

Bail Slip

The Appellants/Accused 2 and 3 namely Jayaraman, S/o. Kannayiram and Rajagopal S/o. Vellayutham were directed to be released on bail as per order of this Court dated 14.2.2017 and made in CrI.MP.668/17 in CrI.A. 27/17 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 27.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MRS.JUSTICE ANITA SUMANTH

CrI.A.No.27 of 2017
and
CrI.M.P.No.293 of 2017

1.Jayaraman
2.Rajagopal
3.Thirupathy
4.Dhanalakshmi

..Appellants/Accused 2,3,4&6

vs.

State, rep.by
The Inspector of Police,
Kandli Police Station
Crime No.186 of 2008

..Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 22.12.2016, passed by the III Additional District and Sessions Judge, Tirupattur, Vellore District, in Sessions Case No.270/08.

For Appellants : Mr.V.Karthic, Sr.counsel for
M/s.K.V.Law Firm

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGMENT

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

The appellants are the accused 2, 3, 4 and 6 in Sessions Case No.270 of 2008, on the file of the III Additional District and Sessions Judge, Tirupattur, Vellore District. There were other accused, who were arrayed as accused No.1 (Arjunan), accused No.5 (Mrs.Kuppammal) and accused No.7 (Mrs.Deiwanai). The trial Court framed as many as seven charges against the accused as detailed below:

Sl. No.	Charges (Section of law)	accused
1.	U/ss.148, 302, 323 r/w.149	A2
2.	U/ss.324 read with Sec.149 IPC	A2
3.	U/ss.148, 323, 324 read with 149 IPC	A3
4.	U/s.148, 302 read with Sec.149 IPC	A4
5.	U/ss.323 read with Section 149, 324 (2 counts), 149 IPC	A4
6.	U/s.148, 302, 323, 324 read with Sec.149 IPC	A5
7.	U/s.148, 302 read with Sec.302, 323, read with Sec.149, 324 read with Sec.149 IPC	A6

The accused 1, 5 and 7 died and therefore, charges against them stood abated. The appellants alone faced the trial. By judgement dated 22.12.2016, the trial Court convicted all the appellants and accordingly sentenced them for various offences as detailed below:

Sl.No.	Rank of accused	Conviction	sentence
1.	A2	U/s.302 IPC	Imprisonment for life with a fine of Rs.5000/-, in default, simple imprisonment for three months.
2.	A3	U/s.302 IPC U/s.323 IPC	Imprisonment for life with a fine of Rs.5000/-, in default, simple imprisonment for three months. Imprisonment for three months with fine of Rs.500/- each, in default, imprisonment for one month.

Sl.No.	Rank of accused	Conviction	sentence
3.	A4	U/s.324(2 counts) IPC	Imprisonment for one year each count with fine of Rs.1000/- (each count) (total Rs.2000/-), in default, simple imprisonment for six months (each count).
4.	A6	U/s.323 IPC U/s.324 IP	Imprisonment for three years with fine of Rs.500, in default, simple imprisonment for one months Imprisonment for one year with fine of Rs.1000/-, in default, simple imprisonment for six months.

Challenging the said conviction and sentences, the appellants are before this Court with this appeal.

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

(a) The deceased in this case was one Mr.Gandhi. P.W.1 is his sister-in-law and P.W.10 is the father of P.W.1. All these accused were close relatives. There was a long standing dispute over irrigation right for their respective lands, between the third accused and P.W.10. This is stated to be the motive for the occurrence.

(b) It is further alleged that on 18.3.2008, at around 4.30 p.m., the accused Nos.3 and 4 had cut and removed a coconut tree belonging to P.W.10. This resulted in a quarrel. It is alleged that in that occurrence, accused 3 to 5 had attacked P.W.4, who is the brother of P.W.1. This is stated to be the immediate motive for the occurrence.

