



## Bail Slip

Muthuraj @ Muthuraman, aged about 35 years

S/o. Chinnamasanayakkar

:Appellant/Accused

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Enlarged on bail vide in this court Order in CrI MP 18/2016  
in CrI A No.342/2015 order dated 19/01/2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.11.2016**

CORAM:

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

AND

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

Criminal Appeal(MD)No.342 of 2015

Muthuraj @ Muthuraman

... Appellant/First Accused

Vs.

State represented by,  
The Inspector of Police,  
Uthumalai Police Station,  
Tirunelveli District.  
(Crime No.31/2012)

.. Respondent/Complainant

**PRAYER:** This Criminal Appeal is filed under Section 374(2) of Cr.P.C to admit this appeal on file, to call for the records from the Lower Court and to duly set aside the Judgment passed by the learned IV Additional District and Sessions Judge, Tirunelveli, Tirunelveli District in his S.C.No.51 of 2013, dated 29.10.2015.

For Appellant

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

For Respondent

: Mr.K.S.Duraipandian  
Additional Public Prosecutor

**JUDGMENT**

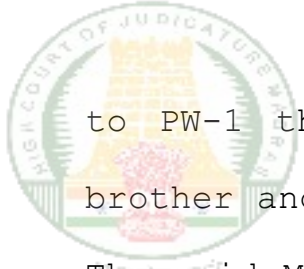
(Judgment of the Court was delivered by M.V.MURALIDARAN, J.)

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The appellant is the 1<sup>st</sup> accused in S.C.No.51/2013 on the file of the IV<sup>th</sup> Additional District & Sessions Judge, Tirunelveli. The trial court framed charges under Sections 302, 201, 506(ii) of I.P.C against this Appellant/1<sup>st</sup> Accused.

2. The Trial Court by Judgment dated 29.10.2015 convicted the appellant under Section 302 of I.P.C for life imprisonment and to pay a fine of Rs.1000/- in default further undergo rigorous imprisonment for Six months, under Section 201 & 506 (ii) have not been proved against 1<sup>st</sup> accused and 2<sup>nd</sup> accused. The 2<sup>nd</sup> accused was acquitted by the Trial Court. The set off was allowed under Section 428 of Cr.P.C. Challenging the said conviction and sentence passed against her, the present appeal has been filed by the appellant/accused.

3. The case of the prosecution is that the PW-1 Kannan who is the brother of the deceased Murugan @ Kannan is residing at Nochikulam and doing coolie work. He knows the accused persons. The 2<sup>nd</sup> accused is his uncle and the 1<sup>st</sup> accused is the son of the 2<sup>nd</sup> accused. On 23.02.2012 at about 8.15 A.M, PW-1's brother Murugan @ Kannan went to his agricultural field. PW1 and others searched him following his missing. In the meantime at 4.30 P.M one Muthammal, D/o. Subbiah Naicker of the same village informed



to PW-1 that in the field of PW-1, she heard screaming of his brother and shouting as "don't beat" and "don't kill me" at 9 A.M.

The said Muthammal is having land on the eastern side land of PW-1. Immediately PW-1 along with witnesses Ravi, Subbiah and Sivaraman went the Maize field and seen the place which was informed by Muthammal where they found the dead body of Murugan @ Kannan with head injury, two injuries on his stomach and one injury on right shoulder. The PW-1 did not know who murdered his brother and he was in confusion state of mind and therefore he went to the Police station at 1.15 A.M on 24.02.2012 and gave Ex-P1 complaint. The respondent police has registered a case under section 302 of IPC in Crime No.31/2012 dated 24.02.2012. After investigation the respondent police has altered the charges by including sections 201, 506 (ii) and 212 of IPC in addition to section 302 of IPC.

4. After filing the charge sheet before the Learned Judicial Magistrate, Tenkasi in P.R.C.No.44 of 2012, the case was made over to the IV<sup>th</sup> Additional District & Sessions Judge, Tirunelveli and the same was numbered as S.C.No.51/2013. In this case, 11 witnesses were examined as prosecution side witnesses and 15 Exhibits were marked on the side of prosecution and there are 7 material objects produced before the Trial court. But there was no witness and exhibits on the side of the accused.

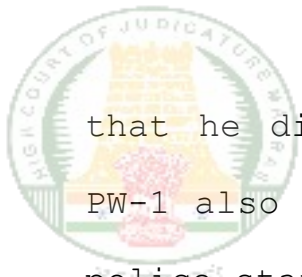
5. In this case, PW-1 Kannan deposed that he is residing at <https://hcservices.ecourts.gov.in/hcservices/>

Nochikulam village and doing coolie work. He knows the accused.



