

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.04.2019

Pronounced on : 28.06.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No.217 of 2016

1.Ramu

2.Balu

... Appellants

-Vs-

The Inspector of Police,
A.Pallipatty Police Station,
Pappireddy Patty Taluk,
Dharmapuri Taluk.

... Respondent

PRAYER: Criminal Appeal is filed under Section 378 of the Code of Criminal Procedure, to set aside the conviction and sentence passed by the Principal Sessions Court, Dharmapuri in S.C.No.221 of 2014 by Judgment dated 03.02.2016.

For Appellants : Mr.V.M.Ravichandran for
M/s.Durai Gunasekaran

For Respondent : Mr.R.Prathap Kumar
Additional Public Prosecutor

JUDGMENT

[Order of the Court was made by **M.NIRMAL KUMAR, J.**]

This Criminal Appeal arises out of the conviction and sentence imposed by the learned Principal District and Session Judge, Dharmapuri in S.C.No.221 of 2014 dated 03.02.2016. The appellants are arrayed as A1 and A2. Based on the complaint given by the defacto complainant, the respondent Police registered a case in Crime No.114 of 2011 against the appellants and three others. On completion of investigation, the respondent Police filed a charge sheet before the learned Principal District and Session Judge, Dharmapuri for the offences under Sections 147, 148, 149, 448, 324, 506(ii), 307 and 302 r/w 120(b), 109 and 34 of IPC.

2. During the trial, the charges against the 3rd accused viz., Krishnan was abated, who reported dead on 28.07.2012. On conclusion of trial, the Court below had convicted the 1st appellant under Section 302 of IPC and sentenced to life imprisonment and a fine of Rs.5,000/- in default to undergo three years rigorous imprisonment and under Section 324 of IPC sentenced to undergo three years rigorous imprisonment. As against the 2nd appellant, for the offence under Section 302 IPC convicted and sentenced him to undergo life imprisonment and imposed a fine of Rs.5,000/- in default to undergo three years rigorous imprisonment. Against the conviction and sentence in S.C.No.221 of 2014, the present Criminal Appeal has been filed.

3.As against the 1st accused for the offence under Section 148, 448, 506(ii) and as against the 2nd accused for the offence under Section 148, 448, 506(ii), 324 and as against the 4th accused for the offence under Section 148, 448, 506(ii), 324, 302 r/w 34 and as against the 5th accused for the offence under Section 148, 448, 506(ii), 324, 307, 302 r/w Section 34, the trial Court acquitted the said accused giving benefit of doubts.

4.The background facts, as projected by the prosecution, are as follows:

4.1. The defacto complainant [PW.1] Sivagami is the wife of deceased Chinnaswamy, whose father had two wives. The deceased is the first wife's son and one Kaaliyappan is the second wife's son. The accused 1 to 3 are the sons of said Kaaliyappan, the 4th accused is the wife of Kaaliyappan and the 5th accused is the wife of the 1st appellant. There seems to be some dispute between them over the partition of family property.

4.2. On 05.06.2011 at about 12.00 p.m, there had been a quarrel between the deceased Chinnasamy and the 1st appellant/A1. Thereafter, at about 12.30 p.m, the 1st appellant along with the other accused, with an intention to murder the deceased Chinnasamy, armed with deadly weapons, forcibly entered into the house of Chinnasamy and assaulted him, thereby he sustained injuries and died.

The deceased, his wife [PW1] and his daughter [PW.2] were attacked by the 1st

appellant with Koduval, the 2nd appellant with wooden log. The 4th accused with Aruvamanai and the 5th accused with wooden stick. The 1st appellant attacked the deceased in his chin with Koduval, the 2nd appellant attacked on his head and the 3rd accused attacked him on his face. The accused 1 to 3 had forcibly dragged the deceased and dashed his head on the wall, thereby causing the death of the deceased. When PW.1 and PW.2 intervened to rescue the deceased Chinnasamy, they were also attacked by them.

4.3. In support of the prosecution, they have examined PW.1 to PW.16 and marked Ex.P1 to Ex.P29 and 11 materials objects were marked. On the side of the defence, DW1 to DW3 were examined and marked as Ex.D1 to Ex.D18.

