

**Bail Slip**

Balasubramani, S/o.Manickam was directed to be released on bail vide order of this Court dated 13.09.2016, made in Cr1.MP(MD) No.11493 of 2016 in Cr1.A(MD)No.369 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**JUDGMENT RESERVED ON : 21.02.2019****JUDGMENT PRONOUNCED ON : 27.03.2019**

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI
Cr1.A.(MD)No.369 of 2016

Balasubramani

...Appellant/Accused

Vs.

The State represented by
The Inspector of Police,
Lalapettai Police Station,
Karur District.

...Respondent/complainant

Prayer: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment of conviction and sentence dated 17.08.2016 in S.C.No.1 of 2016 on the file of the Principal Sessions Judge, Karur and allow the Criminal Appeal as prayed for.

For Appellant : Mr.AR.L.Sundareshan,
Senior Counsel
for M/s. AL.Gandhimathi

For Respondent : Mr.R.Anandharaj,
Additional Public Prosecutor

J U D G M E N T**(Judgment of the Court was made by B.PUGALENDHI, J.,)**

<https://hcservices.ecourts.gov.in/hcservices/>
The appellant is the sole accused in S.C.No.1 of 2016 on the file of the Principal Sessions Court, Karur. The learned trial Judge, vide judgment dated 17.08.2016, found the appellant guilty



of the offence punishable under Section 302 IPC and sentenced him to undergo life imprisonment, with a fine of Rs.50,000/-, in default, to undergo simple imprisonment for one year was also ordered. This judgment of conviction and sentence is put under challenge in this appeal.

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2. The background facts of the case, as projected by the prosecution, in a nutshell, is as follows:-

2.1. PW1 / Mariappan is the father of the deceased Ganesan. PW1 had two sons and his first son Palanisamy was married to Vellaiyammal [PW2]. He died three years prior to the occurrence and therefore, Palanisamy's wife Vellaiyammal, married the deceased Ganesan. There are four brothers for PW1 and the accused's father Manickam is one brother. Manickam was also residing in the same village and he purchased the shares of the other brothers. But PW1 did not part with his share and therefore, an enmity existed between them over a period of ten years. Six months prior to the occurrence, Manickam died and therefore, they had a cordial relationship.

2.2. The accused / appellant is the son of Manickam and the deceased suspected that the accused is having illegal intimacy with his wife, Vellaiyammal [PW2]. On 06.01.2015 during the morning hours, when the accused and the deceased went to the Society, where free dhotis and sarees were being distributed, a quarrel arose between them. The deceased went for his party work and returned home at about 06.00 pm and at that time, PW1 and his daughter-in-law one Ilanjiyam were standing in front of their house. The deceased went to switch off the motor, which is near his house at Konichipatti-Sengal Mud Road. At that point of time, the accused came with a knife and questioned the deceased as to how dare he can quarrel with him, stabbed the deceased on the left chest, neck, thigh and on the back of the deceased. PW1, the father of the deceased, informed the Panchayat Clerk [PW4], namely, Annadurai and thereafter, went to the respondent Police Station around 08.00 pm and lodged a complaint [Ex.P1] before the Sub-Inspector of Police [PW16]. PW16 recorded the same in Crime No.05 of 2015 on the file of the Lalapettai Police Station, as against the appellant at about 08.00 pm for the offence punishable under Section 302 IPC and forwarded the same through PW13 to the Judicial Magistrate Court. PW13 received the printed FIR [Ex.P19] at about 09.00 p.m. and produced the same before the learned Judicial Magistrate, Kuzhithurai, at about 10.00 am.

2.3. On receipt of the intimation, the Inspector of Police [PW17] took up the investigation and went to the place of occurrence at about 10.00 pm, prepared an observation mahazar [Ex.P2] and a rough sketch [Ex.P20] in the presence of PW3. He



conducted the inquest from 06.01.2015 at about 24.00 Hours to 07.01.2015 at about 02.00 a.m. The inquest report is marked as Ex.P21. He also recovered a pair of blood stained Chappals and a left leg chappal branded as VKC Pride [MOs 4 and 5, respectively] from the place of occurrence. He also collected the earth with blood and without blood [MOs 6 & 7, respectively] and sent the dead body for postmortem through PW14 to the Government Hospital, Kuzhithurai. He arrested the accused on 07.01.2015 at about 08.00 am and recovered a Hero Honda Motorcycle bearing Registration No.TN.45-AK-8193 and recorded his confession statement from 09.00 a.m to 11.00 a.m. Pursuant to the confession, he recovered MO1 / knife from a Well near the place of occurrence and also recovered the blood stained shirt which was hidden in an asbestos sheet from the accused's house at about 12.30 hours. The investigation officer [PW17] has also examined the Constable from the Dog Squad [PW9] and collected his report [Ex.P10]. After collecting the scientific report, PW17 filed the final report as against this accused.

