

Bail Slip

The Accused namely Veeran @ Verrakalisvaran was enlarged on bail as per order of this Court dated 18/1/2017 made in Crl.M.P.No.11038/2016 in Crl Appeal.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.02.2017

CORAM

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

AND

THE HONOURABLE MRS. Dr.JUSTICE ANITA SUMANTH

CRL.A.No.804 of 2016

Veeran @ Veerakalisvaran Appellant/A3

Vs

State by
The Inspector of Police,
M.4, Thudiyalur Police Station,
Coimbatore Respondent/Complainant

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned III Additional District and Sessions Judge, Coimbatore dated 05.11.2016 made in S.C.No.5 of 2014.

For Appellant : Mr.Ramesh Kumar Chopra

For Respondent : Mr.P. Govindarajan
Addl. Public Prosecutor

JUDGMENT

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

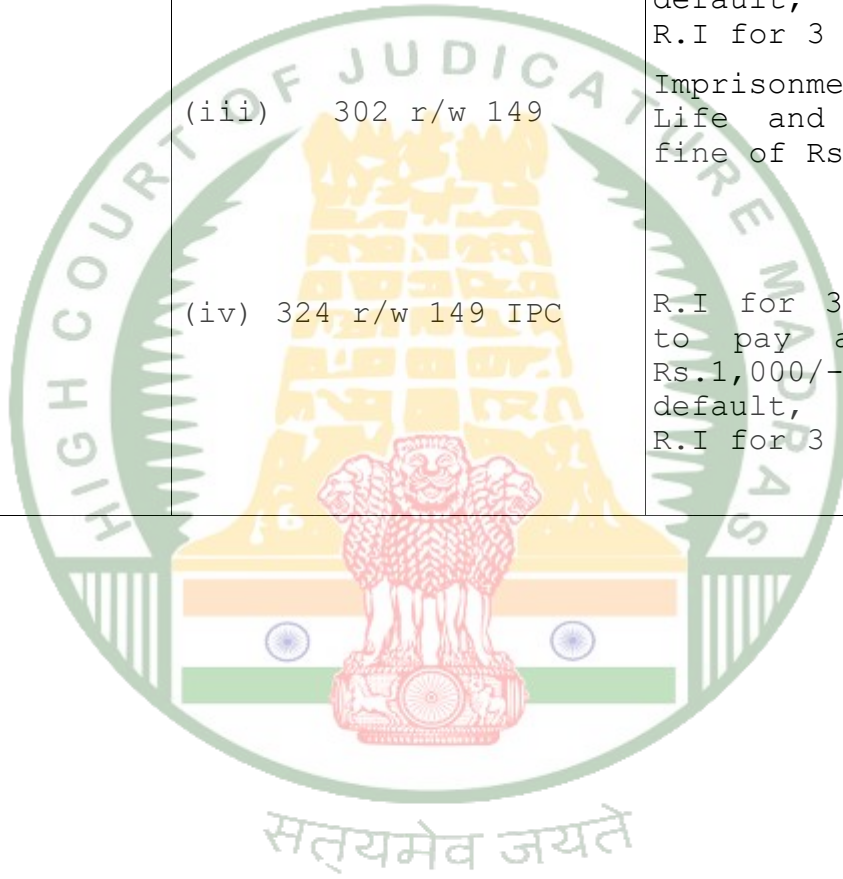
The appellant is A.3 in S.C.No.5/2014 on the file of the learned III Additional District and Sessions Judge, Coimbatore. Including the appellant/A.3, there were totally 7 accused. The trial court framed as many as four charges against the accused/A.3 as detailed below:

Charge Nos.	Accused Rank	Offence
1	A.1 to A.3 A.4 to A.7	148 IPC 147 IPC
2	A.1 A.2 to A.7	302 IPC 149 r/w 302 IPC
3	A.2 A.1, A.3 to A.7	307 IPC 149 r/w 307 IPC
4	A.3 A.1, A.2, A.4 to A.7	324 IPC 149 r/w 324 IPC

By Judgment dated 05.11.2016, the trial Court convicted all the accused except A.5 and A.7. The conviction and sentence imposed on the accused 1 to 4 and 6 are as follows:

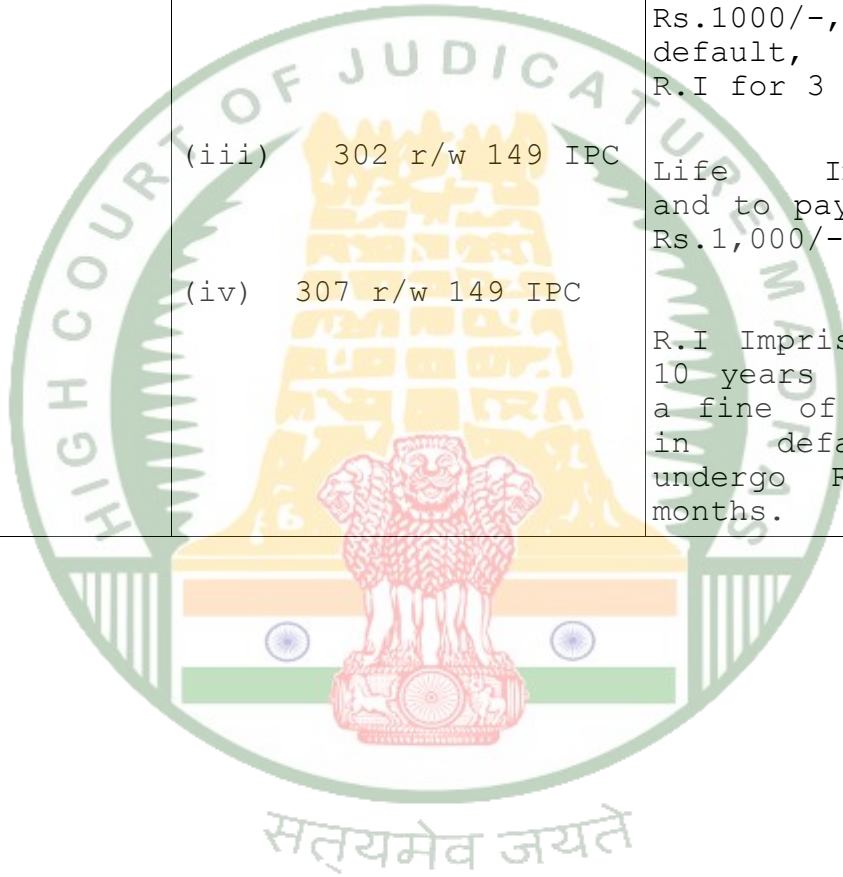
Rank of the Accused	Conviction	Sentence
A.1	(i) 148 IPC (ii) 302 IPC (iii) 307 r/w 149 IPC (iv) 324 r/w 149 IPC	R.I for 3 years and to pay a fine of Rs.1000/-, in default, to under R.I for 3 months Life Imprisonment and to pay a fine of Rs.1000/- R.I for 10 years and to pay a fine of Rs.1000/- in default, to undergo R.I for 3 months R.I for 3 years and to pay a fine of Rs.1000/-, in default, to undergo R.I for 3 months.

Rank of the Accused	Conviction	Sentence
A.2	(i) 148 IPC	R.I for 3 years and to pay a fine of Rs.1000/-, in default, to undergo R.I for 3 months
	(ii) 307 IPC	R.I for 10 years and to pay a fine of Rs.1000/-, in default, to undergo R.I for 3 months
	(iii) 302 r/w 149	Imprisonment for Life and to pay a fine of Rs,1,000/-
	(iv) 324 r/w 149 IPC	R.I for 3 years and to pay a fine of Rs.1,000/- in default, to undergo R.I for 3 months.



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Rank of the Accused	Conviction	Sentence
A.3	(i) 148 IPC	R.I Imprisonment for 3 years and to pay a fine of Rs.1000/-, in default, to undergo R.I for 3 months.
	(ii) 324 IPC	R.I for 3 years and to pay a fine of Rs.1000/-, in default, to undergo R.I for 3 months
	(iii) 302 r/w 149 IPC	Life Imprisonment and to pay a fine of Rs.1,000/-
	(iv) 307 r/w 149 IPC	R.I Imprisonment for 10 years and to pay a fine of Rs.1000/-, in default, to undergo R.I for 3 months.



