

**Bail Slip**

Murugesan, S/o.Natarajan Rangiyaar, aged about 32 (2018), Sole Accused was released on Bail vide Order of this Court dated 19.12.2019 in CrI.MP(MD)No.11300 of 2019 in CrI.A(MD)No.546 of 2018.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	05.10.2020
Date of Judgment	16.10.2020

CORAM

THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**

AND

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****CrI.A(MD)No.546 of 2018**

Murugesan : Appellant/Sole Accused

Vs.

State through
The Inspector of Police,
Thiruvonam Police Station,
Thanjavur District.
(Crime No.163 of 2014)

: Respondent/Respondent

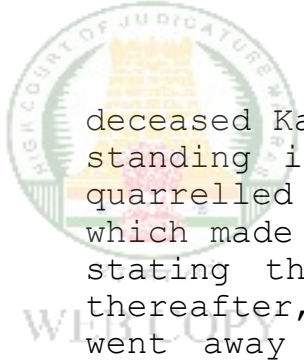
Prayer: Criminal Appeal filed under section 374 of the Criminal Procedure Code against the judgment passed by the III Additional District and Sessions Judge, Thanjavur @ Pattukottai, in S.C No.69 of 2016, dated 30.11.2018.

For Appellant : Mr.M.Subash Babu
For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

J U D G M E N T(Judgment of the Court was made by **K.KALYANASUNDARAM .J**)

The Appellant stands convicted in SC No.69 of 2016 on the file of the III Additional District and Sessions Judge, Thanjavur @ Pattukottai, for the charge under section 302 IPC and sentenced to suffer imprisonment of life for the said offence and to pay a fine of Rs.5,000/-, which carries default sentence on the allegation that on 05.10.2014 at 6.30 pm, he attacked the deceased Kandhappa Thevar with MO1 spade on his head and thereby caused his death.

2. The case of the prosecution briefly summarised as under:- PW1 and PW2 are the sons of the deceased Kandhappa Thevar. The accused is a neighbouring land owner. On 05.10.2014 at 4.30 pm, when the



deceased Kandhappa Thevar was irrigating his lands, PW1 and PW2 were standing in a nearby coconut Thop and at that time, the accused quarrelled with the deceased demanding irrigation of his land first, which made PW1 and PW2 went to the place and pacified the accused by stating that within an hour their lands would be irrigated and thereafter, the accused can take the water. However, the accused went away threatening that the deceased should correct himself, failing which he will be cut and put in a water channel.

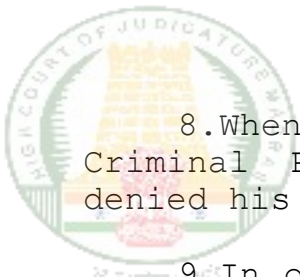
3.The further case of the prosecution is that at 6.30 pm on the same day, PW3 proceeded to a village called 'Ananthagopalapuram' and when he was passing through the land of the deceased, he found the accused was again quarrelling with the deceased and inflicted cut injury on the back side of the deceased and thereafter, he fell down. This incident was informed to PW1 and PW2 when they were in a shop at Ananthagopalapuram. Then, PW1 and PW2 rushed to their lands and saw the accused lifting the body of the deceased on his shoulder and on hearing of the hue and cry, the accused ran away after throwing the deceased in the lands of Palanisamy and Ramamoorthy.

4.At about 10.30 pm, PW1 went to the Thiruvonam Police Station, where PW7 the Sub Inspector of Police received Ex.P1 complaint from PW1 and registered a case, in Crime No.163 of 2013 under section 302 IPC. The printed FIR is Ex.P5. He sent express reports to the higher officials and the Court.

5.On receipt of the intimation about the registration of the case, PW9 Inspector of Police took up the investigation on 06.10.2014 and proceeded to the scene of occurrence, where he prepared observation mahazar Ex.P2 and rough sketch Ex.P6 in the presence of PW5 and one Nodimuthi Nadimuthu. Thereafter, he conducted inquest over the dead body of the deceased Kandhappa Thevar. Ex.P7 is the Inquest Report. After the inquest was over, the body of the deceased was entrusted to Mrs.Rajeswari Police Constable with a requisition for conducting postmortem.

6.On receipt of the requisition, PW7 Doctor attached to the Government Hospital, Pattukottai, conducted autopsy at 12.45 pm and he noticed a lacerated wound 10 x 2 cm depth 1 cm on right side of head vertical in diversion 4 cm behind the right ear and found fracture on the scalp at the length of 6 cm. He opined that the deceased would have died of haemorrhage. Ex.P4 is the Postmortem Certificate.

