



Bail Slip

Selvaraj, S/o.Nagappan @ Periyasamy, Male, aged about 41/2009, (Accused No.2) is released on bail vide Court order dated 12.08.2009 made in MP(MD).No.1 of 2009 in Crl.A(MD).No.199 of 2009.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.08.2019

PRONOUNCED ON : 02.01.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.A.(MD).No.199 of 2009 and
CRL.R.C.(MD)No.42 of 2010

CRL.A.(MD)No.199 of 2009

1. Paramasivam

2. Selvaraj

... Appellants/Accused Nos.1 and 2

Vs.

State rep. by,
The Inspector of Police,
Thogamalai police station,
Karur District.

Crime No.47 of 2008.

... Respondent/Complainant

PRAYER : Criminal appeal is filed under Sections 374 of Cr.P.C., to set aside the Judgment and sentence passed in S.C.No.5 of 2009 dated 16.07.2009 on the file of the learned District and Sessions Court, Karur, convicting the first appellant under Section 324 of I.P.C. and sentenced to undergo 2 months Rigorous Imprisonment and pay a fine of Rs.1,000/- in default to undergo Rigorous Imprisonment for 15 days and convicting the second appellant under Section 304(ii) and 324 of I.P.C. and sentenced to undergo 3 years Rigorous Imprisonment for the offences under Section 304(ii) of I.P.C. and to pay a fine of Rs.1,000/- in default to undergo Rigorous Imprisonment for one month, and sentenced to undergo 2 months Rigorous Imprisonment for the offences under Sections 324 of I.P.C. and imposed a fine of Rs.1,000/- in default to undergo Rigorous Imprisonment for 15 days and ordered to serve the sentence concurrently.



CRL.R.C.(MD)No.42 of 2010

Sakthi @ Sakthiganapathi

... Petitioner/P.W.No.1

Vs.

1. State rep. by,
The Inspector of Police,
Thogamalai police station,
Karur District.

...

Respondent/Complainant

2. Paramasivam
3. Selvaraj
4. Palaniyammal
5. Paragathambal
6. Sekar
7. Dhanabal

... Respondents 2 to 7/
Accused Nos.1 to 6

PRAYER : Criminal revision is filed under Section 397 r/w 401 of Cr.P.C., to call for the records connected with the Judgment dated 16.07.2009 in S.C.No.5 of 2009 on the file of the learned District and Sessions Judge, Karur and set aside the same.

For Petitioners : Mr.K.P.Narayanakumar
in Crl.A.(MD)No.199 of 2009

Mr.R.Alagumani
in Crl.R.C.(MD)No.42 of 2010

For Respondents : Mr.A.Robinson,
Government Advocate(Crl.Side)
for sole respondent
in Crl.A.(MD)No.199 of 2009
and for R-1
in Crl.R.C.(MD)No.42 of 2010

Mr.K.P.Narayanakumar
for R-2 to R-7
in Crl.R.C.(MD)No.42 of 2010

COMMON JUDGMENT

This criminal appeal as well as the criminal revision case arise out of the Judgment dated 16.07.2009 made in S.C.No.5 of 2009 on the file of the District and Sessions Judge, Karur.

2. The appeal is at the instance of the convicted accused, while the revision case has been filed by the defacto complainant seeking enhancement of the sentence for the convicted accused and



reversal of acquittal of the remaining accused.

3. The case of the prosecution in brief is this:

There is a civil dispute between the deceased Chinnasamy and the first accused Paramasivam. Paramasivam filed a suit against Chinnasamy and the same ended in favour of Chinnasamy. Therefore, on 28.01.2008 at about 03.30 p.m., Chinnasamy, his daughter-in-law Ramayi and his son Sakthi @ Sakthi Ganapathy went to the occurrence spot and started digging holes. Accused Nos.1 to 6 forming an unlawful assembly came to the spot and questioned Chinnasamy. Chinnasamy replied that since the civil case had ended in his favour, he was entitled to go ahead with the construction activity. Thereupon at the instigation of the first accused, the other accused attacked Chinnasamy and injured him severely. Ramayi was also attacked. Chinnasamy was rushed to Kulithalai Government Hospital. He was referred to Government Hospital, Trichy, for better treatment. Chinnasamy died at Trichy Government Hospital at about 11.30 p.m.

