

BAIL SLIP

Mani

... Accused No.3

The Above said Appellant/Accused No.3 is directed to be released on bail as per order of this Court dated 16.11.2016 made in Crl.M.P.No.12044 of 2016 in Crl.A.No.764 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.764 of 2016

1. Ayyadurai (A1)

2. Mani (A3) ... Appellants/Accused 1 & 3

- Vs -

State rep by the Inspector of Police,
Uthangarai Police Station,
Krishnagiri District.
(Cr.No.650 of 2008)

... Respondent/Complainant

Prayer:- Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the learned Additional District and Sessions Judge, Krishnagiri in S.C.No.146 of 2010 dated 25.10.2016.

For Appellants : Mr.C.R.Malarvannan

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

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J U D G M E N T

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

The appellants are accused 1 and 3 in S.C.No.146 of 2010 on the file of the learned Additional District and Sessions Judge, Krishnagiri. The trial Court framed as many as four charges against the accused as detailed below:

Serial Number of charge	Charge(s) framed against	Charge(s) framed under Section
https://hcservices.ecourts.gov.in/hcservices/	A1 to A6	120 (B) IPC

Serial Number of charge	Charge(s) framed against	Charge(s) framed under Section
2	A1 to A4	448 IPC
3	A1 to A4	302 IPC
4	A2 and A4	324 IPC

Subsequently, the trial Court altered the charges and re-framed five charges against the accused as detailed below:

Serial Number of charge	Charge(s) framed against	Charge(s) framed under Section
1	A1 to A4	120 (B) IPC
2	A1 to A4	449 IPC
3	A1 to A4	302 IPC
4	A2 and A4	324 IPC
5	A5 and A6	120 (B) r/w 302 IPC

By judgment dated 25.10.2016, the trial Court acquitted the accused 2 and 4 to 6 from all the charges, however convicted the accused 1 and 3 alone. The trial Court convicted the first accused under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for two months and convicted him under Section 120(B) I.P.C. but did not impose any sentence for the said offence. The trial Court convicted the third accused under Section 326 I.P.C. and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for two months. The trial Court acquitted these appellants from the other charges. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

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

2.1. The deceased in this case was one Mr. Anadiyan @ Jayapal. He was a resident of Kallur village. All these six accused belonged to Kallur village. The accused 1 and 3 and the deceased were brothers. Ancestral property belonging to them was partitioned long before. In the said partition, a well was kept in common for all the three. Thus, the deceased and the accused 1 and 3 were taking water from the said well to irrigate their respective lands. In due course of time, the first accused purchased two acres of land from a third party and started taking water from the common well to irrigate the said newly purchased land also. This was objected to by the deceased. This resulted in enmity between the deceased on the one side and the accused 1 and 3 on the other side. The second accused is the wife of the first accused and the 4th accused is the wife of the third accused. The accused 5 and 6 are the neighbouring land owners of the first accused. Thus, it is alleged that all the six accused had enmity against the deceased.

2.2. It is the further case of the prosecution that on 12.09.2008 at 02.00 p.m. all the six accused gather by the side of the house of A3 and conspired to kill the deceased. This was overheard by P.W.1. P.W.1 is none else than the daughter of the deceased. Having heard the same, she immediately went to the cattle shed, where the deceased was sleeping. She cautioned the deceased that these accused had conspired to kill him. The deceased did not take it seriously. P.W.1 thereafter returned to her house and informed P.W.2.

2.3. Then, P.Ws.1 and 2 again proceeded to the cattle shed to caution the deceased. When they were just 50 meters away from the cattle shed, they saw all these six accused menacingly going towards the cattle shed and all of them were armed with weapons. The third accused who was armed with koduval cut the deceased once on his head. The first accused who was armed with iron rod attacked the deceased on both his hands. The accused 2 and 4 attacked the deceased with wooden logs on his legs. P.Ws.1 and 2 raised alarm. The accused 2 and 4 attacked P.W.1 with wooden log on her abdomen. On hearing the alarm raised by P.Ws.1 and 2, P.W.3 and one Mr.Mani came to the place of occurrence. On seeing them, all the six accused fled away from the scene of occurrence.

2.4. Then, they took the deceased and P.W.1 to the Government hospital at Uthangarai. Since the condition of the deceased was bad, the doctor advised them to immediately take the deceased to the Government Headquarters hospital at Krishnagiri. The deceased was taken to the Government hospital at Krishnagiri and admitted as inpatient. P.W.1 was admitted as inpatient at the Government hospital at Uthangarai.

