

**Bail Slip**

The Appellant/Accused viz., A2- P.Senthoorapandi, A3- V.Kandasamy, A4-M.Jothi @ Jothimurugan and A5-M.Kaleeswaran was released on bail as per the order of this Court date 19.09.2017 and made in CRL MP (MD) No.7959 of 2017 in CRL A (MD) No.341 of 2017

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BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Reserved on : 19.12.2017

Pronounced on : 09 -01-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH

and

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Criminal Appeal (MD) No. 341 of 2017

and

Crl.MP (MD) No. 9858 of 2017

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1. D. Karunamoorthy
 2. P. Senthoorapandi
 3. V. Kandasamy
 4. M. Joithi @ Jothimurugan
 5. M. Kaleeswaran
- .. Appellants/Accused Nos 1 to 5

Versus

The State of Tamil Nadu
represented by its
Inspector of Police
Kovilankulam Police Station
Ramanathapuram District
(Crime No. 9 of 2011)

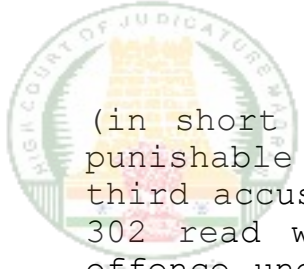
.. Respondent/Complainant.

Appeal filed under Section 374 of Code of Criminal Procedure against the Judgment dated 05.07.2017 passed in S.C. No. 113 of 2013 on the file of Additional District Court (Fast Track Court) Paramakudi

For Appellants	:	Mr. T. Lajapathi Roy
For Respondent	:	Mr. C. Ramesh
		Additional Public Prosecutor

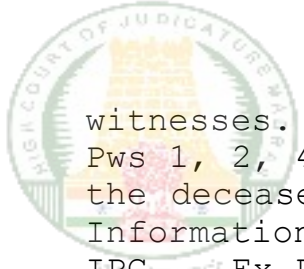
JUDGMENT**R. SUBBIAH, J**

The accused 1 to 5 in S.C. No. 113 of 2013, on the file of the Additional District Judge (Fast Track Court), Paramakudi are the appellants in this appeal. The first accused stood charged for the offence punishable under Section 148 and 302 of Indian Penal Code



(in short 'IPC'). The second accused was charged for the offence punishable under Sections 147, 324, 302 read with 34 of IPC. The third accused stood charged for the offence under Section 147, 342, 302 read with 34 of IPC. The fourth accused was charged for the offence under Section 147, 342, 302 read with 34 of IPC. The fifth accused was charged for the offence under Section 147 and 302 read with 34 of IPC. After conclusion of trial, all the accused were convicted by the trial Court for the offence punishable under Section 149 read with Section 302 of IPC and sentenced to undergo imprisonment for life, with fine of Rs.5000/- each failing which to undergo rigorous imprisonment for a period of one year.

