

Bail Slip: The Appellant/Accused-1 namely Mr.S.Subbaiah, S/o.V.Shanmugham, was directed to be released on bail as per the order of this court dated 13/3/2017 in CrI.M.P.No.3183/17 in CrI.A.No.112/2017 on the file of this court.

Bail Slip: The Appellant/Accused namely Mr.Varatharaj S/o.Chelliah was directed to be released on bail as per the order of this court dated 13.3.2017 in CrI.M.P.No.3184/2017 in CrI.A.No.113/2017 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 21.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

CrI.A.Nos.112 and 113 of 2017

S.Subbiah ... Appellant in

CrI.A.No.112 of 2017

Varatharaj Appellant in

CrI.A.No.113 of 2017

vs.

State, by Paul Singh,
Sub-Divisional Magistrate and
Personal Assistant (Urban land Tax)
to Collector,
Chennai.

... Respondent in
both the Appeals

Criminal appeals preferred under Section 374(2) Cr.P.C., against the judgement dated 21.02.2017, passed by the XIX Additional Sessions Judge, Chennai, in S.C.No.251 of 2009.

For Appellants : Mr.A.Raghunathan, Sr.counsel for
M/s.P.Rameshkumar

For Respondent : Mr.P.Govindarajan, Addl.P.P.

COMMON JUDGMENT

(Judgement of the Court was delivered by S.Nagamuthu,J.)

The appellants are the accused 1 and 3 in Sessions Case No.251 of 2009, on the file of the 19th Additional Sessions Judge, Chennai. The second accused was one Mr.Thirugnanasambanthan. They stood charged for offences under Sections 342, 302 read with Section 34 and Section 201 read with Section 34 IPC. During the pendency of the trial, the second accused Mr.Thirugnanasambanthan died and thus, the charges against him abated. The trial Court, by judgement, dated 21.2.2017, convicted A1 and A3 under all the charges and sentenced them as detailed below.

Sl.No	Rank of accused	Conviction	sentence
1.	A1 & A3	U/s.342 IPC	Simple imprisonment for one year.
2.	A1 & A3	U/s.302 read with Section 34 IPC	Imprisonment for life with a fine of Rs.1,00,000/-, in default, simple imprisonment for six months.
3	A1 & A3	U/s.201 read with Section 34 IPC	Simple Imprisonment for seven years with a fine of Rs.50,000/-, in default, simple imprisonment for six months.

Challenging the said conviction and sentence, the appellants are before this Court with these appeals.

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

(a) The first accused Mr.S.Subbaiah was the then Sub Inspector of Police working at B4 Basin Bridge Police Station, within the Chennai City limits. The second accused was a Head Constable and the third accused was a Grade-II Police Constable in the same police station. It is alleged that in connection with a case, these three accused had taken one Mr.Prakasam into illegal custody and kept him in the police station illegally between 15.12.1991 and 17.12.1991. It is further alleged that while the deceased was in the said Police Station under illegal custody, all the accused attacked him with hands and legs, which resulted in the death of the deceased. Thereafter, according to the case of the prosecution, with a view to cause disappearance of the evidence, the first accused made a false complaint to the

police as though the deceased, while he was about to be apprehended, tried to escape, fell down, sustained injuries and then died in the hospital, where he was taken by the police for treatment. Thus, according to the prosecution, these accused have committed offence under Section 201 read with Section 302 IPC also.

(b) After the case was registered on the report of the first accused, since the deceased had died while in police custody, the case was taken up for enquiry under Section 176 Cr.P.C. by the then Executive Magistrate/Revenue Divisional Officer. He conducted inquest on the body of the deceased and forwarded the same for postmortem. Dr. Amrit Patnaik conducted autopsy on the body of the deceased at 9.45 a.m. on 19.12.1991. He found the following injuries.

"1) A recently healed incised linear sear 2 x 0.3 cms on the lower part of front of left chest 2 cms to the left of midline.

2) A vertical interrupted 4 x 0.3-0.2 cms on the medial aspect; 0.5 x 0.5 cms on the lateral aspect; 0.3 x 0.3 cms on the head of 3rd metacarpal bone; 2 x 1 cms on the dorsal web between 1st and 2nd fingers of the dorsum of right hand.

3) Multiple hof varying sizes between 0.5-0.3 x 0.3 - 0.1 cms on the lateral surface of right elbow.

4) A vertical 3 x 0.5-0.2 cms on the lateral aspect of back of right forearm 2 cms below the elbow line.

5) 1x1 cm on the back of right forearm 6 cms below the elbow line in its lateral part surrounded by multiple punctate abrasions.

6) A transverse oblique 2 x 0.1 cms on the lateral border of back of middle of right forearm.

