

**BAIL SLIP**

1, Ravi, aged about 40 years, S/o, Dasa Govinder

2, Subramani, aged about 53 years, S/o Sadaya Govinder

Appellants/ Accused 1&5

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Enlarged on bail vide in this Court in MP.1 of 2015 in Crl.A.89 of 2015, order dated 20.05.2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: **29.11.2016**

Delivered on: **02.12.2016**

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.A[MD].Nos.89 of 2015 and 456 of 2016

Crl.A. (MD) .No.89 of 2015

1.Ravi

2.Subramani

: Appellants/Accused Nos1 and 5

Vs.

State rep. by

The Inspector of Police,

Muisiri Police Station,

Trichy District.

Crime No.37/2013)

: Respondent/complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction dated 04.03.2015, made in S.C.No.109 of 2014, on the file of the learned Principal Sessions Judge, Tiruchy Division, Trichy as against the Appellants.

For Appellants

: Mr.S.Ashok Kumar

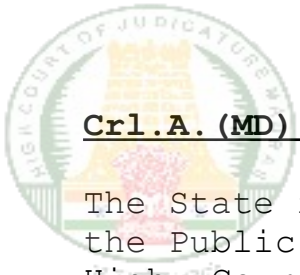
Senior Counsel for

Mr.K.Gandhikumar

For Respondent

: Mr.K.S.Duraipandian,

Additional Public Prosecutor



Crl.A. (MD) .No.456 of 2016

The State rep. By
the Public Prosecutor,
High Court, Madras - 600 104,
Musiri Police Station,
in Crime No.37 of 2013.

: Appellant/ Complainant

Vs.

1.Nagarajan
2.Kandasamy
3.Sivakumar
4.Subramani

: Respondents/
Accused Nos.2 to 5

PRAYER: Appeal filed under Section 378(1) of the Code of Criminal Procedure against the Judgment dated 04.03.2015, made in S.C.No.109 of 2014, on the file of the learned Principal Sessions Judge, Tiruchy Division, Trichy in acquitting A2, A4 and A5 under Section 302 and convict the respondents/Accused Nos.2, 4 and 5 for the offence under Section 302 IPC and the accused No.3 U/s.302 r/w 149 IPC.

For appellant : Mr.K.S.Duraipandian,
Additional Public Prosecutor

For 1st respondent : Mr.S.Ashok Kumar
Senior Counsel for
Mr.Karunanithi

For respondents 2 & 3 : Mr.A.Arivu Chandran

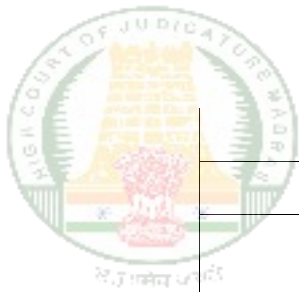
For 4th respondent : Mr.K.Gandhi Kumar

COMMON JUDGMENT

[Judgment of the Court was delivered by **S.NAGAMUTHU, J**]

The appellants in Criminal Appeal (MD).No.89 of 2015 are the accused Nos.1 and 5 in S.C.No.109 of 2014 on the file of the learned Principal Sessions Judge, Tiruchirappalli. There were six other accused, who were arrayed as accused No.2 to 4 and 6 to 8. The accused Nos.2 to 5 are arrayed as the respondents 2 to 5 in Crl.A.(MD).No.495 of 2016. The trial Court framed as many as six charges as detailed below:

Charge	Accused	Penal Provisions
1	Nos.1 to 5	294 (b) IPC
2	Nos.1 to 8	147 IPC



3	Nos.1 to 5	342 IPC
4	Nos.1 to 8	324 IPC
5	Nos.1, 2, 4 & 5	302 IPC
6	Nos.3, 6 to 8	302 r/w 149 IPC

By Judgment dated 04.03.2015, the trial Court convicted the accused Nos.1 to 8, as detailed below:-

