

Bail Slip.

The Appellants herein/Accused 3 and 4 namely 3. Kubendran S/o. Koothan 4. Kumar S/o. Koothan were directed to be released on bail as per the order of this Court dated 08.04.2014 made in M.P. 1/2014 in Cr1.A.192/2014.

Bail Slip

The Appellants herein/Accused 1 & 2 namely 1. Venkatesan So. Dhanapal and 2. Pandian S/o. Irusan were directed to be released on bail as per the order of this Court dated 21.03.2014 made in M.P. 1/2014 in Cr1.A.159/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Cr1.A.Nos.159 & 192 of 2014

1. Kubendran

2. Kumar

...Appellants/A3 & A4 in Cr1.A.192/2014

1. Venkatesan

2. Pandian

...Appellants/A1 & A2 in Cr1.A.159/2014

Vs.

State by

The Inspector of Police,  
Vadaponparapi Police Station,  
Villupuram District.

(Cr.No.113 of 2006)

... Respondent in both the Appeals

Prayer in both the Appeals: These Criminal Appeals have been filed under Section 374(2) of Cr.P.C, to set aside the judgment of conviction and sentence passed in S.C.No.191 of 2008 dated 11.03.2014 by the learned District and Additional Sessions Judge No.III, Kallakurichi.

For Appellants : Mr.C.Sivakumar,  
Legal Aid Counsel in Cr1.A.159/2014

: Mr.D.Sathyaraj in Cr1.A.192/2014

For Respondent : Mr.T.Shanmugarajeswaran  
Govt. Advocate (Crl.Side)  
in both the Appeals

#### COMMON JUDGMENT

These criminal appeals have been filed against the judgment of conviction made in S.C.No.191 of 2008 dated 11.03.2014 by the learned District and Additional Sessions Judge No.III, Kallakurichi. Since both the criminal appeals are arising out of the same judgment of conviction made by the trial Court, both the appeals are taken up together and disposed of by this common judgment.

2 Case of the prosecution is that all the accused on 04.05.2006 at 12.30 a.m. went to the house of the defacto complainant/P.W.1 and assaulted his deceased son with hands and A1 uttered the words 'you spoiled my sister's life' and they brought the deceased to Panchayat and there A5 and A6 forcibly obtained signature from the deceased to marry the sister of A1 at next day morning, but, since the deceased did not come forward to marry the sister of A1, A1 to A4 went to field of the deceased and attacked him which resulted his death.

3 Therefore, respondent police registered a case against the appellants/A1 to A4 and two others in Crime No.113 of 2006 for the offence punishable under Section 302 of IPC against A1 to A4 and 384 of IPC against A5 & A6. After investigation laid a charge sheet before the learned Judicial Magistrate, Sankarapuram, which was taken on file in P.R.C.No.8 of 2007. The learned Judicial Magistrate, since the offence charged against the accused is triable only by the Court of Sessions, committed the case to the learned Principal District and Sessions Judge, Villupuram, and the same was made over to the learned III Additional District and Sessions Judge, Kallakurichi, which was taken on file in S.C.No.191 of 2008 and the learned Sessions Judge, had framed charges against the accused.

4 Before the trial Court, in order to prove case of the prosecution, P.W.1 to P.W.13 were examined Exs.P1 to P21 were marked besides four material objects. After completion of evidence of prosecution witnesses, when incriminating circumstances culled out and put before the accused, they denied as false. On the side of the defence no one was examined and no document was marked.

5 The learned III Additional District and Sessions Judge, Kallakurichi, after trial found all the accused not guilty for the offence charged against them and acquitted, but, convicted the appellants/A1 to A4 for the offence under Section 304(1) and sentenced them to undergo rigorous imprisonment for a period of seven years each with fine of Rs.5000/- each, in default, to undergo rigorous imprisonment for a further period of one year, for each default. Aggrieved against the judgment of conviction dated 11.03.2014, the appellants/A1 to A4 are before this Court with the present criminal appeals.

6 The learned legal aid counsel appearing for the appellants/A1& A2 in CrI.A.No.159 of 2014 would submit that there are material contradictions between the prosecution witnesses. According to prosecution, there are two incidents one is on 04.05.2006 at about 12.30 a.m. all the appellants went to the house of the P.W.1 and attacked the deceased and compelled the deceased to marry sister of A1. It is to be noted that P.W.1 has stated three persons came on the day of occurrence, but, P.W.2 has stated two persons came, which creates doubts in the case of the prosecution. The other incident is on the same day at about 7.00 a.m. since the deceased did not come forward to marry sister of A1, all the appellants went to the field of the deceased and attacked him with hands and due to the same, he died. But no witness had stated that they have seen the appellants in the field. Prosecution has failed to prove its case beyond reasonable doubt and medical evidence also did not support the case of the prosecution and it was not corroborated with the evidence of prosecution witnesses. According to prosecution also the motive is that since the deceased raped sister of A1, due to sudden provocation, the accused attacked the deceased that too with hands only and in this case no deadly weapon was used. Trial Court has failed to consider the facts of the case and erroneously convicted the appellants under Section 304(1), which warrants interference.

