

**BAIL SLIP**

1) Sathiyaraj, S/o.Kaliaperumal 2) Thiyagu, S/o.Subbiah and 3) Marimuth, S/o.Kaliamoorthy, Petitioners/Accused were released on bail vide Order of this Court, dated 06.10.2016 made in CrI.MP(MD) No.9402 of 2016 in CrI.A(MD)No.272 of 2016.

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Reserved on : 14.12.2017

Pronounced on : 31-01-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH

and

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Criminal Appeal (MD) No. 272 of 2016

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1. Sathiaraj
2. Thiyagu
3. Marimuthu

.. Appellants/Petitioners

Versus

State represented by
The Inspector of Police
Thiruvidaimarudhur Police Station
Thanjavur District

.. Respondent/Respondent

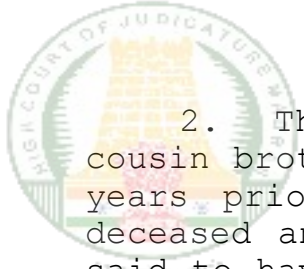
Appeal filed under Section 374 of Code of Criminal Procedure against the Judgment dated 10.12.2015 passed in S.C. No. 262 of 2015 on the file of II Additional District and Sessions Judge, Thanjavur.

For Appellants : Mr. Ar.L. Sundaresan, Senior Advocate
for Ms. AL. Ganthimathi
For Respondent : Mr. C. Ramesh
Additional Public Prosecutor

JUDGMENT

R. SUBBIAH, J

The accused 1 to 3 in S.C. No. 262 of 2015 on the file of the learned II Additional District and Sessions Judge, Thanjavur are the appellants in this appeal. They stood charged for the offences punishable under Sections 302 of IPC. After conclusion of trial, the accused were convicted and sentenced to undergo imprisonment for life together with fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of three months.



2. The deceased in this case is one Ramesh. PW1 and 2 are the cousin brothers of the deceased. According to the prosecution, two years prior to the occurrence, there was a quarrel between the deceased and the first accused Sathyaraj during which the deceased said to have stabbed the first accused and a criminal case was also pending with respect to the said incident. While so, at about 9.30 p.m. on 21.07.2014, PW1 was coming near the Fish market adjacent to Thiruvidadaimarudur Post office to buy cigarette. At that time, PW1 had seen the deceased and asked him as to why he was standing there at that time and instructed him to go home. By saying so, PW1 crossed the deceased and proceeded 10 feet further. At that time, PW1 heard the hue and cry of the deceased, turned back and saw the first accused attacking the deceased on his backside with a knife and the deceased fell down. Soon thereafter, A-2 and A-3 have attacked the deceased on his left and right rib. As all the accused were armed with weapons, PW1 could not prevent the deceased from being attacked by the accused. PW1 therefore raised an alarm and immediately the accused 1 to 3 fled away from the scene of occurrence. Thereafter, PW1 called for an ambulance and took the deceased with him to Kumbakonam Government Hospital where the deceased was declared as brought dead by the Doctor, PW12. Ex.P18 is the wound certificate issued by PW12. Thereafter, PW1 went to the police station at about 12.30 am on 22.07.2014 and lodged a complaint, Ex.P1 to PW15, the Special Sub-Inspector of Police. On the basis of such complaint, PW15 registered a case in Crime No.137 of 2014 for the offence punishable under Section 302 of IPC. Ex.P21 is the First Information which was forwarded by PW15 to higher officials. On receipt of Ex.P15, PW16, the Inspector of Police rushed to the place of occurrence and prepared an observation mahazar and also a rough sketch under Exs. P22 and P23 respectively. PW16 also collected the blood stained earth and sample earth under Ex.P24. Thereafter, PW16 went to the Government Hospital, Kumbakonam where he conducted an inquest on the dead body of the deceased in the presence of Panchayatars and relatives of the deceased. Ex.P25 is the inquest report. After completing the inquest, PW16 arranged to send the body of the deceased through PW9, the Special Sub-Inspector of Police for postmortem. Accordingly, the dead body of the deceased was handed over to the Doctor, PW14 for conducting postmortem. After conducting Postmortem, PW14 issued postmortem Certificate, which was marked as Ex.P20, wherein it was stated as follows:-

