

Bail Slip

The appellance used namely, Thangadurai @ Sathish was directed to be released on bail as per order of this Court dated 28.10.2014 made in CrI.MP.No.1/2014 in CrI.A.No.529/2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.02.2017

Pronounced on : 24.02.2017

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

CrI.A.No.529 of 2014

Thangadurai @ Sathish ... Appellant/A1

V.

State represented by
Inspector of Police,
Mathikonpalayam Circle,
Dharmapuri District
(Krishnapuram Police Station
Crime No.5/2011)

... Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the Criminal Procedure Code, praying to set aside the conviction and sentenced imposed on the Appellant by the learned Additional Sessions Judge, Dharmapuri by Judgment dated 25.09.2014 in S.C.No.16 of 2013 and acquit him.

For Appellant : Mr.R.Thirugnanam

For Respondent : Mr.R.Ravichandran

Government Advocate (CrI. Side)

JUDGMENT

The Appellant/A1 has preferred the instant Criminal Appeal before this Court (as an aggrieved person) as against the Judgment dated 25.09.2014 in S.C.No.16 of 2013 passed the Learned Additional Sessions Judge, Dharmapuri.

2.Earlier, the trial Court had found the Appellant/A1 guilty in respect of an offences under Section 307 and 294(b) I.P.C. and in regard to the offence under Section 307 I.P.C., it imposed a punishment of five years Rigorous Imprisonment upon the Appellant, besides directing him to pay a fine of Rs.1,000/-, in default of payment of fine, he was directed to undergo further three months Rigorous Imprisonment. In so far as

the offence under Section 294(b) was concerned, the trial Court directed the Appellant to pay a fine of Rs.250/-, in default of payment of said fine amount, a default sentence of one month Simple Imprisonment was awarded to him. Further, the period already undergone was directed to be set off under Section 428 Cr.P.C.

3.Questioning the validity and legality of the impugned Judgment of Conviction dated 25.09.2014 in S.C.No.16 of 2013 passed by the trial Court, the Learned Counsel for the Appellant submits that the trial Court had failed to appreciate that there was a long delay in registering the First Information Report. In this connection, a stand is taken on behalf of the Appellant that inasmuch as the occurrence took place at 4.40 p.m. on 05.01.2011, but F.I.R. was registered only at 2.00 a.m. on 06.01.2011, inspite of the fact that the Police Station is situated just about 300 feet from the scene of occurrence.

4.The Learned Counsel for the Appellant contends that in the instant case, F.I.R. was stated to be registered on 06.01.2011 at 2.00 a.m., based on the statement recorded from P.W.1 at the Government Hospital at 11.00 p.m. on 05.01.2011 and this could not to be a true and correct one, because of the categorical evidence of P.W.7 (Doctor), who treated P.W.1, that the latter got himself voluntarily discharged from the Hospital against his medical advise on 05.01.2011 at 10.20 p.m.

5.The Learned Counsel for the Appellant takes a stand that the copy of the F.I.R. reached the Learned Judicial Magistrate No.2, Dharmapuri only at 10.35 a.m. on 10.01.2011, although F.I.R. was registered on 06.01.2011 at 2.00 a.m. and in the present case, there was no explanation from the Respondent/Prosecution side in regard to the inordinate delay of F.I.R. reaching the concerned Court.

6.The Learned Counsel for the Appellant takes a plea that the evidence of P.W.1 was to the effect that he was examined by the Police only at 10.00 a.m. on 06.01.2011 and prior to that, he was not examined by the Police. Further, it is represented on behalf of the Appellant that P.W.7 (Doctor) had deposed that P.W.1 got himself discharged voluntarily from the Hospital against his medical advise at 10.20 p.m. on 05.01.2011. Therefore, the evidence of P.W.9 (S.S.I. of Police) that he recorded the statement of P.W.1 at 11.00 p.m. in the Government Hospital was a contradictory one.

7.The Learned Counsel for the Appellant contends that the theory of the Prosecution was that the weapon (M.O.1) was recovered on 06.01.2011 at the place where the scene of occurrence purported to have been taken place on the previous day, in the presence of P.W.8 and one Ramu was not at all

supported by the alleged mahazar witness P.W.8 and that he categorically stated that he signed only in Observation Mahazar viz., Ex.P4 and that no other material was recovered from the scene of occurrence.

8.The Learned Counsel for the Appellant submits that the trial Court had failed to consider that in the absence of any other witness to support the theory of recovery of M.O.1 - Weapon, the same cannot be used against the Appellant and the failure on the part of the trial Court in considering this aspect is fatal to the Prosecution case.