2.4. PW10, the Doctor, who conducted autopsy on the dead body on 07.01.2015 at about 02.50 pm, noted down the following injuries:-

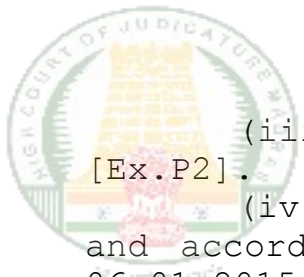
- "1) 1*1*1 cm. cut injury over the left neck, 1 cm. just above the clavicle left-midclavicular line.
- 2) 4*1*6 cm. cut injury over the left chest, just 1 cm. medial to the nipple.
- 3) 2*1*1 cm. cut injury over the left chest, 3 cm lateral to the left nipple.
- 4) 7*3*1 cm. cut injury over the middle 1/3 of the left arm.
- 5) 1*1*1 cm. cut injury 1cm medial to the medial aspect of the scapula left.
- 6) 6*1*1 cm. cut injury over the back of the left thigh.
- 7) 6*1 cm. abrasion left shoulder."

He gave his final opinion that the deceased would appear to have died of shock and haemorrhage due to vital organ injuries, 18-22 hours prior to Autopsy. The postmortem report is marked as Ex.P.12.

3. In support of the prosecution, 17 witnesses were examined and 21 documents were marked and 10 material objects were produced. The evidence available from the prosecution witnesses are as follows:-

(i) PW1 is the father of the deceased and he was examined as an eye witness. He speaks about the motive, occurrence and the lodging of the complaint [Ex.P1].

<https://hcservices.ecourts.gov.in/hcservices/> PW2 is the second wife of the deceased and examined as a hearsay witness and she denied the motive part.



(iii) PW3 is the witness for the Observation mahazar [Ex.P2].

(iv) PW4 is the Panchayat Clerk of Vadavampaadi Panchayat and according to him, PW1 informed him about the occurrence on 06.01.2015 at about 06.30 p.m.

(v) PW5 is the neighbor and also cited as an eye witness to the occurrence. But, he did not support the case of the prosecution and he was treated as a hostile witness.

(vi) PW6 is a hearsay witness.

(vii) PW7 is a Tailor and Co-worker of the accused, who was examined for the recovery of MO2 - Hero Honda Splendor Motorcycle.

(viii) PW8 is the Village Administrative Officer of the Vadavampadi Village, who was present on 06.01.2015 in the place of occurrence and MOs 4, 5, 6 and 7 were recovered from the place of occurrence in his presence. According to him, he was also called at 02.00 a.m. in the early hours to the Police Station. The confession statement of the accused was recorded and MO1 - Knife was recovered from the Well at about 02.45 a.m. He has also witnessed the recovery of the blood stained half arm shirt [MO3] from the accused house.

(ix) PW9 is the Constable, working in the Dog Squad and based on the intimation received from the Superintendent of Police, they went to the place of occurrence on 06.01.2015 and this squad dog went to the accused house first and thereafter, went to the mud road for about three kilometers and their report is marked as [Ex.P10].

(x) PW10 is the Doctor, at the Government Hospital, Kulithalai, who conducted autopsy on 07.01.2015 at about 02.50 pm and he noted down the injuries and gave his final opinion that the deceased appears to have died of shock and haemorrhage due to vital organ injuries, 18-22 hours prior to Autopsy.

(xi) PW11 is a Scientific Expert and according to him, no poisonous substance was deducted from the internal organs referred to him. The Viscera report is marked as Ex.P14.

(xii) PW12 is also a Scientific Expert, who examined MOs.1 to 6. The Biology report is marked as Ex.P16 and the Serology report is marked as Ex.P17.

(xiii) PW13 is the Constable who took the First Information Report [Ex.P19] and produced the same before the concerned Judicial Magistrate at 10.00 pm.

(xiv) PW14 is the Constable, who identified the dead body to the Doctor [PW10], who conducted the postmortem.

(xv) PW15 is a Head Constable of Police, Lalapettai Police Station, who recorded the statements in the Laptop.

(xvi) PW16 is the Sub Inspector of Police, who received the complaint [Ex.P1] on 06.01.2015 at about 08.00 p.m. and registered the same in Crime No.5 of 2015. The printed First Information Report is marked as Ex.P19.

<https://hcservices.ecourts.gov.in/hcservices/> PW17 is the Investigating Officer, who conducted the investigation and filed the final report as stated supra.



