

Bail Slip

The Appellants herein/Accused nos.1 to 3 namely
1.C.Rajmohan S/o.Chandramohan aged about 31 years,
2.A.Ramalingam S/o.Arumugham aged about 28 years,
3.R.Mohan S/o.Ramasamy aged about 40 years, were directed to be released on bail as per order of this court dated 08/12/2011 made in Crl.Mp.no.1 of 2011 in Crl.A.No.781 of 2011 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.08.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.A.No.781 of 2011

1. C.Rajmohan
2. A.Ramalingam
3. R.Mohan

... Appellants/A1 to 3

Vs.

The State by
The Inspector of Police,
Ammamet, Salem City.
Cr.No.1324 of 2009

..Respondent/Complainant

Prayer: This Criminal Appeal is filed under Section 374 of Criminal Procedure Code to call for the records and to set aside the judgment and sentence dated 02.12.2011 made in SC.No.341 of 2010 on the file of the Additional District and Sessions Judge, Fast Track Court No.I, Salem.

For Appellants : Mr.D.Baskar, Legal Aid counsel.

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (crl.side)

J U D G M E N T

This Criminal Appeal is filed to set aside the judgment dated 01.12.2011 made in SC.No.341 of 2010 on the file of the Additional District and Sessions Judge, Fast Track Court No.I, Salem.

2. The case of the prosecution is as follows :-

The respondent/police registered a case against the appellants in Cr.No.1324 of 2009 for the offences under Sections 341, 364 and 302r/w.34 (2 counts) IPC. The respondent police after conducting investigation laid charge sheet before the Judicial Magistrate No.V, Salem, the learned Judicial Magistrate after taking up the charge sheet in PRC.No.10 of 2010 and after completing the formalities, since the offences are triable by the Court of Sessions, committed the case to the learned Principal District and Sessions Judge, Salem. The learned Principal District and Sessions Judge, Salem after completing the formalities taken up the case on file in SC.No.34 of 2010 and made over the same to the Additional District and Sessions Judge, Fast Track Court No.I, Salem. The learned Additional District and Sessions Judge, Fast Track Court No.I, Salem after receiving the case bundle and after completing the formalities framed the charges against all the appellants for the offences under Sections 341, 364 and 302r/w.34 (2 counts) IPC. During trial in order to prove the case of the prosecution on the side of the prosecution as many as 18 witnesses were examined and 26 documents were marked. After completing the prosecution witnesses incriminating circumstances culled out from the prosecution witnesses put before the appellants, the appellants denied as false. On the side of the defence no oral evidence was let in and three documents were marked.

3. After completing the trial, the learned Sessions Judge after hearing the arguments on either side and after considering the oral and documentary evidence produced on either side came to the conclusion that the appellants have committed the offence and convicted the appellants 1 to 3 for the offences under Section 341, 304 part I r/w.34 (2 counts) IPC and sentenced them to undergo simple imprisonment for one month each on each counts for the offence under Section 341 IPC and Rigorous imprisonment for ten years each on each count u/s.304 Part I r/w.34 (2 counts) IPC and to pay a fine of Rs.1000/- each on each counts in default to pay a fine to undergo Rigorous imprisonment for one year each on each counts and found not guilty for the offence under Section 364 IPC. The 4th accused found not guilty for the offences under Sections 341, 364, and 302 r/w.34 (2 counts) IPC.

4. Challenging the said judgment of conviction passed by the learned Additional District and Sessions Judge, Fast Track Court No.I, Salem, the convicts have filed the present appeal before this Court.