"Appearances found at the postmortem. Rigor mortis present in all 4 limbs. Eyes closed. Ear & Nostrils NAD. Mouth closed. Tongue within the mouth. External injuries are mentioned in the next page. Internal - neck & hyoid bone intact. Thorax - ribs intact. Lungs - right 450 gr left 400 gm C/S congested. Heart weight 250 grams. Chawlin empty (1) Lung - laceration of 8 cm X 9 cm X 3 cm over the basal region present. Abdomen - haemoperitoneum of about 500 ml present. Liver - weight 1500 grams, laceration of about 10 cm x 12 cm x 5 cm involity the left half of lower stage of lies present. Spleen - weight 150



gram laceration of 2.5 cm x 2.5 cm x 3 cm. Laceration of 3 cm x 2 cm x 0.5 cm over upper 1/2 of left kidney present. Right kidney intact. C/s congested. Head - intact. Scalp & skull intact. Brain - pale, weight 1300 grams.

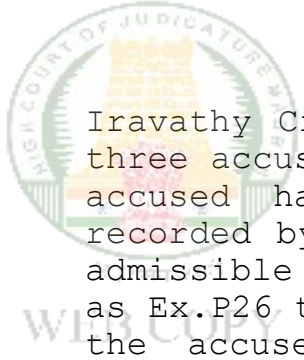
External injuries:-

1. Laceration 2cm x 1 cm x 0.5 cm in left mandible area
2. Laceration 2 cm x 2 cm x 1.5 cm over left cheek
3. Laceration 2 cm x 1 cm x 1 cm over left side of chin
4. Laceration of 2 cm x 2 cm x 2.5 cm over left side of neck exposing the great vessels
5. Incised wound of 2 cm x 1 cm x 1 cm over left clavicular region
6. Abrasion 1 cm x 1 cm over left arm
7. Incised wound 2 cm x 1 cm x 1 cm over left upper arm
8. Incised wound 4 cm x 2 cm x 1 cm over left elbow
9. Incised wound 4 cm x 2 cm x 1 cm over left elbow
10. Scratch mark of 1 cm x 1 cm x 1 cm over upper left arm
11. Abrasion 1 cm x 1 cm over dorsal aspect of palm left
12. Incised wound 2 cm x 1 cm x .5 cm over left (NC)
13. Incised wound 2 cm x 1 cm x .5 cm (NC) left iliac (NC)
14. Incised wound 3 cm x 2 cm x 5 cm over left supra scapula region
15. Incised wound 3 cm x 2 cm x .5 cm over left supra scaoyka region
16. Incised wound 4 cm x 2 cm x .5 cm over left scapula region
17. Incised wound 2 cm x 1.5 cm x .5 cm over left infra scapula region
18. Incised wound 4 cm x 2 cm x 5 cm over left (NC)
19. Incised wound 3 cm x 2 cm x 5 cm over left (NC)
20. Incised would 1 cm x 1 cm x 5 cm over right infra scapula region
21. Incised would 2 cm x 2 cm x 5 cm over left gluteal region
22. Abrasion 2 cm x 2 cm over left gluteal region
23. Abrasion 2 cm x 1 cm below right knee
24. Incised would 1 cm x 1 cm x 1 cm above left knee posterior
25. Incised would 3 cm x 2 cm x 5 cm over right lower
26. Abrasion 2 cm x 1 cm x over right mandibular region

The postmortem concluded at 2 p.m. on 22.07.2014. The death would have occurred 15 - 17 hours prior to postmortem.

The death is due to vital organ damage."

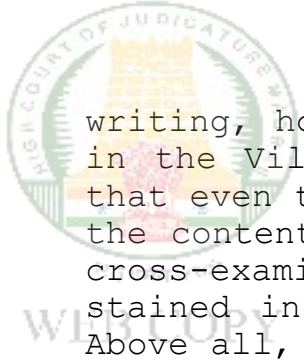
3. On the same day namely 22.07.2014, PW16 recorded the statement of the Doctor, PW14 who conducted the postmortem. PW16 also, on information, proceeded along with Nagarajan, Village Administrative Officer (PW6) and his assistant Durai (PW7) to



