



BAIL SLIP

1. Prathap, S/o. Palanivel, Male aged about 27 years,
2. Chandru, S/o. Ramamurthy, Male aged about 27 years,
Were released on bail vide court order dated 05.07.2018 made in
CRL MP(MD)No.4065 of 2018 in CRL A(MD).217 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
18.03.2020	13.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH**

AND

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRL.A[MD].No.217 of 2018

1.Prathap
2.Chandru : Appellants/Accused Nos.1&2

Vs.

The State rep. by
The Inspector of Police,
Uppiliyapuram,
Trichy District.
(Crime No.80 of 2016). : Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment dated 04.04.2018, made in S.C.No.204 of 2016 on the file of the learned First Additional District and Sessions Judge (PCR), Trichy.

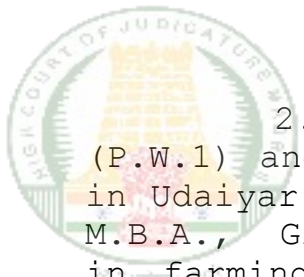
For Appellants : Mr.R.Manickaraj,
For M/s.Veera Associates
For Respondent : Mr.R.Anandharaj,
Additional Public Prosecutor

JUDGMENT

P.N.PRAKASH, J.

The appellants/Accused Nos.1 and 2 have preferred the present Criminal Appeal challenging the judgment of conviction and sentence dated 04.04.2018, made in S.C.No.204 of 2016, on the file of the learned First Additional District and Sessions Judge (PCR), Trichy.

2. The prosecution story runs thus:
<https://hcservices.ecourts.gov.in/hcservices/>



2.1. The deceased Gopinath was the son of Jayalakshmi (P.W.1) and Govindasamy (P.W.2). He was residing with his parents in Udaiyar Street, Alagapuri Village in Trichy District. He was an M.B.A., Graduate and was assisting his father Govindasamy (P.W.2) in farming. Gopinath belonged to Udayar Community. His close friend Ramachandran (P.W.14), who belonged to Vellalar Community, was in love with Brindha, who belonged to Udayar Community and was a resident of Alagapuri Village. Prathap (A-1) is the brother of Brindha and Chandru (A-2) is Brindha's uncle's son. Therefore, the parents and brother of Brindha wanted to give her in marriage to Chandru (A-2). However, it is alleged that Gopinath helped his friend Ramachandran (P.W.14) to elope with Brindha and get married on 06.03.2016. After Ramachandran (P.W.14) and Brindha got married, they went to the local Police Station and lodged complaints (Exs.P.4, P.5 and P.6) seeking police protection, since they feared their life. Therefore, Prathap (A-1) and Chandru (A-2), who were having grudge against Gopinath, for helping his friend Ramachandran (P.W.14) to elope with Brindha, conspired on 09.03.2016 around 08.00 p.m., with Thiruppathi (A-3) near Mariamman Temple to eliminate Gopinath, pursuant to which, on 22.03.2016 around 11.30 a.m., Prathap (A-1) and Chandru (A-2) barged into the house of Gopinath, Prathap (A-1) fell upon Gopinath and belaboured him with a billhook (M.O.1), while Chandru (A-2) held Gopinath by his legs and thus, caused his death in the very presence of his aged parents-Jayalakshmi (63 years) and Govindasamy (71 years).

2.2. After the brutal attack, they fled from the house and surrendered before the learned Judicial Magistrate No.II, Kumbakonam on the next day. On hearing the hue and cry raised by Jayalakshmi (P.W.1) and Govindasamy (P.W.2), their relatives and neighbours rushed to their house and Gopinath was carried to the Government Hospital in Namakkal, where he was declared brought dead at 13.10 hours on 22.03.2016.

2.3. On getting information, Ashok Raj (P.W.4), nephew of Jayalakshmi (P.W.1), who was working as Assistant Professor in Government Engineering College, Salem, rushed by car to the Government Hospital, Namakkal and consoled Jayalakshmi (P.W.1) and Govindasamy (P.W.2). He took Jayalakshmi (P.W.1) to Uppiliyapuram Police Station, where Jayalakshmi (P.W.1) gave a complaint (Ex.P.1) that was scribed by Ashok Raj (P.W.4) narrating the events, based on which, Jothilakshmi (P.W.23), Sub-Inspector of Police registered a case in Uppiliyapuram Police Station Crime No.80 of 2016 on 22.03.2016 at 20.00 hours (08.00 p.m.) under Section 302 of the Indian Penal Code against Prathap (A-1) and Chandru (A-2) and prepared the printed First Information Report (Ex.P.13), which reached the Jurisdictional Magistrate at 11.40 p.m. on the same day, as could be seen from the endorsement



thereon.