5. The learned counsel for the appellants would submit that there is a delay in sending the FIR and statement of witnesses to the Court. Originally the case was registered on 17.08.2009 at about 3.00pm and the FIR was sent to the Court only on

18.08.2009 at about 2.30pm, the delay in sending the FIR was not explained by the prosecution. Further there was discrepancies regarding the alleged occurrence by the deceased Ashokan before the PW18/Sub Inspector of Police, Ammapet, Police Station and PW13/J.M.III, Salem and PW17/Doctor one who was on duty at the time of admitting the injured in the hospital. The Sessions judge failed to consider the fact that the deceased Ashokan had given statement before PW13 in which he categorically stated that he was hit by an auto two days before the occurrence. Further the deceased Rajendran had stated that he and his brother were beaten by 20members and he stated that one Raja, Selvaraja, Chinna Kadhir, Periya Kadhir were attacked. The statement of PW16/Doctor who admitted the deceased in the hospital, in his evidence he stated that the deceased Ashokan came for his treatment on his own on 16.08.2009 at about 3.55p.m. and he informed PW16 that he was beaten by unknown persons near Balamani Theatre, Ammapet at about 7.30pm on 15.08.2009. The deceased Rajendran was also admitted in the same hospital by his neighbours and they informed PW16 that he was beaten by unknown persons near Balamani Theater, Ammapet at 7.30pm on 15.08.2009. The copies of the Accident Register were marked as Exs.P10 and P11. There was serious doubt over the complaint itself, because the statement of the deceased Rajendran was recorded on 17.08.2009 at about 2.00pm by PW18 and the signature and thumb impression were obtained. The Sessions judge failed to consider the evidence of PW8 who is the son of deceased Rajendran, because the statement was recorded from him belatedly after 45days from the date of occurrence and the deceased were not admitted in the NMS ward. PW7 is the brother of PW1, the evidence of PW7 is highly artificial. The deceased Rajendran and his brother deceased Ashokan have named some persons in their dying declaration and those persons were not shown them as accused, which creates serious doubt over the prosecution case.

6. It is to be noted that a case was registered by the first appellant against the deceased persons in Cr.No.1325 of 2009, since the first appellant filed a case against the deceased persons, the police foisted a false case against the appellants. There are material contradictions between the prosecution witnesses and the prosecution failed to prove its case beyond reasonable doubt, the learned Additional Sessions Judge also failed to consider the contradictions and discrepancies between them and acquitted all the accused from the offence under Section 364 IPC and convicted the accused 1 to 3 for the offences cited supra which warrants interference.

7. The learned Government Advocate (crl.side) would submit that the first appellant is the Advocate in Salem city and the appellants 2 and 3 are his clients as well as henchmen. The deceased Rajendran and deceased Ashokan are brothers. The

deceased Ashokan was working with the first appellant and he had dispute with his brother Rajendran with regard to properties. Therefore, he filed suit against his brother Rajendran through the first appellant. Subsequently, the matter was settled between the brothers (i.e, Rajendran and Ashokan), the same was intimated to the first accused that the brothers have decided to settle the issue between themselves. The first appellant did not like the said settlement between the brothers behind his back, he scolded and beaten the Ashokan. Then the Ashokan intimated the same to his brother Rajendran, both were decided to take revenge on the first appellant by kidnapping the son of the first appellant. On 14.08.2009, the deceased brothers tried to kidnap the son of the first appellant and failed in their attempt. The said fact came to the knowledge of the first appellant, the first appellant went along with other accused 2 to 4, due to such enmity on 14.08.2009, the first appellant wrongfully restrained the deceased Rajendran and Ashokan in front of Balamani theater and questioned their attempt to kidnap Sanjai and beat both the Rajendran and Ashok with hands, abducted them towards the house of first accused at Krishna Nagar and kept them for two days even without providing water and food and beaten them till 16.08.2009 and took the deceased to the hospital and admitted them. Subsequently, the duty Doctor informed to the jurisdictional police station through intimation. Thereafter, the police officials went to the hospital since the deceased was in unconscious stage could not record the statement. Again on 17.08.2009 the police officials went to the hospital and recorded the statement from the deceased and registered the case and investigated the matter. During the course of treatment PW13/Judicial Magistrate recorded the statement under Section 164 Cr.PC. Though, they have not stated in the statement and subsequently the prosecution witnesses have clearly stated that the deceased were taken by the appellants on 14.08.2009 itself and kept in their custody and threatened them not to reveal the fact to any body and at last beaten them till they become unconscious and taken to the hospital for treatment. Since, they were under threat and coercion they did not reveal the actual facts, therefore, the statement given by the brothers either before the Doctor or before the Judicial Magistrate are not free consent or voluntary one. Only after recording the witness of son of Rajendran, he had stated that one of the deceased Ashokan has narrated the entire things when he was admitted in the hospital in the absence of the first appellant. Even the Judicial Magistrate came forward to call upon the statement. The dispute between the brothers was settled amicably among themselves, the first appellant did not like the same and he wanted to scrap the property, hence the first appellant beaten the deceased as to how they can settle the issue without his advice. Therefore, the prosecution established its case through prosecution witnesses beyond reasonable doubt, the learned Sessions Judge

