

**BAIL SLIP**

The Appellant 1/Accused A1 viz., George, S/o Dharmaraj, was released on bail in CRL MP(MD)No.3039 of 2018 in CRL A(MD)NO.479 of 2017 dated 23.04.2018 and Appellant 2/Accused 2 viz Rajarathinam @ Royal S/o. Chellaiah Nadar, and Appellant 3/ Accused 3 viz., Albert @ Albert, S/o. Rathinam were released on bail in CRL MP(MD) No.10890/17 in CRL.A(MD)479/2017 dated 10.01.2018.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
30.10.2019	01.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Cr1.A. (MD)No.479 of 2017

1.George

2.Rajarathinam @ Royal

3.Albert @ Albert : Appellants

Vs.

State Represented by
the Inspector of Police
Sathankulam Police Station
Thoothukudi District
Crime No.224/2015

: Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment dated 17.11.2017 in S.C.No.83 of 2016 on the file of the I Additional District and Sessions Judge, Thoothukudi.

For Appellants : Mr.K.Selvakumarasamy for

Mr.V.Arul

For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

**JUDGMENT****S. VAIDYANATHAN, J.****AND****N. ANAND VENKATESH, J.**

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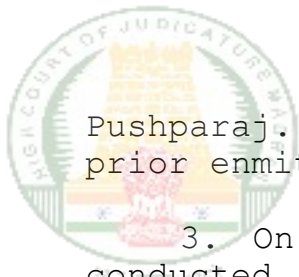
This criminal appeal has been filed against the judgment of I Additional District and Sessions Judge, Thoothukudi, dated 17.11.2017, made in S.C.No.83/2016, convicting and sentencing the appellants as follows:

S. No	Rank of the accused	Provisions under which convicted	Sentence of imprisonment	Fine amount
1	A-1	294(b) IPC	3 months simple imprisonment	-
		341 IPC	One month simple imprisonment	-
		302 IPC	Life imprisonment	Rs.50,000/-, in default to undergo two years simple imprisonment
		506(ii) IPC	2 years simple imprisonment	-
2	A-2 & A-3	294(b) IPC	Three months simple imprisonment	-
		342 IPC	One year simple imprisonment	-
		302 r/w 114 IPC	Life imprisonment	Rs.50,000/-, in default, to undergo two months simple imprisonment
		506(ii) IPC	2 years simple imprisonment	-

The sentences were ordered to run concurrently.

The case of the prosecution in brief:

2. A-1 was a committee member of Immanuel Church and the father of the deceased (P.W.-1) was also a member in the same Church. In the year 2014, there was an election that was conducted in the Church, in which, the father of the deceased (P.W.-1) and the deceased supported one Arputharaj and A-1 supported one Goerge



Pushparaj. In the said election, Arputharaj won and there was a prior enmity between the parties.

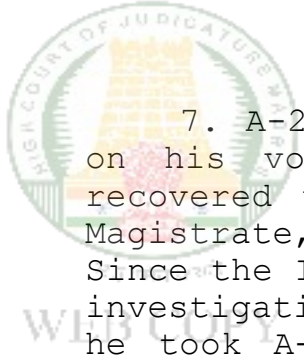
3. On 15.05.2015, the deceased attended a festival that was conducted in the Church along with his father (P.W.-1) and his mother Chandra and they stayed in the Church in order to participate in the prayer meeting that was scheduled to be conducted on 16.05.2015, at 3.30 a.m.

4. On 16.05.2015, at about 12.30 a.m., when the deceased was standing in front of the Church and chatting with Praveen Immanuel (P.W.-2), Melvin Abraham and Jerome, all the three accused persons are said to have come to the said place and abused the deceased in a filthy language and questioned him as to how after working against them in the election, he can come and participate in the festival. The deceased had replied stating that they have no right to question him. Immediately, A-1 took the knife that was concealed in his hip and shouted against the deceased that only if he is alive, he will attend the festival and saying so, attempted to attack the deceased. The deceased took to his heels and he was chased by the accused persons for some distance and A-2 and A-3 restrained the deceased by physically holding him and the first accused person is said to have stabbed the deceased on the left neck and the deceased fell down. The witnesses, who were present there, shouted and they were also threatened by the accused persons and they ran away from the scene of crime. The deceased was taken to the Government Hospital, Sathankulam and he was declared brought dead.

