

Bail Slip

The Appellant/Accused -2 Viz., Murugan and Appellant/Accused 3 to 6 Viz., Kannan, Selvam @ Selvaraj, Settu, Kannappan, was released in Bail in (MP.1 and 2/13 in CrI.A.NO.603/13) dt. 23.9.13, 25.09.2013 and 28.10.2013 and appellant/Accused NO.1 Viz., Civil @ Ravichandran, respectively was released on bail in MP.1 of 2013 in CrI.A.No.627 of 2013 dt. 20.11.2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 21.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

CrI.A.Nos.603 and 627 of 2013

1.Murugan

2.Kannan

3.Selvam @ Selvaraj

4.Settu

5.Kannappan

... Appellants in
CrI.A.No.603 of 2013

Civil @ Ravichandran

... Appellant in
CrI.A.No.627 of 2013

vs.

State, rep.by

The Inspector of Police,

Veeranam Police Station,

Salem, Salem District

Crime No.59 of 2007

... Respondent in
both the appeals

Criminal appeals preferred under Section 374(2) Cr.P.C., against the judgement dated 14.08.2013 passed by the II Additional District and Sessions Judge, Salem, in S.C.No.155 of 2012.

For Appellants : M/s.Swaminathan Law Associates
in CrI.A.No.603 of 2013

Mr.R.Karthikeyan
in CrI.A.No.627 of 2013

For Respondent : Mr.M.Maharaja, Addl.P.P.
in both the appeals

COMMON JUDGMENT

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

The appellants are the accused 1 to 6, in Sessions Case No.155 of 2002, on the file of the learned II Additional District and Sessions Judge, Salem. The trial Court framed charges against the accused as detailed below:

Sl. No.	Charges (Section of law)	accused
1.	U/s.148 and 302 of the Indian Penal Code and Section 3(1) of the Tamil Nadu Prevention of Properties (Damages and Loss) Act 1992	A1
2.	U/s.148, 324 and 302 r/w.149 of the Indian Penal Code	A2
3.	U/s.148 and 302 r/w.149 of the Indian Penal Code	A3 to A6

By judgement dated 14.08.2013, the trial Court convicted all the six accused under these charges and sentenced them as follows:

Sl.No.	Rank of accused	Conviction	sentence
1.	A1 to A6	U/s.148 of the Indian Penal Code	rigorous imprisonment for two years each.
	A2	U/s.324 of the Indian Penal Code	rigorous imprisonment for one year.
	A1	U/s.302 of the Indian Penal Code	Life Imprisonment and a fine of Rs.7,000/- each, in default, simple imprisonment for one year each.
		U/s.3(1) of the Tamil Nadu Prevention of Properties (Damages and Loss) Act, 1992.	Rigorous imprisonment for two years and a fine of Rs.5000/-, in default, simple imprisonment for three months.

A2 to A6	under Section 302 read with 149 of the Indian Penal Code.	Life Imprisonment and a fine of Rs.7000/-, in default, simple imprisonment for one year.
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The sentences imposed against A1 to A6 have been ordered to run concurrently. Challenging the said conviction and sentences, A1 has preferred CrI.A.No.627 of 2013 and A2 to A6 have preferred CrI.A.No.603 of 2013.

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

(a) The deceased in this case was one Mr.Muthu. He was an accused in a number of cases as well as murder cases. On many occasions, he was imprisoned in connection with those cases. One Mr.Vijay @ Vijay Kannan, since died, was also similarly an offender in many theft cases and murder cases. He was also lodged in the prison in connection with those cases. When the deceased Mr.Muthu and Mr.Vijay @ Vijay Kannan were in prison, inside the prison, there arose misunderstanding between them, which resulted in frequent quarrels and ultimately, the same developed into a very strong enmity between the deceased and Vijay @ Vijay Kannan. The accused/the appellants herein, are the associates of Mr.Vijay @ Vijay Kannan. One Mr.Gilli @ Suresh and Mr.Azhagappan were also the associates of Vijay @ Vijay Kannan. Mr.Gilli @ Suresh and Azhagappan are also now no more. Thus, these six appellants, Mr.Vijay @ Vijay Kannan, Mr.Gilli @ Suresh and Mr.Azhagappan were close associates involved in crimes.