2.4. Investigation of the case was taken over by Chezhiyan (P.W.27), Inspector of Police, who went to the place of occurrence and prepared the Observation Mahazar (Ex.P.2) and rough sketch (Ex.P.16) in the presence of witnesses Ilangovan (P.W.8) and Murugan (not examined). From the place of occurrence, the Investigating Officer seized the following items in the presence of the same witnesses on 23.03.2016 at 07.15 a.m., under Mahazar-Ex.P.3:

- (i) samples of bloodstained cement plaster (M.O.2);
- (ii) samples of cement plaster without bloodstain (M.O.3);
- (iii) Bloodstained coir pieces from the coir cot (M.O.4);
- (iv) Samples of coir from the cot without bloodstain (M.O.5)
- (v) Bloodstained pillow cover (M.O.6).

2.5. The Investigating Officer went to the mortuary of the Government Hospital, Namakkal, where the body of Gopinath was kept and conducted inquest over the body and the inquest report was marked as Ex.P.17.

2.6. Dr.Amuthasurabi (P.W.17) conducted post-mortem on the body of the deceased and in her evidence as well in the Post-mortem Certificate (Ex.P.7), noted the following injuries:

"External Injuries:-

- 1) Laceration 7.5 x 1.5 x 1.5 cms over the forehead with fracture of frontal bone exposing the brain.
- 2) Laceration 6 x 3 x 1.5 cms over the left parietal region exposing the bone.
- 3) Laceration 7.5 x 1.5. x 1.5 cms over the left parietal region extending to the centre exposing the bone.
- 4) Laceration 2 x 1/2 x 1/2 cms just below the right knee.

Internal Examination:

Head - Fracture of frontal bone, orbit and Navel bone, Membrane torn, Brain - damaged frontal lobe with blood clots all over the brain, C/S pale, Neck - Hyoid bone intact, Thorax - Ribs - No fracture, Heart - Normal chamber empty C/S pale, Lungs - Normal C/S pale Abdomen - Stomach normal contains 100 ml of undigested food, Liver, Spleen and both Kidneys were normal C/S Pale Intestines - bloated with gas, Bladder normal.



Opinion:-

The deceased would have appeared to have died of shock and haemorrhage due to (fracture of frontal bone) head injury."

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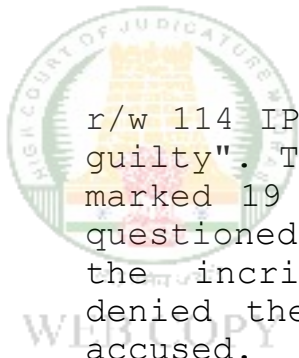
2.7. On coming to know about the involvement of Thiruppathi (A-3) in the conspiracy to eliminate Gopinath, the police arrested Thiruppathi (A-3) on 25.03.2016 at 09.30 a.m. and filed an alteration report (Ex.P.18) including Section 120-B of the Indian Penal Code also. On coming to know that Prathap (A-1) and Chandru (A-2) had surrendered before the learned Judicial Magistrate No.II, Kumbakonam, the Investigating Officer filed necessary application before the Magistrate and took custody of Prathap (A-1) and Chandru (A-2) on 30.03.2016. Based on the confession statement of Prathap (A-1), the police seized a bloodstained billhook (M.O.1) in the presence of witnesses Sivasakthi (P.W.18) and Etthiraj (not examined). Based on the confession statement of Chandru (A-2), the Investigating Officer seized a Bajaj Platina Black Colour Motorcycle (M.O.7) in the presence of same witnesses on 31.03.2016 at 17.00 hours under Mahazar (Ex.P.11). The bloodstained articles were sent to the Tamil Nadu Forensic Sciences Laboratory through the Court for examination.

2.8. Jaya (P.W.26), Scientific Officer, in her evidence as well in the Biological Report (Ex.P.14), has stated that blood was detected in the apparel that were worn by the deceased, pillow cover (M.O.6), cement plaster (M.O.2) and coir rope pieces (M.O.4), which were recovered from the place of occurrence and in the billhook (M.O.1). However, from the Serology Report (Ex.P.15), it is seen that the blood grouping test proved inconclusive.