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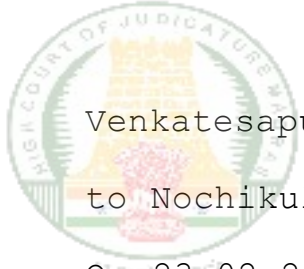
The 1<sup>st</sup> accused is the son of the 2<sup>nd</sup> accused. On 23.02.2012 at about 8.15 A.M, his brother Murugan @ Kannan went to his agricultural land. But he has not returned to home and they also searched him. At 4.30 P.M one Muthammal, D/o. Subbiah Naicker (PW-4) of the same village informed to PW-1 that in the field of PW-1 at 9 A.M, she heard the sound of his brother Murugan @ Kannan shouting that "don't beat" and "don't kill me". The said Muthammal is having land on the eastern side land of PW-1. Immediately PW-1 along with witnesses Ravi, Subbiah and Sivaraman went the Maize field and seen the place informed by Muthammal where they found the dead body of Murugan @ Kannan which was covered by Maize crops with head injury, two injuries on stomach and one injury on right shoulder. The PW-1 did not know who killed his brother and he was in confusion state of mind and therefore he went to the police station at 1.15 A.M on 24.02.2012 and gave Ex-P1 complaint. PW-1 deposed that there was a property dispute between the accused family and the family of PW-1. Earlier the accused had cut and removed the Velikaruvelam tree belongs to PW-1. In this regard there was a wordy quarrel between them. Due to the vengeance only the accused murdered his brother. During the Cross examination the PW1 stated that no property dispute between PW-1 and his deceased brother. The distance between the police station and the place of occurrence is 2 K.M. The PW-1 admitted that there is no relationship between the family of PW-1 and accused family for the past 50 to 60 years. PW-1 further admitted



that he did not know about the name mentioned in the complaint. PW-1 also stated that he has not identified M.O.1 to M.O.3 in the police station.

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6. PW-2 Subbiah deposed that he along with PW-1 and others searched the deceased Murugan @ Kannan. He stated that he along with others seen the deceased and he noticed head injury, one stab injury on the left side rib and one injury on right shoulder on the dead body of Murugan @ Kannan. On 25.02.2012, when PW-2 and Muthuraj were standing in Sankarankovil bus stop where he had seen 1<sup>st</sup> accused also. At that time Uthumalai Police Officer came there and on seeing the officer, 1<sup>st</sup> accused tried to escape, but he was arrested. The 1<sup>st</sup> accused also gave confession statement and in which PW-2 and Muthuraj signed as witnesses. The admitted portion of confession statement is Ex-P2. Further the 1<sup>st</sup> accused also produced M.O.4 Sickle and recovery Mahazar Ex-P3 was prepared and in which PW-2 and Muthuraj signed as recovery Mahazar witness. The PW-2 deposed further that the PW-1 Kannan called the police over phone at 8.00 P.M from the place of occurrence itself, but the police came to the spot only at 1.00 A.M in the early morning. P.W-1, PW-2 and other relatives were standing in the place of occurrence only and the police came there and obtained statement from PW-1. The PW-2 denied his signature contained in confession statement and Mahazar.



Venkatesapuram near Kalugumalai along with her husband. She came to Nochikulam on 22.02.2012 to participate in the temple festival.

On 23.02.2012 at about 9.00 A.M she went to Well for taking bath.

Nearby their land, the lands of the deceased Murugan @ Kannan and the Muthuraj are situated. The PW-3 had seen the deceased Murugan @ Kannan while she was washing her cloths. She also enquired the deceased where he is going and he replied that he was going to see the cut woods. The distance between the field of PW-3 and the deceased field is 50 feet only. The PW-3 stated that the accused twice punched on the left side stomach of the deceased Murugan @ Kannan. When PW-3 intervened, she was threatened by the accused that they would finish off her if she don't leave the place. Hence due to fear, PW-3 had gone to Venkateshapuram. She was enquired by the Inspector on 25.02.2012. The distance between Nochikulam and Venkateshapuram is 60 K.M. The deceased Kannan is the uncle's son of PW-3. On 22.02.2012, she had seen Malliah Naicker but she did not inform about the murder of Murugan @ Kannan to Malliah Naicker and PW-3 also did not inform about the death of Murugan @ Kannan to his family.

8. PW-10 Special Sub Inspector of Police, deposed that PW-1 Kannan came to the Police Station at 1 A.M and gave complaint which was registered in Crime No.31/2012 U/s.302 of I.P.C. The FIR was marked as Ex-P12.

