



Bail Slip

- 1.Thirugnanam
- 2.Ravi @ Ravichandran
- 3.Saravanan @ Rathinavelu
- 4.Velmurugan
- 5.Baskaran
- 6.Nagasundaram
- 7.Banumathi

The Appellants/Accused Nos.1 to 7 were released on Bail as per the order of this Court dated:25.08.2015 made in MP(MD)Nos.1 and 2 of 2015 in Cr1.A(MD).No.199 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**

AND

THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**

Criminal Appeal(MD)No.199 of 2015

and

Criminal Appeal(MD)No.54 of 2016

Cr1.A. (MD)No.199 of 2015

- 1.Thirugnanam
- 2.Ravi @ Ravichandran
- 3.Saravanan @ Rathinavelu
- 4.Velmurugan
- 5.Baskaran
- 6.Nagasundaram
- 7.Banumathi

... Appellants/Accused Nos.1 to 7

Vs.

State represented by
Inspector of Police,
Thiruppuvanam Police Station,
Sivagangai District.
(Crime No.158 of 2000)

.. Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C to call for the records from the Lower Court and to duly set aside the Judgment passed by the learned Sessions Judge, Sivagangai, Sivagangai District in S.C.No.83 of 2006, dated



For Appellants

: Mr.V.Kathirvelu, Senior Counsel
for Mr.K.Prabhu

For Respondent

: Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor

WEB COPY

Crl.A.(MD)No.54 of 2016

N.Saravana Kumar

... Appellant/Complainant

Vs.

1.The State rep. by
The Inspector of Police,
Thiruppuvanam Police Station,
Sivagangai District. .. 1st Respondent/Respondent
(Crime No.158 of 2000)

2.T.Thirugnanam

3.Ravi @ Ravichandran

4.Velmurugan

5.Saravanan @ Rathinavel

6.Bhaskaran

7.Nagasundaram

8.Bhanumathi

.. Respondents 2 to 8/Accused 1 to 7

PRAYER: This Criminal Appeal is filed under Section 372 r/w 378(3) of Cr.P.C to set aside the Judgment and Conviction made in S.C.No.83 of 2006 dated 18.08.2015, on the file of the learned Sessions Judge, Sivagangai, by enhancing the sentence imposed on the accused persons and allow the above criminal appeal.

(The provision of law amended as per order dated 27.01.2016 made in Crl.MP(MD)No.820 & 821 of 2016 in Crl.A(MD)No.SR.36089/2015)

For Appellant

: Mr.Veerakathiravan
Senior Counsel for
Mr.C.Jegannathan

For Respondents

: Mr.C.Mayilvahana Rajendran (for R1)
Additional Public Prosecutor
Mr.S.Senthil Sankaranathakumar
(for R2, R5, R7 and R8)

Mr.V.Kathirvelu, Senior Counsel for
Mr.K.Prabhu (for R3, R4 and R6)



COMMON JUDGMENT

(Judgment of the Court was delivered by M.V.MURALIDARAN, J.)

The appellants are the accused in CrI.A(MD)No.199 of 2015 in S.C.No. 83 of 2006 on the file of the Principle Sessions Judge, Sivagangai. There were as many as 9 charges framed against the appellants/accused as detailed below.

Charge Nos.	Against	Offence U/s.
1	A1 to A6	148 IPC
	A7	147 IPC
2	A1 to A7	341 IPC
3	A1	302 IPC
4	A2 and A7	302 r/w 149 IPC
5	A3 to A6	307 r/w 34 IPC
6	A1 and A6	324 IPC
7	A2	324 IPC
8	A2 to A7	302 r/w 149 IPC
9	A1 and A7	307 r/w 149 IPC

By judgment dated 18.08.2015, the trial Court convicted and sentenced the appellants/accused as follows;

Accused	Conviction U/s.	Sentence
A1 and A2	304(ii) IPC	Rigorous imprisonment for 7 years each and a fine of Rs.1,000/-, each in default to undergo rigorous imprisonment for two months each.
A1	323 IPC	Rigorous imprisonment for 6 months and a fine of Rs.500/-, in default to undergo rigorous imprisonment for one month.
A2	323 IPC (2 counts)	Rigorous imprisonment for 6 months each and a fine of Rs.500/- each, in default to undergo rigorous imprisonment for one month each



