



**BAIL SLIP**

The Appellant/Accused viz., Thambiraja Amson @ Thambiraja, S/o.Gnanaraj Nadar was released on bail as per order dated 03.11.2017 made in CRL MP(MD) No.9375 of 2017 in Crl.A(MD)No. 295 of 2017.

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

JUDGMENT RESERVED ON : 18.09.2019

JUDGMENT DELIVERED ON : 23.09.2019

CORAM:

**THE HON'BLE MR.JUSTICE S.VAIDYANATHAN  
AND  
THE HON'BLE MR.JUSTICE N.ANAND VENKATESH**

**Crl.A(MD)No. 295 of 2017**

Thambiraja Amson @ Thambiraja .. Appellant / Sole Accused

Vs.

The State represented by,  
The Inspector of Police,  
Thisaiyanvilai Police Station,  
Tirunelveli District.

(Crime No.174 of 2011) .. Respondent / Complainant

**PRAYER:** Appeal is filed under Section 374(2) of the Code of Criminal Procedure, against the Judgment, dated 27.02.2017, passed in S.C.No.27 of 2012 by the learned I-Additional District and Sessions Judge, Tirunelveli and set aside the conviction.

For Appellant : Mr.V.Gopinath  
Senior Counsel  
for Mr.L.Mahendran



For Respondent

: Mr.M.Chandrasekaran

Additional Public Prosecutor  
assisted by Mr.R.Anand

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**JUDGMENT**

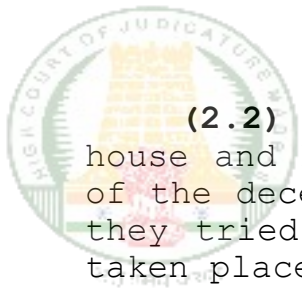
The sole accused has preferred this Criminal Appeal aggrieved by the Judgment passed by the learned I-Additional District and Sessions Judge, Tirunelveli, in S.C.No.27 of 2012, dated 27.02.2017, convicting and sentencing the sole accused/appellant as follows:

| Sl. No. | Offence under which convicted | Sentence of imprisonment       | Fine amount                                                       |
|---------|-------------------------------|--------------------------------|-------------------------------------------------------------------|
| 1.      | Under Section 302 of IPC      | Life imprisonment              | Rs.1,000/-, in default, to undergo one year Rigorous Imprisonment |
| 2.      | Under Section 506(ii) of IPC  | One year Rigorous Imprisonment | ---                                                               |

**2. The case of the prosecution:**

The deceased Jenish Kirubakaran is the nephew of P.W.1. P.W.4 is the cousin of P.W.1. P.W.2 and P.W.3 are the close friends of the deceased and they are the members of Youth Christian Association. The accused was residing with his wife and P.W.2 used to tease and make fun of the wife of the accused. Therefore, the accused had a grievance against P.W.2. The deceased is the associate of P.W.2 and others. The accused is said to have complained about this to the uncle of the deceased and asked him to advice the deceased and others not to associate with P.W.2.

**(2.1)** On the date of occurrence, ie., on 05.05.2011, there was a festival conducted at the local church at about 6.00 p.m., followed by a feast. The deceased, P.W.2 and others were serving food to the persons who had come to the festival. The accused is said to have been sitting in a table in front of his house. P.W.1 and P.W.2 started serving rice to the accused. The accused is said to have shouted saying that he was only served with rice without mutton. At that time, the deceased told the accused that mutton is exhausted and asked him not to get angry. The accused enraged by the same, questioned the deceased, if he is such a big man to advice him and that he was insulted in front of the general public.



(2.2) The accused thereafter is said to have rushed into his house and brought a knife (M.O.1) and stabbed on the left shoulder of the deceased and he also threatened to attack the witnesses when they tried to go near the deceased. This incident is said to have taken place at about 10.45 p.m.

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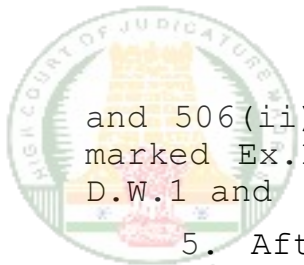
(2.3) P.W.1 to P.W.4, thereafter took the deceased in a car belonging to P.W.3, to Tirunelveli Medical College Hospital and the Doctor (P.W.10) examined the deceased at about 12.30 a.m., on 06.05.2011, and pronounced him dead.