Iravathy Cremation Ground, Eda Street where he apprehended all the three accused from a hideout at about 3 pm. On such arrest, all the accused have given voluntary confession statement and it was recorded by PW16 in the presence of the aforesaid witnesses. The admissible portion of confession statement of A-1 to A-3 was marked as Ex.P26 to P28. After recording such statements, PW16 accompanied the accused and recovered the knife used by them during the commission of offence under a Mahazar from a bush near the compound wall of Karunya Packaged Drinking Water Company, Thirupanipettai and they were marked as Exs. P29 to P31. At about 4.00 pm on that day, all the accused were brought to the police station and they were sent to the Magistrate Court for remand. On 24.07.2014, PW16 recorded the statement of PW6 and 7. The material objects recovered from the accused 1 to 3 were forwarded to the Magistrate Court under Form No.95 under Ex.P32 to 35. During the course of investigation, PW16 gave a requisition letter to the Assistant Engineer, TNEB to ascertain whether the street light was burning on the intervening night of 21/22.07.2014 in the place of occurrence. In the meantime, PW16 was transferred and the investigation was taken over by his successor PW17. PW17, during the course of investigation in the case, recorded the statement of Sivadurai (PW11) and the Postmortem Doctor (PW14) on 10.11.2014. On 24.11.2014, PW17 recorded the statement of Sivasubramaniam, Executive Officer (PW10), Adikesavan, Special Sub-Inspector of Police (PW15), Gurumoorthy and Sujatha (PW13) and recorded their statement. He also recorded the statement of Mr. Vasudevan, Assistant Medical Officer, Government Hospital, Kumbakonam (PW12) who issued the accident register. On 18.12.2014, PW17 completed the investigation and filed the final report.

4. In order to prove the guilt of the accused, on behalf of the prosecution, as many as 17 witnesses were examined as Pws 1 to 17 and Exs. P1 to P37 were marked besides producing Mos 1 to 8. When the accused were questioned under Section 313 of the Code of Criminal Procedure with respect to the incriminating materials made available against them by the prosecution, they pleaded not guilty. The trial court, upon considering the oral and documentary evidence, concluded that the accused/appellants are guilty of the offence complained of and therefore sentenced them to undergo imprisonment for life.

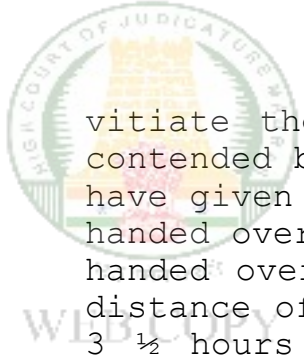
5. The learned Senior counsel appearing for the appellants would contend that PW1 was projected by the prosecution as a chance witness. Admittedly, PW1 was related to the deceased and he is also an interested witness. According to the prosecution, just prior to the occurrence, PW1 was alleged to have come to the occurrence spot to buy cigarette. PW1 also was alleged to have met the deceased and advised him to go home. PW1 in his deposition has stated that he has given the complaint to PW15, Special Sub-Inspector of Police at 12.30 hours in the midnight, however, the complaint was not written by him. PW1 has deposed that the complaint was made to be written by a boy and that he had signed the complaint. However, in the cross-examination, PW1 has stated that he is capable of reading and



writing, however, the complaint was written by one of the Villagers in the Village. PW1 has further deposed in the cross-examination that even though he signed the complaint, Ex.P1, he was not aware of the contents of the complaint. It is further deposed by PW1 in his cross-examination that he went to the police station with the blood stained in his dress, but they were not recovered by the Police. Above all, PW1 had deposed that due to pitched darkness at the scene of occurrence, he could not specifically say as to who attacked the deceased first. This portion of evidence of PW1 is contrary to the Ex.P19, Certificate issued by Junior Engineer attached to Tamil Nadu Electricity Board, Thirupanandhal stating that there was uninterrupted electricity service connection on the date of occurrence throughout the area and that the street light at the scene of occurrence was burning. Further, even though PW1 claimed that soon after the occurrence the deceased have dropped the weapons used by them in the commission of offence at the place of occurrence itself, as per the case of the prosecution, the weapons used by the accused were recovered by PW16 on the basis of the confession statement given by the accused. Further, PW1 in his cross-examination has stated that on the next date of occurrence, he had taken his bicycle from the place of occurrence and it was smeared with blood stains. However, the investigation officer has not recovered the bicycle of PW1. Therefore, the learned Senior counsel for the appellants would contend that PW1 is a chance witness, he has not witnessed the occurrence and his presence at the time of occurrence is very much doubtful.

6. The learned Senior counsel for the appellants would further contend that PW2 to 4 were also projected as eye witness to the occurrence. PW2 in his evidence has stated that he along with PW3 came to a shop near the place of occurrence for consuming liquor. At that time, PW2 heard the noise of PW1 stating that the deceased was stabbed. On hearing the noise, PW2 came out of the shop and saw the accused 1 to 3 running with the weapons from a distance of about 80 feet. However, PW2 in his cross-examination would state that after committing the offence, all the accused have dropped the weapons used by them in the commission of offence. Even PW2 has deposed in his cross-examination that there were blood stains in his attire as he helped the deceased to get into the ambulance. However, his attire were not recovered by the police.

