

**BAIL SLIP****CRL A(MD). 326/ 2016 :**

The Appellant/Accused No.1 namely Rajarajan S/o.Sivasankaran was released on bail as per order dated 21.09.2017 and made in Crl.MP.(MD)No.8227/2017 on the file of this court. The Appellant/Accused No.4 namely K.S.Vimal alias Karthick S/o.Shanmugam was released on bail as per order dated 1.12.2016 and made Crl.MP.(MD)No.11799 of 2016 on the file of this Court.

CRL A(MD). 335/ 2016 :

The Appellant/Accused No.2, namely A.Armaas S/o.Ansar Ali was released on bail as per order dated 19.10.2016 and made in Crl.MP(MD)No.8703/2016 in Crl.A(MD)No.335/2016 on the file of this Court.

CRL A(MD). 418/ 2016 :

The Appellant/Accused no.3 namely Sirajudeen S/O.Rafiudeen was released on bail as per order dated 18.11.2016 and made in Crl.MP.(MD)No.10703/2016 in Crl.A.(MD)No.418/2016 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 02.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.T.SELVAM

And

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

CRL A(MD)Nos.326, 335 and 418 of 2016

1.Rajarajan

2.K.S.Vimal @ Vimal Karthick

... Appellants/A1 & A4 in
Crl.A.(MD) No.326 of 2016

A.Armaas

... Appellant/2nd Accused in
Crl.A.(MD) No.335 of 2016

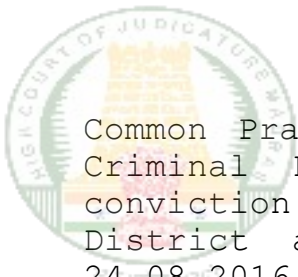
Sirajudeen

... Appellant/3rd Accused in
Crl.A.(MD) No.418 of 2016

Vs.

The State rep. by
The Inspector of Police,
Cantonment Police Station,
Tiruchy District.

... Respondent/Complainant
in all appeals



Common Prayer: Appeals filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to set aside the order of conviction and sentence imposed on the appellants by the learned District and Sessions Judge, Tiruchirapalli by judgment dated 24.08.2016 in S.C.No.220 of 2013.

WEB COPY

For Appellants in : Mr.N.Anandakumar for A1
Crl.A.(MD) No.326/2016 Mr.T.Senthilkumar for A2

For Appellant in : Mr.N.R.Elango,
Crl.A.(MD) No.335/2016 Senior Counsel for M/s.S.Ravi

For Appellant in : Mr.B.Jameel Arasu
Crl.A.(MD) No.418/2016

For Respondent : Mr.S.Chandrasekar,
Additional Public Prosecutor

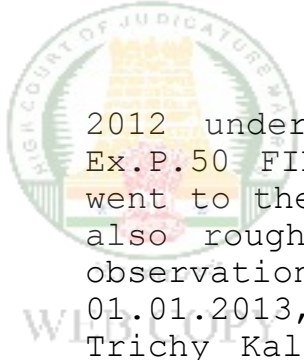
COMMON JUDGMENT

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

The appellants/A1 to A4 have filed these Criminal Appeals, challenging the judgment, dated 24.08.2016, in S.C.No.220 of 2013 on the file of the Principal Sessions Judge, Tiruchirappalli, in and by which, A1 was convicted for offences under Sections 294(b), 302 and 323 I.P.C., A2 and A3 were convicted for offences under Sections 302 and 323 I.P.C., A4 was convicted for offences under Sections 302 r/w 34 and 323 I.P.C. and A5 and A6 were convicted for offence under Sections 323 I.P.C. and A1 was sentenced to undergo three months S.I. and to pay a fine of Rs.1,000/-, in default, 15 days S.I. for offence under Section 294(b) I.P.C., A1 to A3 were sentenced to life imprisonment and to pay a fine of Rs.2,000/-, in default, 2 years R.I. for offence under Section 302 I.P.C., A4 was sentenced to life imprisonment and to pay a fine of Rs.2,000/-, in default, 2 years R.I. for offence under Section 302 r/w 34 I.P.C., and A1 to A6 were sentenced to pay a fine of Rs.1,000/-, in default, 3 months R.I.