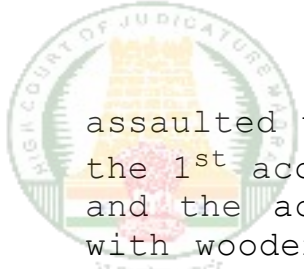
WEB COPY

A3 to A6	307 IPC	Rigorous imprisonment for 7 years each and a fine of Rs.1000/- each, in default undergo rigorous imprisonment for two months each
A6	324 IPC	Rigorous imprisonment for 2 years and a fine of Rs.1000/-, in default undergo rigorous imprisonment for two months
A7	355 IPC	Rigorous imprisonment for one year and a fine of Rs.500/-, in default undergo rigorous imprisonment for one month

The sentences imposed are ordered run concurrently. The set off was allowed under Section 428 of Cr.P.C. Challenging the said conviction and sentence passed against them, the present appeal has been filed by these appellants/accused 1 to 7.

3. Aggrieved over the Judgment of the Trial court, all the seven accused have filed Criminal Appeal No. 199/15 and the De-facto Complainant/PW-1 namely Saravana Kumar has also filed the Cross Appeal U/s.372 read with 378 (3) of Cr.P.C in Criminal Appeal No.54/16. As both the appeals are arising out of the Sessions Case No.83/06, this court feels that it would be proper to take both the appeals together. Accordingly, both the above said appeals are clubbed and heard together for final hearing.

4. The short facts of the case of the prosecution is that PW-1 Saravana Kumar, deceased Nagarajan, PW-2 Kathiresan, PW-3, 4, 5 are the residents of Keeladi Village in Sivangangai District. PW-1 is the son of deceased, PW-2 is the brother of deceased, PW-3 is the wife of PW-2, PW-4 is the son of PW-2, PW-5 is the wife of the deceased. The deceased namely Nagarajan and the accused are belonging to same village. The 4th accused namely Velmurugan allegedly molested one Sumathi who was working in a Spinning Mill of the 4th accused Velmurugan. In this connection a case in Crime No.402/99 was registered against the said Velmurugan in the year 1999. Since the accused decided to persuade the said Sumathi, they tried to compromise the matter through the deceased Nagarajan. However, the deceased refused to compromise the matter, so the accused were having grudge with the deceased Nagarajan. On the day of the alleged occurrence that is on 14.03.2000, the deceased Nagarajan arrived from Thiruppur and proceeded to his house after alighted from a bus, when he was coming in front of the house of one Ramasamy, all the accused waylaid with deadly weapons and

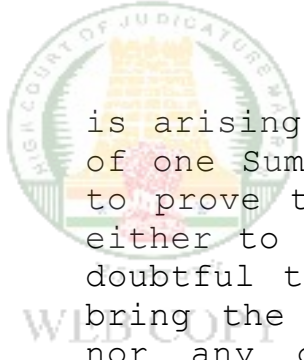


assaulted the deceased. According to the First Information Report, the 1st accused, attacked the deceased with wooden log on the head and the accused No.2- Ravi @ Ravichandran attacked the deceased with wooden log on the left side hip and one Thiruppathiya Pillai attacked him with wooden log on his left wrist (However, pending trial, the said Thiruppathiya Pillai was died). Again he attacked him on his right wrist. The accused No.7 Banumathi (Originally accused No.8) assaulted the deceased with broom stick. At that time, Kathiresan brother of the deceased came to the spot. He was running a shop at the bus stop and he questioned the accused as to why they assaulted his brother, but the accused No.3 Thiruppathiya Pillai (since dead) directed the other accused to kill him and thereafter the accused No.4 Velmurugan attacked PW-2 with Aruval and caused injury on the left side head. The accused No.5 Baskaran (Originally accused No.6) attacked the deceased with Aruval and the accused No.2 attacked PW-2 Kathiresan and caused injury on the head. The sixth accused attacked PW-2 with iron rod and caused injury on the back side and right side chest. The accused No.3 Saravanan @ Rathina Velu attacked PW-2 with wooden stick on the shoulder and caused grievous injury. At that time, PW-1 intervened and questioned the accused and sixth accused attacked PW-1 with rod on the right leg. The first accused attacked him with wooden log on the back. Again, the second accused Ravi assaulted him with wooden stick on the knee.