2. The deceased in this case is one Arumugam, who is the son of PW1 and PW2. The case of the prosecution, as could be unfolded from the complaint, Ex.P1 dated 18.05.2011 given by PW1, is that on 17.05.2011 at about 09.00 pm, PW1 along with his wife PW2, sons Arumugam (deceased), Erulamani (PW4), Muneeswaran (PW5) and daughter Thenmuniya Jothi (PW6) were watching television in their house. At that time, the accused 1 to 5 unlawfully assembled in front of his house and shouted at the inmates of the house to come out. When PW1 along with others came out of the house, they saw the accused 1 to 5 standing in front of their house with deadly weapons. According to PW1, the first accused was in possession of a crow bar, the third and fifth accused were armed with a sickle (Aruval), the second accused was armed with a iron rod and the fourth accused was in possession of a stick. When PW1 asked the accused as to what is the matter, the first accused instigated the other accused to kill him for having prevented him from cutting the Kattu Karuvella trees. Obliging to such command of the first accused, A-4 and A-3 held the deceased Arumugam, who is the son of PW1 and 2, which facilitated A-1 to hit the deceased on his head with the crowbar and he fell down bleeding. When PW1 attempted to prevent the attack, A-5 held PW1 which facilitated A-2 to attack PW1 with the iron rod on his left cheek. On seeing the accused attacking the deceased and PW1, PW2 and her children have raised an alarm. On hearing such alarm, Malaisamy (PW3), Brother-in-law of PW1 came to the occurrence spot and on seeing him, the accused fled away from the scene of occurrence. Immediately, the deceased was taken by an ambulance to Government Head Quarters Hospital, Ramanathapuram from where he was referred to Government Rajaji Hospital, Madurai for better treatment and he was admitted there at about 02.30 am on 18.05.2011. On receipt of intimation from the Government Rajaji Hospital, Madurai, PW14, Sub-Inspector of Police proceeded to the hospital and received a complaint from PW1, who was also taking treatment in the hospital for the injuries sustained by him, at about 8.00 pm on 18.05.2011. Based on such complaint, PW14 registered a case in Crime No. 9 of 2011 for the offences punishable under Sections 147, 148, 324 and 506 (ii) of IPC. Ex.P11 is the first information report. Thereafter, at 9.00 pm, PW14 rushed to the scene of occurrence namely Kaanikur Village where he drew an observation mahazar. Ex.P12 in the presence of witnesses Bose (PW8) and Murugan (PW10). PW14 also drew a rough sketch, Ex.P13 in the presence of the same



witnesses. Thereafter, PW14 proceeded to record the statement of Pws 1, 2, 4 and 3 separately. On 19.05.2011, PW14 was informed that the deceased died in the hospital. Therefore, he altered the First Information Report for the offences punishable under Section 302 of IPC. Ex.P14 is the altered report. On receipt of the altered report, Ex.P14, PW15, Inspector of Police, has taken over the investigation in this case.

3. During the course of investigation, PW15 proceeded to Rajaji Government Hospital, Madurai where he conducted inquest in the presence of Panchayatars namely Kalimuthu, Nagaraj, Murugavel, Karuppaiya, Sendhur Pandian between 9.30 am to 12.00 Noon. Ex.P15 is the Inquest Report. Thereafter, PW15 sent the body of the deceased to the Government Hospital through Muralidharan, Head Constable, PW12. Accordingly, PW13, Dr. Pususthaman attached to Madurai Medical College conducted postmortem and issued Ex.P10, Mostmortem Certificate, wherein it was stated as follows:-

"Appearance found at the Postmortem

Moderately nourished body of a Male aged about 20 years. Finger and toe nails are blue. The following Ante Mortem injuries are noted on the body

1. Curvi linear suture surgical wound measuring 30 cm x 1 cm x brain deep noted over left temporo occipito and mid parietal region.

On Dissection of Scalp, Skull & Dura;

Contusion scalp measuring 12 x 10 cm noted on left fronto temporal region and 07 cm x 5 cm on right frontal region. Six burr holes each measuring 1.5 cm X 1.5 cm noted over left temporo parietal region. The bond piece measuring 13 cm x 11 cm found removed and placed in the left temporo parietal region. Fracture skull bone measuring 7 cm in length noted on right frontal region. Diffused subdural haemorrhage & subarachnoid haemorrhage noted over the both cerebral hemispheres. Laceration of brain measuring 6 cm x 2 cm x 1 cm noted on left temporar region. Carebro spinal fluid is increased in volume and blood stained. Cut section of brain is congested and edematous.

Other Findings:-

Peritoneal cavity - empty; pleural cavities - empty; pericardium - contains 15 ml of straw colour fluid; Heart - Right side fluid blood, left side empty; Coronaries - patent; Lungs - cut section congested; Larynx & trachea - normal; Hyoid bone - intact; Stomach - contains 250 grams of partially digested cooked food materials, nil specific smell, mucosa - normal; Liver, Spleen & Kidneys - cut section congested; Small intestine - contains 20 ml of bile stained fluid, nil specific smell, mucosa - normal; Bladder empty; Brain - described in the injury column.

