

**Bail Slip**

These Appellants/Accused namely Kuppusamy, Marimuthu, Balakrishnan were released on bail vide order dated 14.10.2015 and made in CRL MP(MD)No.1/15 in CRL A(MD)No.220 and 234 of 2014 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :30.03.2016

CORAM

THE HONOURABLE MR. JUSTICE A.SELVAM
and
THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

CrI.A.(MD)Nos.220 & 232 of 2014

1.Kuppusamy
2.Marimuthu

.. Appellants/Accused 1 & 2 in
CrI A(MD)No.232/2014

Balakrishnan

.. Appellant/3rd Accused in
CrI A(MD)No.220/2014

Vs.

State rep.by
The Inspector of Police,
Palani Taluk Police Station,
Dindigul District,
Crime No.36/2011.

.. Respondent/Complainant
in both Appeals.

Criminal appeals filed under Section 374(2) of Cr.P.C. against the conviction and sentence dated 01.04.2014 passed in Sessions Case No.51 of 2012 by the Additional District and Sessions Judge, Dindigul.

For Appellants	: Mr.N.Anantha Padmanabhan (both Appeals)
For Respondent	: Mr.T.Mohan Additional Public Prosecutor (both Appeals)

COMMON JUDGMENT

(Judgment of the Court was made by **A.SELVAM, J.**)

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These Criminal Appeals have been preferred against the conviction and sentence passed in Sessions Case No.51 of 2012 by

the Additional District and Sessions Court, Dindigul.

2. The nubble of the case of the prosecution is that the accused 1 and 2 are the sons of one Ayyavu. The third accused is the uncle of the accused 1 and 2. The mother of the accused 1 and 2 by name Valliammal has eloped with the deceased by name Sarathi @ Parthasarathi and due to that an animosity has been in existence between them and deceased and after some time, the deceased has come to the place of occurrence and the same has been informed to the third accused. The accused 1 and 2 have conveyed the third accused that the deceased should be murdered. The third accused has also accepted the same and in pursuance of their common intention, on 28.01.2011 at about 04.45 pm, while the deceased has been present in the tea shop of his brother-in-law which situated in Mayiladumparai, all the accused have come there by using a two wheeler bearing Registration No. TN-58-L-7716. The first accused has attacked the deceased by using an iron pipe. The second accused has attacked him by using a cudgel. The third accused has lent his support to the accused 1 and 2. Due to overtacts of the accused 1 and 2, the deceased has passed away. After occurrence, the sister of the deceased by name Mahalakshmi as defacto complainant has given a complaint and the same has been registered in Crime No.36 of 2011.

3. On receipt of the complaint, the Investigating Officer by name Gopi (PW11) has taken up investigation and examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased and accordingly, Dr. Rajendran (PW6) has conducted necropsy and he found the following external and internal injuries.

Appearances found at the post-mortem:

A moderately nourished male body lying on its back. Symmetrical bleeding from both nostrils present. Bleeding from left ear present.

External injuries:

A lacerated injury of 10 x 5 cm x bone depth over the left occipital region of scalp. Multiple abrasions over the left cheek, (face) with contusion present. Multiple abrasions present over the left lateral chest wall.

Internal Examination:

On opening the scalp bleeding present from left parietal and occipital region of scalp fracture of left parietal temporal and occipital bones present on the left side contusion of haemorrhage present over the



(N.C.,) brain present. Fracture base of the skull present (both N.C.) wings. Left mandible and maxible fracture present. Hyoid intact. Heart pale. Chambers empty. Stomach empty. All internal organs were pale. Bladder empty. Brain pale.

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4.The post-mortem certificate has been marked as Ex.P14. After transfer of PW11, his successor in office by name Vijayakumar (PW13) has continued investigation and after completing the same, laid a final report on the file of the Judicial Magistrate Court, Palani and the same has been taken on file in PRC No.16 of 2011.

5.The Judicial Magistrate, Palani after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Dindigul Division and taken on file in Sessions Case No.51 of 2012 and subsequently made over to the trial Court.