4.4. The available evidence of the prosecution witnesses are as follows:

(a) PW.1 Sivagami, the wife of the deceased Chinnasamy states that on 05.06.2011, at about 12.00 p.m, the 1st appellant, after attending the marriage of one Sankar, came to her house, called out her husband/deceased abused him. PW.1 asked her daughter/PW.2 to inform PW.3/father of PW.1, about the happenings. On coming to know about the same, PW.3 along with PW2's sister came to the house of PW.1. At that time, the accused 1 to 5 had broken the lock, entered into the house of PW.1 with deadly weapons. She further stated that the 1st appellant attacked the deceased on his left chin with Koduval, the 3rd accused with wooden log attacked the deceased on his left leg and the 2nd

appellant with wooden log attacked on his head. Thereafter, all the accused joined together forcibly dragged her husband and dashed on the wall. When PW.1 intervened to rescue, she was attacked by the 3rd accused with wooden log on her left leg and the 4th accused with Aruvamanai had inflicted a cut injury on her head and the 5th accused had kicked her hip and also attacked her daughter/PW2. The villagers assembled, PW.2 had written the complaint [Ex.P1], which was signed by PW.1 and lodged the same with the respondent Police. On next day, at about 08.30 a.m, PW.1 and PW.2 went to Government Hospital at Harur. Further, PW.1 identified MO1 to MO5 weapons, which were used by the accused and also identified the Dhoti [MO6] and Shirt [MO7] of deceased/husband.

(b) PW.2 is the daughter of the deceased. Her evidence is in conformity with the evidence of PW.1. Further, she has stated that she was assaulted by the 5th accused with wooden stick. On that day, at about 03.30 a.m, PW.2 and her mother/PW1 had gone to the respondent Police, lodged a complaint [Ex.P1] against all the accused.

(c) PW.3 is the father-in-law of the deceased. His evidence in conformity with the evidence of PW.1 and PW.2.

(d) PW.4 and PW.7 are the villagers, who had seen the dead body of the deceased with injuries, while returning back from the marriage function of Sankar on 05.06.2011.

(e) PW.6 another villager has seen the body of the deceased in front of his tea shop on 06.06.2011, at about 06.00 a.m. On enquiry, he came to know that the deceased Chinnasamy was killed by the accused.

(f) PW.5 the Village Administrative Officer who came to know about the death of the deceased, had gone to the scene of occurrence. On 06.06.2011, she and her assistant saw the Inspector of Police preparing the observation mahazar [Ex.P2] and rough sketch and collected the soil with and without blood stains under MOs 8 & 9 and also marked the seizure mahazar [Ex.P3]. PW.5 and her assistant has signed as witnesses for observation Mahazar and seizure mahazar. Thereafter, at about 01.00 p.m., the 1st appellant was arrested by the respondent Police he gave a confession statement [Ex.P5] admitting the offence. Based on his confession, MO1-Koduval was recovered from the Ragi-field and the Mahazar for the same is marked as Ex.P4.

(g) PW.9 the Village Administrative Officer, Manjavadi was called by the Inspector of Police, Kottappatti to be witness for the arrest of accused 2 and 3.

He stated that based on the confession [Ex.P6] some recoveries were made.

Further on 02.07.2011, he was witness for the arrest of A4 and A5. The admissible portion of the confession given by A4 and A5 were marked as Ex.P7 and Ex.P8 respectively and the seizure mahazar for the weapons was marked as Ex.P9 to Ex.P12.

(h) PW.10 the radiologist attached to Government Hospital, Dharmapuri, examined PW.1 on 06.06.2011 and she had taken X-ray, opined that PW1 has not sustained any fracture on her skull.

(i) PW.11 the Doctor attached to Government Hospital at Harur, examined PW.1 on 06.06.2011 at 09.30 a.m, and reported that PW.1 was attacked by five known persons at 12.30 a.m, on the date of occurrence. He gave treatment to PW1 and the wound certificate was marked as Ex.P13. On the same day, at 09.30 a.m, examined PW.2 issued wound certificate [Ex.P14]. On requisition made by the Inspector of Police, Kottappatti, conducted Autopsy on the body of the deceased on 06.06.2011 at about 12.30 p.m and found Rigor Mortis present over the hands and legs, the eyes and mouth closed, the tongue was inside the mouth and there was bleedings on the left side of the ear and blood stains were found over the face, hands and chest and froth was found flowing from the nostrils. The following external injuries are found as follows:

“1) A lacerated wound measuring 2 X 1 X 0.5 cm was found on the upper region of left eye-brow.