4. Sakthi @ Sakthi Ganapathy who was taking treatment at Kulithalai Government Hospital, was examined by the police and his statement was recorded(Ex.P.1). Based on the same, Crime No.47 of 2008 was registered on the file of Thogamalai police station.

5. The case was taken up for investigation and the investigation officer filed final report before the Judicial Magistrate No.I, Kulithalai, against the appellants and four others. The case was committed to the Sessions Court and the charges were framed against all the accused for the offence under Section 148 of I.P.C. According to the prosecution, the first accused Paramasivam instigated the other accused to kill Chinnasamy. He was charged for the offence under Section 302 of I.P.C. r/w. Section 109 of I.P.C. Accused Nos.1 and 2 were also charged with the offence under Section 302 r/w 34 of I.P.C. According to the prosecution, the first accused inflicted cut injury on the head of Chinnasamy while the second accused assaulted the deceased with wooden log on his forehead. Accused Nos.2 and 4 were alleged to have assaulted P.W.1 and P.W.2 and hence charged with the offence under Section 324 of I.P.C. Accused No.6 is said to have caused injury in the left middle finger of P.W.1. Therefore, accused No.6 was charged with the offence under Section 323 of I.P.C. Accused No.3 had assaulted P.W.2 on her shoulder with wooden log. Accused No.5 assaulted P.W.2 with wooden log. Therefore, they were charged for the offence under Section 324 of I.P.C. Accused Nos.3 to 6 who had a common intention to cause the occurrence were charged for the offence under Section 302 of I.P.C. r/w. 149 of I.P.C.

6. The prosecution examined as many as 13 witnesses and marked Ex.P.1 to Ex.P.35 and also marked M.O.1 to M.O.10. The accused marked Ex.D.1 to Ex.D.5. The accused were questioned on the circumstances during the examination under Section 313



of Cr.P.C. After hearing the counsel on either side, the learned trial Judge convicted accused Nos.1 and 2 as follows:-

1 st Accused	Convicted u/s.324 of IPC and sentenced to undergo two months R.I. with fine of Rs.1,000/- in default to undergo R.I. For 15 days.
2 nd Accused	Convicted u/s.304(ii) and 324 of IPC sentenced to undergo 3 years R.I., for 304(ii) of IPC and fine of Rs.1,000/- i/d to undergo R.I. for one month and also sentenced to undergo two months R.I. for offence punishable under Section 324 of IPC, and pay fine of Rs.1,000/- i/d to undergo R.I. for 15 days.

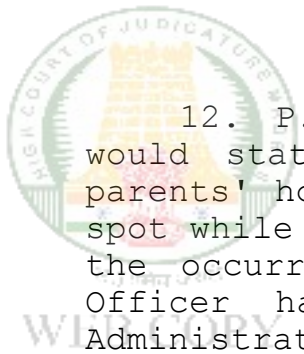
7. The other accused were acquitted of all the charges. Challenging their conviction, accused Nos.1 and 2 filed Crl.A.(MD) No.199 of 2009. Challenging the acquittal, the defacto complainant filed Crl.R.C.(MD)No.42 of 2010. Since the appeal as well as the revision case arise out of the same Judgment, they are being disposed of by this common Judgment.

8. The learned counsel appearing for the accused as well as the learned counsel appearing for the defacto complainant reiterated the contentions set out in the memorandum of grounds.