Complaint and the materials collected during the course of investigation:

5. The father of the deceased (P.W.-1) along with his wife went to the trainee Sub Inspector of Police, Sathankulam (P.W.-17) and had given a complaint (Ex.P-1) at about 2.30 a.m. and on receipt of the same, an FIR (Ex.P-14) was registered in Crime No.224/2015 for offence under Sections 294(b), 342, 302 and 506(ii) IPC. The express FIR was handed over to the Constable (P.W.-14) and he reached it to the Judicial Magistrate, Sathankulam, at 6.00 a.m.

6. The investigation was taken over by the Inspector of Police (P.W.-19) and he went to the scene of crime at about 5.00 a.m. and with the help of street light and emergency light, he prepared the observation mahazar (Ex.P-18) and rough sketch (Ex.P-19) and also recovered material objects (M.O.-12 and M.O.-13) in the presence of witnesses. He thereafter proceeded to the Sathankulam Government Hospital and conducted the inquest over the dead body in the presence of Panchayatdars and prepared the inquest report (Ex.P-21) and handed over the body to the Head Constable (P.W.-15) with a requisition to conduct the postmortem and thereafter to hand over the body to the relatives. The clothes from the body of the deceased was also recovered and sent to the forensic laboratory along with a requisition.



7. A-2 was arrested on 16.05.2015 at about 3.00 p.m. and based on his voluntary confession (Ex.P-5), a bloodstained shirt was recovered under Ex.P-22. He was thereafter sent to the Judicial Magistrate, Sathankulam and he was remanded to judicial custody. Since the Investigating Officer went on leave, for a short time, the investigation was continued by the Inspector of Police (P.W.-18) and he took A-1 and A-3 on police custody after getting appropriate orders and based on the confession of A-1, the knife (M.O.-1) was recovered and based on the confession of A-1 and A-3, the vehicle (M.O.-2) was recovered.

8. The Inspector of Police (P.W.-19) recorded the statement of all the witnesses under Section 161(3) Cr.P.C. and after getting the postmortem certificate, biological report and the serological report and after completion of the investigation, filed a final report on 17.08.2015 before the Judicial Magistrate, Sathankulam.

9. The case was committed to the file of the I Additional District and Sessions Court, Thoothukudi and the trial Court framed charges against the accused persons.

10. The prosecution examined 19 witnesses [P.W.-1 to P.W.-19], marked 23 documents [Ex.P-1 to Ex.P-23] and 13 material objects [M.O.-1 to M.O.-13].

11. The trial Court questioned the accused persons under Section 313(1)(b) of the Code of Criminal Procedure by putting the incriminating materials collected against them during trial and the same was denied as false.

12. The I Additional District and Sessions Judge, Thoothukudi, after considering the facts and circumstances of the case and after analyzing the oral and documentary evidence, came to the conclusion that the prosecution has proved the case beyond reasonable doubts and proceeded to convict and sentence the appellants in the manner stated supra.

Submissions:

13. The learned counsel appearing on behalf of the appellants made the following submissions:

- The prosecution has examined P.W.-1 and P.W.-2 as eyewitnesses in this case and P.W.-2 has turned hostile and did not support the case of the prosecution. Insofar as the incident is concerned, P.W.-1 could not have seen the incident. Therefore, the evidence of both P.W.-1 and P.W.-2 will have to be rejected.
- Even as per the case of the prosecution, the occurrence took place in the presence of one Koilraj, mother of the deceased Chandra, Praveen Immanuel, Melvin Abraham and Jerome and none of these witnesses were examined by the prosecution. Since the material witnesses to the case have not been examined by the

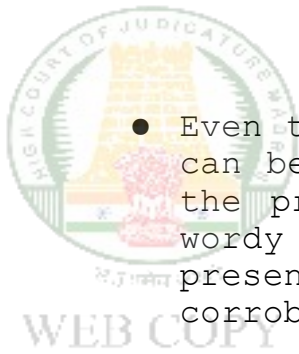


prosecution, it must be construed that the prosecution has intentionally withheld these witnesses and the non-examination gains significance. In order to substantiate the said argument, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in **Joginder Singh v. State of Haryana** reported in **2014 (11) SCC 335**.