(b) While in prison, in one of the quarrels between Vijay @ Vijay Kannan and the deceased Muthu, Vijay @ Vijay Kannan challenged that on getting released from prison, he would not spare the deceased Mr.Muthu and he would do away with him outside the prison. The deceased Mr.Muthu informed the same to his mother (P.W.1).

(c) Few weeks before the occurrence, the deceased Mr.Muthu had come out from the prison. He had forced the first accused Civil @ Ravichandran to pay some amount to him. On coming out from the prison, one week prior to the occurrence, Vijay @ Vijay Kannan, along with the accused 1 and 3 herein, came to the house of the deceased and wanted back the money received from the first accused. Mr.Vijay @ Vijay Kannan shouted that he himself was a big rowdy and therefore, how dare the deceased was to demand money from his associate namely, the first accused. The deceased informed Vijay @ Vijay Kannan that he had not received any such amount from the first accused. When the quarrel was in progress, P.W.1 and other neighbours intervened, pacified Vijay @ Vijay Kanan and his associates and therefore they retreated.

(d) On 19.2.2007, at about 6.30 p.m., the deceased Mr.Muthu along with his associate P.W.7, was coming in his M-80 motorcycle from Kuppanur to Sukkumpatti. The vehicle was driven by the deceased. When they reached the bus stop, at Sukkumpatti, they found P.Ws.1, 2 and 4 standing in the bus stop. The deceased stopped the vehicle, went near his mother (P.W.1) and wanted a sum of Rs.100/- from her for the days' expenditure. At that time, all these six accused led by Vijay @ Vijay Kannan and accompanied by Gilli @ Suresh and Azhagappan came to the said place. Vijay @ Vijay Kannan questioned the deceased as to why he had not returned the money to the first accused, which he had earlier received from him, by force. The deceased Muthu responded by saying that there was no necessity for him to repay the amount. He further challenged the authority of Vijay @ Vijay Kannan to question the same. Vijay @ Vijay Kannan shouted at him and stated that he would instantly show as to who he was. He rushed into the nearby tea shop, run by one Mr.Perumal, and from where, he brought a coconut coir rope. The other accused had taken wooden reapers from the shop. Vijay @ Vijay Kannan had taken the wooden leg of a cot. All of them dragged the deceased towards a nearby flagpost and tied him with a rope. Then, all the nine, indiscriminately attacked the deceased. The deceased was trying to escape. Since the coir rope gave way, the deceased fell down. All these accused and other three, namely, Vijay @ Vijay Kannan, Gilli @ Suresh and Azhagappan continued to attack him with wooden reapers and wooden leg of a cot. The first accused took out a huge stone and dropped the same on the head of the deceased. When P.W.7, attempted to rescue the deceased, the second accused attacked him with wooden reaper, which resulted in minor injuries. The first accused caused extensive damage to the motorcycle belonged to the deceased. All the eyewitnesses cried for help. The accused ran away from the scene of occurrence. The deceased died within a shortwhile succumbing to the injuries. P.W.3, the father of the deceased also, by the time, came to the place of occurrence. The occurrence was witnessed by P.Ws.1, 2, 4 and P.W.7. Thereafter, P.W.1, along with her husband, went to Veeranam Police Station and made a complaint at 7.45 p.m., on 19.2.2007.

