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Bail Slips

The Appellant /Accused viz., Dr.T.Sam Elango S/o. Thangasamy Accused No.10, released on suspending the sentence as per the order dated 07.03.2017 made in Crl.MP.(MD) No.1930 of 2017 in Crl.A.(MD) No.76 of 2017

The Appellant/Accused viz., Mani @ Vasudevan, S/o. Muthusany, accused No.8, released on bail as per the order dated 17.05.2017 made in Crl.MP.(MD) No.4001 of 2017 in Crl.A.(MD) No.109 of 2017

The Appellant/Accused viz., Nataraj, S/o. Marappa Gounder Accused No.1, released on bail as per the order dated 17.05.2017 made in Crl.MP.(MD) No.4004 of 2017 in Crl.A.(MD) No.122 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 24.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.T.SELVAM

And

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

CRL A(MD)Nos.76, 109 and 122 of 2017

Dr.T.Sam Elango	... Appellant/10 th Accused in Crl.A.(MD) No.76 of 2017
Mani @ Vasudevan	... Appellant/8 th Accused in Crl.A.(MD) No.109 of 2017
Nataraj	... Appellant/1 st Accused in Crl.A.(MD) No.122 of 2017

Vs.

The State represented by,
The Deputy Superintendent of Police,
District Crime Branch, Karur,
Investigation Officer of
Vengamedu Police Station,
Crime No.477 of 2008.

... Respondent/Complainant
in these appeals

Common Prayer: Appeals filed under Section 374 and 374(2) of the Code of Criminal Procedure, 1973, praying to set aside the order of conviction and sentence imposed on the appellants by learned Sessions Judge, Fast Track Mahila Court, Karur by judgment dated 28.02.2017 in S.C.No.50 of 2015.



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For Appellant in	: Mr.R.Anand
Crl.A.(MD) No.76/2017	
For Appellant in	: Mr.R.Shanmugasundaram
Crl.A.(MD) No.109/2017	Senior Counsel for M/s.S.Ravi
For Appellant in	: Mr.N.R.Elango
Crl.A.(MD) No.122/2017	Senior Counsel for
	Mr.V.Muthukamatchi
For Respondent in all	: Mr.R.Anandharaj
the appeals	Additional Public Prosecutor
	Assisted by Mr.K.Dinesh Babu
	Additional Public Prosecutor

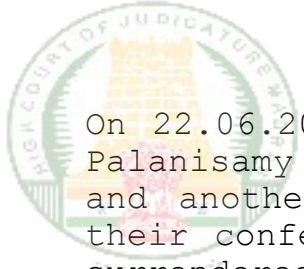
COMMON JUDGMENT

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

The appellants/A10, A8 and A1 have filed these Criminal Appeals, challenging the judgment, dated 28.02.2017, in S.C.No.50 of 2015 on the file of learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Court) Karur, in and by which, A1 and A8 were convicted for offence under Section 341 I.P.C. and sentenced to undergo one month R.I. and also convicted for offence under Section 307 IPC and sentenced to undergo life imprisonment and fine of Rs.1,00,000/- each, in default, one month simple imprisonment and A10 was convicted for offences under Sections 468 and 471 I.P.C. and sentenced to undergo 3 years simple imprisonment and fine of Rs.10,000/- each, in default, three months simple imprisonment for each offence.

2. Prosecution case is that in a civil dispute between A1 and one Palaniammal, P.W.19 - Banumathi, wife of P.W.17 - Kandasamy was of assistance to the said Palaniammal. Owing thereto, the first accused held a grudge against P.W.19 and hence hired A3 to A7 and A9 to do away with her. A8, brother in law of A1 also joined hands with him. Pursuant to the conspiracy entered upon between A1, A2, A4 and A5, on 18.06.2008 at about 4.30 p.m., A1, A4, A6 to A8 along with a juvenile Kathirvel attacked the deceased with intent to kill her. A2, A3 and A5 assisted them in the attempt to murder P.W.19. A10 had issued a medical certificate to the effect that A8 had been at Hospital at the time of occurrence.

