



Bail Slip

The Appellants 2 to 4/Accused 2 to 4 in CrI.A.No.78/2013
Viz Murali, M/31, S/o Chinnasamy, TamilNadu alicc Mariappan,
M/32, Son of Raja, Dhanapal, M/31, S/O Madhu were directed to be
released on bail as per order of this court dated 18.4.2013 made
in cMP No.1/2013 in CrI A No.78/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

Criminal Appeal No. 78 of 2013

1. Meiyalagan
2. Murali
3. Tamil Nadu alias
Mariappan
4. Dhanapal ..Appellants

Vs.

State by: Inspector of Police,
Kitchipalayam Police Station,
Salem District,
(Crime No. 1018 of 2008) ..Respondent

Prayer: Criminal Appeal as against the judgment dated
04.01.2013 passed in S.C. No. 314 of 2009 on the file of III
Additional District & Sessions Judge, Salem.

For Appellants :: Mr.S. Ashok Kumar,
Senior Counsel for
Mr.B. Vasudevan

For Respondent :: Mr.M. Maharaja
Addl. Public Prosecutor



J U D G M E N T

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

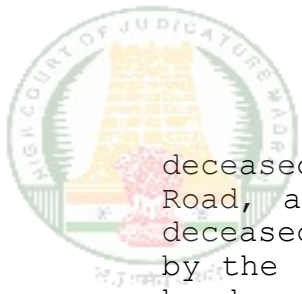
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The appellants are accused Nos. 1 to 4 in S.C. No. 314 of 2009 on the file of learned III Additional District Sessions Judge, Salem. Including these appellants, altogether, there were totally thirteen accused before the Trial Court and the Trial Court framed as many as 4 charges against them. The first charge was under Section 120(B) I.P.C. against accused Nos. 1 to 11, the second charge was under Section 341 I.P.C. against accused Nos. 1 to 4, the third charge was under Section 302 I.P.C. against accused Nos. 1 to 3; under Section 302 r/w 109 I.P.C. against the 4th accused and under Section 302 r/w 120(B) I.P.C. against accused Nos. 5 to 11 and the fourth charge was under Section 212 r/w 120(B) I.P.C. against the twelfth accused. During the pendency of the trial, accused Nos. 7 and 13 died and thus, the charges against them stood abated. By judgment dated 04.01.2013, the Trial Court convicted accused Nos. 1 to 3 under Sections 341 I.P.C. and 302 I.P.C. and the fourth accused under Sections 341 I.P.C. and 302 r/w 109 I.P.C. They were acquitted of all the other charges. Accused Nos. 5, 6, 8 to 12 were acquitted of all the charges framed against them. Challenging the conviction and sentence imposed on them, accused Nos. 1 to 4 are before this Court with this appeal.

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

(i) The deceased, in this case, was one Sivakumar. The first accused is a resident of Erumapalayam Village. Accused Nos. 2 to 13 were his friends. The deceased had developed illicit intimacy with the wife of the first accused. Though the deceased was warned and asked to discontinue his affair with the wife of the first accused, he did not do so. On an earlier occasion, the deceased had threatened accused Nos. 2 to 7 not to talk to the first accused or move with him. Subsequently, in respect of a land transaction, there was a direct fight between accused Nos. 8 to 10 on the one hand and the deceased on the other hand. Further, about 15 days prior to the occurrence, the first accused had come to the house of the deceased and threatened P.W.1, the father of the deceased, with dire consequences, in the event of the deceased intimating the Police about the illicit arrack selling done by him and asked P.W.1 to advise his son properly. These instances are said to be the motive for the accused as against the deceased.