9. The learned Government Advocate(Crl. Side) submitted that the impugned Judgment does not warrant any interference.

10. I carefully considered the rival contentions and perused the evidence on record.

11. The star witnesses for the prosecution are P.W.1, P.W.2 and P.W.3, namely, the son, the daughter-in-law and the wife of the deceased Chinnasamy. The three witnesses would in unison depose that there was an enmity between the two families over a piece of land. These witnesses would claim that the vacant site belongs to them and that the accused are also claiming over the same. Accused No.1 Paramasivam filed a civil suit. Initially injunction was granted in favour of Paramasivam. But after the trial, the suit was dismissed. Therefore, in order to erect a shed in the said site, Chinnasamy, Ramayi and P.W.1 were digging pits. It was, then the accused came to the spot and questioned Chinnasamy. Since the civil Court's Judgment ended in favour of Chinnasamy, he brushed aside the objections. This enraged Paramasivam who instigated the other accused to kill Chinnasamy. He also for his part hacked Chinnasamy on his head with his Aruval. These witnesses supported the prosecution case in toto.

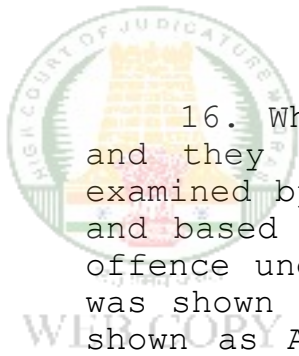


12. P.W.4 is the daughter of the deceased Chinnasamy. She would state that on the occurrence date, she was also in her parents' home and that P.W.1, P.W.2 and that her father left for the spot while P.Ws.3 and 4 joined them a little later and that was when the occurrence took place. P.W.5 is the Village Administrative Officer had signed Ex.P.4 Magazar. P.W.6 is another Village Administrative Officer who witnessed the confession and recovery. P.W.7 worked as Head Clerk in the Judicial Magistrate No.1 Court, Kulithalai and he despatched the material objects to the Forensic Department for examination. P.W.8 received Ex.P.1 complaint as well as the First Information Report and handed over the same to the Judicial Magistrate on 28.04.2008 at about 2.00 a.m. P.W.9 Vijayakumar is the police constable who received the body of the deceased on 29.01.2008 and handed over the same for postmortem along with requisition letter.

13. P.W.10 Thiraviyanathan is the Sub Inspector of Police who recorded the statement of P.W.1 Sakthi and based on the same, registered First Information Report. P.W.11 Dr.A.Karthikeyan conducted postmortem and issued Ex.P.19 Postmortem Certificate. P.W.12 had treated P.W.1 Sakthi on 28.01.2008 and entered the details in Ex.P.20 Accident Register. She also admitted Ramayi and made entries in Ex.P.21. P.W.13 Rajendran, Inspector of Police conducted the investigation. The investigation officer deposed that on 29.01.2008 at about 01.30 a.m. he received a copy of the complaint and that he thereafter commenced investigation on the same day. He went to the occurrence spot and prepared Observation Magazar and also Rough Sketch in the presence of the witnesses. Inquest was conducted on the next day and the statements of the various witnesses were also recorded. He recorded further statements of the eyewitnesses, namely, Sakthi @ Sakthi Ganapathy, Sethurathinam, Ramayi and Papathy on 30.01.2008. On 31.01.2008, he arrested the accused Selvaraj and Pragathambal and recorded their confession. Some the material objects were recovered from their confession on 01.02.2008 at about 9.00 a.m. Accused No.1 Paramasivam was arrested and confession was also recorded. After examining all the witnesses and completing all the formalities, he laid final report against all the six accused before the jurisdictional Magistrate.

14. The question that arises for consideration is whether the impugned Judgment deserves to be affirmed as such.

15. It must be stated at the very outset that even though the eyewitnesses have deposed that accused No.1 Paramasivam hacked Chinnasamy with Aruval on his head, the postmortem doctor had categorically opined that the death of Chinnasamy would not have occurred on account of M.O.1 Sickle. According to him, on account of any sharp edged weapon, the injuries found on the body of the deceased would not have happened.