rightly came to the conclusion, since due to some enmity the deceased brothers attempted to kidnap the son of the first appellant, due to provocation he had beaten them. Hence, the learned Sessions judge rightly convicted the accused 1 to 3 for the offences under Sections 341, 304 part I r/w.34 (2 counts) IPC and sentenced them to undergo simple imprisonment for one month each on each count u/s.341 IPC and Rigorous imprisonment for ten years each on each count u/s.304 Part I r/w.34 (2 counts) IPC and to pay a fine of Rs.1000/- each on each counts in default to pay a fine to undergo Rigorous imprisonment for one year each on each counts and found not guilty for the offence under Section 364 IPC. The 4th accused found not guilty for the offences under Sections 341, 364, and 302 r/w.34 (2 counts) IPC.

8. Heard the rival submissions made on both sides and perused the materials available on record.

9. The case of the prosecution is that the first appellant is an Advocate in Salem city, the accused 2 to 4 are his clients as well as henchmen. The deceased Rajendran and deceased Ashokan are brothers and they have civil dispute, the deceased Ashokan engaged the first appellant as his lawyer. The deceased brothers decided to settle the matter between themselves and informed the fact to the first appellant. The first appellant did not like it, scolded and beaten Ashok. The Ashok informed the same to the Rajendran, both the brothers decided to take revenge on the first appellant by kidnapping his 5years old son Sanjay. Both the deceased brothers went to the tuition center near Balamani theater on 14.08.2009 at about 7.30pm where Sanjay was studying. The first appellant learnt the activities of the deceased brothers and developed enmity against them and decided to murder them with the help of A2 to A4. Due to enmity at about 8.00pm on 14.08.2009, A1 to A4 wrongfully restrained Rajendran and Ashok in front of Balamani theater and abducted them towards the house of the first accused at Krishna Nagar and all the accused persons beaten them severely with the common intention to cause death. As a result, the Rajendran died on 23.08.2009 at 8.40pm at CMC Hospital and Ashok died on 30.09.2009 at 11.15pm in the same hospital. Thus the accused 1 to 4 have committed the offences punishable under Section 341, 364 and 302 r/w.34 (2 counts) IPC.

10. After investigation the respondent police laid charge sheet, the prosecution has established its case beyond reasonable doubt, the learned Additional District and Sessions Judge admitted the case of the prosecution to the extent that the appellants 1 to 3 have caused death on the deceased. However, the same does not fall under Section 302 r/w.34 IPC and falls under Section 304 Part-I r/w.34 IPC. Challenging the said judgment, the appellants 1 to 3 have filed the present criminal

appella before this Court.

11. Since, this Court is an appellate Court in order to give an independent findings, this Court has to re-appreciate the entire evidence of prosecution and arrive at an independent conclusion. In order to prove the case of the prosecution before the trial Court as many as 19 witnesses were examined. PW1 - i.e wife of deceased Rajendran, PW2 & PW8 are sons of deceased Rajendran, PW7 is the brother of PW1. PW16/Doctor who was working in emergency ward Salem on 16.08.2009 at about 3.55pm Ashokan aged about 31 years came for treatment and he informed him that he was beaten by four known persons at about 7.30pm on 15.08.2009. On examination he found (i) A lacerated injury measuring 3x1.5cm near left eye (ii) There was contusion around left eye (iii) X-ray taken for his head and admitted as inpatient for further treatment. The copy of the Accident Register of Ashokan is marked as Ex.P10. Further, on the same day at about 4.00pm one Rajendran aged 38 years was admitted by the neighbours Kumaresan and Ramalingam for treatment and told that he was beaten by four known persons near Balamani Theater, Ammapet on 7.30pm on 15.08.2009. Rajendran was found unconscious and he was not able to speak. He had a contusion injury around his right eye, X-ray was taken for his head. The copy of the Accident Register of Rajendran is marked as Ex.P11.