(e) P.W.13, the then sub Inspector of Police of Veeranam Police Station, on receipt of the said complaint, registered a case in Crime No.59 of 2007, under Sections 147, 148, 342, 323, 427, 506(ii) and 302 of the Indian Penal Code against these six accused and the other three, namely, Vijay @ Vijay Kannan, Gilli @ Suresh and Azhagappan. Ex.P.37 is the First Information Report. He forwarded Ex.P.1, the complaint and Ex.P.37, the First Information Report, to the Court and handed over the case diary to P.W.15, for investigation. Taking up the case for investigation, P.W.15 went to the place of occurrence at 10.15 p.m., and prepared an observation mahazar and a rough sketch, in the presence of P.W.5 and another

witness. Then, he conducted inquest on the body of the deceased, in the presence of Panchayatdars and prepared Ex.P.39, the inquest report. He arranged for a photographer to take photographs, at the place of occurrence. Then, he forwarded the dead body for postmortem. P.W.10, Dr.Kesavalingam, conducted autopsy on the body of the deceased, on 20.2.2007, at 10.10 a.m. He found the following injuries.

"INJURIES: I. Abrasions (i) Lower abrasion 4 x .5 cm, 5 x 0.5 cm, 3x1 cm., 6 cm x .5 cm over the rt. chest wall (B) Linear abrasion measuring 6 x .5 cm, 2 x .5 cm, 2 x .5 cm, over the Rt. lower part of chest wall (c) 2 x .5 cm abrasion of Right leg (d) 2 x .5 cm over the right wrist, (e) 3 cm x 2.5 cm left lower part of arm (f) Rectangular abrasion measuring 4 cm x 2.5 cm over the lower part of chest wall.

II Contusions (a) Contusion of Rt. shoulder measuring 13 cm x 4 cm x DR over the right shoulder (b) Contusion and abrasion measuring 12 cm x 8 cm over lower part of neck to rt. upper part of chest wall. (c) Contusion 18 cm X 10 cm over lower part both chest wall and right upper abdomen (d) On dissection of skin of the chest wall (a) contusion over the body of sternum 5 cm x 3.5 cm x DR and fracture.

On Opening of chest wall: (a) Laceration measuring 2.5 x 2 cm x 3 cm, 3cm x 1.5 cm, 2x0.5, 1m, 3cm x 5 cm x 1.5 m over the left side lung. i) Laceration measuring 4.5 x 3 x 2, over the right lung. (2) Fracture of ribs right side 4,5,6 Lt side 6th rib and 450 blood in the left side of the thoracic cavity.

Dissection of abdomen: Laceration measuring 11 cm x 4 m x 3 m posterior aspect of right rib of the (lobe), liver, 4 cm x 2.5 m x 3 m laceration anterior aspect of right lobe of liver. Peritoneal cavity contained 1200 gms of clotted blood, and 600 ml fluid blood.

On dissection of scalp: Contusion .5 m x 3 cm x PR over the left parietal temporal region with temporalis muscle contused. On opening of skull: Dura intact, Brain normal, Pale in color.

Stomach: Contusion. 50 ml greyish brown colour fluid. No Specific smell on ent

section of lungs, kidneys, spleen, Liver, Pale in colour, Urenary bladder empty. Spinal: Normal, Pelvis Normal. Hyoid bone intact."

Ex.P.33 is the postmortem certificate. The Doctor opined that the death was due to shock and haemorrhage due to the injuries found on the body of the deceased. P.W.15, then recovered the clothe from the body of the deceased, as produced by the Constable, who took the body for postmortem.