6. The trial Court after hearing arguments of both sides and upon perusing relevant records has framed first charge against the accused 1 and 2 under Section 302; second charge against the third accused under Section 302 r/w 34 of the Indian Penal Code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

7. On the side of the prosecution PWs.1 to 13 have been examined and Exs.P1 to P22 and M.Os.1 to 10 have been marked.

8. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been let in on the side of the accused.

9. The trial Court after hearing arguments of both sides and upon perusing relevant evidence available on record has found the accused 1 and 2 guilty under Section 302 of the Indian Penal Code and sentenced them to undergo imprisonment for life and also imposed a fine of Rs.1,000/- upon each of them with usual default clause. The trial Court has also found the third accused guilty under Section 302 r/w 34 of the Indian Penal Code and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.1,000/- with usual default clause. Against the conviction and sentence passed by the trial Court, accused 1 and 2 have preferred CrI.A(MD)No.232 of 2014 and the third accused has preferred CrI.A(MD)No.220 of 2014.

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10.Since common questions of law and facts are involved in both Appeals, common Judgment is pronounced.



11. The sum and substance of the case of the prosecution is that the accused 1 and 2 are brothers and the third accused is nothing but their uncle and prior to occurrence, the mother of the accused 1 and 2 has eloped with the deceased and due to that a strong motive has been in existence between the accused 1 and 2 and deceased and after some time, the deceased has come to the place by name Mayiladumparai and after knowing the said fact, the accused 1 and 2 have approached the third accused and told him that the deceased should be murdered. The third accused has also given his consent and in pursuance of their common intention, on 28.01.2011 at about 04.45 pm, while the deceased has been in the tea shop of the defacto complainant, his sister, all the accused have come there by using a two wheeler bearing Registration No.TN-58-L-7716 and the accused 1 and 2 have indiscriminately attacked on the person of the deceased and the third accused has lent his support to them. Under the said circumstances, the accused 1 and 2 have faced a charge under Section 302 and third accused has faced a charge under Section 302 r/w Section 34 of the Indian Penal Code.

12. The prosecution has set the law in motion only on the basis of Ex.P1, complaint, wherein motive for occurrence and also details of attack alleged to have been made by the accused 1 and 2 on the person of the deceased have been clearly mentioned. The author of Ex.P1 has been examined as PW1 and one Pothumani has been examined as PW3. The doctor who conducted necropsy has been examined as PW6 and he marked Ex.P14. The trial Court after considering the evidence adduced by the witnesses mentioned supra coupled with relevant documents, has invited conviction and sentence against the appellants/accused as mentioned supra.

13. The learned counsel appearing for the appellants/accused has contended that the evidence given by PWs.1 and 3 are totally contra to the evidence given by PW6 and in fact no sufficient evidence is available so as to implicate the accused 2 and 3 in the crime and further the specific case of the prosecution is that the deceased has eloped with the mother of the accused 1 and 2 and thereby created impudicity to their family. Under the said circumstances, due to sustained provocation, the occurrence has taken place and therefore, the accused 1 and 2 and third accused cannot be mulcted with liability under Section 302 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court against the appellants/accused are not factually and legally sustainable and the same are liable to be set aside.

14. The learned Additional Public Prosecutor has contended that in the instant case strong motive has been in existence for the crime on the part of the accused and apart from strong motive, eye witnesses have been examined as PWs.1 and 3 and their specific evidence is that in the place of occurrence, the



accused 1 and 2 have attacked the deceased by using an iron pipe and also a cudgel respectively and their evidence has been corroborated by medical evidence and further there is no sustained provocation, since accused 1 and 2 have come to the place of occurrence with deadly weapons and also with common intention to murder the deceased. Under the said circumstances, the conviction and sentence passed by the trial Court are perfectly correct and the same need not be interfered with.

