

Bail Slip

The Appellants herein/Accused 1 to 3 namely (1) Govindasamy (2) Thirupathy (3) Swamikannu, were directed to be released on bail as per the order of this court dated 18.11.2013, and made in MP No.1 of 2013 in Crl.Appl.No.724 of 2013 and made herein.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.04.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN
AND
THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRL.A.No.724/2013

1.Govindasamy
2.Thirupathy
3.Samikannu

...Appellant/Accused No.1 to 3

Versus

The State by
The Inspector of Police
Nagarasampatti Police Station
Krishnagiri District.

... Respondent/Complainant

Appeal filed under section 374[2] Cr.P.C., against the judgment and sentence passed by the learned Principal District and Sessions Judge, Krishnagiri, Krishnagiri District in SC.No.80/2012 dated 30.09.2013.

For Appellants : Mr.E.Kannadasan

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by S.NAGAMUTHU, J.,]

The appellants are A1 to A3 in SC.No.80/2012 on the file of the learned Principal District and Sessions Judge, Krishnagiri. They stood charged for the offence u/s.302 IPC. By judgment dated 30.09.2013, the Trial Court convicted them for the offence u/s.302 IPC and sentenced each of them to

undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for 6 months. Challenging the said conviction and sentence, the appellants are 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 Mr.Chinnaraji. He was residing at Veeramalai, Nilagirikottai Village, in Krishnagiri District. He had 6 acres of agricultural lands. A1 is the owner of the adjacent land. A2 and A3 are the sons of A1. For about 15 years, there was a dispute between the accused and the deceased in respect of a pathway. This culminated into a very strong enmity between the two families. This is stated to be the motive.

[B] On 11.05.2011, all the three accused were working in their field. It was around 17.00 hrs. The deceased came to his land and put up some fence across the pathway over which, the accused were claiming right to use. The accused questioned the same. This resulted in a scuffle. It is alleged that in the said scuffle, A1 attacked the deceased with hands on his cheek ; A2 attacked him with hands on the back of his chest ; and A3 also attacked him with hands and one of the accused attacked him with the wooden handle of an koduval. The occurrence was witnessed by P.W.1, the son of the deceased. After attacking the deceased, all the three accused fled away from the scene of occurrence.

[C] P.W.1, took the deceased to the Government Hospital at Krishnagiri. The deceased was examined by the doctor at 22.10 hrs on 11.05.2011. There was no injury found either internal or external. Therefore, the doctor treated him as an Out-patient. The deceased, thus, returned home. On 13.05.2011, since the deceased developed abdominal pain, he went to the Medical College Hospital, at Dharmapuri. P.W.7 [Dr.Rohini] examined the deceased at 12.50 hrs., on 13.05.2011. The doctor was told by the deceased that he was attacked by three known persons with wooden log and knife. P.W.7 found no external injuries on the body of the deceased. Since the deceased complained of abdominal pain, she admitted him as an In-patient for further examination. But, on 17.05.2011, the deceased, on his own, got discharged from the hospital. Thereafter, the deceased remained at his house. Since the abdominal pain continued, on 18.05.2011, he went to a private hospital, by name, Nithya Hospital, at Dharmapuri. P.W.3-Dr.Senthilkumar, gave treatment to him in the said hospital. He found blunt injuries on the bowel. On 21.05.2011, he conducted

surgery on the deceased. The deceased recovered fully then. Therefore, P.W.3 discharged him on 31.05.2011.

[D] While he was in the hospital, on 20.05.2011, in pursuance of the intimation given by the Government Hospital, Dharmapuri, P.W.10, the Special Sub Inspector of Police attached to Nagarasampatti Police Station, went to Nithya Hospital and recorded the statement of the deceased under Ex.P.1. On returning to the Police Station, on 20.05.2011 at 11.30 hrs., he registered a case in Cr.No.194/2011 for the offences u/s.294[b], 323, 506[i] IPC against all the 3 accused. Ex.P.13 is the FIR. He forwarded both the documents to the Court concerned, which were received by the learned Magistrate at 11.30 hrs on 23.05.2011.