Opinion:-

The deceased would appear to have died of head injury.

4. In the meantime, during the course of his examination, PW15 once again examined PW1, PW2, PW4 and PW3 and recorded their statement at Government Rajaji Government Hospital. Thereafter, PW15 went to the occurrence spot, however, he did not draw any observation mahazar or rough sketch as already they were prepared by PW14. Thereafter, on 20.05.2011, on receipt of information, PW15 rushed to Kamudhi to Sayalkudi Road at 7.00 a.m. where he arrested A-2 and A-5 in the presence of witnesses Mr. Ramasamy (PW9) and Mr. Murugan (PW10) at Thiruvarai Bus Stop. On such arrest, A-2 gave a voluntary confession which was recorded in the presence of PW9 and 10. Ex.P16 is the voluntary confession given by A-2, admitted portion of the confession statement is Ex.P17. Similarly, A-5 gave a voluntary confession statement and it was also recorded in the presence of same witnesses. Ex.P18 is the Voluntary confession statement given by A-5. On the basis of such confession statements, PW-15 accompanied A-2 and A-5 to their house situate at Kanikur Village on 20.05.2011 at 9.30 pm from where A-5 handed over the wooden log used in the commission of offence and it was recovered under a Mahazar, Ex.P19 in the presence of PW9 and 10. Thereafter, PW15 sent A-2 and A-5 for remand through the jurisdictional Court on 21.05.2011 at 10.30 am. PW15 also prepared Form No.95 and sent the Wooden log recovered from A-2 to the Court. Later, on the basis of a tip-off, PW15 arrested A-1, A-3 and A-4 near Badhala Mariamman Temple at 6.00 pm on 21.05.2011 in the presence of PW8 and PW10. On such arrest, A-1 gave a voluntary statement and it was recorded in the presence of PW8 and 10. Ex.P20 is the voluntary confession statement given by A-1, admitted portion of the confession statement of A-1 was marked as Ex.P20. On the basis of such confession statement, PW-15 accompanied all the three accused namely A-1, A-3 and A-4 to the house of A-1 at Kanikur Village where, from where A-1 handed over the crow bar used by him in the commission of offence and it was recovered under a Mahazar, Ex.P22. Thereafter, on the next day namely 22.05.2011, PW15 sent all the three accused namely A-1, A-3 and A-4 to remand through the jurisdictional Court. PW15 also prepared Form No.95 and sent the Crowbar recovered from A-1 to the Court. In continuation of the investigation in the case, PW15 recorded the statement of Adhistaraj, Head Constable (PW14) and Guru Muralidharan (PW12). Thereafter, PW15 was transferred and therefore, PW16 his successor has taken up the investigation and recorded the statement of the Doctor who conducted postmortem on the body of the deceased. Similarly, PW16 has recorded the statement of PW1, PW5 and PW6 and recorded their additional statement. After completing all the formalities, PW16 obtained a legal opinion from the Public Prosecutor concerned and as per the opinion given, PW16 recorded the statement of Kannan, PW7 and Dr. Esther, who has given first aid to the deceased when he was admitted in the Government Head Quarters Hospital at Ramanathapuram and who has referred the deceased to Government Rajaji Hospital, Madurai for better treatment. PW16 also recorded the statement of Muthusamy, Special



Sub Inspector of Police, PW11 and Mr. Veeraraj, Head Clerk of Judicial Magistrate Court. After completing all the formalities, PW16 laid the charge sheet against the accused for the offences punishable under Sections 147, 148, 324, 506 (ii) and 302 of IPC.

5. Before the trial Court, in order to prove the guilt of the accused, prosecution has examined as many as 16 witnesses as Pws 1 to 16 and marked Exs. P1 to P22 besides producing Mos 1 and 2. When the accused were questioned with respect to the incriminating materials made available against them, they pleaded not guilty. Thereafter, the trial Court, on appreciation of oral and documentary evidence, convicted and sentenced to the accused as indicated in the preceding paragraph of this Judgment.