5.It is the further case of the prosecution that PW-6 Srinivasan came to the occurrence place and took the injured person to Government Rajaji Hospital in a lorry. All the injured were admitted at Government Rajaji Hospital, Madurai for treatment. Followed by information by the Hospital Authorities, PW-15 came to Rajaji Hospital and received the written complaint Ex P-8 from the deceased and registered a case in Crime No.158/2000 for the offence 147, 148, 341, 323, 324, 355, 307 of IPC. Thereafter another case in Crime No.159/2000 for the offence under sections 341, 323, 324 and 307 of IPC was also registered based on the complaint given by the second accused namely Ravi @ Ravichandran for the injuries implicated upon him. The printed First Information Report Ex P-9 was sent to the concerned Judicial Magistrate. Further, he also sent the First Information Report of in Crime No.159/2000 to the Judicial Magistrate concerned. Thereafter the case was taken up for investigation and charge sheet was filed against the 7 accused for the offence as stated above.

6.In order to prove the case, the prosecution examined 16 witness, marked 16 exhibits along with 20 material objects. However no witness was examined on the side of accused.

7.In this case, it is alleged that since the deceased did not make arrangement and refused to persuade one Sumathi, who was allegedly molested by the 4th accused Velumurugan, the accused were having animosity at the deceased. The case of the prosecution



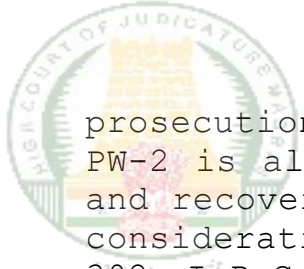
is arising out of this particular alleged incident of molestation of one Sumathi. However, the prosecution has not taken any effort to prove that the deceased Nagarajan was the deciding authority, either to persuade the Sumathi, or her family members. It is also doubtful that the said Nagarajan was requested by the accused to bring the said Sumathi for compromise. Neither the said Sumathi nor any of her blood relatives are examined to prove this particular factor. So, in this regard the argument advanced on the side of appellants that the prosecution has not proved the motive is acceptable as the motive alleged by the prosecution has not legs at all. This court is unable to accept the case of the prosecution that the deceased was assaulted as he failed to bring the said Sumathi for compromise. The evidence on record would show that the said Sumathi is having her own family and relatives. So, if at all, the said Sumathi was brought for compromise, she could have been approached either in person, or through her relatives. The version of the prosecution in this regard that the deceased who is a third person was approached to compromise the case as against the 4th accused Velmurugan is unacceptable. So the prosecution has not proved the motive as alleged.

8.The next point is taken up for consideration is that the injuries sustained by 2nd accused namely Ravi @ Ravichandran, has not been explained by the prosecution which would deeply affect the root of the case. It is a settled legal position that the non-explanation of the injuries sustained by the accused would create doubt over the prosecution case. In this connection the counsel for the appellants placed reliance on the Judgment of the Hon'ble Supreme Court reported in **AIR 1976 Page 2263**. Another Judgment is also relied upon by the Learned Counsel of the appellants is reported in 2016 (1) law weekly (Criminal 48) in which one of us is a part to the judgment by setting aside the conviction with the finding that the prosecution ought to have explained the injuries sustained by the accused.

9.In this case, admittedly the evidence of PW-15 would show the injuries sustained by the 2nd accused. The 2nd accused lodged a complaint for the injuries implicated upon him and same was registered by PW-15 in Crime No.159/2000 on the file of Thiruppuvanam Police Station. We do not understand as to why the investigation officer has not taken any effort to investigate the case in the Crime No.159/2000 on the file of the Thiruppuvanam Police station. In our considered opinion, the failure of the prosecution in explaining the injuries sustained by the 2nd accused would deeply affect the credibility of the prosecution case. Further, the presence of PW1 is doubtful as he deposed that when he went to agricultural field, he was intercepted and assaulted and this was adduced in the Chief examination itself. So, he could not be an eye witness.

