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BAIL SLIP

The Appellants/Accused Nos. 1 and 2 namely 1.Suriya Sekar, 2.Selvam, were released on bail as per order of this Court dated 24.05.2017 made in CrI MP(MD)No.4252 of 2017 in CrI.A(MD)No.206 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE **C.T.SELVAM**

AND

THE HONOURABLE MR.JUSTICE **A.M.BASHEER AHAMED**

CRL.A[MD].No.206 of 2016

1.Suriya Sekar
2.Selvam

: Appellants 1 and 2/
Accused Nos.1 and 2

Vs.

State Represented by
The Inspector of Police,
Arumuganeri Police Station,
(Crime No.233 of 2010)

: Respondent/Complainant

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure to call for the records from the Lower Court and set aside the Judgment of the Lower Court passed by the Second Additional District and Sessions Court, Thoothukudi, in S.C.No.191 of 2013, dated 16.12.2013, by allowing the appeal.

For Appellants	: Mr.S.I.A.K.Bagadur Sha for Mr.V.P.Chamuraj
For Respondent	: Mr.R.Anandraj Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by **C.T.SELVAM, J.**]

The appellants were tried as accused Nos.1 and 2 in S.C.No.191 of 2013, on the file of the learned Second Additional District and Sessions Court, Thoothukudi. They and two others stood charged of

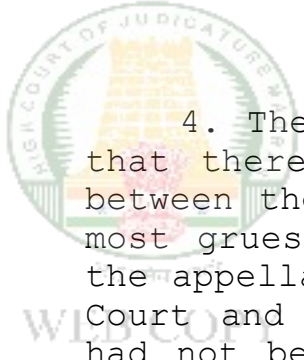
offence punishable under Section 302 r/w 120-B of the Indian Penal Code. By Judgment dated 16.12.2013, the Trial Court has convicted the appellants and sentenced them, as hereunder:-

Rank of the accused	Section of Law	Sentence of imprisonment	Fine amount
1 to 4	302 r/w 120-B IPC	Imprisonment for life.	Rs.1,000/- each, in default to undergo rigorous imprisonment for two months.
1 and 2	302 IPC	Imprisonment for life.	Rs.1,000/- each in default to undergo simple imprisonment for two months.

The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellants/accused have moved this Criminal Appeal.

2. Out of six accused, two accused died before the filing of the final report. The accused Nos.3 and 4 have preferred CrI.A. (MD).No.30 of 2014 and have been acquitted under Judgment of this Court dated 15.12.2014. The present appeal is preferred by the appellants 1 and 2/accused Nos.1 and 2. While disposing of CrI.A. (MD).No.30 of 2014, this Court has restricted its findings to the charge of criminal conspiracy levelled against Accused Nos.3 and 4 and found the same unsubstantiated. It is these appellants, namely, the accused Nos.1 and 2 against whom overt acts leading to death have been attributed.

3. The case of the prosecution is that due to previous animosity between the accused and the deceased, the accused hatched a conspiracy on 02.06.2010 and in pursuance thereof, waylaid the deceased, when he was on his way out of the DCW Company, where he was working, after finishing his work, on 15.06.2010 at about 04.30 PM. At that time, the accused Nos.1 and 2 and deceased accused, namely, Sathiya have indiscriminately attacked the deceased and due to overtacts committed by them, he died. *De facto* complainant, by name, Ramakrishnan (PW-13) has given a complaint and the same has been registered by the Sub Inspector of Police (PW-17) in Crime No.233 of 2010. Complaint has been marked as EX-P5.



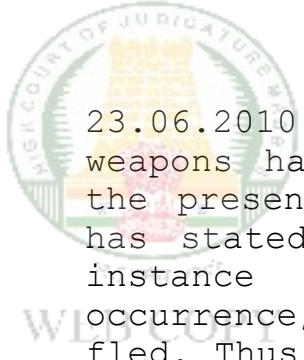
4. The postmortem certificate of the deceased [EX-P3] informs that there were as many as 23 gruesome stab and incised wounds between the head and the hip. Undoubtedly, the deceased has met a most gruesome death at the hands of assailants. As stated supra, the appellants/accused Nos.3 and 4 already stand acquitted by this Court and on the finding that the charge of criminal conspiracy had not been proved. We find ourselves totally in agreement with such finding. It falls upon us only to decide the charge under Section 302 of the Indian Penal Code against these appellants.