9.The Learned Counsel for the Appellant projects an argument that even for the sake of argument, occurrence was admitted, the evidence on record clearly shows that the same took place because of sudden quarrel and there was no motive or intention to cause the death of P.W.1, since the stab injury was only on the left backside of the ribs and not on any vital part of the body. Therefore, the trial Court should have held in its Judgment that the offence would not come under the purview of Section 307 I.P.C., since there was no endeavour to commit murder of P.W.1.

10.The Learned Counsel for the Appellant cites the decision of this Court in Kanagaraj V. State, rep. By Inspector of Police, Pasuvandhanai Police Station, Tuticorin District, reported in 2011 (1) MWN (Cr.) 172 (DB), at special pages 182 to 184 wherein at paragraphs 11 to 14, it is observed and held as follows:

"11.In view of all these infirmities and inconsistencies, the inordinate and unexplained delay in the First Information Report reaching the Magistrate's Court as well as the delay in registering the First Information Report assume importance. It is pertinent to note that according to the prosecution the occurrence is said to have taken place at 7.45 a.m., but the report was given only at 9.30 a.m., whereas, the Police Station is only 10 kilometers away from the scene of occurrence. It is relevant to note that P.W.1 claimed that he gave the report to P.W.14, Head Constable, and the same was registered at 9.30 a.m. But the said First Information Report despatched and reached the Magistrate's Court only at 7.00 p.m. as per the evidence of th Constable, namely, R.W.9, who has taken the First Information Report, to the Magistrate's Court. It is categorically admitted by P.W.9 in his cross-

examination that from the Police Station to the Kovilpatti Magistrate's Court it would take only half an hour if one goes by bus. There is absolutely no explanation whatsoever forthcoming from the prosecution in respect of the inordinate delay in the First Information Report reaching the Magistrate's Court. In view of the all these factors, it is crystal clear that the earliest report given by P.W.8 could have been suppressed.

12. At this juncture, it is relevant to refer to a decision of the Hon'ble Apex Court in *Ishwar Singh, v. State of U.P.*, AIR 1976 SC 2423, wherein, it was held as hereunder: "5. Mr. Frank Anthony appearing for Appellant Ishwar Singh submitted that in affirming the judgment of the Trial Court, the High Court also overlooked certain important aspects of the case that the Sessions Judge had failed to consider. He pointed out that the FIR which is stated to have been lodged at 9.05 a.m. on February 14, 1973 was sent out from the Police Station the next day, February 15; the time when it was despatched is not stated, but it appears from the record that the Magistrate received it on the morning of February 16. The Court of the Magistrate was nearby, which makes it difficult to understand why the report was sent to him about two days after its stated hour of receipt at the Police Station. Section 157 of the Code of Criminal Procedure, 1898 as well as of 1973 both require the first information report to be sent "forthwith" to the Magistrate competent to take cognizance of the offence. No explanation is offered for this extraordinary delay in sending the report to the Magistrate. This is a circumstance which provides a legitimate basis for suspecting, as Mr. Anthony suggested, that the First Information Report was recorded much later than the stated date and hour affording sufficient time to the prosecution to introduce improvement and embellishment and set up a distorted version of the occurrence."

13. In yet another decision in *Rajeevan and another v. State of Kerala*, 2003 (3) SCC 355, the Hon'ble Apex Court has held as hereunder:

"6.The Trial Court noticed that there were many weak spots in the prosecution case such as, the delay in lodging the First Information Statement. The spot of incident is only 100 metres from the Police Station. But the FIR was lodged in the Police Station only at 7.40 a.m. on the next day; that though FIR was filed on 29.12.1987 in the morning, it was sent to the Magistrate only at 5.40 p.m. on 30.12.1987; that the Sub-Inspector (PW 28) did not register the crime on the basis of information collected by him immediately after the incident; that Ext.P.30 is the counterfoil file of the FIR and between the entries relating to Crimes Nos.5 and 7, certain blank sheets were found; that this circumstance was not satisfactorily explained by the police officer concerned during examination. The Trial Court is of the view that this was done to fill up details regarding the instant case subsequently, that Ext.P-1, first information statement given by PW 1 also seemed to have been subsequently 6 written on a blank signed paper, that this inference was drawn due to the cramped handwriting in the paper towards the end portion, just above the signature though there was adequate space in the next page. 7.Based on these factors the FIR was found to be a concocted document and delay in lodging the FIR with the Magistrate also influenced the Trial Court in holding that innocent persons were being implicated as a result of political vendetta or for any other reason as there was enough time for manipulation and the manner in which record was maintained gave rise to grave suspicion regarding the same."

