

**BAIL SLIP**

1.Rajendran, S/o.Periyandi, Male, Aged about (48/2017), (Accused No.3), 2.Muniappan @ Muniyaraj,, S/o.Palanisamy,Male, Aged about (37/2017), (Accused No.4), 3.Latchpandi, S/o.Periyapandi, Male, Aged about (34/2017), (Accused No.1), 4.Thiruppathi, S/o.Ramar, Male, Aged about (36/2017), (Accused No.2), were released on bail vide Court order dated 03.08.2017, 09.08.2017, 24.11.2017 and 21.09.2017 made in CRL MP(MD)Nos.4052, 6556, 7781 and 8209 of 2017 in CRL A(MD) Nos.147, 282, 336 and 335 of 2017 respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2019

CORAM:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and**

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD) Nos.147, 282, 336 & 355 of 2017

Rajendran	...	Appellant/Accused No.3 in Crl.A.(MD) No.147 of 2017
Muniappan @ Muniyaraj	...	Appellant/Accused No.4 in Crl.A.(MD) No.282 of 2017
Latchupandi	...	Appellant/Accused No.1 in Crl.A.(MD) No.336 of 2017
Thiruppathi	...	Appellant/Accused No.2 in Crl.A.(MD) No.355 of 2017

-vs-

State rep by its
The Inspector of Police
Vadamadurai Police Station
Vadamadurai
Dindigul District
(Crime No.151 of 2012)

... Respondent in all Criminal
Appeals

PRAYER (in Crl.A.(MD) No.147 of 2017): Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records of the case in S.C.No.3 of 2015 on the file of the Additional District and Sessions Court, Dindigul, dated 25.04.2017 and allow this appeal and acquit the appellant from the charges by setting aside the

impugned judgment dated 25.04.2017.

PRAYER (in CrI.A.(MD) No.282 of 2017): Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the judgment dated 25.04.2017 made in S.C.No.3 of 2015 on the file of the Additional District and Sessions Judge, Dindigul and set aside the same.

PRAYER (in CrI.A.(MD) No.336 of 2017): Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records of the case in S.C.No.3 of 2015 on the file of the Additional District and Sessions Court, Dindigul, dated 25.04.2017 and allow this appeal and acquit the appellant from the charges by setting aside the impugned judgment dated 25.04.2017.

PRAYER (in CrI.A.(MD) No.355 of 2017): Appeal filed under Section 374 of the Code of Criminal Procedure, to call for the Judgment dated 25.04.2017 made in S.C.No.3 of 2015 on the file of the Additional District and Sessions Judge, Dindigul and set aside the same.

For Appellant : Mr.AR.Jeyarhuthran
(in CrI.A.(MD) No.147 of 2017)

For Appellant : Mr.J.Sivaram
(in CrI.A.(MD) No.282 of 2017 &
CrI.A.(MD) No.355 of 2017)

For Appellant : Mr.N.Anantha Padmanaban
(in CrI.A.(MD) No.336 of 2017) for M/s.APN Law
Associates

For Respondent : Mr.R.Anandharaj
(in all Criminal Appeals) Additional Public
Prosecutor

C O M M O N J U D G M E N T

P.N.PRAKASH, J.,

Challenging the judgment of conviction and sentence, dated 25.04.2017, passed in S.C.No.3 of 2015, by the learned Additional District and Sessions Judge, Dindigul, accused 1 to 4 are before this Court.

2. The case of the prosecution, in a nutshell, is as follows:

2.1. Saradha, daughter of Rajendran (A3), was given in marriage to Ganesan, son of the deceased Karuppasamy; on account of matrimonial discord between the couple, there were differences of opinion between the family of the deceased Karuppasamy and Rajendran (A3); pursuant to that, Saradha was sent back to her natal home, on account of which, Rajendran (A3) had grouse against the deceased