(c) On 19.3.2008, at about 8.00 a.m., all these accused were already in the said disputed land, engaged in some agricultural work. It is alleged that the deceased took P.Ws.1 to 5 and 10 to the said land. It is the case that all of them had gone there only to question the accused 3, 4 and 5 as to why they had attacked P.W.4, on the previous day. It is

the further case that on reaching the said place, the deceased and others questioned. Immediately, the sixth and seventh accused attacked the deceased with hands. The accused 1 to 4 rushed to their respective houses and came back with weapons like knife Veechu Aruval and stones. They indiscriminately attacked the deceased with the respective weapons; more specifically, accused 2 and 3 attacked the deceased and the others helped them. Accused 3, 5, 6 and 7 attacked Mrs.Suguna-P.W.1, with wooden logs. The accused 4 and 5 attacked P.W.10 with 'Vettu Kathi'; the fourth accused attacked P.W.2 with 'Vettu Kathi'; the sixth accused attacked P.W.3 with 'Vettu Kathi' and caused injuries. All the injured raised alarm. The accused ran away from the scene of occurrence with their respective weapons.

(d) Then all the injured were taken to the hospital, where, inspite of treatment, the deceased died. The others were treated and later on they were discharged. In respect of the said occurrence, on a complaint made by P.W.1, a case was registered in Crime No.186 of 2008 under Sections 147,148, 307, 324 and 323 IPC., at 10.30 a.m. Ex.P1 is the complaint and Ex.P20 is the FIR.

(e) P.W.16 took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch and also recovered the blood stained earth and sample earth from the place of occurrence. He examined few witnesses. On returning to the hospital, he examined the injured witnesses. After conducting inquest, he forwarded the body for post-mortem. P.W.12 conducted autopsy on the body of the deceased, on 20.03.2008 at 2.30 p.m. He found the following injuries.

"Lacerations:

- 1) 14 x 8 cm x bone deep involving right forearm horizontally with fracture of right radius and ulna.
- 2) 10 x 4 cm x bone deep over the middle of the right forearm with muscles and bones exposed.
- 3) 7 x 4 cm x bone deep, 8 x 7 cm x bone deep cut lacerations over the medial aspect of right forearm with muscles, vessels cut and exposed.
- 4) 10 x 3 cm over the dorsal aspect of right hand.
- 5) 5 x 1 cm over the right thigh and 3 x 1 cm over the medial aspect of right leg.
- 6) 5 x 2 cm over the medial aspect of left leg, 4 x 2 cm over the lateral aspect of left foot.

7) 1 x 1 x 2 cm over the left shoulder and 3 x 2 x 5 cm over the left shoulder joint.

8) 16 x 10 cm x muscle deep cut lacerations involving the left elbow with muscles and vessels cut and exposed.

9) 5 x 6 cm over the medial aspect of left wrist.

10) 4 x 3 cm crush laceration of left thumb with fracture of left 1st phalanx.

11) 4 x 1 cm cut laceration over the left side angle of mouth.

12) Multiple (11 nos), sutured lacerations, of varying sizes found over the forehead and the scalp region."

He opined that the death of the deceased was due to shock and hemorrhage and due to multiple injuries found on the body of the deceased. He further opined that the said injuries may be caused by a weapons like 'knife' and 'Veechu Aruval'.