<https://hcservices.ecourts.gov.in/hcservices/>

10.Further, no independent witness is supporting the prosecution case which is also affects the case of the



prosecution. Apart from that another important fact is that though PW-2 is allegedly injured by another accused, but who got fainted and recovered only after 15 days. So, his evidence can't take into consideration in an offence punishable for capital punishment of 302 I.P.C. So, the non investigation of the counter case is creating doubt over the case of the prosecution.

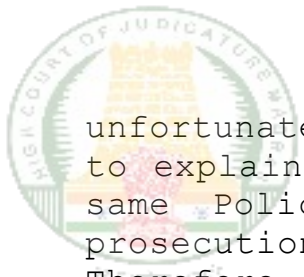
11.As far as the other witnesses are concerned, no reliable evidence is adduced to prove the prosecution case. PW3 is a here say witness in respect of the occurrence, but as per her evidence, she was also assaulted so she went to Thiruppuvanam Police station and thereafter went Government Rajaji Hospital. However, when her evidence is analyzed, it would falsify the lodging of written complaint by the deceased. Because the evidence of PW-3 does not say that the deceased gave written complaint to PW-15.

12.Apart from that contradictory evidence alone is available in respect of the information received by the police about the occurrence. Though, the learned Public Prosecutor would advance his argument that the prosecution has proved the case as per law beyond reasonable doubt. On the other hand, he also admits that no evidence is available in respect of the allegation by whose lorry all the three injured were taken to the Government Rajaji Hospital, Madurai. Further no investigation was done to know about the lorry and whether it had blood stains or not. This factor would also affect the prosecution case. Yet another important factor is that though A2 and A4 were arrested on 19.03.2000 and based on their confession Ex-P5, recovery was made that has not inspired confidence in the mind of court mainly because no independent witness has supported the prosecution case.

13.Moreover when the evidence of PW5 is taken up for appreciation, she is the wife of deceased, but her evidence is found untrust worthy. Because she is working in a school as a Noon Meal Organizer and she attended her duty on the day of the occurrence. So her evidence is not only falsified the case of the prosecution, but strengthened the suggestion put forth on the side of appellants/accused.

14.Further the counsel appeared on behalf of PW-1/Defacto complainant has attempted to draw the attention of this court that the evidence of the prosecution is intact to warrant conviction. But, he has no say the reason for non-explanation of the injuries sustained by the 2nd appellant and the failure of the prosecution in proving the motive behind the case.

15.Therefore, this court is not able to accept the case of prosecution. Though one person is died and few others have got injuries on either side, no doubt it is the duty of prosecution to approach the court of law with clean hands and neutral mind. The reason for non investigation in Crime No.159/2000 is not explained by the prosecution. Further, the investigation officer is also died on 24.12.2000 before the Chief Examination. So it is



unfortunate to record here that the prosecution agency is failed to explain the fate of the Crime No.159/2000 on the file of very same Police station which has the force to doubt over the prosecution case by giving benefit of doubt to all the appellants. Therefore the appellants/accused are acquitted from all the charges by giving benefit of doubt to the accused.

16. Therefore, the Criminal Appeal (MD)No.199 of 2015 is allowed and the Criminal Appeal (MD)No.54 of 2016 is dismissed.

17. In the result, the Criminal Appeal No.199 of 2015 is allowed and the conviction and sentence imposed on the appellants are hereby set aside and the appellants are acquitted and they are directed to be set at liberty forthwith unless their presence is required in connection with any other case. Fine amount paid if any by the appellants shall be refunded to him.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Sessions Judge,
Sivagangai, Sivagangai District.

2. The Judicial Magistrate, Manamadurai

3. -do-thro The Chief Judicial Magistrate, Sivagangai District

4. The Superintendent, Central Prison, Trichy

5. The Inspector of Police,
Thiruppuvanam Police Station,
Sivagangai District.

6. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

Copy to: The Section Officer
Criminal Section(Record)
Madurai Bench of Madras High Court, Madurai

+1cc to Mr.K.Prabhu, Advocate SR.No.51885

+1cc to Mr.C.Jegaannathan, Advocate SR.No.52310

vsa/skn

SM:JM:SAR 1:14.02.2017:8p/10c

Criminal Appeal (MD)No.199 of 2015
and

Criminal Appeal (MD)No.54 of 2016
12.09.2016