4. The incriminating materials from the prosecution evidence, were put to the accused under Section 313 Cr.P.C., and the accused had denied the same. The learned trial Judge by relying on the evidence of PW1, the dog squad report, MOs 5 & 8 / pair of Chappals recovered from the place of occurrence and the accused house, respectively, found the appellant guilty of the offence punishable under Section 302 IPC and sentenced him to undergo to life imprisonment. As against this conviction and sentence, this Criminal Appeal came to be filed.

5. Heard Mr.AR.L.Sunderashan, learned Senior Counsel, for Mrs.AL.Gandhimathi, appearing for the appellant and Mr.R.Anandharaj, learned Additional Public Prosecutor, appearing for the respondent and also perused the records carefully.

6. Mr.AR.L.Sunderasan, learned Senior counsel, canvassed the following points for consideration:-

6.1. PW1 is the deceased's father and an interested witness. He cannot be an eye witness for the reason that he could not have viewed the occurrence from his house, as it was near the switch box for mini tank motor and even according to PW1, it cannot be viewed from his house.

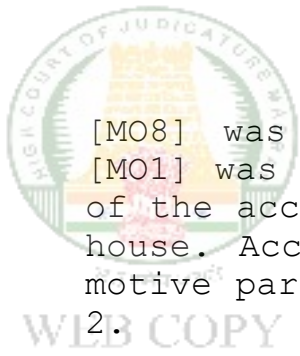
6.2. The non-examination of Ilanjiyam / daughter-in-law of PW1, who is said to have witnessed the occurrence along with PW1, is fatal to the prosecution.

6.3. The complaint was lodged at about 08.00 pm and the Investigation Officer [PW17] went to the place of occurrence at about 10.00 pm, whereas, the Dog Squad had reached the place of occurrence at about 06.40 pm, as such there was an earlier information about the occurrence and the actual assailant was not known and therefore, the Dog Squad was called and thereafter, Ex.P1 has been created as if PW1 had witnessed the occurrence.

6.4. The motive as alleged by the prosecution has not been established before the Court.

6.5. PW5 who was examined as an eye witness did not support the prosecution case and therefore, it is not proper to convict the appellant based on the solitary witness, PW1, who is not trustworthy.

7. Per contra, the learned Additional Public Prosecutor submits that PW1 has witnessed the occurrence, informed PW4 immediately and the complaint was also lodged without any delay. There is no delay in the FIR reaching the Court and the left leg chappal of the accused, which is printed as VKC pride [MO5] was recovered from the place of occurrence and the right leg chappal



[MO8] was recovered in front of the accused's house. The Knife [MO1] was also recovered from the Well, pursuant to the confession of the accused and the Dog from the Squad also went to the accused house. According to the learned Additional Public Prosecutor, the motive part is also established by the prosecution through PWs 1 & 2.

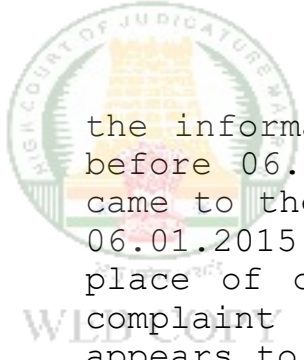
8. We have carefully perused the evidence adduced on behalf of the prosecution and the records placed before us.

9. The case was registered at the instance of PW1 on 06.01.2015, at about 08.15 pm. The complaint [Ex.P1] and the printed FIR [Ex.P19] were duly sent to the Court through the Head Constable [PW13] and also reached the Court at about 10.00 pm, as such, there is no delay in reporting the incident and the FIR reaching the Court.

10. On receipt of the intimation, the Investigating Officer [PW17] went to the place of occurrence on 06.01.2015 at about 10.00 pm and prepared the observation mahazar and recovered the material objects. However, the Dog Squad has been deployed on the directions of the Superintendent of Police at 06.40 pm itself and the Dog's departure as per the performa [Ex.P10] of the Sub Inspector of Police, Detective Dog Squad, is 06.50 p.m. The Dog arrived at the scene at about 08.10 p.m, went to the accused house after taking the sniff from the dead body and also went to the mud road up to three kilometers. But, according to the prosecution, the complaint was lodged at 08.00 pm and was received by the Investigating Officer [PW17] and the investigation, according to him, commenced only on 06.01.2015 at 10.00 p.m.

11. Admittedly, the case was registered on the complaint of PW1 at 8 pm. But, as per the Dog Squad report [Ex.P10], it appears the Dog Squad was called at 06.40 pm and the Dog Squad has departed from the camp at 06.50 pm, reached the scene of occurrence at 08.10 pm. From the report [Ex.P10], it appears that the investigation has commenced at 06.40 pm itself.