[E] Taking up the case for investigation, P.W.10 proceeded to the scene of occurrence on 20.05.2011 at 13.00 hrs and prepared the Observation Mahazar [Ex.P.7] and also prepared a Rough Sketch [Ex.P.14] in the presence of P.W.6 and another witness. He examined P.Ws.1 and 2 and few more witnesses and recorded their statements. All the three accused had obtained anticipatory bail from the learned Sessions Judge, Krishnagiri. Then, he handed over the Case Diary to P.W.11 for further investigation.

[F] The deceased, who was discharged from the hospital on 31.05.2011, remained at home and died on 14.09.2011. On getting the death intimation, P.W.11, the Inspector of Police, altered the case into one u/s.302 IPC. Ex.P.12 is the altered FIR. Taking up the case for investigation, on 14.09.2011 at 14.00 hrs., P.W.11 went to the house of the deceased and conducted inquest on the body of the deceased in the presence of Panchayatdhars and other witnesses. Ex.P.16 is the Inquest Report. He also prepared an Observation Mahazar [Ex.P.8] and a Rough Sketch [Ex.P.15]. He forwarded the dead body of the deceased for postmortem.

[G] P.W.4, Dr.Hariraman, the Medical Officer attached to the Government Hospital, Kaveripatinam, conducted autopsy on the body of the deceased on 15.09.2011 at 09.15 hrs. He found the following injuries:-

"Eyes closed. Mouth closed. Teeth-upper two incisor teeth missing. Tongue-inside. Nail beds-normal. Nose, ear-normal. External genitalia-normal. Anal closed.

Internal Examination:-

Skull-intact. Brain-pale. Hyoid Bone-intact. Thorax:-Both lungs are congested. Heart chambers-enlarged, filled with blood clot.

Ribs-intact. Abdomen:-Stomach-empty. Liver-congested. Small Intestine-pale. O/D- recession of large colon and colossally seen with suture. Kidneys-pale. Bladder-empty."

Ex.P.6 is the Postmortem Certificate. He opined that the death was due to Cardio-pulmonary arrest due to septicemia.

[H] P.W.11, during the course of investigation, collected the medical records, examined the doctors. On 14.03.2012, in pursuance of the summons issued by P.W.11, all the three accused appeared before him for interrogation. While under interrogation, A1 disclosed the place where he had hidden the koduval. The said statement was made in the presence of P.W.8 and another witness. In pursuance of the same, he took the police and witnesses to his motor-shed and produced the koduval [M.O.1]. He forwarded the accused to the Court for judicial remand and also the material object for chemical examination. On completing the investigation, he laid the charge sheet against the accused.

[I] Based on the above materials, the Trial Court framed a lone charge against the accused as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case on the side of the prosecution, as many as 11 witnesses were examined, 16 documents and 1 material object were also marked.

[J] Out of the said witnesses, P.W.1 is the son of the deceased and he is the sole eyewitness to the occurrence. He has vividly spoken about the occurrence. P.W.2 is the wife of the deceased and she has stated that P.W.1 came to her house and informed about the occurrence and thereafter, she rushed to the place of occurrence and then, they took the deceased to the Government Hospital, Krishnagiri. P.W.3-Dr.Senthilkumar, has spoken about the surgery conducted on the deceased at Nithya Hospital at Dharmapuri. P.W.4 has spoken about the postmortem conducted on the body of the deceased and the cause of death. P.W.5 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.6 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of crime. P.W.7 is the doctor who has spoken about the treatment given by the deceased at the Government Medical College Hospital at Dharmapuri. According to her, the deceased underwent treatment in the said hospital between 13.05.2011 and 17.05.2011. P.W.8 has spoken about the disclosure statement made by A1 and the consequential recovery of M.O.1 - Koduval. P.W.9, the Special Sub Inspector of Police has spoken about the handing over of the altered FIR to the Court concerned. P.W.10 has spoken about the registration of the case on the statement

of the deceased on 20.05.2011 and also the initial investigation done by him. P.W.11 has spoken about the further investigation done by him and the filing of the final report.

