



Bail Slip

1. Perumaiyee, W/o.Ramu, Female, aged about 62/2018 years (Accused No.3), 2. Panju @ Panjavarnam, W/o.Ramesh, Female, aged about 30/2018 years (Accused No.4) are released on bail vide Court order dated 28.01.2019 made in CRL MP(MD)No.10416 of 2018 in CRL A(MD)No.542 of 2018.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2019

CORAM:

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

Crl.A(MD)No.542 of 2018

1.Ranjith @ Ranjith Kumar

2.Arivu Raja

3.Perumaiyee

4.Panju @ Panjavarnam

... Appellants / Accused No.1 to 4

Vs.

State of Tamil Nadu,
represented by
The Inspector of Police,
Devadanapatti Police Station,
Theni District.
[Crime No.371 of 2016]

... Respondent / Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to set aside the conviction and sentence imposed in judgment dated 19.11.2018 made in SC No.102 of 2017, on the file of the Additional District and Sessions Judge, Theni at Periyakulam.

For Appellant : Mr.Muthumani Doraisami
For Respondent : Mr.S.Chandrasekar,
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**]

The appellants are the accused nos.1 to 4 in S.C.No.102 of 2017 on the file of the Additional District and Sessions Judge, Theni at Periyakulam and they stood charged, tried and convicted as follows:

Accused	Section of Law	Sentence of imprisonment	Fine amount
A1 and A2	302 IPC	To undergo imprisonment for life, each	Rs.10,000/- in default to undergo simple imprisonment for one year, each
A3 and A4	341 IPC	To undergo imprisonment for one month, each.	Rs.500/- in default to undergo simple imprisonment for one week, each.
	302 r/w 34 IPC	To undergo imprisonment for life, each.	Rs.10,000/- in default to undergo simple imprisonment for one year, each.

2.The facts leading to the filing of the present appeal, relevant for the disposal, are as follows:

2.1.The deceased, namely, Ramesh is the husband of the fourth accused, namely, Panju @ Panjavarnam. The third accused, namely, Perumaiyee is the mother of the fourth accused and mother-in-law of the deceased Ramesh. The accused Nos.1 & 2 are the brothers of the fourth accused and sons of the third accused and brothers-in-law of the deceased Ramesh. The marriage between Ramesh and the fourth accused was a love marriage and out of wedlock, children were born. At the time of marriage, Seethana was given to the deceased Ramesh / husband of the fourth accused and utilizing the same, he purchased a landed property at Vinoba Nagar, G.Kalupatti, Periyakulam Taluk, Theni. The fourth accused / wife of the deceased Ramesh insisted that the said property should be settled in favour of the children born to them and it was refused by the deceased and on account of the same, there was a difference of opinion and hence, the fourth accused left the matrimonial home and started living with her parents.

2.2.The deceased Ramesh made an attempt to mortgage the said property for the purpose of getting loan and it was opposed by the fourth accused and in this regard also, there was a wordy altercation on 10.07.2016. The accused nos.1 to 4 infuriated by the attitude of the deceased, in not settling the landed property in favour of his sons, got enraged.

2.3.On 11.07.2016, at about 16.50 hours, when the deceased Ramesh was in front of his house, the first accused driving the Auto (MO3) with the accused nos.2 to 4, as occupants, came there and questioned the deceased Ramesh, as to the mortgaging of the said property and there was an altercation. The accused nos.1 & 2 armed with knives made attempts to stab and it was resisted by the deceased and during that fight, the first accused sustained injury on the left side of the chest and the second accused on the stomach.



The accused nos.1 & 2 pushed the deceased and the accused nos.3 & 4 caught hold of the deceased and the accused nos.1 & 2 attacked him with MOs.8 & 9, repeatedly on the chest and as a consequence, Ramesh breathed his last.

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2.4.PW1 is the maternal uncle of the deceased Ramesh and with regard to the commission of the offence, he proceeded to Devadanapatti Police Station and lodged a complaint under Ex.P1, on 11.07.2016 and upon receipt of Ex.P1, PW17 / Sub-Inspector of Police attached to the said Police Station, has registered a case in Crime No.371 of 2016 for the commission of offence under Section 302 IPC at about 22.30 hours. The printed First Information Report was marked as Ex.P12.

