

BAIL SLIP

The Petitioners/Accused Nos.1 to 3 Viz, 1.Ramamurthy S/o.Muthukumaran, 2.Kalaivanan S/o.Muthukumaran, 3.Rajamani S/o.Muthukumaran, was directed to be released on bail as per order of this court, dt.17.2.2011 and made in Crl.M.P.No.1 of 2011 in Crl.A.No.100 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

C O R A M

THE HONOURABLE Mr.JUSTICE P.VELMURUGAN

Crl.A.No.100 of 2011

1. Ramamurthy
2. Kalaivanan
3. Rajamani

... Appellants/Accused Nos.1 to3

-Vs-

State rep. by  
The Inspector of Police,  
Manalmedu Police Station,  
Nagapattinam District.

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C, praying to set aside the judgment dated 22.11.2010 passed in S.C.No.163 of 2007 by the learned Sessions Judge, Nagapattinam.

For Appellants : Ms.M.Jayanthi  
Legal Aid Counsel

For Respondent : Mr.T.Shanmugarajeswaran  
Government Advocate (Crl.Side)

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JUDGMENT

This Criminal appeal has been filed to set aside the judgment dated 22.11.2010 passed in S.C.No.163 of 2007 by the learned Sessions Judge, Nagapattinam.

2. The respondent police registered a case in Crime No.369 of 2003 against the appellants herein for the offences

under Sections 323 and 307 of IPC and after completing investigation, laid a charge sheet before the learned Judicial Magistrate No.1, Mayiladuthurai and the same was taken on file in PRC.No.6 of 2004. The learned Magistrate, after taking the charge sheet on file, found that the offences are exclusively triable by the Court of Sessions and committed to the learned Sessions Judge, Nagapattinam. The learned Sessions Judge taken the case on file in S.C.No.163 of 2007 and after completing the formalities, framed charges against A1 for the offences under Sections 307 and 302 r/w 34 of IPC, A2 for the offences under Sections 307 r/w 34 and 302 of IPC and A3 for the offences under Sections 307 r/w 34, 302 r/w 34 and 326 of IPC.

3. In order to prove the case of the prosecution, on the side of the prosecution as many as 17 witnesses were examined and marked 23 documents and 3 Material Objects. After completing evidence, incriminating circumstances culled out from the prosecution witnesses were put before the accused, they denied as false. On the side of the defence no oral and documentary evidence was produced. The learned Sessions Judge, after hearing the arguments advanced on either side, sentenced them to undergo 5 years Rigorous Imprisonment and fine of Rs.2,000/- each, in default, one year Simple Imprisonment each for the offence under Section 307 r/w 34 of IPC and 7 years Rigorous Imprisonment and fine of Rs.3,000/- each, in default, one year Simple Imprisonment each for the offence under Section 304(Part ii) of IPC, by judgment dated 22.11.2010. There against, the present appeal has been preferred by the convicts before this Court.

4. The learned counsel for the appellants would submit that there is a doubt in the genesis of the case and also in the date of occurrence. There was a delay in filing the FIR and the inordinate delay has not been explained by the prosecution. After due deliberation, the prosecution has foisted a false case against the appellants. Further, Ex.P3-Accident Register itself shows that the person, who brought injured, has stated that he was assaulted by 3 known persons with Arival, whereas, the Arival has not been recovered and the confession and the recovery have not been proved. There is a material contradiction regarding the place of arrest, also the time of the arrest and the recovery mahazars and also contradictions between the prosecution witnesses 1, 3, 4 and 5. All the witnesses are interested witnesses and there is no independent witness has been examined in this case. The alleged occurrence taken place during night and the Executive Engineer stated that no power shut down in the place of occurrence, whereas, he has not stated in the place of occurrence will have light. Therefore, the evidence of PW-6/Executive Engineer will not helpful to the case of the prosecution. The Doctor/PW-2 clearly deposed that the person,

who brought the victim to the hospital, stated that unknown persons assaulted with Arival and the weapon has not been recovered by the prosecution. Therefore, the prosecution has not proved its case. Further, the deceased survived 45 days at the hospital and died later and therefore, it is not proved that the deceased died due to injuries sustained at the time of occurrence. The Doctor gave best treatment to avoid the death. Therefore, the alteration of charge under Section 304 of IPC itself shows that the prosecution failed to investigate the matter with the RIGHT perspective, foisted a false case against the appellants/accused. The cause of death itself is doubtful and therefore, the prosecution has failed to prove its case. The learned Sessions Judge failed to consider the fact that the prosecution has not proved its case beyond reasonable doubts. Instead of convicting the appellants for the offence under Section 307 IPC, the Trial Court convicted the appellants for the offence under Section 304(ii) IPC, which warrants interference of this Court.

5. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that PW-1 is the wife of the PW-3 and she has also the eye-witness. Prior to the occurrence, there was a fight between the accused and the deceased, the deceased came to his house and informed PW-1/wife about the occurrence, during the conversation, all the appellants/accused came to their house and when the deceased came outside, they attacked him with iron pipe. There is a specific overt act against the appellants/accused. PWs-3 to 5 are also the eye-witnesses, who have clearly supported the prosecution. PW-8 is the neighbour, who came to the occurrence place and he immediately took the injured to the hospital. PW-2/Doctor has clearly deposed that PW-8 brought the injured to the hospital at 9.45.p.m. PW-8 has stated that 3 known persons assaulted the injured. PW-6-Assistant Executive Engineer has stated that there was no power shut down at the time of occurrence. PW-9 has clearly deposed about the confession and recovery. PW-11-Doctor has stated about the declaration of the death. PW-14 is the Investigating Officer, who investigated the matter and he has clearly stated about the investigation. PW-15-Doctor, who conducted autopsy, has clearly opined that the deceased died due to injuries sustained on his head and all the witnesses have spoken about the involvement of the accused. The prosecution has proved its case beyond reasonable doubts. The evidence of PW-1, Ex.P1/complaint, Exs.P2 & P3/Accident Registers have clearly show that the deceased was assaulted by three known persons. The evidence of PWs-1 to 5, PW-9-recovery witness and PW-15, who conducted autopsy, Exs.P1 to 3 and P17-Serology report further strengthened the case of the prosecution. The prosecution has proved its case beyond reasonable doubts. The learned Sessions Judge rightly appreciated all the evidences and found that the appellants/accused have committed the

offence and convicted them, which does not warrant any interference.

