

**BAIL SLIP**

The Appellant namely Stalin, S/O, Paramasivan, Male, aged 26 years, was released on bail as per order of this Court dated 23/05/2016, made in CrI.MP.(MD)No.3094 of 2016 in CrI.A(MD)No.122 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2017

CORAM

**THE HONOURABLE MR. JUSTICE A.SELVAM**

**and**

**THE HONOURABLE MR. JUSTICE P.KALAIYARASAN**

CrI.A.(MD)No.122 of 2016

Stalin

.. Appellant/Accused

**Vs.**

State rep.by  
The Inspector of Police,  
Surandai Police Station,  
Tirunelveli District,  
Crime No.346 of 2011.

.. Respondent/Complainant

Criminal appeal filed under Section 374(2) of Cr.P.C. against the conviction and sentence dated 12.02.2016 passed in Sessions Case No.354 of 2012 by the IV Additional District and Sessions Court, Tirunelveli.

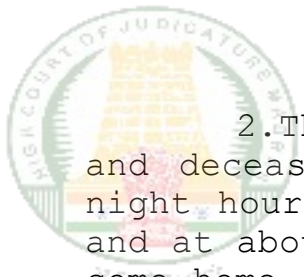
For Appellant : Mr.M.Vivekanandan

For Respondent : Mr.A.Ramar  
Additional Public Prosecutor

**JUDGMENT**

(Judgment of the Court was delivered by **A.SELVAM, J.**)

The conviction and sentence dated 12<sup>th</sup> February, 2016 passed in Sessions Case No.354 of 2012 by the IV Additional District and Sessions Court, Tirunelveli are being challenged in this Criminal



2.The case of the prosecution is that the accused Stalin and deceased Kalidass are friends. Prior to four months, during night hours, they have gone to a temple for attending a function and at about 12.00 o' clock, the accused has asked the deceased to come home. The deceased has refused the demand made by the accused and due to that a miff has occurred between them. On 10.09.2011, at about 11.30 pm., the accused and deceased and some others, in the place of occurrence, have taken beer. Since the deceased has supplied beer to some other persons, the accused has scolded him by using filthy words and subsequently, on the same day, the accused has attacked the deceased by using a knife and after occurrence, the deceased has been taken to hospital and on the way, he passed away. Further, the accused has threatened some of the prosecution witnesses. After occurrence, the defacto complainant by name Murugaiah, father of the deceased has given a complaint and the same has been marked as Ex.P1.

3.On receipt of Ex.P1, the Investigating Officer (PW15) has registered the same in Crime No.346 of 2011 and taken up investigation; examined connected witnesses and also made arrangements for conducting autopsy on the body of the deceased and accordingly, Dr.Selvarangarajan (PW9) has conducted post-mortem and he found the following internal and external injuries:

External Injuries:

A stab wound about 3 X 1.5 cm and 8 cm deep with clean edges present over the back on the right side corresponding to D11 vertebrae present. Wound edges swollen, red with adherent blood. Age of the wound about 12 to 18 hours.

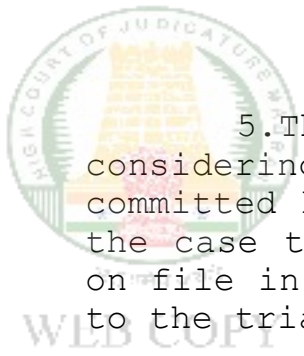
O/E thorax:

300 ml of blood present within the thoracic cavity. 2 X 3 cm laceration over collapsed right lung. Heart empty.

O/E Abdomen:

200 ml of blood within peritoneal cavity present. 1 X 3 laceration over liver. Both branches of aorta & inferior vena cava torn. Both kidneys normal. Hyoid intact. External genitalia normal. Skull & brain intact. Stomach : contained 50 ml of liquid food particles with alcoholic smell. Intestines pale & distended with gas paravertebral muscle on the right side torn.

4.The post-mortem report has been marked as Ex.P8. After transfer of PW15, PW16 has taken up investigation and after completing the same, laid a final report on the file of the  
<https://hcc.judicelibrary.gov.in/govsec> State Court, Shengottai and the same has been taken on file in PRC No.35 of 2012.