- There was a previous enmity between the parties due to the election dispute and therefore, P.W.-1 had intentionally roped in the appellants as accused persons and it is attended by *mala fides*.
- The Investigating Officer (P.W.-19) has stated that P.W.-1 and his wife accompanied the deceased in the Ambulance. However, P.W.-1 very specifically states that they did not go in the Ambulance and it was one Shekar, who accompanied the deceased and later P.W.-1 and his wife went by an Auto to the Hospital. The said Shekar has not been examined in this case by the prosecution.
- P.W.-1 has deposed that he went to the police station to prefer the complaint at about 5.00 a.m. However, the police (P.W.-17) has deposed that the FIR was registered at 2.30 a.m. This completely contradicts the evidence of P.W.-1.
- The Sub Inspector of Police, who registered the FIR and was examined as P.W.-17, has further stated that he received the information from Sathankulam Government Hospital at about 1.50 a.m. on 16.05.2015 and he went to the hospital and received the information regarding the death of Praveenkumar and came back to the Police Station at about 2.30 a.m. and got a complaint from P.W.-1 and registered the FIR. Therefore, the first information was received by P.W.-17 only from the hospital and not from P.W.-1.
- The recovery of M.O.-1 took place nearly after 10 days on 28.05.2015 and the place from which the knife was recovered is a public place to which the general public have easy access. Therefore, the recovery itself becomes doubtful.
- The prosecution has not established the case beyond reasonable doubts and therefore, the benefit of doubt has to be extended to the appellants and they must be acquitted from all charges.

14. The learned Additional Public Prosecutor appearing on behalf of the State made the following submissions:

- P.W.-1 has categorically stated about the incident and the overt-act with regard to each of the accused persons and there is nothing to discredit his evidence.



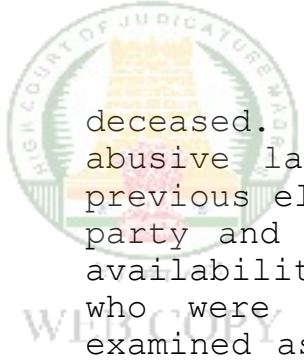
- Even though P.W.-2 was treated as hostile witness, his evidence can be taken into account for establishing the motive and also the presence of the accused persons and the deceased and the wordy quarrel that took place before the incident and the presence of the knife in the hands of A-1. His evidence corroborates the evidence of P.W.-1 to that extent.
- The evidence of P.W.-5 and P.W.-6 clearly speaks about the previous enmity between the parties and the motive behind the crime.
- The evidence of P.W.-7, who is the postmortem Doctor, clearly speaks about the injuries sustained by the deceased and it correlates with the overt-act attributed against the appellants by P.W.-1.
- The evidence of P.W.-9 and P.W.-10 clearly establishes the arrest and recovery, which further corroborates the case of the prosecution.
- The evidence of the Doctor (P.W.-11) clearly establishes the fact that the deceased was brought in 108 Ambulance to the Sathankulam Government Hospital at about 1.40 a.m. on 16.05.2015 and he being examined was found dead. The injuries found in the body was also recorded in the Accident Register (Ex.P-6).
- There was no delay in the registration of the FIR, express FIR reaching the Court and the commencement of the investigation and the prosecution has proceeded in a cogent manner with the investigation.
- The trial Court has properly appreciated the oral and documentary evidence and convicted and sentenced the accused persons and there is no ground to interfere with the same.

Discussion:

15. This Court has carefully considered the submissions made on either side and analyzed the oral and documentary evidence.

16. The dispute between the parties arising out of the election in the Church, which formed the motive for the crime, has been sufficiently spoken to by P.W.-1, P.W.-5, P.W.-6 and P.W.-8 and there is absolutely no ground to discredit the evidence of these witnesses with regard to the motive behind the crime.

17. The evidence of P.W.-1, who is the father of the deceased, shows that just before the incident, the deceased, one Melvin Abraham, P.W.-2 and Jerome were talking near the Church. At that time, the accused persons had come to that place around 12.30 a.m. and picked up a quarrel with the deceased. This has been spoken by P.W.-1 and Praveen Immanuel (P.W.-2), who is the friend of the



deceased. Both P.W.-1 and P.W.-2 consistently state regarding the abusive language used by the accused persons and also about the previous election dispute, where the deceased supported the opposite party and the threat exerted by the accused persons and also the availability of the knife with A-1. Even though the other persons, who were present, namely, Melvin Abraham and Jerome were not examined as witnesses, that does not in any way affect the case of the prosecution with regard to the incident that took place prior to the actual attack on the deceased.