(ii) It is alleged that on account of such motive, accused Nos. 1 to 11, on 25.05.2008, at about 3.30p.m., conspired to do away with the deceased. It is further alleged that pursuant to the said conspiracy, on 28.05.2008, at about 10p.m., when the



deceased was coming on his motor cycle, on Kalarampatti Main Road, accused Nos. 1 to 4, armed with weapons, intercepted the deceased, wrongfully restrained him and on the instigation made by the fourth accused, accused Nos. 1 to 3, with knives in their hands, stabbed the deceased indiscriminately. Consequently, the deceased died on the spot. Thereafter, accused Nos. 1 to 4 fled away from the scene of occurrence. After the above occurrence, accused Nos. 1 to 5 were given shelter by accused Nos. 12 and 13 in their house, knowing fully well that accused Nos. 1 to 5 were involved in the crime.

(iii) The alleged occurrence was witnessed by P.W.s 1, 3 and 4. P.W.1 is the father of the deceased. On seeing the occurrence, according to him, within 10 minutes of the occurrence, he left the scene for the Police Station. P.W.18, the then Sub-Inspector of Police of Kitchipalayam Police Station, on receiving the complaint from P.W.1, which is marked as Ex-P1, registered a case in Crime No. 1018 of 2008 for offences under Sections 341 and 302 I.P.C. at 10.45p.m. on 28.05.2008. Ex-P9 is the First Information Report. He forwarded both the documents to the Court, which were received by the learned Judicial Magistrate No.2, Salem at 11.50p.m. on 28.05.2008. The copies of the above said documents were also handed over to the Investigating Officer, P.W.24.

(iv) P.W.24 took up the case for investigation. He proceeded to the place of occurrence and prepared an Observation Mahazar (Ex-P17) and drew a rough sketch (Ex-P18) showing the place of occurrence in the presence of P.W.s 7 and 8. He recovered bloodstained earth (M.O.17), sample earth (M.O.18), a pair of slippers (M.O.3), a motor cycle bearing Registration No. TN 27 F 6951 (M.O.) and a knife pouch (M.O.7) from the scene of occurrence under Ex-P19, mahazar, in the presence of the same witnesses. Then, on 29.05.2008, in the presence of Panchayatdharas and witnesses, he conducted inquest on the dead body. Ex-P20 is the inquest report. He sent the dead body to the Government Hospital, Salem for postmortem.

(v) P.W.22, Tutor in Department of Forensic Medicine, attached to Government Mohan Kumaramangalam Medical College Hospital, Salem, conducted autopsy on the body of the deceased Sivakumar at 11.15a.m. on 29.05.2008 and he found the following injuries:

- "1. Linear Reddish Brown Abrasions seen over
 - (a) Left Temple 2 x 0.5 cms, 1 x 0.5 cms
 - (b) Right Cheek 1 x 0.5 cms.

2. Oblique gaping stab injuries with regular edges seen over



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(a) left chest wall at the level of III intercostal space 6 x 3.5 cms X cavity deep. The wound caused stab injury of right ventricle of heart 5 x 3 x 2 cms. Pericardial cavity contained 150 gms of clotted blood.

(b) middle of left lower chest wall 5 cms below the previous stab injury 6.5 x 2.5 X Cavity deep with cut fracture of 11th and 12th ribs

(c) left side of epigastric region 60 x 2.5 cms X cavity deep with stab injury of diaphragm and cut fracture of lower end of sternum

(d) left lumbar region 6 x 2.5 cms X cavity deep

(e) right loin - thro and thro 5 x 2 x cavity deep on the posterior aspect and 5 x 2.5 cms X cavity deep n the anterior aspect

(f) back of lower third of left arm 4 x 2 cms X 1 x bone deep

(g) back of neck 2 x 1 cms X bone deep

(h) left scapular region 1 x 0.5 cms Bone deep

(i) back of right side of abdomen 5 x 2 cms X Cavity deep with stab wound extending to posterior surface of liver 4 x 1 x 1 cms. Peritoneal cavity contained 1500 cc of fluid blood and 150 gms of clotted blood

(j) right cheek 1.5 x 0.5 cms X bone deep

(k) right chest wall 3 x 0.25 x 0.25 cms.