9. PW-11 Investigation Officer deposed that he took up Crime No.31/2012 for investigation at 2.30 A.M on 24.02.2012. He visited



the place of occurrence and prepared observation Mahazar in the presence of witnesses Kalimuthu, Vairamuthu. He also made inquest enquiry and prepared inquest report Ex-A14. On 25.02.2012 at 1.00

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P.M, he arrested the 1<sup>st</sup> accused Muthuraj at Sankarankovil bus stand in the presence of PW-2 Subbiah and Muthuraj and obtained confession Statement without any coercion. He also recovered Sickie M.O.4 nearby the place of occurrence. As per the confession statement of 1<sup>st</sup> accused, the 2<sup>nd</sup> accused was arrested at 4.30 P.M on 25.02.2012 by PW-11 and thereafter they were sent to judicial custody. PW-11 stated in his cross that neither PW-1 Kannan, nor PW-2 Subbiah were eye witnesses. He did not know till 25.02.2012 who has committed the crime. During the course of investigation PW-1 informed to him that 1<sup>st</sup> accused might have murdered his brother. Muthammal wife of Mallaiah Naicker came to Nochikulam to see her relative on the date of occurrence. The dead body was removed from the place of occurrence at 2.30 A.M on 24.02.2012. The accused are not having land adjacent to the land of the deceased. PW-11 admitted in his cross that no witness stated to him that the cut injury on the right shoulder of the deceased was caused by 1<sup>st</sup> accused. PW-3 in her statement given to the police under Section 161(3) of Cr.P.C has stated that she came to her relative's house of Nochikulam and not stated that she came to Nochikulam to attend the temple festival.



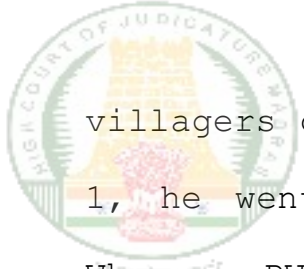
Additional District & Sessions Judge, Tirunelveli came to the conclusion that the charges laid against the 1<sup>st</sup> accused in so far as the offence under Section 302 alone is proved by the sole eye witness led by the prosecution.

11. In the above said circumstances, there is direct eye witness, the learned Trial Judge convicted the 1<sup>st</sup> accused for the offence under section 302 of I.P.C and acquitted the 1<sup>st</sup> accused from the offences under Sections 201, 506 (ii) of IPC and acquitted the 2<sup>nd</sup> accused from all the charges. Against the said conviction the present appeal has been filed.

12. We have heard Mr.V.Kathirvelu, learned senior counsel for Mr.K.Prabhu, learned Counsel for the appellant and Mr.K.S.Duraipandian, learned Assistant Public Prosecutor and we have also perused the records carefully.

13. In this case, going through the evidences and documents produced by the prosecution, the investigation conducted by the prosecution is improper. We have to see that whether there is an unexplained delay in lodging the complaint by the PW-1. In this regard let us examine the evidence of PW-1 and PW-2. The occurrence said to have committed at 9 A.M on 23.02.2012, whereas PW-1 gave complaint only at night 1.00 A.M on 24.02.2012, though he had seen the dead body of his brother at 5 P.M on 23.02.2012.

It is the case of PW-1 that there was a delay of their relatives in reaching the place of occurrence. Whereas PW-2 deposed that the



villagers came to the spot at 5 to 6 P.M. Further according to PW-1, he went to police station at about 1.15 A.M on 24.02.2012.

Whereas PW-2 Subbiah deposed that PW-1 did not go to the police station, he informed the police station over phone only at 8.00 P.M and the police came to the spot at about 1 A.M on 24.02.2012. Therefore there are two contradictory versions with regard to the intimation given to the police station and the same has not been corroborated by the prosecution.

14. Admittedly there was a delay in lodging complaint and there was no explanation for the same by the prosecution. Though the same was accepted by the Learned Judge, but erred in holding that the PW-1 has not mentioned the name of the accused in the complaint and therefore the case of the prosecution can't be rejected on the ground of delay in lodging the complaint. When the prosecution failed to give proper explanation for the delay in giving complaint, the prosecution case must go against them and the benefit of doubt should be given to the accused.

15. No doubt there are reasons, objects and aims of lodging prompt FIR and delay in lodging the first information report more often than not, results in embellishment and exaggeration which is a creature of an after-thought. A delayed FIR not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity, as has



been held by the Apex Court in State of Himanchal Pradesh Vs. Prem Singh: AIR 2009 (SC) Page 1010 is extracted below:-

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"This is trite law that Delay in lodging FIR more often than not, results in embellishment and exaggeration, which is creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of the introduction of a coloured version, an exaggerated account of the incident or a concocted story as a result of deliberations and consultations, also creeps in, casting a serious doubt on its veracity. Thus, FIR is to be filed more promptly and if there is any delay, the prosecution must furnish a satisfactory explanation for the same for the reason that in case the substratum of the evidence given by the complainant/informant is found to be unreliable, the prosecution case has to be rejected in its entirety."

