

**BAIL SLIP**

The Appellant/Accused No.1/viz., Thavidan, who was released on bail as per the Order by this Hon'ble Court dated 10.08.2015 made in MP(MD)No.1/2015 in Cr1.A(MD)No.163/2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.09.2016

PRONOUNCED ON : 28.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.A.[MD].No.163 of 2015

Thavidan : Appellant/
Accused No.1

Vs.

State rep. by
the Inspector of Police,
Pasuvanthanai Police Station,
Thoothukudi District.
(Crime No.46/2013)

: Respondent/
Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment, dated 25.06.2015, made in S.C.No.55 of 2015, by the learned II-Additional District and Sessions Judge, Thoothukudi.

For appellant : Mr.M.Saravanan

For respondent : Mr.K.S.Durai Pandian,
Additional Public Prosecutor

JUDGMENT

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

The appellant is the first accused in S.C.No.55 of 2015 on the file of the learned II-Additional District and Sessions Judge, Thoothukudi. There were two other accused by name Krishnasamy and Paulraj, who were arrayed as accused Nos.2 and 3 respectively.

The trial Court framed as many as three charges against the accused as under:

Charge Nos.	Against	Offence U/s.
1	A1 to A3	U/s.341 IPC
2	A2 and A3	U/s.294(b) IPC
3	(a) A2 and A3	U/s.302 r/w 109 IPC
	(b) A1	U/s.302 IPC

2. The trial Court, by judgment dated 25.6.2015, convicted the first accused under Sections 341 and 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for two months for the offence under Section 302 IPC and to undergo simple imprisonment for one month for the offence under Section 341 IPC. The trial Court has convicted the accused 2 and 3 under Section 341 IPC alone and sentenced them to undergo simple imprisonment for one month. The accused 2 and 3 did not file any appeal challenging the conviction and sentence passed against them. The appellant/A1 alone is before before this Court with this appeal, challenging the conviction and sentence passed against him.

3.The case of the prosecution in brief is as follows;

(a) The deceased in this case was one Mr.Mariyappa Reddiyar. He was a resident of South Kailasapuram Village, Tirunelveli District. All the three accused also hail from the same village. The first accused is the son of the second accused and the third accused is the son-in-law of the second accused. There was a promboke land in the said village, which was enjoyed by the entire village in common. But, the second accused had put up a small hut on a portion of the same. This was objected to by the villagers. The four elders of the village convened a village Panchayat. In the said Panchayat, Panchayathars insisted the accused to remove the hut and to leave the vacant land for the use of the villagers. The accused had refused. Therefore, the villagers made a complaint to the Sub Inspector of Police, Pasuvanthanai Police Station. On 19.06.2013, there was an enquiry at the Police Station regarding the said issue. At the end of the enquiry, the accused agreed to remove the hut and to hand over the vacant possession to the villagers and it was ended into a statement recorded in the Police Station. According to the case of the prosecution, all these three accused felt aggrieved by the same. This is stated to be the motive for the occurrence.

(b)It is further alleged that after all of them had returned to the respective houses, around 4.30 p.m., these three accused were in their house. At that time, these three accused were talking among themselves that for the above humiliation suffered in the Police Station, somebody from the opposite group should be killed. They further discussed that the deceased Mr.Mariyappa Nadar, who was leading the villagers, should be killed. This,



according to the prosecution, was overheard by PW6. On the same day, at 4.30 p.m. the deceased went to Pasuvanthanai, which is a mini Town situated at a distance of about one kilometre from the house of the deceased. PWs.3 and 4, the other villagers, belonging to the same community of the deceased, also went to Pasuvanthanai.

(c) After completing the purchase of certain materials, PWs.3 and 4 went to return to South Kailasapuram Village. The deceased also joined them. The deceased was proceeding in his bicycle ahead of PWs.3 and 4, who were following him in a single bicycle. When they were nearing South Kailasapuram Village, near Periyasamy Nadar Rice Mill, these three accused suddenly emerged. The first accused was having an aruval in his hands. All the three accused intercepted the deceased. The deceased got down from the cycle. Then, the second accused shouted and directed the first accused to get the deceased and kill him. The first accused immediately started mounting attack on the deceased with aruval. He caused a number of injuries on the deceased. The deceased fell down in a pool of blood. All the three accused ran away from the scene of occurrence. The entire occurrence was witnessed by PWs.3 and 4. Thereafter, PWs.3 and 4 rushed to South Kailasapuram Village and informed PW1, the wife and PW2 the daughter-in-law of the deceased. PW1, PW2 and other villagers along with PWs.3 and 4 rushed to the place of occurrence. They found the deceased lying in a pool of blood with cut injuries. He was dead. Thereafter, at 8.30 p.m. PW1 went to Pasuvanthanai Police Station and made a complaint to the Police.