(f) On 20.03.2008, at 1.00 p.m., P.W.16 arrested the accused 1, 2 and 6. On such arrest, the accused 1 and 2 made voluntary confessions. Out of which, the 'Veechu Aruvals' produced, respectively, were recovered. Then, he forwarded the accused for judicial remand. On the same day at 4.45 p.m. he arrested the accused 3, 4 and 5 and forwarded them to the Court. While in custody, the third accused made a voluntary confession, in which, he disclosed the place where he had hidden the 'Vettu Kathi'. In pursuance of the same, he took the police and the witnesses to the place of hide-out and produced the 'Vettu Kathi'. P.W.16 recovered the same under a mahazar. Then, he forwarded all the accused for judicial remand. At his request, the material objects were sent for chemical examination, which revealed that there were human blood stains on all the material objects. On completing the investigation, he laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed charges against the accused, as already elaborated. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined, 31 documents were marked, besides 4 material objects. Out of the said witnesses, P.Ws.1 to 3 and 10 are injured eye witnesses to the occurrence. They have vividly spoken about the injuries sustained by them as well as the injuries caused on the deceased. P.W.1 has spoken about the complaint made also. P.W.4, the son of P.W.10, has spoken about the motive. P.W.5 is not an injured witness. But he has spoken about the occurrence. P.W.6 has spoken about the preparation of observation mahazar and a rough sketch and the recovery of material objects at the place of occurrence. P.W.7 has stated that he heard about the occurrence. P.W.8

has stated that he took the deceased to the hospital for treatment. P.W.9, the Village Administrative Officer, has spoken about the arrest of some of the accused and the consequential recoveries made, as already dealt with. P.W.10 is an injured eyewitness. He has vividly spoken about the entire occurrence. P.W.11 has spoken about the treatment given to the deceased as well as the injured witnesses. According to him, on 19.3.2008, at 8.40 a.m., the deceased was brought to the Government Hospital at Thirupattur. At that time, he was unconscious. The doctor was told by the attender that the deceased was attacked by four males and two females. He found the following injuries on the deceased.

- "All wounds clear cut wounds incised
- (1) Fracture (R) forearm
 - (a) 12 x 4 x 4 cm
 - (b) 8 x 8 x 7 cm - both bones cut and hand dangling
 - (c) 4 x 3 x 3 cms
 - (d) Right hand 3 x 1 x 1 cms
 - (2) Left Forearm Flop and skin 'U' shape 15x10cmx3 cms
 - (3) Left Thumb finger tip missing and bleeding
 - (4) (L) Wrist 8 x 4 x 3 cms
 - (5) (R) leg 3 x 2x1 cms incised wound
 - (6) (L) Foot 10 x 3 x cms incised wound
 - (7) (L) Leg 5 x 3 x 2 cms
 - (8) (L) Foot cut wound 3 x 2 x 1 cms
 - (9) (R) Forearm 2 x 1 x 1 cms
 - (10) Lacerate occiput 10 x 3 x 2 cms"

Ex.P9 is the Accident Register. According to the Doctor, since the condition of the deceased was bad, he referred him to the C.M.C. Hospital at Vellore. He has further stated that on the same day, at 11.15 a.m. he examined P.W.10 and found the following injuries.

- "(1) Incised wound (R) middle finger 3 x 1 x 1 cms
(2) Lacerated clear incised wound
(R) middle finger 1 x 1/2 x 1 cms."

Ex.P10 is the Accident Register. He has further opined that the said injuries could have been caused by a weapon like M.O.1. On the same day, he then examined P.W.2 Mr.Arumugam and found the following injuries.

- "(1) Contusion (R) Shoulder 3 x 3 cms.
(2) Contusion (L) Shoulder 3 x 3 cms"

Ex.P11 is the Accident Register. He opined that the said injuries could have been caused by a wooden log. On the same day, according to him, he examined P.W.3 and found the following injuries.

- "(1) Laceration (L) occipito Parietal region 3 x 1 x 1 cms .

(2) Bodyache."

Ex.P12 is the Accident Register. He opined that the said injuries could have been caused by attack with iron pipe. On the same day, he examined P.W.1. He found the following injuries.

- "(1) Clear incised wound (L) Hand 5 x 1 x 1/2 cms
- (2) Contusion (R) knee 10 x 3 cms."

He opined that the said injuries could have been caused by a weapon like knife. Ex.P13 is the Accident Register. According to the very same witness, on the same day, at the same time, the first accused was brought to him for treatment. The first accused told that he was attacked by six known persons by knives and stones. He found the following injuries on him.