14.The Hon'ble Apex Court in Dilwar Singh v. State of Delhi, 2007 (6) Supreme 153 has held as hereunder:

"8.In Criminal trial one of the cardinal principles for the Court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the Complainant to make deliberation upon the Complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be

presented before the Court at the earliest instance. That is why if there is delay in either coming before the police or before the Court, the Courts always view the allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution case."

11.He also relies on the decision in Ramachandran V. State, by Inspector of Police, Tirupur North Police Station, Tirupur, reported in 2012 (3) MWN (Cr.) 266 (DB), at special page 274 & 275, wherein at paragraph 22, it is observed as under:

"22.No doubt, FIR is not a substantial piece of evidence, but in a Criminal Case, it is an important document because it sets the Criminal Law in motion. It contains the first, earliest version, information concerning the commission of a cognizable offence (see Section 154, Cr.P.C.). So much is the importance attached to such a piece of document in a Criminal Case. That is how it has been repeatedly held that it must reach the Law Enforcing Authorities as well as the Court with quickest possible time. Every delay of it must be accounted for, explained. It is with a view to exclude, in the meanwhile, script writing by prosecution implicating innocent persons, making additions and deletions. Fabrication in the FIR will tell upon the prosecution version [see Kumar @ Thambi and others v. State by Inspector of Police, Dindigul Taluk Police Station, Dindigul Dist., 2012 (2) MLJ (Crl.) 494]."

12.Per contra, it is the submission of the Learned Government Advocate (Crl.Side) for the Respondent that Ex.P1 (Statement/ Complaint of P.W.1) was recorded on 05.01.2011 at 23.00 hrs at G.H. Dharmapuri by the Madhu (P.W.9), who registered a case in Krishnapuram P.S. Cr.No.5/2011 under Section 294(b), 323, 324, 506(ii) I.P.C. on 06.01.2011 at 02.00 hrs. In fact, P.W.1 (the injured), in his evidence, had categorically stated that on 06.01.2011 when he was at Dharmapuri Government Hospital, Police had enquired him. Further, he had stated (in his cross examination) that on 06.01.2011 at about 10.00 a.m. in the morning, he was examined by the Police and before that, he was not examined by the Police and also he had not affixed his signature and that he came out of the Government Hospital on 6th evening and on the said

evening, he was admitted into Vinayaga Mission Hospital for treatment where he took treatment for a week and thereafter, he returned home.

13.The Learned Government Advocate (Crl.Side) for the Respondent contends that even though, the Appellant side relies on the endorsement made in Ex.P3 that P.W.1 was admitted into Government Dharmapuri Hospital on 05.01.2011 at 5.20 p.m. and he was discharged on 05.01.2011 at 10.20 p.m. against medical advise. P.W.1 had clearly stated in his evidence that he was examined by the Police at 10.00 p.m. on 06.01.2011 and the Police came to Dharmapuri Government Hospital and examined him on 06.01.2011 and they obtained his signature in the statement given by him viz., Ex.P1 and therefore, one has to take into account only the evidence of P.W.1 and not the endorsement of P.W.7 (Doctor) made in Ex.P3.

14.The Learned Government Advocate (Crl. Side) for the Respondent draws the attention of this Court that P.W.7 (S.S.I. of Police) in his evidence had clearly deposed that he recorded the statement of P.W.1 on 05.01.2011 at 23.00 hrs at G.H. Dharmapuri and registered a case in Krishnapuram P.S. Cr.No.5/2011 under Section 294(b), 323, 324 and 506(ii) I.P.C. on 06.01.2011 at 0.200 hrs. and due weightage is to be given to the evidence of P.W.1 rather than the evidence of P.W.7 (Doctor) who had stated that P.W.1 had left the Government Dharmapuri Hospital at 10.20 p.m. on 05.01.2011 (discharged against medical advise).

15.The Learned Government Advocate (Crl. Side), in effect, submits that the Appellant/A1 had stabbed P.W.1 on his left side trunk with that of M.O.1 - Button Knife and that the knife was recovered and in fact, P.W.2 had admitted P.W.1 at the Dharmapuri Government Hospital for treatment and later, for further treatment, he was admitted into Vinayaga Mission Hospital and on the next day, he handed over the blood stained clothes owned by P.W.1 before the Police.