3 When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, on their side, one Dr.Sridharan, was examined as DW1. He has stated that while he was on duty at B.E.S.Medical College and Research Institute, at Kuppam, on 12.08.2010, the deceased was admitted in the said hospital for treatment and he underwent treatment till 22.08.2010. He has further stated that during treatment, it was diagnosed that the deceased had the attack of Tuberculosis in his small intestine and large intestine. It was acute. Ex.D1 is the Discharge Summary. He has further opined that the deceased would have died on account of the above disease.

4 Having considered all the above, the Trial Court convicted and sentenced the appellants/accused as detailed in the first paragraph of this judgment. That is how the appellants are before this Court with this appeal.

5 We have heard Mr.E.Kannadasan, learned counsel appearing for the appellants and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we also perused the materials placed on record carefully.

6 The enmity between the deceased and the accused has been spoken by P.Ws.1 and 2. It is an admitted fact. This fact has been thus, proved by the prosecution.

7 To speak about the occurrence, the prosecution relies only on the evidence of P.W.1. P.W.1, in general terms, has stated that all the three accused attacked the deceased with hands and also with a wooden handle of Koduval. This happened, according to P.W.1, on 11.05.2011 at 17.00 hrs. The deceased was taken to the Government Hospital, Krishnagiri. The doctor, who treated him, has not been examined. However, the Accident Register issued by the doctor, at the Government Hospital, Krishnagiri, has been marked as Ex.P.9. It shows that the doctor had found no external injuries at all. The deceased was treated as an Out-patient and he was sent back. Thus, at the earliest opportunity, the doctor had found no injury at all, on the body of the deceased, though it was alleged by P.W.1 that the deceased was attacked repeatedly with hands as well as with the wooden handle of Koduval.

8 There is no evidence as to what was the condition of the deceased after his return to his house until 13.05.2011.

On 13.05.2011 at 13.30 hrs., he was examined by P.W.7-Dr.Rohini, at the Government Medical College Hospital, at Dharmapuri. The deceased told the doctor that he was attacked by three known persons with wooden log and knife. This is not the case of the prosecution at all. P.W.7 also found no external injuries on the body of the deceased. For the purpose of further diagnosis and examination, he was admitted in the said hospital. But, on his own, the deceased got discharged on 17.05.2011 and went away. P.W.7, has therefore, stated that he could not give any opinion that there was any external injuries on the body of the deceased. Thereafter, according to P.W.3, the deceased was admitted at Nithya Hospital, which is a private hospital on 18.05.2011. It is not in the evidence as to what had happened to the deceased after his discharge on 17.05.2011 and until he was given admission on 18.05.2011 at Nithya Hospital. P.W.3 has spoken about the surgery conducted on the deceased. But, unfortunately, the medical records pertaining to the treatment given to the deceased at Nithya hospital, have not been proved in evidence. Only, the Discharge Summary issued by P.W.3, has been marked. P.W.3 has further stated that the deceased was operated upon on 21.05.2011 and after he became alright as he fully recovered, he was discharged from the hospital on 31.05.2011. Thus, on 31.05.2011, when he was discharged, there was no further complaint and the deceased had fully recovered. The deceased was thereafter, at his house. He died only on 14.09.2011 at his house. There is no evidence on record as to whether he continued the treatment atleast as an out-patient beyond 31.05.2011 or not. The doctor, who has conducted autopsy on the body of the deceased, opined that the deceased died due to cardio-pulmonary arrest due to septicemia. When the deceased was at his house for about 3 ½ months, whether he had any other complication, which was the cause for septicemia, has not been investigated into at all. But, to the contrary, DW1-Dr.Sridharan, has stated that on an earlier occasion, the deceased underwent treatment in his hospital between 12.08.2010 and 22.08.2010. At that time itself, it was diagnosed that the deceased was severely affected by Tuberculosis in his small intestine as well as in the large intestine. He has further opined that if the said Tuberculosis has not been properly, there is possibility of septicemia, resulting in his death. This opinion of DW1 is acceptable to the Court. In our considered view, in the absence of any evidence as to whether the deceased had undergone treatment for 3 ½ months after his discharge from Nithya hospital and in the light of the evidence of DW1, it is possible that the deceased would have died a natural death due to Tuberculosis, which resulted in septicemia, which in turn, resulted in his death. Thus, the prosecution has failed to prove that the death of the deceased was caused by these accused. So far as the alleged attack made on the

deceased by all the three accused, it is difficult to believe the evidence of P.W.1 because it is very vague. Though it is stated by P.W.1 that the deceased was attacked with hands and wooden handle of Koduval, the deceased had told P.W.7 that he was attacked with wooden log and knife. This contradiction has not been explained by the prosecution and therefore, we find it difficult to believe the evidence of P.W.1 and thus, the prosecution has failed to prove its case beyond reasonable doubts. Therefore, we are inclined to acquit the accused.