5.The Judicial Magistrate Court, Shengottai after considering the fact that the offences alleged to have been committed by the accused are triable by Sessions Court, committed the case to the Court of Sessions, Tirunelveli Division and taken on file in Sessions Case No.354 of 2012 and subsequently made over to the trial Court.

6.The trial Court after hearing arguments of both sides and upon perusing relevant records has framed first charge against the accused under Section 294(b); second charge against him under Section 302 and third charge under Section 506(ii) of the Indian Penal Code and the same have been read over and explained to him. The accused has denied the charges and claimed to be tried.

7.On the side of the prosecution, PWs.1 to 16 have been examined and Exs.P1 to P17 and M.Os.1 to 7 have been marked.

8.When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. On the side of the accused, DWs.1 and 2 have been examined and Exs.D1 to D4 have been marked.

9.The trial Court after hearing arguments of both sides and upon perusing the relevant evidence available on record has found the accused guilty under Section 302 of the Indian Penal Code and sentenced to undergo imprisonment for life and also imposed a fine of Rs.1,000/- with usual default clause. However, the trial Court has acquitted the accused under Sections 294(b) and 506(ii) of the Indian Penal Code. The conviction and sentence passed by the trial Court, are under challenge in the present Criminal Appeal.

10.The sum and substance of the case of the prosecution is that both the accused and deceased are friends and prior to four months from the date of occurrence, both of them have gone to a temple festival and at about 12.00 o'clock, the accused has asked the deceased to accompany with him for going home. But the deceased has refused to concede the request made by the accused and due to that, a despair has been in existence between them and on 10.09.2011, the accused, deceased and others have taken beer in the place of occurrence on the eve of marriage of one Ramya and since the deceased has supplied beer to others, the accused has hurled invectives against him and subsequently attacked on his person by using a knife and due to his overtacts, on the way to hospital, the deceased has passed away.

11.For the purpose of proving the charges framed against the accused on the side of the prosecution, as many as 16 witnesses have been examined. For proving the motive between the accused and deceased, PWs.4 and 5 have been examined and their



specific evidence is that prior to occurrence both of them have attended a festival in a temple and the accused has asked the deceased to accompany with him for going home. But the deceased has refused and due to that a despair has been in existence between them.

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12.From the evidence adduced by PWs.4 and 5, the Court can very well come to a conclusion that prior to occurrence, a motive has been in existence between the accused and deceased.

13.Even assuming without conceding that in a case where eye witnesses are available, motive has become insignificant and at the same time, the said type of cases have to be analysed only on the basis of available evidence.

14.On the side of the prosecution, father of the deceased has been examined as PW1 and his brother has been examined as PW2 and one independent witness has been examined as PW3.

15.The trial Court after considering the overall evidence adduced by PWs.1 to 3 coupled with medical evidence, has given a finding that in the place of occurrence, the accused has murdered the deceased and sentenced him to undergo imprisonment as stated in the Judgment.

16.On the side of the appellant/accused, the following points have been raised for the purpose of supplanting the conviction and sentence passed against him.

(i)The specific evidence given by PW3 is that on the date of occurrence at about 11.45 pm, he has gone to the house of PW1 and intimated the initial occurrence between the accused and deceased, whereas, in the first charge, it has been specifically stated that the occurrence has taken place at about 11.30 pm.,

(ii)In the instant case, evidence is available for the purpose of recovery of a knife and the same has been subjected to serological test and the test report has been marked as Ex.P10, wherein no specific group has been mentioned in respect of the blood detected from the knife alleged to have been recovered from the accused and therefore, the entire conviction and sentence passed by the trial Court are liable to be set aside.

(iii)The specific evidence given by PW2 during the course of cross examination is that he has not known anything about the occurrence.

(iv)A vital contradiction is available between the evidence of PWs.2 and 8.

(v)On the side of the prosecution, ambulance driver has been examined as PW12 and his specific evidence is that the concerned Inspector of Police has not recovered any trip sheet from him.