2.5.PW17 despatched the original of Ex.P1 and the First Information Report to the jurisdictional Magistrate Court and also forwarded a copy of the same to the Station House Officer, Devadanapatti Police Station for investigation and also assisted him during the investigation.

2.6.PW20 was the Inspector of Police, Devadanapatti Police Station and upon receipt of the First Information Report, he proceeded to the scene of occurrence and in the presence of PW7 and one Suresh, has prepared the observation mahazar and rough sketch, marked as Ex.P2 & P7, respectively. PW20, in the presence of the very same witnesses, recovered blood stained earth / MO1 and sample earth / MO2 under the cover of mahazar Ex.P3. PW20 examined PWs.1 to 4, 8, 9, 15 and one Kannan, Murugan, Raj kumar and Vijaya in the scene of occurrence and recorded their statements under Section 161 (3) Cr.P.C. On 12.07.2016, at about 06.30 hours, PW20 conducted the inquest over the body of the deceased at Mortuary of the Government Hospital, Theni, in the presence of Panchayatars. The inquest report was marked as Ex.P18. At about 08.45 hours, on the same day, PW20 sent the body of the deceased for postmortem along with the requisition, through PW12.

2.7.PW18 was the District Police Surgeon, Associate Professor and Head of the Department, Department of Forensic Medicine, Government Medical Hospital, Theni and he received the body of the deceased along with the requisition at about 10.10 hours on 12.07.2016 through PW12 and seen the body at 10.15 hours on 12.07.2016 and noted the following ante mortem injuries:

" Ante mortem Injuries are noted on the body:

1. A oblique stab injury measuring 5.1 cms X 2 cm X right pleural cavity deep noted on the right upper chest. It is 10 cms below the mid clavicle, 8.5 cms from mid-axillary line.

O/D the wound passes inward piercing the underlying muscles, vessels and nerves in 3rd intercostal space,



pierce the underlying pleura measuring 4 cms X linear X through and through, and anterior surface of upper part of upper lobe of right lung measuring 1.5 cms X 1 cms X 1cms and ends as a point.

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2.A stab injury measuring 2.1 cms X 1 cm X right pleural cavity deep noted on the front right upper chest, 1cm below injury No.1.

O/D the wound passes inwards piercing the underlying muscles, vessels and nerves in 4th intercostal space, piercing the underlying the pleura measuring 3 cms X linear X through and through, and anterior surface of lower part of upper lobe of right lung measuring 1.5 cms X 1 cms X 1cm and ends as a point.

3) A stab injury measuring 2 cms X 1cm X muscle deep noted on the mid-line of upper chest, 10 cms above injury No.1, 6 from sternal notch.

4) A stab injury measuring 1.5cms X 1cm X muscle deep noted on the left upper chest, 6 cms below left clavicle.

Note: All the stab injuries are having regular margins, one end is pointed, and another end is curved."

2.8.PW18, during the course of postmortem has noted the following injuries:

" On dissection of chest:

Pericardium - contains 10ml of straw colour fluid; Heart - both chamber's empty; coronaries paten. Right pleural cavity contains about 1500 ml of blood with clots. Left pleural cavity - empty. Both lungs - cut- section-pale.

Other findings:

Peritoneal cavity- normal. Liver, Spleen, and kidneys- cut section pale, Larynx and trachea - normal; Hyoid bone - intact. Stomach - contains 100 gms of partly digested food particles with nil specific smell, mucosa-pale. Small intestine - contains 20 ml of bile fluid with nil specific smell, mucosa-pale. Bladder -empty. Brain surface vessel and cut section pale."

2.9.PW18, after concluding the postmortem, reserved the opinion pending chemical examination report and upon receipt of the final report marked as Ex.P14, opined that "the deceased would appear to have died of Shock and Haemorrhage due to external injuries No:1 and 2 and its corresponding internal injuries and cumulative effects of all stab injuries, 26 hours to 30 hours prior to autopsy ". The postmortem report was marked as Ex.P13.

