

**BAIL SLIP**

The Appellant / Accused No.3 namely Amirtharaj, S/o.Veerappan was directed to be released on bail by this Hon'ble Court made in CRL MP(MD).8805/2017 in CrI.A.(MD) No.390 of 2017 dated 03.10.17.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on	05.02.2018
Orders Pronounced on	20.02.2018

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

CrI.A. (MD) No.390 of 2017 and
CRL MP(MD).8788/2017

1. Renganathan
2. Alagammal
3. Amirtharaj

... Appellants/A1 to A3

-vs-

State rep. by its,
The Inspector of Police,
Thevaram Police Station,
Theni District.
(Crime No.141 of 2012)

... Respondent/Complainant

Prayer: Appeal filed under Section 378 of the Code of Criminal Procedure praying to call for the records in the judgment of the Principal District and Sessions Judge, Theni in S.C.No.144 of 2013 by judgment dated 11.09.2017 and set aside the same.

For Appellants : Mr.S.Ramasamy

For Respondent : Mr.C.Ramesh
Addl. Public Prosecutor

J U D G M E N T

S.VIMALA, J.

"The world has enough for everyone's need, but not enough for everyone's greed." - Mahatma Gandhi

<https://hcservices.ecourts.gov.in/hcservices/> A will is a legal document that indicates how a person wants his or her estate (money and property) to be distributed after death. A will also may describe any wishes for funeral and burial



arrangements and may designate guardians for minor children. A testator can change a will at any time. If one does not have a will before death, intestate succession rules determine how a person's assets are distributed. A will is central to a person's estate planning. In most cases, people create wills to protect the assets they have worked hard for and to ensure they are passed to appropriate individuals or organizations.

2. Here is the case where the deceased, while planning to protect his estate has failed to protect his life. The plan of the deceased towards his estate planning for longer living has ultimately ended in shorter living by his expeditious death on account of murder. This incident perhaps would not have taken place if the deceased had known that he is entitled to write any number of Wills till his death by revoking the previous Wills and that the Will itself would come into operation only after his death. Perhaps, what did not occur to his mind is that this very same rule of Will coming into effect after death has operated as an instigation to an accused to expedite the death of the deceased.

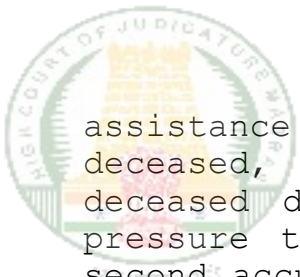
3. The conviction and sentence passed as against all the three accused by the judgment dated 11.09.2017 made in S.C.No.144 of 2013 by the learned Principal District Judge, Theni, runs as under and challenging the same, the appeal is filed.

Sl.No.	Rank	Offence	Conviction and Sentence
1.	A1 & A2	Section 302 IPC	Life imprisonment with a fine of Rs.5,000/- in default 2 months S.I.
2.		Section 511 r/w 302 r/w 201 IPC	Three years R.I. With a fine of Rs.500/- in default one month S.I.
3.	A3	Section 302 r/w 511 r/w 201 IPC	Three years R.I. with a fine of Rs.500/- in default one month S.I.

Case in brief:

4. The deceased was residing in the house of the 1st and 2nd accused and he parted company of his wife about 25 years before. The son had been employed elsewhere. The second accused is the wife of the first accused and the third accused is the brother of the deceased. The deceased Bose Raj had properties at Devaram village. He had executed a Will dated 22.03.2010 in favour of the first accused, who is not a relative to the deceased and the Will had been registered at the office of the Sub-Registrar at Devaram. According to the Will, the property would be enjoyed by the deceased till his life time and after his demise, the property would go to the first accused.

5. According to the case of the prosecution, in order to immediately get title to the property, the accused 1 and 2 with the



assistance of A3 and with the conspiracy and intention to kill the deceased, murdered the deceased. The second accused pushed the deceased down on the floor, the first accused, using tremendous pressure through legs, pressed the private part of the deceased; second accused squeezed the private part with hands and thus caused the death of the deceased. The deceased was admitted at Theni Medical College Hospital and he died on 30.07.2012 at about 4.00 o'clock in the early morning.

6. In order to erase the evidence and with the intention to escape from the clutches of law, the accused persons informed the Doctor that the death of the deceased was a natural death and thereafter, took the body to Muthulingapuram and made all arrangements to dispose of the dead body.