(d) PW14, the then Special Sub Inspector of Police, Pasuvanthanai Police Station, on receipt of the complaint, registered a case in Crime No.46 of 2013, under Sections 341, 294 (b) and 302 IPC. Ex.P1 is the complaint. Ex.P13 is the FIR. He forwarded both the documents to the Court through the Police Constable (PW11). PW11 handed over the FIR and the complaint to the learned Magistrate at 6.30 a.m. on 20.06.2013.

(e) PW16, the then Inspector of Police, took up the case for investigation. He proceeded to the place of occurrence at 10.15 p.m. and prepared an observation mahazar and a rough sketch in the presence of PW10 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. Then, he conducted inquest on the body of the deceased. Ex.P17 is the inquest report. At 2.00 a.m. on 20.06.2013, he forwarded the body for postmortem.

(f) PW15 - Dr.Manoharan conducted autopsy on the body of the deceased on 20.06.2013 at 11.15 a.m. He found the following injuries on the body of the deceased:

[https://hcservices.ecourts.gov.in/hcse/Views/An oblique cut wound of size 26cms x 5 cms x 7 cms seen extending from the right cheek along the right ear to the back of neck. The](https://hcservices.ecourts.gov.in/hcse/Views/An%20oblique%20cut%20wound%20of%20size%2026cms%20x%205%20cms%20x%207%20cms%20seen%20extending%20from%20the%20right%20cheek%20along%20the%20right%20ear%20to%20the%20back%20of%20neck.%20The)



underlying major blood vessels, nerves and C-1 Vertebra found cut.

2) An oblique cut wound of size 16 cms x 2 cms x 2 cms seen in the right side of face extending from the right angle of mouth to back of neck. The injury is 2 cms below the injury No.1.

3) A cut wound of size 6 cms x 2 cms x bone deep seen over the medial side of middle of right forearm.

4) A laceration of size 2 cms x 1 cms x bone deep seen over the medial side of right wrist.

5) An abrasion of size 4 cms x 1 cms seen 5 cms above the right wrist."

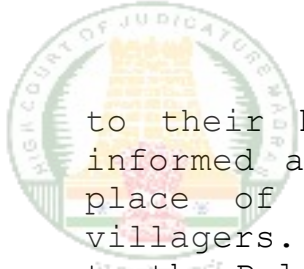
Ex.P15 is the Postmortem Certificate. He gave opinion that the injuries found on the body of the deceased could have been caused by a weapon like M.O.1 aruval. He further opined that the death was due to shock and haemorrhage due to multiple injuries found on the body of the deceased.

(g) PW16, during the course of investigation, recovered the bloodstained clothes from the body of the deceased. On the same day, at 01.20 p.m. at Rajev Nagar Colony bus-stop in the presence of PW10 and another witness PW16 arrested all the three accused. On such arrest, the first accused gave a voluntary confession, in which he disclosed the place where he had hidden the aruval. In pursuance of the same, he took the Police and witnesses to the place where he had hidden the aruval and produced MO.1. PW16 recovered the same under mahazar in the presence of the same witnesses. On returning to the Police Station, he forwarded all the accused to the Court for judicial remand.

(h) The investigation was thereafter continued by PW17, the successor. He examined the doctor and collected the postmortem certificate and examined few more witnesses. On his request, the material objects were sent for chemical examination. The report revealed that there were bloodstain on all the material objects including the aruval allegedly recovered from the accused. On completing the investigation, he laid charge sheet against the accused.

(i) Based on the above materials, the trial Court framed charges against the accused as detailed in the first paragraph of this Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 17 witnesses were examined and 17 documents and 7 material objects were marked.

<https://hcservices.ecourts.gov.in/hcservices/> the said witnesses, PW1 and PW2 are the wife and daughter of the deceased. They have stated about the motive for the occurrence. They have further stated that PWs.3 and 4 rushed

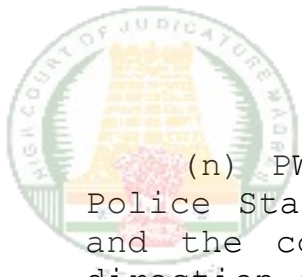


to their house around 6.30 p.m. on the date of occurrence and informed about the same. According to them, they rushed to the place of occurrence, along with PWs.3 and 4 and the other villagers. They have also spoken about the complaint made by PW1 to the Police.