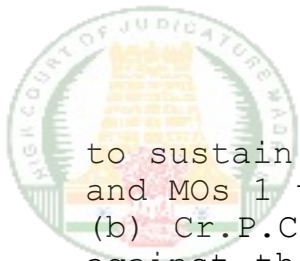


2.10. PW20, after the postmortem was over, seized the cloths worn by the deceased. PW20, upon receipt of the information, has effected the arrest of accused nos.3 & 4 at Government Hospital, Theni, at about 11.00 hours on 12.07.2016 and the fourth accused voluntarily came forward to give the confession statement and as per the admissible portion of the confession statement marked as Ex.P4, MO.2 and the cloth worn by the said accused at the time of commission of offence were recovered under the cover of the mahazar Ex.P7. Thereafter, PW20 sent both the accused for judicial custody. On 13.07.2016, PW20 examined PW8 and one Suresh and recorded their statements. On 16.07.2016, PW20 became aware of the fact that the first accused, who sustained grievous injury and got admitted in Government Hospital, Theni, got discharged and has effected his arrest at 14.00 hours and he voluntarily came forward to give the confession statement and as per the admissible portion of the confession statement, marked as Ex.P5, in the presence of PW10 and another, he had seized MO8 and thereafter, he was sent for judicial custody. On 21.07.2016, the second accused got discharged from Government Hospital, Theni, after taking treatment for the grievous injury and was arrested at about 14.15 hours and he voluntarily came forward to give the confession statement and as per the admissible portion of the confession statement, marked as Ex.P6, MO9 was recovered. Thereafter, the second accused was sent for judicial custody.

2.11. PW20 sent the incriminating articles seized pursuant to the admissible portion of the confession statements of accused nos.1 & 2, in the presence of PW10, for chemical analysis.

2.12. PW21 continued with the investigation and having found that the statements of the material witnesses have already been examined, did not re-examine them and he examined PW19, who treated the accused nos.1 & 2 and the Doctor who conducted the autopsy, namely PW18 and the Scientific Officer / PW16 and recorded their statements and also examined PW17, who registered the First Information Report and after completion of investigation, has filed the charge sheet / final report charging all the accused for the commission of offence under Sections 302, 341 & 34 IPC on 30.11.2016 before the Court of Judicial Magistrate, Periyakulam, who took it on file in P.R.C.No.3 of 2017. The Committal Court issued summons to the accused and upon their appearance, has furnished them the copies of the documents under Section 207 Cr.P.C. The Committal Court, having found the case is exclusively triable by Sessions Court, has committed the same to the Court of Principal Sessions Judge at Theni, who, in turn, made over the case to the Additional District and Sessions Judge, Theni at Periyakulam, who took it on file in S.C.No.102 of 2017.

2.13. The trial Court had issued summons to the accused and upon their appearance, had framed the charges under Sections 302, 341 r/w Section 34 IPC and questioned them and all the accused pleaded not guilty to the charges framed against them. The prosecution, in order



to sustain their case, has examined PWs 1 to 21, marked Exs.P1 to 18 and MOs 1 to 9. All the accused were questioned under Section 313(1) (b) Cr.P.C with regard to the incriminating circumstances made out against them and the evidences rendered by the prosecution and they denied it as false. On behalf of the accused / appellants, no witnesses were examined and no documents were marked.

2.14.The trial Court, upon consideration of the oral and documentary⁴ evidence and other materials, has found all the accused guilty of the charges framed against them and convicted and sentenced them accordingly, vide impugned judgment dated 19.11.2018 and challenging the legality of the said judgment, the present appeal is filed.

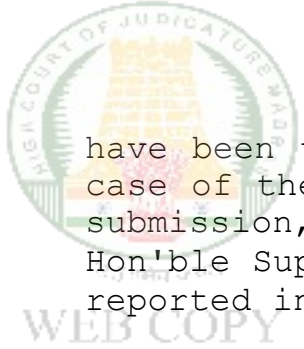
3.Mr.K.Duraisamy, learned Senior Counsel assisted by Mr.Muthumani Doraisamy, learned Counsel appearing for the appellants / accused made the following submissions:

3.1.The eye witnesses, especially the *de facto* complainant, namely, PW1 and PWs 2 & 3 had turned hostile and they did not support the case of the prosecution and except the testimony of PW9 / eye witness, nobody has supported the case of the prosecution.