6. Heard the learned counsel appearing for the appellants, the learned Government Advocate (Crl.Side) appearing for the respondent and perused the entire materials available on record.

7. The case of the prosecution is that there was a previous enmity between A3 and the deceased over the hosting of the flag and collection of the amount and also there was enmity between two families in respect of purchase of the house site belonged to one Vellaisamy. When PW-3 was preparing to purchase the house from Vellaisamy, the father of the accused prevented the same. Therefore, there was a dispute between the two families. On 20.06.2003 at about 7.00 p.m when PW-3 went to Pattavarthi village to purchase groceries, A2 dashed against PW-3. PW-3 questioned the same, there was a quarrel between them and thereafter, at about 7.30.p.m when PW-3 explained the same to his wife-PW-1, witnesses PWs-4, 5 and 8 were also present in front of their house. At that time, all the appellants/accused gathered in front of the house of PWs-1 and 3 and A1 with iron pipe and A2 and A3 with wooden pegs, attacked PW-3 on the head. When PW-1 shouted A2 and A3 attacked on her hand, the deceased Madhavan intervened the occurrence and at the time, all the accused repeatedly attacked the deceased on the head and also hand.

8. PW-1/wife of PW-3 has clearly deposed that the appellants and the victims are in the same village. Prior to the occurrence, PW-3 went to Pattavarthy village for purchase groceries and at the time of occurrence, the second appellant/A2 dashed against her husband. When he asked as to why he dashed him, A2 involved in quarrel. In continuation of the same, all the appellants/accused came to the house of PW-3 with iron pipe and wooden peg and attacked him and the deceased and also attacked PW-1. Subsequently, PW-8 taken the victims to the hospital. PW-10-Doctor, who was on duty at the time of admitted the injured at hospital, has stated that 3 persons attacked her and he also made an entry in the accident register. PW-3 is the brother of the deceased Madhavan. The appellants came to the house of PWs-1 & 3 and attacked them and the deceased. The evidence of PWs-4 and 5 corroborated the evidence of PWs-1 and 3. PW-6 stated that on the date of occurrence, there was no power shut down. Though the occurrence is taken place during night hours, as per the evidence of PW-3, there was a street light. Therefore, it is easy to identify the appellants and since the appellants are in the same village, there is no dispute with reference to the identification. PW-8, who is the neighbour, deposed that soon after the occurrence, he reached the place of occurrence and took the injured to the hospital and admitted them. PW-2 also

stated in Exs.P2 and P3-Accident Registers that PW-8 brought the injured and they have stated that 3 known persons assaulted them by Arival. Mere wrong mentioning of weapon is not fatal to the case of the prosecution, when the eye-witness stated that the accused assaulted with iron pipe. The recovery witnesses also have clearly spoken that iron pipe was recovered from the appellants. PW-1 has clearly deposed the entire occurrence and there is no reason to discard the evidence of PW-1. At 7.30.p.m, naturally family members would be present in the house when the occurrence took place in front of the house.

9. From the evidences of PWs-1,3 to 5, it is seen that the prosecution has proved its case beyond reasonable doubts and further, it supported the case of the prosecution with the evidence of PW-2-Doctor, who has admitted the injured at the hospital and made entry in the accident registers. Since the evidence of PW-1 is very cogent, there is no reason to discard her evidence. Further, it corroborated with other witnesses and medical evidences. The evidence of PWs-2, 10, 11 and 15 have clearly show the injury sustained by the victims, declaration of death and post-mortem. The forensic report also shows that the human blood found in the material objects, which also identified in the blood group. Therefore, the trial Court rightly appreciated the entire evidences and convicted the appellants/accused. This Court does not find any merit in the appeal and the same is liable to be dismissed.

10. This Criminal Appeal shall stand dismissed. The Judgment dated 22.11.2010 in S.C.No.163 of 2007 passed by the learned Sessions Judge, Nagapattinam, is hereby confirmed. The counsel for the appellant/accused on record, who was appointed by the Tamil Nadu State Legal Services Authority, Chennai from the Legal Aid Panel is entitled for the fees as per the rule.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

KMI

To

1. The Sessions Judge,  
Nagapattinam.
2. The Inspector of Police,  
Manalmedu Police Station,  
Nagapattinam District.

3. The Public Prosecutor,  
High Court,  
Chennai-104.

4.The Secretary,  
Tamil Nadu State Legal Services Authorities,  
Chennai.

5.The Judicial Magistrat No.I,  
Mayiladuthurai.

6.-do-thro'the Chief Judicial Magistrate,  
Nagapattinam.

7.The Superintendent, Centrail Prison,  
Cuddalore.

Copy to: The Section Officer,  
Criminal Section,  
High Court, Madras.

Crl.A.No.100 of 2011

PA(CO)  
CB(20/11/2019)



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