

Bail Slip

The Appellants 7 and 6 Accused namely Kothandapani S/OS.Pandurangan and Natarajan S/o Pondurengen were directed to be released on bail as per order of this Court dated 13.02.2013 and made in MP 1/13 and 2/13 in Crl.A.No.98/12 and

The 1st appellant/1st accused namely Vinayagamurthy S/O Kothandapani was directed to be released on bail as per order of this Court 1.3.13 and made in M.P.No.3/13 in Crl.A 98/12 and

The appellants 4,5 and 8/Accused 45 & 8 namely Somu S/O Pandurangan, Ramkumar @ Thirisangu S/O Kothandapani, Manikandan S/O Kothandapani were directed to be released on bail as per order of this Court dated 21.3.2013 and made in MP 4,6 and 5/13 in Crl.A 98/12.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.06.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.A.No.98 of 2012

1. Vinayagamoorthy
2. Manickam
3. Suresh
4. Somu
5. Ramkumar @ Thirisangu
6. Natrajan
7. Kothandapani
8. Manikandan
9. Jyothi

.. Appellants

Vs

The State
represented by
Inspector of Police
Nellikuppam Police Station
Cuddalore District.

.. Respondent

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Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, (Fast Track Court No.II), Cuddalore, dated 27.12.2010 and made in S.C.No.36/09

For Appellants : Mr.V.Raghavachari

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by V.BHARATHIDASAN, J.,]

The appellants are accused 1 to 9 in S.C.No.36 of 2009 on the file of the Additional District and Sessions Judge (Fast Track Court No.II), Cuddalore.

- (a) A1 to A9 stood charged for the offences as follows:-
- (i) A1, A4 to A8 - under Section 148 IPC.
 - (ii) A2, A3 and A9 - under Section 147 IPC.
 - (iii) A1 to A9 - under Section 294(b) IPC.
 - (iv) A1 to A9 - under Section 341 IPC.
 - (v) A1 and A5 - under Section 302 IPC.
 - (vi) A1 - under Section 324 IPC.
 - (vii) A2 and A3 - under Section 323 IPC.
 - (viii) A4, A5 and A6 - under Section 324 IPC.
 - (ix) A7 and A8 - under Section 324 IPC.
 - (x) A9 - under Section 323 IPC.
 - (xi) A2, A3, A4, A6 to A9 - under Section 302 r/w.149 IPC.

(b) After trial, the trial Court convicted A1 under Section 302 IPC and sentenced him to undergo life imprisonment with a fine of Rs.10,000/-, in default to undergo one year rigorous imprisonment; A4 to A8 were convicted under Section 302 r/w.149 IPC and each of them were sentenced to undergo life imprisonment and also to pay a fine of Rs.5,000/- in default to undergo six months rigorous imprisonment; A1, A4, A5 and A8 were convicted under Section 324 and each of them were sentenced to undergo two years rigorous imprisonment; A1 to A9 were convicted under Section 294(b) IPC and imposed with a fine of Rs.500/- each, in default to undergo three months rigorous imprisonment; A1 to A9 were convicted under Section 341 IPC and imposed with a fine of Rs.500/- each, in default to undergo three months rigorous imprisonment. All the above sentences were directed to run concurrently. The trial Court acquitted

A2, A3 and A9 from the charges under Sections 147, 323 and 302 r/w.149 IPC. A5 was acquitted from the charge under Section 302 IPC. A6 and A7 were acquitted from the charge under Section 324 IPC.

Challenging the above conviction and sentence, the present Appeal has been filed.