9 In the result, the criminal appeal is allowed. The conviction and sentence imposed on the appellants by the Trial Court in SC.No.80/2012 dated 30.09.2013, are hereby set aside and the appellants are acquitted of the charges leveled against them.

10 Since the appellants are on bail, the bail bonds executed by them, shall stand discharged. Fine amounts, if any paid, shall be refunded to them.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

AP

To

- 1 The Principal District and Sessions Judge,
Krishnagiri.
- 2 The District Munsif Court,
Judicial Magistrate, Pochampalli.
- 3 Do Thro' The Chief Judicial Magistrate Krishnagiri.
- 4 The Superintendent
Central Jail, Salem.
- 5 The Inspector of Police
Nagarasampatti Police Station
Krishnagiri District.
- 6 The District Collector
Salem.

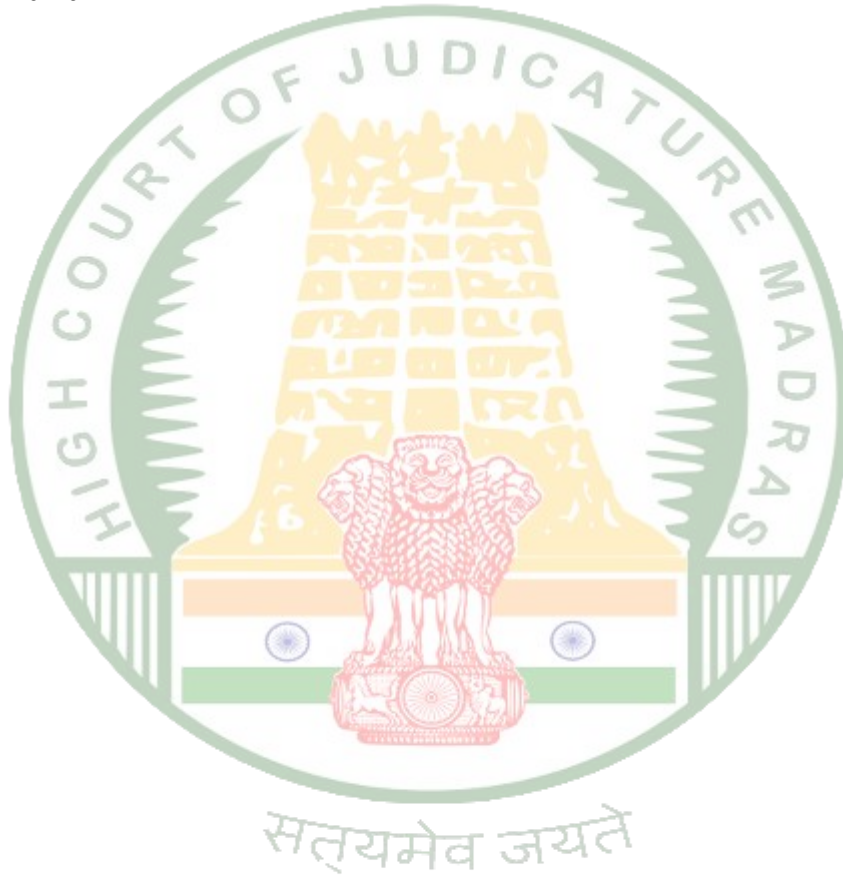
7 The Director General of Police,
Mylapore, Chennai 4.

8 The Public Prosecutor
High Court, Madras.

1 cc to M/s.E.Kannadasan, Advocate, sr.24876

Cr1.A.No.724/2013

ug co
kra 02.06.2016



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