3.P.W.17, wife of P.W.19, preferred a complaint before the Sub Inspector of Police at Vengamedu Police Station on 18.06.2008. P.W.21, Sub-Inspector of Police registered the complaint in Crime No.477 of 2008 under Sections 341, 307 and 324 IPC and prepared Ex.P.24 - F.I.R. P.W.23, Inspector of Police, who was in charge of Vengamedu Police Station, took up investigation, went to the scene and prepared observation mahazar Ex.P.1, as also rough sketch Ex.P.25 and recovered M.Os.1 to 6. Thereafter, P.W.25, Inspector of Police, Vengamedu Police Station, conducted further investigation.



On 22.06.2008, he arrested A1 to A3, namely, Nataraj, Mohanraj and Palanisamy and recorded their confessions in the presence of P.W.8 and another. On 23.06.2008, he arrested A4 and A5 and recorded their confessions in the presence of P.W.10 and another. A6 and A7 surrendered before Court. On 11.07.2008, P.W.25 took them into police custody and recorded their confessions in the presence of P.W.9 and another. P.W.25 examined witnesses and recorded their statements. Thereafter, P.W.27 - Inspector of Police continued the investigation. Upon completion of investigation, P.W.27 filed charge sheet informing commission of offences under Sections 148, 341, 326 and 307 r/w 149 I.P.C. against A1 to A8 and under sections 148, 341, 326 and 327 r/w 149 I.P.C. against juvenile accused Kathirvel on 25.12.2009. Thereafter, as per the direction of this Court in CrI.O.P.(MD) No.2730 of 2010, dated 30.04.2010, the Superintendent of Police, Karur, transferred the case to P.W.28 - Deputy Superintendent of Police, District Crime Branch, Karur for further investigation. Accordingly, P.W.28 re-examined the witnesses and recorded their statements. After his transfer, P.W.29 - Deputy Superintendent of Police, District Crime Branch continued the investigation. Upon completion of investigation, he filed additional final report showing Dr.Sam Ilango as A10. On committal, the case was tried in S.C.No.50 of 2015 on the file of learned Sessions Judge, Fast Track Mahila Court, Karur. Before trial Court, prosecution examined 31 witnesses and marked 34 exhibits and 15 material objects. None were examined on behalf of defence, however one document was marked as Ex.D.1.

4.1. P.W.1 - spoke to attesting observation mahazer and recovery of material objects.

4.2. P.W.2 and 3 were examined as eye-witnesses to the occurrence. They turned hostile.

4.3. P.W.4 was examined on sending P.W.19 in an ambulance to hospital and of P.W.19 informing that A1 was responsible for the attack. He did not support the prosecution and turned hostile.

4.4. P.W.5 - Manager of Selvi Travels, spoke to sending Car bearing Registration No.TN-47-R-4591 on hire.

4.5. P.W.6 - spoke to the conspiracy of the accused to murder P.W.19.

4.6. P.W.7 - spoke to seeing P.W.19 with injuries at the scene.

4.7. P.W.8 - Village Administrative Officer, spoke to arrest of A1 to A3 and confessions and recovery.

4.8. P.W.9 - another Village Administrative Officer, spoke to arrest of A6 and A7 confessions and recovery.

4.9. P.W.10 and P.W.24 examined to speak to arrest, confession and recovery with regard to A4, turned hostile.

4.10. P.W.11 spoke to seizure of Trip Sheet Ex.P.14 from the driver of car TN-47-R-4591.

4.11. P.W.12 was the Doctor who administered first aid to P.W.19. He spoke to the injuries sustained by P.W.19.

4.12. P.W.13 - a Grade - II Police Constable, spoke to assisting the investigation.

4.13. P.W.14 - Scientific Officer spoke to examination of

blood samples and of submitting Exs.P18 and P19, chemical analysis reports.

4.14. P.W.15- spoke to the treatment given to P.W.19 at K.M.C.H. Hospital.

4.15. P.W.16 - a borewell machine driver was examined as eye-witness to the occurrence. He turned hostile.

4.16. P.W.17 - Kandasamy is the husband of P.W.19. His complaint was marked as Ex.P.21. He spoke to the motive of the accused to attack P.W.19, attack of P.W.19 by the accused, taking her to hospital and preferring complaint. According to him, A1 caused cut injuries to the left and right hands of P.W.19 with an Aruval and A8 caused injuries all over the body of P.W.19 with a broken bottle and they also asked the other accused to attack P.W.19.