3.2.The learned Senior Counsel attacking the testimony of PW9, would submit that admittedly, PW9 is having bad antecedents and he was also detained under the Preventive Detention Laws and therefore, he was under obligation to oblige the prosecuting agency and though PW4 was cited as an eye witness, he turned hostile and in the chief examination, he did not speak about presence of PW9 at the time of commission of offence and PW9, who supported the case of the prosecution, did not also speak about the presence of PW4 at the time of commission of offence and therefore, his alleged presence and witnessing the occurrence is highly doubtful.

3.3.The statement of PW9 was recorded by PW20 on 12.07.2016 and however, the said statement reached the Court only on 26.07.2016, after the arrest of the first accused and the judgment made law mandates that the statements of material witnesses should be despatched to the jurisdictional Magistrate Court without any loss of time and the investigation officer, namely, PW20 has failed to offer any plausible explanation.

3.4.It is the further submission of the learned Senior Counsel that PW20 has failed to offer any explanation as to how the accused nos.1 & 2 had sustained grievous injury, despite the fact that PW19, a Causality Medical Officer, had admitted the accused nos.1 & 2 in Government Hospital, Theni and also issued Exs.P15 & P16.The investigation officer / PW20, in the cross examination, would admit that he had not investigated as to how the accused nos.1 & 2 had sustained grievous injuries and the primordial submission made by the learned Senior Counsel for the appellants in that regard is that in the absence of any explanation as to how the two accused, who



have been treated with fatal overtacts, had sustained injuries, the case of the prosecution falls in its entirety and in support of his submission, has placed reliance upon the judgment rendered by the Hon'ble Supreme Court in **Lakshmi Singh and others Vs State of Bihar**, reported in **1976 4 SCC 394**.

3.5. In sum and substance, it is the submission of the learned Senior Counsel for the appellants that in the light of the infirmities pointed out, the edifice of the prosecution case has fallen down and in the light of the very many infirmities and inconsistencies in the case projected by the prosecution, the trial Court, at least, ought to have ordered benefit of doubt and acquitted them and therefore, prays for setting aside the conviction and sentence imposed by the trial Court and allowing this appeal.

4. Per contra, Mr. S. Chandrasekar, learned Additional Public Prosecutor appearing for the State would submit that though PW4 was treated as hostile witness, he has spoken about the presence of all the accused in the scene of crime, going in an Auto and PW8 had also seen all the accused in the Auto about 3 kms distance from the scene of crime and therefore, the prosecution was able to establish that the accused nos. 1 to 4 were the aggressors.

5. The learned Additional Public Prosecutor, drawing the attention of this Court to the testimony of the PW9 / eye witness, would submit that in the cross examination, the main aspect of PW9 seeing the accused nos. 1 & 2, attacking the deceased with knives and the accused nos. 3 & 4 catching hold of the deceased have not been controverted and no contradiction has been elucidated through the testimony of the investigation officer, namely, PW20 and would submit that the testimony of PW9 has been amply corroborated through the scientific evidence in the postmortem report, marked as Ex.P13, coupled with the testimony of PWs 16 to 18 and Ex.P10 & P11, marked through them.

6. It is his further submission that PW10 has also cogently spoken about the arrest and recovery of the incriminating articles, namely, MOs 8 & 9 from the admissible portion of the confession statements of the accused nos. 1 & 2, marked as Ex.P5 & P6 respectively and the trial Court, on a full consideration and appreciation of oral and documentary evidence and other materials, has rightly reached the conclusion to convict and sentence the accused accordingly and prays for dismissal of this criminal appeal.

7. This Court paid it's anxious consideration and best attention to the rival submissions and also perused the oral and documentary evidence and other materials as well as the original records.

8. The moot question that arises for consideration in this appeal is whether the impugned judgment of conviction and sentence awarded by the trial Court is based upon the correct appreciation of oral and documentary evidence and other materials.