2) A lacerated wound measuring 1 X 3 X 2 cm was found below the left jaw.

3) A bone deep lacerated wound measuring 0.5 X 5 was found on the left side skull.

4) A deep abrasion measuring 3 X 3 cm was found over the right elbow.

5) An abrasion on the right knee.

6) Left leg was found swollen, bone was found fractured and in damaged condition.”

He gave opinion that *“the deceased would appear to have died of injuries sustained on his head, shock and haemorrhage”*. The post-mortem report was marked as Ex.P16. The vital organs were sent to forensic department, the covering letter was marked as Ex.P17 and the forensic report was marked as Ex.P18.

(j) PW12 the photographer took photographs [Ex.P19] of the scene of occurrence at the request of the Inspector of Police, Kottappatti. According to him, he took photographs of the deceased on 06.06.2011.

(k) PW13, working in Tamil Nadu Electricity Board, Kobinathampatty has stated that there was no power cut on 05.06.2011 in the Pattavarthy Village in the scene of occurrence.

(l) PW.14 the Head Constable has produced PW.1 and PW.2 for treatment to the Government Hospital, Harur and produced requisition letter for post-mortem of the deceased body. Further, he has produced the dhoti [M.O.10] and shirt [M.O.11] of the deceased under Ex.P20 to the Inspector of Police, A.Pallipatty.

(m) PW15 the Special Sub-Inspector of Police submitted an F.I.R in Crime No.114 of 2011 to the Judicial Magistrate, Pappireddypatty on 06.06.2011 at 06.00 a.m.

(n) PW16 the Investigating Officer on 06.06.2011 at about 03.30 a.m, received a complaint from PW1. On receipt of the same, he registered an F.I.R in Crime No.114 of 2011 [Ex.P21]. Thereafter, the injured persons viz., PW1 and PW2 were sent for treatment at Government Hospital, Harur. F.I.R was despatched to the learned Judicial Magistrate, Pappireddypatty and the higher officials. PW16 reached the scene of occurrence at about 06.00 am, prepared Rough Sketch [Ex.P22], Observation Mahazar [Ex.P2], examined witnesses and conducted inquest from 08.30 am to 11.30 am and sent the body for post-mortem

with request to the Government Hospital, Harur along with PW14. At about 01.00 pm on 06.06.2011, near Jammanapatty Bus Stand, the 1st accused was arrested by PW.16 and based on his confession Kodual [MO1] was seized. On the same day, A2 Balu and A3 Krishnan were arrested in the presence of witnesses and on their confession, MO3 and MO4 recovered. Thereafter, on 02.07.2011, A4 and A5 were arrested and on their confession MO5 and MO6 were recovered. The material objects were sent for forensic examination through Ex.P24. The Biological and Serological Report were marked as Ex.P25 and Ex.P26. After examining all these witnesses, charge sheet has been filed by PW16 before the Judicial Magistrate, Pappereddypetty on 27.09.2011 as against A1 to A5.

5.(a) DW1 the Junior Assistant in Pappereddypatty, Tahsildar office marked Ex.D8 to D13 and produced the death certificate [Ex.D9] of one Govindasamy. Further he stated that based on the request made by Balu/A2, brother of Govindasamy, the death certificate was issued on 21.09.2012, and the proceedings for the same is Ex.D10. He further stated that on enquiry made from the villagers, the death certificate [Ex.D9] of Govindasamy was issued by them. The legal heir certificate [Ex.D6] of Govindasamy had been obtained by the Balu/A2, in which his mother/A4 and his wife Annakili were shown as legal heirs. Ex.D11, the death certificate of Krishnan/A3, who died on 28.07.2012, was issued on the request made by the respondent Police. DW1, further states that a

representation to the District Collector [Ex.D12] was given by the 4th accused stating that her son Krishnan/A3, who is from Army was arrested by the respondent Police. On 07.10.2014, the 2nd accused had given a complaint that the death certificate has been issued in the name of Krishnan, at the instance of the Police is wrong. By proceedings in Na.Ka.10550/14 A3 dated 18.10.2014 [Ex.D13], the death certificate was issued after proper enquiry and verification.