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

(i) The deceased one Jayaprakash is the brother of PW.1 and the son of PW.2. They are all permanent residents of P.N.Palayam, near Nellikuppam. On 06.08.2008 at about 1.30 p.m, PW.4, son of PW.3 was riding a bicycle and the cycle had stuck in the mud, A5 - Ramkumar, who belongs to the same village, came in a cycle in the opposite direction, dashed against the cycle of PW.4. When PW.4 questioned the same, there arose a quarrel and during the quarrel, A1, A3 and A5 beat PW.4. Thereafter, PW.4 informed the same to the deceased and PWs.1 to 3. On hearing the same, PW.1 and PW.6 went to A1's house to enquire about the incident. At that time, all the accused were standing there with weapons. A8 attacked with an iron rod on the head of PW.1. A7 also attacked him with another iron rod on the shoulder. A9 attacked him with wooden log. Seeing that, the deceased Jayaprakash came there and prevented the accused to save PW.1., at that time, A1 attacked the deceased with iron rod on his head and also on his cheek. The deceased fell down. Thereafter, A2 and A3 attacked the deceased with wooden logs. A5 also attacked him with iron rod. Upon seeing the occurrence, PW.4 also rushed to the scene. A5 attacked him with iron rod on his head, A6 attacked him on the shoulder. On hearing the news, PW.2, father of PW.1, came there to prevent it. At that time, A4 attacked him with a knife on the head and A1 also attacked PW.2 with iron rod. After hearing the news, general public reached the scene of occurrence and all the accused ran away. Village public took all the injured persons to the Government Hospital, Cuddalore.

(ii) PW.13, Assistant Surgeon working in the Government Hospital, Cuddalore, examined the deceased and declared him dead and issued Accident Register copy (Ex.P9). She admitted PW.2 and also issued Accident Register Ex.P10. She also examined PW.3 and issued Accident Register Ex.P11. She also examined PW.4 and issued Accident Register Ex.P14.

3. On receipt of a memo from the Government Hospital, Cuddalore, PW.14, Sub-Inspector of respondent police, reached the Government Hospital, Cuddalore, and obtained statement from PW.1 and registered a case in Crime No.472 of 2008 for the offences under Sections 147, 148, 294, 341, 324, 307 and 302 IPC and sent the First Information Report (Ex.P14) to the Judicial Magistrate, Cuddalore and copies to higher police officials.

4. PW.15, Inspector of Police, on receipt of First Information Report, commenced investigation, reached the scene of occurrence at about 7.00 p.m and prepared an Observation Mahazar (Ex.P2) and a rough sketch (Ex.P15). He also recovered blood stained cement slab piece (M.O.11) and sample cement slab piece (M.O.12), in the presence of witnesses, recorded statements of witnesses between 10.45 p.m to 12.00 p.m. He recorded the statements of injured persons, viz., PW.1, PW.2, PW.3 and PW.4. Subsequently at about 7.00 a.m on the next day, he conducted inquest over the dead body in the Government Hospital, Cuddalore, in the presence of panchayatdars. The inquest report is Ex.P16. He sent the body for postmortem. On the same day, PW.15 arrested A1, A2 and A5 in the presence of witnesses and on such arrest, they gave voluntarily confession statements, and based on the disclosure statements, PW.15 seized M.Os.1 to 5 and 7 to 9. Since the above accused were also injured, he sent them for treatment to the hospital under a memo. PW.15 arrested A4 near P.N.Palayam to Palur Road and on such arrest, A4 voluntarily gave a confession statement and based on the disclosure statement, he recovered a knife (M.O.6). At the time of arrest, PW.15 found injuries on A4 and based on his complaint, he registered a case in Crime No.474 of 2008 for offences under Sections 147, 148, 294(b), 323 and 324 IPC and sent him for treatment, under a memo.

5. PW.11 - Assistant Surgeon, working in the Government Hospital, Cuddalore, conducted postmortem on the dead body and found the following injuries.