7. In the meantime, the wife of the deceased gave a complaint to Devaram Police Station and a case was registered under Section 174 Cr.P.C. and thereafter it was sent to the Executive Magistrate for enquiry. The Inspector of Police, after receiving the report, altered the offence from Section 174 Cr.P.C. to Section 302 IPC and continued investigation. After getting the body, being subjected to postmortem and after conducting investigation, he laid the final report against accused persons under Section 302 and 201 IPC. The accused persons as usual have disputed their involvement in the occurrence.

8. The prosecution, in order to substantiate the offences against the accused, have examined 18 witnesses and marked 12 documents through cross examination PW13, Ex.D1 has been marked.

9. After analyzing the evidence adduced before it, the Trial Court came to the conclusion that the circumstantial evidence against the accused persons were cogent, reliable, complete, with no missing links, found the accused guilty and awarded the sentence as stated supra. Challenging the conviction and sentence, the appeal has been filed under the following grounds:

- i. The evidence of PW1 to 3 are not acceptable, as their evidence is contradictory to the statement made under Section 161(3) Cr.P.C.
- ii. The evidence of the Doctor, who conducted Postmortem (PW13) should not have been accepted, as the opinion expressed in the inquest report is totally contradictory. In any event, it is not the conclusive evidence;
- iii. The evidence of PW16 is that there is a possibility of the deceased receiving penal injury on account of fall on the ground and the implication is that it could not have been caused by Appellants 1 & 2;
- iv. Motive for the occurrence is not established;

10. Towards substantiating the grounds, the learned counsel for the appellants would state that there could not have been any intention on the part of the accused 1 & 2 to cause the death of the

deceased with whom there is no enmity for Accused 1 & 2. It is pointed out that leaving the wife and son, the deceased was staying in the house of the accused 1 & 2 and in the absence of the enmity, there is no necessity for A1 & A2 to cause the death of the deceased. This contention is like a cat sitting on a wall, waiting to jump on either side. The circumstances as narrated by the learned counsel for the accused coupled with the terms of the Will has proved the motive for the occurrence.

11. The learned Additional Public Prosecutor appearing for the State would submit that the motive for the occurrence is spoken to by PW3 / Ganesan, who has spoken about the quarrel between the deceased and A1. PW3 has stated that when he went to the house of Renganathan (A1), there was a wordy quarrel between Renganathan and the deceased; the deceased wanted Renganathan to return the Will and money, which he had entrusted to the first accused and that this death had taken place on the very next day of dispute.

12. In this context, Ex.P4 / Will dated 22.03.2010 must receive the attention of the Court. Perusal of the Will dated 22.03.2010 would go to show that it is a registered document. The execution of the Will was spoken to by PW12 / Selvam. Selvam has spoken about the fact that he was called by the deceased for the purpose of signing the Will, which was to be executed in favour of the first accused and pursuant to the invitation by the deceased, he and periyakaruppasamy went to the office of the Registrar and signed in the Will as witnesses.

13. It is relevant to point out that the existence of the Will in favour of the first accused is not under dispute. The fact that when the wife and son were alive, the deceased took shelter in the house of A1 & A2 is also not under dispute. At this juncture, the recital in the Will is very important. As per recital in the Will, the property of the deceased would be enjoyed by him till his life time and after his life time, the title to the property would pass on to the first accused. The relevant lines read as under:

“அடியில் கண்ட சொத்தை நான் என் ஆயுள் காலம் வரை அனுபவித்து வருவேனாகவும் / என் ஆயுளுக்கும் பின் அடியில் கண்ட சொத்துக்களை // // // // // ர;கசாமி அவர்கள் குமாரர் அவர்கள் அடைந்து அனுபவித்துக் கொள்வது/”

Relying upon this recitals, the learned counsel for the respondent would submit that in order to enjoy the property immediately, the accused 1 and 2 have felt that causing the death of the deceased would be the effective method and thus, there is every intention to cause the death of the deceased and thus, the motive stands proved without any iota of doubt.

14. It may not be out of place to mention that the document stands in the name of the first accused. The quarrel had taken place only between the first accused and the deceased as spoken to by PW3. The prosecution case entirely relies upon the circumstantial evidence. The prosecution relies upon the residential accommodation taken by the deceased in the house of A1 & A2 and the Will executed by the deceased in favour of the first accused and the accused 1 & 2 accompanying the deceased on the fateful night in the ambulance to



the hospital.

15. Strangely, the hospital records contain the signature of A3 and his cousin brother and not the signature of A1 & A2. However, the deceased had been admitted in the hospital at about 2.30 to 3.00am in the morning. Though initially, PW16 / Dr.Venkatesan was not informed about the exact medical condition of the patient, during which, the Doctor came to the conclusion that it is a natural death. Only during Postmortem, the penal injury has been brought to light.