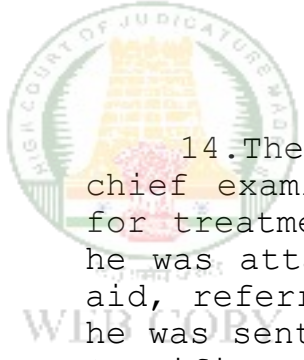
9.PW6, who was treated as a hostile witness, has spoken about the fact of wordy altercation that took place some days prior to the commission of the offence. PW8, who was treated as a hostile witness, in the chief examination, had spoken about the accused nos.1 to 4 coming in the Auto and seeing the blood stained cloth of the first accused and when he went near the house of Ramesh, he found his body in front of the house.

10.The star witness of the prosecution, who was projected as their sole eye witness, in the chief examination, has spoken about the motive for the commission of the offence as projected by the prosecution and with regard to the commission of offence on 11.07.2016, in the evening hours, he would state that in MO3 / Auto, all the accused came and they got down in front of the house of the deceased and at that time, he along with one Kannan, was present and he heard the sound of some altercation in front of the house of the deceased and when he and Kannan went there, he saw the accused nos.3 & 4 caught hold of the hands of the deceased and the accused nos.1 & 2 armed with knives, repeatedly stabbed him and when he asked them to as to why they are doing it, they threatened him with dire consequences and fled away. Immediately they bound the cloths and arrested the bleeding and he along with two others, took the deceased to the Government Hospital, Theni and the Doctors there told him that he was dead on arrival and subsequently, he was examined by the Police.

11.In the cross examination done on behalf of the accused, PW9 deposed that he is not related to the deceased, but admitted that he had three criminal cases and he also faced preventive detention proceedings and since it was a false case, the detention order was quashed.

12.He would further depose that on account of the stab injuries inflicted upon the deceased, the cloths worn by all the accused tainted with blood, but he has not seen as to whether the first accused had sustained injuries and denied the suggestion that he was not at all present at the scene of occurrence and he would further state that he was also examined by the Police at the Government Hospital, Theni. PW9 also denied the suggestion that there was an altercation between Ramesh and Chinathambi and on account of the same, the accused nos.1 & 2 had sustained injuries.

13.PW10 & PW11 have spoken about the arrest and recovery of incriminating articles and PW11 had turned hostile. The Doctor, who conducted the autopsy, namely, PW18 in his final opinion marked as Ex.P14, opined that the deceased died on account of the stab injuries sustained on his chest. The Serological and Chemical analysis reports were marked as Ex.P11 & P10, respectively and a service report of PW11 would disclose that the blood said to have been found on MOs.8 & 9 got disintegrated.



14. The Doctor / PW19, who treated the accused nos.1 & 2, in the chief examination, would state that the first accused came to her for treatment at about 07.45 pm on 11.07.2016 and he told her that he was attacked by three known persons and she, after giving first aid, referred him to the Government Hospital, Theni and from there, he was sent to the Government Rajaji Hospital, Madurai and the Wound Certificate given to the first accused was marked as Ex.P15.

15. PW19 would further depose that at about 07.40 pm on 11.07.2016, the second accused came to her for treatment and he told her that at about 07.00 pm, he was attacked by three known persons with knives and he was given first aid and thereafter, she referred him to the Government Hospital, Theni and the Wound Certificate given by her was marked as Ex.P16.

16. A perusal of Ex.P15 & P16 would show that both of them had sustained grievous injuries.

17. This Court has also taken note of the one of the primordial submissions made by the learned Senior Counsel appearing for the appellants that admittedly, the accused nos.1 & 2 had sustained grievous injuries as evidenced from the testimony of PW19, coupled with Ex.P15 & 16 and drawn the attention of this Court to the chief examination of PW19, wherein, she has stated that insofar as the first accused is concerned, after giving him first aid, he was referred to the Government Hospital, Theni and from there, he was referred to the Government Rajaji Hospital, Madurai. Now coming to the testimony of PW20 as regard to the said aspect, he has spoken about the arrest of the accused nos.1 & 2 after their discharge from the Government Hospital, recording of confession statement and recovery of incriminating articles. It is to be noted at this juncture that according to the testimony of PW8 the cloths worn by the accused were tainted with blood and admittedly, the cloths worn by them, though seized, not marked as MOs but what was recovered was the knives marked as MOs.8 & 9 only. PW20 was specifically cross examined with regard to the sustainment of grievous injuries by the accused nos.1 & 2 and he would depose that in connection with the said incident, he did not do any investigation and while he examined the third accused, she did not state about the sustainment of injury by the accused nos.1 & 2 and he also did not examine the accused nos.1 & 2 and he was also aware of the fact of the treatment of the second accused, while he effected the arrest of the first accused and the explanation offered by him is that he asked the first accused to give statement and he refused to give statement.

