



Bail Slip

The Appellants/Accused Nos.1&4 namely 1.Bharathan,Male,aged about 46 years 2.Lingam @ Lingasamy,Male, aged about 46 years were released in bail vide order made in Crl.MP(MD)No.2154/2018 in Crl.A.(MD)No.134 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

and

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A.(MD)No.134 of 2018

1.Bharathan, S/o.Lingam

2.Lingam @ Lingasamy, S/o.Mahalingam ... Appellants/A1 and A4
Vs.

State through

The Inspector of Police,

Kallikudi Police Station,Madurai District.

(In Crime No.50 of 2010)

... Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code, praying to call for the entire records connected to the Judgment dated 16.11.2017, passed in S.C.No.305 of 2012, on the file of the IV Additional District and Sessions Court, Madurai, and set aside the conviction and sentence imposed against the appellant.

For Appellants

: Ms.A.S.Rajeswari

For Respondent

: Mr.R.Anandaraj

Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was made by **T.RAJA, J.**)

The appellants are the Accused Nos.1 and 4 in S.C.No.305 of 2012, on the file of the IV Additional District and Sessions Court, Madurai, and they stood charged and tried for the commission of offences under Sections 148, 341 r/w. 149, 302 r/w. 149 and 506(ii) r/w. 149 IPC. The Trial Court, vide judgment dated 16.11.2017, has found them guilty for the commission of offence under Section 302 I.P.C. and sentenced them as follows:-

Appellant /Accused	Offence	Sentence
1 st Appellant /A1	302 IPC	Life imprisonment and fine of Rs.5,000/-, i/d. 3 months S.I.
2 nd Appellant /A4	302 r/w. 34 IPC	Life imprisonment and fine of Rs.5,000/-, i/d. 3 months S.I.



The appellants/A1 and A4, aggrieved by the impugned judgment of conviction and sentence passed by the Trial Court, came forward with this Criminal Appeal.

2. Facts leading to the filing of this Criminal Appeal, relevant for the purpose of disposal of this case, briefly narrated, are as follows:

2.1. It is the case of the prosecution that totally there are 10 persons involved in the commission of offence, among them 3 are minors. On 12.02.2010, the Village people of Aavalsooranpatti celebrated Mahashivarathiri festival in Kamakshiammn Temple. The de-facto complainant viz., Balamurugan [P.W.3], his brother Illanchezhian [deceased], the first appellant/A1 - Bharathan and minor Vijayaprabakaran and their father viz., the second appellant, A4 - Lingam @ Lingasamy attended the above festival along with their friends. They played cards, in which, the second appellant/A4 - Lingam @ Lingasamy lost all his money and he had asked them to return the money. Therefore, a quarrel arose between them and the second appellant/A4 - Lingam @ Lingasamy shouted at Illanchezhian with dire consequences and left the place. Hence, there was enmity between the deceased Illanchezhian and the first appellant/A1 - Bharathan, minor Vijayaprabakaran and the second appellant/A4 Lingam @ Lingasamy.

2.2. On 04.04.2010, the de-facto complainant and his brother Illanchezhian participated in Virudhunagar Mariamman Temple festival function. On the same day, at 11.30 p.m., near Samudhayakoodam, the second appellant/A4 Lingam @ Lingasamy in an inebriated stage, had misbehaved with women and since the deceased Illanchezhian condemned such behaviour, a quarrel arose between them. At that time, the first appellant/A1 along with A5, A6, A7, minor Vijayaprabakaran and minor Pandi came there in a Share Auto and A2 Karthik and A3 Anvar Ali Raja came in a Yamaha Motorcycle, bearing Registration No.TN-58-B-2292. When the appellants/A1 and A4 were quarrelling with the deceased Illanchezhian, all the other accused surrounded the deceased with deadly weapons viz., Knife and Aruval and Lingam @ Lingasamy (A4) caught-hold the left hand of Illanchezhian, minor Vijayaprabakaran caught-hold the right hand of Illanchezhian and the first appellant/A1 threatened the Illanchezhian with dire consequences and stabbed in his stomach by the using knife. When the said Illanchezhian tried to rescue himself, he received stab injury in his left flank. When the de-facto complainant and the Villagers tried to save Illanchezhian, all the accused herein criminally intimidated them showing the weapons and threatened them with dire consequences and escaped from the place of occurrence. The injured Illanchezhian was taken to Virudhunagar Government Hospital and thereafter, he was shifted



to Government Rajaji Hospital, Madurai, for further treatment.