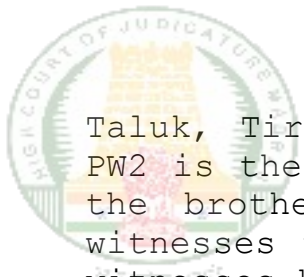
Accused No.	Convicted under Sections	Sentence imposed	Fine amount
A1 to A5	147 IPC		Sentenced to pay a fine of Rs.1,000/- each, in default to undergo simple imprisonment for one month
A1 to A5	342 IPC		Sentenced to pay a fine of Rs.1,000/- each, in default to undergo simple imprisonment for one month
A2, A5, A6 to A8	324 IPC	To undergo rigorous imprisonment for one month.	---
A1	302 IPC	To undergo imprisonment for life.	Rs.1,000/-, in default to undergo rigorous imprisonment for six months

Challenging the said conviction and sentence, the appellants/Accused Nos.1 and 5 are before this Court with CrI.A. (MD).No.89 of 2015. Challenging the acquittal of A2, A4 and A5 under Section 302 IPC and A3 under Section 302 r/w 148 IPC, the State has come up with the Criminal Appeal (MD).No.456 of 2016. That is how both the appeals are before us.

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

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

(a) The deceased in this case was one Mr.Ramanathan. He was a resident of East Street at Chitilarai Kaikatti Village, Musiri



Taluk, Tiruchirapalli District. PW1 is the son of the deceased. PW2 is the wife of the deceased. PW3 is the wife of PW1. PW4 is the brother of PW3. PW5 is the brother of PW2. All these witnesses were also residing in the same village. Thus, all the witnesses belong to the same family.

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(b) The third accused in this case Mr.Kandasamy is the brother of the deceased Ramanathan. The 4th accused is the son of the third accused and the 8th accused is the wife of the third accused. The accused Nos.1 and 2 are brothers. The 6th accused is the wife of the first accused and the 7th accused is the mother of A1 and A2. Thus, all those accused also belong to the same family. They were also residing in the same village.

(c) The father of the deceased and the third accused had five acres of land. Out of the same, they sold 2-1/2 acres to the 4th accused. The remaining extent of 2-1/2 acres was with the father of the deceased and A3. A3 wanted the said land for which the deceased refused. There is allegation of forgery committed by the deceased in respect of the same. Thus, there was a long standing enmity between the two families in respect of the said land dispute.

(d) It is alleged that on 25.01.2013, the accused party prevented PW1 from taking water from the common well, over which there arose a dispute. PW1 made a complaint to the Musiri Police Station at about 6.00 p.m. The accused 1 to 5 appeared before the Police Station. During the enquiry, all the five accused challenged PW1 as to what he could do by making a complaint against them. They further challenged that they would not spare him alive. This is stated to be the immediate motive for the occurrence. It is further alleged that on the same day, they dragged PW1 to the house of the A1 and tied him to a light- post in front of the house. The second accused took a stone lying there and hit him on his head. The 5th accused took another stone and hit him on his leg. PW1 raised alarm. At that time, PWs.2 & 3 were in their house.

(e) On hearing the alarm raised by PW1, all of them rushed to the place of occurrence. On reaching the place of occurrence, when the deceased was passing through the house of A1, A4 and A5 intercepted him and caught him hold and then, A2 took out a stick lying there and attacked him on his head and hip. The deceased fell down. The wife of the deceased and the wife of PW1 rushed to the place of occurrence. The accused 6 to 8 attacked them with sticks. Then, PWs.4 to 7 came there. On seeing them, all the accused ran away with weapons. PW1 and others immediately arranged for 108 Ambulance. But, the deceased within a short time died at the spot. Therefore, PWs.1 to 3 were taken to the Government Hospital at Musiri. They were referred to the Government Hospital at Tiruchirapalli.



