

**BAIL SLIP**

The Appellant/Accused No.2, Jeyaraj, S/o.Iyyadurai, was directed to be released on bail in order of this Court dt.17.10.2016 and made in CrI.MP(MD)No.9337 of 2016 in CrI.A(MD) No.355 of 2016.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.04.2019

CORAM:

THE HONOURABLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE**AND****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CRL.A.[MD].No.355 of 2016**

Jeyaraj : Appellant/Accused No.2

Vs.

State, Represented by
The Inspector of Police,
Rajakkamangalam Circle,
Eathamozhy Police Station,
Crime No.120/2009,
Kanyakumari District.

: Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment dated 23.04.2016 made in S.C.No.4 of 2011, on the file of the Court of Sessions, Kanyakumari Division at Nagercoil.

For Appellant

: Mrs.S.Ragaventhre

For Mr.K.Prabhu

For Respondent

: Mr.K.K.Ramakrishnan

Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by **The Hon'ble Chief Justice**]

This appeal is directed by the appellant - original accused No.2 against the Judgment and order dated 23rd April 2016 passed by the learned Sessions Judge, Kanyakumari Division at Nagercoil in Sessions Case No.4 of 2011. Totally, there were two accused in this case. Accused No.1 - Jeyakumar died pending trial. By the said Judgment and order, the learned Sessions Judge, while acquitting the appellant herein under Section 324 IPC, convicted the appellant under Section 302 r/w 109 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for a further period of two years.



2. The case of the prosecution, briefly stated, is as under:-

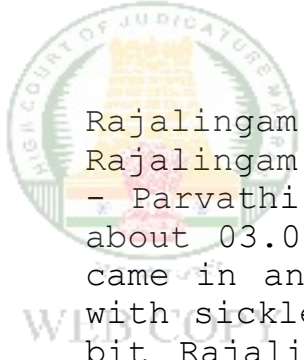
2.1. There was some dispute between deceased - Rajalingam and deceased accused - Jeyakumar. On account of the dispute, on 30.06.2009, at about 03.00 p.m., deceased accused - Jeyakumar and the present appellant assaulted Rajalingam. Deceased accused Jeyakumar assaulted Rajalingam with a sickle on various parts of his body. The appellant, during the time of incident, bit Rajalingam on his left hand and instigated deceased accused - Jeyakumar to hack Rajalingam. Rajalingam died due to the injuries. The incident of assault was witnessed by PW-2 - Selvakani, who is the mother of Rajalingam, PW-3 - Parvathi and PW-4 - Rajathi, who are the neighbours of Rajalingam. According to the prosecution case, PW-2 - Selvakani, who witnessed the incident, went and told her son - PW-1 - Suyambulingam, who is the brother of Rajalingam about the assault.

2.2 PW-1 - Suyambulingam lodged his complaint, which is at EX-P1. Thereafter, it was registered, which is at EX-P16. Thereafter, the investigation commenced. The dead body of Rajalingam was sent for postmortem. After completion of the investigation, charge sheet came to be filed. In due course, the case was committed to the Court of Session.

3. Charge came to be framed against the appellant [original accused No.2] under Section 324 for biting the left hand of Rajalingam and under Section 302 r/w 109 IPC for instigating deceased accused Jeyakumar to hack Rajalingam. The appellant pleaded "not guilty" to the said charges and claimed to be tried. His defence is of total denial and false implication. To support its case, the prosecution examined PW-1 to PW-17 and marked EX-P1 to EX-P22 and thirteen material objects. After going through the evidence adduced in this case, the learned Sessions Judge convicted and sentenced the appellant, as stated in Paragraph No.1, above, hence, this appeal.

4. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the State. After giving anxious consideration to the facts and circumstances of the case, the arguments advanced by the learned counsel for the appellant and the learned Additional Public Prosecutor for the State, the evidence on record and the judgment delivered by the learned Sessions Judge for the reasons stated hereinbelow, we are of the opinion that the prosecution has not proved its case against the appellant beyond reasonable doubt.

