

**BAIL SLIP**

The Appellant/Accused viz., Muthvel @ Udayar, S/o.Kanda Thevar released on bail as per the order of this Court dated 05.09.2017 made in CrI.MP(MD)No.5825 of 2017 in CRL A(MD)No.221 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 03.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.T.SELVAM**And****THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED**

CRL A(MD)No.221 of 2017

Muthuvel @ Udayar

.. Appellant/Accused No.1

Vs.

The State rep. by
The Inspector of Police,
Kadaladi.
(in Kadaladi Police Station
Crime No.78/2010)

.. Respondent/Complainant

PRAYER: The criminal appeal has been preferred under Section 374 (2) Cr.P.C against the judgment dated 19.6.2017 made in S.C.No.1 of 2013 by learned Additional Sessions Judge (Fast Track Judge), Paramakudi.

For Appellant : Mr.Veera Kathiravan, Senior Counsel
for Mr.C.Jeganathan

For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

JUDGMENT**(The Judgment of the Court was delivered by C.T.SELVAM, J.)**

Appellant/Accused No.1 has filed the Criminal Appeal, challenging the judgment, dated 19.06.2017, in S.C.No.1 of 2013, on the file of learned Additional District and Sessions Judge (Fast Track Court), Paramakudi, in and by which, the other accused were acquitted and appellant was convicted for offences under Sections 306(ii), 307 and 302 I.P.C. and sentenced to undergo 2 years R.I. and to pay a fine of Rs.500/-, in default, 1 month S.I.

for the offence under Section 506(ii) I.P.C., sentenced to undergo 7 year R.I. and to pay a fine of Rs.2,500/-, in default, 6 months R.I. as also sentenced to undergo life imprisonment and to pay fine of Rs.5,000/-, in default, one year R.I.

2.The prosecution case is that owing to the previous enmity between the family members of A2 to A4 and one Arunachalathevar, on 23.09.2010, at 3.00 p.m., at the instigation of A2 to A4, A1 attempted to murder P.W.4 - Thirugnanam @ Thirugnanamoorthy S/o. Arunachalathevar, by cutting him on his left head and murdered Dharmalingam S/o. Arunachalathevar, by attacking him on the back side of head using a sharp edged weapon, apart from criminally intimidating them.

3.P.W.1, cousin brother of the deceased, preferred a complaint before Special Sub Inspector of Police at kadaladi Police Station on 23.09.2010. P.W.13, Special Sub Inspector of Police registered the complaint in Crime No.78 of 2010 under Sections 294(b), 323, 324 and 506(ii) I.P.C. and prepared Ex.P.6 FIR. He took up the investigation, went to the scene, prepared observation mahazar Ex.P.7, as also rough sketch Ex.P.8, examined witnesses and deceased and recorded their statements. Since, Dharmalingam died on 27.09.2010, he submitted the file to Inspector of Police for alteration of F.I.R. P.W.14 - Inspector of Police took up the investigation, he conducted inquest over the body of the deceased and prepared Ex.P.10 - Inquest Report and sent the body for post-mortem. The Post-mortem Report is Ex.P.5. He examined the witnesses and recorded their statements. He took A1, who surrendered before Judicial Magistrate No.1, Madurai, to Police custody, recorded his confessional statement in the presence of P.W.7 and another and recovered M.O.1. Then he altered the F.I.R. from 294(b), 323, 324 and 506(ii) I.P.C. to Sections 294(b), 324, 323, 506(ii) and 302 I.P.C. and prepared alteration report Ex.P.13. After his transfer, P.W.15 - Inspector of Police, took up the case for further investigation, examined the witnesses and recorded their statements. Then he altered the F.I.R. from 294(b), 324, 323, 506 (ii) and 302 I.P.C. to Sections 120-B, 294(b), 324, 326, 323, 506 (ii) and 302 I.P.C. and prepared alteration report Ex.P.14. Upon completion of investigation, P.W.15 filed a charge sheet informing commission of offences under Sections 307 and 302 r/w 34 I.P.C. On committal, the case was tried in S.C.No.1 of 2013 on the file of learned Additional District and Sessions Judge (Fast Track Court), Paramakudi. Before trial Court, prosecution examined 15 witnesses and marked 15 exhibits and one material object. None were examined on behalf of defence nor were any exhibits marked.

4.1. P.W.1 - Mookuran, cousin brother of the deceased was examined to speak about the occurrence and of lodging the complaint. He turned hostile.

4.2. P.W.2 - Govindan, an eyewitness, spoke to attack made by

A1 on deceased Dharmalingam and Thirugnanam and of taking the injured to hospital.

4.3. P.W.3 - Nagajothi, sister of deceased spoke to the conspiracy of the accused to murder deceased Dharmalingam and Thirugnanam.