2.The prosecution case is that on 31.12.2012, at about 9.15 p.m., when deceased was standing in front of Paramasivam Tea Stall, opposite to Sona Meena Theatres along with his friends, A1 to A4 came there, A1 abused the deceased in filthy language, A1 to A3 attacked him with knife and while deceased's friend Santhanaprabu tried to prevent the accused from attacking the deceased, A4 attacked him. The deceased was taken to Kaveri Hospital by his friends. When the friends of the deceased were standing in front of the hospital, the accused came there and attacked Santhaprabu. On 07.01.2013, at 2.05 A.M., the deceased succumbed to injuries.

3.P.W.1, the injured eye-witness and friend of the deceased, preferred a complaint before Sub Inspector of Police at Trichy Contonment Police Station on 31.12.2012 at 23.30 hours. P.W.42, Sub-Inspector of Police registered the complaint in Crime No.1683 of



2012 under Sections 294(b), 323, 324 and 307 IPC and prepared Ex.P.50 FIR. P.W.45, Inspector of Police, took up investigation, went to the first scene and prepared observation mahazar Ex.P.5, as also rough sketch Ex.P.51 and to the second scene and prepared observation mahazar Ex.P.10, as also rough sketch Ex.P.53. On 01.01.2013, at 13.00 hours, he arrested A3 near Aanjaneyar Temple at Trichy Kallukuzhi and recorded his confession in the presence of P.W.18, namely, Abbas as also Ismayil, who also attested the confession of the accused. Based on the confession, he recovered one of the knives in M.O.4 series. He sent the accused to judicial custody on the same day. On 02.01.2013, he recovered the blood stained clothes of the deceased. On the same day at 10.00 p.m., he arrested A2 at Trichy Puthur Four Road, near Canara Bank A.T.M. and recorded his confession in the presence of P.W.23 - Village Administrative Officer and another. On 03.01.2013 at 2.30 a.m., he arrested A1 and A4 and recorded their confessions. Based on the search warrant issued by learned Judicial Magistrate No.2, Trichy, he conducted search in the house of accused and recovered material objects in the presence of accused and witnesses. On 04.01.2013, he arrested A5 and recorded his confession in the presence of witnesses. After receiving the death intimation of deceased Ajay Rooban on 07.01.2013 at 2.30 a.m., he prepared Ex.P.60 alteration report. He conducted inquest over the body of deceased in the presence of Panchayatars and prepared Ex.P.61, Inquest Report and sent the body to Government Hospital, Trichy through PW-30 Grade-I Police Constable for post-mortem. The Post-mortem Report is Ex.P.27. On 22.01.2013, he arrested A6 and sent him to judicial custody. He sent a requisition for chemical analysis. He examined PWs.1 to 24 and recorded their statements and recovered M.Os.1 to 29. Upon completion of investigation, he filed a charge sheet informing commission of offences under Sections 294(b), 323, 302 r/w 34 IPC. On committal, the case was tried in S.C.No.220 of 2013 on the file of learned Principal Sessions Judge, Tiruchirappalli. Before trial Court, prosecution examined 45 witnesses and marked 63 exhibits and 29 material objects. None were examined on behalf of defence nor were any exhibits marked.

4.1. P.W.1 - S.Santhana Prabhu, is the friend of the deceased. His complaint is marked as Ex.P.1. He is an eye-witness. He spoke to the attack by the accused on the deceased and upon himself and to preferring complaint.

4.2. P.W.2 - Kane Mario Netto is also a friend of the deceased and an eye-witness. He has been examined to speak to the occurrence. He did not support the prosecution and was treated hostile.