(f) On 21.2.2007, at 6.00 a.m., at Thirumanimutharu Tharaipalam, near Kaliamma Temple, P.W.15 arrested Vijay @ Vijay Kannan, Gilli @ Suresh, the accused Nos.1 and 2, in the presence of P.W.6 and another witness. On such arrest, Vijay @ Vijay Kannan gave a voluntary confession, in which, he disclosed the place where he had hidden the blood stained leg of the cot. The first accused Civil @ Ravichandran gave a voluntary confession, in which, he disclosed the place where he had hidden the wooden reapers. Then, the accused Murugan (A2) gave voluntary confession, in which he disclosed the place where he had hidden the wooden reaper. In pursuance of the same, the accused Gilli @ Suresh took the police and the witnesses to the place of hide out and produced the wooden reaper. Similarly in pursuance of the disclosure statement, the deceased Vijay @ Vijay Kannan took the police and the witnesses to Sukkampatty burrial ground and from a bush near a transformer, he produced the wooden leg of the cot. In pursuance of the confession given by the first accused, he took the police and the witnesses to Kandasamy Gounder Samadhi and from a bush, he produced a blood stained wooden reaper. Then, the second accused, in pursuance of his disclosure statement, took the police to Murugesan Nadar Samadhi and produced a wooden reaper. In pursuance of the disclosure statement, the accused Gilli @ Suresh took the police to Sukampatti Cremation ground, from where he produced a wooden reaper. P.W.15 recovered all the material objects under independent mahazars, in the presence of the same witnesses. Then, returning to the police station, he forwarded the accused to the Court and handed over the material objects to the Court. On 21.2.2007, at 5.00 p.m., he arrested the accused A3, A4 and A5, in the presence of the same witnesses. On such arrest, the third accused gave a voluntary confession, out of which, a wooden reaper was recovered. Similarly, the fourth accused, Selvam, also gave a voluntary confession, out of which, yet another wooden reaper was recovered from the place of hide out. P.W.15 recovered the same under independent mahazars. A5, Settu, identified the place, in pursuance of his disclosure statement and produced the wooden reaper. On returning to the police station, he forwarded all the accused to the Court and also handed over the material objects to the Court. On 23.2.2007, he arrested the accused Azhagappan (now died) and on such arrest he gave a voluntary confession, out of which, he produced a wooden reaper. At his request, the material objects were sent for chemical examination. On

completing the investigation, he laid charge-sheet against all of them.

(g) Before the filing of the final report, the assailants Vijay @ Vijay Kannan, Gilli @ Suresh and Azhagappan passed away. Therefore, final report was filed only against these six appellants alone.

3. Based on the above materials, the trial Court framed charges against these accused, as detailed in the first paragraph of this judgment. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined, 44 documents were marked, besides 11 material objects. Out of the said witnesses, P.Ws.1, 2, 4 and 7 have spoken about the entire occurrence, as eyewitnesses. P.W.7 is an injured eyewitness. P.W.3, the father of the deceased, has stated that he heard about the occurrence, while he was at his house and came to the place of occurrence. P.W.5 has spoken about the preparation of the observation mahazar and the rough sketch, at the place of occurrence, by P.W.15. P.W.6 has spoken about the arrest of the accused, the confessions made by them and the consequential recovery of the crime weapons. P.W.8, the Head Clerk of the Court, has stated that he forwarded the material objects for chemical examination, on the orders of the learned Magistrate and according to the report, there were human blood stains on all the material objects, including the wooden logs, recovered from the accused. P.W.9, the learned Judicial Magistrate No.V, Salem, has stated that she recorded the statements of witnesses 1, 2, 4 and 7, under Section 164 of the Code of Criminal Procedure, as requested by the investigating officer. P.W.10 has spoken about the postmortem conducted by him and his final opinion regarding the cause of death. P.W.11, the Constable attached to the respondent police, has stated that he took the First Information Report, from the police station from P.W.15 and handed over the same to the learned Judicial Magistrate. P.W.12, a yet another Constable, has stated that he carried the dead body from the place of occurrence to the nearby hospital and handed over the same for postmortem. P.W.13 has spoken about the registration of the case on the complaint of P.W.1. P.W.14 has spoken about the photographs taken at the place of occurrence, on the request made by P.W.15. P.W.15 has spoken about the investigation done and his final report against the accused.

4. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness on their side. Their defence was a total denial. Having considered all the above, the trial Court convicted all the accused as detailed in the first paragraph of this judgment.