2.9. After examining the witnesses and collecting various records, the police completed the investigation and filed a final report in P.R.C.No.7 of 2016 before the learned Judicial Magistrate, Thuraiyur, under Sections 302 r/w 120-B, 449, 302 and 302 r/w 114 of the Indian Penal Code against Prathap (A-1), Chandru (A-2) and Thirupathhi (A-3).

2.10. On appearance of the accused, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the case was committed to the Court of Session in S.C.No.204 of 2016 and was made over to the First Additional District and Sessions Court, Trichy, for trial.

2.11. The Trial Court framed charges under Section 120-B r/w 302 IPC against A-1 to A-3; under Section 449 IPC against A-1 and A-2; and under Section 302 IPC against A-1; and under Section 302



r/w 114 IPC against A-2. When questioned, the accused pleaded "not guilty". To prove the case, the prosecution examined 27 witnesses, marked 19 exhibits and 7 material objects. When the accused were questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against them, they denied the same. No witness was examined from the side of the accused. However, in the cross-examination of the prosecution witnesses, the defence marked Exs.D.1, D.2 and D.3.

2.12. After considering the evidence on record and hearing either side, the Trial Court, by Judgment and order dated 04.04.2018, in S.C.No.204 of 2016, acquitted all the accused of the the charge under Section 120-B r/w 302 IPC, and convicted and sentenced Prathap (A-1) and Chandru (A-2) as under:

Accused Name and rank	Conviction U/S.	Sentence
No.1 (Prathap)	302 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 1 year rigorous imprisonment.
No.1 (Prathap)	449 IPC	To undergo 7 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 6 months rigorous imprisonment.
No.2 (Chandru)	302 r/w 114 IPC	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 1 year rigorous imprisonment
No.2 (Chandru)	449 IPC	To undergo 7 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 6 months rigorous imprisonment.

3. Challenging the aforesaid conviction and sentences, Prathap (A-1) and Chandru (A-2) have preferred the present appeal.

4. None has chosen to challenge the acquittal of Thiruppathi (A-3).



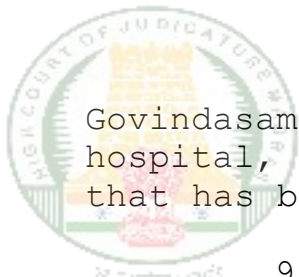
5. Heard Mr.R.Manickaraj, learned counsel for the appellants/A-1 and A-2 and Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondent.

6. The prosecution has proved the following facts beyond cavil:

- (i) The deceased Gopinath was the son of Jayalakshmi (P.W.1) and Govindasamy (P.W.2);
- (ii) he was an M.B.A., Graduate and was living with his parents in Udaiyar Street, Alagapuri Village;
- (iii) he belonged to Udayar Community; and
- (iv) his death was a homicide and had occurred in his house on 22.03.2016 around 11.30 a.m.

7. The nub of the prosecution case rests on the ocular evidence of his parents Jayalakshmi (P.W.1) and Govindasamy (P.W.2). Jayalakshmi (P.W.1) and Govindasamy (P.W.2), in their evidence, have stated that the deceased Gopinath was their son and that they know the accused; they heard from their son that he was warned by Prathap (A-1) for helping Ramachandran (P.W.14) to get married to Brindha; on 22.03.2016 at 11.30 a.m., their son Gopinath was sitting on the coir cot in the hall of their house and they (P.W.1 & P.W.2) were sitting on the floor and chatting; at that time, Prathap (A-1) and Chandru (A-2) barged into the house and Prathap (A-1) started attacking Gopinath by saying "When we are weeping, you are happily chatting after making my sister run away"; when they both got up to go to the rescue of Gopinath, Chandru (A-2) pushed both of them down and held the legs of Gopinath, while A-1 hacked him; thereafter, they fled from the house. This is with regard to the kernel of the fact in issue. Thereafter, Jayalakshmi (P.W.1) and Govindasamy (P.W.2) have stated that they made a hue and cry, hearing which, their relatives and neighbours rushed to the house and they carried Gopinath to the Government Hospital, Namakkal by ambulance, where he was declared brought dead. Jayalakshmi (P.W.1) has further stated that she went along with her nephew Ashok Raj to the Police Station and gave a written complaint (Ex.P.1).