16.The Learned Government Advocate (Crl. Side) contends that P.W.3 also in his evidence had deposed that the Appellant/A1 because of the eruption of wordy quarrel took a knife from the Car and stabbed P.W.1 on his left side trunk and that after seeing the occurrence, he came to the shop and informed P.W.2 and P.W.5 had also stated in his evidence that the Appellant/A1 had stabbed P.W.1 with button knife on his left side trunk and that Kumar's brother took P.W.1 to the hospital in Sakthivel's two wheeler.

17.The Learned Government Advocate (Crl. Side) submits that P.W.6, in his evidence, had stated that the Appellant/A1 had

stabbed his son P.W.1 on his left back side trunk with knife. In short, it is the plea of the Respondent/Complainant that the trial Court, on an appreciation of entire oral and documentary evidence available on record, had resultantly found the Appellant/A1 guilty in respect of an offence under Section 307 I.P.C. and imposed him with necessary punishments.

18.The Learned Government Advocate (Crl. Side) for the Respondent contends that Ex.P1 - Complaint (Statement of P.W.1) was recorded by P.W.9 on 05.01.2011 at 23.00 hrs. at G.H. Dharmapuri and that on 06.01.2011 at 0.200 hrs in Krishnapuram P.S. Cr.No.5/2011, a case was registered under Sections 294(b), 323, 324 and 506(ii) I.P.C. and as such, there is no delay in regard to the registration of F.I.R. by the Police concerned. In regard to an endorsement in Ex.P5 - F.I.R. that the same was received at 10.35 a.m. on 10.01.2011 by the Learned Judicial Magistrate No.2, Dharmapuri, the Learned Government Advocate (Crl. Side) cites the decision of the Hon'ble Supreme Court in Ramdas and others V. State of Maharashtra, reported in AIR 2007 Supreme Court 155 at special page 162, wherein at paragraph 23, it is, among other things, observed as under:

"... Thus mere delay in lodging of the report may not by itself be fatal to the case of the prosecution, but the delay has to be considered in the background of the facts and circumstances in each case and is a matter of appreciation of evidence by the court of fact."

19.It is represented on behalf of the Respondent that the counter case filed by the Accused was dropped as 'Mistake of Fact'.

20.Before the trial Court, it is the evidence of P.W.1 that on 05.01.2011 at about 4.00 p.m. in the evening, he went to the intersection road (from Dharmapuri to Ariyakulam) and at that time, one blue colour Santro Car bearing Registration No.TN 07 K 6264 came from Dharmapuri intersection road and later, it turned at a fast speed at Ariyakulam road and at that time, one Ellappan and Murugesan, belonging to his village, were proceeding from Ariyakulam and was walking to the intersection road and at that time, the Accused went fast near the shop of one Mayil, when Ellappan and Murugesan were coming and both Ellappan and Murugesan raised a noise 'as to who were that persons and uttered go slow' for which, they stopped a Car and got down from the Car questioned as to who had scolded them etc.

21.It is the further evidence of P.W.1 that when his father Kuppusamy, who went there to compromise the matter, he was

pushed down and when questioned about it, the Accused Saravanan brought out a knife from the Car and uttered, 'he will not leave without murdering him' and the Appellant/Accused used obscene language and stabbed him on his left side trunk with his knife.

22. At this stage, this Court points out that a perusal of Ex.P1 Statement of P.W.1 shows that P.W.9 (S.S.I. of Police) had recorded his statement on 05.01.2011 at 23.00 hrs. at G.H. Dharmapuri and registered a case in Krishnapuram P.S. Cr.No.5/2011 under Sections 294(b), 323, 324 and 506(ii) I.P.C. on 06.01.2011 at 0.200 hrs. The date of occurrence as per Ex.P5 - printed F.I.R. is 05.01.2011 at 16.40 hrs. The information received at the Police Station was on 06.01.2011 at 0.200 hrs. The distance between the place of occurrence and the Police Station was half furlong. The reasons for delay in reporting the complaint in Ex.P5 - F.I.R. was mentioned as 'Hospital Intimation'. As such, the delay in reporting the incident cannot be blown out of proportion, in the considered opinion of this Court.