Karuppasamy, because he believed that it was Karuppasamy, who was responsible for the matrimonial discord between Ganesan and Saradha; on 29.04.2012, Rajendran (A3) along with his younger brother Latchupandi (A1), friends Thirupathi (A2) and Muniappan (A4), went to the house of Karuppasamy and not finding him there, threatened Shanmugavalli (P.W.5), wife of the deceased Karuppasamy; thereafter, Latchupandi (A1), Thirupathi (A2), Rajendran (A3) and Muniappan (A4) went in search of Karuppasamy's younger brother Nallar (P.W.1); near Vadakarai Uppukulam, they found Nallar (P.W.1) grazing cattle; they restrained him and tried to obtain his signature in a blank stamp paper; when Nallar (P.W.1) refused to sign in blank stamp paper, Latchupandi (A1) assaulted Nallar (P.W.1) with the blunt side of a sickle (M.O.1), Thirupathi (A2), Rajendran (A3) and Muniappan (A4) assaulted Nallar (P.W.1) by hand; while this was going on, the deceased Karuppasamy came to the place, along with Karuppadurai (P.W.2), Special Sub Inspector of Police, Eriodu Police Station and Senthil Kumar (P.W.3), a Member of Fronds of Police; on seeing Karuppasamy coming, Latchupandi (A1) and Thirupathi (A2) attacked Karuppasamy with a sickle resulting in his death.

2.2. On the complaint (Ex.P1) lodged by Nallar (P.W.1), Muthulakshmi (P.W.19), Sub Inspector of Police, Vadamadurai Police Station (jurisdictional Police Station for Vadakarai, where the incident took place), registered a case in Crime No.151 of 2012, for the offences punishable under Sections 341, 324 and 302 I.P.C., on 29.04.2012 at 18.30 hours and prepared the printed F.I.R. (Ex.P19) against Latchupandi (A1), Thirupathi (A2), Rajendran (A3) and Muniappan (A4). Investigation of the case was taken over by Nallu (P.W.20), Inspector of Police, who went to the place of occurrence and prepared Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P20), in the presence of witnesses Natchiappan (P.W.6) and Pandi (not examined). From the place of occurrence, he seized blood stained soil, soil without blood stain and a blood stained spectacle cover (M.O.10) under the cover of Mahazar (Ex.P3). Latchupandi (A1) surrendered before the Judicial Magistrate, Thoothukudi and on information, the Police took him into custody and pursuant to the confession statement given by him, recovered a sickle (M.O.1) under the cover of Mahazar (Ex.P23).

2.3. On 01.05.2012, the Police arrested Thirupathi (A2) and based on his confession statement, recovered a sickle (M.O.6) under the cover of Mahazar (Ex.P5) in the presence of witnesses Uma Chandran (P.W.7) and Saravana Perumal (not examined). Rajendran (A3) surrendered before the Judicial Magistrate, Oddanchatram and on information, the Police took him into custody, however, no recovery was effected. On 18.05.2012, the Police arrested Muniappan (A4)



and based on his confession statement, recovered a Knife (M.O.7) under the cover of Mahazar (Ex.P10) in the presence of witnesses Muthuselvan (P.W.7) and Selvam (not examined).

2.4. Now, going back to the narration of facts, Nallu (P.W.20), Inspector of Police, conducted inquest over the body of the deceased Karuppasamy and prepared Inquest Report (Ex.P15). Thereafter, the body was dispatched to the Government Hospital, Vendasandur, for postmortem, where Dr.Somasundaram (P.W.12) conducted autopsy over the body of the deceased and issued Postmortem Certificate (Ex.13), wherein regarding the cause of death, it is stated as under:

"The deceased would appear to have died of Shock and haemerrage due to multiple injuries sustained 18 to 20 hours prior Autopsy."

2.5. It appears that, after the incident, Latchupandi sped away in his motorbike and met with a road accident and he was taken to the Government Hospital, Oddanchathram, where Dr.Sathish Kumar (P.W.13) examined him on 29.04.2012, at 08.00 p.m. and issued Accident Register (Ex.P14), wherein he has noted the following injuries:

*"Fracture Right Middle and index finger,
Abrasion Right knee"*

Thereafter, Latchupandi (A1) was referred to the Government Hospital, Dindigul, for further treatment and therefrom, he appears to have absconded and later surrendered before the Judicial Magistrate, Thoothukudi.

2.6. After examining witnesses and collecting various reports, the Investigating Officer completed the investigation and filed final report in P.R.C.No.23 of 2012, before the learned Judicial Magistrate, Vendasandur, for the offences punishable under Sections 341, 324 & 302 I.P.C. against Latchupandi (A1) and Thirupathi (A2) and Sections 341 & 506(II) I.P.C. against Rajendran (A3) and Muniappan (A4).

3. On the appearance of the appellants, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.3 of 2015 and made over to the learned Additional District and Sessions Judge, Dindigul, for trial.