**3. Complaint and evidence collected in the course of investigation:**

P.W.1 is said to have proceeded to the respondent police station, which is one kilo metre from the scene of occurrence and lodged a complaint (Ex.P.1) to P.W.12-the Sub Inspector of Police, at about 5.00 a.m., on 06.05.2011. P.W.12 registered an FIR (Ex.P.13). The express FIR was handed over to the Head Constable, Thirunavukarasu, and it had reached the Judicial Magistrate, Nanguneri at about 06.00 a.m.

(3.1) The investigation was taken up by P.W.13 and he proceeded to the scene of occurrence at about 06.00 a.m., on 06.05.2011 and he prepared the observation mahazer (Ex.P.2). He also seized the material objects, like, blood stained earth, sample earth, etc., under Ex.P.3, which was attested by P.W.6. He also prepared a rough sketch (Ex.P.14) and held an inquest over the body of the deceased between 9 to 11 a.m., at the hospital and prepared the inquest report (Ex.P.15). The body was handed over to P.W.9 along with the requisition letter to take it for postmortem and thereafter to be handed over to the relatives. He recorded the statements of the witnesses under Section 161(3) of Cr.P.C., at about 4.30 p.m., and on the same day, he arrested the accused person. Based on the confession recorded under Ex.P.4, the investigating officer recovered M.O.1 under Ex.P.5. All the material objects that were seized were sent to the Court under Form 95. In the course of investigation, he recorded the statement of the postmortem Doctor (P.W.11) and collected the postmortem report (Ex.P.12). He also proceeded to collect the viscera report (Ex.P.9). After completing the investigation, he laid the final report against the accused person for the offences under Sections 302 and 506(ii) of I.P.C.

4.The case was committed to the file of the learned I-Additional District and Sessions Judge, Tirunelveli. Charges were framed against the accused person for the offence under Sections 302



and 506(ii) of I.P.C. The prosecution examined P.W.1 to P.W.13 and marked Ex.P.1 to Ex.P.15 and M.O.1 to M.O.8. The defence examined D.W.1 and D.W.2 and marked Ex.D1 to Ex.D6.

5. After the completion of the examination of witnesses, the Court below questioned the accused person under Section 313(1)(b) of Cr.P.C., by putting all the incriminating materials collected against him, during the course of trial and he denied the same as false.

6. The trial Court after taking into consideration the entire facts and circumstances of the case, and on assessment of the oral and documentary evidence, came to a conclusion that the prosecution has proved the case beyond reasonable doubts and proceeded to convict and sentence the appellant in the manner indicated supra.

**Submissions:**

7. Mr.V.Gopinath, learned Senior Counsel appearing on behalf of the appellant made the following submissions:

- According to P.W.10-Doctor, the deceased was brought to the hospital by his brother Jerome and on examination of the deceased, he was found to have died and had sent intimation to the police under Ex.P.11. He also made the entries in the Accident Register. However, this Accident Register was not marked by the prosecution and the said Jerome was not examined by the prosecution.
- Ex.D1, which is the Accident Register marked on the side of the accused, is the earliest document available in this case. The non-marking of this document and the non-examination of Jerome, creates a lot of doubt on the case of the prosecution and also on the presence of P.W.1 to P.W.4 in the scene of occurrence.
- The scene of occurrence is only one kilo metre away from the police station and the occurrence had taken place in the midst of a huge crowd, who had attended the festival and it is highly improbable that the police would not have known about this incident till 5.00 a.m., the next day, when the FIR is alleged to have been registered.
- D.W.2 has categorically stated that the information was sent to the respondent police and it was received by them at about 1.45 a.m., as per Ex.D6. In spite of the same, the respondent police have come out with the version that they came to know about the incident only at 5.00 a.m.
- The evidence of eyewitnesses P.W.1 to P.W.4 is very artificial and unnatural. They have passed through many police stations before reaching the hospital and the complaint itself was given only on the next day, ie., on 06.05.2011 at 05.00 a.m.



