



BAIL SLIP

The Appellants/Accused viz., namely A1.S.Neelamegam, S/o.Sundarrajan, A2.N.Kanthan, S/o.Neelamegam, A4.N.Lakshmi, W/o.Neelamegam, are released on bail as per order of this Court dated 01.08.2017 and made in CrI.M.P(MD)No.6218 of 2017 in CrI.A(MD) No.246 of 2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 04.04.2019

PRONOUNCED ON: 24.04.2019

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

AND

THE HON'BLE MR.JUSTICE B.PUGALENDHI

CRL. A. [MD] No.246 of 2017

1 S. Neelamegam
2 N. Kanthan
3 N. Harikrishnan
4 N. Lakshmi

Appellants/Accused 1-4
vs.

The State represented by
the Inspector of Police
Kalaiyarkoil Police Station
(Cr. No.290 of 2009)

Respondent/Complainant

Criminal Appeal filed under Section 374 Cr.P.C. against the judgment dated 28.03.2017 made in S.C.No.29 of 2010 on the file of the Sessions Court, Sivagangai.

For appellants Mr. N. Ananthapadmanaban
for Mr. K.P.S. Palanivelrajan

For respondent Mr. M. Chandrasekaran
Additional Public Prosecutor

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JUDGMENT

P.N.PRAKASH, J.



This criminal appeal by the accused is focussed against the judgment of conviction dated 28.03.2017 passed in S.C.No.29 of 2010 on the file of the Sessions Court, Sivagangai.

2 The germane facts giving rise to the filing of this criminal appeal are succinctly stated as under:

2.1 Kanthan (A2) and Harikrishnan (A3) are the sons of Neelamegam (A1) and Lakshmi (A4). Neelamegam (A1) is the brother of the deceased Gopalakrishnan. There was a property dispute between Neelamegam (A1) and Gopalakrishnan, in respect of which, a suit in O.S. No.95 of 2001 was filed by Neelamegam (A1) against Gopalakrishnan before the District Munsif Court, Sivagangai. The said suit was dismissed on 30.06.2009. This litigation had created so much of acrimony between Neelamegam (A1) and Gopalakrishnan that on 07.10.2009, at 2.45 a.m., when Gopalakrishnan was sleeping in front of his house, Neelamegam (A1), Kanthan (A2) and Harikrishnan (A3) fell upon him (Gopalakrishnan) and belaboured him to death. This was witnessed by Gopalakrishnan's wife Vasuki (P.W.1) and his son Jayagovindan (P.W.2), who were sleeping nearby. After the occurrence, all the four appellants took to their heels.

2.2 Gopalakrishnan was taken to the Government Hospital, Sivagangai, where, he was declared "brought dead". Thereafter, on the written complaint (Ex.P.1) given by Vasuki (P.W.1), Sengottuvan (P.W.14), Inspector of Police (hereinafter referred to as "the Investigating Officer") registered a case in Cr. No.290 of 2009 on 07.10.2009 at 7.15 a.m. under Section 302 IPC against four accused and prepared the printed FIR (Ex.P.12), which reached the jurisdictional Magistrate at 10.00 a.m. on the same day, as could be seen from the endorsement thereon.

2.3 The Investigating Officer went to the Government Hospital, Sivagangai and conducted inquest over the body of Gopalakrishnan and prepared the inquest report (Ex.P.13) and despatched the body for postmortem.

2.4 Dr. Maheswaran (P.W.13) who performed autopsy on Gopalakrishnan's body, has stated in his evidence as well in the postmortem certificate (Ex.P.11) as under:

"Appearances found at the postmortem:

"Soles, palms and face are pale; eyes mouth closed.

(1) Stab wound left wrist dorsum 2 x 2 x ½ cm.

(2) Stab wound left upper lateral aspect chest below axilla 4 x 2 x 8 cm. passes upwards



(3) Stab wound left chest 4 cm medial to left nipple 2 x 1 x 15 cm deep into chest

(4) Stab wound right chest 5 cm. above the nipple 2 x 1 x 20 cm.

(5) Stab wound right posterior arm and right elbow 2 x 1 x 1 cm.

(1) Haematoma right chest including right pectoral muscle, puncture wound in the third intercosta/space punching 4th rib. Partial cut entering into thoracic cavity.

(2) Haematoma left chest, stab wound enter into 3rd intercostal space upto thoracic cavity.