(k) PWs.3 and 4 have spoken about the earlier complaint given against the accused in respect of putting up of hut in the common land and the compromise entered in the Police Station. They have further stated that when they were returning to South Kailasapuram Village, after making purchase in the Town, the deceased was proceeding ahead of them in his bicycle. PWs.3 and 4 were proceeding in a single bicycle. They have further stated that at the place of occurrence, all the three accused suddenly emerged and all the three intercepted the deceased and the deceased got down from the cycle. They have also stated that the second accused viz., the father of the first accused, shouted at the first accused and directed him to kill the deceased and immediately, the first accused cut the deceased indiscriminately which resulted in his death. They have also stated that thereafter, they rushed to the house of PW1 and informed the same to PW1 and PW2.

(l) PW5 is the Head Clerk of the jurisdictional Magistrate Court, who has stated that on the orders of the learned Magistrate, he forwarded the material objects to the Forensic Lab for chemical examination. PW6 is yet another villager. He also belongs to the same community to which the deceased was belonged to. He has stated about the motive for the occurrence. He has further stated that at 4.30 a.m. on the date of occurrence, he found all the three accused together in the house and they were planning to kill the deceased. He has further stated that however, he did not disclose the same to anybody out of fear. PW7 and PW8 have spoken about the fact that the second accused had put up a hut on the promboke land and when the Panchayathars asked to remove the hut, the second accused refused to remove the same. They have further stated that since he refused, a complaint was made to the Police and at the Police Station, the accused agreed to remove the hut and hand over the vacant possession.

(m) PW9 is the owner of the Rice Mill at Pasuvanthanai. The occurrence had taken place by the side of his rice mill. He has stated that on the day of occurrence, when he was in the rice mill, he found a huge crowd of people in front of his mill. When he came out of the mill, he found the deceased lying dead in a pool of blood. He has not stated anything about the presence of neither PWs.3 and 4 nor PWs.1 and 2. PW10, the Village Administrative Officer, has spoken about the preparation of observation mahazar and rough sketch and also recovery of material objects from the place of occurrence. He has further stated about all the three accused, on the next day of the occurrence, at 1.30 p.m., the confession made by the first accused and the consequential recovery of MO.1 aruval from the hide out.



(n) PW11, the Police Constable attached to the Pasuvanthanai Police Station has stated that on 19.06.2013 at 9.45 p.m. the FIR and the complaint in this case were handed over to him with a direction to hand over the same to the learned Magistrate by PW16. He has further stated that he went to Pasuvanthanai bus-stop, but, since there was no bus available, he stayed in the bus-stop till the next day morning and on the next day morning, according to him, he went to the house of the learned Magistrate at Kovilpatti and handed over the FIR to the learned Magistrate at 6.30 a.m. PW12, the Police Constable, has stated that he took the dead body from the place of occurrence and handed over the same to the Doctor for postmortem as directed by PW16.

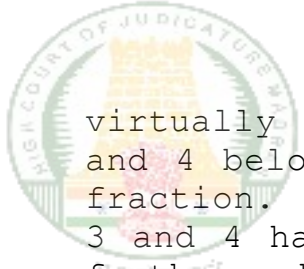
(o) PW13, the Sub Inspector of Police, has spoken about the previous complaint made by the villagers in respect of the land dispute and the compromise reached at the Police Station. PW14, the Sub Inspector of Police, has spoken about the registration of the case and the complaint made by PW1. PW15 has spoken about the postmortem conducted by him and his final opinion regarding the cause of death. PW16 and PW17 have spoken about the investigation done and the final report filed.

(p) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor to mark any document on their side. The defence of the accused was total denial. Having considered all the above, the trial Court convicted them, as detailed in the first paragraph of this judgment. As pointed out earlier, the accused 2 and 3 did not file an appeal challenging the conviction and sentence passed against them. Thus, the appellant/A1 alone is before this Court with this appeal.

4. We have heard the learned counsel for the appellant/A1 and the learned Additional Public Prosecutor appearing for the respondent. We have also perused the records carefully.

5. The learned counsel for the appellant/A1 would submit that PWs. 3 and 4 would not have been present at the place of occurrence as it is projected by them. He would further submit that their presence at the place of occurrence is highly doubtful and therefore, their evidence should be fully rejected. The learned counsel would further point out that the conduct of PWs. 3 and 4 in not going to the Police Station also creates doubt in their veracity.