"External injuries :

1. Contusion above right eye brow 2 x 1 cm
2. Contusion right zygoma 4 x 1 cm
3. Contusion right pinna 1 x 1 cm
4. laceration right parietal region 3 cm
5. laceration below right ear 2 x 1 cm
6. laceration right foot 1 x 1 cm x 2 cm
7. laceration left foot 1 x 1.5 cm

Rigor mortis present in all four limbs.
Non-watery discharge from eye lids.
Mouth closed. Abdomen distended. Hands free; Peritoneum cavity normal. Ribs intact; Heart empty; Lungs congested; Hyoid intact; Stomach contains about 200gms of partially digested food particles; Liver, Spleen, Kidney congested; Intestines filled with gas;

Skull :

1. Haematoma right Fronto-Parieto Temporal Region 8 x 6 cm in size;

2. Linear # right Temporal right Parietal to Left Parietal region about 14 cm length with corresponding hematoma inside

4. Membrane torn

5. Corresponding haematoma in the subdural region seen. Brain congested.

Time of death : 20 to 28 hours prior to postmortem.

Cause of death : The deceased would have died of shock and hemorrhage due to the head injury sustained.''

Ex.P8 is the postmortem report. PW.15 recorded the statements of some other witnesses and also the Doctor conducted postmortem and after completion of investigation, on 04.11.2008, he filed the charge sheet in Crime No.478 of 2008, against the appellants/accused. In the above occurrence, the accused A1, A2, A4 and A5 also got injuries. Hence, a counter case was also registered by PW.15 in Crime No.474 of 2008 under Sections 147, 148, 294(b), 323 and 324 IPC.

6. Based on the above materials, the trial Court has framed charges against the appellants/accused as stated in paragraph-1 (a) of the judgment. The accused denied the same. In order to prove the charges, the prosecution examined 16 witnesses and marked 18 documents and 12 material objects.

7. Out of the above witnesses, PW.1 is an injured witness and he is also the brother of the deceased. He has spoken about the injuries found on him, and also on the other injured witnesses and about the attack on the deceased. PW.2, who is the father of the deceased, is also injured in the above occurrence. PW.3 is the father of PW.4, he is also injured in the occurrence. PW.4 also an injured witness. PW.5 to PW.7 are residents of P.N.Palayam and they are all eye witnesses to the occurrence. PW.8 - Village Assistant of P.N.Palayam is the mahazar witness (Ex.P2) for recovery of bloodstained cement slab piece (Ex.P11) and sample cement slab piece (Ex.P12). PW.9 is a witness to the arrest of A4 and also recovery of M.O.5. PW.10 is a witness to the arrest of other accused and also recovery of M.Os.1 to 5, 7 to 9. PW.11 is the Doctor working in Government Hospital, Cuddalore, who conducted postmortem and gave postmortem certificate Ex.P8. PW.12 is a Head Constable of the respondent police, who has identified and handed over the body for postmortem. PW.13 is the Doctor working in the Government Hospital, Cuddalore, who examined the deceased at the Hospital and issued Accident Register (Ex.P9) and also examined other injured witnesses and issued Accident Registers (Exs.P10, P11 and P12). PW.14 is the Sub-Inspector of respondent police, who registered a complaint after obtaining statement from PW.1. PW.15 is the investigating officer, who investigated the case

and filed charge sheet. PW.16 is the Assistant working in the Forensic Lab, Villupuram, who examined the material objects and gave a report Ex.P17. Ex.P18 is the report of the Forensic Lab, Chennai.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. The accused did not examine any witnesses, but marked four exhibits, which are the arrest memo issued to A1, A2, A4 and A5.

9. Considering the above materials, the trial Court convicted the accused and sentenced them as stated in paragraph-1 (b) of the judgment. As against the conviction and sentence, the present appeal has been filed by the accused before this Court.

10. Mr.V.Raghavachari, learned counsel appearing for the appellants would submit that there was a quarrel between the accused group and the deceased group and in the above said quarrel, A1, A2, A4 and A5 were also injured and they also have given a complaint and based on the same, a case in Crime No.474 of 2008 was registered by PW.15 against the prosecution party for the offences under Sections 147, 148, 294(b), 323 and 324 IPC, but no investigation was conducted based on the above complaint and the prosecution totally suppressed the above facts, by which the prosecution suppressed the origin and genesis of the case. He would further submit that the wound certificates of the accused party were not produced and the injuries sustained by them were not explained by the prosecution.