(3) Haematoma left upper chest, in the axillary muscles. Blood oozing out through left chest wound. Heard punctured over left ventricle. Haematoma anterior aspect heart, left ventricle opened clotted blood present. Lungs small shrunken, adherent to chest wall. Lungs and all internal organs pale. Stab injury liver 2 x 1 cm; over right dome diaphragm upto 10 cm. into liver, over superior aspect of liver and enter over left aspect of liver; 500 ml. of fluid blood, right thoracic cavity, 100 ml. of clotted blood in left thoracic cavity. Spleen normal, kidney normal. Stomach partially mixed 500 mg. food particles. Bladder empty. Skull, brain normal."

2.5 The Investigating Officer went to the place of occurrence and prepared the observation mahazar (Ex.P.6) and rough sketch (Ex.P.14) in the presence of witnesses Gopi (P.W.7) and Sethuraman (P.W.8). From the place of occurrence, the Investigating Officer seized bloodstained soil (M.O.2) and soil without bloodstain (M.O.3) vide mahazar (Ex.P.7). The Investigating Officer arrested Neelamegam (A1) and Lakshmi (A4) at 1.00 p.m. on 07.10.2009. Pursuant to the disclosure of Neelamegam (A1), the Investigating Officer seized a knife (M.O.1) under the cover of mahazar (Ex.P.9) in the presence of witnesses Chelliah (P.W.10) and Dharmar (P.W.11).

2.6 On getting information that Kanthan (A2) and Harikrishnan (A3) have surrendered before the Judicial Magistrate Court No.I, Madurai, which is not the jurisdictional Magistrate Court, the Investigating Officer filed a petition before the Judicial Magistrate Court No.I, Sivagangai for taking them into police custody and accordingly, he took them into custody on 13.10.2009 and recorded their statements.

2.7 The seized properties were sent to the Judicial Magistrate No.I, Sivagangai, with a requisition to forward the same to the Tamil Nadu Forensic Sciences Department for examination and report. The chemical report was marked as Ex.P.16 and the serology report was marked as Ex.P.17. No blood was detected in the knife (M.O.1).



2.8 After completing the investigation, the Investigating Officer filed final report in P.R.C. No.31/2009 before the Judicial Magistrate No.I, Sivagangai, for the offences under Sections 302 and 34 IPC.

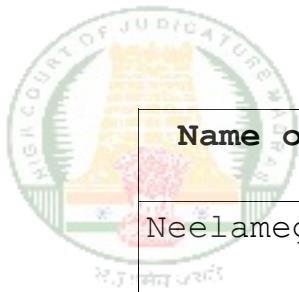
2.9 On the appearance of the appellants, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C. No.29 of 2010. The Trial Court framed the following charges:

Charge No.	Provision under which charged	Accused
1	S.302 IPC	Harikrishnan (A3)
2	S. 302 r/w 34 IPC	Neelamegam (A1) Kanthan (A2) Lakshmi (A4)

When questioned, the appellants pleaded not guilty.

2.10 To prove the case, the prosecution examined 14 witnesses, marked 17 exhibits and 5 material objects. When the appellants were questioned under Section 313 Cr.P.C. about the incriminating circumstances appearing against them, they denied the same. On behalf of the appellants, no witness was examined nor any document marked.

2.11 After considering the evidence on record, the Trial Court, vide judgment dated 28.03.2017 in S.C. No.29 of 2010, convicted and sentenced the appellants as follows:



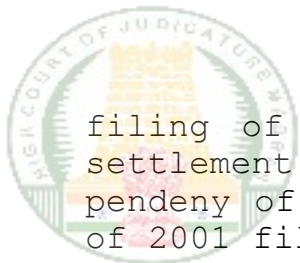
Name of accused	Provision under which convicted	Sentence
Neelamegam (A1)	S.302 r/w S. 34 IPC	Life imprisonment and fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment
Kanthan (A2)	S.302 r/w S. 34 IPC	Life imprisonment and fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment
Harikrishnan (A3)	S.302 IPC	Life imprisonment and fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment
Lakshmi (A4)	S.302 r/w S. 34 IPC	Life imprisonment and fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment

2.12 Challenging the aforesaid conviction and sentence, the accused are before this Court.

3 Heard Mr. Ananthapadmanaban, learned counsel representing Mr.K.P.S. Palanivelrajan, learned counsel on record for the appellants and Mr. M. Chandrasekaran, learned Additional Public Prosecutor appearing for the respondent-State.

4 Vasuki (P.W.1) and Jayagovindan (P.W.2), have, in their evidence, stated that there was a property dispute between the family of Neelamegam (A1) and Gopalakrishnan, to establish which, the judgment dated 02.06.2015 passed in S.A. (MD) No.588 of 2014 was marked as Ex.P.2.