4.4. P.W.4 - Thirugnanamoorthy, injured eyewitness spoke to attack made by A1 on his deceased brother and on him.

4.5. P.W.5 - Dr.Bhagath Singh, spoke to examination of P.W.4 and of issuing Ex.P.2 - Wound Certificate.

4.6. P.W.6 - Jeyanthinathan, owner of the tea shop, in front of which deceased and P.W.4 was attacked, was examined to speak about the occurrence. He turned hostile.

4.7. P.W.7 - Ramamoorthy was examined to speak about arrest, confession and recovery as regards A1. He also turned hostile.

4.8. P.W.8 - Ramasubramanian, Head Clerk of Judicial Magistrate Court, Muthukulathur, spoke to receipt of material objects of this case from Investigating Officer.

4.9. P.W.9 - K.Chellachamy, Head Constable, spoke to handing over the body of deceased to Doctor for post-mortem and on completion thereof, handing over the body to the relatives.

4.10. P.W.10 - P.Sasivarnam @ Sasi was examined to speak about knowing of the occurrence. He turned hostile.

4.11. P.W.11 - Dr.Saravanan, who conducted post-mortem on the body of deceased, opined that the deceased would appear to have died of head injury.

4.12. P.W.12 - Thomas Victor, Grade - I Police Constable spoke to handing over the Alteration Report to Judicial Magistrate, Muthukulathur.

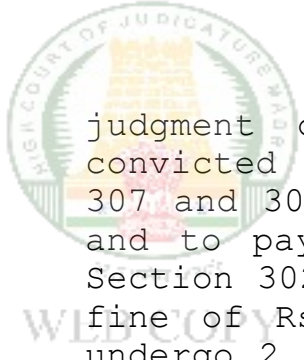
4.13. P.W.13 - Murugan, Special Sub-Inspector of Police spoke to registration of case in Crime No.77 of 2010 u/s. 294(b), 323, 324 and 506(ii) I.P.C., forwarding Ex.P.6, Original First Information Report to Judicial Magistrate, Muthukulathur, visiting the place of occurrence, preparation of mahazars, examination of witnesses and of submitting the file to Inspector of Police for alteration of F.I.R.

4.14. P.W.14 - Rajkumar, Inspector of Police, spoke to conducting of inquest, taking accused to police custody, recording of confession statement, recovery of Material Objects, examination of witnesses and of altering F.I.R.

4.14. P.W.15 - A.Kannan, Inspector of Police, spoke to examination of witnesses, alteration of F.I.R. and upon completion of investigation filing of charge sheet informing commission of offences under Sections 307, 302 r/w 34 I.P.C.

5. When the accused were examined under Section 313 Cr.P.C. on the incriminating materials against them, they denied their complicity and stated that they had been falsely implicated in the case.

6. On appreciation of materials before it, trial Court, under



judgment dated 19.06.2017, while acquitting the other accused convicted the first accused for offences under Sections 506(ii), 307 and 302 I.P.C. and sentenced him to undergo life imprisonment and to pay fine of Rs.5,000/-, in default, one year R.I. under Section 302 I.P.C., sentenced to undergo 7 years R.I. and to pay a fine of Rs.2,500/-, in default, 6 months R.I. and sentenced to undergo 2 years R.I. and to pay a fine of Rs.500/-, in default, 1 month S.I. for the offence under Section 506(ii) I.P.C. Against such finding, the present appeal has been filed by A1.

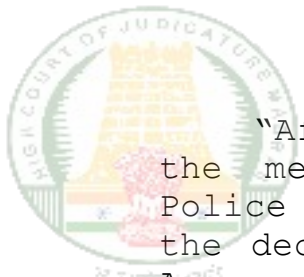
7. Advancing arguments on behalf of the appellant, learned Senior Counsel would submit that though P.Ws.1, 2, 4 and 6 are stated to be eye witnesses, P.Ws.1 and 6 turned hostile. The alleged occurrence is also said to have taken place in front of the Tea shop of P.W.6. P.W.2 in his cross-examination stated that he has not seen the occurrence. Though P.W.4 is an injured witness, there is no explanation for his getting admitted in the hospital on 02.10.2010, even though the occurrence took place on 23.09.2010.

8. Learned Additional Public Prosecutor for the respondent submits that considering the evidence of P.Ws.2 and 4, and other material, the trial Court has rightly rendered finding of conviction on A1 and no interference is required.

9. We have considered the rival submissions.

10. It is admitted case of the prosecution that both P.W.4 and the deceased were first taken to Kadaladi Government Hospital. According to the prosecution, they were taken to such hospital by an Ambulance. No material whatsoever has been produced on how the Ambulance came to the scene of crime or how P.W.4 and the deceased reached Kadaladi Government Hospital, as no Ambulance driver has been examined. P.W.4 has spoken to having fainted, immediately after suffering injury and that he was taken to hospital at Madurai. No records whatsoever of the admission into Kadaladi Government Hospital of P.W.4 and the deceased, nor the treatment given to them there, have been produced nor has any Doctor, who was a staff of such hospital been examined. The occurrence allegedly had taken place on 23.09.2010 and the deceased had been transferred from Kadaladi Government Hospital to Madurai Rajaji Government Hospital. There is absolutely, no records, regarding the admission and the treatment received by P.W.4 and the deceased at Madurai Rajaji Government Hospital.