12. PW1 is the wife of the deceased Rajendran, has stated that she knew first appellant, her husband was residing opposite to Natarajan Theater. Due to a dispute with him, she was residing in Narayanan Street, separately from her husband. There was a land dispute between her husband and his brother Ashokan. On hearing that her husband and her brother in law were attacked and taking treatment she went to the Government Hospital on 16.08.2009 and found them unconscious. Again she went on 17.08.2009, her brother in law Ashokan was in a position to speak to PW2/Karthikeyan son of PW2, PW1 was also accompanied with him. Ashokan was working under the first appellant, when her husband and brother in law decided to settle the land dispute between them, Ashokan intimated this fact to the accused Rajmohan. The first appellant did not like this idea, scolded and beaten him. Ashokan informed the same to Rajendran, Ashokan told PW1 and PW2 that he was beaten by accused, Rajmohan, Ramalingam, Mohan and Sekar on his chest, face, lips, forehead and the accused had also beaten Rajendran. PW2 deposed that the appellants took his father and uncle to the house of first accused and kept there for 1 ½ days and beaten them without giving any food. The first appellant thought of cornering 1200sq.ft from the deceased and therefore the accused had beaten Rajendran and Ashokan. The treatment given at Government Hospital, Salem not yield the desired result and they were taken to the Government Hospital, Coimbatore. Despite treatment

Rajendran died on 23.08.2009 and Ashokan died on 30.09.2009.

13. PW8/Sathish Kumar another son of deceased Rajendran had deposed that on 19.09.2009 at about 9.15am he went to the Government Hospital NMS ward to see his father and uncle. The first accused was standing near his father and told his father if the judge or police asked anything, inform them that he suffered injuries in an Auto accident, if his father did not listen to the words of first accused he would beat his wife and sons. If the father of PW8 listen to the words of the first accused he would promise to take over the medical expenses of the deceased Rajendran. At that time, the second accused/Ramalaingam was also standing near his uncle Ashokan and told him that he would inform that they kidnapped the son of the first accused and he was beaten by Chinnakathir, Periyakathir and Raja and also promised that he would render necessary help to deceased Ashokan. The deceased Ashokan nodded his head in approval, then both the accused 1 and 2 left the hospital. Ashokan called PW8 and asked him to look after his mother and father and do as told by the accused. Ashokan also cautioned PW8 not to inform the fact to any one, otherwise the accused will beat him, therefore, he did not tell the incident to any one.

14. PW4 deposed that he knew PW1, PW2 and deceased. PW1 purchased a site in the name of his son. There was a dispute with regard to the site and he learnt that Shanthi's husband and brother in law were beaten in connection with this land dispute, admitted in the hospital for treatment and died subsequently.

15. PW18/Sub Inspector of Police, Ammapet Police Station deposed that on 16.08.2009 he received the information from Government Hospital and found that Ashokan and Rajendran were in unconscious state of mind. Again he visited on 17.08.2009 at 12.30pm and found Ashokan was conscious and recorded the statement of Ashokan and registered a case in Ammapet Police Station in Cr.No.1324 of 2009 under Section 341 and 307 IPC, the copy of the complaint is marked as Ex.P20 and FIR is marked as Ex.P21.

16. PW13/Judicial Magistrate No.III, Salem deposed that on 19.08.2009 at about 3.10pm he received a requisition to record the dying declaration of Ashokan and Rajendran. PW13 visited the emergency ward at 3.25pm and enquired from Ashokan and Rajendran as to whether they gave statement in fit state of mind and found them to be fit for giving dying declaration. The dying declaration of Ashokan was recorded from 3.25pm to 3.40pm and thereafter recorded the dying declaration of Rajendran and the same are marked as Exs.P6 and P7. The requisition is marked as Ex.P5. The letter sent by the Judicial Magistrate No.III along with the dying declaration is marked as Ex.P8.