(b) DW2 is one Krishnan, S/o.Kaaliyappan, brother of appellants 1 and 2 joined army on 16.09.2003, his father is late Kaaliyappan, his mother Meenakshi/A4 and his four brothers are Balu/A2, Ramu/A1, Govindhasamy and Krishnan/A3. He has taken training at Bangalore and thereafter, joined duty in Jammu & Kashmir. From 11.06.2011 to 15.08.2011, on leave he came to his native place. After completion of his leave on 15.09.2011, he joined back duty in Jammu & Kashmir. DW2's photograph in the Bank Pass Book viz., State Bank of India in the name of Sepoy K.Krishnan is that of him and the same marked as Ex.D2. The photograph of DW2's brother Govindhasamy is available in the Bank Pass Book viz., State Bank of India and the account was opened on 20.10.2011. Further, he stated that his brother Govindasamy was a lorry driver. On 06.07.2019, he purchased a piece of land from one Neela and the photograph in the sale deed [Ex.D14] is also that of him. On 11.06.2012, Govindasamy purchased a property from one Palani, in which Govindasamy's photograph is found and the same is marked as Ex.D15. DW2's Transfer Certificate from

Jammanavalli Government School was marked as Ex.D16. The death certificate in his name is not correct and he was not arrested by the Police in Crime No.114 of 2011.

(c) DW3 the Havildar of Madras Engineer Regiment produced the service particulars of Krishnan/DW2, which is marked as Ex.D18. As per the service particulars, Kaaliyappan is the father of Krishnan and his legal heirs are his mother Meenakshi/A4, his brothers viz., A1/Ramu, A2/Balu, A3/Krishnan and Govindasamy. All of them belong to Pattavarthini Village, Jamanavalli Post, Dharmapuri District.

6. On conclusion of the trial and on analysing the evidence let-in by the prosecution and the accused, the trial Court, though acquitted the 4th and 5th accused, has found the accused 1 and 2/ appellants herein guilty and convicted them as stated above.

7. The fulcrum of defense of the appellants is that Krishnan/DW2, on the date of occurrence ie., on 05.06.2011 was in duty at Jammu & Kashmir. Hence, he could not have been present in the scene of occurrence. He further submitted that PW1 and her family members, inimically disposed against the appellants/accused, over inheritance of the property from their common ancestors. PW1 the wife, PW2 the daughter and PW3 the father-in-law of the

deceased falsely implicated the appellants as accused, due to property dispute. Other than these witnesses, who were said to be eye witnesses, none have witnessed the occurrence proper. PW4, PW6 and PW7 the villagers, who came to the scene of occurrence at a later point of time did not witness the occurrence. PW5 and PW9 are the Village Administrative Officers, who are obliging witnesses for arrest and recovery.

8. The learned counsel for the appellants further stated that the evidence of PW1 to PW3 are with embellishment and contrary to each other does not inspire confidence. The alleged assault on PW1 and PW2 by the 4th and 5th accused have been disbelieved by the trial Court. On the other hand convicting the 1st and 2nd appellants for assaulting PW1 cannot be sustained. The trial Court acquitted the 1st appellant under Sections 148, 448, 506(ii) of IPC and the 2nd appellant under Section 148, 448, 506(ii), 324 of IPC. On the same set of evidence, the trial Court convicted the 1st appellant for the offence under Sections 302 and 324 of IPC and the 2nd appellant for the offence under Section 302 IPC which is not proper and it would amount to miscarriage of justice.

9. He further submitted that the evidence of PW8 father-in-law of Krishnan/A3 has no consequence. PW1 and PW2 was injured in the alleged occurrence on 05.06.2011 and they were taken to Government Hospital, Harur at

about 09.30 am and 09.45 am on 06.06.2011, which causes doubt about the time and manner in which the occurrence is said to have taken place. PW1 in her evidence admitted that she has only lodged the complaint [Ex.P1] and PW2 is the author of the complaint. It is found that no where in the complaint, it is shown that the content were read over to PW1. PW2 has stated in her evidence that the complaint was written on the dictation of PW1, which creates doubt on the genuineness of PW1 and the manner in which Ex.P1 came into existence.