7.PW9 proceeded with the investigation and arrested the accused on 06.10.2014 itself in the presence of PW6, the Village Administrative Officer and one Manivel, Sathiyaraj. When questioned, the accused gave a statement. Ex.P8 is the admissible portion of the confession. In pursuance thereof, he took the police and produced MO1 spade. It was seized under Mahazar Ex.P3. He sent the material object to the Court under Ex.P9. PW9 enquired the witnesses and obtained the statement. After completing investigation, he laid a final report against the accused under section 302 IPC.



8. When the accused was questioned under section 313 of the Criminal Procedure Code on the incriminating circumstances, he denied his complicity.

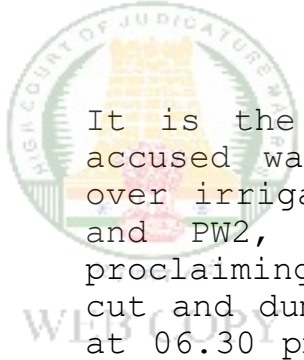
9. In order to establish the case, the prosecution examined PWs 1 to 9 and marked Exs. P1 to P10 as well as MO1. On the side of the accused, no witness was examined and no document was marked. On the evidence adduced, the learned Sessions Judge held the charge against the accused is proved and convicted and sentenced him as stated above. Challenging the same, the accused has come forward with this criminal appeal.

10. Mr. M. Subash Babu, learned counsel appearing for the appellant would argue that the prosecution cited PW3 as eye witness to the occurrence, but his presence in the scene of occurrence is highly doubtful. He would further add that had PW3 seen the occurrence, overtact attributed against the accused would have been mentioned in Ex. P1 complaint, but it was not stated in Ex. P1. It is next contended that it is the evidence of PW1 that he lodged the complaint at 10.00 pm on 05.10.2014, but the case was registered only at 3.00 pm on 06.10.2014 and it reached the Magistrate court only at 12.15 pm. But the prosecution failed to explain the delay in lodging the complaint, registering the case and Ex. P1 reaching the Magistrate court.

11. It is also contended that the earlier complaint was suppressed by the prosecution and after deliberation and consultation, Ex. P1 was received from PW1 and the accused is falsely implicated in this case. In this regard, he referred the testimony of PW3. It is further submitted that even though MO1 was recovered in pursuance of the confession of the accused on 06.10.2014, it was sent to the court only on 04.02.2015 and Form-95 sent by PW9 was returned by the court on 10.10.2014 as weapon was not produced. Moreover, MO1 was not subjected to chemical examination and there is no material to connect MO1 with the crime and hence, the finding of the trial court is to be set aside.

12. Per contra, Mr. R. Anandharaj, learned Additional Public Prosecutor would urge that the prosecution has proved the motive for the commission of the crime through the evidence of PW1 and PW2 and the attack made by the accused was established from the evidence of PW3. It is further submitted that the accused was arrested on 06.10.2014 and on the same day, the confession and the statement of the witnesses have reached the court and hence any delay in producing MO1 before the court will not have any consequence. According to the learned Additional Public Prosecutor, PW1 to PW3 are natural witnesses and there is reason to disbelieve their evidence and the prosecution has proved the charge against the accused beyond reasonable doubt.

13. In the instant case, the prosecution heavily relies on the evidence of PW1 to PW3 to bring home the guilt against the accused.

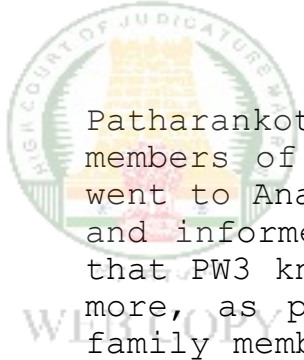


It is the prosecution case that at 04.30 pm on 05.10.2014, the accused was found quarrelling with the deceased Kandhappa Thevar over irrigation of his land. However, at the intervention of PW1 and PW2, the accused went away from the scene of occurrence proclaiming that if the deceased did not correct himself, he will be cut and dumped in a water channel. It is the evidence of PW3 that at 06.30 pm, when he was proceeding to Ananthagopalapuram to fetch kerosene, he witnessed the cut injury inflicted by the accused on the deceased. It is his further evidence that the crime committed by the accused was immediately informed to PW1 and PW2. PW1 and PW2 would state that they immediately went to the scene of occurrence and saw the accused was taking the deceased on his shoulder and after hearing their hug and cry, he threw the deceased in the lands of Palalanisamy and Ramamoorthy and took to heels. PW1 further stated that on 10.30 pm, he lodged Ex.P1 complaint to PW8. Since the entire case hinges on the evidence of PW1 to PW3, this court has to analyse whether the evidence of PW1 to PW3 is reliable and trustworthy.