23. P.W.7 (Doctor), in his evidence, had deposed that P.W.1 (Complainant) was admitted into the Government Dharmapuri Hospital on 05.01.2011 at about 5.20 p.m. and he was discharged on 05.01.2011 at about 10.20 p.m. against medical advice and therefore, he opined that opinion could not be given, in regard to the injuries sustained by P.W.1. In fact, in Ex.P3 the injury noted was 1. Laceration 2x1x7 cm (depth) over the left back trunk. Further, P.W.1 was directed to be admitted in ISCU on 05.01.2010 by P.W.7. A perusal of Ex.P3 - A.R copy shows that P.W.1 was allegedly stabbed by one known person by using knife at Krishnapuram bus stop on 05.01.2011 at 4.40 p.m. Indeed, P.W.7 (Doctor) (in his cross examination) had deposed that P.W.1 left the Government Hospital on 05.01.2011 at night 10.20 p.m. Moreover, P.W.7 went on to add that since P.W.1 voluntarily discharged from the Hospital against medical advice and he had not noted the nature of injury sustained by him.

24. P.W.9 (S.S.I. of Police), in his evidence, had stated that on 05.01.2011 when P.W.1 was at the Dharmapuri Government Hospital as an I.C.U. Patient, he examined him and recorded the statement at 23.00 hrs. and after coming to the Police Station on 06.01.2011 at about 2.00 a.m. in Krishnapuram P.S. Cr.No.5/2011 registered a case under Sections 294(b), 323, 324 and 506(ii) I.P.C. and the printed F.I.R. was Ex.P5. Later, he took up the investigation of the case and examined the concerned witnesses and in their presence prepared Observation Mahazar (Ex.P4) and prepared a Rough Sketch - Ex.P6 and seized one Button Knife and the Santro Car bearing Registration No.TN 07 K 6264 in front of the same witnesses through Seizure Mahazar Ex.P7 and subsequently, after completion of investigation, he

altered the Sections from 294(b), 323, 324, 307 and gave an Alteration Report - Ex.P8 and since the offence was under Section 307 I.P.C., he handed over the case file to the Incharge Inspector of Police.

25.Added further, it is the evidence of P.W.9 that on 07.01.2011 while he was at the Police Station, one witness Sakthivel S/o.Kuppusamy came to the Police Station and handed over the blood stained clothes owned by P.W.1 (M.O.3 to M.O.5) which he seized under Form 95 and sent the same to the Court and further that, he was examined by the Inspector of Police.

26.P.W.9 (in his cross examination) had deposed that he got intimation from the Police Station, but he does not remember as to who gave that information and that based on the information given by the Hospital, he received the Intimation Memo at 8.00 p.m. from the outpost Police Station of the Hospital and that during night at 11.00 p.m., he obtained the statement from P.W.1 and he recorded the Complaint for one hour and came out of the Hospital at 12'0 clock and at that time, P.W.1 was there and that on 06.01.2011 he enquired P.W.1 and obtained his statement.

27.It is the further evidence of P.W.9 that he does not know at which place he obtained the statement and recorded the same and that he had not examined the Doctor of Vinayaga Mission Hospital and that it was not correct to state that on 05.01.2011 at about 10.20 p.m. during night, P.W.1 had left the Hospital.

28.As far as the present case is concerned, at the risk of repetition, this Court pertinently points out that P.W.7 (Doctor), in his evidence, had deposed that P.W.1 was given the first aid treatment and that in Emergency Surgical Ward, he was admitted as an inpatient, but P.W.1 left the place on his own volition and therefore, he could not mention the gravity of the injury sustained by P.W.1 in Ex.P3 - A.R. Copy. Further, P.W.7 (in his evidence) had stated that P.W.1 on 05.1.2011 at about 10.20 p.m. had left the Government Hospital. At this juncture, this Court relevantly points out that if really P.W.1 had left the Dharmapuri Government Hospital on 05.01.2011 at 10.20 p.m. (discharged against medical advise) and that too on his own volition, then, the coming into existence of Ex.P.1 - Complaint (Statement of P.W.1) is highly doubtful, in the considered opinion of this Court. Further, this simmering, genesis and reasonable doubt gets strengthened by the evidence of P.W.9 (S.S.I. of Police) who had stated in his evidence that on 05.01.2011 when he was at the Krishnapuram P.S. at about 10'o clock in the night, from the Government Dharmapuri Hospital, he received an information that one Sivakumar (P.W.1) was under treatment in an I.C.U. Unit and that after he enquired him and obtained a Complaint/Statement on 23.00 hrs. and came to the

Police Station on 06.01.2011 at 2.00 a.m. in the morning and registered a case in P.S. Cr.No.5/2011 under Sections 294(b), 323, 324, 506(ii) I.P.C.