4. Initially, on 11.02.2015, the Trial Court framed four charges against the appellants, as detailed below:

Charge	Accused	Penal Provisions
1.	A1	341 I.P.C.
2.	A2	324 I.P.C.



3.	A3 & A4	341 & 506(II) I.P.C.
4.	A1 & A2	302 I.P.C.

We observed a typographical error in the second charge. Though the narration in that charge is with regard to the assault of Nallar (P.W.1) with the blunt portion of the sickle (M.O.1) punishable under Section 324 I.P.C., the name of the injured has been typed as Karuppasamy instead of Nallar.

5. Thereafter, on 29.11.2016, the charges framed against Rajendran (A3) and Muniappan (A4) were amended, under Section 216 Cr.P.C., as detailed below:

Charge	Accused	Penal Provisions
1.	A3	341 & 324 r/w 34 I.P.C.
2.		302 r/w 34 I.P.C.
3.	A4	341 & 324 r/w 34 I.P.C.
4.		302 r/w 34 I.P.C.

6. When questioned, the appellants pleaded "not guilty". To prove its case, the prosecution examined 21 witnesses and marked 23 exhibits and 10 material objects. No witness was examined nor any document marked on the side of the appellants. When the appellants were questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same.

7. By Judgment dated 25.04.2017, the Trial Court acquitted all the accused of the charge under Section 341 I.P.C.; acquitted Thirupathi (A2) of the charges under Sections 302 & 324 I.P.C.; however, convicted and sentenced all the accused as detailed below:

Accused	Section of Law	Sentence of imprisonment	Fine amount
A1	302 I.P.C.	To undergo imprisonment for life	Rs.1,000/- in default to undergo simple imprisonment for six (6) months
	324 I.P.C.	To undergo rigorous imprisonment for three (3) years	Nil
A2, A3 & A4	302 r/w 34 I.P.C.	To undergo imprisonment for life	Rs.1,000/- in default to undergo simple imprisonment for six (6) months
	324 r/w 34 I.P.C.	To undergo rigorous imprisonment for three (3) years	Nil



The sentences have been ordered to run concurrently.

8. Assailing the judgment of conviction and sentence, dated 25.04.2017, the appellants are before this Court.

9. Heard the learned counsel on either side and carefully perused the materials placed on record.

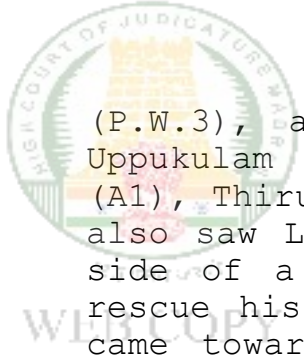
10. The prosecution has proved the following facts beyond cavil:

- (a) Saradha, daughter of Rajendran (A3), was given in marriage to the son of the deceased Karuppasamy.
- (b) On account of matrimonial discord between the couple, there were differences of opinion between the family of the deceased Karuppasamy and Rajendran (A3).
- (c) Death of Karuppasamy was homicidal.

11. This case is predicated on the direct evidence of the injured witness, Nallar (P.W.1), Karuppadurai (P.W.2), Sub Inspector of Police and Senthil Kumar (P.W.3).

12. Nallar (P.W.1), in his evidence, has stated that Ganesan, son of his elder brother Karuppasamy, was given in marriage to Saradha, daughter of Rajendran (A3); Saradha was found speaking to someone in her mobile frequently; hence her father-in-law, the deceased Karuppasamy resented it; on account of this, Rajendran (A3), father of Saradha, was aggrieved; the couple were living apart; on 29.04.2012, around 05.00 p.m., while he was grazing cattle near Vadamadurai Uppukulam, Latchupandi (A1), Thirupathi (A2), Rajendran (A3) and Muniappan (A4) came there and Latchupandi (A1) assaulted him with the blunt side of a sickle (M.O.1) and asked him to sign on a blank stamp paper; when he refused, Latchupandi (A1) assaulted him on his right shoulder, leg and back; Thirupathi (A2), Rajendran (A3) and Muniappan (A4) also assaulted him; at that time, his elder brother Karuppasamy came to the place with Police; on seeing Karuppasamy, Latchupandi (A1) rushed towards him and hacked him to death; seeing this, he (P.W.1) fainted; thereafter, he went to the Police Station and gave the complaint (Ex.P1) and he was referred to Hospital for treatment.