6. The learned counsel appearing for the accused/appellants submitted that the prosecution did not prove the case against the appellants beyond reasonable doubt and there are several material inconsistencies in the case of the prosecution, which goes to the root of the case. According to the learned counsel for the appellants, Pws 1 to 6 are interested witnesses and based on such testimony the trial court ought not to have convicted the appellants. It is contended by the learned counsel for the appellants that Pws 1 and 2 are parents of the deceased and PW4 to 6 are brothers and sister of the deceased. Further, PW3 is the brother-in-law of PW1 and he is only a hear-say witness who did not witness the occurrence. Similarly, PW7 is also related to the deceased and prosecution witnesses 1 to 6 and he did not witness the occurrence. PW8 is the attesting witness to the confession statement recorded from the accused 2 and 5. Similarly, PW10 was an auto Driver and he was also related to the deceased and Pws 1 to 6. Thus, all the prosecution witnesses are closely related to each other and the prosecution has not chosen to examine any independent witness to corroborate the deposition of PW1 to 6 especially when it is the case of the prosecution that the alleged occurrence took place in front of the house of PW1.

7. The learned counsel for the accused/appellant would further contend that the occurrence alleged to have taken place on 17.05.2011 at 9.00 pm, but PW1, father of the deceased, has given the complaint only on the next day i.e., 18.05.2011 at about 8.00 p.m. The said complaint was received from PW1 by PW14, Sub-Inspector of Police at Rajaji Government Hospital, Madurai and the case in Crime No. 9 of 2011 was registered on the file of Kovilangulam Police Station on 18.05.2011 at 8.00 p.m. While so, PW1 in his cross-examination has stated that after the death of his son on the night of 18.05.2011, he went to Kovilangulam Police Station and gave the complaint. To contradict this version of PW1, PW16, Inspector of Police has stated that it is not correct to state that PW1 has come to the police station and gave the complaint, rather, the complaint was obtained from PW1 from Government Rajaji Hospital, Madurai. This inconsistency in the deposition of PW1 will go to the root of the case projected by the prosecution which was not



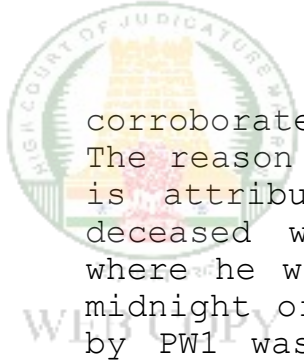
considered by the trial Court.

8. The learned counsel for the appellants would further contend that the occurrence was alleged to have taken place on 17.05.2011 at 9.00 pm, but the complaint was given only on the next day i.e., 18.05.2011 at about 8.00 p.m. Thus, there is a delay of about 24 hours in registering the complaint. PW16, Inspector of Police, in his deposition also admitted that in the First Information Report, Ex.P11, there was no reference made with regard to the delay in registering the complaint. Therefore, the delay in registering the complaint was not properly explained by the prosecution and it is fatal to the case of the prosecution.

9. The next fallacy in the case of the prosecution is that PW1, in his complaint has stated that at the time of occurrence, A-5 held him which facilitated A-2 to attack him with the iron rod on his left cheek. However, PW1 in the cross-examination has admitted that he has not taken any treatment in any hospital for any injuries. This would indicate that during the course of occurrence, PW1 did not sustain any injury, as alleged in the complaint.