17. The Doctor who conducted the postmortem of the deceased was examined as PW17 opined that the deceased Rajendran died due to multiple injuries and its complications. The requisition for conducting postmortem is Ex.P12 and the postmortem certificate is marked as Ex.P14. The Doctor has also given answer to the queries raised by the I.O.

18. After considering the evidence of PW1/wife of deceased Rajendran, PW2 and PW8/sons of Rajendran, PW4/neighbour and PW17/Doctor the learned Additional District and Sessions Judge, came to the conclusion that the prosecution has proved its case beyond reasonable doubt.

19. The learned counsel for the appellant would submit that there is a delay in registering the case and also sending the copy of the FIR to the Court have not been properly explained. On reading of the entire materials, originally the occurrence had taken place on 14.08.2009, the evidence of PW2 clearly states that the deceased were taken by the appellants and they have detained them for 1½ days without providing water and food and beaten them. The Doctor also admitted that they were brought to the hospital on 16.08.2009 at 5.00pm and informed four unknown persons attacked him. The deceased Rajasekaran was taken by the neighbours Kumaresan and Ramalingam, both of them were not added as accused or witnesses, the said Ramalingam is not the second appellant herein. The respondent police failed to investigate into the matter properly and find out the actual facts and actual cause and the injuries sustained by both the deceased Ashokan and Rajendran. Since, the respondent police foisted a false case and registered as against the first appellant and others. There is no independent witnesses were examined in this case, the occurrence was happened near the Balamani theater which is a public place, the first appellant beaten the deceased in front of his house, the public and the area people should have definitely witnessed the scene, there is no independent witnesses in this case. Though, the case was registered on 17.08.2009 and reaches the court on 18.08.2009. On reading of the entire materials, PW12 visited the injured persons Ashokan and Rajendran, at that time Rajendran was not in position to speak and Ashokan was conscious and informed that the appellant taken them to their place and retained them for two days. PW8 also clearly stated that he was in the hospital on 19.08.2009 prior to that PW13 came to the hospital to record the statement, the accused 1 and 2 came there and told to listen to the words of the first accused and promised to take over the medical expenses, otherwise they would beat and kill his wife and sons. Further, the first appellant is an Advocate who is having influence in that area, therefore, mere delay in registering the case and sending the FIR is not fatal to the case of the prosecution.

20. The learned counsel for the appellant would submit that the dying declaration given by the Rajendran as stated that he met with an accident. The dying declaration given by the Ashokan is that the unknown persons hit him. The deceased Ashokan was working for the first appellant, stated before the Magistrate and Doctor, no known and named persons were cited as witnesses, which affects the case of the prosecution. As already stated, the combined reading of the evidence of PW2 and PW8 sons of deceased Rajendran they have clearly stated subsequent to the occurrence they met their uncle Ashokan in the hospital on two different dates. The deceased Ashokan narrated the incident to PW8, at that time, the appellants 1 and 2 came to the hospital and threatened the deceased Ashokan and Rajendran not to reveal the actual facts and promised to take care of the medical expenses, otherwise they would kill his wife and sons. Therefore, they have not revealed the facts either before the Doctor or before the Magistrate. Though, the two persons who came to the hospital and admitted one of the injured also revealed their name. But the learned counsel for the appellant would submit that name of the Ramalingam mentioned in the Accident Register is not that of the second appellant herein. Further, the Kumaresan has not been implicated in this case or cited as witnesses. The evidence of PWs 1, 2, 4 and 7 clearly says that there is enmity between the appellants and the deceased, when the deceased Ashokan was working under the first appellant, there was a dispute between both the brothers Ashokan and Rajendran with regard to a land, during the civil dispute pending before the Court, the Ashokan and Rajendran settled the Civil suit without intimating or without getting assistance from the first appellant. The first appellant did not like the said settlement between the brothers, therefore he beaten the Ashokan and subsequently, the Ashokan informed the same to the Rajendran, both the brothers planned to teach a lesson to the first appellant and decided to kidnap the son of the first appellant, the said fact was came to the knowledge of the first appellant and inturn the first appellant kidnapped the brothers with the help of the other accused 2 and 3 and taken the custody of the brothers. All the three accused have beaten the deceased brothers for 1½ days and later sent them to the hospital. In this case, the motive of the accused have been established by the prosecution and also the enmity between the appellant and the deceased brothers. From the evidence of PWs 1, 2, 4 & 8 there were civil dispute between the brothers as well as the appellants have taken the custody of the deceased brothers for more than 1½ days and beaten them and also threatened them not to reveal the fact to any one. Though, the first appellant registered a case against the deceased brothers for kidnapping his son, after the death of the brothers the case was closed as the accused were died.