11. The deceased had died at Madurai Rajaji Government Hospital on 27.09.2010. The prosecution case is mired in haziness. The laziness, with which the Investigating Officer has gone about his duties, is evident from his answers in cross examination, which are to the following effect:-



"After taking charge of investigation, I went through the medical records register, maintained at Kadaladi Police Station. It is true that, in respect of P.W.4 and the deceased, medical record No.28/ML/F5 was registered. As per the said record, the injured persons were sent to Kadaladi Government Hospital. No Accident Register copy was received from the Kadaladi Government Hospital for the injured persons. I came to know that the injured persons were transferred from Kadaladi Government Hospital to Madurai Rajaji Government Hospital. No accident register copy was received from the Rajaji Government Hospital. There is no entry in the case file on what time on 23.09.2010, the injured were sent to Kadaladi Government Hospital for treatment. Likewise, it is true that there is no entry in the case file, as to what date, the injured persons were admitted in Madurai Rajaji Government Hospital. After taking the case for investigation, I have perused the complaint of P.W.1-Mukkooran. In the complaint it is stated that the injured persons were taken to Kadaladi Government Hospital through an ambulance. There is no information as to who called for ambulance and at what time, the ambulance came to the scene of occurrence. I have not examined the ambulance driver. During investigation, I came to know that on 02.10.2010, the injured Thirugnanam was admitted in Madurai Meenakshi Mission Hospital for treatment. It was mentioned in the case file that the injured persons were taking treatment from 23.09.2010 to 02.10.2010 at Madurai Rajaji Government Hospital. I had not examined anyone in this regard. I had perused the inquest report. It is true that in the said inquest report, the name of the accused were not mentioned. As per rough sketch, the occurrence had taken place at the rear side of the house of one Jeyamani Thevar, which is situated at the southern side of East-West street. At the same time, it was mentioned that the tea shop owned by one Jeyanthinathan, is situated at eastern side of South-North street, facing the west. I examined persons living near the scene of occurrence but they had not come forward to give evidence. I have not examined witnesses, who were present in Arunagiri Kottaigai, when the deceased Krishnan was taken from Trichy to Arunagiri Kottaigai. I came to know that there was a land dispute for a long time, between the family of the deceased Darmalingam and the accused. I have not enquired about as to what land and what period, the dispute was existing. It is not correct that I have filed the charge sheet against the accused, without conducting proper investigation. It is not true that there is no connection between the accused and the death of the deceased Darmalingam and the injuries caused to

Thirugnanam."

We are unable to sustain the finding of conviction of the appellant, given the above nature of investigation. The fact that while P.W.4 speaks to, both he and his brother having suffered one injury each to the head, his wound certificate-Ex.P2 reflects that he has suffered one simple injury and four grievous injuries i.e. four fractures to the head, while post-mortem report in Ex.P5 would reveal atleast five fractures to the head suffered by the deceased, as follows:-

"1.Contusion of the entire scalp.

2.Multiple fractures of skull involving the midfrontal, left parietal, mid parietal and left occipital regions. Haematoma brain 7 cms x 6 cms noted over the left parietal region. Haematoma brain 5 cms x 4 cms noted over left occipital region. Haematoma brain 4 cms x 4 cms noted over right occipital region. Diffuse subdural hemorrhage and subarachnoid hemorrhage noted over both cerebral hemispheres."

The position is suggestive of P.W.4 not knowing how he and the deceased came to be attacked. In all probability, on P.W.4 fainting, the assailants had left him for dead. Given the above infirmities in the prosecution case, it becomes necessary not to delve further thereon. The prosecution has failed to prove the case beyond reasonable doubt. The appellant is entitled to acquittal.

12.In the result, the Criminal Appeals is allowed. The conviction and sentence imposed on the appellant/A1 by learned Additional District Judge (Fast Track Court), Paramakudi in S.C.No.1 of 2013, dated 19.06.2017, are set aside. The appellant is acquitted of the charges levelled against him. Fine amount, if any, paid by the appellant shall be refunded to him. Bail bonds executed by the accused shall stand cancelled.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Additional Sessions Judge (Fast Track Judge),
Paramakudi.

2. The District Munsif-cum-Judicial Magistrate,

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



3. -do-through The Chief Judicial Magistrate,
Ramanathapuram District.

4. The Superintendent, Central Prison,
Madurai.

5. The District Collector,
Ramanathapuram District.

6. The Inspector of Police,
Kadaladi Police Station,
Kadaladi.

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

Copy To:-

The Section Officer/Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO M/s.VEERA ASSOCIATES, IN SR No. 70952

SJ

TE/RP/SAR-4 : 23/08/2018 : 7P/11C

Judgment made in
CRL A (MD) No.221 of 2017
03.07.2018