12. The learned Senior Counsel, by referring to the Dog Squad report, contended that the accused was not known to them and therefore, the Dog Squad was called. When it was verified with the learned Additional Public Prosecutor as to the necessity of the Dog Squad in this case, the learned Additional Public Prosecutor, on instructions, submitted that the Dog Squad was called to arrest the accused. The accused, in this case, is none other than the PW1's brother's son. He was also residing in the same village. If, factually, PW1 had witnessed the occurrence, as stated in Ex.P1, there is no necessity for calling the Dog Squad to the place of occurrence. From the Dog Squad report [Ex.P10], it is clear that



the information about the occurrence was known to the police even before 06.40 pm, but the complaint has been registered as if PW1 came to the police station and lodged the complaint before PW16 on 06.01.2015 at 08.00 pm. Therefore, the presence of PW1 in the place of occurrence as stated in Ex.P1 is doubtful. The earlier complaint that had triggered the summoning of the Dog Squad appears to have been suppressed.

13. PW1 is said to have witnessed the occurrence along with one Ilanjiyam. Ilanjiyam is none other than the first wife of the deceased. Though she was referred as an eye witness to the occurrence, she was not examined by the prosecution. PW5, a neighbor was examined as an eye witness, but he did not support the case of the prosecution. The entire prosecution rest up on the evidence of PW1 and therefore, his evidence has to be analysed with due care.

14. The occurrence took place near the switch box of a mini tank. In the rough sketch [Ex.P20], the switch box is referred as if it is available behind PW1's house and the dead body is shown lying in the mud road from Konipatti to Sengal. PW1 admits in his cross examination that the switch box and mini tank cannot be viewed from his house. The house was facing South and PW1 was sitting in front of his house and the occurrence had taken place behind his house 10.5 metres away in the mud road and trees are also shown between P.W.1's house and the mud road as per Ex.P20.

15. An altercation between the deceased and the appellant had taken place in the morning and the same is mentioned in the complaint [Ex.P1]. But, PW1 in his cross examination has stated that he came to know about that incident two days after the occurrence. Though the motive is not important in the case of a direct evidence, the motive, according to PW1, is that his brother Manickam intended to purchase his land and there was a strained relationship between their family and that the accused was having intimacy with PW2. But, in the evidence of PW1, he has admitted that there was cordial relationship with the accused family after the demise of Manickam. PW2 has also denied her relationship with the accused, as projected by the prosecution.

16. The knife / MO1 was recovered from a Well, near the place of occurrence. According to PW1, the mother of the accused threw the knife / MO1 into the Well. But, there is no evidence as to how the mother of the accused came to the place of occurrence and moreover, she was not arrayed as an accomplice. The knife / MO1 was recovered on 07.01.2015 at about 12 hours in the presence of the Village Administrative Officer [PW8]. But, PW8 would state that the knife [MO1] was recovered at 02.20 am. His evidence also states that other material objects were recovered from the place of occurrence in between 02.10 am to 03.15 am. The left



footwear of VKC Pride [MO5] was recovered at 02.10 am and MOs 6 & 7, earth with blood and without blood, respectively, were recovered in Ex.P8 at 02.45 am and the another pair of VKC brand Chappal [MO8] was recovered at 03.15 am. But the arrest of the accused is shown that he was arrested on 07.01.2015 at 08.00 am, near Veerarakiyam Railway Station and on his disclosure statement, the knife / MO1 was recovered at 12 hours. The evidence of PW8 would disprove the arrest and recovery.

17. The pair of Chappal, MOs 5 & 8 are projected as that of the accused. The left leg Chappal [MO5] was recovered from the place of occurrence and the another pair of Chappal [MO8] was recovered in front of the accused house. Excepting this, there is no material to connect MOs 5 & 8 with the accused. There is no evidence that this Chappal belongs to the accused.

18. Therefore, the evidence available is not sufficient to establish the guilt of the appellant beyond reasonable doubt. In the absence of any plausible evidence, it is not safe to convict the appellant. In such view of the matter, we hold that the prosecution has not established the case beyond reasonable doubt and thus, we are bound to give the benefit of doubt to the accused. Accordingly, the conviction and sentence of the appellant made in S.C.No.1 of 2016, on the file of the learned Principal Sessions Judge, dated 17.08.2016 is set aside.

19. In fine, this Criminal Appeal is allowed. The appellant / accused is acquitted in respect of the present case. Fine amount, if paid, shall be refunded to the appellant / accused and bail bonds shall stand terminated.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

1.The Principal Sessions Judge,
Karur

2.The Judicial Magistrate No.I, Kulithalai

3.-do-Thro' The Chief Judicial Magistrate, Karur District.

4.The Inspector of Police,
Karur District.



5.The Superintendent, Central Prison, Trichy.

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

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+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-56779[F] dated
27/03/2019)

gk

Judgment made in
Cr1.A. (MD) No.369 of 2016
27.03.2019

KM/ (08.04.2019) 9P 8C