10. As regards the recovery of weapon used in the commission of offence, PW1 in the complaint has stated that the deceased was attacked by A-1 with a crowbar. PW16, Inspector of Police has recovered the so-called crowbar pursuant to the confession statement of A-1, in the presence of PW10, witness. However, PW10 turned hostile. Further, soon after the occurrence, the deceased was said to have been taken to Government Hospital, Ramanathapuram, but the Accident Register issued by the said Hospital for having treated the deceased was not marked by the prosecution. Similarly, the Doctor, who treated the deceased at Government Hospital, Ramanathapuram was not examined on behalf of the prosecution. On the contrary, PW16, Inspector of Police in his deposition has stated that he obtained the statement of Dr. Esther, who treated the deceased at Government Hospital, Ramanathapuram. In her statement, Dr. Esther has stated that when she treated the deceased, she was informed by the deceased that he was hit by a stick on his head. Therefore, it is clear that the prosecution has not come forward with a clear version as to the alleged weapon used in the commission of the offence. The trial court, failed to take note of the above material inconsistencies while passing the impugned judgment. The learned counsel for the appellants therefore prayed for setting aside of the Judgment of the court below.

11. On the contrary, the learned Additional Public Prosecutor would contend that the occurrence has taken place on 17.05.2011 at 9.00 pm in front of the house of the PW1 and in the presence of Pws 1, 2, 4, 5 and 6. PW1, 2, 4, 5 and 6 have witnessed the occurrence and merely because they happened to be the parents, brothers and sister of the deceased, their testimony cannot be brushed aside on the ground that they are interested witness. Further, the testimony of PW1, 2, 4, 5 and 6, who have witnessed the occurrence, is



corroborated by each other, besides they were natural and cogent. The reason for the delay in registering the first information report is attributed to the fact that soon after the occurrence, the deceased was taken to Government Hospital, Ramanathapuram, from where he was shifted to Government Rajaji Hospital, Madurai in the midnight of 18.05.2011. On the very next day, the complaint given by PW1 was registered and therefore, much significance cannot be given for the delay in registering the complaint. Furthermore, in the complaint, Ex.P1 dated 18.05.2011, PW1 has categorically given the name of the accused, the specific overt act attributable against each of the accused and the motive for the attack. When the name of the accused was indicated in the complaint, which has come into existence at the earliest point of time, it will only add strength to the case of the prosecution. Furthermore, it is not disputed that the deceased died due to a homicidal act, as could be evident from the Postmortem report of the Doctor and therefore, it is contended by the learned Additional Public Prosecutor that the prosecution has proved the case against the accused beyond reasonable doubt, which was rightly taken note of by the trial court and therefore, he prayed for dismissal of the appeal.

12. We have considered the arguments advanced by the counsel for both sides and perused the materials placed on record. It is the specific contention of the counsel for the appellants that the prosecution has rested their case solely on the basis of the interested testimony of Pws 1 to 6 and in the absence of any independent witness to corroborate their testimony, the case of the prosecution cannot be believed. The learned counsel for the appellants also pointed out the inconsistency in the deposition of PW1, who has deposed that the complaint was given by him in person in the police station, whereas, PW14, Sub-Inspector of Police has deposed that he had obtained the complaint from PW1 at Government Rajaji Hospital, Madurai, which was also affirmed by PW15, Inspector of Police. Furthermore, the prosecution failed to examine Dr. Esther, who has given first aid to the deceased, for the reasons best known to them. In fact, in the statement given by Dr. Esther to PW16, she has clearly stated that at the time when she treated the deceased, the deceased informed her that he was beaten on his head with a stick. While so, the theory of the prosecution that the first accused had used the crow bar to deliver a blow on the head of the deceased cannot be accepted.

13. It is well settled that the testimony of interested witnesses cannot be simply brushed aside and if their testimony inspires the confidence of the Court, it can always be reliable and in all the cases, the requirement to examine independent witness cannot be insisted. In this backdrop, it has to be seen as to whether the testimony of the prosecution witnesses 1 to 6 in this case can be relied on or not. According to PW1, on the date of occurrence, when he along with Pws 2, 4, 5 and 6 were watching television, the accused persons formed themselves into an unlawful assembly in front of his house and shouted at the inmates of the



house to come out. When PW1 and others came out of the house, the accused were armed with deadly weapons and A-1 attacked the deceased with a crow bar and that second accused had attacked PW1 with a wooden log on his cheek.

