

BAIL SLIP

The Petitioner Viz, Mr.Nagaraj, S/o.Stanley, aged about 26 years was directed to be released on bail in MP.No.2 of 2013 in CrI.A.No.465/2013 dated 17.12.2013.

The Petitioners Viz., Selvam, S/o.Subramani, aged about 26 years and Ganesh,S/o.Thanikashalam aged about 21 years was directed to be released on bail in MP.No.1 of 2013 in CrI.A.No.465/2013 dated 25.11.2013.

The Petitioners Viz.,Kumar, S/o.Danabalan, aged about 28 years and Raju, S/o.Kamaraj aged about 19 years and Venkatesan, S/o.Kuppan was directed to be released on bail in MP.No.1 of 2013 in CrI.A.No.722/2013 dated 25.11.2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal Nos.465 and 722 of 2013

- 1.Selvam
- 2.Nagaraj
- 3.Ganesh

... Appellants in
CrI.A.No.465/2013

- 1.Kumar
- 2.Raju
- 3.Venkatesan

... Appellants in CrI.A.No.722/2013

-vs-

State
Rep. by the Inspector of Police
T-6, Avadi Police Station,
Thiruvallur District.

... Respondent
in both Appeals

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These Criminal Appeals have been preferred to set aside the conviction and sentence imposed vide judgment dated 26.06.2013 made in S.C.No.295 of 2011 on the file of the III Additional District and Sessions Judge, Thiruvallur at Poonamallee, by allowing these appeals.

For Appellants
(in both appeals) : Mr.R.Sankarasubbu

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

COMMON JUDGMENT

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

The appellants in Crl.A.No.722 of 2013 are the Accused 1,3 and 4 and the appellants in Crl.A.No.465 of 2013 are the Accused 2,5 and 6 in S.C.No.295 of 2011 on the file of the III Additional District and Sessions Judge, Tiruvallur at Poonamallee. They stood charged for offences under Sections 147 and 302 IPC. By judgment, dated 26.06.2013, the Trial Court convicted all the six accused under Section 302 IPC alone and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for two months. The Trial Court acquitted them from the charge under Section 147 IPC. Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

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

P.W.1 is a resident of Avadi, Chennai. He has three sons by name Mahesh, Ramesh and Manikandan. They were all residing along with P.W.1. Mr.Mahesh, the son of P.W.1 is the deceased in this case. On 14.09.2010, at about 2.30 p.m., a funeral procession was proceeding towards the graveyard at Periyar Nagar, Avadi. In that procession, one Vishnu and few others were dancing. P.Ws.1 to 6 were also in the procession. Manikandan, son of P.W.1 joined the dancers in the procession. These accused objected to the same. This resulted in a scuffle between the accused and Mr.Manikandan. It is alleged that all these accused manhandled him.

3. Mr.Manikandan came to his house and informed P.W.1 and the deceased Mahesh about the same. The deceased and Manikandan then went to the house of these accused to question as to why they attacked Manikandan. All the accused were near Tamil Nadu Housing Board building at Avadi, near the lake. When Manikandan and the deceased Mahesh questioned them, all the six accused attacked them with hands. Manikandan and the deceased took to their heels. All the six accused gave a chase. Manikandan jumped into the lake and reached the other side by swimming across the lake. The accused could not reach him. But the deceased was caught by the accused. They pushed him into the lake and immersed him into the water. He died on the spot due to drowning. Leaving the dead body into the water, all the six accused escaped from the scene of occurrence.

4. Manikandan, then returned to his house and informed P.W.1 about the incident. Thereafter, he went to Avadi Police Station and made a complaint at 10.30 p.m. on 14.09.2010 against all the six accused. P.W.14 - the then Inspector of Police on receipt of the said complaint registered a case in Crime No.589 of 2010 under Sections 147 and 302 IPC. Ex.P7 is the FIR. He forwarded both the documents viz., Complaint [Ex.P1] and FIR [Ex.P7] to the Court, which were received by the learned Magistrate at 4.50 p.m., on 15.09.2010.