13. Karuppadurai (P.W.2), Sub Inspector of Police, in his evidence, has stated that on 29.04.2012, around 03.00 p.m., while he was on duty, Shanmugavalli (P.W.5), along with her husband Karuppasamy, came to the Police Station and complained that Latchupandi (A1), Thirupathi (A2), Rajendran (A3) and Muniappan (A4) came to their house looking out for Karuppasamy and not finding him there, they left the place, after threatening her that they will eliminate Karuppasamy; on the basis of this complaint, he (P.W.2) gave a complaint receipt bearing No.90 of 2012 and went along with Karuppasamy in search of them; he (P.W.2) also took Senthil Kumar



(P.W.3), a member of Fronds of Police; they went to Vadakarai Uppukulam and found Nallar (P.W.1) being assaulted by Latchupandi (A1), Thirupathi (A2), Rajendran (A3) and Muniappan (A4); he (P.W.2) also saw Latchupandi (A1) assaulting Nallar (P.W.1) with the blunt side of a sickle (M.O.1); on seeing this, Karuppasamy rushed to rescue his brother Nallar (P.W.1); at that time, Latchupandi (A1) came towards Karuppasamy by saying "We were looking out for you only" and hacked him with the sickle (M.O.1) on his right jaw, right hand, backside of neck and at various places; thereafter, Karuppasamy fell dead; Latchupandi (A1) took his motorbike and fled; Thirupathi (A2), Rajendran (A3) and Muniappan (A4) ran away.

14. Senthil Kumar (P.W.3) has also corroborated the evidence of Nallar (P.W.1) and Karuppadurai (P.W.2), Sub Inspector of Police, but, only added that, Thirupathi (A2) instigated Latchupandi (A1) to attack Karuppasamy.

15. Learned counsel for the appellants contended that Nallar (P.W.1), Karuppadurai (P.W.2), Sub Inspector of Police and Senthil Kumar (P.W.3) have clearly stated that it was only Latchupandi (A1), who attacked Karuppasamy and no overt act has been attributed to Thirupathi (A2), Rajendran (A3) and Muniappan (A4), except the solitary statement of Senthil Kumar (P.W.3) that it was Thirupathi (A2), who had instigated Latchupandi (A1).

16. The learned counsel for the appellants further contended that even in the charges that were framed, there was no reference to Thirupathi (A2) instigating Latchupandi (A1).

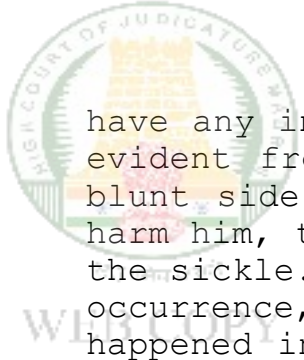
17. As stated above, after the incident, Nallar (P.W.1) went to the Police Station and after lodging the complaint (Ex.P1), he was referred to the Government Hospital, Vendasandur for treatment, where, Dr.Chandramurali (P.W.11) examined him on 30.04.2012, at 01.15 a.m. and noted the following injuries:

"1.Laceration of size 1 x 0.5 x 0.2 cm over right collar bone.

2.Contusion 2 x 1cm over left knee (part)."

The evidence of Dr.Chandramurali (P.W.11) corroborates the evidence of Nallar (P.W.1) that he also sustained injuries at the hands of the accused.

18. Coming to the contentions of the learned counsel for the appellants, we find that on account of matrimonial discord between Saradha and Ganesan, Saradha had gone back to her natal home. When that being so, we are unable to comprehend as to why the appellants / accused should obtain signature of Nallar (P.W.1) in a blank stamp paper. However, the evidence of Nallar (P.W.1) that Latchupandi (A1), Thirupathi (A2), Rajendran (A3) and Muniappan (A4) were trying to obtain his signature in a blank stamp paper, cannot be totally ignored, especially in the light of the fact that his evidence is corroborated by Karuppadurai (P.W.2), Sub Inspector of Police and Senthil Kumar (P.W.3). The appellants / accused did not