10. The learned counsel for the appellants contented that entire villagers were present in the scene of occurrence, but no villager was cited as a witness to any of the documents, Observation Mahazar [Ex.P2], Rough Sketch [Ex.P22], Seizure Mahazar [Ex.P3], arrest of the accused, confession and recovery mahazars. The obliging Village Administrative Officer and his Assistant are witnesses to these documents. PW19 the investigating officer, admits that villagers and independent persons were present at the scene of occurrence and at the place of arrest and recovery. The villagers PW4, PW6 and PW7 have not stated about the appellants presence in the scene of occurrence. They merely stated the body of deceased Chinnaswamy was at the scene of occurrence. PW8, father of A3/Krishnan, has only stated that his son-in-law died after the occurrence on 28.07.2012. He does not implicate these appellants.

11.The defence witness and defence exhibits would prove that Krishnan/A3 was serving in Indian Army posted at Jammu & Kashmir on 05.06.2011, the date of occurrence. Hence, the appellants have been falsely implicated in this case.

12.*Per contra*, the learned Additional Public Prosecutor would submit that there are three eye witnesses to this case viz., PW1, PW2 and PW3 of which PW1 and PW2 are injured witnesses. The defacto complainant [PW.1] Sivagami is the wife of deceased Chinnaswamy, whose father had two wives. The deceased is the first wife's son and one Kaaliyappan is the second wife's son. The accused 1 to 3 are the sons of said Kaaliyappan, A4 is the wife of Kaaliyappan and A5 is the wife of the 1st appellant. Enmity existed between them over partition of family property, due to which A1 on 05.06.2011, at about 12.00 midnight, after attending the marriage of one Sankar on the way back to his house had picked up quarrel with the deceased and thereafter, he had brought other accused, broke open the lock and forcibly entered into the house of the deceased and attacked the deceased with deadly weapons. Thereafter, A1 to A3 dragged the deceased from the house and dashed him against the wall, due to which he sustained multiple injuries and died on the spot, which has been corroborated by PW11, Doctor of Government Hospital, Harur.

13.He further submitted that PW5 and PW9 are the Village Administrative Officers, who are the witnesses for arrest of the accused, confession and recovery of the material object. There is nothing to suggest that these witnesses are inimical uttering false hood. PW4 and PW7 are the villagers, who had reached the scene of occurrence while returning from the marriage function of one Sankar. They saw the dead body of Chinnaswamy with multiple injuries all over the body. PW12 photographer had taken photographs [Ex.P19] of the scene of occurrence.

14.Further, PW.6 another villager has seen the body of the deceased in front of his tea shop on 06.06.2011, at about 06.00 a.m. PW13 is the Wireman in Tamil Nadu Electricity Board has stated that on the date of occurrence, there was no power cut and produced relevant log book entries. Hence, there is no dispute with regard to availability of light. The evidence of all these witnesses are in conformity to the case.

15.In the appeal DW2, his wife Anitha, his mother Meenakshi appeared and filed affidavit placing reliance on the death certificate issued by Revenue authorities in the name of Govindasamy DW2, further reiterated that he is Krishnan. Hence, this Court by order dated 09.08.2016, nominated Mr.A.G.Pon Manickavel, Inspector General of Police, Idol Wing, Chennai to conduct an investigation on the stand of the appellants and based on the deposition of DW2

Govindasamy @ Military Govindasamy.

16.As per the said direction issued by this Court, the enquiry officer after a detailed enquiry has submitted a report dated 19.07.2016. During enquiry, he has examined 26 witnesses and collected 39 documents. The witnesses examined by the enquiry officer are the classmates, who had studied along with DW2 and Krishnan/A3 at Jammanavalli Government Higher Secondary School, the revenue officials, the Police personals, villagers from Pattavarthiny, wife of Krishnan/A3, the mother/A4 of Govindasamy and Krishnan and the impersonated Govindasamy, who were examined by the trial Court, recorded their evidence and had forwarded the same to this Court.

17.CW1, CW2 and CW3 are PW1, PW2 and PW3 in this case. CW4 is Annakili, wife of A3/Krishnan. CW5, CW7, CW8, CW9 and CW16 are the classmates of Govindasamy. CW9 and CW10 are the classmates of Krishnan. CW3 is the Junior of Govindasamy in school time. CW12 and CW26 are the villagers. CW15 is the impersonator Govindasamy @ Military Govindasamy @ Krishnan. CW24 Meenakshi/A4 mother of Govindasamy and Krishnan/A3. CW17 is the Head Constable, who had taken the finger print of Krishnan/A3. CW18 is the Inspector of Police, produced A3/krishnan for remand before the Judicial Magistrate, Pappireddypatty.