29. In this connection, this Court significantly points out that P.W.9, in his evidence (in cross examination), had stated that he got the medical intimation from the outpost Police Station of the Hospital at 8.00 p.m. in the night and at 11.00 p.m. he obtained a statement of P.W.1 and for merely one hour, he recorded the statement and came out of the Hospital at 12.00 p.m. and further stated that at that time P.W.1 was there etc. If really P.W.1 had left the Hospital on 05.01.2011 at 10.20 p.m. [as per endorsement in Ex.P3 made by P.W.7 (Doctor)] and when it is the crystalline evidence of P.W.7 (Doctor) that in Ex.P3, he could not mention about the gravity of the injury because of the reason that P.W.1 had left the Hospital, then, it passes beyond one's comprehension as to how the Ex.P1 - Complaint would have come into existence, as alleged by the Prosecution.

30. Moreover, it is the evidence of P.W.9 (in cross examination) that he does not know at which place he examined P.W.1 and obtained Ex.P1 - Statement which would unerringly point out about the coming into existence of Ex.P1 - Complaint (Statement of P.W.1), in the considered opinion of this Court.

31. It is the evidence of D.W.1 (Lakshmanan) that on 05.01.2011 at 4.40 p.m. in the evening Sathish (Appellant/A1) came in a Car from Dharmapuri to Ariyakulam and Saravanan came along with him. Further, Sathish (Appellant/A1) got down from the Car took a bag for purchasing vegetables and at that time, Sivakumar (P.W.1), S/o. Kuppasamy caught hold of the shirt of Sathish (Appellant) and further that, the people who had gathered there said that there village man (Sivakumar - P.W.1) was being assaulted and they ran and beat Sathish (Appellant) who unable to bear the blow ran for a short period and later, he fell down. Also, the Villagers who came in a crowd beat Sathish (Appellant) with log and hand as a result of which Sathish (Appellant) became unconscious. Moreover, Saravanan was dragged from the car and the Villagers hit him with a brick on his head.

32. Added further, it is the evidence of D.W.1 that four persons came from the Krishnapuram Police Station and that he informed them that who ever may be they may not be permitted to beat another and that he phoned up to the Ambulance and he admitted the two Accused at the Hospital.

33. It is the evidence of D.W.2 (Doctor) that on 05.01.2011 when he was serving as a Doctor in Emergency Ward of the Dharmapuri Hospital at about 6.14 hours in the evening one

Sakthikumaresan aged 27 was brought by his brother and he informed that he was attacked by one known person and by six unknown persons with bottle nearby at Ariyakulam Krishnapuram Bus Stand at about 5'0 clock in the evening and he examined him.

34.Further, it is the evidence of D.W.2 (Doctor) that on examination, he found that there was a torn injury on the left side head measuring 3 x 1 x 0.5 cm and a liquor smell emanated from the said Sakthikumaresan and that on 06.01.2011 at about 2'o clock in the afternoon on his own volition, he was discharged from the Hospital and he was there as an inpatient for one day in the Hospital and his case sheet xerox copy is Ex.D4.

35.Apart from the above, it is the evidence of D.W.2 that on the same day at about 6.18 hours in the evening Thangadurai aged 25(Appellant/A1) came to him for treatment and he informed that he was attacked by one known person and six unknown persons nearby Bus Stand at 5'o clock in the evening and on examination, he found that he had a torn injury and his left side head measuring 10 x 1.5 cm and that he was admitted as an inpatient and since he left hospital on his own accord, he could not give opinion on the nature of injury sustained by him and his case sheet xerox copy is Ex.D5.

36.Also that, a mere running of the eye of Ex.P1 Complaint indicates that in first page of Ex.P1, in between the lines, one can see with naked eyes that there is a larger space, but on the second page of Ex.P1, except four lines which were written with a larger space in between, the last seven lines were written with smaller space and at the end of the statement, P.W.1 had affixed his signature in Tamil. In short, this Court is of the considered view that except the first four lines in page 2 of Ex.P1, other seven lines were written with a short gap and this also raises a cloud, shroud and mist in regard to the surface of Ex.P1 - Complaint (of course, in the manner as alleged by the Respondent/Prosecution) and this is not a favourable circumstance in favour of the Respondent/Prosecution.

37.It is to be remembered that a Fair trial in a Criminal case is the essence of the Criminal Justice. To ensure a Fair trial, it is imperative that the investigation of the case should be fair and impartial. It is true that F.I.R. recorded under Section 154 Cr.P.C. is not a substantive evidence and it may be used to corroborate the Informant under Section 157 of the Indian Evidence Act, 1872 or to contradict him on the Section 145 of the Act, if the Informant/ Complainant is called as a witness.