5 On reading the judgment in S.A. (MD) No.588 of 2014, it appears that Neelamegam (A1) and Gopalakrishnan are brothers born to Sundararaja Chettiar and Nagarathinam Ammal; Nagarathinam Ammal suffered leprosy and so, her husband Sundararaja Chettiar, who was doing business in Malaysia, contracted second marriage; Nagarathinam Ammal owned several properties; it is the case of Neelamegam (A1) that the properties in the hands of Nagarathinam Ammal were not her absolute properties and that he (Neelamegam-A1) had a share in it; therefore, he filed O.S. No.95 of 2001 against his mother Nagarathinam Ammal and brother Gopalakrishnan; even before the



filing of the said suit, Nagarathinam Ammal had executed a gift settlement dated 17.11.2000 in favour of Gopalakrishnan; during the pendency of the suit, Nagarathinam Ammal died; the suit in O.S.No.95 of 2001 filed by Neelamegam (A1) was dismissed by the Trial Court on 30.06.2009; the incident in this case took place on 07.10.2009.

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6 Vasuki (P.W.1) and Jayagovindan (P.W.2) have stated in their evidence that several relatives had come to their house in connection with their village temple festival on 06.10.2009 and therefore, in order to accommodate them inside their house, Gopalakrishnan decided to sleep outside the house; the relatives who had come home had gone to watch dance programme in the temple; while Gopalakrishnan was lying in the entrance of the house, they (P.W.1 and P.W.2) were lying on the pial; around 2.45 a.m., they heard a violent noise and on getting up, they saw Neelamegam (A1) stuffing a cloth into the mouth of Gopalakrishnan and Kanthan (A2) holding Gopalakrishnan's legs, Hari Krishnan (A3) stabbing Gopalakrishnan with a knife indiscriminately on his chest and Lakshmi (A4) standing nearby as guard; on seeing them, they hollered "Don't stab, don't stab", which drew the attention of the neighbours; on seeing this, the appellants fled. Vasuki (P.W.1) has further stated that she and her son (P.W.2) tried to call 108 ambulance, but, since they were not able to get one, they carried Gopalakrishnan in a private car to the Government Hospital, Sivagangai, where, he was declared "brought dead".

7 Mr. Ananthapadmanaban, learned counsel for the appellants, attacked the evidence of Vasuki (P.W.1) and Jayagovindan (P.W.2) and contended that their version of the incident cannot be believed. He contended that in the complaint (Ex.P.1), Vasuki (P.W.1) has not stated that some relatives had come to their house for the temple festival on 06.10.2009 and that to accommodate them in their house, they decided to sleep outside. Be it noted, the fact that there was temple festival on 06.10.2009 has been established not only through the evidence of Vasuki (P.W.1) and Jayagovindan (P.W.2) but also through the evidence of the Investigating Officer who has stated that the village temple festival had begun on 06.10.2009 and he had posted pickets near the temple. Of course, the place of occurrence is not anywhere near the temple. In our opinion, the failure of Vasuki (P.W.1) to give the names of the relatives in the complaint (Ex.P.1) who had come for the temple festival, cannot be said to be fatal, because, an FIR is not an encyclopaedia of the prosecution case. In her evidence, Vasuki (P.W.1) has stated that her daughter Muthu Krishnaveni (P.W.3), Muthu Krishnaveni's (P.W.3's) husband Rajkumar (not examined), Muthu Krishnaveni's (P.W.3's) father-in-law Pandi (not examined) and her (P.W.1's) father Somasundaram Chettiar (not examined) had come for the temple festival. She has specifically stated that Rajkumar, Muthiah (Rajkumar's brother) and Pandi had gone to the temple for watching the dance programme. Muthu Krishnaveni (P.W.3) has corroborated the testimony of Vasuki (P.W.1) and Jayagovindan (P.W.2) by saying that on 06.10.2009, she came with



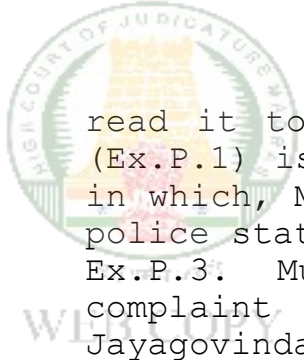
her husband Rajkumar, her father-in-law Pandi and Muthiah, her brother-in-law, for the temple village festival; while Rajkumar, Pandi and Muthiah had gone to the temple for watching the dance programme, the incident in question took place.