(vi) The specific evidence given by PW7 is that the Investigation Officer has not examined him and received any statement.

(vii) In between the evidence given by PWs.4 and 5, with regard to motive, some contradictions are available.

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17. The learned Additional Public Prosecutor appearing for the respondent has contended to the effect that in the instant case, PWs.4 and 5 have spoken about the motive between the accused and deceased prior to occurrence and with regard to occurrence, PWs.1 to 3 have given cogent evidence for the purpose of analysing the alleged crime and the trial Court after considering the trustworthy evidence given by PWs.1 to 3 coupled with other evidence has rightly invited conviction and sentence against the appellant/accused under section 302 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court do not warrant interference.

18. On the basis of the divergent submissions made on either side, the Court has to meticulously analyse the following points:

(a) Motive;

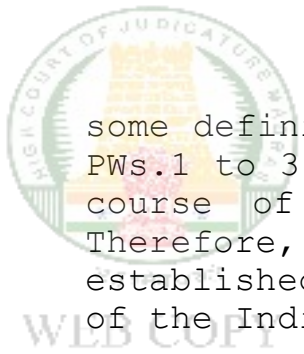
(b) Evidence adduced by the witnesses relating to occurrence.

19. As pointed out earlier, the specific case of the prosecution is that prior to four months from the date of occurrence, both the accused and deceased have gone to a temple festival and on the same day at about 12.00 o'clock the accused has desired to go home and he expressed his desire to the deceased, but the deceased has refused to concede the same and due to that a despair has been in existence between them.

20. For the purpose of proving the said aspect, PWs.4 and 5 have been examined and both of them have spoken about the previous occurrence alleged to have been taken place between the accused and deceased. Even assuming without conceding that their evidence is not at all sufficient for coming to a conclusion that there is a motive between the accused and deceased, in the instant case, some of the prosecution witnesses have been examined as eye witnesses. Since eye witnesses are available in the present case, the alleged motive has become insignificant and therefore, the Court has to necessarily look into the second point, as pointed out earlier.

21. It is true that PW1 is the father of the deceased and PW2 is the brother of PW1 and PW3 is an independent witness. It is not an exaggeration to say that PWs.1 to 3 have clearly spoken about the fact that in the place of occurrence, the accused has stabbed the deceased by using a knife.

<https://hcservices.ecourts.gov.in/hcservices/> 22. It is an admitted fact that PWs.1, 2 and deceased are inter-related to each other. Simply because they are related to each other, their evidence cannot be discarded, unless there are



some definite reasons for rejecting the same. In the instant case, PWs.1 to 3 have given clear evidence to the effect that during the course of occurrence, the accused has attacked the deceased. Therefore, it is quite clear that the prosecution has clearly established the guilt of the accused punishable under Section 302 of the Indian Penal Code.

23.The first and foremost contention put forth on the side of the appellant/accused is that the specific evidence given by PW3 is that he has given information with regard to occurrence to PW1 at about 11.45 pm., whereas, the specific case of the prosecution is that the occurrence has taken place at about 11.30 pm and the said contention has not been noted down by the trial Court.

24.It is true that the specific evidence given by PW3 is that he informed the initial occurrence, on the date of occurrence to PW1 at about 11.45 pm., It is nothing but a small mistake on the part of PW3 and that itself would not undermine the case of the prosecution.

25.The second point urged on the side of the appellant/accused is that a knife has been recovered from the appellant/accused and the same has been subjected to chemical examination and Ex.P10 is nothing but serologist report, wherein it has been clearly stated that the blood found from knife is nothing but human, no category is mentioned.

26.It is true that the knife recovered from the accused and some other beweltered material objects have been subjected to chemical examination and ultimately filed Ex.P10, wherein it has been simply stated that the blood detected from knife is nothing but human, whereas, in respect of other material objects, 'B' group blood is found out. Simply because in the blood detected from knife, some blood is found out, the Court cannot come to a conclusion that the appellant/accused has had no connection whatsoever with the crime, by way of brushing aside the concrete evidence given by PWs.1 to 3. Therefore, the second point urged on the side of the appellant/accused is sans merit.