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

6. The learned counsel for the appellants would submit that P.Ws.1, 2, 4 and 7 would not have witnessed the occurrence at all and their presence at the place of occurrence, is highly unbelievable. He would further submit that P.W.3 has stated that P.Ws.1 and 2 were with him at his house at the time of occurrence. Only on hearing the information about the occurrence, they all went together to the place of occurrence. Thus, according to the learned counsel, from the evidence of P.W.3, it has been clearly established that P.Ws.1 and 2 would not have been present at the time of occurrence. So far as P.W.4 is concerned, according to the learned counsel, his name does not find a place in the First Information Report and therefore, his presence, at the place of occurrence, is also doubtful. Turning to P.W.7, the learned counsel would submit that he also would not have been present, which is evident from the fact that the statement recorded from him, under Section 161 of the Code of Criminal Procedure, by P.W.15, had reached the Court one month after the occurrence. He has further stated that he did not go to the Doctor for injury, allegedly sustained by him, at the very same occurrence. The learned counsel has pointed out certain other discrepancies in these evidences, in an attempt to convince this Court that these eyewitnesses cannot be believed. In effect, the contention of the learned counsel for the appellants is that the prosecution has failed to prove the case beyond reasonable doubt.

7. The learned Additional Public Prosecutor would oppose the appeal. According to him, the presence of the eyewitnesses, at the place of occurrence, is quite natural and there are no reasons to doubt their credentials. He would further submit that P.W.7 is an injured eyewitness. His presence, at the place of occurrence, cannot be doubted. He would further submit that the motive for the occurrence had been clearly established and the presence and participation of all these accused has also been spoken vividly by all the eyewitnesses. He would further submit that the medical evidence also corroborates the eyewitness account. The blood stains would further strengthen the case of the prosecution, the learned Additional Public Prosecutor contended. For these reasons, according to the learned Additional Public Prosecutor, the appeals deserve to be dismissed.

8. We have considered the above submissions.

9. Admittedly the occurrence had not taken place anywhere near the place of residence of these eyewitnesses. It had taken place in front of a tea shop of one Mr.Perumal, which is situated by the side of the bus stop. The question is whether these eyewitnesses would have been present near the bus stop at the time of occurrence at all or not?. The injured eyewitness (P.W.7) has stated that in the M-80 motorcycle, driven by the deceased, he came as a pillion rider. He has stated, on seeing P.Ws.1 and 2, at the place of occurrence, stopped the vehicle, went near his mother,

namely, P.W.1 and wanted Rs.100/- from her. He had further stated about the presence of P.W.4 also. P.Ws.1 and 2 have stated that they have gone to a maligai shop, situated near the bus stop and when they were so standing near the maligai shop, near the bus stop, the deceased came in the M-80 motorcycle along with P.W.7, stopped the vehicle, came near P.W.1 and wanted Rs.100/-. P.W.4 has stated that he had also come to the Perumal tea shop. Thus, the presence of these eyewitnesses has been clearly established by the evidences and we do not find any reason to doubt the same.

10. It is the further case of the prosecution that at that time, all these six accused and the other three, namely, Vijay @ Vijay Kannan, Gilli @ Suresh and Azhagappan came there and they wanted as to why the deceased had not returned the money to the first accused, which he had earlier obtained from him, by force. When the deceased told that there was no need for him to repay the same, Vijay @ Vijay Kannan challenged that he would instantly show as to who he was. These eyewitnesses have further stated that thereafter, all these accused went into the nearby shop, Vijay @ Vijay Kannan came with a coir rope and the other accused had taken wooden reapers in their hands. Vijay @ Vijay Kannan had brought the wooden leg of the cot. They tied the deceased and indiscriminately attacked him. Since the rope gave way, the deceased fell down and even thereafter, all of them attacked him indiscriminately with wooden reapers and finally, the first accused dropped a huge stone on the head of the deceased. The eyewitness account of these witnesses have been duly corroborated by the medical evidence also. There is delay in preferring the First Information Report and also despatching the same to the Court. Thus, absolutely we find no reason to doubt the veracity of these eyewitnesses. These eyewitnesses have further stated that A2 attacked P.W.7, in which, he sustained only simple hurt and the weapon used was a wooden reaper. They have also stated that the motorcycle of the deceased was heavily damaged by the first accused. From these eyewitness account, which is duly corroborated by the other evidences, more particularly, medical evidence, we are of the view that the prosecution has clearly established the guilt of these six accused. The learned counsel for the appellants would, however, submit that P.W.3, the father of the deceased, has stated that P.Ws.1 and 2 were also with him at his house when he received information that the deceased had been attacked by these accused and thus, according to the learned counsel, P.Ws.1 and 2 would not have witnessed the occurrence at all. A perusal of the evidences of these eyewitnesses would go to show that P.W.1 has stated that P.W.3 was not at the place of occurrence and he was at his house and only P.Ws.1 and 2 had gone to the shop. She has further stated that on receiving intimation, P.W.3 came to the place of occurrence, whereas P.Ws.1 and 2 had already been present at the place of occurrence. Probably due to loss of memory, P.W.3 would have made a slightly contradictory statement in his evidence. But that would not in any manner go to falsify