18.CW19 is the Investigating Officer, who had taken up the case on transfer of CW18. The Revenue Department Officials CW20, CW21, CW22, CW23 are the witnesses, for the issuance of death certificate in the name of Krishnan and Govindasamy thereafter, cancelling the death certificate of Govindasamy. CW13 is the villager, who used Govindasamy and Balu/A2 to get death certificate in the name of Govindasamy. CW24 is the 4th accused in this case. CW25 is the enquiry officer, Inspector General of Police, Idol Wing, Chennai.

19.The enquiry officer has conclusively found that the person, who committed suicide on 28.07.2012 is the 3rd accused Krishnan and the claim of DW2 as Krishnan S/o.Kaaliyappan is a false claim and it is Govindasamy S/o.Kaaliyappan, who had impersonated Krishnan, joined in Indian Army on 16.09.2006 by using the school certificate of Krishnan. In order to sustain his claim he had created forged documents for his impersonation by impersonating himself as Krishnan, S/o.Govindasamy and obtained all the documents such as driving license, Voter ID, Family card and sale deeds in the name of Krishnan. All these documents were created after Govindasamy joined in Indian Army on 16.09.2006, impersonally using the school certificate of his younger brother Krishnan/A3.

20.It is pertinent to note that PW16, Investigating Officer arrested Krishnan/3rd accused along with A1 and A2 appellants herein and produced for remand before the Judicial Magistrate, Pappireddypatty. During the remand, the identity of the accused persons were ascertained. Thereafter they were remanded periodically from 07.06.2011 to 01.08.2011. A1 to A3 were in prison for 57 days till bail was granted by the learned Principal District Judge, Dharmapuri on 01.08.2011. During such period, the identity of Krishnan/A3 was not disputed. The defence of projecting Govindasamy as Krishnan is orchestrated by DW2 Govindasamy @ Military Govindasamy @ Krishnan, fearing being caught by the Military officials of his impersonation. PW8 Arjunan father-in-law of the 3rd accused Krishnan categorically stated about the suicide of Krishnan on 28.07.2012 attending his funeral, cremation carried out in a hasty manner without leaving any traces. The revenue officials and the police officials were not informed about the suicide of Krishnan. The officials after coming to know about the same, reached the village for enquiry, by the time the body was cremated.

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21.The revenue officials issued the death certificate in the name of Govindasamy without proper verification and after enquiry it was cancelled, the cancellation of death certificate of Govindasamy is not disputed and had not been challenged. On verification of the records, it is seen that in the remand

warrant dated 07.06.2011, the signature of Krishnan has been inscribed in tamil as it is found in Ex.C23, school certificate dated 08.07.2003. All other documents in the name of Krishnan has been signed in English by Govindasamy. The documents produced by Govindasamy in the name of Krishnan are all after 16.09.2006, after Govindasamy joined Indian Army in the name of Krishnan, using his younger brother Krishnan's school certificate.

22.It is seen from the evidence of eye witness PW1, who had been cross examined in length mostly about the relationship of the accused and the witnesses. PW1 has categorically stated that Govindasamy is the person, who is working in Indian Army and the person, who assaulted her husband is Krishnan/A3 now he is no more. It has been suggested that the deceased and PW1 had assaulted the accused. The deceased Chinnasamy after attackin the accused attempted to escape from the scene of occurrence, dashed against the wall, thereby sustained head injury as also PW1.

23.PW2 categorically stated that the late Kaaliyappan had four sons and A3 was Krishnan. It was Govindasamy, who served in Army. PW2 was cross examined on the point that PW2 was studying in Salem and she was not present in the scene of occurrence. By their own case the accused have admitted their presence in the scene of occurrence and their only explanation is that, it was the deceased and PW1 who attacked them.

24.The injuries sustained by PW1 and PW2 and the injuries on deceased have been spoken by PW11 under Ex.P13 and Ex.18. PW8 is the father-in-law Krishnan, who had attended the funeral of his son-in-law A3. PW5, Village Administrative Officer had spoken about the investigating officer reaching the scene of occurrence, preparation of observation mahazar, rough sketch, examination of witnesses, seizure of material objects under MO6 to MO9. She had been the witness to the arrest of A1, his confession statement Ex.P5 and seizure of MO1 Koduval and the mahazar for the same as Ex.P9.