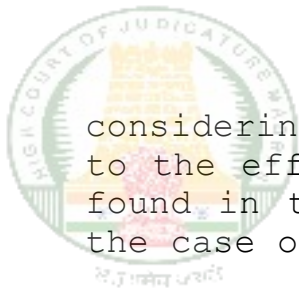
27.The third point urged on the side of the appellant/accused is that PW2 during the course of cross examination has stated that he has not known the occurrence.

28.In fact, this Court has perused the entire evidence given by PW2. During the course of chief examination, he has clearly stated to the effect that he has seen the occurrence. But during the course of cross examination he simply stated that he has not known the occurrence.

<https://hccvscs.courts.gov.in/cvscs/>

29.Considering the aforesaid factual aspects and also





considering the fact that in so many places PW2 has given evidence to the effect that he has seen the occurrence, mere contradiction found in the evidence of PW2 as indicated supra would not affect the case of the prosecution.

30.The fourth point urged on the side of the appellant/accused is that with regard to service of ambulance, a contrary evidence is available between the evidence of PWs.2 and 8 and the same has not been considered by the trial Court.

31.It is true that a flimsy contradictory evidence is available between the evidence of PWs.2 and 8 and that itself would not affect the case of the prosecution.

32.The fifth contention put forth on the side of the appellant/accused is that the ambulance driver has been examined as PW12 and his specific evidence is that the concerned Inspector of Police has not seized any trip sheet.

33.It is nothing but a mistake on the part of the Investigating Officer and that itself would not pave the way for coming to a conclusion that the case of the prosecution is false.

34.The sixth contention put forth on the side of the appellant/accused is that the specific evidence of PW7 is that he has not given any statement before the Inspector of Police.

35.It is nothing but an omission on the part of the Investigating Officer and the same would not affect the case of the prosecution.

36.The last contention put forth on the side of the appellant/accused is that with regard to motive, a contradictory evidence is available between PWs.4 and 5.

37.It is true that a flimsy contradiction is available in the evidence of PWs.4 and 5 with regard to alleged motive.

38.It has already been pointed out that in a case like this, motive has become insignificant. Further PWs.1 to 3 have given clinching evidence with regard to occurrence. Since PWs.1 to 3 have given clear evidence with regard to occurrence and also details of attack made by the accused on the person of the deceased, mere contradiction found in the evidence of PWs.4 and 5 would not affect the case of the prosecution.

39.It has already been pointed that on the basis of evidence given by PWs.1 to 3, the Court can very well come to a conclusion that the prosecution has clearly established the guilt of the accused punishable under Section 302 of the Indian Penal Code. In view of the discussion made earlier, this Court has not



found any error nor illegality in the conviction and sentence passed by the trial Court and altogether, the present Criminal Appeal deserves to be dismissed.

40. In fine, this Criminal Appeal is dismissed. The conviction and sentence passed against the appellant/accused in Sessions Case No.354 of 2012 by the trial Court are confirmed. The trial Court is directed to take appropriate steps so as to immure the appellant/accused in prison to serve out the remaining period of sentence.

41. The learned counsel appearing for the appellant/accused, after pronouncing Judgment, has represented that the appellant/accused is a mentally retarded person and some leniency can be given in awarding punishment.

42. Considering the nature of crime committed by the appellant/accused, no leniency can be shown in awarding sentence and therefore, the contention put forth on the side of the appellant/accused is rejected.

Sd/  
Assistant Registrar

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Sub Assistant Registrar

To

1. The IV Additional District and Sessions Court,  
Tirunelveli.

2. The Principal District Judge  
Tirunelveli.

3. The Judicial Magistrate  
Senkottai.

4. Do Through The Chief Judicial Magistrate  
Tirunelveli.

5. The Inspector of Police,  
Surandai Police Station,  
Tirunelveli District.

<https://hcservices.ecourts.gov.in/hcservices/>

6. The Superintendent Central Prison,  
Tirunelveli.





7.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

8.The District Collector Tirunelveli.

Mj

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