14. At the outset, it is to be noted that if really PW1 was attacked by second accused, as portrayed by him, he would have taken treatment for such injuries sustained by him. However, PW1 has categorically deposed that he has not taken treatment in any of the hospital, thereby it could be inferred that he did not sustain any injury at the instance of the accused. This piece of deposition of PW1, in our opinion, has weakened the case projected by the prosecution.

15. We have also noticed from the material records that even according to PW1, A-1 has given a single blow on the head of the deceased with a crow bar. Further, soon after such attack, the deceased was taken to Government Hospital, Ramanathapuram where the deceased was treated by Dr. Esther. At the time of such treatment, the deceased himself has informed the Doctor that he was assaulted on his head with a stick. This could be inferred from the deposition of PW16, who has obtained the statement of Dr. Esther during the course of his investigation. As rightly pointed out by the counsel for the accused/appellants, the prosecution, for the reasons best known, did not examine Dr. Esther as one of the witnesses, who has given treatment to the deceased at Government Hospital, Ramanathapuram. Further, the investigation officer is said to have recovered the crowbar in the presence of PW10, but, however, PW10 has turned hostile and did not support the case of the prosecution with regard to recovery of the alleged crowbar used by the first accused in the commission of offence. Therefore, we find considerable force in the submission of the counsel for the appellants that the prosecution has not made it clear as to whether the deceased was hit by a crowbar or a stick.

16. As we have held above, at the time of occurrence, there was no injury sustained by PW1, as alleged. Moreover, from the cumulative reading of evidence narrated above, it is clear that though the prosecution has established that A-1 has given a single blow on the head of the deceased and it is the said blow which caused the death of the deceased, it has failed to establish that the deceased was hit by a crow bar or a stick, which led to the death of the deceased. Therefore, the conviction of the first accused for the offence punishable under Section 302 of IPC cannot be sustained. Similarly, the prosecution has failed to bring forth the specific overt act attributable against A-2 to A-5 in the commission of offence and therefore, we are constrained to hold that the prosecution failed to bring home the guilt of the accused 2 to 5 and they are only entitled to be acquitted from the charges. Consequently, we are of the view that the judgment of conviction passed by the trial court in respect of A-2 to A-5 cannot be sustained and it is liable to be set aside.



17. As far as A-1 is concerned, it is clear that he had given a single blow on the head of the deceased, which led to his death. Thus, the act of the first accused would clearly fall within the third limb of Section 300 IPC. The same would also fall under the first exception to Section 300 IPC. Therefore, the accused is liable to be punished only under Section 304(i)IPC. Therefore, we are only inclined to modify the period of sentence imposed against the first accused from life imprisonment into one of rigorous imprisonment for a period of seven years.

18. In the result, the Judgment dated 05.07.2017 passed in S.C. No. 113 of 2013 on the file of Additional District Court (Fast Track Court) Paramakudi is set aside only in so far as the accused 2 to 5/appellants 2 to 5 are concerned. Insofar as the first accused/first appellant is concerned, we confirm the conviction imposed on the first accused/first appellant only for the offence punishable under Section 304 (i) of IPC and modify the sentence imposed on him from life imprisonment into one of rigorous imprisonment for a period of seven years. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

- 1 THE ADDITIONAL DISTRICT JUDGE, (FAST TRACK COURT) PARAMAKUDI.
- 2 THE JUDICIAL MAGISTRATE, THENI.
- 3 -DO-THRO THE CHIEF JUDICIAL MAGISTRATE, THENI DISTRICT.
4. THE DIRECTOR GENERAL OF POLICE, CHENNAI.
5. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 6 THE INSPECTOR OF POLICE, KOVILANKULAM POLICE STATION,
RAMANATHAPURAM DISTRICT
- 7 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

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Judgment in
Crl.A. (MD) No. 341 of 2017
09-01-2018

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