4.17. P.W.18 - is also an eye-witness, spoke to the motive and attack of P.W.19 by the accused and taking her to hospital.

4.18. P.W.19 - Banumathi is the victim. According to her, A1 threatened to murder her, since she assisted Palaniammal in conducting a suit in Civil Court and in getting an order of stay. Thereafter, on 18.06.2008, at 4.00 p.m. when she was on a bicycle, A1 and A8 along with four others surrounded her and attacked her with aruval, knife and bottles, she fainted and was unconscious for two to three months.

4.19. P.W.20 also an eye-witness, spoke to the attack of P.W.10 by A1 and A8 along with other accused.

4.20. P.W.21- Sub-Inspector of Police, spoke to registration of case in Crime No.477 of 2008 u/s. 341, 307 and 324 I.P.C., and of forwarding Ex.P.24, Original First Information Report to Judicial Magistrate No.1, Kulithalai.

4.21. P.W.22 - examined to speak to P.W.19 going to hospital by ambulance and of hearing from others that P.W.19 was attacked by A1 Natarajan due to previous enmity has turned hostile.

4.22. P.W.23 - Muthukaruppan, Inspector of Police at Vengamedu Police Station, conducted investigation in the case and spoke to visiting the place of occurrence, preparation of mahazars, recovery of material objects and examination of witnesses.

4.23. P.W.25 - Mohandoss, Inspector of Police, spoke to arrest of accused Nos.1 to 6, recording of their confessions and examination of witnesses.

4.24. P.W.26 - Judicial Magistrate No.1, Kuzhithalai, spoke to recording of Section 164 Cr.P.C. Statements of P.Ws.6, 17 and 19 marked as Exs.P4, 22 and 31.

4.25. P.W.27 - Inspector of Police, spoke to conduct of further investigation and filing charge sheet informing commission of offences under Sections 148, 341, 326 and 307 r/w 149 I.P.C. against A1 to A8 and under Sections 148, 341, 326, 327 r/w 149 I.P.C. against juveline accused Kathirvel.

4.26. P.W.28 - Deputy Superintendent of Police, District Crime Branch, Karur, took up the case for further investigation as per the direction of the Superintendent of Police, Karur, pursuant to the direction of this Court in CrI.O.P.(MD) No.2730 of 2010, dated 30.04.2010. He spoke to re-examination of the witnesses.



4.27. P.W.29 - Deputy Superintendent of Police, District Crime Branch spoke to continuation of investigation and on completion of investigation, filing additional final report showing Dr.Sam Ilango as A10.

4.28. P.W.30 was a lab technician at V.O.C. Memorial Hospital spoke to various tests conducted by her regarding A8.

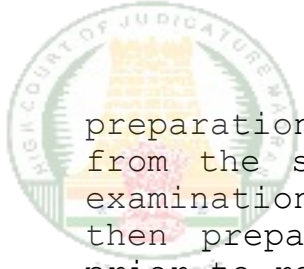
4.29. P.W.31 was a Medical Superintendent at V.O.C. Memorial Hospital and was examined to disprove the treatment given to A8, but she turned hostile.

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

6. On appreciation of materials before it, trial Court, under judgment dated 28.02.2017, convicted the appellant in CrI.A.(MD) No.76 of 2017/A10 for offences u/s.468 and 471 IPC and sentenced him to three years S.I. and fine of Rs.10,000/- i/d 3 months S.I. for each of the offence and sentenced the appellant in CrI.A.(MD) Nos.122 and 109 of 2017/A1 and A8 to life imprisonment and fine of RS.1,00,000/- each i/d 1 year R.I. for offence u/s. 307 I.P.C. and they were also sentenced to one month S.I. for offence u/s 341 I.P.C. Against such finding, the present appeals have been filed.

7. Heard Mr.R.Shanmugasundaram, learned Senior Counsel appearing for appellant in CrI.A.(MD) No.109 of 2017, Mr.N.R.Elango, learned Senior Counsel appearing for appellant in CrI.A.(MD) No.122 of 2017 and R.Anand, learned counsel for appellant in CrI.A.(MD) No.76 of 2017, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for respondent in all the appeals.