- According to P.W.13, the accused was arrested on 06.05.2011 at 4.30 p.m., and M.O.1 was recovered. However, P.W.6 says that the accused was apprehended on 06.05.2011, at about 10 or 11 a.m. According to P.W.4, P.W.1 came to the police station at 1.00 p.m., for giving the complaint. Therefore, there is a doubt regarding the arrest of the accused person.
- There was absolutely no motive for the accused to commit the murder of the deceased since there was no previous enmity between them and if at all there was an enmity, it was only between the accused and P.W.2.
- P.W.5, who is the priest, who conducted the festival and who was living in the house right opposite to the scene of occurrence, was not even aware of the incident and no one had informed him in the church and this by itself shows that the scene of occurrence as projected by the prosecution is highly doubtful.
- The evidence of P.W.11 and the postmortem report shows that there was ethyl alcohol in the blood of the deceased and it shows that the deceased was drunk at the time of the occurrence.
- Since the prosecution has concealed the very genesis of the case, the accused is entitled for the benefit of doubt.

*8. Per contra, the learned Additional Public Prosecutor appearing on behalf of the State made the following submissions:*

- The eyewitnesses P.W.1 to P.W.4 have clearly spoken about the incident and their evidence has not been discredited in the cross-examination.
- It is the natural conduct of the witnesses to have taken the deceased first to the hospital and after he was declared to have been brought dead, they had gone to the police station for giving a complaint and therefore there is no delay in lodging the FIR.
- The accused had attacked the deceased with M.O.1 and had caused a serious stab injury near the left shoulder resulting in an oblique gapping stab injury of size 3 x 1.5 c.m x cavity deep seen above middle of left clavicle, and the postmortem doctor has categorically stated that the deceased had died due to hemorrhage shock as a result of the stab injury.
- Just because Jerome was not examined by the prosecution and the accident register was not marked by the prosecution, that does not by itself take away the credibility of the other materials collected by the prosecution and in fact P.W.13 had stated that there was no person called Jerome, who was available for recording his statement.



- Immediately after the FIR was registered, the investigation had progressed in a proper manner and there was no delay at any stage and the weapon that was used at the time of the crime was also recovered and sent along with the other material objects to the Forensic Laboratory and the prosecution has proved the case beyond reasonable doubts against the appellant.

**Discussion:**

9. This Court has carefully considered the submissions made on either side and also carefully assessed the oral and documentary evidence.

10. The Prosecution has sought to project the motive in this case as if P.W.2 used to tease and make fun of the wife of the accused and the accused had a grievance against P.W.2. The deceased is an associate of P.W.2. Therefore, this grievance is sought to be extended to the deceased. This attempt made by the prosecution is not supported by any materials and infact there was no previous enmity between the deceased and the accused. On the date of occurrence, the accused had participated in the feast and when he was served with food, he found that it was served without mutton. He is said to have questioned it, and the deceased is said to have informed him that the mutton has exhausted. This enraged the accused and he shouted at the deceased and went inside his house and brought M.O.1 and stabbed the deceased on his left shoulder and threatened the other witnesses.

11. It is true that in a case where there is a clear eyewitness to the incident, motive does not play a major role and not proving the motive will not be fatal to the case of the prosecution. Therefore, this Court has to see whether the prosecution has proved the case through the evidence of the eyewitnesses.

12. The evidence of P.W.1, P.W.2, P.W.3 and P.W.4 is almost verbatim and they have stated that they saw the accused attacking the deceased in his left shoulder with the knife (M.O.1) and threatened them and thereafter ran away from the scene of occurrence. A plain reading of their evidence shows as if they had seen the occurrence and thereafter had taken the deceased to the hospital, and on being informed that the deceased had died, P.W.1 has gone to the police station and given the complaint.

13. The learned Senior Counsel appearing on behalf of the appellant had submitted that the evidence of P.W.1 to P.W.4 is completely artificial and they are not talking the truth. The learned Senior Counsel attempts to discredit the evidence of P.W.1 to P.W.4 by questioning the very genesis of the case.



14. It is relevant to look upon the evidence of P.W.10 for this purpose. This witness is the doctor and the senior resident in the casualty ward at Tirunelveli Medical College. He says that on 06.05.2011, at about 12.30 a.m., the deceased was brought by his brother Jerome to the hospital and on examining the deceased, it was found that he was brought dead. This was recorded in the accident register(Ex.D1) and an intimation was also given to the police station under Ex.P.11. P.W.1 and P.W.2 have not even spoken about the presence of Jerome and P.W.1 says that Jerome did not take the deceased to the hospital. P.W.3 states that he does not know who Jerome is and never seen him. P.W.4 also does not speak about the presence of Jerome in the hospital. P.W.13, who is the investigating officer in his evidence states that he enquired P.W.2 and P.W.3 about Jerome and they said that there is no such person. He also states that P.W.1 to P.W.4 have not stated about the fact that the deceased was taken to the hospital by Jerome.