2.3. P.W.3 - Balamurugan has given a written complaint [Ex.P.2] to P.W.18 - Manoharan, Sub-Inspector of Police on 05.04.2010 at 06.00 a.m. against the appellants/A1 and A4, Vijayaprabhakaran, Karthik, Pandi, Bharathi, Manimaran and Anvar Ali Raja. Thereafter, on the same day at 08.45 a.m., the deceased succumbed to the injuries in Government Rajaji Hospital at Madurai.

2.4. Based on the complaint given by P.W.3, P.W.18 has registered a case in Crime No.50 of 2010 under Sections 147, 148, 342 and 307 r/w. 109 IPC on 05.04.2010 at 23.30 hours. The copy of the FIR was marked as Ex.P.29.

2.5. P.W.18 - Manoharan, Sub-Inspector of Police, despatched the original F.I.R. and original complaint to the Court of jurisdictional Magistrate and a copy of the same to P.W.19 - Venugopal, Inspector of Police. After receiving the copy of the said F.I.R., P.W.19 went to the scene of crime and in the presence of one Ramar and P.W.7 - Muthupandi, he has prepared Observation Mahazar and Rough Sketch, which were marked as Exs.P.4 and P.31 respectively. He has also effected recovery of sand with blood and sand without blood, M.Os.5 and 6 respectively, and the same were received under a cover of Mahazar, Ex.P.32. P.W.19 enquired the witnesses one Raman and P.W.7 - Muthupandi and recorded their statements. Thereafter, he conducted inquest on the body of the deceased in the presence of Panchayatars and the inquest report is marked as Ex.P.33 and has given a requisition letter for postmortem to one Jeyaraman, Police Constable. Thereafter, he enquired the witnesses and P.W.18 and recorded their statements and altered the offences into under Sections 147, 148, 342, 307 and 302 IPC and the alteration report is marked as Ex.P.34. On 06.04.2010, P.W.19 enquired P.W.5 - Logidass and recorded his statement and arrested the accused and thereafter, they were enquired by P.W.19 in the presence of witnesses and their statements were recorded by P.W.19 and thereafter, the material objects were recovered under Form-95 [Ex.P.36 series].

2.6. P.W.16 - Dr.Natarajan conducted postmortem on 06.04.2010 at 10.45 a.m and noticed the following injuries on the body of the deceased.

'1. A sutured oblique stab injury 7 cms x 1.5 cms x peritoneal cavity deep noted on the back of left side of abdomen, one inch below the posterior costal margin on left side in the scapular line.

On dissection, the wound is passes obliquely upwards, forwards and medially piercing the underlying muscles,



vessels and nerves and piercing the left dome of diaphragm 5 cms x 0.5 cm x through and through, piercing the underlying pleura and lower lobe of left lung measuring 4 cms x 0.5 cm x ends as a point.

2.Sutured two drainage wounds each measuring about 2 cms x 1 cm x cavity deep noted on either side of the flanks of abdomen.

3.Midline surgical sutured wound in the front of abdomen 30 cms x 2 cms x cavity deep noted epigastic region to suprapubic region.''

The postmortem report is marked as Ex.P.26. P.W.16 Doctor gave a final opinion stating that the deceased would appear to have died of External Stab Injury No.1 and its corresponding internal injuries. The Final Opinion of the said Doctor is marked as Ex.P.27.

2.7. After completion of investigation, P.W.19 filed a charge sheet against A1 to A7 for the offences stated above.

2.8. The case against minor Vijayaprabakaran, Manimaran and Pandi @ Pandeewaran was spilt up to be tried by Juvenile Justice Board and the case against A1 to A7 were taken cognizance by the Judicial Magistrate, Thirumangalam, in P.R.C.No.25 of 2012.

2.9. The Committal Court issued summons to the accused and on their appearance, furnished them the copies of documents under Section 207 Cr.P.C. and having found that the case is exclusively triable by the Sessions Court, had committed the same to the Principal Sessions Court, Madurai, which in-turn, made over the same to the IV Additional District and Sessions Court, Madurai, which took it on file in S.C.No.305 of 2012. The appellants/A1 and A4 were issued with summons and on their appearance, the abovesaid charges have been framed. The appellants/A1 and A4 denied the charges.