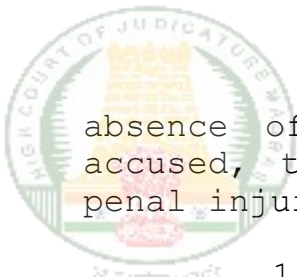
16. Who could have been responsible for the penal injury is the main issue? Whether it is A1 & A2 together or A1 alone, is the issue.

17. Admittedly, A3 was not in the place of occurrence even according to the case of the prosecution. In the absence of any direct evidence regarding participation of A1 & A2, the prosecution relies upon the terms of Will and the penal injury. Under the terms and conditions of the Will, A1 is the beneficiary, if the death of the deceased occurs immediately. The plausible conclusion is that it is A1, who would be the most interested person to cause the death of the deceased. Therefore, the participation of A1 cannot be disputed.

18. With regard to the cause of death, the evidence of Dr.Juliana / PW13 and the Postmortem report under (Ex.P5 & Ex.P6) explicitly speaks about the same. PW13 had given a clear cut evidence that the bright red colour contusion of size 4x4cm seen over the dorsal aspect of the penis is sufficient to cause death and the deceased would appear to have died of that injury.

18.1. it is contended that this penal injury is possible on account of a fall. This contention cannot be accepted, as there is no associated injuries over any part of the body either in the front portion or in the back portion. Therefore, the penal injury caused is not an injury sustained, but it is an injury caused.

18.2. The learned counsel for the accused would contend that the first accused himself is an aged person and having attained the status of senior citizen, could not have got the physical capacity to cause such injuries. The learned counsel representing the State would submit that the deceased, who was also a Senior Citizen, having trusted the first accused and having decided to part with the property, even though he had wife, two daughters and a son, should not have been michievously killed and that to cause a penal injury, no such physical capacity is required and therefore, it is a case where the accused has to suffer the maximum punishment. The learned counsel appearing for the State would further submit that when the deceased was under the care and custody of the first accused, having taken asylum under one roof, it is within the personal knowledge of the first accused to explain the circumstances under which the deceased sustained penal injury. This is expected of the accused under Section 105 of the Indian Evidence Act. In the



absence of the explanation coming from the mouth of the first accused, then the first accused is impliedly responsible for the penal injuries sustained by the deceased.

19. The learned counsel for the appellants would submit that this opinion is contra to the inquest report, where the opinion is that the death is due to kidney problem. Admittedly, inquest report only speaks about the apparent cause of death and the Postmortem report speaks about the actual cause of death. At the time when the inquest report came out, the witnesses to the inquest were made to believe that the deceased was suffering from kidney ailment. Obviously, the penal injuries being not external, being not disclosed, was not within the knowledge of either the Doctor (PW16), who treated initially and also not to the persons who participated in the inquest. Therefore, believing the version of A3, inquest report might have been brought out. When the Postmortem report, which is scientific, based on expert opinion reveals that the death is due to penal injury, there is no reason to disbelieve the postmortem report. Then, the consequential question is, who is responsible for this penal injury?

20. The facts and circumstances proved by the prosecution only point out without any iota of doubt, only the first accused. The participation of A2 is not conclusively established and it remains in the sphere of surmises and conjectures. The participation by A2 might have been there or might not have been. The participation may be open or silent. There may be circumstances, where the second accused would not have participated as her husband was directly in the scene. The prosecution case describes the role of A1 and A2 distinctly as if there had been an eyewitness to the occurrence, but the evidence is lacking, so far as A2 is concerned. Under the circumstances, the benefit of doubt should go to the second accused.

21. So far as third accused is concerned, he is the brother of the deceased. The only evidence against A3 is that he took the deceased, while he was fighting for his life in an ambulance to the Government Hospital. It is not alleged that the third accused was involved in causing injury to the deceased. It is also not known whether the third accused took the deceased to the hospital with the knowledge that he suffered from penal injury or without the knowledge of the penal injury. The act of the third accused taking the deceased to the hospital cannot be construed as towards erasing the evidence. The very act of taking the body of the deceased to the native place cannot also be construed as amounting to suppression of evidence, as it is customary to take the body of the deceased to the native place. In the absence of the active involvement of A3 in the entire episode, the case of the prosecution that he attempted to suppress the evidence of murder of the deceased cannot be accepted.