7. Similar was the evidence of PW3 that on hearing the alarm raised by PW1, he came out of the shop where he was consuming liquor and saw the accused 1 to 3 running from the scene of occurrence. However, PW3 was treated as a hostile witness by the prosecution. PW4 is the wife of the deceased and she is admittedly a hear-say witness who did not witness the occurrence. PW4 in her evidence has deposed that she was not aware of any enmity between her husband (deceased) and the first accused. The learned Senior counsel for the appellants would therefore contend that there were several inconsistencies in the case projected by the prosecution which goes to the root of the case. The inconsistencies are such that it would



vitiating the case projected by the prosecution. Above all, it is contended by the learned Senior Counsel that even though PW1 said to have given the complaint at 12.30 hours in the night to PW15, it was handed over to Mr. Gurumoorthy, Special Sub-Inspector of Police, who handed over Ex.P15 to the Judicial Magistrate Court, situated at a distance of 10 kilometers, at 4.00 a.m. Thus, there was a delay of 3 ½ hours in the first information report reaching the Judicial Magistrate Court besides that the person who was said to have handed over the first information report namely Gurumoorthy was not examined before the trial Court. Therefore, according to the learned Senior counsel for the accused, the first information report was not registered at 12.30 hours, as alleged by the prosecution and there was delay in registering the first information report, which raises a doubt in the case of the prosecution. Therefore the learned Senior Counsel for the accused/appellant prayed for allowing this criminal appeal.

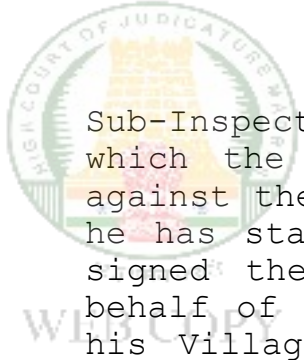
8. In support of his contentions, the learned Senior counsel for the appellants relied on the decision of the Honourable Supreme Court in (Baby @ Sebastian and another vs. Circle Inspector of Police, Adimaly) reported in AIR 2016 Supreme Court 3671 to contend that PW1 was projected by the prosecution as a chance witness and such evidence requires a very cautious and close scrutiny. According to the learned Senior counsel for the appellants, the evidence of PW1, if examined as a whole, would reveal that his presence in the scene of occurrence is very much doubtful and his evidence has to be discarded. For the same proposition, the learned Senior counsel for the accused/ appellants would rely on the decision in the case of (Bahal Singh vs. The State of Haryana) reported in (1976) 3 Supreme Court Cases 564 wherein it was held that if by coincidence or chance a person happened to be at the place of occurrence at the time an occurrence had taken place, he is called a chance witness and if such a person happened to be a friend or relative of the victim or inimically disposed towards the accused then his being a chance witness is viewed with suspicion. Such a piece of evidence is not necessarily incredible or unbelievable but does require cautious and close scrutiny. By placing reliance on the above decision, the learned Senior counsel would contend that PW1 is a chance witness besides being closely related to the deceased in this case and therefore his evidence has to be discarded besides that his deposition is weak and untrustworthy.

9. The learned Senior counsel for the appellants further relied on the decision of the Honourable Supreme Court in (Sohan and another vs. State of Haryana and another) reported in (2001) 3 Supreme Court Cases 620 and contended that in criminal proceedings, the burden of proof to prove the guilt of the accused is largely on the shoulders of the prosecution and that the prosecution has to establish the case against the accused beyond all reasonable doubt. In the present case, PW1 to 4 were closely related to the deceased and other witnesses examined by the prosecution did not support the case.