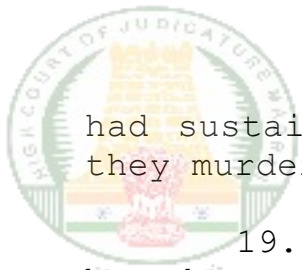
15.As stated earlier, the prosecution has set the law in motion only on the basis of Ex.P1, wherein, motive for occurrence, details of attack alleged to have been made by the accused 1 and 2 and also presence of third accused have been clearly mentioned. The author of Ex.P1 has been examined as PW1 and one Pothumani has been examined as PW3. Both of them have consistently stated in their evidence that the first accused has attacked the deceased by using an iron pipe and the second accused has attacked the deceased indiscriminately by using a cudgel. On the basis of evidence given by PWs.1 and 3, the Court can very well come to a conclusion that the occurrence has taken place as stated on the side of the prosecution. It is true that PWs.1 and 3 are close relatives of the deceased and that itself would not be a cause either for rejecting or discarding the evidence given by them.

16.The learned counsel appearing for the appellants/accused has contended that the evidence given by PWs.1 and 3 are totally contra to the evidence given by PW6, the doctor who conducted autopsy. At this juncture, it would be more useful to look into the evidence given by PW6 as well as Ex.P14. In Ex.P14, it is stated that PW6 has found the following injuries:

"A lacerated injury of 10 x 5 cm x bone depth over the left occipital region of scalp. Multiple abrasions over the left cheek, (face) with contusion present. Multiple abrasions present over the left lateral chest wall."

17.It has already been pointed out that the specific evidence given by PWs.1 and 3 is that the first accused has attacked on the head of the deceased by using an iron pipe and second accused has attacked him indiscriminately by using a cudgel. Therefore, it is quite clear that the evidence given by PWs.1 and 3 are in consonance with the materials found in Ex.P14. Further on the basis of Ex.P14, PW6 has given clear evidence. Therefore, the first and foremost contention put forth on the side of the appellants/accused cannot be accepted.

18.On the side of the appellants/accused, an abortive ~~advice not in evidence~~ made to the effect that since the mother of the accused 1 and 2 has eloped with the deceased, impudicity has been caused to their family and due to that the accused 1 and 2 have



had sustained provocation and only under the said circumstances, they murdered the deceased.

19. In fact, this Court has perused the entire answers given by the accused 1 and 2 to the questions posed to them under Section 313 of the Code of Criminal Procedure, 1973, wherein no mention has been made with regard to the alleged sustained provocation and further their specific answer is that the entire case of the prosecution is false. Further it is not their case nor answer that they committed murder only due to the alleged sustained provocation. Since the alleged aspect has not been mentioned by the accused 1 and 2 in 313 questions, the contention put forth on the side of the appellants/accused cannot be accepted and further all the accused have predetermined to murder the deceased and only due to their common intention, the accused 1 and 2 have attacked the deceased and third accused has lent his unstinted support to them. Therefore, viewing from any angle, the second limb of argument put forth on the side of the appellants/accused cannot be accepted.

20. The trial Court after considering the over all evidence available on record has rightly found the accused 1 and 2 guilty under Section 302 of the Indian Penal Code and third accused guilty under Section 302 r/w 34 of the Indian Penal Code. In view of the discussion made earlier, this Court has not found any illegality nor infirmity in the conviction and sentence passed by the trial Court and therefore, the present Criminal Appeals deserve to be dismissed.

21. In fine, these Criminal Appeals are dismissed. The conviction and sentence passed against the appellants/accused in Sessions Case No.51 of 2012 by the Additional District and Sessions Court, Dindigul are confirmed. The trial Court is directed to take appropriate steps so as to incarcerate the appellants/accused in prison to serve out the remaining period of sentence.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

1. The Principal District Judge, Dindigul.

2. The Additional District and Sessions Court, Dindigul.

3. The Judicial Magistrate, Palani.

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4. The Chief Judicial Magistrate, Dindigul.



5.The Director General of Police, Chennai.

6.The District Collector, Dindigul.

7.The Inspector of Police,
Palani Taluk Police Station, Dindigul District

8.The Addl. Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

9.The Superintendent, Central Prison, Madurai.

Pre delivery Judgment made in
Crl.A.(MD)Nos.220 & 232 of 2014
30.03.2016

CSL/GSV-PM/13.04.2016/7P/10C