25.PW9, Village Administrative Officer, Manjavadi is the witness for arrest and confession statement of A2 and A3. Based on their confession, MO3 and MO4 were recovered in her presence. Further, she has been witness for arrest of A4 and A5. Further on 02.07.2011, he was also witness for the arrest of A4 and A5. The admissible portion of the confession given by A4 and A5 were marked as Ex.P7 and Ex.P8 respectively and the seizure mahazar for the weapons was marked as Ex.P9 to Ex.12.

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26.PW.11 is the Doctor attached to Government Hospital at Harur, who had examined PW1 and PW2 and issued wound certificate under Ex.P13 and Ex.P14. He also conducted Autopsy on the body of the deceased Chinnasamy and issued the post-mortem report under Ex.P16.

27.PW16 is the Investigating Officer visited the scene of occurrence, prepared Observation Mahazar [Ex.P2], Rough Sketch [Ex.P22], seized the materials objects, arrested the accused, recorded their confession statements, based on their confession recovered the weapons. He has stated that the late Kaliyappan had four sons viz., Balu/A1, Ramu/A2, Krishnan/A3 and one Govindasamy. Further, he arrested A1 to A3 and produced them for remand before the Judicial Magistrate, Pappireddypatty. Thereafter, they were remanded periodically from 07.06.2011 to 01.08.2011 and they were in prison for 57 days till bail was granted by the learned Principal District Judge, Dharmapuri on 01.08.2011. During such period, the identity of Krishnan was not disputed.

28.It is also seen that when the accused was arrested by the Police, photographs have been taken and the same is marked as Ex.P27. Further, the rough sketch has been marked as Ex.P22. On perusal of the same, it is seen that the availability of mercury lights in the scene of occurrence. The accused have not disputed about the non-availability of light in the scene of occurrence.

29.The contention of the appellants in this case is that on the date of the occurrence, Krishnan/A3 was serving in Indian Army in Jammu Kashmir, he had been shown as accused in this case. Thus the entire case projected by the accused and his family members are false and fabricated against them.

30.As discussed earlier from the evidence of witnesses, PW1 and PW2 are injured eye witnesses and their evidences are in conformity to the medical evidence and evidence of other witnesses are in consensus would prove the fact that the accused were present at the scene of occurrence and also their assault on the deceased, PW1 and PW2.

31.This Court on perusal of the documents and on analysis of the evidence let-in by both the accused and the prosecution, comes to the conclusion that the accused has committed the murder of Chinnasamy which has been clearly established on the evidences of the eye witnesses [PWs.1, 2 & 3]. Such evidences are in conformity with the medical evidence [PW11]. The arrest of the accused and the recovery of the incriminating articles have been spoken by PW5 and PW9. On an analysis of evidence of villagers, which are corroborative and in conformity to the evidence of PW1, PW2 and PW3. The individual overtact of the appellants have been clearly spoken by PWs.1, 2 & 3. The unassailable evidence of PW1, PW2 and PW3 is that, it was the appellants who committed the murder of Chinnasamy. Further, there was no delay in lodging the complaint, registering F.I.R and the investigation was carried out without any delay. The statement and documents reached the Court in time.

32.PW11 the Doctor, who treated PW1 and PW2, immediately on the next day of occurrence, issued wound certificates under Exs.P13 & P14 for injuries on

them. PW1 and PW2 had categorically stated that they were assaulted by the accused and they sustained injuries, for which PW11 gave treatment for them.

PW14 is the Head Constable, who had taken PW1 and PW2 to Government Hospital, Harur. PW15 is the Sub Inspector of Police, who submitted F.I.R [Ex.P21] to the Judicial Magistrate, Pappireddypatty and other higher officials. PW16 is the Investigating Officer, on receipt of the complaint [Ex.P1] at about 03.30 am, reached the scene of occurrence, prepared Observation Mahazar [Ex.P2], Rough Sketch [Ex.P22], Seizure Mahazar [Ex.P3], enquired the witnesses present in the scene of occurrence, recorded their statements and directed PW1 and PW2 to be produced before the Government Hospital, Harur. Thereafter, conducted inquest on the same day at about 08.30 am to 11.30 am, arrested the accused A1 to A3. Based on the confession given by the 1st accused, Kodual [MO1] was seized. On the same day, A2 Balu and A3 Krishnan were arrested in the presence of witnesses and on their confessions MO3, MO4 were recovered. Thereafter, on 02.07.2011, A4 and A5 were arrested and on their confession MO5 and MO6 were recovered. The material objects were sent for forensic examination through Ex.P24. The biological and serologist reports were marked as Ex.P25 and Ex.P26. The trial Court on proper analysis of evidence and materials had rightly convicted A1 and A2. Further the conduct of appellants/accused and DW2 in creating false documents and adducing false evidence had caused hardship and enormous delay. The criminal intend of appellants and DW2 and others involved in such exercise

to be punished.