15. It must be borne in mind that Jerome is none other than the brother of the deceased and it is really unbelievable as to why he was not examined by the investigating officer. It is also unbelievable that P.W.1 to P.W.4 took the deceased to the hospital since P.W.10, doctor does not say that the deceased was brought by P.W.1 to P.W.4. The doctor is an independent witness and his statement has a higher evidentiary value.

16. P.W.5 is the Priest, who conducted the festival on 05.05.2011 and on the completion of the festival, he went back home around 10.00 p.m. and he was not even aware of the incident. This witness was living in the house right opposite to the place of occurrence. He further states in the cross-examination that nobody informed him about the incident. A priest, who conducted the festival and was living right opposite to the place of occurrence, was not informed about the incident. This sounds very artificial and if really the incident had taken place in the place as projected by the prosecution, it is highly unlikely that P.W.5 would be ignorant about the incident.

17. The doctor (P.W.10) had made entries in the accident register and informed the police through Ex.P.11. It is not known as to why this accident register was not marked on the side of the prosecution. The accident register came to be marked as Ex.D.1 on the side of the accused and it shows that the deceased was brought to the hospital by Jerome, who is the brother of the deceased. The accident register further states that the deceased was brought dead and from there it was sent to the mortuary. The attempt made by the prosecution to conceal the accident register coupled with non-examination of Jerome, creates a lot of doubt on the genesis of the incident.



18. It is also relevant to take note of the evidence of D.W.2. He is the police officer, who speaks about the intimation, which was sent to the respondent police at about 1.45 a.m., and it was received by the Head Constable No.2137. This fact was substantiated by marking Ex.D6, which is the information received under the Right to Information Act. If the intimation has been received at 1.45 a.m., it is not known as to why the respondent police have not acted upon it. The complaint came to be given at 05.00 a.m., and only thereafter, the FIR was registered and investigation was commenced. The police station is just one kilo metre from the place of occurrence and the place of occurrence had a huge crowd since there was a festival followed by a feast. Therefore, it is unbelievable that the police would not have known about this incident, if at all it had taken place at the alleged place of incident, till 05.00 a.m., the next day. This also throws a lot of doubt on the genesis of the incident.

19. When the origin of the prosecution case is suppressed, the case of the prosecution must fail and the benefit of doubt must be given to the accused person.

20. It will be useful to rely upon the judgment of this Court in ***Pattu @ Patturaj and others vs. State, rep., by the Inspector of Police, Thoothukudi North Police Station***, reported in ***2009(1)MLJ (Cri)133***

The relevant portion of the judgment is extracted hereunder:

"19. Coming to the conviction and sentence imposed upon Accused-1 to 5 & 7 to 9, the appellants in Crl.A.(MD) No. 415 of 2007, it is by now well settled that even a slight suspicion enters into the mind of the Court as to the prosecution case, the Court must be very cautious while scrutinising the evidence. P.W.1, who is an eye-witness and the author of the complaint, Ex.P13, has disowned not only the contents of the complaint, but also the fact that he lodged such a complaint to P.W.40, the Sub Inspector of Police as alleged by the prosecution. The fact that P.W.1 had turned hostile assumes importance if the other circumstances are also taken into consideration. It is the admitted case of P.W.6 that when Accused-1 attacked the deceased, he tried to prevent the further attack and in that process, he sustained injury. The said occurrence had taken place at