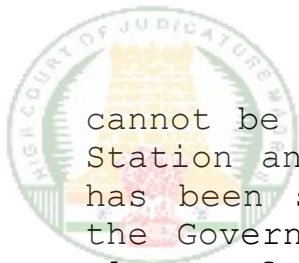
8. The learned counsel for the defence took this Court to the cross-examination of Jayalakshmi (P.W.1) and Govindasamy (P.W.2) and submitted that there are contradictions. He submitted that Jayalakshmi (P.W.1) has stated that she had gone to the Police Station with her husband, whereas, Govindasamy (P.W.2) has stated that he did not accompany Jayalakshmi (P.W.1) to the Police Station. The learned counsel further submitted that the First Information Report in this case was registered only at 08.00 p.m., which shows that there was a long delay in lodging the complaint. The learned counsel further contended that Jayalakshmi (P.W.1) and



Govindasamy (P.W.2) have stated that the police had come to the hospital, which shows that she had given an earlier complaint and that has been suppressed.

9. We are unable to appreciate any of these submissions. The deceased Gopinath was a bachelor and was living with his parents Jayalakshmi (P.W.1) and Govindasamy (P.W.2). In a case predicated on ocular evidence, motive assumes very less significance. However, in this case, the motive for the murder was that, Gopinath though belonging to Udayar Community, had helped Brindha, a Udayar Community girl, to elope with Ramachandran (P.W.14) belonging to Vellalar Community. Ramachandran (P.W.14), in his evidence, has stated that he was in love with Brindha, the sister of Prathap (A-1) and married her. He has further stated that he went to Uppiliyapuram Police Station with Brindha and lodged complaints (Exs.P.4, P.5 and P.6) seeking protection, since their marriage was an inter-caste marriage. He has further stated that he knows Gopinath, but, has strangely stated that Gopinath did not help him to get married to Brindha. The reason for this somersault is obvious. After all, Prathap (A-1) is none other than the elder brother of Ramachandran's (P.W.14's) wife Brindha and Chandru (A-2) was Brindha's uncle's son. The Trial Court Public Prosecutor must have declared this witness hostile on this aspect, but, that was not done. However, the complaints (Exs.P.4, P.5 and P.6) that were given by Ramachandran (P.W.14) and Brindha to the police clearly show that he and Brindha feared that harm will befall them from Brindha's family. Apart from Jayalakshmi (P.W.1) and Govindasamy (P.W.2), Deivendran (P.W.3) and Ashok Raj (P.W.4) and Arputham (P.W.5) have stated that the accused had animosity towards Gopinath for having aided the elopement of Brindha.

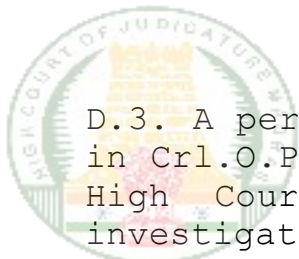
10. With regard to the submission of the defence that there was delay in lodging of the complaint, it is seen that Jayalakshmi (P.W.1), in her evidence, has stated that after the incident, they carried Gopinath from Alagapuri to Namakkal, which is about 50 kilometres away and Gopinath was examined by Dr.Gopinath (namesake of the deceased) at 13.10 hours on 22.03.2016 and was declared brought dead. Thereafter, the body was kept in the mortuary of the hospital. The old parents must have been in a state of terrible shock after having witnessed the attack and losing their beloved son. Jayalakshmi (P.W.1) and Govindasamy (P.W.2) have stated that they are illiterates. They have scribbled their name in Tamil as signatures in the deposition. Jayalakshmi (P.W.1) has stated that she went along with her nephew Ashok Raj (P.W.4) from Namakkal District back to Uppiliyapuram in Trichy District and lodged the complaint. In the cross-examination, she has stated that she does not remember at what time she reached the Police Station. Just because she has stated that some policemen had come to the hospital, an inference