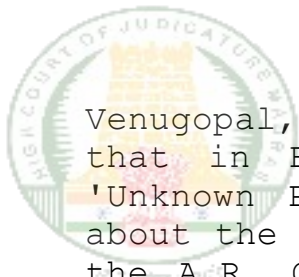
2.10. The prosecution, in order to sustain its case, examined PWs.1 to 19, marked Exs.P.1 to P.36 and also marked M.Os.1 to 6. The appellants/Accused Nos.1 and 4 were also questioned under Section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances made out against them and they denied it as false. The appellants/A1 and A4 did not examine any witness or mark any document on their side.

2.11. The Trial Court, on consideration of oral and documentary evidence and other materials, had found the appellants/A1 and A4 guilty of the offence and sentenced them as stated above, vide impugned judgment, dated 16.11.2017 and challenging the same, the present Criminal Appeal is filed.



3. Learned counsel appearing for the appellants would submit that the Trial Court ought to have acquitted the appellants/A1 and A4, since the prosecution miserably failed to prove its case beyond reasonable doubt. She would further submit that in Ex.P.2 - Complaint, it is stated that on 05.04.2010 at 06.00 a.m. at Government Rajaji Hospital, Madurai, a written complaint was received by P.W.18 - Manoharan, Sub-Inspector of Police from P.W.3 and thereafter, P.W.18 registered a case in Crime No.50 of 2010 for the offences under Sections 147, 148, 342, 307 IPC r/w. 109 IPC on 05.04.2010 at 07.30 a.m. on the file of the Kallikudi Police Station, whereas, P.W.1 - Subbiah Dass, in his evidence, has clearly stated that he has written the complaint at the Police Station. Further, P.W.3 - Balamurugan, who is the de-facto complainant, is not an eyewitness to the occurrence. P.W.18 has stated in his chief-examination that on 05.04.2010 at 04.30 a.m., P.W.3 gave a complaint to him at Government Rajaji Hospital, Madurai, whereas P.W.3 has stated in his cross-examination that at the time of occurrence, he was standing at a walkable distance of five minutes and he is having vision in one eye, besides, there was electricity failure at the occurrence Village, therefore, he cannot be able to see the alleged occurrence. Further, according to him, somebody from his Village informed the Police and P.W.18 - Sub-Inspector of Police came to Government Rajaji Hospital, Madurai, at 02.00 a.m. and has recorded a statement from the deceased, who was conscious till 02.00 a.m. and thereafter, a written complaint was given on the same day at 2.15 a.m., and the same was suppressed by the prosecution. P.W.18 has stated in his evidence that the complaint was registered on 05.04.2010 at 07.30 a.m., and the complaint and the printed F.I.R. reached the Court, which is just 20 Kilometres away from the Police Station, on the same day at 05.30 p.m., with a delay of 10 hours, which clearly proves the fact that the original complaint is suppressed and the present complaint is fabricated.

4. Learned counsel appearing for the appellants would further submit that P.W.6, mother of the deceased, in her evidence, has stated that the appellants/A1 and A4 only took her son to the Hospital in an Auto. P.W.3 stated in his evidence that except the appellants, all other accused are all apprehended by the Public and handed over to the Police within half an hour. Further, the deceased and the appellants are relatives and native of the same Village and known persons to the deceased. The deceased had stated before P.W.15 Dr.Ayisha Kani that he was assaulted by unknown persons, but in Ex.P.25 - A.R. Copy, the letters 'UN' in the words 'Unknown Person', have been struck off. Further, P.W.15 admits in her cross-examination that the A.R. Copy shall not be corrected, if the same was once written. P.W.19 -



Venugopal, Investigating Officer has also admitted in his evidence that in Ex.P.25 - A.R. Copy, the letters 'UN' in the words 'Unknown Person', have been struck off and he has not enquired about the corrections in the A.R. Copy. The material alteration in the A.R. Copy is not explained by the prosecution and the Court below failed to appreciate the same. The deceased was enquired by the Police as per evidence of P.W.15. The statement of the deceased is that he was stabbed by unknown persons, which is admissible under Section 32 of the Indian Evidence Act. The same was suppressed by the prosecution and the Trial Court has also failed to appreciate same.