4.3. P.W.3 - Gopinath, who is also a friend of the deceased and an eye-witness corroborated the evidence of P.W.1 regarding the first occurrence.

4.4. P.W.4 - S.Gowtham, P.W.5 - R. Prince Daniel also friends of the deceased and corroborated the evidence of P.W.1.

4.5. P.W.6 - Manojkumar, father of the deceased and P.W.7 - R.P.Mani, maternal grand-father of the deceased spoke to hearing of the motive, attack on the deceased and his death.



4.6. P.W.8 - Shanmugam spoke to attesting observation mahazar and recovery of material objects.

4.7. P.W.9 - Dr.M.Manikandaprabhu spoke to the treatment given to A1.

4.8. P.W.10 - Dr.T.Krishnamurthy, P.W.11 - Dr.S.Skanda, P.W.12 - Dr.Anand, P.W.13 - Dr.M.Vikram, P.W.14 - Dr.R.Uday Sankar, P.W.15 - Dr.P.Gowri, P.W.16 - Dr.Sanjay Theoder and P.W.17 - Dr.Andrew James Jeremiah, spoke to examination of the deceased and the treatment given.

4.9. P.W.18 - Abbas, spoke to arrest, confession and recovery with regard to A3.

4.10. P.W.19 - K.Jeyakumar, Watchman of K.M.C. Hospital spoke to admission of deceased into hospital and the attack on P.W.1 by the accused.

4.11. P.W.20 - M.Paramasivam remaining a Tiffin Centre near the scene of occurrence, spoke to the attack by A1 to A4 of the deceased.

4.12. P.W.21 - Mohammed Irfan and P.W.22 - Mariyappan, have been examined with regard to the attack by the accused of the deceased and he did not support the prosecution and turned hostile.

4.13. P.W.23 - G.Saravanan, Village Administrative Officer, spoke to arrest, confession and recovery with regard to A1 to A3.

4.14. P.W.24 - S.Kirubakaran Mathuram, Judicial Magistrate - spoke to recording statements of P.W.2 and P.W.4 under Section 164 Cr.P.C.

4.15. P.W.25 - Dr.Sivamani, spoke to examination of the deceased, the treatment given and his death.

4.16. P.W.26 - Dr.Renuka Devi, who conducted post-mortem on the body of deceased, opined that the deceased died of multiple injuries to the neck.

4.17. P.W.27 - Dr.Kader Sahib, spoke to examination of the deceased and the treatment given.

4.18. P.W.28 - Dr.Mahalakshmi, spoke to examination of A1, A4 and P.W.1 and the treatment given.

4.19. P.W.29 - Brother M. Arul, Principal of Campaign Anglo Higher Secondary School spoke to deceased and A1, A2 and A5 having studied in the said school.

4.20. P.W.30 - V.P.Ravi, Grade - I Police 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.

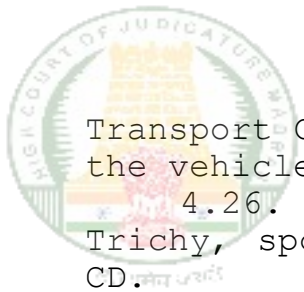
4.21. P.W.31 - Dr.Narayanan, spoke to examination of A4 and the treatment given to him.

4.22. P.W.32 - C.Jaya, Scientific Officer, spoke to the Serological report.

4.23. P.W.33 - A.Rajendran, Head Constable, spoke to handing over the Material Objects to Forensic Science Laboratory, Chennai.

4.24. P.W.34 - A.Joseph Ashok, Manager of Trichy Kavery Hospital, spoke to handing over the CCTV footage of the entrance of the hospital during the time of occurrence in Hard Disk and C.D. to the police.

4.25. P.W.35 - A.Kalai Selvi, Superintendent of the Regional



Transport Office, Trichy West, spoke to issuance of Report regarding the vehicle TN 45 BA 0748, involved in the occurrence.