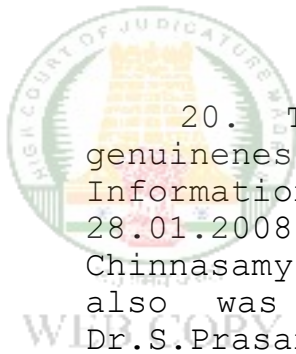
16. What is striking is that both A1 and A2 suffered injuries and they were also admitted in the hospital. A2 Selvaraj was examined by the police and his statement was recorded on 29.01.2008 and based on the same, crime No.48 of 2008 was registered for the offence under Section 323 and 324 of I.P.C. The deceased Chinnasamy was shown as accused No.1 while Sakthi @ Sakthi Ganapathy P.W.1 was shown as A2. The said First Information Report is to the effect that on 28.01.2008 at about 3.30 p.m., during the altercation Chinnasamy attacked accused No.1 Paramasivam on his left shoulder. Accused No.1 fell down. When accused No.2 rushed to lift accused No.1 Paramasivam who is his elder brother, Chinnasamy attacked him with a wooden log on his head. When A2 Selvaraj tried to ward it off, he suffered injury on his right hand.

17. Ex.D.2 Accident Register pertains to Paramasivam. Ex.D.3 is the Accident Register pertaining to Accused No.2 Selvaraj. Ex.D.4 is the Wound Certificate while Ex.D.5 is also the Wound Certificate. The Wound Certificates were issued by the Assistant Surgeon, Annal Gandhi Memorial Government Hospital, Thiruchirappalli. It can be seen therefrom that both accused Nos.1 and 2 had suffered head injuries and accused No.2 suffered a fracture in his right elbow. As rightly pointed out by the learned trial Judge, the injuries on the accused have not at all been explained by the prosecution witnesses. In fact they made a deliberate attempt to suppress the facts.

18. After a careful perusal of M.O.2 photos, it was concluded that there was already a shed standing on the disputed property and the deceased, his son and the daughter-in-law had come to the spot to pull it down. The claim that the deceased and his family members came to the spot to dig holes for constructing a shed, is patently false. The site in question is located opposite to the house of the accused. The family members of the deceased are residing a little far away from the disputed spot. The shed was already in existence. It is no doubt true that accused No.1 Paramasivam filed a suit against the deceased Chinnasamy and that the same was dismissed. Chinnasamy did not file any case. He straightaway came to the spot and tried to pull down the standing structure. While it may not be entirely appropriate to characterise Chinnasamy and his son Sakthi as aggressors, the fact remains that they had invited the trouble. The fact remains that Paramasivam had suffered injuries on his left parietal and right occipital regions. In Wound Certificate Ex.D.4, doctor characterised them as simple injuries and their dimensions are as follows:-

- "1) Laceration over left parietal 5 x 1 x 0.5 cms.
- 2) Laceration over right occipital 4 x 1 x 1 cms."

19. Accident Register Ex.D.3 states that he was unconscious and only thereafter, X-Ray was taken. It was recorded that skull bones have not suffered any injury.



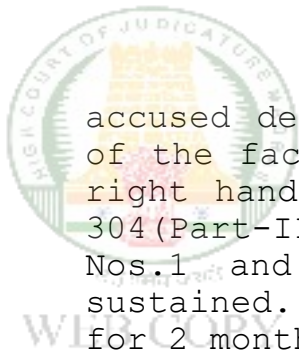
20. There is also considerable doubt regarding the very genuineness of Ex.P.1 complaint and the registration of First Information Report. The occurrence admittedly had taken place on 28.01.2008 at about 03.30 p.m. It is also not in dispute that Chinnasamy died on the same day at about 11.30 p.m. P.W.1 Sakthi also was admitted to a nearby hospital immediately. P.W.12 Dr.S.Prasanna Lakshmi deposed that Sakthi was admitted to Government Hospital, Thiruchirappalli at about 6.55 p.m. on 28.01.2008.