have any intention to commit the murder of Nallar (P.W.1), which is evident from the fact that Nallar (P.W.1) was assaulted only with blunt side of the sickle. Had the appellants / accused wanted to harm him, they would have caused injuries by using the sharp side of the sickle. But, when the deceased Karuppasamy came to the place of occurrence, Latchupandi (A1) fell upon him and attacked him, which happened in a trice. None of the accused would have expected that the deceased Karuppasamy would come to that spot, that too with Police. Nallar (P.W.1), Karuppadurai (P.W.2), Sub Inspector of Police and Senthil Kumar (P.W.3) have not attributed any overt act to Thirupathi (A2), Rajendran (A3) and Muniappan (A4), except the stray statement of Senthil Kumar (P.W.3) that Thirupathi (A2) instigated Latchupandi (A1). This is an improvement by Senthil Kumar (P.W.3). Under such circumstance, we are not able to infer that Thirupathi (A2), Rajendran (A3) and Muniappan (A4) shared the common intention with Latchupandi (A1) who impulsively pounced upon Karuppasamy, ignoring the presence of Karuppadurai (P.W.2), a Policeman and hacked him to death and thereafter, sped away in his motorbike. Hence, we are unable to confirm the conviction of A2, A3 and A4 under Section 302 r/w 34 I.P.C. In such perspective of the matter, we are of the view that the prosecution has proved the case beyond doubt *qua* Latchupandi (A1) and the conviction and sentence imposed on him by the Trial Court under Sections 324 & 302 I.P.C. As regards A2, A3 & A4, the prosecution has proved beyond doubt that they shared common intention with Latchupandi (A1) in the assault on Nallar (P.W.1) and therefore, their conviction under Section 324 r/w 34 I.P.C. stands confirmed.

19. In the result,

- The Criminal Appeal in CrI.A.(MD) No.336 of 2017 is dismissed.
- The conviction and sentence imposed on Latchupandi (A1), by Judgment dated 25.04.2017, passed S.C.No.3 of 2015, on the file of the learned Additional District and Sessions Judge, Dindigul, are hereby confirmed.
- The Criminal Appeals in CrI.A.(MD) Nos.147, 282 & 355 of 2017 are partly allowed.
- The conviction and sentence imposed on Thirupathi (A2), Rajendran (A3) and Muniappan (A4), by Judgment dated 25.04.2017, passed S.C.No.3 of 2015, on the file of the learned Additional District and Sessions Judge, Dindigul, are modified to the effect that they are acquitted of the charge under Section 302 r/w 34 I.P.C. and the sentence imposed on them for the offence under Section 324 r/w 34 I.P.C is reduced to one (1) year rigorous imprisonment from three (3) years rigorous imprisonment and they shall pay a fine of Rs.1,000/-, in default to undergo six (6) months simple imprisonment.
- Fine amount paid, if any, is directed to be adjusted



towards the fine amount now imposed.

- Suspension of sentence granted by this Court vide orders, dated 24.11.2017 in CrI.M.P.(MD) No.7781 of 2017, 21.09.2017 in CrI.M.P.(MD) No.8209 of 2017, 03.08.2017 in CrI.M.P.(MD) No.4052 of 2017 and 09.08.2017 in CrI.M.P.(MD) No.6556 of 2017, for A1, A2, A3 & A4 respectively stand cancelled.
- Since the accused / appellants are on bail, it is directed that the Trial Court shall take steps to secure them and to commit them to prison to serve out the period of sentence.
- The period of sentence already undergone by the appellants / accused shall be set off under Section 428 of the Code of Criminal Procedure.

Sd/-

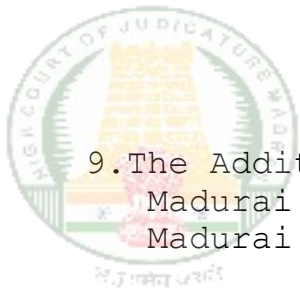
Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

To:

- 1.The Additional District and
Sessions Judge,
Dindigul.
- 2.The Judicial Magistrate, Vendasandur
- 3.The Chief Judicial Magistrate, Dindigul
- 4.The Inspector of Police,
Vadamadurai Police Station,
Vadamadurai,
Dindigul District.
- 5.The Superintendent of Police,
Dindigul
- 6.The Superintendent,
Central Prison,
Madurai
- 7.The District Collector,
Dindigul.
- 8.The Director General of Police,
Mylapore, Chennai-4



9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

10.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+2cc to Mr.J.SIVARAM, Advocate, SR.No. 54812,54811

+1cc to Mr.AR.JEYARHUTHRAN,Advocate, SR.No. 54152

Cr1.A.(MD) Nos.147, 282, 336 & 355 of
2017

14.03.2019

KK/SAR-/29.03.2019/10P-14C