16. The PW-3 has given contradictory versions for her arrival to the scene of occurrence. The learned Judge convicted the 1<sup>st</sup> accused on assumption and presumption by holding that PW-3 on seeing the occurrence due to fear might have gone to her native place without information of the commission of offence to anybody. The Learned trial court Judge further held that merely because the investigation conducted by the police is not proper, the real accused can't be allowed to escape from the clutches of law. The said finding of the Trial court cannot be accepted by us, since it



is the duty of the police to conduct proper investigation in a case of murder without giving any room to suspect the investigation of the police. There is a legal flaw in this case is that the police has sent 161 (3) Cr.P.C statement of PW-3 Muthammal said to have obtained on 25.02.2012, but sent the same to the court only on 14.08.2012 would create serious doubt in the mind of this court about the statement of PW-3. We have to accept the argument of the learned counsel appearing for the appellant that PW-3 has not at all seen the commission of offence and she is an arranged witness in this case only for the purpose of implicating the accused and therefore the conviction and sentence imposed on the 1<sup>st</sup> accused on the basis of the evidence of PW-3 by the Learned Additional District Judge has to be set aside.

17. The prosecution has not corroborated the evidence of PW-3 with other independent witnesses. That itself weakened the case of the prosecution and it is a fatal to the prosecution case.

18. As per the evidence of PW-3, there were 4 injuries stated whereas as per Ex-P6 the doctor who conducted autopsy found only 3 injuries. Further a perusal of the evidence of PW-4 shows that he is a witness for hearing the noise in the maize crop field, but she has not stated anything against the accused. Therefore the evidence of PW-4 is not helpful to the case of the prosecution.

19. The learned trial Judge has convicted the 1<sup>st</sup> accused on

<https://hcservices.ecourts.gov.in/hcservices/> presumption, surmises and conjunctures by holding the 1<sup>st</sup> accused



guilty on the evidence of sole eye witness PW-3. Any ordinary man would act immediately on seeing murder and report or inform the same either to the police or to the relatives of the deceased. In this case, PW-3 Muthammal after seeing the commission of offence, though she went to Nochikulam and met her husband Mallaiah Naicker did not inform the murder said to have committed by the accused and went to Venkateshapuram. As per version of eye witness PW-3 she revealed the commission of offence only after passing of two days when the I.O. came and interrogated with her. The Prosecution has not explained the delay. The said version of PW-3 is unbelievable one and we could conclude that PW-3 is an arranged witness by the prosecution only to improve their case.

20. The standard of proof in criminal case has to be beyond reasonable doubt. This expression is of higher standard, of course, there cannot be absolute standard stating degree of proof. This could depend upon the facts of a given case. Doubts would be called reasonable if they are free from zest for abstract speculation. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence.

21. In the present case, taking into consideration the inadmissible evidence, the contradictions and the trial not being



in conformity with law do raise doubts which are not only reasonable but are actual and substantial.

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22. Besides the prosecution having failed to bring the guilt of the 1<sup>st</sup> accused, it is a case where undue delay caused in lodging complaint by the investigating agency and the callous attitude of the investigating authority has provided advantage to the accused in law. Link evidence is missing and different versions of the prosecution witnesses including the eye witness have created visible loop-holes in the case of the prosecution.

23. In this case the conviction is based on sole eye witness of PW-3. As discussed above, PW-3 is not at all an eye witness and she could not have seen anything relating to the commission of offence. The prosecution failed to establish the murder committed by the appellant herein from the evidence of sole eye witness PW-3 beyond reasonable doubt. Therefore benefit of doubt is given to the 1<sup>st</sup> accused/appellant and the appellant is acquitted from the charge and the sentence and conviction imposed on him by the Trial court is hereby set aside.

24. In the result, the criminal appeal is allowed and conviction and sentence imposed on the appellant are hereby set aside and the appellant is acquitted and he is directed to be set at liberty forthwith unless his presence is required in connection



with any other case. Fine amount paid if any by the appellant shall be refunded to him.

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Sd/-

Assistant Registrar (RTI)

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Sub Assistant Registrar

To

- 1.The Inspector of Police,  
Uthumalai Police Station, Tirunelveli District.
- 2.The IV Additional District and Sessions Judge,  
Tirunelveli, Tirunelveli District.
- 3.The Judicial Magistrate, Thenkasi.
- 4.The Chief Judicial Magistrate, Tirunelveli,  
Tirunelveli District.
- 5.The Additonal Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.
- 6.The Superintendent, Central Prison, Palayamkottai.

+1 cc to Mr.K.PRABHU, Advocate, Sr.No:68025

vsa/skn

MAS/MPA-JK:18.01.2017: 14P/8 C

**Criminal Appeal (MD) No.342 of 2015**

**10.11.2016**