18. It is the specific evidence of P.W.-1 and P.W.-2 that immediately after A-1 took the knife and threatened the deceased, the deceased ran away from the place and he was chased by all the accused persons. Thereafter, it was only P.W.-1, who speaks about the incident as an eyewitness. Even though P.W.-2 was examined as eyewitness, he did not support the case of the prosecution with regard to the actual attack by the accused persons against the deceased. It, therefore, becomes important for this Court to carefully analyze the evidence of P.W.-1.

19. P.W.-1, in his evidence, states that place of occurrence was almost 300 meters from the Church and when the accused persons were chasing the deceased, he claims that he along with his wife and one Melvin Abraham ran behind them. Admittedly, nearly 500 persons have participated in the festival. P.W.-1, in his chief-examination claims that he saw A-2 and A-3 holding the hands of the deceased and A-1 stabbing the deceased with knife in the left neck. In the cross-examination, he states that his age is about 55 years and the age of his wife is about 49 years and they have some medical issues. The attempt made by the learned counsel for the appellants is that P.W.-1 could not have seen the incident, since, by the time he reached the place of occurrence, the accused persons had reached well before and they will not be waiting for P.W.-1 to witness the crime. Therefore, the respondent police not examining the wife of P.W.-1 and Melvin Abraham becomes a crucial factor.

20. It is true that in a given case, non-examination of material witnesses, despite their availability, may become a significant factor, if the available evidence does not substantially establish the case of the prosecution. It was so held by the Hon'ble Supreme Court in the judgment cited by the learned counsel for the appellants. In all such cases, the Court will construe that the prosecution had intentionally withheld the material witnesses.

21. In the present case, even if it is taken for the sake of argument that P.W.-1 could not have run behind the accused persons and witnessed the actual incident, it can be clearly seen that A-1 was having a knife in his hand and P.W.-1 saw his son lying in a pool of blood, after he was attacked with the knife on his left neck. In the course of natural events, except A-1, no one else could have caused this injury to the deceased. At this point of



time, it will be relevant to extract the injuries as found in the postmortem Certificate (Ex.P-3):

"Injuries: External

1. A stab injury of about 3 x 2 ½ cm size over left side of front of neck just above the medial end of left clavicle, deeply penetrating intercostal muscles, puncturing veins and great vessels and ending up in the posterior pericardium, dried blood around Heart and arteries 1500 ml of blood in the mediastinum.
2. Two laceration of about 1 ½ x ½ x ½ cm size over left middle finger. DB present.
3. Two laceration of about 3 x ½ x ½ cm size over right little finger. DB present.
4. An abrasion of about ½ x ½ x ½ cm over right thumb. DB present.

Internal : All internal organs : Pale - Hyoid intact; stomach contains about 600 g of undigested rice.

Opinion as to cause of death:

The deceased would appear to have died of shock due to injuries to vital organs and blood loss due to injury sustained by him about 12 to 18 hrs prior to postmortem. 16.05.2015."

22. The postmortem Doctor (P.W.-7) has categorically stated in his evidence that the first injury could be caused by the knife and the deceased had died due to the shock due to injury to the vital organ and blood loss due to injury.

23. It is true that there is a discrepancy with regard to the person, who accompanied the deceased in the Ambulance to the Government Hospital, Sathankulam. This discrepancy is only a minor contradiction, which will not completely discredit the evidence of P.W.-1. The fact remains that the deceased was examined by the Doctor (P.W.-11) at about 1.40 a.m. on 16.05.2015 and she merely states that the person, who brought the deceased was the 108 Ambulance and there is no mention with regard to the name of the person, who brought the deceased to the hospital.

24. After the incident, A-1 was taken police custody on 27.05.2015 and based on his confession, made in the presence of P.W.-9, the knife (M.O.-1) was recovered. This has been spoken to by P.W.-9.

Findings:

25. A combined reading of the materials available before this Court satisfies this Court with regard to the involvement of A-1 in this crime. Except A-1, no one else could have attacked the deceased with the knife and the sequence of events as spoken by the witnesses, clearly establishes this fact beyond reasonable doubts.