8. Learned Senior counsel appearing for appellants submitted that out of 10 accused, who stood trial, only A1, 8 and 10 had been convicted. The other accused had been acquitted on the reasoning that no identification parade has been conducted towards establishing their participation in the occurrence. A1 and 8 are relatives. The prosecution case is that there was a civil dispute between A1 and one Palaniammal P.W.19 - Banumathi, wife of P.W.17 - Kandasamy had been of assistance to the said Palaniammal. Owing thereto, the first accused held a grudge against P.W.19 and hence hired A3 to A7 and A9 to do away with her. Prosecution has not examined Palaniammal towards establishing the motive. The need to establish the motive may recede in a case, where there were eye-witnesses to the occurrence but the evidence of P.Ws.17 to 20 examined as eye-witnesses to the occurrence, did not inspire confidence. Learned Senior counsel submitted that while the occurrence had taken place on 18.06.2008 at 4.30 p.m., F.I.R. had been registered at the instance of P.W.17, husband of P.W.19, the injured, at 8.45 p.m. In the F.I.R. it is averred that the assault on P.W.19 had been carried out by two named persons A1 and 8 and some others. However, P.W.1, who had been examined to speak to



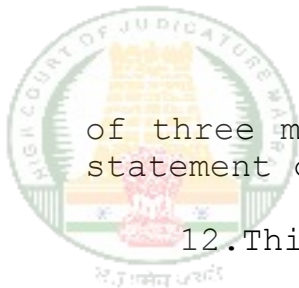
preparation of observation mahazar and recovery of material objects from the scene, had admitted both in chief as well as in cross-examination, that police were at the scene by 6.00 p.m. and were then preparing the observation mahazar i.e., 2 hours 45 minutes prior to registration of the F.I.R.

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9. The case was initially investigated by P.W.25 - Inspector of Police and thereafter on instructions of the Superintendent of Police, Karur investigation had been transferred to P.W.29 - Deputy Superintendent of Police. While the statements of P.W.3 and 4 recorded by P.W.25 under 161 (3) Cr.P.C., had informed their having witnessed the occurrence. As P.Ws.3 and 4 had deposed in Court in keeping with 161(3) Cr.P.C. Statements recorded by P.W.29, they had been treated hostile. Learned counsel submitted that the examination of P.Ws.3 and 4 by the Public Prosecutor reveals the prosecution case as being that on 18.06.2008, P.W.19 was left on her own after suffering an attack and that it was only at her instance P.Ws.3 and 4 went to the house and brought their mother. The mother of P.W.19 has not been examined.

10. Learned counsel further submitted that P.W.19 had initially been taken to Karur Amaravathi Hospital. The accident register entry therein in Ex.P.15 informs she had been admitted on 18.06.2008 at 5.00 p.m. and that she had been attacked by one known person. The same also informs that she had been brought thereto by her mother. Further Ex.P.15 that informs, on examination she had been found not responding to commands. P.W.19 thereafter had been shifted to the Kovai Medical Centre and Hospital, Coimbatore. Ex.P.20 - Wound Certificate pertaining to admission of P.W.19 to such hospital informs of attack by two known persons. The statements of P.Ws.17 and 18 under 161(3) Cr.P.C., which had allegedly been recorded on 18.06.2008, have reached the Court only on 23.06.2008 after arrest of A1 on 22.06.2008. The 161(3) statement of P.W.19 had been recorded only on 15.09.2009, although P.W.19 had been discharged from hospital on 08.07.2008 as reflected in Ex.P.20 - Wound Certificate. Learned counsel submitted that in the above scenario, involvement of the appellants/accused was rendered highly doubtful. Learned counsel would conclude by submitting that when the prosecution case was of A1 having engaged A3 to A7 and A9 as hirelings, it was most unnatural to suggest that he had participated in the attack of P.W.19.

11. Learned Additional Public Prosecutor submits that the deposition of eye-witnesses P.W.17 to P.W.19 and particularly the injured witness P.W.19 was beyond reproach. The statements of P.W.17 - husband/complainant and P.W.19 - wife/ injured had been recorded under 164 Cr.P.C. and marked as Exs.P.22 and P.23. The trial Court had given a reasoned finding and found it appropriate to convict the present appellants/A1, A8 and A10, even while acquitting the others. The finding of the trial Court did not call for any interference. Learned Additional Public Prosecutor further referring to deposition of P.W.19 to submit that she had been unconscious for over a period



of three months and such was the reason for delay in recording the statement of P.W.19 under Section 161(3) Cr.P.C.