2.5. On receipt of intimation from the hospital, P.W.11, the Sub Inspector of Police at Uthangarai, recorded the statement of P.W.1 and returned to the police station at 10.30 p.m. on 12.09.2008. He registered a case in crime No.650 of 2008 under Sections 147, 148, 324, 307 and 109 I.P.C. against all the six accused. Ex.P1 is the complaint and Ex.P20 is the F.I.R. He forwarded both the documents to the Court, which was received by the learned Magistrate at 06.30 a.m on 13.09.2008.

2.6. P.W.12 took up the case for investigation. At 11.40 p.m. he received intimation from the hospital that the deceased died in the hospital. Therefore, he altered the case into one under Sections 147, 148, 324, 302 and 109 I.P.C. Then on the next day morning, he went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of witnesses. At 10.30 a.m. he conducted inquest on the body of the deceased and he enquired P.Ws.2, 3, 4 and few more witnesses. Then, he forwarded the body for postmortem.

2.7. P.W.4 Dr.Narayanasami conducted autopsy on the body of the deceased on 13.09.2008 at 12.30 p.m. He found the following injuries:

"External injuries: (1) C shaped 4 cm x 1 cm x bone depth laceration on upper 1/3 rd of Ant.aspect of left leg. C curve towards left. (2) 3cm x 1 cm x bone deep sutured laceration on middle 1/3 rd of Ant.aspect of right leg (vertically). (3) 2 cm x 1 cm x bone deep laceration at Ant.aspect of right knee (horizontally placed). (4) Closed # middle 1/3 of left humerus. (5) compound # middle 1/3 of right humerus 0.5 dia meter punctured wound over the right upper arm (6) 5 cm x 1 cm x bone depth incised sutured wound horizontally placed over the occipital (7) 1cm x 0.5 cm x 0.6 cm sutured laceration lower 1/3 of lateral aspect of left upper arm. (8) 4cm x 8 cm contusion on left leg. (9) 6 cm x 4 cm contusion at left upper 1/3rd of fore arm. (10) 3 cm x 1.5 cm contusion above C2 and C3 region.

Internal injuries: Hyoid bone - intact. Rib cage - intact. Both lungs intact right 450 gms and left 400 gms c/s pale. Pericardium -Heart intact. Heart contains 100 ml of fluid blood weight - 300 gms c/s congested. Abdominal cavity - no fluid. Stomach contains 200 ml and brown coloured fluid. Intestines - intact. Liver-intact, weight 1500 gms. C/s congested, spleen - intact - 150 gms c/s congested. Both kidneys - intact, Weight - 150 gms each c/s congested. Urinary bladder - intact, empty. Skull valves, membranes and brain - intact. Brain weight 1400 gms c/s congested. Sub dural 4cm x 3 cm in post central lobe, spinal cord - C2 and C3 dislocated."

Ex.P3 is the postmortem certificate. He gave opinion that the injuries found on the body of the deceased could have been caused by weapons like M.Os.1 to 4. He further opined that the death of the deceased was due to shock and hemorrhage due to the multiple injuries.

2.8. During the course of investigation, he recovered the bloodstained clothes from the body of the deceased. On the same day at 02.00 p.m. he arrested the accused 1 to 4 in the presence of witnesses. While in custody, the accused 1 to 4 gave independent voluntary confession one after the other. In pursuance of the confessions, a koduval and wooden logs were recovered. On returning to the police station, he forwarded

the accused 1 to 4 to the Court for judicial remand. At his request, the material objects were sent for chemical examination, which revealed that there were human bloodstain on the material objects. On completing the investigation, he laid chargesheet against all the six accused.

2.9. 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 case, on the side of the prosecution, as many as 12 witnesses were examined, 26 documents and 10 material objects were marked.

2.10. Out of the said witnesses, P.Ws.1 and 2 who are the daughter and daughter-in-law of the deceased have spoken about the entire occurrence. P.W.1 has spoken about the conspiracy also. P.W.3 has spoken about the fact that he took the deceased to the hospital for treatment. P.W.4 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.5 has spoken about the treatment given to the deceased in the Government Hospital at Uthangarai.

2.11. P.W.6 has spoken about the chemical examination conducted on the hyoid bone of the deceased. He has stated that there was no fracture of the hyoid bone. P.W.7 has spoken about the motive. P.W.8 has also spoken about the motive. P.W.9 has spoken about the preparation of the observation mahazar and the rough sketch. P.W.10 has spoken about the arrest of the accused 1 to 4 and the consequential recoveries of material objects. P.W.11 has spoken about the registration of the case and P.W.12 has spoken about the investigation done and final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However they did not choose to examine anyone nor mark any documents. Having considered all the above the trial Court convicted these appellants alone (A1 and A3) as detailed in the first paragraph of this judgment and that is how the appellants are before this Court with this appeal.