5. P.W.14 took up the case for investigation. He went to the place of occurrence and prepared an Observation Mahazar and a rough sketch in the presence of witnesses. The dead body could not be retrieved. He made a request to the Fire and Rescue services to retrieve the dead body of the deceased. At 6.00 a.m. on the next day i.e, 15.09.2010, the Fire and Rescue services men retrieved the body from the lake. P.W.14 conducted inquest on the body of the deceased and forwarded the same for Post-mortem. He examined P.Ws.1 to 10 and recorded their statements. On 15.09.2010, he arrested all the accused in the presence of P.W.10 and another witness. On completing the investigation, he laid charge sheet against all the accused.

6. Based on the above materials, the trial Court framed charges as detailed in the first para of this judgment against all the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 14 witnesses were examined; 10 documents were exhibited, but no Material Objects were marked.

7. Out of the said witnesses, P.W.1 - the father of the deceased has stated that he saw all the six accused giving a chase to Manikandan and Mahesh. They were running along the bank of the lake. After some time, according to P.W.1, Manikandan returned home and told him that Mahesh was not seen. Then they

went to the place of occurrence. Since Mahesh was not seen, P.W.1 went along with Manikandan and made a complaint to the Police. P.W.2 is the resident of Avadi. He has also stated that he was in the procession. When the procession was moving, he found the accused giving a chase to Mahesh and Manikandan. He has further stated that one of the accused attacked one Ranganthan. He further stated that Mahesh jumped into the lake. Manikandan also jumped into the lake. The accused also jumped into the lake. They attacked Mahesh inside the lake with hands. Then they ran away, he added. P.W.3 has also stated like P.W.2. P.W.4 has stated that he was also in the procession and he found all the six accused giving a chase to the deceased. P.W.5 is yet another person, who participated in the procession and he has also stated like P.W.4. P.W.6 has stated that he heard about the occurrence and went to the lake, where the Fire and Rescue services men retrieved the body on the next day. P.W.7 is an official of the Fire and Rescue services. He has stated that on receiving phone from the Avadi Police Station on 15.09.2010 at 7.00 a.m., he along with other official went to the lake and retrieved the body of the deceased. P.W.8 has stated that he found the accused running from the procession at the crucial point of time. P.W.9 has also stated that he found these accused giving a chase to the deceased. P.W.10 has stated that all the six accused were attacking a boy in the lake. P.W.11 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. According to him, the death was due to asphyxia due to drowning. P.W.13 is the constable, who carried the dead body from the place of occurrence and handed over the same to the doctor for Post-mortem. P.W.14 has spoken about the registration of the case and investigation done.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C, he denied the same as false. However, he did not choose to examine any witness on his side nor marked any document in his favour. His defence was a total denial.

9. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this Judgment. Aggrieved over the same, the appellants are before this Court with these appeals.

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

11. As we have already pointed out, the eye witnesses have stated that they saw these six accused chasing the deceased and Manikandan from the procession. They have further stated that Manikandan jumped into the water and reached the other side of

the lake by swimming, whereas, the deceased was caught by the accused and they killed him by immersing him into the water. But it is in evidence that none of the accused was previously known to any of these witnesses. They admitted during cross examination that they did not even know the names of these accused. There was no Test Identification Parade conducted at all. It is seen from their evidences that they have stated in a very vague manner that all the accused gave a chase and immersed the deceased into water. Some of the witnesses have stated that the deceased on his own jumped into the water. At any rate, prosecution has not examined Manikandan. There is no other evidence to connect the accused to the crime. As we have already pointed out, it is difficult to place reliance on the Identification made for the first time in the Court, by these eye witnesses. Above all, since there are multiple number of accused, false implication cannot be ruled out. Though it is stated that the alleged occurrence was at 5.30 p.m., complaint was made only at 10.30 p.m. and FIR reached the Court on the next day at 4.50 p.m., that was on 15.09.2010. Absolutely, there is no explanation for such enormous delay in registering the case and also despatching the same to the Court. It also creates doubt in the case of the prosecution.