6. The learned counsel for the appellant/A1 would next submit that there is enormous delay in the FIR reaching the hands of the learned Magistrate. He would further submit that utilising the said delay, the FIR has been falsely fabricated against all the three accused. He would further submit that the villagers were



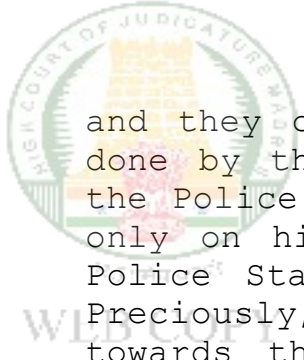
virtually divided on caste basis and that the deceased and PWs.3 and 4 belong to one fraction and the accused belong to different fraction. It is because of the said fraction and the enmity, PWs. 3 and 4 had deposed against the accused, he contended. He would further submit that since the trial Court rejected the case of the prosecution as against the accused 2 and 3 disbelieving the evidences of PWs.3 and 4, the trial Court ought to have rejected the evidences of PWs.3 and 4 in its entirety. The learned counsel would also point out certain material contradictions between the evidences of PWs.3 and 4. Thus, according to the learned counsel, the appellant/A1 is entitled for acquittal.

7.The learned Additional Public Prosecutor would vehemently oppose this appeal. According to him, the presence of PWs.3 and 4 from the place of occurrence cannot be doubted at all. He would submit that their presence is quite natural and the reason for their presence has also been duly explained by them. The learned Additional Public Prosecutor also submitted that the deceased had gone to the place of occurrence in a bicycle, followed by PWs.3 and 4 in their bicycle. Thus, according to him, the presence of PWs.3 and 4, at no cost, could be doubted. He would further point out that there is some delay in the FIR reaching the hands of the learned Magistrate and the same has been duly explained by PW11 and the said explanation is possible and therefore, acceptable. He would further submit that the medical evidence duly corroborates the eyewitness account of PWs.3 and 4. Thus, according to the learned Additional Public Prosecutor, the trial Court has rightly convicted the appellant/A1.

8.We have considered the above submissions.

9.As We have already pointed out, the prosecution relies on the eyewitness account of PWs.3 and 4 to prove the guilt of this appellant/A1. It needs to be remembered that the trial Court has rejected their evidences as against the accused 2 and 3 for the charge U/s.302 r/w 109 IPC. The acquittal of the accused 2 and 3 has not been challenged. Thus, even according to the trial Court, PWs.3 and 4 are partly believable. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in Vadivel Thevar Vs. State of Madras, reported in AIR 1957 CrL. 614, wherein the Hon'ble Supreme Court has held that if a witness proves to be partly believable, then, as a rule of caution, the Court should look for corroboration from any other independent source, at least on material particulars. According to the learned counsel, in the absence of any such corroboration, the evidence of such witnesses, who are only partly believable, cannot be the foundation for conviction. At the same time, we are also conscious of the legal position that the principle of *falsus in uno, falsus in omnibus* has not been recognised by the Indian Courts and in the Indian

several courts have held that the Court is able to separate the grain from the chaff, there is no legal impediment for the Court to act upon the same and to convict the accused.



and they challenged PW3 and others to do whatever that could be done by them. He has further stated that thereafter, he went to the Police Station along with others and made a complaint. It was only on his complaint, the accused 1 and 2 were brought to the Police Station, where they gave undertaking to remove the hut. Precisely, PW4 has also stated so. PWs.3 and 4 were inimical towards the accused and they were responsible for the issue. Thus, PWs.3 and 4 are not independent witnesses.

13. From the evidences of these two witnesses, it is also crystal clear that the deceased Mariyappa Nadar did not involve actively in the above issue. He only joined the others when they went to the Police Station. Had it been true that the accused had any grudge on account of the above issue, where they were forced to vacate the property, the said grudge would have been only against PWs.3 and 4 and others and not against the deceased. Assuming that they had grudge against the deceased also, when PWs.3 and 4 accompanied the deceased, these accused would not have spared PWs.3 and 4 without causing any harm to them. Since PWs.3 and 4 were the elders of the group which wanted the accused to remove the hut, certainly their anger would have been only against PWs.3 and 4. The very fact that PWs.3 and 4 were not caused any harm even slightly would go to show that the presence of PWs.3 and 4 is doubtful.

14. The above doubt regarding the presence of PWs.3 and 4 at the place of occurrence is further fortified by the evidence of PW9. PW9 is the owner of the Rice Mill near to which the occurrence had taken place. According to him, he was very much available in the rice mill on the date of the occurrence from 6.00 a.m. onwards. He has stated that around 6.00 p.m. a crowded people gathered at the place of occurrence. He saw the deceased lying dead with cut injuries. He has not stated that PWs.3 and 4 were present at the time of occurrence. Had it been true that PWs.3 and 4, who were prominent people in the village, were present certainly PW9 would have mentioned about their very presence in his evidence. Thus, the evidence of PW9, who is the natural witness at the place of occurrence also creates doubt in the evidence of PWs.3 and 4.