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

5. Before analysing the rival submissions made by the learned counsel on either side, let us go into the correctness of the charges framed by the trial Court and the conviction recorded. As we have already extracted, the first charge against all the six accused is under Section 120(B) IPC on the allegation that on 12.09.2008 at 04.00 p.m. all these six accused had conspired to do away the deceased. The trial Court had acquitted the accused 2 to 6 from the said charge disbelieving the evidence of P.W.1. Except P.W.1, no one has spoken about the said conspiracy. Having acquitted the

accused 2 to 6 from the charge of conspiracy, it is not understandable as to how the trial Court could convict the first accused alone under Section 120(B) IPC. To hatch a conspiracy, the bare minimum is that at least two persons are involved. It is not the case of the prosecution at all that the first accused hatched conspiracy with anybody else other than the accused viz., A2 to A6. Thus the trial Court has convicted the first accused alone under Section 120(B) IPC as though he himself conspired. This would only go to show that the trial Court is ignorant of the concept of conspiracy as dealt with in Section 120(B) IPC.

6. The second charge framed by the trial Court is under Section 448 IPC on the allegation that the accused 1 to 4 trespassed into the cattle shed of the deceased and attacked the deceased. This has been spoken by P.Ws.1 and 2. But the trial Court has acquitted the accused 2 and 4 from the said charge. The trial Court has found that the accused 1 and 3 alone attacked the deceased. It is again not understandable as to how the trial Court could acquit the accused 1 and 3 from the charge under Section 448 IPC when the occurrence had taken place inside the cattle shed of the deceased where these two accused had gone by trespassing.

7. The third charge is against the accused 1 to 4 under Section 302 IPC, as though all the four accused committed murder of the deceased. Fundamentally, the charge is erroneous in view of the fact that it is the case of the prosecution that these four accused (A1 to A4) killed the deceased in pursuance of the conspiracy hatched by all the six accused. But absolutely there is no statement under charge No.3 that the causing of death of the deceased was in pursuance of the conspiracy hatched between the accused 1 to 6. As we have already pointed out, the charge No.1 itself is defective because it does not state that the conspiracy was to commit murder of the deceased. It is the case that all the four accused attacked the deceased and caused his death. It is not known as to why the trial Court had not framed proper charge in respect of the causing of death.

8. Similarly, the fourth charge is under Section 324 IPC only against the accused 2 and 4 for having caused simple hurt to P.W.1. When all the four accused had gone together in pursuance of the conspiracy to kill the deceased and also to attack P.W.1, it is not understandable as to why there is no charge framed against A1 and A3 in respect of the simple hurt caused on P.W.1.

9. It is our experience that in this State, many of the trial Courts are not bestowing their attention in framing appropriate charges. Repeatedly, we have been insisting upon the trial Courts to bestow their best attention to frame proper charges because failure to frame proper charges may result in failure of justice. But unfortunately, we find no

desirable change is taking place. We only wish that there has to be change in the mind set of the learned Judges of the subordinate judiciary.

10. Now turning to the facts of the case, P.Ws.1 and 2 are the daughter and the daughter-in-law of the deceased. These two witnesses have been disbelieved as against the accused 2 and 4. Though they were supposed to speak about the accused 5 and 6 also, they conveniently omitted to speak about them in their evidence. The trial Court has acquitted the accused 2 and 4 though it is alleged that they attacked P.W.1. Thus, even according to the trial Court, these two witnesses are only partly believable. As has been held by the Hon'ble Supreme Court in Vadivelu Thevar Vs. State of Madras reported in AIR 1957 SC 614, when the witness is partly believable, the Court should look for corroboration from independent sources. In the instant case, except the tainted evidences of P.Ws.1 and 2, there is no other evidence from any other independent source.

11. Now turning to the F.I.R., it is alleged that the occurrence had taken place at 05.00 p.m. on 12.09.2008. As admitted by P.W.11, the Sub Inspector of Police, the distance between the Government hospital at Uthangarai and the police station is hardly 200 meters and the distance between the police station and the Judicial Magistrate Court is hardly one kilometer. But the F.I.R. in this case was registered only at 10.30 p.m. and the same has reached the hands of the learned Magistrate at 06.30 a.m. absolutely there is no explanation for the same. It carries the names of all the six accused as the assailants, but the trial Court itself has disbelieved the case of the prosecution against all the other accused except these appellants. So far as these appellants are also concerned, the trial Court has acquitted them from some of the charges. The presence of P.Ws.1 and 2 at the place of occurrence also cannot be believed. The occurrence had not taken place anywhere near their house. It was in the cattle shed of the deceased in the field. According to P.Ws.1 and 2, they went to the place of occurrence because P.W.1 overheard the conspiracy hatched by these six accused near the house of A3. When the trial Court has disbelieved the conspiracy as spoken by P.W.1, then the evidence of P.Ws.1 and 2 that they went to the place of occurrence because P.W.1 overheard the conspiracy also cannot be believed as a corollary. In our considered view, the deceased would have been attacked by some unidentifiable persons. Only after having seen him lying unconscious, P.W.3 would have taken him to the hospital. Thus, in our considered view, P.Ws.1 and 2 would not have witnessed the occurrence at all. After a due deliberation, it appears that the case has been registered against all these six accused.