21. P.W.10 Thiraviyanathan recorded the statement of Sakthi. He would claim that he received intimation from the Government Hospital, Thiruchirappalli, only at around 3.00 a.m. on 29.01.2008 and that he thereafter, proceeded to the hospital to examine Sakthi. But then, in his cross examination he asserts that no such endorsement regarding receiving intimation from Trichy Government Hospital was made by him. The specific suggestion that a prior complaint was already received by the police and that the same was substituted following the death of Chinnasamy. Of course P.W.10 had denied the said suggestion. The prosecution does not inspire my confidence. A serious incident had taken place at about 3.30 p.m. in Naganottakaran Village. It is located at a distance of hardly 7 kms. from the police station. Four persons had suffered injuries, one of them had fainted, while the other had suffered serious injuries.

22. Therefore, it is improbable that the police did not receive information immediately after the occurrence. There is a considerable weight and substance in the contention of the defence counsel that after receiving complaints from both sides, the police deliberately delayed registering the First Information Report. Chinnasamy died at around mid night. Therafter a fresh statement was obtained from P.W.1 in which all the members of the accused family stood implicated.

23. The findings of the trial Court do not warrant any interference. The Court below took note of the fact that the occurrence had taken place right in front of the house of accused No.1 Paramasivam. The house of Chinnasamy is at a distance of 250 feet away from the occurrence spot. Chinnasamy, P.W.1 and P.W.2 had come to the spot and invited the trouble. The witnesses have not been truthful. They had suppressed the genesis of the occurrence. The prosecution had not at all explained the injuries sustained by accused Nos.1 and 2. In any event accused No.1 could not have caused the vital injuries on the victim. Even the second accused also may not have any intention to kill Chinnasamy. Chinnasamy had attacked accused No.1 Paramasivam. When accused No.2 rushed to his rescue, the events unfolded otherwise.

24. Therefore, even while sustaining the Judgment of the Court below, both in respect of conviction as well as acquittal, I am of
<https://hcservices.ecourts.gov.in/hcservices/> the conviction and sentence imposed on the second



accused deserves to be substantially modified. I have to take note of the fact that the second accused had suffered a fracture in his right hand. Therefore, he is acquitted of the charge under Section 304(Part-II) of I.P.C. also. However, the conviction of accused Nos.1 and 2 for the offence under Section 324 of I.P.C. is sustained. They were sentenced only to undergo Rigorous Imprisonment for 2 months for the offence under Section 324 of I.P.C.

25. The learned counsel appearing for the appellants undertakes that the second accused will deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the credit of S.C.No.5 of 2009 on the file of the District and Sessions Judge, Karur, within a period of two months from the date of receipt of a copy of this order. On such deposit, the wife of the victim is entitled to withdraw the same.

26. The criminal appeal stands partly allowed, accordingly. The learned trial Judge is directed to secure the appellants to undergo the remaining period of sentence. The bail bond, if any, executed by them shall stand cancelled.

27. The criminal Revision stands dismissed.

Sd/-

Assistant Registrar (CO)

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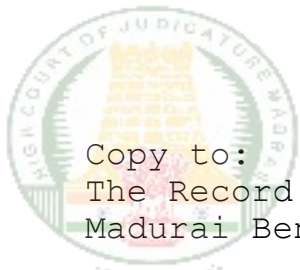
/ /2020

Sub Assistant Registrar(CS)

pmu

To

1. The District and Sessions Judge,
Karur.
2. The Judicial Magistrate NO.III,
Kulithalai.
3. The Chief Judicial Magistrate, Karur.
4. The Inspector of Police,
Thogamalai police station,
Karur District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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+1 CC to M/s.K.P.NARAYANAKUMAR, Advocate (SR-67[F] dated 03/01/2020

+1cc to Mr.A.Balakrishnan,Advocate, SR.No.66

+1cc to Mr.R.Alagumani,Advocate, SR.No.57

CRL.A.(MD).No.199 of 2009 and
CRL.R.C.(MD)No.42 of 2010
02.01.2020

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