the evidences of P.Ws.1 and 2 that they were very much present at the time of occurrence. Therefore, this argument of the learned counsel for the appellants is rejected.

11. So far as the contention of the learned counsel for the appellants that the presence of P.W.4 has not been mentioned in the First Information Report, we need to say that the First Information Report is not an encyclopedia to contain all the details of the occurrence, including the presence of all the eyewitnesses. Further Ex.P.1 had not been used to contradict P.W.1, as to why she did not mention the presence of P.W.3. In the absence of the same, in our considered view, the argument of the learned counsel deserves only to be rejected.

12. The next contention of the learned counsel for the appellants that P.W.7 has not gone to the Doctor, immediately, for treatment also deserves no weightage, because, he was attacked with a wooden reaper, which did not result in any serious injury or any open wound. Therefore, P.W.7 would not have gone to the Doctor, immediately. Thus, this argument of the learned counsel is also rejected.

13. In respect of the last contention of the learned counsel for the appellants that there are discrepancies between the evidences of these eyewitnesses, we find no force. The learned counsel would submit that these witnesses have admitted that they cannot particularly identify the wooden logs used by each accused with reference to their identity. It is quite natural, when a number of people were attacking with similar wooden reapers, then it would be really difficult for anyone to particularly say about the identity of the wooden reaper used by each accused. In a very general manner they have stated that all the accused, baring Vijay @ Vijay Kannan, used wooden reapers and attacked the deceased. Therefore, this is no discrepancy at all in the eye of law. Thus, we do not find any merit at all in this appeal. We hold that the prosecution has proved the case beyond reasonable doubt.

14. Though, the accused Nos.2 to 6 are liable to be punished for offences under Section 324 read with Section 149 and Section 3(1) of the Tamil Nadu Public Property (Damage and Loss) Act, read with Section 149 of the Indian Penal Code, since the trial Court had failed to frame charges against these accused under these provisions and since, the State had not taken any step to rectify the same, in these appeals filed by the accused, we cannot, under law, punish them and thus, they escape without punishment for these offences.

15. Now turning to the quantum of punishment, the trial Court has imposed only a minimum punishment, which does not require any interference at the hands of this Court.

16. In the result, the appeals fail and they are dismissed. The conviction and sentences imposed by the trial Court on the appellants are hereby confirmed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Inspector of Police, Veeranam Police Station, Salem, Salem District.
- 2.The II Additional District and Sessions Judge, Salem.
3. The Judicial Magistrate No., Thiruchirapalli.
4. The Judicial Magistrate No.IV, Salem.
5. The Chief Judicial Magistrate, Salem (for information)
6. The Superintendent, Central Prison, Coimbatore.
7. The Superintendent Central Prison, Salem.
- 8.The Public Prosecutor,
High Court, Madras
+ 2 ccs to M/s.Swaminathan Law Associates, advocate SR NO 34604
+1cc to Mr.R. Karthikeyan, Advocate, S.R.No.24630
+1cc to Mr.K.V. Sridharan, Advocate, S.R.No.25250

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