14.It is not disputed that PW1 and PW2 are sons and PW3 is the grand son of the deceased. Merely because PW1 to PW3 are relatives of the deceased, on the sole ground their evidence need not be discarded, unless it is established that there are materials to show that they are giving false version to the court. In this case, admittedly PW1 and PW2 have not seen the occurrence and it is only by PW3.

15.It is to be noticed that in Ex.P1 complaint nothing is mentioned about the assault made by the accused with M01 spade on the deceased and on the other hand, only altercation ensued between the deceased and the accused is found mentioned. PW3 stated that after seeing the occurrence, he entertained fear and immediately rushed to Ananthagopalapuram, where he met PW1 and PW2 and after informing them, he went to purchase the diesel for his tractor and only at 7.30 pm, he was aware that the deceased died. In the cross examination, PW3 admitted that on 05.10.2017, he did not inform the incident to his family members, nor he had gone to the village of the deceased to inform about the incident and he proceeded further to purchase the diesel. It is admitted that he made no attempt to rescue the deceased and only on the way to purchase diesel, he informed PW1 and PW2 the incident. He further admitted that a complaint was given to the police for suspicious death of the deceased Kandhappa Thevar.

16.It is relevant to note that the deceased, PW1 and PW2 belong to Patharankottai village, while the accused is native of Ananthagopalapuram Village. PW1 admitted in the cross examination that the Village Patharankottai is situated on the southern side of the place of occurrence at a distance of half kilometre and the village of the accused Ananthagopalapuram is just on the opposite direction with a distance of 3/4 kms on the northern side. If PW3 witnessed the occurrence, the normal conduct is that he would go to



Patharankottai village to inform about the incident to the family members of the deceased. But on the other hand, he stated that he went to Ananthagopalapuram to fetch diesel, where he saw PW1 and PW2 and informed the incident. It is not the case of the prosecution that PW3 knew that PW1 and PW2 were at Ananthagopalapuram. Furthermore, as per his evidence, he did not inform the incident to his family members also. This creates a doubt about his presence in the scene of occurrence at that relevant time. After analysing the evidence of PW3 and Ex.P1, we are of the opinion that PW3 is not trustworthy and it would not be safe to rely on his testimony to base conviction on the accused.

17.PW1 has categorically stated that Ex.P1 complaint was given to PW8 at 10.00 pm, on 05.10.2014, but admittedly the case came to be registered only at 3.00 am on 06.10.2014. There is absolutely no attempt was made by the prosecution to explain the delay in registering the case. That apart Ex.P1 reached the Magistrate court only at 12.15 pm, despite the fact that the Magistrate Court is at the distance of 20 kms and it could be reached within a period of 30 minute as per the evidence of PW8. Delay assumes significance in this case in view of admission made by PW3 that prior to Ex.P1, an earlier complaint was lodged suspecting involvement of some other persons in commission of the crime.

18.Considering the totality of the evidence adduced by the prosecution and the facts of this case, we are of the view that the prosecution failed to prove the charge against the accused beyond reasonable doubt. Hence, there is no scope to sustain the conviction and sentence imposed on the appellant and the accused is to be given the benefit of doubt.

19.In that view, this Criminal Appeal is allowed. The conviction and sentence recorded by the trial court is hereby set aside. The appellant is acquitted from the charge levelled against him. The bail bond if any executed by him shall stand cancelled and the fine amount if any paid by him shall be refunded to him.

Sd/-

Assistant Registrar (C.O)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The III Additional District and Sessions Judge,
Thanjavur @ Pattukottai.
2. The District Munsif-cum-Judicial Magistrate,
Orathanadu.
3. The Chief Judicial Magistrate,
Thanjavur at Kumbakonam.
4. The Inspector of Police,
Thiruvonam Police Station,
Thanjavur District.
5. The Superintendent of Central Prison,
Tiruchirappalli.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
7. The District Collector,
Thanjavur District.
8. The Director General of Police,
Mylapore, Chennai.

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

+1 CC to Mr.M.SUBASH BABU, Advocate SR-20330.

Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

**Judgment
made in
Crl.A(MD)No.546 of 2018
16.10.2020**

PK(CO)

CS(09.11.2020) 6P 12C