22. In the result, **the Criminal Appeal is partly allowed and the conviction and sentence passed as against the first accused is confirmed.** The conviction and sentence imposed as against A2 & A3



by the learned Principal District and Sessions Judge, Theni dated 11.09.2017 in S.C.No.144 of 2013 is set aside and A2 & A3 are ordered to be acquitted of the charges and they are ordered to be released, if not wanted in any other case. The bail bonds, if any executed by A2 & A3 shall stand cancelled and fine amount, if any in respect of A2 & A3 shall also be refunded. Consequently, connected miscellaneous petition is closed.

23. Before parting with the case, we would like to highlight the protection available to Senior Citizens in terms of their life and property, and the responsibility of the State Government to create awareness regarding the protection available in terms of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

23.1. The protections available to Senior Citizens are as detailed hereunder:

i) In 2007, the Maintenance and Welfare of Parents and Senior Citizens Act was passed to provide maintenance support to elderly parents and senior citizens. The Act establishes the Maintenance Tribunal to provide speedy and effective relief to elderly persons. Section 19 of the act also mandates the establishment of an old age home in every district and provides for the protection of life and property of the elderly.

ii) Parents can opt to claim maintenance either under Section 125 of the Criminal Procedure Code, 1973 or under this Act - they cannot opt for both.

iii) Any person who is responsible for the protection and care of a senior citizen and intentionally abandons the senior citizen completely is liable to pay a fine of Rs 5,000 or be imprisoned for 3 months or both.

iv) Parents or senior citizens can avail the services of the State Government appointed Maintenance Officer to represent their interests during proceedings before the Maintenance Tribunal.

23.2. In the situations where a senior citizen after the commencement of this Act, has transferred his property (movable or immovable), by way of gift or any such transfer, but the condition that the transferee shall provide him basic amenities and physical needs, is attached with the transfer, and thereafter such transferee refuses or fails to fulfill such condition, such transfer of property shall be deemed to have been made by fraud, coercion or undue influence and the Tribunal can declare such transfer as void.

23.3. Section 23 in The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 reads as under:

"23 Transfer of property to be void in certain circumstances. ?

(1) Where any senior citizen who, after the commencement of this Act, has transferred by way of gift or otherwise, his property, subject to the condition that



the transferee shall provide the basic amenities and basic physical needs to the transferor and such transferee refuses or fails to provide such amenities and physical needs, the said transfer of property shall be deemed to have been made by fraud or coercion or under undue influence and shall at the option of the transferor be declared void by the Tribunal.

(2) Where any senior citizen has a right to receive maintenance out of an estate and such estate or part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of right.

(3) If, any senior citizen is incapable of enforcing the rights under sub-sections (1) and (2), action may be taken on his behalf by any of the organisation referred to in Explanation to sub-section (1) of section 5.

23.4. Before this Act came into existence, the only remedy available to senior citizens in such a cases was to approach the court to ask for the maintenance from the children to whom he had transferred the property but then also such property would be the exclusive property of the transferee and the senior citizen had no right on such property. But by applying the provisions of this Act, a senior citizen can reclaim his property from the transferee. Needless to point out that it is the duty of the State Government to create awareness regarding the rights of Senior Citizens, as contemplated under Section 21 of the Act, which reads as under:

"21 Measures for publicity, awareness, etc., for welfare of senior citizen. ?The State Government shall, take all measures to ensure that?

(i) the provisions of this Act are given wide publicity through public media including the television, radio and the print, at regular intervals;

(ii) the Central Government and State Government Officers, including the police officers and the members of the judicial service, are given periodic sensitization and awareness training on the issues relating to this Act;

(iii) effective co-ordination between the services provided by the concerned Ministries or Departments dealing with law, home affairs, health and welfare, to address the issues relating to the welfare of the senior citizens and periodical review of the same is conducted.



24. We direct the State Government to implement Section 21 of the Act in letter and spirit, so that the life of Senior Citizens are safe and secure.

WEB COPY

/True copy/

Sd/-

Assistant Registrar(Crl side)

Sub Assistant Registrar

To:

1. The Principal District and Sessions Judge,
Theni.
2. The Inspector of Police,
Thevaram Police Station,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The District Munsif-cum-Judicial Magistrate,
Bodinaickanur.
5. The Chief Judicial Magistrate, Theni District.
6. The Principal District Judge, Theni District.
7. The District Collector,
Theni District.
8. The Director General of Police,
Mylapore, Chennai-4.
9. The Superintendent,
Central Prison, Madurai.
10. The Superintendent,
Central Prison for women, Madurai.

Crl.A.(MD) No.390 of 2017
20.02.2018

ar

KK/SV MMS/SAR 1/22.02.2018/ 9P- 11C