3. Gaping incised wound seen over

(a) anterior aspect of middle third of neck 7 x 0.25 x 0.25 cms; 6 x 0.25 x 0.25 cms, 2 x 1 x 0.25 cms

(b) Posterior aspect of middle third of right forearm 10 x 3 cms X Bone deep

(c) Inner aspect of right elbow 5.5 x 2 cms X Muscle Deep, 5 x 3 cms X Muscle deep

(d) Dorsum of right hand 5 x 2 cms X Bone deep; 3 x 1 cms X Bone deep (Antemortem).

OTHER FINDINGS: HEART - VALVES NORMAL CAVITIES EMPTY. VIDE INJURY COLUMN. CORONARIES - PATENT. LUNGS - PALE. STOMACH - EMPTY. NO SPECIFIC SMELL. MUCOSA-PALE. LIVER, SPLEEN, KIDNEYS - PALE. BLADDER - EMPTY. NORMAL. PELVIS MEMBRANES AND SPINAL COLUMN ALL ARE INTACT. BRAIN O/S PALE. GENITALIA - NO INJURIES...."

Ex-P13 is the postmortem certificate issued by him. The Doctor opined that the deceased would appear to have died of shock and



haemorrhage due to multiple stab injuries. According to him, the stab injuries would have been caused by a weapon like knife. Ex-P14 is the Biology Report. Ex-P15 is the Serology Report and Ex-P16 is the Chemical Analysis Report.

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(vi) Continuing the investigation, P.W.24, on 01.06.2008 arrested accused Nos. 1, 2 and 4 and on such arrest, the first accused gave a voluntary confession statement, which was recorded in the presence of P.W.s 1 and 14. Pursuant to the said statement, the first accused took the Police and the witnesses to the place of hideout and produced bloodstained knives, (M.Os.8 & 9) and bloodstained clothes (M.O.s 10 to 15). P.W.24 recovered them under Ex-P5, mahazar in the presence of witnesses. At about 6.30p.m., on the same day, he arrested accused Nos. 5 to 7. At about 7.15p.m., on the same day, accused Nos. 8 to 10 were arrested and at about 8p.m. accused Nos. 12 & 13 were arrested, on being identified by the first accused. On reaching the Police Station, he sent the accused for judicial remand. He altered the section of offence to one under Sections 120(B), 341, 302, 149 & 212 r/w 109 I.P.C. Then, he sent the case properties to the Court under Form - 91. He examined further witnesses and recorded their statements. On 02.06.2008, he arrested the eleventh accused and sent him for judicial remand. He took police custody of the third accused, who surrendered before Court. While in custody, the third accused gave a voluntary confession, which he recorded in the presence of P.W.s 1 and 14. Pursuant to the same, the third accused took the police and the witnesses to the place where he had hidden the bloodstained knife (M.O.16) and produced the same, which was recovered under Ex-P7 mahazar. Thereafter, P.W.24 produced the third accused before the Court and he was sent to Central Prison, Salem. P.W.24 sent the recovered case properties to the Court under Form 91. On 17.06.2008, he gave a requisition, Ex-P24, to the Court to subject the case properties for chemical analysis. On completing the investigation, he laid the charge sheet against the accused on 10.07.2008.

(vii) Based on the above materials, the Trial Court framed appropriate charges 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 24 witnesses were examined and 24 documents were marked, besides, 18 material objects.