26. The next issue that has to be considered by this Court is regarding the involvement of A-2 and A-3 in this case. It is true that A-2 and A-3 were present along with A-1. The trial Court has not framed any charge against A-2 and A-3 under Section 34 of IPC. On the other hand, the trial Court has framed a charge against A-2 and A-3 for an offence under Section 302 read with 114 IPC. In other words, the charge against A-2 and A-3 is for the offence of abetment. There is absolutely no material available in this case to prove the charge of abetment against A-2 and A-3. In order to prove the charge of abetment, there must be material to show that either the accused persons instigated or intentionally aided or conspired to commit the offence. None of these ingredients have been satisfied in this case. It is not the case of the prosecution that A-2 and A-3 had done some individual acts in furtherance of the common intention. The charge under Section 34 IPC is only a rule of evidence and does not create a substantive offence. However, the Court below has not thought it fit to frame a charge under Section 34 IPC read with 302 IPC. That apart, the evidence of P.W.-1, insofar as A-2 and A-3 are concerned, looks unnatural and the manner in which the incident has been explained by P.W.-1 to the effect that it took place 300 meters away from the Church, after the deceased was chased by the accused persons, could not have enabled P.W.-1 to have actually witnessed the overt-act that is attempted to be attributed to A-2 and A-3. Except for the evidence of P.W.-1, there is no other evidence available against A-2 and A-3. This Court does not find it safe to convict A-2 and A-3 for the major offence and the benefit of doubt has to be given to them.

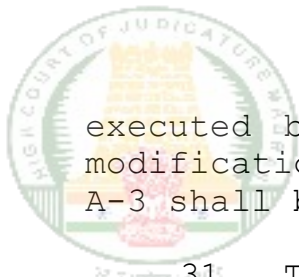
Conclusion:

27. In view of the above discussions, this Court comes to the conclusion that the prosecution has made out a case against the first appellant (A-1) for offence under Sections 294(b), 341 and 302 IPC. He is entitled to be acquitted for the charge under Section 506(ii) IPC.

28. Insofar as the second and third appellants (A-2 and A-3) are concerned, the prosecution has not proved the case beyond reasonable doubts for the offence under Sections 342, 302 r/w 114 and Section 506(ii) IPC. Only an offence under Section 294(b) IPC has been made out against them.

29. In the result, this criminal appeal is partly allowed and the conviction and sentence of the first appellant (A-1) is sustained insofar as the offence under Sections 294(b), 341 and 302 IPC and he is acquitted of the charge under Section 506(ii) IPC.

30. With regard to the second and third appellants (A-2 and A-3), they are acquitted from the charges under Sections 342, 302 r/w 114 and 506 (II) IPC and their conviction is sustained only insofar as the offence under Section 294(b) IPC is concerned and they are sentenced to the period already undergone by them. The bail bond



executed by A-2 and A-3 shall stand terminated, in view of the modification of sentence. The fine amount, if any, paid by A-2 and A-3 shall be refunded to them.

31. The first appellant (A-1) is directed to immediately surrender before the Judicial Magistrate, Sathankulam, Thoothukudi District and he is further directed to be confined in jail in order to undergo the remaining period of sentence.

32. If the first appellant does not surrender, the respondent police is directed to immediately secure him and produce him before the Judicial Magistrate, Sathankulam in order to confine him to the jail to undergo the remaining period of sentence.

Sd/-

Assistant Registrar (CS-I)

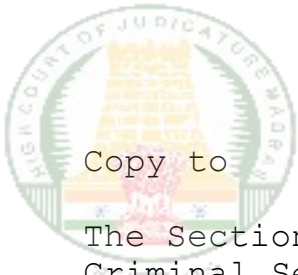
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Sub Assistant Registrar (CS)

RR

To

1. The I Additional District & Sessions Judge,
Thoothukudi District.
2. The District Collector,
Thoothukudi District, Thoothukudi.
3. The Director General of Police,
Mylapore, Chennai.
4. The Judicial Magistrate, Sathankulam, Thoothukudi District.
5. -Do- Thro The Chief Judicial Magistrate,
Thoothukudi District.
6. The Superintendent, Central Prison,
Palayamkottai.
7. The Inspector of Police
Sathankulam Police Station
Thoothukudi District
8. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.
9. The Superintendent of Police,
Thoothukudi District.



Copy to

The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.V.ARUL, Advocate (SR-95371[F] dated 01/11/2019)

Judgment made in
Crl.A. (MD) No.479 of 2017
01.11.2019

VB(14.11.2019) 11P 13C