(f) While they were in the Government Hospital, Musiri, on receiving intimation from the hospital, PW15, the then Sub Inspector of Police rushed to the Government Hospital at Musiri, recorded the statement of PW1 and on returning to the Police Station at 8.00 p.m. on 25.01.2013 registered a case in Crime No.37 of 2013 under Sections 147, 294(b), 342, 336, 324, 323 and 302 IPC. Ex.P1 is the complaint. Ex.P18 is the FIR. He forwarded both the documents to the Court.

(g) The case was taken up for investigation by PW26. He went to the place of occurrence at 8.45 p.m. prepared an observation mahazar and a rough sketch and recovered bloodstained earth and sample earth from the place of occurrence. He recovered a rope and three broken stones lying at the place of occurrence under a mahazar. He conducted inquest on the body of the deceased between 10.15 p.m. to 12.00 midnight. Then, he forwarded the body for postmortem. PW8 Dr.Senthilkumar, conducted autopsy on the body of the deceased on 26.01.2013. He found the following injuries:

"External examination:

a) Laceration in the left heel measuring 2 x 1 cm.

b) Sub laceration in the scalp (measuring 1 x 2 cm) and 5 x 1 cm)

No other injuries.

Internal examination:

Skull opened. No fracture seen. Brain Hemorrhage in the occipital (occipital) region. Chest - No fracture, lungs, congestion heart chamber - filled with blood abdomen - wall normal."

Ex.P2 is the postmortem certificate. He gave opinion that the deceased would appear to have died of injury to the vital organ.

(h) PW16 examined PWs.1 to 3 and few more witnesses and recorded their statements. On 26.01.2013 at 6.30 p.m., he arrested the accused 1 and 2. While in custody, the first accused gave a voluntary confession in which he disclosed the place where he had hidden a wooden log (Panthakkal). In pursuance of the same, he took the Police and witnesses to the place of hide out and produce the wooden log. PW16 recovered the same under a mahazar. The second accused also gave a voluntary confession. In pursuance of the same, he took the Police and the witnesses to the place of hide out and produced MO.2 - a wooden log of a cot and few stones and on returning to the Police Station, he forwarded the accused to the Court and handed over the material objects also to the Court. On 27.01.2013 at 9.00 a.m. he arrested the accused 7 & 8 and forwarded them to the judicial remand. He examined the collected medical records pertaining to the treatment given to the witnesses and also the postmortem conducted. At his request, the material objects were sent for chemical examination.



The report revealed that there was no bloodstains deducted. On completing the investigation, he laid charge sheet against all the accused.

(i) Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the charges, on the side of the prosecution as many as 16 witnesses were examined, 25 documents and 10 material objects were marked.

(j) Out of the said witnesses, PWs.1 to 5 have spoken about the entire occurrence as eyewitnesses. PWs.6 & 7 have turned hostile and they have not stated anything incriminating. PW8 - Dr.Senilkumar has spoken about the postmortem conducted and his final opinion regarding the cause of the death. PW9 has spoken about the treatment given to PWs.1 & 2. Ex.P3 is the Wound Certificate of PW2, wherein he has noted down the following injury:

"Laceration parietal, occipital region size about 8 cm x 1.5 cm x muscle depth."

Ex.P5 is the wound certificate of PW1, wherein he has noted down the following injuries:

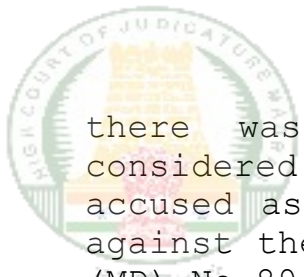
"1)Laceration right occipital parietal region size about 3 cm x 0.5 cm x muscle depth.

2)Punctured wound in the right elbow."

According to him, all these injuries were simple in nature.