5. PW-3 to PW-7 examined as eye-witnesses to the occurrence have turned hostile.

6. We are most impressed with submissions of the learned counsel for appellants and the reasons put forth by him to substantiate his contention that out of seven alleged eye-witnesses, the ones, who have supported the case of the prosecution, PW-1 and PW-13 are not reliable witnesses. We enumerate the same hereunder:-

- Both PW-1 and PW-13, admittedly, are relatives of the deceased. PW-1 has admitted to being a resident of Bangalore at the time of occurrence. However, he has claimed that he came over to the scene village, only three days prior to the occurrence and that he had accompanied PW-13 to the work spot of the deceased towards meeting one Farisu, a friend of PW-13, who, too, was an employee in the company, where the deceased had been employed. PW-13, admittedly, resided at a distance of 3 to 5 kilometres away from the scene village. PW-13 has claimed to being an employee at the same company, where the deceased and the said Farisu worked, but, was on the night shift and on leave on the occurrence day. PW-13 would state that when the said Farisu came out of the Company, PW-1, the said Farisu and he were chatting at a tea shop near the entrance and at that time, the attack on the deceased took place. The said Farisu has not been examined. Such non-examination of one, who would have been a most material witness, is, in the circumstances of the present case, fatal to the prosecution.
- Though PW-1 had, in chief-examination, claimed of knowing the said Farisu, in cross, he has stated that he did not know him. While PW-1 spoke to witnessing the occurrence 50 feet away from the scene, PW-13 has stated that they witnessed the occurrence 200 feet away from the scene.

7. A cogent reading of the above would lead to the irresistible conclusion that PW-1 and PW-13 could have not witnessed the occurrence. Four accused, namely, the appellants <https://hcservices.hcscourts.gov.in/hcservices/> appellants in CrI.A.(MD).No.30 of 2014, and two other accused, who died before the filing of the final report, have surrendered before the Judicial Magistrate, Ambasamudram, on



23.06.2010. They had all been taken custody of on the same day and weapons had been seized allegedly upon their confessions and in the presence of PW-14, the Village Administrative Officer. PW-14 has stated that the weapons were seized at Moolakkarai, at the instance of the accused. PW-1 had stated that after the occurrence, the accused had dropped their weapons at the scene and fled. Thus, clearly, in a case of most brutal and gruesome attack, allegedly at day time, the Investigating Agency has been totally clueless and in the dark.

8. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellants, by Judgment dated 16.12.2013, made in S.C.No.191 of 2013, on the file of the learned Second Additional District and Sessions Court, Thoothukudi, are set aside and the appellants are acquitted. Fine amount, if any, paid by the appellants shall be refunded to them. Bail bond executed by the appellants and the sureties shall stand terminated.

9. Before parting with this case, we would note that the Trial Court has framed a charge against all the accused of offence under Section 302 r/w 120-B of the Indian Penal Code. Both 302 IPC and 120-B IPC are substantive offences in themselves and ought to have been subject matter of separate charges. It might have been appropriate, in the instant case, to inform charges as under Section 302 and 120-B r/w 302 IPC.

Sd/-

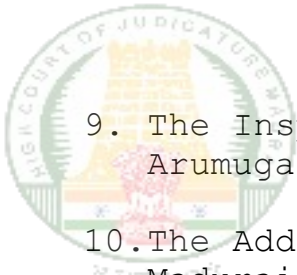
Assistant Registrar(P&A)

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Sub Assistant Registrar

To

- 1.The Second Additional District and Sessions Judge, Thoothukudi.
- 2.Do thro The Principal District Sessions Judge, Thoothukudi.
- 3.The Judicial Magistrate No.1, Kovilpatti.
- 4.The Judicial Magistrate, Tiruchendure.
- 5.Do thro The Chief Judicial Magistrate, Thoothukudi.
6. The Superintendent Central Jail, Palayamkottai.
- 7.The District Collector, Thoothukudi.
- 8.The Director General of Police, Chennai.



9. The Inspector of Police,
Arumuganeri Police Station, Thoothukudi District.

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

Copy to

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

NB

VB/SV/SAR4/06.07.2018/5P/13C

**JUDGMENT MADE IN
CRL.A[MD] .No.206 of 2016
21.06.2018**