5. In order to support its case, the prosecution has mainly relied on the evidence of PW-2 - Selvakani, PW-3 - Parvathi and PW-4 - Rajathi, who, according to the prosecution, are eyewitnesses to the incident. PW-2 - Selvakani is the mother of

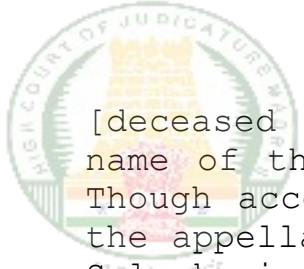


Rajalingam. PW-3 - Parvathi and PW-4 - Rajathi are neighbours of Rajalingam. We would first like to advert to the evidence of PW-3 - Parvathi and PW-4 - Rajathi. PW-3 - Parvathi has stated that at about 03.00 p.m., on 30.06.2009, the appellant and another person came in an auto. The deceased accused Jeyakumar hacked Rajalingam with sickle. Rajalingam caught hold of sickle. Then, the appellant bit Rajalingam on his hand. Rajalingam started running away. At that time, the appellant was saying "Hack him, Hack him". Thereafter, deceased accused - Jeyakumar hacked Rajalingam. Rajalingam fell down. After the incident, both the accused left the place. The evidence of PW-4 - Rajathi is on similar line as that of PW-3 - Parvathi.

6. We have already adverted to the evidence of two eyewitnesses, namely, PW-3 - Parvathi and PW-4 - Rajathi. However, there is one more eyewitness, who has been examined by the prosecution, viz., PW-2 - Selvakani. PW-2 - Selvakani is the mother of Rajalingam. We have carefully gone through the evidence of PW-2 - Selvakani. She has stated that at 03.00 p.m., her son - Rajalingam was sitting on a culvert at Poochivilagam Junction. At that time, an auto came from the south, in which the appellant herein and one Udhayakumar were present. According to her, Udhayakumar has died. She has further stated that the appellant and another person, who came in the auto, told her son - Rajalingam that no one will question them, if they assault him. She has also stated that the appellant hacked her son with sickle. Her son tried to escape. However, the appellant hacked her son on his back with sickle and her son fell down on the ground. Again, the appellant hacked her son on his head. After hacking her son, the accused persons told that they will hack anyone, who comes forward and thereafter, the accused persons left the place.

7. It is pertinent to note that PW-2 - Selvakani, PW-3 - Parvathi and PW-4 - Rajathi, according to the prosecution, were all present, when the incident occurred. However, PW-3 - Parvathi and PW-4 - Rajathi stated that it was deceased accused - Jeyakumar, who assaulted Rajalingam with the sickle, whereas, PW-2 - Selvakani, who is the mother of Rajalingam, stated that it was the present appellant, who hacked her son with sickle. This is a serious and material discrepancy in the evidence of the eyewitnesses regarding the role of the appellant during the incident. This discrepancy goes to the root of the prosecution case and affects its credibility.

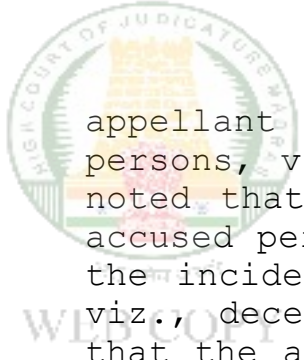
8. At this juncture, we would like to advert to the evidence of PW-1 - Suyambulingam, who is the brother of Rajalingam and the son of PW-2 - Selvakani. PW-1 - Suyambulingam has stated that at about 03.00 p.m., on 30.06.2009, he received a phone call saying <https://hservices.ecourts.gov.in/hservices/> son was hacked to death, hence, he gave a complaint in the police station. The complaint was against Jeyakumar



[deceased accused] and Sardar. It is pertinent to note that the name of the present appellant is not mentioned in the complaint. Though according to PW-1 - Suyambulingam, he and his parents knew the appellant - Jeyaraj from his childhood and his mother - PW-2 - Selvakani witnessed the occurrence, the name of the appellant has not been mentioned in the complaint. What is even more important to note is that PW-1 - Suyambulingam, in cross-examination, has stated that his parents and the other witnesses stated that unknown persons have hacked his brother - Rajalingam to death. In such a case, if PW-2 - Selvakani had actually witnessed the appellant assaulting her son, she would have given the name of the present appellant, who was known to her since many years. Thus, it shows that PW-2 - Selvakani, who is the mother of Rajalingam, had, in fact, stated that unknown persons had hacked her son to death and based on the said information, PW-1 - Suyambulingam, who is the brother of Rajalingam, has lodged his complaint against deceased accused - Jeyakumar and Sardar. Thus, the fact that the name of the appellant does not find place in the complaint, which was lodged immediately after the incident, makes it clear that the appellant was not one of the perpetrators of the crime.

9. Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor, contended that no reliance should be placed on the testimony of PW-2 - Selvakani and instead, reliance should be placed on the evidence of PW-3 - Parvathi and PW-4 - Rajathi, who are all eyewitnesses to the incident and who, according to him, are independent witnesses. As far as this submission is concerned, the evidence of PW-3 - Parvathi shows that the police made enquiry with her on the next day at 10.00 a.m. Thus, it is seen that there is delay in recording the statement of witnesses by the police, which gives rise to the suspicion that on account of delay, some concoction has occurred and an attempt has been made to falsely rope in the appellant as an accused.

10. As far as the evidence of PW-3 - Parvathi and PW-4 - Rajathi, who, according to the prosecution, are eyewitnesses, is concerned, one important fact is that PW-2 - Selvakani is also an eyewitness to the incident. However, the roles attributed by PW-2 - Selvakani on one hand and PW-3 - Parvathi and PW-4 - Rajathi on the other hand, are entirely discrepant. According to PW-2 - Selvakani, the appellant hacked her son with sickle, whereas, PW-3 - Parvathi and PW-4 - Rajathi stated that deceased accused - Jeyakumar hacked Rajalingam with the sickle and the role attributed to the appellant by PW-3 - Parvathi and PW-4 - Rajathi is that he bit Rajalingam and instigated deceased accused - Jeyakumar to assault Rajalingam. This is a serious discrepancy in the evidence of the eyewitnesses. As stated earlier, on account of the above serious discrepancy, we are not inclined to place any reliance on the evidence of these three eyewitnesses. Moreover, as stated earlier, in the complaint, which was lodged immediately after the incident, there is no mention at all of the name of the



appellant and there is mention of the names of only two accused persons, viz., deceased accused Jeyakumar and Sardar. It is to be noted that the complaint does not make any mention of any other accused person by stating that one more person had participated in the incident, but, it makes only mention of two accused persons, viz., deceased accused Jeyakumar and Sardar. It is no one's case that the appellant is also known by the name of Sardar. All these facts give rise to serious suspicion about the veracity of the prosecution case that the appellant either assaulted Rajalingam or abetted deceased accused Jeyakumar to assault Rajalingam.

11. Thus, looking to the evidence on record, we find much merit in the submission made by the learned counsel for the appellant that the appellant has been falsely implicated in this case. On going through the evidence on record, we are of the view that the prosecution has not proved its case against the appellant beyond reasonable doubt. Thus, the conviction and sentence imposed on the appellant by the learned Sessions Judge is liable to be set aside.

12. In the result,

- this Criminal Appeal is allowed and the conviction and sentence imposed on the appellant by the learned Sessions Judge, Kanyakumari Division at Nagercoil, in S.C.No.4 of 2011, dated 23.04.2016 is set aside and the appellant is acquitted of the charge framed against him.
- Bail bond and the sureties executed by the appellant shall stand discharged.
- Fine amount, if any paid, shall be refunded to the appellant.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

NB/RSB

To

1. The Inspector of Police,
Rajakkamangalam Circle,
Eathamozhy Police Station,
Kanyakumari District.

2. The Sessions Court,
Kanyakumari Division at Nagercoil.



3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
 4. The Judicial Magistrate No.III,
Nagercoil.
 5. The Chief Judicial Magistrate,
Kanyakumari at Nagercoil.
 6. The Superintendent of Police,
Kanyakumari District.
 7. The District Collector,
Kanyakumari District.
 8. The Director General of Police,
Mylapore, Chnnai-4.
 9. The Superintendent Central Prison,
Palayamkottai.
 10. The Record Keeper,
Criminal Records Section,
Madurai Bench of Madras High Court, Madurai.
- + 1 CC to Mr.K.Prabhu, Advocate in SR.No.62293

**JUDGMENT MADE IN
CRL.A. [MD] .No.355 of 2016**

24.04.2019

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