(k) PW10, the Head Clerk of the Magistrate has stated that he forwarded the material objects to the forensic lab for chemical examination as directed by the learned Magistrate. PW11, the Village Administrative Officer, has spoken about the arrest of the accused 1 and 2 and the recovery of the material objects on the respective disclosure statements. PW12 has stated that he took photographs at the place of occurrence, as directed by the investigating officer. PW13, a Head Constable, has stated that he handed over the FIR to the learned Magistrate at 12.01 a.m. on 26.01.2013. According to him, the distance between the Police Station and the house of the learned Magistrate is around half a kilometer. PW14, yet another Constable, has stated that he took the dead body and handed over the same to the Doctor for postmortem. PW15 has spoken about the registration of the case. PW16 has spoken about the investigation done and the final report filed.

(l) 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 that the deceased parties as aggressors came to the house of the deceased and indulged in violence. In the said violence, the deceased sustained injuries. According to them, the assailants were not known, because it was dark at the time of occurrence and



there was no light. They have pleaded ignorance. Having considered all the above, the trial Court convicted all the accused as detailed in the first paragraph of this judgment. As against the same, the accused Nos.1 and 5 have come up with CrI.A. (MD).No.89 of 2015 and the defacto complainant has come up with CrI.A. (MD).No.456 of 2016 as against the acquittal of the accused Nos.2 to 5 in certain charges.

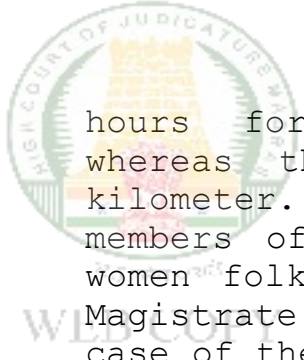
3. We have heard the learned senior counsel appearing for the appellants/A1 and A5 and the learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully.

4.The learned senior counsel Mr.Ashok Kumar, would submit that PWs.1 to 5 belong to the same family and they were all inimical towards the accused. Therefore, according to him, their evidences should be closely scrutinized and they are not fully believable and for want of corroboration, the case of the prosecution should be rejected. He would further submit that the very fact that the entire family members, including women folk have been arrayed as accused would go to show that every attempt has been made to rope in as many number of persons as accused in this case, according to their whims and fancies of the prosecution party. He would further submit that the FIR in this case would not have come into being at the time as projected by the prosecution. He would further state that Ex.P1 is the result of deliberation and therefore, the entire case of the prosecution should be doubted and rejected.

5. The learned Additional Public Prosecutor would submit that there could be no doubt regarding Ex.P1. He would further submit that there can be no reason to reject the eyewitness account of at-least the injured witnesses namely PWs.1 and 2. The learned Additional Public Prosecutor would further submit that the trial Court was not right in acquitting the respondents in Crime Appeal No.456 of 2016/A2 to A5 without enforcing constructive liability on them as required under Section 149 of the Indian Penal Code. He would pray for dismissal of the criminal appeal filed by the A1 and A5 and for allowing the criminal appeal filed by the State.

6. We have considered the above submissions.

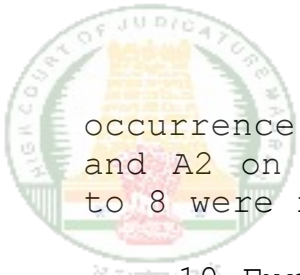
7. The alleged occurrence even according to the prosecution, had taken place at 6.00 p.m. According to PW9, PW1 and PW2 were brought to Musiri Hospital at 7.30 p.m. According to PW14, the FIR was registered by him at 8.00 p.m. The distance between the Police Station and the house of the learned Magistrate is less than one kilometer as spoken by PW13. But, the FIR was handed over to the learned Magistrate only at 12.01 a.m. on 26.01.2013. PW13 has got no explanation to offer as to why he took more than 4



hours for the FIR to reach the hands of the learned Magistrate, whereas the distance covered by him was less than half a kilometer. In the light of the fact that the entire family members of the accused have been roped in as accused including women folk, the delay in FIR reaching the hands of the learned Magistrate assumes importance. This creates initial doubt in the case of the prosecution.

