence that from 10.00 am onwards on 08.09.2010, the deceased was very much participating in the condolence and the first accused was also present. Had he had any motive or had he had any other old provocation, he would not have permitted the deceased to participate in the condolence or he would have harmed him sometime before. It is the case of the prosecution that when the procession was in progress, suddenly the first accused took out a knife and stabbed the deceased. In our considered view, going by the natural human conduct, we are of the view that there would have been some provocation caused by the deceased. But for the provocation, the accused would not have caused the injury at all. Though no witness has spoken about any such provocation, going by the natural human conduct, as provided under Section 114 of the Indian Evidence Act, 1872, we presume that there had been some provocation which was so grave and sudden, which only had made the first accused to lose his mental balance and to cause a single stab on the abdomen of the deceased. Had it been his intention to cause the death, he would have inflicted many more injuries also. But he did not do so. Having considered the totality of the circumstances, we are of the view that though the act of the first accused would fall within the third limb of Section 300 IPC, the same would also fall within the first exception to Section 300 IPC. Therefore, the first accused is liable to be punished for the offence under Section 304 (1) IPC.

28. Now turning to the quantum of punishment, at the time of occurrence the first accused was hardly aged about 26 years and there are lot of chances for his reformation. He has no bad antecedents. He has a family to protect and to take care of. The occurrence was not premeditated and the same was out of a sudden provocation. Having regard to the aggravating and mitigating circumstances, we are of the view that sentencing the first accused to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.5,000/- for the offence under Section 304 (1) IPC would meet the ends of justice. He is entitled for acquittal from the charge under Section 148 IPC. Similarly, the accused 2 to 5 are entitled for acquittal of all the charges framed against them.

29. In the result: (i) Criminal Appeal No.306 of 2013 is partly-allowed. The conviction and sentence imposed on the first accused for the offence under Sections 148 and 302 IPC read with Section 149 IPC are set-aside and instead, he is convicted under Section 304 (1) IPC and sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.5,000/-, in default, to undergo Rigorous Imprisonment for four weeks.

(ii) Criminal Appeal No.148 of 2013 stands dismissed as abated as against fifth appellant / sixth accused.

(iii) Criminal Appeal No.148 of 2013 is allowed, as against appellants 1 to 4 / accused 2 to 5 and the conviction and sentence imposed on these appellants / accused, by the learned III Additional Sessions Judge, Vellore, at Tiruppattur, in S.C.No.17 of 2012, by the judgment, dated 04.01.2013, are hereby set-aside. These appellants / accused 2 to 5 are acquitted of all the charges levelled against them and they are directed to be set at liberty, forthwith, unless their presence is required in connection with any other case. Fine amounts, if any, paid by these appellants (A-2 to A-5), shall be refunded to them. Bail bonds, if any, shall stand discharged.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

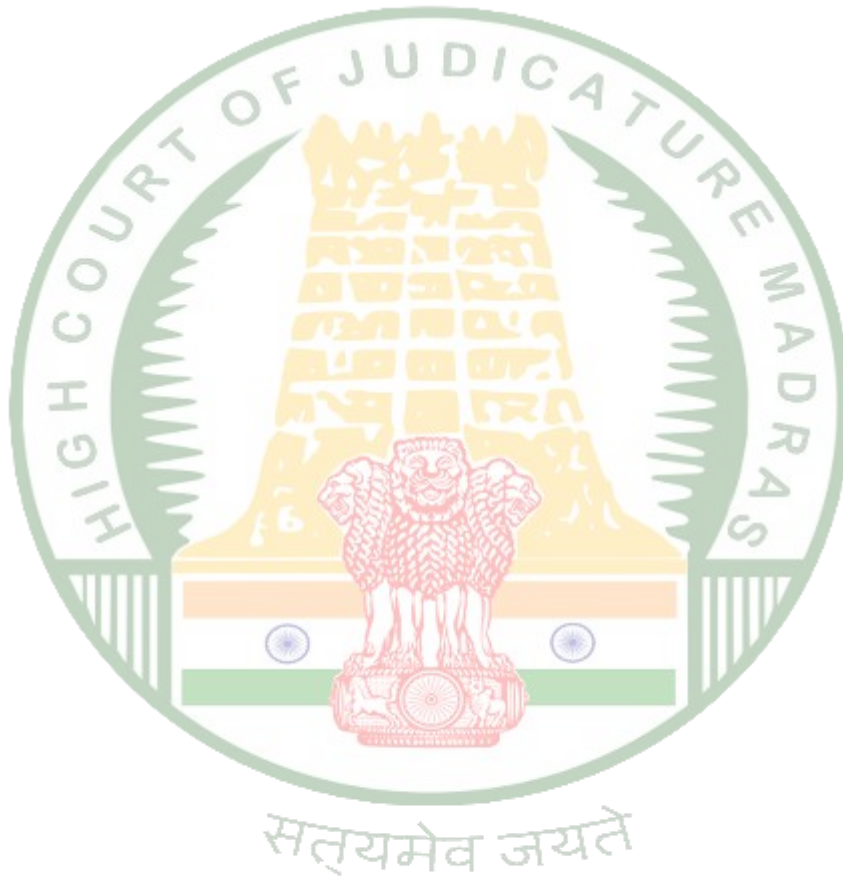
To

- 1.The Judicial Magistrate,
No.II, Tirupattur.
- 2.-do- Thro The Chief Judicial Magistrate,
Vellore.
- 3.III Additional District and Sessions Judge,
Vellore,
at Tiruppattur.
- 4.The Public Prosecutor,
Madras.
- 5.The Inspector of police,
Tiruppatur
TK, Police Station,
Tirupatur.
- 6.The Superintendent,
Central Prison,
Vellore.
- 7.The District- Sessions Judge,
Vellore at Tiruppattur.

8. Director General of Police,
Mylapore, Chennai.

CrI.A.Nos.306 & 148 of 2013

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