18. The Hon'ble Supreme Court in **Lakshmi Singh's case** reported in (1976) 4 SCC 394, which also deals with the non-explanation of grievous injuries sustained by the accused by the prosecution, in paragraph No.12, after dealing with the facts of the case, has taken note of its earlier judgment in **Mohar Ravi Vs State of Bihar**, reported in AIR (1968) SC 1281, wherein, it is observed as follows:



"The trial Court as well as the High Court wholly ignored the significance of the injuries found on the appellants. Mohar Rai had sustained as many as 13 injuries and Bharath Rai 14. We get it from the evidence of P.W.15 that he noticed injuries on the person of Mohar Rai when he was produced before him immediately after the occurrence. Therefore the version of the appellants that they sustained injuries at the time of the occurrence is highly probabalised. Under these circumstances the prosecution had a duty to explain those injuries.... In our judgment the failure of the prosecution to offer any explanation in that regard shows that evidence of the prosecution witnesses relating to the incident is not true or at any rate not wholly true. Further those injuries probabalise the plea taken by the appellants."

19.The Hon'ble Supreme Court had also placed reliance upon another judgment in **Puran Singh Vs State of Punjab**, reported in **(1975) 4 SCC 518** and observed in Paragraph No.12 as follows:

"12. It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1)that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version:

(2)that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3)that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one. In the instant case, when it is held, as it must be, that the appellant Dasrath Singh received serious injuries which have not been explained by the prosecution, then it will be difficult for the Court to rely on the evidence of PWs.1 to 4 and 6 more particularly, when some of these witnesses have lied by stating that they did not see any injuries on the person of the accused. Thus neither the Sessions Judge nor the High Court appears to have given due consideration to



this important lacuna or infirmity appearing in the prosecution case. We must hasten to add that as held by this Court in *State of Gujarat v. Bai Fatima* [Criminal Appeal No. 67 of 1971 decided on March 19, 1975], there may be cases where the non-explanation of the injuries by the prosecution may not affect the prosecution case. This principle would obviously apply to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and creditworthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. The present, however, is certainly not such a case, and the High Court was, therefore, in error in brushing aside this serious infirmity in the prosecution case on unconvincing premises".

20. PW20 did not do any investigation as to how the accused nos. 1 & 2 sustained grievous injuries and he categorically admitted that he did not do any investigation as to how they sustained grievous injuries, despite the said fact spoken to by PW19, coupled with Ex.P15 & 16.

21. A perusal of the original records coupled with the chief examination of PW20 would disclose that PW9 was examined by him in the scene of occurrence on 12.07.2016, however, his statement recorded under Section 161(3) Cr.P.C. had reached the jurisdictional Magistrate Court only on 26.07.2016. It is also to be noted at this juncture that the first accused was arrested on 16.07.2016 and the second accused was arrested on 21.07.2016.

22. **Karunakaran Jabamani Nadar in re** reported in **1974 L.W. (Crl)**, a Division Bench of this Court has dealt with the belated despatch of the original documents and held as follows:

"5. It is imperative that the following documents should be despatched immediately, without any delay by the investigating officers to the Sub-Magistrate. The Station-House Officer should record the time of actual despatch of the various documents in the various registers, particularly, the statement recorded under S.154 of the Crl.P.C. On receipt of the said documents, the Magistrate should initial the same, noting there in the time and date of the receipt of those documents. This would provide the only judicial safeguard against subsequent fabrication of such documents in grave crimes. Therefore, as the Manual of Instructions for the Guidance of Magistrates in the Madras State does not contain any instructions to the effect in this regard, we suggest that the same may be brought upto date by incorporating in the circulars which had been issued from time to time for the guidance



of the Magistrates. The following are documents of special importance which should be despatched by the investigating officers without any delay to the Magistrates and they should bear the initials of the Magistrate with reference to both the time and date of their receipt:

1.The original report or complaint under S.154 of the CrI.P.C.