8. Now let us go into the evidences of PWs.1 to 5, who claimed to be the eyewitnesses. It is the case of the prosecution that PW1 was taken to the house of A1 and tied to a light-post in front of the house of A1 and attacked by the accused 1 to 5. But, according to the medical evidence, there were no such marks found on the body of PW1. There were also no abrasion found on the body indicating that he was tied to the post. Further, at the earliest point of time, when he was taken to the hospital, he did not tell the doctor that he was tied to the light-post and then, he was attacked. He has simply stated that he was attacked by known persons. It is not explained to the Court as to why at the earliest point of time, he did not say that he was tied to the post. The defence of the accused is that PW1, along with the deceased and other parties, came to the house of A1 in a menacing mood with a view to attack the family members of the accused. Though there is no evidence to prove the defence, in this regard, going by the natural human conduct and also having regard to the fact that the alleged occurrence had taken place just in front of the house of the first accused, we have to hold that there is every probability that the deceased party would have gone to the house of the accused with a view to attack them and that is the reason why, the occurrence had taken place just in front of the house of the first accused.

9. Assuming that what is stated by PWs.1 to 5 is true, it is their positive evidence that PW1 alone was taken first to the house of A1 and where he was tied to the post. At the time of this occurrence, the deceased and PWs.2 to 5 were not at all present in the place of occurrence. Similarly, when PW1 was dragged by A1 to A5, PWs.2 to 5 and the deceased were not present. Even according to the admitted case of the prosecution, they were in their respective houses. Only on hearing the alarm raised by PW1, the deceased rushed to the place of occurrence. Even before he could reach the place of occurrence, he was attacked by the first accused by removing stick viz., Panthakkal on his head. The other accused did not cause any harm to the deceased. They were not even present at the place where the deceased was attacked by A1. It is the evidence of these witnesses that only thereafter, PW2 and PW3 rushed to the place of occurrence and PW2 was attacked by A6 to A8. It was only thereafter the other witnesses came to the place of occurrence. From the narration of these facts by these witnesses, it is crystal clear that initially there was no unlawful assembly at all. The accused 6 to 8 came to the place of



occurrence only after the attack by A1 on the head of the deceased and A2 on the hip and head of the deceased. Thus, the accused 6 to 8 were not at all the members of the unlawful assembly.

10. Further, though it is stated that A6 to A8 attacked PWs. 2 and 3, the medical records pertaining to PW3 have not been produced and only the wound certificate and accident register of PW2 have been produced. There was only one small lacerated injury measuring 8 cm x 1.5 cm on the head of PW2. This single injury would not have been caused by three persons. Though A2 to A4 and A6 to A8 have not filed any appeal, we want to go into the correctness of conviction of all the accused. In respect of the appeal filed challenging the acquittal of A2 to A5 on the other charges, we hold that the trial Court was right in acquitting them from the other charges.

11. Now turning to the accused 1 to 5, as we have already pointed out, the object of the assembly of A1 to A5 was not to cause any harm to the deceased. The deceased was not at all present at the place of occurrence. They only attacked PW1. Some time thereafter, the deceased came to the place of occurrence. Even before he could reach the place of occurrence, A1 rushed towards him and gave a single blow by removing a wooden log viz., Panthakkal. Thus, the act of the first accused in attacking the deceased was not in prosecution of any common object. Therefore, he is liable to be punished for his individual overtact. Similarly the accused 2 to 5 are liable to be punished for their individual overtacts. It cannot be said that there was no common object at all and there was no unlawful assembly. We find that there was unlawful assembly of A1 to A5 and the object of the assembly was to wrongly confine PW1. Therefore, A1 to A5 are to be punished for the offences under Sections 147 and 342 IPC. So far as causing of death of the deceased is concerned, since it was not in prosecution of the common object of the assembly, the first accused alone is liable for punishment for his individual overtact.