11. Per contra, the learned Additional Public Prosecutor would submit that the injuries sustained by the accused are trivial and they need not be explained. It is his further submission that there are four injured witnesses and three eye witnesses and they have categorically stated about the occurrence and hence, non-explaining the minor injuries sustained by some of the accused, is not fatal to the case of the prosecution and on that score alone, the prosecution case cannot be rejected.

12. We have considered the rival submissions and perused the records carefully.

13. Admittedly, there was a quarrel between PW.4 and A5, which led to the present occurrence. The deceased, P.Ws.1 to 4 were present in the scene of occurrence, as a group. In the above occurrence, admittedly, A1, A2, A4 and A5 also got injuries and they were referred to hospital for treatment, under a police memo and a counter case was also registered in Crime

No.474 of 2008 under Sections 147, 148, 294(b), 323 and 324 IPC, by PW.15. PW.15 has categorically admitted the same in his evidence. But he did not conduct any investigation in the counter case at all. The Accident Registers, relating to the injuries sustained by the accused parties, were not produced before the Court. Whereas, the defence has marked arrest memo of all the accused (Exs.D1 to D4), wherein, it has been clearly stated that they have also sustained injuries and the injuries are not trivial in nature. But the injuries sustained by the accused party has been totally suppressed by the prosecution and they have not taken any steps to explain the same.

14. It is well settled principle of law that the injuries sustained by the accused during the time of occurrence, is a very important circumstance and the prosecution has to necessarily explain the same. Because of non-explaining the injuries on the accused, the Court can only draw inference that the prosecution has suppressed the genesis and origin of the prosecution case and did not present the true case. The Hon'ble Supreme Court in Lakshmi Singh v. State of Bihar, 1976 SCC (Crl.) 671, has held as follows:-

"Where the prosecution fails to explain the injuries on the accused, two results follow:

- (1) that the evidence of the prosecution witnesses is untrue; and
- (2) that the injuries probalise the plea taken by the appellants.

It was further observed that -

" In a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of alteration is a very important circumstance from which the Court can draw the following inferences:

- (1) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version,

- (2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore, their evidence is unreliable,

- (3) that in case there is a defence version which explains the injuries on the person of the Accused it is rendered probable so as to throw doubt on the prosecution case.

"

15. A Division Bench of this Court, in which one of us is a party (S.NAGAMUTHU, J.,) reported in "M.Muniyandi v. State (2013 (1) MWN (Cr.) 597 DB", considering the above judgment, in similar circumstances, acquitted the accused. In the instant case also, the prosecution has suppressed the injuries on the accused and did not come forward with the true version of the occurrence and only projected the version of the prosecution party. In the said facts and circumstances, it is not safe to sustain the conviction of the accused based on the evidences of the injured witnesses and eye witnesses which is unreliable. Hence, we are of the considered view that the prosecution has suppressed the origin and genesis of the case and did not present the true version, and therefore, the appellants are entitled for acquittal.

16. In the result, the conviction and sentence imposed on the appellants by the trial court are set aside. The Criminal Appeal is allowed. All the appellants are acquitted of the charges levelled against them and fine amount already paid, if any, shall be refunded to them. Their bail bonds shall stand terminated.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mra

To

- 1.The Judicial Magistrate No.1,
Cuddalore.
- 2.-Do- Chief Judicial Magistrate,
Cuddalore.
- 3.The Additional District and Sessions Judge,
(Fast Track Court No.II), Cuddalore.
- 4.-Do- Thro The Principal Sessions Judge,
Cuddalore.

5.The Inspector of Police
Nellikuppam Police Station
Cuddalore District.

6.The Superintendent,
Central Prison,
Cuddalore.

7.The District Collector,
Cuddalore District.

8.The Director General of Police,
Chennai-4.

9.The Public Prosecutor,
High Court, Chennai.

Copy to

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/S.A.Ajimath Begem, Advocate Sr.31989

Crl.A.No.98 of 2012

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srg 18/01/2017

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