cannot be drawn that the policemen were from Uppiliyapuram Police Station and that she gave a complaint to them and that complaint has been suppressed. It is possible that Constables attached to the Government Hospital Outpost would have come to ascertain the place of occurrence for sending intimation to the concerned station. Mr.R.Manickaraj, learned counsel contended that witnesses have stated that policemen from Uppiliyapuram Police Station had come to the house of the deceased after the occurrence. The possibility also cannot be ruled out, because, after the injured was carried to the Hospital, Uppiliyapuram Police would have got information and would have come to the house of the deceased. All this, by itself, cannot lead to the inference that Jayalakshmi (P.W.1) had given a complaint earlier and that has been suppressed. On the contrary, Jayalakshmi's (P.W.1's) evidence shows that from the Namakkal Government Hospital, she came back to Uppiliyapuram Police Station, which itself is 20 kilometres away from Alagapuri Village and lodged the complaint in the evening. The defence has not put any suggestion to Jothilakshmi (P.W.23) Sub-Inspector of Police that an earlier complaint was given, the same was suppressed and a fresh complaint was obtained from Jayalakshmi (P.W.1) implicating the accused. We have no reasons to doubt the presence of Jayalakshmi (P.W.1) and Govindasamy (P.W.2), the parents of the deceased, in their own house when the incident had taken place.

11. The learned counsel contended that there were no bloodstains in the cot on which the deceased was sitting at the time of incident. This submission is erroneous, because blood was detected in the coir rope pieces (M.O.4), pillow cover (M.O.6) and cement plaster (M.O.2), but the Serologist was not able to determine the blood group vide Exs.P.14 and P.15. The stray submission of Jayalakshmi (P.W.1) that Govindasamy (P.W.2) also accompanied her to the Police Station and the statement of Govindasamy (P.W.2) that he did not accompany his wife to the Police Station would not, by itself, discredit their testimonies. Human memory is not like a recording machine, as held by the Supreme Court in **Pargan Singh vs. State of Punjab** reported in **2014 (14) SCC 619**. The most important circumstance against the accused is that after the murder, they had voluntarily surrendered before the learned Judicial Magistrate No.II, Kumbakonam in Thanjavur District and not before the Jurisdictional Magistrate, viz., Judicial Magistrate, Thuraiyur in Trichy District, which conduct is relevant under Section 8 of the Evidence Act. That apart, from the billhook (M.O.1) that was seized by the police, pursuant to the disclosure of Prathap (A-1), human blood was detected by Jaya (P.W.26) vide Ex.P.14.

12. In the cross-examination of the prosecution witnesses, the defence filed three documents as Exs.D.1, D.2 and



D.3. A perusal of them shows that Ex.D.1 is a copy of the petition in Crl.O.P.(MD)No.6438 of 2016 filed by Jayalakshmi (P.W.1) in the High Court for a direction to the police to complete the investigation in Crime No.80 of 2016 and file a final report. It is seen that Jayalakshmi (P.W.1) had given a representation (Ex.D.3) to the Superintendent of Police alleging that the police had not properly investigated the case and thereafter, had filed Crl.O.P.(MD)No.6438 of 2016 under Section 482 of the Code of Criminal Procedure. A learned Single Judge of this Court has passed final orders on 22.04.2016 (Ex.D.2) with the following direction:

"3. The learned Government Advocate (Criminal side) appearing for the respondent Police has submitted that if three months time is granted by this Court, the investigation would be completed and final report would be filed by the respondent Police before the concerned Court. The said statement is recorded.

4. In view of the above, this Criminal Original Petition is disposed of with a direction to the respondent Police to complete the investigation and to file the final report within a period of three months from the date of receipt of a copy of this order."

These documents have not improved the defence case any further. Thus, the prosecution has proved the case beyond a peradventure and the appeal deserves to be dismissed.

13. In the result,

- The Criminal Appeal is dismissed;
- The Judgment dated 04.04.2018, made in S.C.No.204 of 2016, on the file of the learned First Additional District and Sessions Judge (PCR), Trichy, is upheld.
- Suspension of sentence granted by this Court on 05.07.2018 in Crl.M.P.(MD).No.4065 of 2018 in Crl.A.(M).No.217 of 2018 stands cancelled.
- Since the appellants/Accused Nos.1 and 2 are on bail, it is directed that the Trial Court shall take steps to secure them and commit them to prison to serve out the period of sentence.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1.The First Additional District and Sessions Judge (PCR) ,
Trichy.

2.The Chief Judicial Magistrate, Trichy.

3. The Judicial Magistrate, Thuraiyur.

4. The Superintendent, Central prison, Trichy.

5.The Inspector of Police,
Uppiliyapuram,
Trichy District.

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

7.The Record Keeper,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-12530[F] dated
19/03/2020)

Judgment made in
CRL.A[MD].No.217 of 2018
Delivered on: 13.05.2020

ac (CO)
TR(27.05.2020) 10P 10C