12. Now turning to the case against A2, it is the case that he attacked the deceased with a wooden log viz., Panthakkal, once on his head. The Doctor who conducted autopsy had found that there were lacerated injuries measuring 2 x 1 cm, 1 x 2 cm and 5 x 1 cm. The death, according to PW8, was due to the injuries on the vital organs viz., hemorrhage. But, he has not stated as to whether it is on the sub dural hemorrhage or extra dural hemorrhage. From the fact that the first accused was not already armed with any weapon and he attacked the deceased not in prosecution of the common object, the fact that more than once he did not attack the deceased would all go to show that he would not have intended to cause the death of the deceased. Similarly, the injury found on the deceased cannot be stated to be sufficient in the ordinary course of nature to cause the death. At the same time, it can be



certainly said that the accused had knowledge that his act of attacking on the head and causing a lacerated injury is likely to cause the death. Thus, his act would squarely fall within the third limb of Section 299 IPC and therefore he is liable to be punished for the offence under Section 304(ii) IPC. We should also state that so much of knowledge as required under the 4th limb of Section 300 IPC that the act of the accused is imminently dangerous to cause the death of the deceased cannot be attributed to him. Thus, the culpable homicide caused by A1 would not amount to murder.

13. In view of the foregoing discussion, we hold that A1 is liable to be punished for the offence under Sections 147, 342 and 304 (ii) IPC. A2 to A5 are liable to be punished for the offence under Sections 147, 342 IPC and A2, A5 and A6 to A8 are liable to be punished for the offence under Section 323 IPC, instead of under Section 324 IPC.

14. Now turning to the quantum of punishment, so far as the punishment for the offence under Section 147 and 342 are concerned, we confirm the same as against the accused 1 to 5. For the offence under Section 304(ii) IPC, this Court is of the view that sentencing the first accused to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks would meet the ends of justice. So far as A2 and A5 to A8 are concerned, they are liable to be convicted under Section 323 IPC and sentenced to undergo rigorous imprisonment for one month each. The acquittal of the accused from the other charges by the trial Court are confirmed.

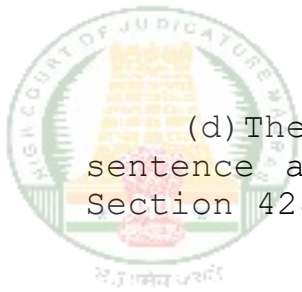
15. In the result, the Criminal Appal (MD).No.89 of 2016 is dismissed and the acquittal of the respondents / accused Nos.2 to 5 from the others charges by the trial Court is confirmed.

16. In the result, the Criminal Appeal (MD).No.89 of 2015 is partly allowed in the following terms:

(a) The conviction and sentence imposed on A1 for the offence under Sections 147 and 342 IPC is confirmed. However the conviction imposed on A1 for the offence under Section 302 IPC is set aside and instead, he is convicted under Section 304(ii) IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks.

(b) The conviction and sentence imposed on the appellants/Accused Nos.2 to 5 for the offence under Sections 147 and 342 IPC are confirmed.

(c) The conviction of A2, A5 to A8 for the offence under Section 302 IPC is set aside and instead, they are convicted under Section 323 IPC and sentenced to undergo rigorous imprisonment for one month.



(d) The sentences are to run concurrently and the period of sentence already undergone by them shall be given set off under Section 428 Cr.P.C.

Sd/-

Assistant Registrar(T&P)

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/True Copy/

Sub Assistant Registrar

gcg

To

- 1.The Principal Sessions Judge,
Trichy.
- 2.The Inspector of Police,
Muisiri Police Station,
Trichy District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.
- 5 Do Through The Judicial Magistrate,
Musiri
- 6 The Chief Judicial Magistrate,
Trichy

+1cc to Mr.A.Arivuchandran, Advocate Sr.No. 79077

+1cc to Mr.K.GanthiKumar Advocate Sr.No. 79264

JAM/12.01.2017/ME/ 11 p-9c

Pre-delivery Common Judgment made in
CRL.A[MD].Nos.89 of 2015 and 456 of 2016
Delivered on: 02.12.2016