12. In this regard, the learned counsel for the appellant placed reliance on the judgment of the Hon'ble Court in, Thulia Kali vs The State of Tamil Nadu [1973 AIR 501] wherein, the Hon'ble Supreme Court, in an identical situation, has taken the view that such inordinate unexplained delay creates doubt in the case of the prosecution. Applying the same yardstick to the facts of the present case, in view of the inordinate delay in preferring the complaint and in despatching the same to Court, coupled with the fact that absolutely there is no explanation offered by the prosecution, we doubt the origin of FIR.

13. For all these reasons, we hold that the prosecution has failed to prove the case beyond reasonable doubt. Thus the appellants are entitled to acquittal.

14. The Criminal Appeals are allowed and the conviction and sentence imposed on the appellants by the Trial Court in S.C.No.295 of 2011 are hereby set aside. The appellants are acquitted and they are directed to be set at liberty, forthwith, unless their presence is required in connection with any other case. Fine amount, if any, paid by the appellants, shall be refunded to them. Bail bond, if any, shall stand discharged.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The III Additional District and Sessions Judge,
Thiruvallur at Poonamallee,

2.The Judicial Magistrate No.II
Poonamallee

3.The Chief Judicial Magistrate
Thiruvallur(for information)

4.The Public Prosecutor
High Court, Chennai.

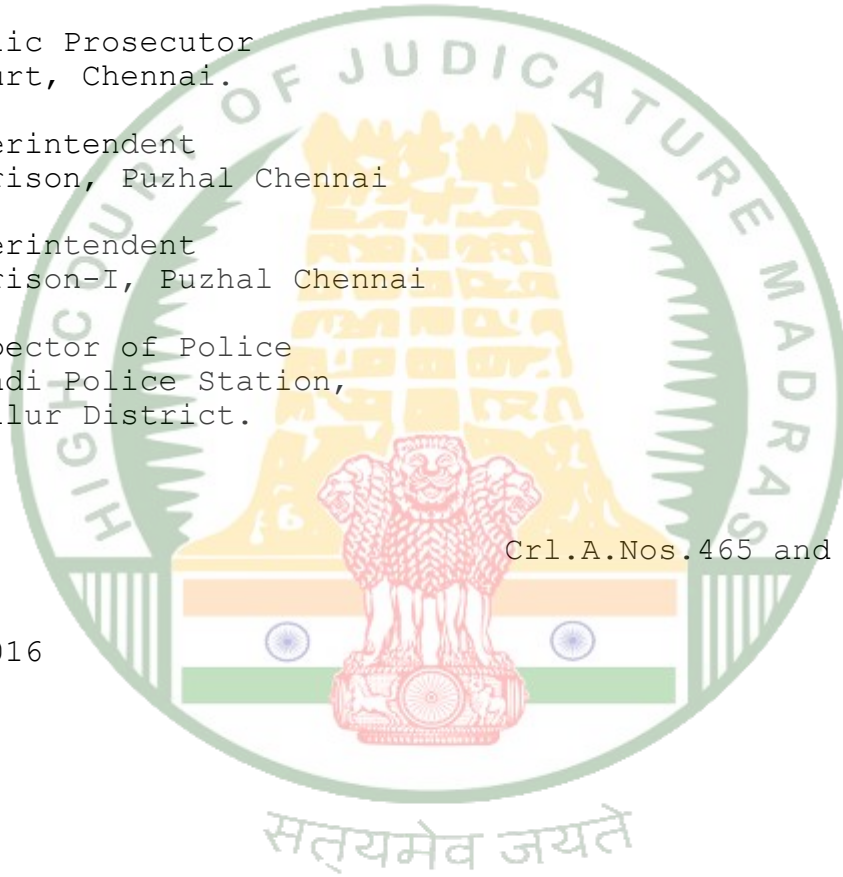
5.The Superintendent
Central Prison, Puzhal Chennai

6.The Superintendent
Central Prison-I, Puzhal Chennai

7.The Inspector of Police
T-6, Avadi Police Station,
Thiruvallur District.

Crl.A.Nos.465 and 722 of 2013

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