- "(1) Laceration Parietal occiput region 7 x 1 x 1 cms with contusion.
- (2) Laceration (L) Forehead 2 x 1 x 1 cms
- (3) Contusion (L) Forehead 3 x 2 x 1/2 cms
- (4) Laceration (L) Cheek 2 x 1 x 1/2 cms
- (5) (L) Shoulder abrasion 10 x 10 cms
- (6) Contusion (R) upper part arm 10 x 7 cms."

Ex.P14 is the Accident Register. He opined that the said injuries could have been caused by a weapon like knife and stones. He has further stated that at the same time, he examined the third accused and found the following injuries.

- "(1) Clear incised wound 13x2x1 cms
- (2) Contusion (R) shoulder 4 x 3 cms
- (3) Bodyache.

Ex.P15 is the Accident Register. He opined that the said injuries could have been caused by a wooden log. A3 told the Doctor that he was attacked by three male persons with knives and wooden logs. According to the said witness, then he examined the fourth accused and found the following injuries.

- "(1) Contusion with laceration (R) forearm 3 x 4 cms.
- (2) Contusion (R) Thumb 3 x 2 cms."

A4 told the Doctor that three male persons attacked him with wooden logs and knives. Ex.P16 is the Accident Register. He opined that the said injuries could have been caused by a knife and wooden logs. He has further stated that on the same day, he examined the sixth accused and found the following injuries:

- "Contusion (R) skull 10 x 10 cms. with lacerated skull 5 x 1 x 1 cms."

She told that she was attacked by two male persons with wooden logs. Ex.P.17 is the Accident Register. He gave opinion that

the said injuries could have been caused by a wooden log. He has further stated that on the same day, he examined the 7th accused. She told that she was attacked by two male persons and he found the following injuries.

"(1) Lacerated skull 1 x 1/2 x 1/2 cms

(2) (R) Hand swelling with pain.

(3) Bodyache."

Ex.P18 is the Accident Register. He further opined that the said injuries could have been caused by a wooden log and knife. P.W.12 Dr.Balachandran has stated about the post-mortem conducted and the final opinion regarding the cause of death. P.W.13 has spoken about the registration of the case. According to him, on receiving intimation from the hospital, he rushed to the Tirupattur Government Hospital, recorded the statement of P.W.1 and rushed to the police station at 10.30 a.m. He registered the present case in Crime No.186 of 2008, under Sections 147,148, 307, 324 and 323 IPC., at 10.30 a.m. P.W.14 has spoken about the chemical examination conducted on the visceral organs of the deceased. According to him, there was no poison or alcohol found in the same. P.W.15 has spoken about the chemical examination conducted on the material objects. P.W.16 has spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, they denied the same as false. However, they did not choose to examine any witness nor mark any document. Their defence was a total denial. Having considered all the above, the trial Court convicted these appellants as detailed in the first paragraph of this judgement. That is how they are before this Court.

5. We have heard the learned Senior counsel Mr.Karthic, for the appellants and the learned Additional Public Prosecutor for the State and we have also perused the records carefully.

6. At the outset, among other things, the learned Senior counsel submitted that in this case, the prosecution has not come forward with the true version of the occurrence. There was no investigation at all done in respect of the injuries sustained by the accused Nos.1, 2, 4, 6 and 7, in the same occurrence. He would further submit that there was no explanation in respect of the injuries sustained by these accused in the same occurrence. The learned Senior counsel would further submit that though a counter case was registered on the complaint of A7 in Crime No.190 of 2008, no investigation at all was done on the same. The records pertaining to the said case also have not been exhibited in this case. Thus, according to the learned Senior counsel, the prosecution has not come forward with clean hands and had taken a partisan attitude in projecting the case of the prosecution party alone. Therefore, according to the learned Senior counsel, the accused are entitled for acquittal.