38.To put it precisely, unless a F.I.R. is submitted in

evidence under any provision in Chapter II of the Indian Evidence Act, 1872, it can ordinarily be used for the purpose of corroborating, contradicting or discrediting its Maker under Sections 157, 145 or 155 of the Evidence Act. However, he does not apply to such operations in respect of other witnesses, as per decision of the Hon'ble Supreme Court Shankar V. State of Uttar Pradesh, AIR 1975 SC 757.

39. It is to be pointed out that F.I.R. is a document which is of immense value to an Accused because it exhibits on what materials the investigation commenced and what was the Prosecution case in the first blush. Further, the mental and physical condition of an Informant would be relevant when the issue of furnishing the details in F.I.R. arises.

40. In a Criminal Justice System, an Accused is presumed to be innocent till he is convicted by a Competent Court after full trial. Indeed, there are no fetters in Law, for an Appellate Court to review, re-appreciate, reconsider evidence based on Facts and Law. Undoubtedly, it is the primordial duty of a Court of Law to remove the chaff from husk to dredge the truth from the materials available on record.

41. As a matter of fact, it is the evidence of P.W.10 (Doctor) that on 06.01.2011 at 2.00 a.m. Sivakumar S/o.Kuppusamy (P.W.1) was brought to the Salem Vinayaga Mission Hospital and that on enquiry, he informed that on 05.01.2011 at about 5.00 p.m. in the evening, he was stabbed by unknown person at Krishnapuram Bus stand and further that he was admitted as an inpatient in the Hospital and C.T. Scan was taken.

42. It is the further evidence of P.W.10 that there was one stab injury measuring 1.4 x 1 cm (which was stitched) was seen on the left back side of P.W.1's hip and that he was admitted as an inpatient and was discharged from the Hospital on 11.01.2011 and he had given a medical certificate stating that the injury was a grievous one and that the report of C.T. scans were marked as Ex.P10 and Ex.P11.

43. From the aforesaid evidence of P.W.10 (Doctor), it is candidly clear that P.W.1 was admitted as an inpatient on 06.01.2011 at 2.00 a.m. in the early morning. In this regard, it may not be out of place for this Court to make a significant mention that P.W.7 (Doctor), in his evidence, had clearly deposed that P.W.1 had left the Government Dharmapuri Hospital at 10.20 p.m. on 05.01.2011.

44. At this juncture, this Court aptly points out that when P.W.7 had stated in his evidence that P.W.1 was discharged from the Hospital at 10.20 p.m. on 05.01.2011 and all the more when

the evidence of P.W.10 (Doctor) was to the effect that P.W.1 was admitted as an inpatient at Vinayaga Mission Hospital on the early morning of 06.01.2011 at 2.00 a.m., it is highly doubtful to believe the version of P.W.9 (S.S.I. of Police) that he obtained a statement from P.W.1 at 11.00 p.m. on the night of 05.01.2011 and recorded his statement for one hour and at that time, P.W.1 was there.

45. In the present case, the evidence of P.W.7 (Doctor) that P.W.1 had left the Government Dharmapuri Hospital on 05.01.2011 at 10.20 p.m. and further that, owing to the discharge of P.W.1 on his own volition, he could not give his opinion on the nature of injury sustained by him in Ex.P3. These aspects certainly nail the Prosecution case in regard to the coming into existence of Ex.P1 Complaint, in the considered opinion of this Court.

46. In so far as the evidence of D.W.1 is concerned, it is to be relevantly pointed out by this Court that in Ex.D2 (Complaint), his utterings before this Court in his evidence conspicuously do not find a place. Therefore, this Court, without any haziness, comes to a conclusion that the evidence of D.W.1 before this Court is a tainted one and the same is rejected by this Court.

47. In the instant case, the evidence of P.W.7 (Doctor) was that P.W.1 (Complainant) was admitted into the Government Dharmapuri Hospital on 05.01.2011 at about 5.20 p.m. and he was discharged on 05.01.2011 at about 10.20 p.m. against medical advice. This evidence of P.W.7 goes so far that had completely rules out the possibility of ocular evidence of P.W.9 that he examined P.W.1 (Complainant) when he was at the Hospital and recorded his statement at 23 hours, being true and as such, the evidence of P.W.9, in this regard, is unworthy of acceptance. In short, there are inherent material contradictions in regard to the evidence of P.W.1, P.W.7 and P.W.9 and certainly, they deviate the case of prosecution, in the considered of this Court.