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8 The learned counsel for the defence contended that in the complaint (Ex.P.1), Vasuki (P.W.1) has not stated that she and her son Jayagovindan (P.W.2) were sleeping on the pial and Gopalakrishnan was sleeping on a cot outside their house. Likewise, he further contended that there is no reference to Muthu Krishnaveni (P.W.3) in the complaint. In our opinion, it is not necessary to state all these minute facts in the complaint (Ex.P.1). Vasuki (P.W.1) has stated in the complaint (Ex.P.1) that on 07.10.2009, her husband was sleeping on the cot outside the house and she and her son Jayagovindan (P.W.2) were sleeping nearby and on hearing the noise, they woke up and saw the incident.

9 The next contention of the learned counsel for the defence is that the Investigating Officer has not shown the presence of the cot and pial either in the observation mahazar (Ex.P.6) or in the rough sketch (Ex.P.14) and therefore, the version of the witnesses that Gopalakrishnan was sleeping on the cot and Vasuki (P.W.1) and Jayagovindan (P.W.2) were lying on the pial, deserves to be rejected. It may be necessary to state here that even in the complaint (Ex.P.1), Vasuki (P.W.1) has clearly stated that her husband was lying on the cot. However, the Investigating Officer has stated that he recovered bloodstains of the soil from beneath the cot. For the failure of the Investigating Officer to refer to the pial and cot in the observation mahazar (Ex.P.6) or rough sketch (Ex.P.14), the evidence of these witnesses cannot be disbelieved. A reading of the evidence of Jayagovindan (P.W.2) shows that the roof of their house extends to the front and the pial is beneath it. It is common knowledge that pial is an integral part of village houses in our State. In fact, Jayagovindan (P.W.2), in the cross-examination, has stated that their pial will be about 6 or 7 feet in breadth and his father was sleeping about 5 feet away from the pial.

10 The learned counsel for the appellants contended that in the cross-examination, Vasuki (P.W.1) has stated that she narrated the incident to the Inspector and the Inspector wrote the statement and obtained her signature, whereas, the Inspector has stated that the complaint (Ex.P.1) in the case was not written by him and therefore, the credibility of Ex.P.1 (complaint) has been shaken. It should be remembered that Vasuki (P.W.1) is a rustic lady and she was giving evidence on 26.08.2016 in connection with the incident that had taken place on 07.10.2009. The appellants have managed to protract the proceedings as could be seen from the case records. A reading of this part of the evidence of Vasuki (P.W.1) referred to by the defence counsel does not relate to the complaint (Ex.P.1). She has stated that she gave a statement to the Inspector and he

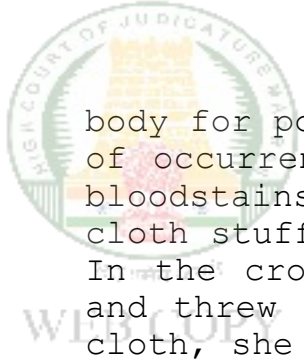


read it to her and obtained her signature, whereas, the complaint (Ex.P.1) is not in the form of a statement, but, it is handwritten, in which, Muthuvel (P.W.4) who had accompanied Vasuki (P.W.1) to the police station, has also signed and his signature has been marked as Ex.P.3. Muthuvel (P.W.4) has clearly stated that the scribe of the complaint (Ex.P.1) was Jayagovindan (P.W.2), S/o Vasuki (P.W.1). Jayagovindan (P.W.2) has stated that his father Gopalakrishnan was declared "brought dead" in the hospital and he accompanied his mother Vasuki (P.W.1) and Muthuvel (P.W.4) to the police station and lodged the complaint. Therefore, we reject this submission of the learned counsel for the appellants.

11 The next contention of the defence counsel is that the evidence of Vasuki (P.W.1) and Jayagovindan (P.W.2) is parrot-like and therefore, unbelievable. The incident had taken place at the entrance of the house of Gopalakrishnan. The presence of Vasuki (P.W.1) and Jayagovindan (P.W.2) in their house at that time cannot be disbelieved, for, it is after all their house and their presence there is natural. Their narration of what they saw falls within a very limited compass and therefore, it will naturally appear parrot-like. When they heard the noise, they saw Neelamegam (A1) stuffing a cloth into the mouth of Gopalakrishnan, Kanthan (A2) holding Gopalakrishnan's legs and Harikrishnan (A3) stabbing Gopalakrishnan on his chest. This is not a complicated occurrence involving about a dozen persons who have been attributed with multifarious overt acts.