7. The learned Additional Public Prosecutor would however oppose this appeal. According to him, it is true that there was a counter case registered in Crime No.190 of 2008. He would further submit that unfortunately, the records pertaining to the said case, have not been produced before the trial Court. There is also no evidence as to the investigation done in the said case. He would further submit that unfortunately there was no explanation as to the injuries sustained by the accused. Further, according to the learned Additional Public Prosecutor, on that score, the conviction of the accused need not be interfered with.

8. We have considered the above submissions.

9. Admittedly, the occurrence had taken place on the land, which is under dispute. It is the positive case of the prosecution that all the seven accused were already there in the field engaging in their agricultural work. It is also the positive case of the prosecution that the prosecution party, including the deceased, had gone to the said field. The purpose of going over there was questioned by the accused in respect of the occurrence which had taken place on the previous day. This would go to show that the accused party would not have intercepted the arrival of the prosecution party to the place of occurrence at all. The very fact that the prosecution party had gone to the place of occurrence would go to show that they were the aggressors. It is also admitted that the accused 1, 3, 4, 6 and 7 had sustained injuries in the same occurrence. A perusal of the evidence of the Doctor and the medical record would go to show that the injuries were all serious injuries on vital parts of the bodies of these accused. But unfortunately, there was no investigation at all done in respect of those injuries. The injuries also have not been explained away by the prosecution. To a specific question posed to the investigating officer as to what had happened to the counter case in Crime No.190 of 2008, he has stated that the records were found mis-placed. He has not at all stated that the said case was investigated. Even the Sub-Inspector, who registered the case, has not come forward to state that he registered the case. All these facts would go to show that the investigating officer had taken partisan attitude only to investigate the case of the prosecution and no efforts whatsoever was taken by him to find out the death and the prosecution has not come forward with true version of the occurrence. In this regard, we may refer to the judgement of the Hon'ble Supreme Court in Lakshmi Singh and Others etc., vs. State of Bihar (AIR 1976 Supreme Court 2263), wherein in an identical situation, taking note of the fact that the prosecution had failed to explain the injuries sustained by the accused, the Hon'ble Supreme Court has held as follows:

" 11..... It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time

of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:

(2) That the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one "

Applying the same yardstick in the present case, we have to necessarily hold that though P.Ws.1 to 3 and 10 are injured eyewitnesses, since they have not whispered anything about the injuries sustained by the accused, we cannot give full credence to their evidences. There is no other independent witness also. As we have already concluded there was no investigation done in respect of the injuries sustained by the accused and the investigating officer had investigated the case of the prosecution party alone. For all these reasons, we are of the view that the accused are entitled for acquittal, more particularly because the prosecution has not come forward with the true version of the occurrence. In such view of the matter, the appeal deserves to be allowed and the accused are entitled for acquittal.

10. In the result, this criminal appeal is allowed; the conviction and sentences imposed as against the appellants are set aside. The appellants/accused are acquitted. Bail bonds, if any, executed by them, shall stand cancelled. Fine amount, if any, paid by them shall be refunded to them forthwith. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

- 1.The III Additional District and Sessions Judge,
Tirupattur, Vellore District.
 2. -do- Principal Sessions Judge, Vellore,
Vellore District.
 - 3.The Judicial Magistrate-III, Tirupattur.
 4. -do- Thro Chief Judicial Magistrate, Vellore.
 - 5.The Inspector of Police, Kandli Police Station.
 6. The Superintendent, Central Prison, Vellore.
 7. The District Collector Vellore District
 8. The Director General of Police, Mylapore Chennai-4.
 - 9.The Public Prosecutor, High Court, Madras.
- Copy to: The Section Officer, Crl.Section,
High Court, Madras.

+ 1 cc to M/s. K.V. Law Firm, Advocate Sr.12433

Crl.A.No.27 of 2017

RSY(CO)
Eu 17.4.17

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