(viii) Out of the said witnesses, P.W.s 1, 3 and 4 have stated about the occurrence. They have stated that they were present at the time of occurrence and by chance, they witnessed the same. P.W.1 has further stated about the complaint lodged by him to the Police. P.W.2 is the wife of the deceased. She is not an eye-witness to the occurrence. She has stated about the motive and that she heard about the occurrence and went and saw



the dead body. P.W.5 has turned hostile. He has not stated anything against the accused. P.W.6 has stated that on hearing about the occurrence, he went to the scene after the occurrence was over. He has not stated anything incriminating against the accused. P.W.s 7 & 8 have spoken about they being witnesses to Ex-P2, Observation Mahazar and Ex-P3, recovery mahazar. P.W.9 has spoken about the alleged conspiracy hatched between accused Nos. 1,3 to 7. P.W.10 has spoken about the meeting between A1 and A3 in front of A8's house about 4 to 5 days prior to the occurrence. P.W.11 has spoken about the conspiracy hatched between accused Nos. 1,3 to 7. P.W.12 has also spoken about the meeting between accused Nos. 1 to 7 and about A11 telling A1 to finish off the deceased as he would arrive in that way for reaching home. P.W.13 has turned hostile. P.W.14 has spoken about the arrest of the accused, the consequential recovery of material objects and recording of confession statements on arrest of such accused. P.W.15 has stated that he accompanied the Inspector of Police, when he went to arrest the accused. P.W.16 is the Junior Engineer, who was working in Seelanayakkanpatti Electricity Board and he has spoken about the fact there was power supply at the place of occurrence at the relevant point of time. P.W.17 has been treated as hostile as he has denied any knowledge about the occurrence. P.W.18 has spoken about the registration of the case. P.W.19, who was working as Grade I Bench Clerk in Mahila Court, has spoken about the receipt of the case properties, sending the same for chemical analysis on the request made by the Investigating officer and the receipt of Forensic Report. P.W.20 has spoken about the photographs of the deceased taken by him at the scene of occurrence. P.W.21 has spoken about forwarding the copies of First Information Report to the Court as well as to higher officials. P.W.22 has spoken about the autopsy conducted by him. P.W.23 has spoken about handing over the body of the deceased to the Government Hospital, Salem for postmortem and P.W.24 has spoken about the investigation done and the filing of final report against the accused.

(ix) 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 nor mark any document. The defence of the accused was one of total denial. Having considered all the above, the Trial Court convicted the appellants alone as stated in the first paragraph of the judgment. That is how, the appellants are before this Court with this appeal.

3. The prosecution, in this case, mainly relies upon the eye-witness account of P.W.s 1, 3 and 4. P.W.1 is the father of the deceased. P.Ws.3 & 4 hail from the same village. According to P.W.1, he was present at the place of occurrence by chance. P.W.s 3 and 4 have stated that they were members of Communist Party of India and on the date of occurrence, when they were



returning at about 9.30p.m., after attending a party meeting at the office, they witnessed the entire occurrence.

4. However, the learned Senior Counsel appearing for the appellants would submit that these three witnesses would not have witnessed the occurrence at all and there are also material contradictions in their evidence. Learned Additional Public Prosecutor would, however, dispute the same.

5. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State. We have also carefully gone through the evidence available on record.

6. In the First Information Report, it is alleged that the assailants were four in number and they were accused Nos. 1 to 4, who are the appellants herein. The learned Additional Public Prosecutor would submit that at the earliest point of time itself, without there being any delay, the presence and participation of the accused had been mentioned even in Ex-P1. Of course, it is true. But, the said fact would not go to vouch for the truth of allegation made against them. It is too well-settled that when witnesses, upon whom reliance is placed by the prosecution are partisan, interested, inimical and also related to the deceased, their evidence requires close scrutiny. Unless they pass the test of close scrutiny, it would not be safe to convict the accused solely based on the evidence of such witnesses. Here, in this case, undoubtedly, P.W.s 1, 3 and 4 claim that they were present at the place of occurrence only by chance. The occurrence had taken place on the road where there were no houses. As per the earliest version of P.W.1, the deceased was stabbed only by one accused, namely, accused No.1 and accused Nos. 2 to 4 only caught hold of the deceased and they did not cause any injury at all on the deceased. During inquest also, when he was examined, he had repeated the same and told that the first accused alone stabbed the deceased while accused Nos. 2 to 4 were holding him. But, for the first time, during evidence, P.W.1 has stated that the fourth accused caught hold of the deceased and accused Nos. 1 to 3 stabbed him indiscriminately with knives. This contradiction has been duly proved by the accused by confronting P.W.1 with the First Information Report as well as the earliest statement of P.W.1 made under Section 161 Cr.P.C. P.W.1 has not offered any explanation for this material contradiction.