WEB COPY

Rank of the Accused	Conviction	Sentence
A.4	(i) 147 IPC (ii) 302 r/w 149 IPC (iii) 307 r/w 149 IPC (iv) 324 r/w 149 IPC	R.I for 2 years and to pay a fine of Rs.1000/-in default to undergo RI for 3 months Imprisonment for Life and to pay a fine of Rs.1000/- R.I for 10 years and to pay a fine of Rs.1000/- in default to undergo R.I for 3 months R.I for 3 years and to pay a fine of Rs.1000/- in default to undergo RI for 3 months
A.6	(i) 147 IPC (ii) 302 r/w 149 IPC (iii) 307 r/w 149 IPC (iv) 324 r/w 149 IPC	R.I for 2 years and to pay a fine of Rs.1000/- in default to undergo RI for 3 months Life Imprisonment and to pay a fine of Rs.1000/- R.I for 10 years and to pay a fine of Rs.1000/- in default to undergo RI for 3 months R.I for 3 years and to pay a fine of Rs.1000/- in default R.I for 3 months.

The period of sentence already undergone by the accused was ordered to be set off under Sec.428 Cr,P.C and all the sentences were ordered to run concurrently.

Challenging the said conviction and sentence, the appellant/A.3 has come up with this appeal.

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

(a) The deceased in this case was one Perumal. P.Ws.1 to 3 and the deceased Perumal had gone to a nearby liquor Bar on 07.10.2012 at 5.00 p.m to consume liquor. One Kaliraj (P.W.10) along with his friends was also in the same bar, drinking liquor. The accused 1 to 3 had also gone to the bar at the same time. It is alleged that Kaliraj (P.W.10) vomited on the table itself. A.1 to A.3 objected to the same and developed quarrel with P.W.10. The owner of the Bar and the other workers in the bar were also present and they also intervened. A.1 to A.3, while leaving, challenged the deceased and P.Ws.1 to 3 that they would not spare him and P.Ws.1 to 3 for their interference in that quarrel and for supporting P.W.10. P.Ws.1 to 3 and the deceased did not take it seriously and they came out of the bar and they were proceeding to their house.

(b) When they were reaching near Good Choice Rice Shop at Koundampalayam, all the seven accused suddenly emerged. A.1 to A.3 were armed with knife while others were unarmed. On reaching the deceased and P.Ws. 1 to 3, A.4 and A.5 caught hold the deceased and A.1, with knife in his hand, stabbed the deceased repeatedly. In the course of the same transaction, when P.W.3 intervened, A.6 and A.7 caught hold of him and A.2 stabbed him and the blow fell on the abdomen and because of the blow, the intestine protruded out. P.W.1 then intervened. In the course of same transaction, it is alleged that A.3 stabbed with knife on the right hand of the deceased. The deceased fell down in a pool of blood. P.W.1 and others raised alarm. All the 7 accused at once fled away from the scene of occurrence. The deceased died instantaneously. P.Ws.1 to 3 went to the hospital.

(c) The Sub Inspector of Police, (P.W.16) on receiving the information from the hospital, went to the hospital, recorded the statement of P.W.1 and on returning to the police station at 6.40 p.m on 07.10.2012, registered a case in Cr.No.668 of 2012 for the offences under Secs.147, 148, 294(b), 342, 324, 307 and 302 IPC as against all the accused. Ex.P.1 is the complaint and Ex.P.22 is the first information report. He forwarded both the documents to the Court, which were received by the learned Magistrate at 6.00 a.m on 08.10.2012.

(d) P.W.19, the the Inspector of Police of Thudiyalur Police Station, took up the case for investigation. He went to the scene of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.4 and others. He recovered blood stained earth and sample earth from the place of

occurrence. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(e) P.W.13 Dr. Saravana Priya conducted autopsy on the dead body of the deceased on 08.10.2012 at 10.10 a.m. she found the following injuries:

'The following ante mortem injuries are seen in the body:

1) Reddish abrasion 0/25x0.25 cm two in number noted over lateral aspect of left gluteal region and 0.5x0.5 cm noted over lateral aspect of top of left shoulder.

2) Vertically oblique stab wound 2.5x1.5cm on pleural cavity deep noted over left side chest. The lateral end is sharp and medial upper end is blunt. The wound is 2 cm above and lateral to left side of the nipple. The upper medial end 10 cm lateral to midline at the left 3rd inter costal space. On dissection the wound passes, down wards, medially piercing the 4th inter costal space measuring about 3x1.5cm and cut fracture of left side 4th rib and piercing the pericardium, left ventricle and enter into the left ventricular cavity. Pericardium sac contains about 300 ml of fluid blood with clots. Left pleural cavity contains about 1000 ml of fluid blood with 200 grams blood clot. Left lung found collapsed.