33.This Court finds that on analysis of the evidence of eye witnesses PWs.1, 2 & 3 is corroborated by medical and other witnesses. Hence, this Court dismisses the appeal confirming the conviction and sentence passed by the learned Principal District and Session Judge, Dharmapuri, in S.C.No.221 of 2014, dated 03.02.2016. Hence, the learned Principal District and Session Judge, Dharmapuri is directed to take appropriate steps to secure the appellants to undergo the remaining sentence and the respondent Police is also directed to secure the appellants/accused forthwith.

34.This Court by order dated 09.08.2016, directed the Inspector General of Police to file a report on the specific plea made by Govindasamy and his mother/A4 and his wife Aruna. As per the said direction issued by this Court, the enquiry officer after detailed enquiry submitted a report dated 19.07.2016. During enquiry, he has examined 26 witnesses and collected 39 documents and also made a claim that DW2 in the above case is Govindasamy @ Military Govindasamy. Thereafter, this Court directed the trial Court to examine all the witnesses giving opportunity to the learned counsel for the accused and the learned Additional Public Prosecutor to cross-examine the witnesses. As per the direction of this Court, the examination of witnesses have been completed.

35.On perusal of the same, it is found that it is a tactful ploy adopted by DW2 to substantiate his claim that he is Krishnan. He has used the school

certificate of his younger brother Krishnan/A3 and joined in Indian Army on 16.09.2006. Fearing that if the case in the name of original Krishnan is proceeded with, he would be exposed of his impersonation and he would have to face Court martial, created all the documents. Taking advantage of the same to save his brother from the capital punishment, he had sustained his claim that he is Krishnan.

36.CW13 Saravanan, who is a Government School Teacher in Pappyreddipatty, hails from Pattavarthini village had categorically stated about the ploy adopted by Govindasamy and Balu/A2. CW13 had helped DW2 and Balu/A2 to get death certificate of Krishnan, who died on 28.07.2012. DW2 and Balu/A2 in a deceitful manner had obtained death certificate in the name of Govindasamy, as the person died on 28.07.2012.

37.CWs.20, 21 and 22 in dereliction of the duty for small benefits, are abettors in preparation of forged death certificate in the name of Govindasamy. After knowing the facts and its consequences, they subsequently cancelled the death certificate.

38.CW17 and CW18 are the police personals during the relevant period on having knowledge about the suicide of Krishnan on 28.07.2012 have not taken immediate and proper action against Govindasamy, who obtained forged death certificate by illegal means are abettors. The revenue and Police officials

namely CW20/VAO, CW21/Deputy Tahsildar, CW18 and CW15 being Public servants had abetted to the act of Govidasamy, his wife Aruna, Balu/A2, Meenakshi/A4 in concealing and designing of false evidence, fabricating the documents and giving false information to screen offenders of a capital punishment.

39.This Court directs the concerned officials of Police and Revenue Department to take appropriate departmental action them. The District Crime Branch, Dharmapuri to register a case against these persons and proceed in accordance with law. The Superintendent of Police, Dharmapuri is also directed to monitor the case and report compliance.

[M.S.N., J] [M.N.K., J]
28.06.2019

Speaking order/Non-speaking order
Index: Yes/No
Internet: Yes/No

vv2

To

1.The Principal District and Session Court,
Dharmapuri.

2.The Inspector of Police,
A.Pallipatty Police Station,
Pappireddy Patty Taluk,
Dharmapuri Taluk.

3.The Public Prosecutor,
High Court, Madras.

M.SATHYANARAYANAN, J.
and
M.NIRMAL KUMAR, J.

vv2



Pre-Delivery Judgment
in
Criminal Appeal No.217 of 2016

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28.06.2019