4.26. P.W.36 - Suresh, System Administrator, Kavery Hospital, Trichy, spoke to copying of the CCTV footage in the Hard Disk and CD.

4.27. P.W.37 - C.Vijay, Nodal Officer of TATA Teleservices, spoke to issuance of, Incoming, Outgoing call details and Tower Location of mobile No.81484 45239 belonging to the deceased.

4.28. P.W.38 - Vijeyakumar Raja, Nodal Officer of AIRCEL Limited, spoke to issuance of Incoming, Outgoing call details and Tower Location of mobile No.98424 87001 belonging to Gopinath for the period from 30.12.2012 to 02.01.2013.

4.29. P.W.39 - A.Johnson, Nodal Officer of AIRTEL Limited, spoke to issuance of Incoming, Outgoing call details and Tower Location of mobile Nos.96298 17230 belonging to P.W.1, 97891 65359 belonging to P.W.2, 99441 78224 belonging to A1, 99441 10044 belonging to A2, 96294 19071 belonging to A3, for the period from 30.12.2012 to 02.01.2013.

4.30. P.W.40 - S.Vijaya, a Court clerk, spoke to sending material objects for chemical examination.

4.31. P.W.41 - K.Venketraman, Grade I Police Constable, spoke to receiving First Information Report, handing over the same to Judicial Magistrate No.II, Trichy and of handing over the material objects to Forensic Science Laboratory, Trichy.

4.32. P.W.42 - Y.Alaudeen, Sub Inspector of Police, spoke to registration of case in Crime No.1683 of 2012 u/s. 294(b), 323, 324 and 307 I.P.C., and of forwarding Ex.P.19, Original First Information Report to Judicial Magistrate No.2, Trichy and copies thereof to higher officials.

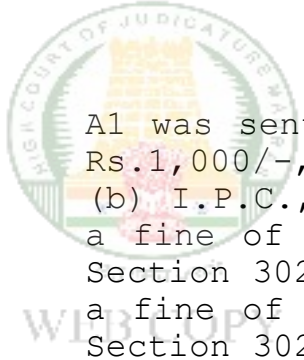
4.33. P.W.43 - K.Manivannan, Scientific Officer, spoke to examination of CCTV footage and submitting report.

4.34. P.W.44 - S.Alarmelmangai, Assistant Director, Forensic Science Laboratory, Chennai, spoke to examination of the photographs of accused and P.W.1 with the CCTV footage and of submitting a report.

4.35. P.W.45 - S.Umasankar was the Inspector of Police, Trichy Condonement Police Station, who conducted investigation in the case and spoke to visiting the place of occurrence, preparation of mahazars, examination of witnesses, arrest of accused and of obtaining various reports and on completion of investigation, filing charge sheet informing commission of offences under Sections 294(b), 323, 302 r/w 34 IPC.

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.

6. On appreciation of materials before it, trial Court, under judgment dated 24.08.2016, convicted A1 for offences under Sections 294(b), 302 and 323 I.P.C., A2 and A3 for offences under Sections 302 and 323 I.P.C., A4 for offences under Sections 302 r/w 34 and 323 I.P.C. and A5 and A6 for offence under Sections 323 I.P.C. and



A1 was sentenced to undergo three months S.I. and to pay a fine of Rs.1,000/-, in default, 15 days S.I. for offence under Section 294 (b) I.P.C., A1 to A3 were sentenced to life imprisonment and to pay a fine of Rs.2,000/-, in default, 2 years R.I. for offence under Section 302 I.P.C., A4 was sentenced to life imprisonment and to pay a fine of Rs.2,000/-, in default, 2 years R.I. for offence under Section 302 r/w 34 I.P.C., and A1 to A6 were sentenced to pay a fine of Rs.1,000/-, in default, 3 months R.I. Against such finding, the present appeals have been filed by A1 to A4.

7. Heard learned counsel for appellants and learned Additional Public Prosecutor appearing for respondent in both appeals.