2.The printed form of the F.I.R (First Information Report) prepared on the basis of the said report or complaint.

3.Inquest reports and statements of witnesses recorded during the inquest.

4.Memo sent by the Station House Officers to Doctors for treating the injured victims who die in the hospital subsequently and the history of the case treatment

5.Memo sent by the Doctor to the Police when a person with injuries is brought to the hospital, or the death-memo sent by the Doctor to the Police on the death of the person admitted into the hospital with injuries.

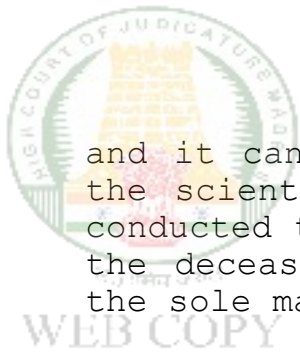
6.Observations mahazars and mahazars for the recovery of material objects, search lists and the statements given by the accused admissible under S.27 of the Evidence Act, etc, prepared in the course of investigation.

7.The statements of witnesses recorded under S.161 (3) of the CrI.P.C.

8.Form No.91, accompanied by material objects"

23.Admittedly, the crucial statement of the only eye witness, namely, PW9, though recorded on 12.07.2016, despatched to the Magistrate Court only on 26.07.2016, after the arrest and alleged confession statements of the accused nos.1 & 2. Though the cloths worn by the deceased were tainted with the blood, as per the testimony of PW8, the first accused was also having bloodstained cloths and the admissible portion of the confession statement of the third accused marked as Ex.P.4, would also disclose that the cloths worn by them were also recovered, but, the same have not been exhibited as material objects and as a consequence, the said cloths were also not subjected to chemical analysis.

24.As already pointed out all the witnesses, including the de facto complainant and close relatives of the deceased, except PW.9, became hostile and the only testimony of PW9, who has been projected as the sole eye witness to the occurrence, in the considered opinion of the Court, did not inspire confidence in the mind of the Court



and it cannot be said that he is a trustworthy witness. No doubt, the scientific evidence in the form of the testimony of PW18, who conducted the autopsy, coupled with Exs.P3 & P4, would disclose that the deceased died on account of homicide, but, the same cannot be the sole material to convict the appellants.

25.The case projected by the prosecution suffers, on account of inherent improbabilities, serious omission and infirmities, especially, the testimony of PW9, who had also faced three criminal cases and was detained under the preventive detention laws. Though the quality of the evidence alone matters and not the quantity, in the light of the above facts and circumstances and the reasons assigned above, testimony of PW9 cannot be termed as a trustworthy and believable one and therefore, this Court is inclined to award benefit of doubt to all the appellants / accused nos.1 to 4.

26.In the result,

- this Criminal Appeal is allowed;
- the conviction and sentence imposed on the appellants/A.1 to A.4 by the learned Additional District and Sessions Judge, Theni, at Periyakulam, in S.C.No.102 of 2017, dated 19.11.2018, is set aside and the appellants/A.1 to A.4 are acquitted of the charges framed against them;
- It is represented that the appellants 3 and 4 have already been granted suspension of substantive sentence of imprisonment. Hence, the bail bonds executed by the appellants 3 and 4 shall stand terminated;
- Since the appellants 1 and 2 are in jail, they are ordered to be released forthwith, unless their custody is required in connection with any other case/proceedings; and
- Fine amounts, if any paid, shall be refunded to them.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Additional District and Sessions Judge,
Theni at Periyakulam.

2. The Judicial Magistrate,
Periyakulam

3. The Chief Judicial Magistrate,
Theni at Periyakulam



4. The Inspector of Police,
Devadanapatti Police Station,
Theni District.
5. The Superintendent of Police,
Theni
6. The District Collector,
Theni
7. The Superintendent,
Central Prison, Madurai
8. The Director General Of Police,
Mylapore, Chennai 4
9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
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Cr1.A(MD)No.542 of 2018

25.07.2019

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