5. Learned counsel appearing for the appellants would also submit that as per the case of prosecution, the second appellant viz., Lingam @ Lingasamy (A4) caught-hold the left hand of the deceased, but P.W.1, in his evidence, has stated that the second appellant/A4 twisted his left hand, therefore, the charge against the accused fails. Further, no witnesses stated in their evidence that the second appellant/A4 misbehaved with the women at the time of occurrence and the prosecution has failed to prove the case beyond reasonable doubt, therefore, the impugned conviction and sentence imposed against the appellants may be set aside and the appellants may be acquitted of the charges levelled against them, she pleaded.

6. Per contra, the learned Additional Public Prosecutor appearing for the State would submit that the eyewitnesses P.Ws.1 and 3 have deposed about the overt-act against the appellants/A1 and A4 and juvenile Vijayaprabakaran and that the other Accused viz., A2, A3 and A5 to A7 were present in the scene of occurrence armed with weapons with a common object of committing the murder of the deceased Illanchezian and therefore, the prosecution has clearly proved its case by cogent and convincing evidences and the Trial Court after considering the available evidence on record, has rightly invited convictions and sentences against the appellants and therefore, the convictions and sentences passed by the Trial Court against the appellants are not liable to be set aside. Thus, he prayed for dismissal of the appeal.

7. We have given our careful consideration to the rival contentions put forth by either side and also perused the entire oral and documentary evidence adduced by the prosecution.

8. When crucial argument was placed before the Trial Court that at the time of admitting the deceased on 05.04.2010 at Government Hospital, Virudhunagar, he was conscious, therefore, there is no possibility for recording that he was assaulted by Unknown Persons in Ex.P.25 - Accident Register. Subsequently, the letters 'UN' have been struck off in the Accident Register. The



Doctor, who was examined as P.W.15, in her cross-examination, has clearly deposed that once the details entered in the Accident Register, the same will not be altered. But, alteration has been made by removing the letters 'Un' in the Accident Register, which has not been properly considered by the Trial Court.

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9. Secondly, when the occurrence is said to have been taken place on 04.04.2010 at 11.30 p.m., the complaint was lodged only on 05.04.2010 at 06.00 a.m., whereas the FIR was registered on 05.04.2010 at 07.30 a.m. and the same reached the concerned jurisdictional Magistrate on 05.04.2010 at 05.30 p.m., with a delay of 10 hours, which caused more suspicion on the case of prosecution. Again, the suspicion is aggravated by one another evidence given by P.W.3, who said that when P.W.18 - Sub-Inspector of Police visited the Hospital to make enquiry at 02.00 a.m., the complaint was given within 15 minutes viz., at 2.15. a.m.

10. Further, P.W.6, mother of the deceased, in her evidence, has stated that only the appellants/A1 and A4 have taken the deceased to the Hospital, whereas P.W.8 Karuppusamy only brought the deceased to the Hospital. The material contradiction has not been explained and subsequently, P.W.8 turned hostile. These fatal and crucial aspects of the matter have not been dealt with and no reasons whatsoever have been given by the prosecution and equally, the Trial Court has completely lost sight of these crucial aspects, which creates a doubt on the prosecution case.

11. Therefore, this Criminal Appeal is allowed and the judgement of the learned IV Additional District and Sessions Judge, Madurai, in S.C.No.305 of 2012, dated 16.11.2017, is set aside. The appellants/Accused Nos.1 and 4 are acquitted of the charges levelled against them. Fine amount, if any paid, shall be refunded to them. The bail bonds executed by the appellants/Accused Nos.1 and 4 shall stand cancelled.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

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To

1.The IV Additional District and Sessions Judge,
Madurai.

2.The Judicial Magistrate,
Thirumangalam.

3.The Chief Judicial Magistrate,
Madurai.

4.The Superintendent, Central Prison, Madurai.

5.The Inspector of Police,
Kallikudi Police Station,
Madurai District.

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

Copy to

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

+2 CC to Mr.S.PALANI PACKIAM, Advocate (SR-7676[F] dated
21/02/2020)

Crl.A. (MD)No.134 of 2018

21.02.2020

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