7) 0.5 x 0.5 cms - 10 cms above the wrist line over the back of right forearm.

8) An oblique linear 6 x 2 - 1 cm on the middle of postere lateral aspect of right arm regularly interrupted normal skin at two places.

9) An irregularly interrupted 5 x 2-1 cm on the postere lateral aspect of right arm 1 cm above to the previous injury.

10) An oblique 5 x 2 - 1 cm on the posterior aspect of upper part of right arm.

11) Two in numbers upper on 4 x 1.5-1 cm and the lower one 2.5x1.5-1 cm placed one below the other 2 cms apart of the intact skin surrounded by multiple punctate

abrasions just below the exterior aspect of the top of right shoulder.

12) 0.5 x 0.5 -2 cms medial to left ear lobe.

13) 5 x 2-1.5 cms on the top of left shoulder.

14) 2x1 cm in size 2 cms medial to the previous injury.

15) 6x5-5 cms on the back of upper part of left shoulder.

16) Oblique 9 x 3-2.5 cms on the outer and back of upper part of left arm.

17) 8x0.5 cms oblique linear on the outer aspect of middle of left arm.

18) An irregular 7 x 3-2.5 cms on the back of middle of left arm."

He issued postmortem certificate, reserving his final opinion pending viscera report. But no final opinion was obtained from him. Finally, the Revenue Divisional Officer concluded that the deceased was attacked by these accused, which resulted in his death. On a report submitted by him to the Government, the Government considered and directed him to file a complaint before the Court. Accordingly, the Revenue Divisional Officer laid a complaint before the Court, which ultimately culminated in a trial of the case in S.C.No.251 of 2009.

(c) The trial Court framed charges as detailed in the first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution as many as six witnesses have been examined and six documents were exhibited. No materials whatsoever was marked. P.W.1 is the wife of the deceased. She has stated that in the year 1991, a Police Constable, by name James took the deceased to Puliyanthoppu Police Station and she went to the said police station in search of her husband. She found the accused 1 and 3 herein and few more police men, by name, James, Ayyanar and Natarajan attacked the deceased. Then, the deceased was taken to the hospital from Puliyanthoppu Police Station, where he died. P.W.2 is the mother-in-law of the deceased. She has stated that she came to know about the death of the deceased later. P.W.3 was the resident of Vepery. He has stated that P.W.1 and few more women came to him and informed him that the deceased was taken to the police station. Immediately he spoke over phone to someone in the police station, but he was informed that the deceased was not taken to Basin Bridge Police Station. Thereafter, he came to know that the deceased died in the hospital. P.W.4 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.5 was the Inspector of Police at Basin Bridge Police Station, during the relevant time. According to him, on a report submitted by A1, he registered a case in Crime No.445 of 1991, under Section 175 Cr.P.C. and then

forwarded the same to the Revenue Divisional Officer for enquiry. P.W.6, a retired Personal Assistant to the District Collector, Chennai, has stated that during the year 1991, one Mr.Ramakrishnan was the Revenue Divisional Officer. According to him Mr.Ramakrishnan held enquiry into the case of death in this case and submitted a report to the Government. According to him, Mr.Ramakrishnan was no more. Based on his report, he has given evidence about the investigation done.

3. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any one nor mark any document on their side. Having considered all the above, the trial Court has convicted these two accused. That is how they are before this Court with these appeals.

4. We have heard the learned counsel Mr.A.Raghunathan, appearing for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

5. In this case, the prosecution makes reliance on the evidence of P.W.1, the wife of the deceased, who has stated that she saw the deceased being beaten by these two accused and few policemen in the police station. A close scrutiny of her evidence would go to show that according to her, the deceased was attacked at Puliyanthoppu Police Station, but it is not at all the case of the prosecution. According to the case of the prosecution, the deceased was taken to Basinbridge Police Station, where he was attacked by these accused and other policemen. Thus, the evidence of P.W.1 is quite contrary to the case of the prosecution itself. Therefore, the evidence of P.W.1 would not in any manner prove the charges.

6. So far as P.W.2 is concerned, she has not stated anything incriminating. Similarly P.W.3 also has not stated anything incriminating. He has stated that he enquired at the Basinbridge Police Station and he was informed that the deceased was not taken to the said Police station at all. P.W.4 has turned hostile. P.W.5 has only spoken about the registration of the case.