12 The learned counsel for the defence contended that from the nature of injuries, it is clear that the incident would have occurred instantaneously and there would not have been any occasion for Gopalakrishnan to make noise. Had the appellants merely stabbed a sleeping person, then, this argument may merit consideration. In the case at hand, the appellants have tried to stuff Gopalakrishnan's mouth with a cloth. This means that Gopalakrishnan must have seen them. Even assuming for a moment that Gopalakrishnan would not have been able to raise any alarm because of his mouth being stuffed with a cloth, Jayagovindan (P.W.2) has clearly stated that he heard a "தடா தடா" sound and he woke up and saw his father being attacked.

13 The next contention of the learned counsel for the appellants is that the cloth stuffed into the mouth of Gopalakrishnan was not recovered by the police though Vasuki (P.W.1) has stated in the cross-examination that it was she who removed the cloth. In this case, Vasuki (P.W.1), Jayagovindan (P.W.2), Muthu Krishnaveni (P.W.3) and Muthuvel (P.W.4) have stated that after the incident, they carried Gopalakrishnan to the Government Hospital, Sivagangai and only after he was declared "brought dead", they went to the police station and lodged the complaint (Ex.P.1). The Investigating Officer has stated that he went first to the Government Hospital and conducted inquest. After despatching the



body for postmortem, the Investigating Officer had come to the place of occurrence and recovered the bloodstained soil and soil without bloodstains. It is not Vasuki's (P.W.1's) case that, along with the cloth stuffed in the mouth, she carried her husband to the hospital. In the cross-examination she has stated that she pulled the cloth and threw it. When she was asked as to what was the nature of the cloth, she has stated that she does not remember it. From the events which followed the murder immediately as spoken to by Vasuki (P.W.1), Jayagovindan (P.W.2), Muthu Krishnaveni (P.W.3) and Muthuvel (P.W.4), we do not find that the failure of the Investigating Officer to recover the cloth stuffed into Gopalakrishnan's mouth would be fatal to the prosecution case. Further, recovery of soil with bloodstain (M.O.2) and soil without bloodstain (M.O.3) from the place of occurrence under the cover of mahazar (Ex.P.7) has been satisfactorily established. The soil with bloodstain (M.O.2) has been sent along with the bloodstained clothes, viz., blue colour bloodstained lungi (M.O.4) and bloodstained green striped underwear (M.O.5), through the Court to the Tamil Nadu Forensic Science Laboratory for examination. The chemical report (Ex.P.16) shows the presence of human blood in all the three items. Therefore, the place of occurrence has been satisfactorily established by the prosecution.

14 Coming to the case of Lakshmi (A4), Vasuki (P.W.1) and Jayagovindan (P.W.2) have stated that they saw her standing nearby. Concededly, the house of the appellants is diagonally opposite the house of Gopalakrishnan. Under such circumstances, the mere presence of Lakshmi (A4) without anything more, especially in the light of the fact that her house is diagonally opposite the house of Gopalakrishnan, will not be sufficient to convict her with the aid of Section 34 IPC.

15 As regards the contention of the defence counsel that the witnesses could not have seen the occurrence in dark, it is seen that even in the observation mahazar (Ex.P.6) and rough sketch (Ex.P.14), the presence of street light finds place. In fact, in the observation mahazar (Ex.P.6), it is stated that near the place of occurrence, there is a street light and its number, viz., EB 281160 has been given.

16 Thus, in the ultimate analysis, the conviction and sentence slapped on Lakshmi (A4) by the Trial Court are set aside and as a sequel, Lakshmi (A4) is acquitted of the charges levelled against her.

17 Insofar as Neelamegam (A1), Kanthan (A2) and Harikrishnan (A3), the conviction and sentence slapped on them by the Trial Court are hereby confirmed.



In the result, this criminal appeal is allowed to the extent indicated in paragraph nos. 16 and 17 above. The Trial Court is directed to secure the presence of Neelamegam (A1), Kanthan (A2) and Hari Krishnan (A3) and commit them to prison. Bail bond executed by Lakshmi (A4) shall stand terminated. Fine amount, if any, paid by Lakshmi (A4) shall be refunded.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar (CS)

To

- 1 The Inspector of Police
Kalaiyarkoil Police Station
- 2 The Sessions Judge
Sivagangai
- 3 The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai
- 4 The Record Keeper
Criminal Records Section
Madurai Bench of Madras High Court
Madurai
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+1cc to Mr.K.P.S.PALANIVELRAJAN, Advocate, SR.No. 62277

CRL. A. [MD] No.246 of 2017

24.04.2019

KK/SAR/29.04.2019/ 10P- 7C