3) Stab wound 4x2x6 cm muscle deep noted over front of left arm. The lateral end is sharp 7 cm above the left elbow joint and the medial end is blunt 10 cm below the axilla. The wound passed upwards inwards along the muscle pain.

OTHER FINDINGS:

- Peritoneal and Right Pleural cavities - empty
- Heart: cut section empty
- Hyoid bone - intact
- Stomach contains about 200 grams of partially digested food particles with unpleasant smell, mucosa pale.
- Small intestine contains about 10 ml of bile stained fluid, with unpleasant smell, mucosa pale.
- Lungs, Spleen, Kidneys, Liver and Brain - cut section pale
- Urinary bladder - empty

- Viscera preserved and sent for chemical analysis
- Blood preserved for analysis.

The Doctor opined that the deceased would appear to have died of shock and hemorrhage due to stab injury to the chest and its corresponding internal injuries. Ex.P.17 is the Post Mortem Certificate. She further opined that the injuries could have been caused by a weapon like M.O.1 knife.

(f) During the course of investigation, P.W.19 recovered the blood stained clothes from the dead body of the deceased and forwarded the same to Court. He examined P.Ws.1 and 3 and recorded their statements. P.W.19 arrested A.4 and A.6 at 3.00 p.m on 09.10.2012 in the presence of P.W.6 and other witnesses. While in custody, A.4 and A.6 made independent voluntary confessions. A.4 made a voluntary confession, in which, he disclosed the place at where he had hidden blood stained "T" shirt. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the blood stained "T" Shirt.

(g) Similarly, in the disclosure statement, A.6 disclosed the place at where he had hidden yet another "T" shirt. In pursuance of the same, he took the police and the witnesses to his house and produced the blood stained "T" shirt. P.W.19 recovered the same under Mahazar. Then, on returning to the police station, he forwarded both the accused to the Court for judicial remand.

(h) On 09.10.2012 A.1 and A.2 had surrendered before Judicial Magistrate, Palani. P.W.19 took police custody of these two accused on 22.10.2012. While in custody, they also made independent voluntary confessions. In the disclosure statement, A.1 disclosed the place at where he had hidden blood stained knife and blood stained shirt. In pursuance of the same, he took the police and witnesses to the place of hide out and produced the material objects. A.2 in his disclosure statement disclosed the place at where he had hidden the knife. In pursuance of the same, he took the police and other witnesses to the place of hide out and produced the knife. P.W.19 recovered the material objects under mahazar. He forwarded the material objects for chemical examination.

(i) On 19.11.2012, at 10.30 a.m he arrested A.5 in the presence of witnesses. While in custody, no discovery of fact was made. Then he forwarded the accused to Court for judicial remand. On completing the investigation, P.W.19 laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 19 witnesses were examined and 27 documents and 11 material objects were also marked.

4. Out of the said witnesses, P.Ws.1 to 3 are the eyewitness to the occurrence. P.Ws.1 and 3 are the injured witnesses. Therefore, they have spoken about the entire occurrence. P.W.4 has spoken about the preparation of the Observation Mahazar and the Rough Sketch. P.W.5, owner of the liquor Bar has spoken about the quarrel between A.1 to A.3 and the deceased in the Bar. P.Ws.6 and 7 have spoken about the confession made by A.4 and A.6 and the recoveries made from them. P.W.8 is the nearby shop owner. He has stated that he heard about the occurrence. P.W.9 has spoken about the confession made by A.3 and the recovery of knife from his possession. P.W.10 Kaliraj has stated that because of vomiting made by him, quarrel arose in the Bar. P.W.11 has spoken about the confession made by A.1 and A.2. P.W.12 has spoken about the treatment given to P.W.2 for the injuries sustained by him. P.W.13 has spoken about the post mortem conducted and her final opinion regarding the cause of death. P.W.14 Head Constable has stated that he handed over the dead body to the doctor for post mortem. P.W.15 has spoken about the treatment given to P.W.3 in the hospital. P.W.16 Sub Inspector of Police has stated about the registration of the case on the complaint made by P.W.1. P.Ws.17 and 18 are Scientific Assistants from Forensic Laboratories and they have spoken about the scientific analysis conducted on the material objects. P.W.19 has spoken about the investigation done and the final report filed.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not choose to examine any witness nor mark any document on his side.

6. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

7. We have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. As already we have pointed out in the instant case Pws.1 and 3 are the injured eyewitnesses. Therefore, their presence at the place of occurrence cannot be doubted. P.W.2, though not an injured witness in the occurrence, has also spoken

about the entire occurrence. Therefore, P.W.2's presence at the place of occurrence also, in our considered view, cannot be doubted.

9. The learned counsel for the appellant submitted that since P.Ws.1 to 3 are close friends, their evidence should be rejected. We are not persuaded by such argument. Simply because they are close friends, their evidence cannot be rejected. Law requires that their evidence requires close scrutiny.

10. The learned counsel for the appellant next contended that the conduct of P.W.1 shows that he would not have been present at the time of occurrence and the injury would not have been sustained in the same occurrence. We are not persuaded by such argument. The learned counsel submitted that he has not explained as to why he did not take the deceased to hospital though he happened to be a close friend of the deceased. The learned counsel would further submit that the injuries sustained by him are simple in nature which could have been self inflicted by him.

11. The learned counsel contended that P.W.1 did not go to the nearest hospital instead, he had gone to the hospital at the distance of 5 kms. This event, according to the learned counsel, would show the unnatural conduct on the part of P.W.1.

12. We do not think so. Having sustained injury, P.W.1 would have gone to the hospital, where, in his perception, better treatment would be available. Therefore, going to the hospital at a distance of 5 kms cannot be shown as an unnatural conduct on his part. When he himself had sustained injury, one cannot expect him to take the deceased or P.W.3 to the hospital. Thus, we do not find anything unnatural conduct in P.W.1.

13. The learned counsel next contended that the Accident Register, pertaining to the treatment given to P.Ws.1 to 3 have not been marked. But it is seen from the record that the Wound Certificate pertaining to the treatment given to P.Ws.1 to 3 have been marked. It is not at all the case of the accused that these two documents have been fabricated. Therefore, this argument is also rejected.

14. The learned counsel for the appellant contended that the medical evidence does not corroborate the eyewitness account. We do find the oral account of P.Ws. 1 and 3 corroborated by the medical evidence.

15. The learned counsel next contended that there was no chemical examination conducted on the material objects. Assuming it as a flaw on the part of the police, that would not go to destroy the evidence of P.Ws.1 to 3. Though P.Ws.1 to 3 have been cross examined, we are not able to find anything in their evidence favouring the accused. There was no delay in making the complaint to the police and also forwarding the first information to the Court.

16. From these evidences, in our considered view, the prosecution has clearly established that all the 7 accused had gone to the place of occurrence in an unlawful assembly with common object of attacking the deceased as well as P.Ws.1 and 3.

17. The learned counsel would submit that there would have been nothing common between these accused and therefore, it cannot be said that there had been any common object as required under Sec.149 IPC. We are not at all persuaded by such argument because the fact that all the 7 accused went together and the fact that A.1 to A.3 were armed with knife and the fact that A.4, A.5, A.6 and A.7 assisted A.1 to A.3 to attack the deceased or the witnesses. This would go to show that they had common object and thus, they are liable to be punished by invoking Sec.149 IPC. In our considered view the trial court has rightly convicted the appellant of all the charges.

18. Now turning to the quantum of punishment, in our considered view, the trial court has imposed only a minimum punishment which does not require any interference at the hands of this Court. Thus, we do not find any merit at all in this appeal.

19. In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed by the trial court are hereby confirmed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The III Additional District and Sessions Judge,
Coimbatore.
- 2.The Principal District & Sessions Judge,
Coimbatore.
- 3.The Judicial Magistrate I,
Coimbatore.
- 4.The Chief Judicial Magistrate,
Coimbatore, (For Information).
- 5.The Superintendent,
Central Jail, Coimbatore.
- 6.The Inspector of Police,
M.4, Thudiyalur Police Station,
Coimbatore.
- 7.The District Collector,
Coimbatore.
- 8.The Director General of Police,
Mylapore, Chennai.
- 9.The Public Prosecutor,
High Court, Chennai.

+1cc to M/S.Ramesh Kumar, Advocate Sr.10550

Crl.A.No.804/2016

rr[col]
srg 24/04/2017

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