48. Suffice it for this Court to make a clear cut mention that in view of the discrepancies/material contradictions as regards the evidence of witnesses especially P.W.7 and P.W.9 coupled with P.W.10, this Court comes to an irresistible and inescapable conclusion that although the incident took place on 05.01.2011 at about 4.40 p.m. in which P.W.1 had suffered a serious stab injury, which was grievous in nature, which was spoken to by P.W.1 himself and other witnesses viz., P.W.2 to P.W.6, the coming into existence or the origin/genesis of F.I.R. is highly a suspicious and doubtful one (in the manner as alleged by the Respondent/Prosecution). When the coming into existence of Ex.P1 - Complaint is disbelieved by this Court, then, this Court holds that the foundation of the Prosecution story crumbles. Viewed in that perspective, this Court interferes with the Judgment of Conviction rendered by the trial

Court in S.C.No.16/2013 on 25.09.2014 and sets aside the same. Consequently, the Criminal Appeal succeeds.

49.In fine, the Criminal Appeal is allowed. The Judgment dated 25.09.2014 in S.C.No.16 of 2013 passed by the Additional Sessions Judge, Dharmapuri is set aside by this Court for the reasons assigned by this Court in this Appeal. The Appellant/A1 shall stand acquitted in respect of an offence under Sections 294(b) and 307 I.P.C. Resultantly, Appellant/A1 is directed to set at liberty immediately, if not required in any other case. The bail bonds, if any, shall stand terminated. Liberty is granted to the Appellant/A1 to file necessary Miscellaneous Petition before the trial Court in S.C.No.16 of 2013 to claim refund of the fine amount of Rs.1,250/- in accordance with Law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Additional Sessions Judge,
Dharmapuri.

2.The Inspector of Police,
Mathikonpalayam Circle,
Dharmapuri District
(Krishnapuram Police Station)

3 The Superintendent Central Prison, Vellore

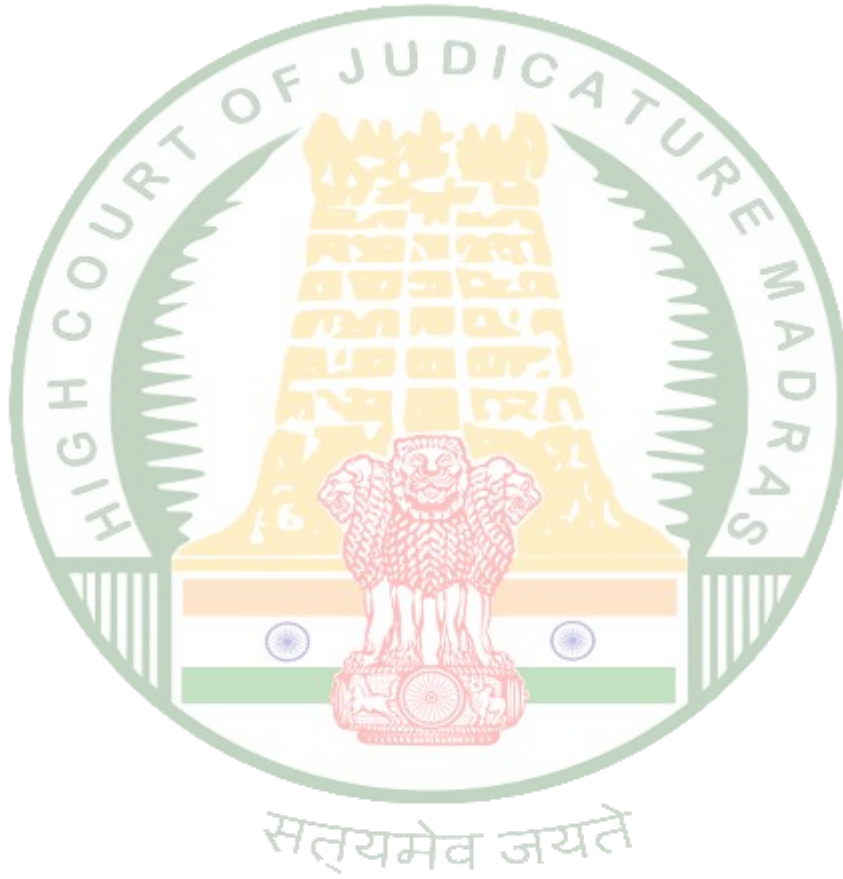
4 The Public Prosecutor
High Court, madras

WEB COPY

Copy to:
The Section Officer,
Criminal Section, High Court, Madras

ks(CO)
md(08/03/2017)

Cr1.A.No.529 of 2014



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