10. Per contra, the learned Additional Public Prosecutor would contend that even in the First Information Report, Ex.P21, which was registered based on the complaint, Ex.P1 given by PW1, the name of the three accused was prominently mentioned as the aggressors. In the complaint, the specific overt act as against the accused was clearly mentioned. The first information report was also registered without any loss of time and therefore, it cannot be said that the accused did not take part in the occurrence. As regards PW1, even though he can be construed as a chance witness or interested witness, his evidence need not be discarded as such. PW1 has in fact witnessed the occurrence and clearly narrated the manner in which the deceased was done to death by the accused 1 to 3. It is the PW1 who has taken the deceased to the hospital and thereafter has given the complaint based on which prosecution came to be launched against the accused. Further, Pws 2 and 3 also witnessed the accused fleeing from the scene of occurrence soon after the commission of the offence and their presence in the scene of occurrence was clearly established. Even though there are minor inconsistencies in the deposition of the prosecution witnesses, it will not vitiate the case projected by the prosecution. It is further contended that the testimony of an interested witnesses need not always be discarded and it only requires a thorough scrutiny. If the deposition of the prosecution witness is read as a whole, it would clinchingly prove the overt act as against the accused. The trial Court, on appreciation of the entire evidence on record, has rightly convicted and sentenced the accused for the offence punishable under Section 302 of the Indian Penal Code. Therefore, the learned Additional Public Prosecutor prayed for dismissal of the appeal.

11. We have given our anxious consideration to the rival submissions made. According to the prosecution, there was previous enmity between the deceased and the first accused inasmuch as two years prior to the occurrence, the deceased had stabbed the first accused and a case was pending in connection with the said occurrence. This is said to be the motive for the accused to commit the murder of the deceased. As regards the present case, it is stated that PW1, who is the cousin brother of the deceased, was going to the shop near the scene of occurrence at about 9.30 pm to buy cigarette and at that time he saw the deceased standing there. PW1 asked the deceased as to why he is standing there and advised him to go home. By saying so, PW1 proceeded 10 feet ahead and at that time, he heard the alarm of the deceased. At that time PW1 saw the accused 1 to 3 attacking the deceased with deadly weapons, however, PW1 could not prevent the accused from attacking the deceased further as they were armed with weapons. PW1 therefore raised an alarm and immediately thereafter, the accused fled away from the scene of occurrence. On hearing the alarm of PW1, a crowd gathered there and PW1 had taken the deceased to the Government hospital only to be declared that the deceased was brought dead. In this context, PW1 has given a written complaint to PW15, Special



Sub-Inspector of Police at about 12.30 hours in the night based on which the case in Crime No. 137 of 2014 came to be registered against the accused. When PW1 was examined before the trial Court, he has stated that the complaint was written by a boy and he has signed the complaint. However, when PW1 was cross-examined on behalf of the accused, he has stated that one of the Villagers in his Village has written the complaint, but he does not know the contents of the complaint. Further, PW1 admitted that even though he went to the police station with blood stained cloths, they were not recovered by the police. He has further deposed in the cross-examination that he was not sure as to who had attacked the deceased first inasmuch there was no lighting at the scene of occurrence and it was pitched darkness. PW1 has further deposed that soon after committing the murder of the deceased, the accused have dropped the weapons which they used in the commission of offence and ran away from the scene of occurrence. This deposition of PW1 which contain material inconsistencies required a thorough scrutiny.

12 . In this context, the learned Senior counsel for accused/appellant relied on the decisions of the Honourable Supreme Court in (i) (Baby @ Sebastian and another vs. Circle Inspector of Police, Adimaly) reported in AIR 2016 Supreme Court 3671 and (ii) (Bahal Singh vs. The State of Haryana) reported in (1976) 3 Supreme Court Cases 564. In those decisions, the Honourable Supreme Court has held that the testimony of a chance witness or interested witness need not be discarded as such but it requires a very cautious and close scrutiny. Admittedly, in the present case, PW1 has to be construed as a chance witness besides he is an interested witness. On close scrutiny of the deposition of PW1 it would reveal that his deposition is very weak and feeble and it does not inspire the confidence of this Court. In the chief examination, PW1 deposed that the complaint was written by a boy, which he presented to PW15 at 12.30 hours on 21.07.2014. However, contrary to such deposition, in his cross-examination, he had stated that the complaint was written by one of the Villagers in his village and that he had no knowledge about the contents of the complaint at all. Further, PW1 has stated that there was no adequate lighting in the scene of occurrence, as a result of which, he could not say as to which of the accused attacked the deceased first. Contrary to such deposition, PW19, Junior Engineer attached to Tamil Nadu Electricity Board, Thiruvidadaimarudur gave a letter to the investigation officer under Ex.P19 stating that there was uninterrupted electricity power supply made available in the locality on 21.07.2014 and that the street lights were burning. On further scrutiny of the deposition of PW1 in his cross-examination, we could see that PW1 has deposed that he went to the police station with blood stained clothes, however, such clothes worn by PW1 were not recovered by the police. The further fallacy in the deposition of PW1 is that he has stated that the accused, soon after committing the offence have dropped the weapons which they carried with them, however, according to PW16, investigation officer, the weapons used by the accused in the commission of offence were recovered pursuant to the confession