12. This Court has considered the rival submissions.

13. The case initially was investigated by P.W.25, Inspector of Police. Subsequently, on the instructions of Superintendent of Police, the investigation has been transferred to P.W.29, Deputy Superintendent of Police. The position informed by P.Ws.3 and 4 viz., that they had been asked by P.W.19 to inform her household and that they had thus informed her mother is not in keeping with their statements recorded under 161(3) Cr.P.C. by the subsequent investigating officer. As submitted by learned counsel for appellants, after treating P.Ws.3 and 4 hostile, the prosecution itself has suggested such position. When this is considered along with the evidence of P.W.1 that even at 6.00 p.m. on 18.06.2008, police were at the scene and were preparing the observation mahazar, the registration of F.I.R. at 8.45 p.m. is rendered doubtful. Though it is the prosecution case that P.W.19 was taken to hospital by Ambulance, the driver of the ambulance has not been examined. Ex.P.15 Accident Register informs that she was taken to hospital by her mother Kaliammal and such person has not been examined, which raises much doubt about the prosecution case. Ex.P.15 - Accident Register informs of attack by one known person. That such exhibit reveals the position of P.W.19 having been unconscious at such time, only weakens the prosecution case as does the entry in Ex.P.20 informing an attack by two known persons. In the above doubtful scenario, prosecution has failed to establish motive by examining Palaniammal, whom P.W.19 is said to have assisted in a civil dispute against A1. The fact that 161(3) statements of P.Ws.17 and 18 reached the Court only on 23.06.2008, that too after the first accused was arrested on 22.06.2008 only leads to suspicion of such statements having been recorded only towards implicating the first accused. The submission of learned Additional Public Prosecutor is that P.W.19 has spoken to having been unconscious for three months. Such position being informed as justification for delayed examination of P.W.19 on 15.02.2009 does not hold water in the light of Ex.P.20 informing that she had been discharged as early as on 08.07.2008.

14. We are informed that on the petition moved by A8 before this Court. Contending that his plea of alibi, did not receive consideration of the investigation officer, this Court ordered further investigation in W.P.(MD) No.858 of 2010 on 28.01.2010 and thereafter, on the direction of this Court in petition moved by the victim in CrI.O.P.(MD) No.2730 of 2010, dated 30.04.2010, the Superintendent of Police, Karur transferred the investigation to Deputy Superintendent of Police, District Crime Branch. A8's claim of alibi was found to be false. A10, a doctor had been charged and found guilty under Sections 468 and 471 I.P.C as he allegedly issued a false certificate towards informing that A8 was at hospital at the time of occurrence.



15. We find the entire prosecution case devoid of merits. In this case, offence of under Section 468 and 471 I.P.C is alleged against A10 on promise that he issued a false certificate in support of a false plea of alibi. More forgery is not an offence-see Dr.Vimala vs Delhi Administration (AIR 1963 SC 1572). Only when the main offence is proved, will the question of using a false document to avoid punishment therefor arise. 10th accused is entitled to acquittal.

16. In the circumstances, these Criminal Appeals are allowed. The conviction and sentence imposed on the appellants/accused Nos.1, 8 and 10 by the trial Court, are set aside. They are acquitted of all the charges. They are directed to be set at liberty forthwith, unless their custody is required in connection with any other case. The fine amount, if any, paid shall be refunded.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Judicial Magistrate No.I,
Karur.
2. The Chief Judicial Magistrate,
Karur
3. The Sessions Judge,
Fast Track Mahila Court,
Karur.
4. The Principal District And Sessions Judge,
Karur.
5. The Deputy Superintendent of Police,
District Crime Branch, Karur,
Investigation Officer of
Vengamedu Police Station,
6. The District Judge,
Karur
7. The Superintendent,
Central Prison,
Tiruchirappalli.
8. The District Collector, Karur.



9.The Commissioner of Police,
Karur

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

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Madurai.

+2cc to Mr.S.Ravi, Advocate SR.No.63411
+1cc to Mr.R.Anand, Advocate SR.No.63491
Sj
DS/RSK/SAR 1/23.08.2018/9p/16C

Judgment made in
CRL A(MD) Nos.76, 109 and 122 of 2017
24.04.2018