8. Prosecution case fails and these appeals succeed for the following reasons:

(i) The accident register of P.W.1 in Ex.P.32 informs of an attack by 5 unknown persons. Injury to P.W.1 is said to have been caused after having admitted the deceased into hospital and while he was at the frontage thereof. P.W.45, Investigating Officer, admits that CCTV footage in M.Os.11, 12 and 13 informs the presence of the Special Sub Inspector of Police - P.W.42 as also his presence, following the deceased while he was wheeled into the hospital.

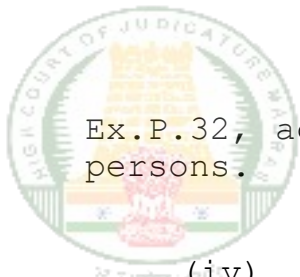
(ii) The occurrence allegedly took place at 9.15 p.m. and First Information allegedly was registered at 11.30 p.m. The First Information Report and the complaint allegedly in the hand of P.W.1 reaches the Judicial Magistrate at 7.00 p.m. on the next day ie., 01.01.2013. It is the evidence of P.W.1 that his oral statement was recorded by P.W.42 and he had signed in the same. As against this, the prosecution case is that a written complaint was handed over by P.W.1 to P.W.42 at the Police Station. It is the evidence of P.W.1 that he had on few occasions seen the accused persons, but had no knowledge of their names. As against this, the complaint Ex.P.1 informs both the names of the accused, as also their father's names as also the particular places of residence. Holistic consideration of the above features, leads to the irresistible conclusion that

(a) The original information tendered by P.W.1 at hospital, which ought to form the basis of FIR, has been suppressed.

(b) The complaint informed in Ex.P.1 is nothing but one drawn up not at the instance of P.W.1, but by the Investigating Agency and their reading of the manner in which the offence came to take place.

(iii) No amount of evidence in support of a case projected by the investigating Agency can result in a finding of conviction, when at the very first step, falsity of prosecution case is palpable

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



Ex.P.32, accident register of P.W.1 informs of an attack by unknown persons.

(iv) Learned Additional Public Prosecutor submitted that P.Ws.34 to 36 have given evidence of two CDs reflecting video footage evidencing the presence of P.W.1 along with A1, A2, A3, A5 & A6 and clippings had been recorded at the original scene. The submission of learned Additional Public Prosecutor is that evidence in the form of video footage spoken to by Forensic Expert P.W.43 informs the presence of the accused along with P.W.1 at the scene where the deceased was attacked and during the attack on P.W.1 at the hospital entrance. The timing is proximate to the attack on the deceased namely, that the attack on the deceased took place at Sona Meena Theatre opposite to a Tea stall at 9.15 p.m. whereas, the attack on P.W.1 at the hospital entrance has taken place between 9.37 p.m. to 9.38 p.m. learned Additional Public Prosecutor submissions do not impress us. Report in Ex.P.49 was spoken to by P.W.43. Evidence of P.W.43 does not fall within the realm of certainty as he merely states that photographs may be that of the accused persons and further that what was available were 2 dimensional pictures whereas to be certain about the person involved 3 dimensional images are necessary.

9.In the circumstances, these Criminal Appeals are allowed. The conviction and sentences imposed on the accused by the trial Court, are set aside. They are acquitted of 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 shall be refunded.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

- 1.The Principal Sessions Judge,
Tiruchirappalli.
- 2.The Judicial Magistrate No.II,
Tiruchirappalli.
- 3.The Inspector of Police,
Contonment Police Station,
- 4.The Superintendent,



Central Prison,
Trichy.

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

Copy to:
The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1CC TO MR.S.RAVI, ADVOCATE IN SR.NO,70672.
+1CC TO MR.B.JAMEEL ARASU, ADVOCATE IN SR.NO.70746.

NBJ
DS RP SAR-4 03.10.2018 8P/10C

Judgment made in
CRL A (MD) Nos.326, 335 and 418 of 2016
02.07.2018