7. Thus, absolutely there is no evidence against these accused that they either attacked the deceased at Basinbridge Police Station or made any false complaint. Though the post-mortem certificate has been marked in the evidence, it does not carry the final opinion regarding the cause of death. The Doctor, who gave final opinion regarding the cause of death, after conduct of post-mortem, has not been examined, because he died even before the trial commenced. No second opinion also has been obtained by the prosecution to prove the cause of death. Thus, the cause of the death also has not been

proved

8. It is the case of the accused that the deceased, while he was about to be apprehended, tried to escape, fell down, hit against a rough space, sustained injury and then, he died in the hospital. This defence of the accused is probable and the same could not be ruled out by any evidence. In such view of the matter, we find that absolutely there is no evidence against the accused. However, the trial Court has convicted these accused out of mere surmises. The trial Court has referred to the guidelines issued by the Supreme Court in D.K.Basu vs. State of W.B. (1997 SCC (Cri) 92), which has got nothing to do with the present case. It is not at all the case of the accused that they arrested the deceased. It is the case of the accused that even before the deceased could be apprehended, he tried to escape, fell down and sustained injury. At any rate, the judgement of the trial Court is based on mere surmises and therefore, the same cannot be sustained. We hold that absolutely there is no evidence against the accused to prove the case and therefore, the appellants are entitled for acquittal.

9. In the result, the appeals are allowed. The conviction and sentence imposed on the appellants, by the trial Court in Sessions Case No.251 of 2009, are set aside. The appellants/accused are acquitted. Bail bonds, if any, executed by them shall stand cancelled. Fine amounts, if any, paid by them are ordered to be refunded forthwith.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

msk

To

1.The Chief Metropolitan Magistrate,
Allikulam Road,Chennai,Egmore.

2.Sub-Divisional Magistrate and
Personal Assistant(Urban land Tax)
to Collector,
Chennai.

3.The XIX Additional Sessions Judge, Chennai.

4.The Principal Sessions Judge, Chennai.

5.The Public Prosecutor,
High Court, Madras

6.The Superintendent,Central Prison,
Puzhal,Chennai.

7.The District Collector,Chennai.

8.The Director General of Police,Mylapore,
Chennai-4.

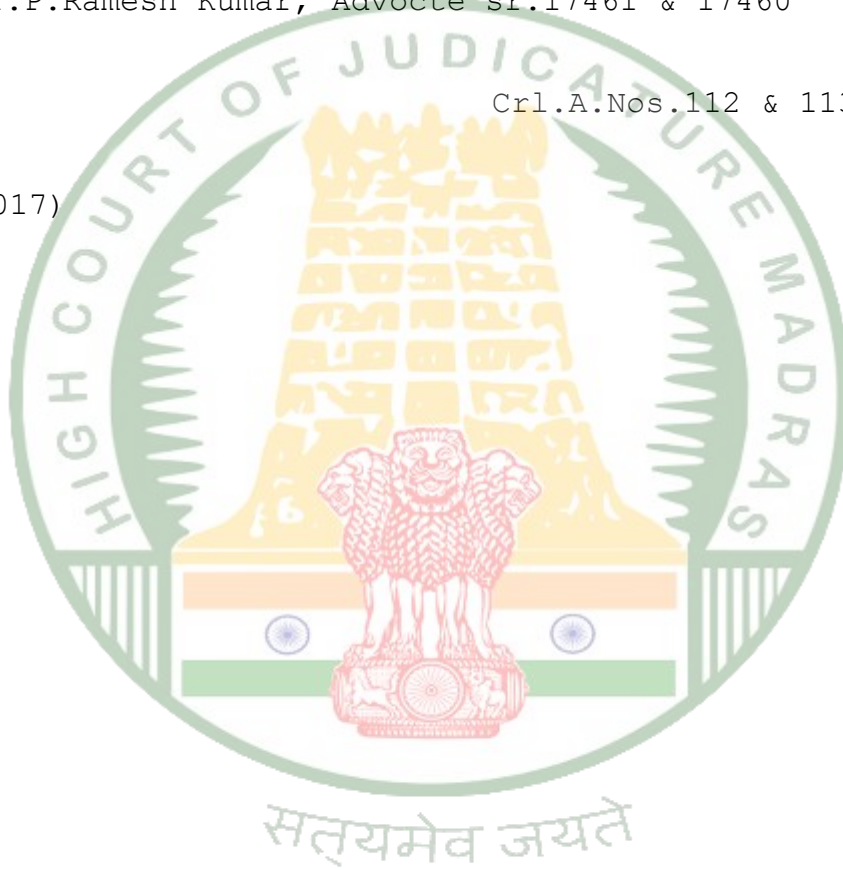
Copy to:

The Section Officer, VR Section, High Court, Madras.

+2cc to Mr.P.Ramesh Kumar, Advocte sr.17461 & 17460

CrI.A.Nos.112 & 113 of 2017

br(co)
ss(21/4/2017)



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