7 The learned counsel appearing for the appellants in CrI.A.No.192 of 2014 would submit that the deceased sustained

injuries only at the first incident alleged to have taken place on 04.05.2006 at 12.30 a.m. and because of that injuries only the deceased died. Further P.W.4 has stated that four persons came and lifted the deceased, whereas, evidence of P.Ws.1 & 2 have stated that his relative came and lifted the deceased at his shoulder. There is material contradictions between the prosecution witnesses and there is no eye witness for the second incident and to implicate these appellants, prosecution has set up this second incident. Medical evidences shows that due to auspicious and broken of Zygoma bone, fact remains that the deceased sustained the above injuries only at the first incident. Prosecution has stated that all the appellants attacked the deceased with hand and caused injures and prosecution has failed to prove the offence said to have committed by these appellants. Medical evidence not tallied with the evidence of prosecution and it has not proved the offence alleged to have been committed by these appellants. P.W.4 is not eye witness to the first incident and even in the second incident also he did not say anything about the presence of these accused and also he has not stated that these appellants only attacked the deceased in the field. The learned counsel has relied on plethora of decisions rendered by the Hon'ble Supreme Court to support his contentions. The learned trial Judge has failed to consider the contradiction in the evidence of prosecution with regard to the persons who committed the offence itself and erroneously convicted these appellants, which warrants interference.

8 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that prior to the occurrence the deceased went to house of A1 and committed rape on his sister. Therefore A1 along with three others went to house of the deceased and knocked the doors at that time P.Ws.1 & 2 came out. The accused asked whereabouts of their son and went into the room and compelled the deceased to marry sister of A1 and assaulted him with hands and further pulled him to the Panchayat, wherein, A5 & A6 obtained signatures in white paper towards assurance to marry sister of A1 at next day morning. Since the deceased did not come forward for the marriage, all the accused went to the field and attacked the deceased with hands and the deceased sustained injuries, which are grievous in nature and subsequently he died at the field. P.Ws.1 & 2 have clearly stated that the accused came to their house and attacked their son and he sustained injuries. The evidence of P.Ws.1 & 2 corroborates with the medical evidence and the Doctor/P.W.9, who conducted autopsy on the body of the deceased has stated that the deceased sustained multiple injuries all over the body and due to broke of Zygomatic bone on the nose, he died. P.W.4, who is owner of the land nearby the field, where the second incident

has taken place and he stated that he saw the appellants nearby his land immediately after the occurrence. Even though, P.W.4 is not an eye witness, he is circumstantial witness and he has clearly stated that he saw the appellants nearby the occurrence place. It is proved that prior to the second incident, all the accused went to the house of P.Ws.1 & 2 and attacked the deceased and under these circumstances, the evidence of P.W.4 with regard to the presence of the appellants in the second incident. Prosecution has proved its case beyond reasonable doubt and the trial Court has also rightly appreciated the evidence of prosecution and convicted the appellants, which does not call for any interference.

9 Heard the learned counsel appearing on either side and perused the materials available on record.

10 It is seen that P.W.1 is father and P.W.2 is mother of the deceased, who raped sister of A1. P.W.3 is relative and P.W.4 is neighbouring land owner and is independent witness. Evidence of P.W.1 shows that three persons came to his house and attacked his son and P.W.2 also stated that at night house all the four appellants came assaulted his son. Therefore from the evidence of P.Ws.1 & 2, it is clear that there is enmity between the deceased and A1 due to the reason that the deceased raped sister of A1 and refused to marry her and the appellants obtained a letter and the same was also marked. On the same day morning at 7.00 a.m. since the deceased did not come forward to marry sister of A1, he went to the field along with other accused and attacked the deceased, which caused death. Even though, for the first incident parents of deceased are only eye witness and for the second incident there is no eye witness, P.W.4 is circumstantial witness, who has clearly stated that he saw the appellants nearby the occurrence place. P.W.3 has stated that he saw the deceased lying on the field and immediately informed the same to his parents and subsequently he died. The Doctor/P.W.9, one who conducted autopsy has clearly state that the deceased died due to broken of zygomatic bone at the nose and auspicious and there are also other injuries on the fact and chest. According to P.Ws.1 & 2, three persons came and A1 attacked the deceased. P.W.2, mother of the deceased has stated that A1 attacked her son and punched him at Nose. Chain of circumstances has been clearly proved by prosecution from the evidence of P.Ws.1 to 4. P.Ws.1 & 2 had seen the appellants at the first incident and P.W.4 had seen the appellants at the second incident and P.W.3 seen the deceased lying on the field and immediately informed to his parents and prosecution has proved its case beyond reasonable doubt. This Court has re-appreciated entire evidence and finds there is no break in the

chain of circumstances and does not find any reason to take a different view in this case.

11 In the result, these criminal appeals are dismissed and the judgment of conviction passed against all the appellants is hereby confirmed. However, since, A2 to A3 were present all along the incidents and A1 attacked the deceased, which caused death, this Court is inclined to modify the sentence alone against A2 to A4. Accordingly the period of imprisonment of seven years imposed on A2 to A4 is reduced to five years and the imprisonment imposed on A1 is hereby confirmed. Trial Court is directed to secure all the appellants to serve remaining period of imprisonment, if any.

12 While parting with the case, I appreciate the services rendered by Mr.C.Sivakumar, learned counsel who appeared on behalf of the appellants/accused in CrI.A.No.159 of 2014, as Legal Aid Counsel. The learned counsel on record for the appellants is entitled for remuneration as per rules.

s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The District and Additional Sessions Judge No.III, Kallakurichi.
2. The Judicial Magistrate, Sankarapuram
3. The Chief Judicial Magistrate, Villupuram
4. The Superintendent Central Prison, Cuddalore.
5. The Inspector of Police, Vadaponparapi Police Station, Villupuram District.
6. The Additional Public Prosecutor High Court, Madras 104.

+1 CC to Mr.D.Sathyaraj Advocate sr 65448.

+1 CC to Mr.C.Sivakumar, Advocate sr 64908.

CrI.A.Nos.159 & 192 of 2014

BS (CO)  
SP(23/09/2019)