7. Now, coming to the evidence of P.W.s 3 and 4, when they were examined at the first instance as well as during inquest, they have also stated that the first accused alone stabbed the deceased while accused Nos. 2 to 4 held him. But, while giving evidence in Court, they have stated that accused Nos. 1 to 3



stabbed the deceased while the fourth accused held him. Even in chief examination, these two witnesses have made an attempt to explain this contradiction stating that since they were in a state of shock, on seeing the occurrence, they made such contradictory statements at the earliest point of time. In our considered view, this contradiction is such a vital one and the explanation offered by these two witnesses is not convincing. It is also worth noticing that this contradiction is found in the evidence of P.W.s 1, 3 and 4 uniformly. This contradiction, in our considered opinion, is so material and it creates a lot of doubt regarding the veracity of these three witnesses.

8. As we have already pointed out, the presence of these three witnesses, at the place of occurrence, was by chance. It is too well-settled that if a witness claims to have been present at the time of occurrence, at the place of occurrence, then the said witness is expected to explain to the satisfaction of the Court as to what made the witness to be present at the place of occurrence, at the crucial moment of the occurrence. Here, in this case, in our considered view, the explanation offered by P.W.s 3 and 4 is unbelievable and unconvincing. P.W.s 3 and 4 have stated that when they were returning after attending a meeting of their political party, they witnessed the occurrence. But, there is no evidence at all to show that there was any such party meeting held on that day. Therefore, it is difficult to believe the presence of P.W.s 3 and 4, at the time of occurrence and at the place of occurrence.

9. That apart, here is a case, where altogether, 13 persons were arrayed as accused. The Trial Court itself has acquitted the rest of the accused. This would only go to show that due to the partisan character of prosecution party and due to previous enmity, a number of people have been implicated as accused. This tendency, on the part of the prosecution party, also creates a doubt about the case of the prosecution as against these appellants also. False implication of these accused cannot be ruled out. Since the occurrence was at about 9.30p.m. , that too, in a lonely place where there are no houses and since the presence of these three witnesses is doubtful and in the absence of any acceptable explanation for the material contradiction in their evidence, as discussed above, we are of the view that it is not safe to act upon the evidence of P.W.s 1, 3 and 4 to sustain the conviction of these accused.

10. In view of the foregoing discussion, we hold that the prosecution has failed to prove the case against the appellants/accused Nos. 1 to 4 beyond all reasonable doubts and therefore, they are entitled for an acquittal.



11. In the result, the appeal is allowed and the conviction and sentence imposed on the appellants/accused Nos. 1 to 4 by the Trial court are set aside and they are acquitted of all the charges. Bail bonds, if any executed by them, shall stand cancelled. Fine amount, if any, paid, shall be refunded to the accused/appellants.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

To

1. The III Addl. Dist. & Sessions Judge,
Salem.
2. The Public Prosecutor,
High Court, Madras.
3. The Inspector of Police,
Kitchipalayam Police Station,
Salem District.
4. The Principal sessions Judge,
Salem.
5. The Judicial Magistrate No.2,
Salem.
6. -Do- Thro The Chief Judicial Magistrate,
Salem.
7. The Superintendent,
Central Prison,
Coimbatore.
8. The District Collector,
Salem.
9. The Superintendent of Police,
Salem.



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

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+1cc to M/S.B.Vasudevan, Advocate sr.9793

Crl.A. No. 78 of 2013

mp (CO)
srg (27/04/2016)