15. PW6, the brother of the deceased, stated that at 4.30 p.m. on the same day, these accused were found in their house. They were talking themselves to do away with the deceased. Had it been true that these accused were openly declaring that they would to do away with the deceased and conspired to do so, PW6 would not have kept silent. By all human conduct, he would have cautioned the deceased about the same. But, he did not do so. Thus, it is quite obvious that PW6 had been planted by the Police to improve the prosecution. The very fact that PW6 has been made to depose as though it was conspiracy at 4.30 p.m. would create doubt about the presence of PWs.3 and 4. As PW6 has been planted,



in our considered view, PW3 and 4 have also been planted. PW6 has further admitted during cross examination that he was tutored by the Police as to how and what he should depose before the Court. He has further admitted that PWs.3 and 4 were also so tutored by the Police.

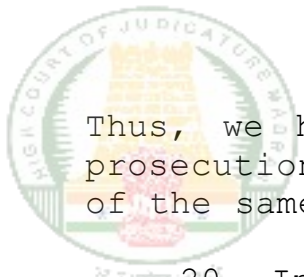
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16. The learned Additional Public Prosecutor would submit that refreshing the memory of the witness cannot be taken as tutoring. In our considered view, refreshing the memory of a witness is a different from tutoring a witness. Tutoring means making the witness to memorise something which is not in his knowledge and directing him to depose so. Here, in this case, PW6 has stated that he and PWs.3 and 4 were tutored to depose before the Court about certain facts. It also creates doubt in the case of the prosecution.

17. It is stated that at the time of occurrence, the deceased was going ahead in his cycle. A cycle was found at the place of occurrence and the same was recovered by the Police. PWs.1 to 6 have not identified the said cycle as that of the deceased. PWs.3 and 4 have stated that they also went in a cycle. But, it was only one cycle was found lying. What happened to the other cycle has not been spoken to by any other witnesses. As we have already pointed out, even MO.5 has not been proved to be that of the deceased. It also creates doubt to the case of the prosecution.

18. It is seen from the evidence of PW2 that the distance between the place of occurrence and the Police Station is hardly 3/4 Kilometres. If that be so, the Police would have been kept informed about the occurrence soon after the occurrence. PW2 admitted that as soon as the complaint was made, the first accused was brought to the Police Station by the Police, whereas, according to the evidence of the investigating officer, the accused were arrested at 1.30 a.m. on 20.06.2013. We find no reason to reject the evidence of PW2 that the first accused were brought to the Police Station by the Police as soon as the complaint was made. This would give an inference that the first accused was brought to the Police Station from his house and thereafter, the complaint has been preferred in the next day morning and that is how it has reached the hands of the learned Magistrate at 6.30 a.m. on 20.06.2013.

19. In our considered view, when the presence of PWs.3 and 4 at the place of occurrence is doubtful, in the absence of any other corroboration from any other independent source, it is not safe to act upon their testimony. However, as we have already pointed out, the evidence of PWs.3 and 4 have been rejected in part by the trial Court as against the accused 2 and 3. The evidence laid down by the Hon'ble Supreme Court in Vadivel Thevar case, cited supra, for want of corroboration, in our considered view, it would not be safe to convict the appellant/A1.



Thus, we hold that there are lot of doubts in the case of the prosecution, which are very reasonable and the benefit arising out of the same should enure in favour of the appellant/A1.

20. In the result, this Criminal Appeal is allowed and the conviction and sentence imposed against the appellant/A1 in S.C.No.55 of 2015 is set aside and he is acquitted. Fine amount, if any, paid shall be refunded to the appellant.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

- 1.The II-Additional District and Sessions Judge,
Thoothukudi.
- 2.Do through the Principal District Judge, Thoothukudi
- 3.The Inspector of Police,
Pasuvanthanai Police Station,
Thoothukudi District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Judicial Magistrate No.II, Kovilpatti
- 6.Do through the Chief Judicial Magistrate, Thoothukudi
- 7.The Superintendent, Central Prison, Palayamkottai
- 8.The Commissioner of Police, Thoothukudi
- 9.The District Collectoe, Thoothukudi
- 10.The Director General of Police, Chennai

Copy to:-

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai

+One cc to Mr.M.Saravanan, Advocate, SR.No.56917

gcg

RL/13C/11P/GSV/PM/SAR3/21.10.2016

Judgement made in
Crl.A.[MD].No.163 of 2015
Dated: 28.09.2016