

**Bail slip**

The Appellant/2nd Accused viz. Chandran, was released on bail as per the order of this court dated 28.09.2010 made in CRL MP(MD) No.1/2010 in CRL A(MD)NO.272 of 2010.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A. (MD) .No.272 of 2010

Chandran

... Appellant/2nd Accused

Vs

State rep. by the
Inspector of Police, Kulasekaran Circle,
Paecheparai Police Station.
(Crime No.45 of 2003) .. Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of the Criminal Procedure Code, to allow the criminal appeal and set aside the Judgment of Conviction, dated 27.07.2010 in S.C.No.10 of 2007 on the file of the learned Sessions Judge, Kanyakumari Division, Nagercoil.

For Appellant : Mr.M.Suri

For Respondent : Mr.A.Robinson
Government Advocate (Crl. Side)

JUDGMENT

The appellant figured as A2 in Sessions Case No.10 of 2007 on the file of the learned Sessions Judge, Kaniyakumari Division, Nagercoil.

2.Apart from the appellant there were four other accused. The learned trial Judge by judgment dated, 27.07.2010, acquitted the other accused and convicted the appellant alone for the offences under Sections 341 and 326 of IPC. He was sentenced to undergo simple imprisonment for one month for the offence under section 341 of IPC and for the offence under Section 326 IPC, to undergo 7 years rigorous imprisonment and to pay a fine of Rs.3,000/-. Aggrieved by the said judgment, dated 27.07.2010, this appeal came to be filed.

3.Heard the learned counsel on either side.

4.1 carefully considered the rival contentions and perused the evidence on record.



5.The Prosecution Case runs as under:

The deceased was Murugan Kani. The case of the prosecution is that on 15.12.2003, at about 2.30 p.m., the five accused formed a unlawful assembly. With an unlawful intention to murder the said Murugan Kani, they restrained him from proceeding further when he was at Paduparai. While the other accused are said to have instigated, the appellant herein with M.O.1 aruval cut the deceased Murugan Kani on his left ankle. This was witnessed by his wife Vasantha, brother Krishnan and two other persons. Even though the occurrence took place at 2.30 p.m., since it was a remote spot, due to non availability of conveyance facility, PW1 and PW2 could not take Murugan Kani to hospital immediately. Only much later they were able to secure transportation facility and took Murugan in a Car. But Murugan Kani died enroute. Yet he was taken to Kulashekaram Government Hospital. The hospital authorities declared that the Murugan Kani was brought dead. Thereafter, intimation was given to police. Thereupon a Special Sub Inspector came to the hospital and Vasantha gave Ex.P1, First Information Statement. Based on the same, Crime No.45 of 2003 was registered on the file of Paechiparai Police Station Ex.P.10. Investigation was taken up and after completion of usual formalities, final report was lodged against the five accused. Charges were framed against the accused as follows:

"Due to enmity with the deceased, all the accused formed unlawful assembly armed with weapons and wrongfully restrained and assaulted the deceased with the weapon and committed the murder of the deceased."

6.The accused pleaded not guilty to the charges and claimed to be tried. The prosecution examined 9 witnesses and marked Exs.P1 to P15 and also marked the material objects M.O.1 to M.O.8. On the side of the defence, two witnesses were examined.

7.The learned Sessions Judge, acquitted the other accused and convicted and sentenced the appellant as mentioned above. Challenging the same, this appeal has been filed.

8.The learned counsel for the appellant pointed out that the prosecution had come up with a specific case. That is Murugan Kani was cut on the ankle with M.O.1 vettaruval by the appellant Chandran and that this was witnessed by as many as four eye witnesses including PW1 wife and PW2 brother Krishnan. Ex.P1 lodged by Vasantha is on the same lines. But when PW1 was examined before the Court, she was very specific that it was only A1 namely Leestar S/o Yesudhas who cut Murugan Kani. In other words, PW1 does not implicate the appellant at all in her testimony before the Court. Of course, PW2 does implicate the appellant and supported the prosecution. But then wife of the deceased who is said to have witnessed the occurrence and who lodged the FIR had not supported to the prosecution case against the appellant herein. I am of the view that the prosecution case stands undermined.



9. This court carefully went through the testimony of PW1. PW1 admitted that her husband had a number of enemies. Against her husband number of criminal cases were pending before Thuckalai court at the instance of one Charles. One such case was that deceased Murugan had hacked Charles. Likewise Murugan was said to have hacked one Perumal and another case was that Murugan hacked one Lakshmanan. There is also an allegation that Murugan had illegal intimacy with one Sulochana. On that score, there was a quarrel between the two families. That apart, there was yet another case of attack on Kumar by Murugan. The catalogue of cases in which the deceased Murugan was implicated appears to be rather long. That is why PW1 admitted that he had many enemies in the locality.

10. The occurrence is said to have taken place at about 2.30 p.m. But then he was taken to hospital only at around 6.45 p.m., There is a gap of more than 4 hours and 15 minutes. The hospital is at a distance of about 15 k.m. From this, one can come to the safe conclusion that the deceased Murugan was fatally attacked by some unknown persons and that he was left to die there. The defence has examined two witnesses. According to DW2, he got information about the attack on Murugan Kani and he took steps to send Murugan Kani to hospital.

11. From this, one can come to the conclusion that after she came into know about the demise of her husband, PW1 decided to implicate the five accused. Initially, she chose to implicate the accused No.2 Chandran appellant herein, as the main culprit. Later she changed her stand and stated that Leester attacked her husband and he is the main accused. Thus PW1 has not been consistent in her accusation. While in the complaint she says Chandran attacked her husband, before the Court she says Leester attacked her husband. In these circumstances, one cannot come to definite conclusion as to a who attacked the deceased.

12. I am of the view that the benefit of doubt should go to the appellant herein. The court below did not give proper importance to the vital discrepancies in the original stand of PW1 and subsequent stand taken in the Court. In this circumstance, I am of the view that the judgment of the trial court convicting and sentencing the appellant herein deserves to be set aside and accordingly the conviction and sentence passed in S.C.No.10 of 2007 on the file of the learned Sessions Judge, Nagercoil, dated 27.07.2010 is set aside. This Criminal Appeal is allowed. If any fine amount has already been paid by the appellant herein, the same shall be refunded to him.

Sd/-

Assistant Registrar ()

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To

1. THE SESSIONS JUDGE, NAGERCOIL
2. THE JUDICIAL MAGISTRATE, PADMANADHAPURAM
3. -DO- THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI DISTRICT AT NAGERCOIL
4. THE INSPECTOR OF POLICE KULASEKARAM CIRCLE,
PAECHEPARAI POLICE STATION,
5. THE DIRECTOR GENERAL OF POLICE MYLAPORE, CHENNAI
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
7. THE SECTION OFFICER, CRIMINAL SECTION (RECORD KEEPER,)
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

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