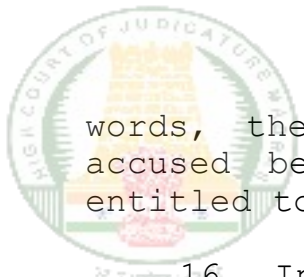


statement given by them from a bush near the compound wall of Karunya Packaged Drinking Water Company, Thirupanipettai. Therefore, there were glaring contradictions in the deposition of PW1 in the cross-examination as well as the recovery of the weapons by PW16 under recovery mahazar. Therefore, we are of the view that the deposition of PW1 has several material contradictions and based on the same, it is very unsafe to convict the accused.

13. The prosecution has also projected PW2 as an eye witness to the occurrence. Here again, PW2 is also related to the deceased and is an interested witnesses. Admittedly, PW2 did not witness the occurrence and he was alleged to have seen the accused fleeing from the scene of occurrence after committing the offence on hearing the alarm raised by PW1. PW2 also deposed in his cross-examination that soon after committing the offence, the accused have dropped the weapons in the scene of occurrence. However, as mentioned above, the weapons were allegedly recovered from the accused on the basis of their confession statement by PW16 near the compound wall of Karunya Packaged Drinking Water Company, Thirupanipettai and not from the scene of occurrence. Even PW2 deposed in his cross-examination that he assisted PW1 and others to lift the deceased into the ambulance and there were blood stains in his attire. However, the blood stained clothes of PW2 was also not recovered in this case.

14. The prosecution has examined PW3, who is also related to the deceased. PW3 in his deposition has stated that he saw the accused fleeing from the scene of occurrence after hearing the alarm raised by PW1. Even in his deposition, PW3 has stated that he did not witness the occurrence and therefore, PW3 was treated as a hostile witness. PW4 is the wife of the deceased and in her deposition, she has stated that she was not aware of the previous enmity between the deceased and the first accused. PW4 is a hear-say witness and she also did not witness the occurrence. Similarly, PW5 is also a close relative of the deceased and he came to the occurrence spot on hearing about the death of the deceased. Thus, the prosecution did not examine any independent witness who have witnessed the occurrence, rather, the prosecution examined PW1 to 5 who are closely related to the deceased. In fact, as per the deposition of PW1, immediately after the commission of offence by the accused, he raised an alarm and a crowd gathered there. However, no independent witness was examined by the prosecution who has any knowledge about the commission of offence by the accused. Therefore, the evidence of PW1 to 5, particularly the deposition of PW1, if examined as a whole, would reveal that the presence of PW1 in the scene of occurrence is very much doubtful and his evidence has to be discarded.

15. On a cumulative reading of the deposition of the prosecution witnesses and the documents marked by the prosecution, we are of the view that the prosecution case against the accused/appellants is not free from reasonable doubt. In other



words, the prosecution has not proved the case as against the accused beyond reasonable doubt and therefore, the accused are entitled to the benefit of doubt.

16. In the result, the Criminal Appeal is allowed by setting aside the Judgment dated 10.12.2015 passed in S.C. No. 262 of 2015 on the file of II Additional District and Sessions Judge, Thanjavur. It is seen from the records that by order dated 06.10.2016, the Division Bench of this Court had suspended the substantial sentence of imprisonment imposed on the accused and they are on bail now. Therefore, in view of the allowing of this criminal appeal, we direct that the bail bonds, if any, executed by the accused shall stand cancelled and the fine amount, if any, paid by the accused shall be refunded to them.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

- 1.The II Additional District and Sessions Judge
Thanjavur.
- 2.The II Additional District Munsif cum Judicial Magistrate No.I,
Kumbakonam
- 3.The Principal District and Sessions Judge, Thanjavur District
- 4.The Superintendnet, Central Prison, Trichy
- 5.The Inspector of Police,
Thiruvidaimarudur Police Station, Thanjavur District
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

Copy to:-

The Section Officer, Criminal Section, (2 copies)
Madurai Bench of Madras High Court, Madurai

+3ccs to M/s.AL.Ganthimathi, Advocate, R.No.45460
rsh
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Judgment in
Crl.A. (MD) No. 272 of 2016