21. Originally, the case was registered under Section 307 IPC, after the death of the deceased brothers it was altered into section 302 IPC. Since, the prosecution has stated that the deceased attempted to kidnap the son of the first appellant and the first appellant and others beaten the brothers and subsequently, both the brothers died out of the injuries sustained by them. The trial Court not convicted the accused for the offence under section 302 and convicted them under Section 304(i) IPC. The learned counsel for the appellant would submit that the prosecution has not proved its case beyond reasonable doubt.

22. On reading of the entire evidences of PW1, PW2, PW4, PW8, PW13, PW16, PW17 and PW18, if at all the deceased Rajendran met with an accident from the Auto, definitely he would not have filed false case, he would have filed case for claiming compensation and filed case under Section 304(A) IPC. There is no need to file the case as against the Advocate. The deceased Ashokan was also working in the office of the first appellant and if there is no dispute between them and the deceased has no reason to file false case against his own master and if there is no dispute the deceased could not have made an attempt to kidnap the son of the first appellant. The records and evidence would show that the complaint was filed by the first appellant against the deceased brothers, subsequently due to the death of the brothers/accused therein, the case was closed. The evidence of the PW2 and PW8 are very cogent and convincing, though they are relative witnesses that may not be the sole reason to discard the evidences of PW2 and PW8.

23. The learned judge disbelieved the evidences of PW7 who is brother of PW1, but believed the evidences of PW2 and PW8 sons of the deceased Rajendran. Though the prosecution has not established its case through the eyewitnesses, by examining the circumstantial evidence, this Court also found that the prosecution has proved its case beyond reasonable doubt. The injuries sustained by the deceased were not tallied with the prosecution evidences, though, in the accident register the Doctor has not made a mention about all the injuries as detailed in the postmortem report. The Doctor who conducted the postmortem has clearly mentioned all the injuries and the Doctor opined that the death caused due to the injuries sustained by them. Therefore, on reading of the evidence of PW1, PW2, PW4, PW8, PW13, PW16, PW17 and PW18, this Court finds that the prosecution has proved its case beyond reasonable doubt and there is no sound and valid reason to interfere with the judgment of the trial Court.

24. In the result, the criminal appeal stands dismissed by confirming the judgment of conviction and sentence recorded by the learned Additional District and Sessions Judge, Fast Track

Court No.I, Salem in SC.No.341 of 2010 dated 02.12.2011. The trial Court is directed to secure the custody of the appellants forthwith to undergo the remaining period of imprisonment.

25. Mr.D.Baskar, Legal-Aid-Counsel, who appeared for the appellants, is entitled for getting legal fees as per rules.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate NO.V, Salem
- 2.The Chief Judicial Magistrate,
Salem(For information)
- 3.The Additional District and Sessions Judge,
Fast Track Court No.I, Salem.
- 4.The Superintendent, Central prison
Salem.
- 5.The Inspector of Police,
Ammamet Police Station, Salem.
- 6.The Member Secretary,
Tamil Nadu Legal Services Authority,
Chennai.
- 7.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.D.Baskar(Legal aid counsel) in SR.75189

CrI.A.No.781 of 2011

SAI(CO)
CB(18/10/2019)