12. The medical evidence also does not support the case of the prosecution. According to the doctor, there were as

many as 10 external injuries and corresponding internal injuries. P.Ws.1 and 2 have stated that the third accused attacked the deceased with koduval once and the first accused attacked him with iron rod once. Thus, the other injuries have not been accounted for. For these reasons, we hold that the prosecution has not proved the case beyond reasonable doubt. Therefore, the appellants are entitled for acquittal.

13. In the result,

(i) the appeal is allowed and the conviction and sentence imposed on the appellants by the learned Additional District and Sessions Judge, Krishnagiri in S.C.No.146 of 2010 dated 25.10.2016 is set aside and the appellants / accused 1 and 3 are acquitted.

(ii) The fine amount, if any paid, shall be refunded to them.

(iii) Since the appellant / first accused is in jail, he is directed to be set at liberty forthwith, unless his detention is required in connection with any other case.

(iv) The bail bond, if any executed, by the appellant / third accused, shall stand discharged.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
Krishnagiri.
2. Do Through the Principal Sessions Judge,
Krishnagiri.
3. The Inspector of Police,
Uthangarai Police Station,
Krishnagiri District.
4. The Director General of Police,
Mylapore, Chennai 04.
5. The Superintendent,
Central Prison,
Vellore.
6. The District Munsif -cum-
Judicial Magistrate,
Uthangarai, Krishnagiri District.

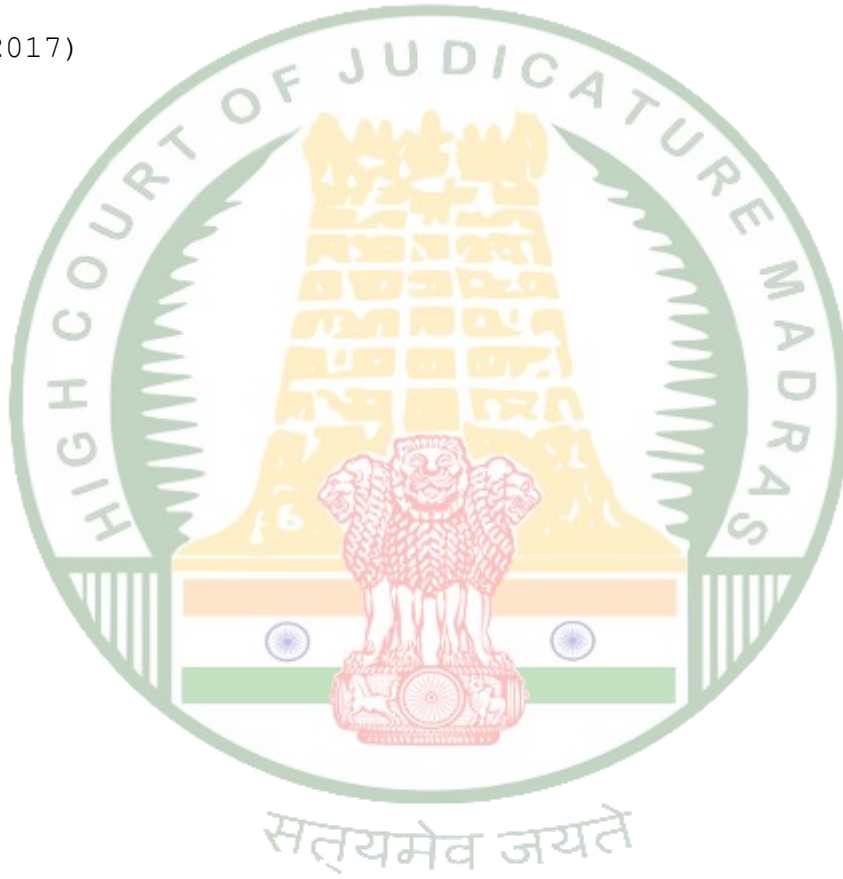
7. The District Collector,
Krishnagiri District.

8. The Public Prosecutor,
Madras High Court.

+1cc to Mr.N.Mohideen Basha, Advocate, S.R.No.8417

CrI.A.No.764 of 2016

KS (CO)
CA(22/05/2017)



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