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10.00 p.m., on 15.7.99. Though the deceased Selvaraj was immediately taken to the hospital, P.W.6 was not sent to the hospital at least for further half-an-hour time. According to his evidence, the superior police officers came to the scene place and they enquired him about the occurrence. He has narrated the entire happenings to the police and the said statement was reduced into writing. This had occurred at 10.30 p.m. However, the First Information Report said to have been given by P.W.1 was recorded at 11.00 p.m. It is quite obvious that even before the complaint, Ex.P13 and the First Information Report, Ex.P14 came to be registered, the police had arrived at the scene of occurrence and has commenced the investigation by recording the statement of P.W.6. Strangely, the said statement has been suppressed by the police. In our opinion, the statement given by P.W.6 is the first information given to the police and not the complaint, Ex.P13 said to have been given by P.W.1 to P.W.40, which was registered in Ex.P14 at 11.00 p.m. When the very origin or genesis of the First Information Report itself is doubtful, the prosecution case cannot be believed. That apart, the suppression of the earlier information, which could be treated as first information, also throws a serious doubt about the very prosecution case itself. See MANU/SC/0170/1979 : 1980 SCC (Cri.) 985 (Marudanal Augusti v. State of Kerala). Division Bench judgments of this Court in 2005 (2) L.W. (Cri.) 779 (Secretary @ Mara Naicker and 7 Ors. v. State by Sub Inspector of Police, Sathyamangalam) & in 2005 (2) L.W. (Cri.) 787 (Subramani @ Manian v. Subramanian)."

21. It will also be relevant to rely upon the judgment of this Court in **Ravichandran and others vs. Inspector of Police, Thittakudi Police Station**, reported in **2007(2) LW (Cri) 827**. The relevant portion of the judgment is extracted hereunder:

"14. ....The Supreme Court as early as in the year 1976 in the case reported in 1976(4)SCC394(Lakshmi Singh vs. State of Bihar) held that when the origin of the



prosecution case is suppressed, then the prosecution case must fail. In this case for more than one reason, we find that the prosecution is definitely guilty of suppressing the origin of the case."

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### **22. Conclusion:**

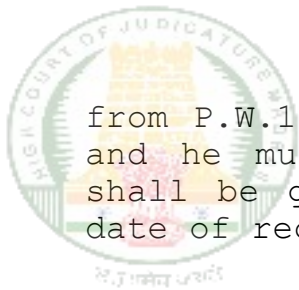
It is clear from the above judgments that the suppression of the earliest information throws a very serious doubt about the prosecution case itself. The Hon'ble Supreme Court has categorically held that when the origin of the prosecution case is suppressed, then the prosecution case must fail. In this case, for more than one reason, we find that the prosecution is definitely guilty of suppressing the origin of the case.

(22.1) We are thoroughly disappointed in the manner in which the investigating officer has conducted the investigation in this case. The investigating officer was aware of the fact that one Jerome, who is the brother of the deceased had gone to the hospital and met P.W.10, who declared the deceased to be brought dead. He fails to take the statement of Jerome and merely states that there is no such person called Jerome. This is a clear dereliction of duty on the part of the investigating officer. If the investigating officer had examined the said Jerome, the true case would have come out. Similarly, the information had gone to the police station at 1.45 a.m., and this entry was very much available in the general diary. The investigating officer does not even take note of it and he goes ahead with the investigation as if the police were informed for the first time only at 5.00 a.m. It is also not known as to why the investigating officer suppressed the accident register and did not mark it before the Court below. This itself shows that the investigating officer was not genuine with the investigation and he knew that the marking of the accident register will completely dislodge the case of the prosecution. The investigating officer was not even present before this Court at the time of hearing this criminal appeal.

(22.2) It will be useful to rely upon the judgment of the Hon'ble Supreme Court in the ***State of Gujarat vs. Kishanbhai and others***, reported in **2014 (5) SCC 108**. The relevant portion of the judgment is extracted hereunder:

" On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or





from P.W.13, since the investigation suffers from sheer negligence, and he must be subjected to departmental action. This direction shall be given effect to within a period of three months from the date of receipt of a copy of this judgment.

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Sd/-  
Assistant Registrar(AD-II)

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Sub Assistant Registrar

PJL

To

- 1 The I-Additional District and Sessions Judge,  
Tirunelveli.
- 2 The Judicial Magistrate,  
Nanguneri, Tirunelveli District.
- 3 do Through the Chief Judicial Magistrate,  
Tirunelveli District.
- 4 The Inspector of Police,  
Thisaiyanvilai Police Station,  
Tirunelveli District.
- 5 The Superintendent of Police,  
Tirunelveli District.
- 6 The Superintendent,  
Central Prison, Palayamkottai.
- 7 The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.
- 8 The Section Officer,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 copies)

+1 CC to M/s.R. ANAND, Advocate ( SR-89008[F] dated 24/09/2019 )

+2 CC to M/s.L.MAHENDRAN, Advocate SR-88629 & 89338

Judgment made in  
**Crl.A(MD)No.295 of 2017**  
**23.09.2019**

JM/14.10.2019/12P/13C