



BAIL SLIP(Crl. A. (MD) . No. 8 of 2019)

Selvam @ Palakottai Selvam, S/o Vasuthevar, aged about 57 years (2019), Accused No.4, was released on Bail vide order of this Court order dated 13/06/2019 in Crl. M.P.(MD) No. 4510 of 2019 in Crl. A. (MD). No. 8 of 2019.

WEB COPY

BAIL SLIP(Crl. A. (MD) . No. 10 of 2019)

Gobikannan, S/o Selvam, aged about 31 years(2019), Accused No.6, was released on Bail vide order of this Court order dated 19/07/2019 in Crl. M.P.(MD) No. 5744 of 2019 in Crl. A.(MD). No. 10 of 2019.

BAIL SLIP(Crl. A. (MD) . No. 541 of 2018)

Chandra, w/o Gopi, aged about 30 years(2018), Accused No.7, was released on Bail vide order of this Court order dated 28/01/2019 in Crl. M.P.(MD) No. 10394 of 2018 in Crl. A.(MD). No. 541 of 2018.

BAIL SLIP

(Crl. A. (MD) . No. 548 of 2018 & Crl. A. (MD) . No. 9 of 2019)

1. Theivam @ Theivakani, w/o Kodeeshwaran, aged about 58 years (2018), Accused No.2,
2. Kodeeshwaran, s/o Neelakumar Thevar, aged about 65 years(2018), Accused No.3,
3. Selvarani, w/o Selvam @ Palakottai Selvam, aged about 53 years (2019), Accused No.5,
were released on Bail vide order of this Court order dated 27/06/2019 in Crl. M.P.(MD) Nos. 4557 and 4690 of 2019 in Crl. A. (MD). No. 548 of 2018 and Crl. M.P.(MD) No. 5398 of 2019 in Crl. A. (MD). No. 9 of 2019.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.09.2021	Delivered on : 14.09.2021
--------------------------	---------------------------

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CRL.A (MD)Nos.541, 548 of 2018 and 8 to 10 of 2019
and Crl.M.P.(MD) No.4523 of 2020 in Crl.A.(MD) No.548 of 2018

Chandra

.. Appellant in Crl.A.(MD) No.
541 of 2018/A7



1.Rameshkumar
2.Theivam @ Theivakani

3.Kodeeshwaran

WEB COPY

Selvam @ Palakottai Selvam

Selvarani

Gobikannan

.. Appellants in Crl.A.(MD)
No.548 of 2018/A1 to A3

.. Appellant in Crl.A.(MD) No.
8 of 2019/A4

.. Appellant in Crl.A.(MD) No.
9 of 2019/A5

.. Appellant in Crl.A.(MD) No.
10 of 2019/A6

-vs-

State Represented by,
The Inspector of Police,
Veerapandi Police Station,
Crime No.358 of 2015,
Theni District.

.. Respondent/Complainant in
all the Criminal Appeals

Criminal Appeals filed under Section 374(2) of the Code of Criminal Procedure against the judgment of the learned Additional District Judge (Fast Track Court), Theni District in S.C.No.162 of 2016 dated 10.12.2018.

For Appellant in :: Mr.V.Gobinath
Crl.A.(MD) Nos. Senior Counsel for
541 of 2018 & 8 Mr.P.Andiraj
to 10 of 2019

For Appellant in :: Mr.A.K.Alagarsamy for
Crl.A.(MD) No. Mr.K.Samidurai
548 of 2018

For Respondent :: Mr.S.Ravi
in all appeals Standing Counsel for State

COMMON JUDGMENT

(Judgment of the Court was delivered by V.BHARATHIDASAN, J.)

The appellants in these Criminal Appeals are Accused Nos.1 to 7
in S.C.No.162 of 2016, on the file of the learned Additional
<https://hcservices.ecourts.gov.in/hcservices/>



District and Sessions Judge, (Fast Track Court), Theni. They stood charged, convicted and sentenced as follows:

Accused	Original Charge	Altered Charge/ Convicted under Section	Sentence Imposed	Fine	Default Sentence
A1	120 (b), 147, 148, 506(2) and 302 r/w 149 I.P.C.	148 I.P.C.	6 months R.I.	--	--
		506(ii) I.P.C.	2 years R.I.	--	--
		302 I.P.C.	Life Imprisonment	Rs.5,000/-	6 Months S.I.
A2	120 (b), 147, 148 and 302 r/w 149 I.P.C.	302 r/w 149 I.P.C.	Life Imprisonment	Rs.5,000/-	6 Months S.I.
A3	120 (b), 147, 148, 342, 302 r/w 149 I.P.C.	302 r/w 34 I.P.C.	Life Imprisonment	Rs.5,000/-	6 Months S.I.
A4	120 (b), 147, 148, 342, 302 r/w 149 I.P.C.	302 r/w 149 I.P.C.	Life Imprisonment	Rs.5,000/-	6 Months S.I.
A5	120 (b), 147, 148, 302 r/w 149 I.P.C.	302 r/w 149 I.P.C.	Life Imprisonment	Rs.5,000/-	6 Months S.I.
A6	120 (b), 147, 148, 342, 302 r/w 149 I.P.C.	302 r/w 34 I.P.C.	Life Imprisonment	Rs.5,000/-	6 Months S.I.
A7	120 (b), 147, 148, 342, 302 r/w 149 I.P.C.	302 r/w 149 I.P.C.	Life Imprisonment	Rs.5,000/-	6 Months S.I.

The sentences were ordered to run concurrently and the sentence already undergone were given set of under Section 428 Cr.P.C. Challenging the aforesaid conviction and sentence, A1 to A3 filed Crl.A.(MD) No.548 of 2018, A4 filed Crl.A.(MD) No.8 of 2019, A5 filed Crl.A.(MD) No.9 of 2019, A6 filed Crl.A.(MD) No.9 of 2019 and A7 filed Crl.A.(MD) No.541 of 2018.



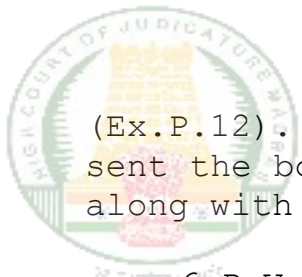
2.The case of the prosecution in brief as follows:

The deceased Mandhri is the husband of P.W.1 and he was a Village Level Secretary of a political party. A1 in this case was working as a Police Constable and there was a dispute between the deceased and A1 in respect of drawing a picture in a local Village Temple, in which, the deceased said to have given a criminal complaint against A1, based on the criminal case, A1 was dismissed from service, hence, there was motive for A1 against the deceased. A4 was originally appointed as the Village Level Secretary of the political party, subsequently, he was removed and the deceased was appointed in that post and hence, A4 also had a motive against the deceased.

3.A1 is the son of A2 and A3, A5 is the wife of A4, and A6 and A7 are the son and daughter of A4 and A5. On the date of occurrence, i.e., on 30.06.2015, at about 7.00 a.m., the deceased came from Coimbatore to Lakshmipuram, the scene village, and got down near a shop belongs to one Ganesan. At that time, all the accused present in the scene of occurrence and formed an unlawful assembly, A3 and A6 caught hold of the deceased and A4 was having a knife in his hand and A1 received a knife from A4 and stabbed him in the left chest, shoulder and stomach. While the witnesses present there tried to prevent the accused, A1 criminally intimidated them and all the accused ran away from the scene of occurrence. Immediately after the occurrence, P.W.1 and one Pandidurai (since deceased), wife and son of the deceased came to the scene of occurrence and took him to hospital, where he was declared dead. Then, Pandidurai, S/o. deceased Mandhiri, went to the respondent Police Station and lodged a complaint at 9.00 a.m. against 10 named accused.

4.P.W.17, Sub-Inspector of Police attached to Veerapandi Police Station, on receipt of the complaint (Ex.P.9) registered a criminal case in Crime No.385 of 2015, under Sections 147, 148, 341, 342, 302, 109 and 506(ii) I.P.C. and sent the First Information Report (Ex.P.10) to the concerned Court, copies to the higher officials and also sent a copy to P.W.18, Inspector of Police, for investigation.

5.P.W.18, Inspector of Police in the respondent police station, on receipt of the First Information Report, commenced the investigation and visited the place of occurrence at 10.15 a.m., prepared Observation Mahazar (Ex.P.2), Rough Sketch (Ex.P.11) in the presence of P.W.9 and one Eswaran, also recovered portion of blood stained Tar in the Road and portion of ordinary Tar from the Road (M.Os.2 and 3). Then, he proceeded to the Government Hospital, Theni, conducted inquest in the presence of Panchayatars and witnesses between 12.00 noon and 2.00 p.m. prepared Inquest Report



(Ex.P.12). Thereafter, he recorded the statements of witnesses and sent the body for postmortem autopsy through P.W.13, Head Constable, along with memo.

6.P.W.14 is the Doctor working in Theni Government Medical College Hospital, conducted autopsy and gave a postmortem report Ex.P.7 and he was of the opinion that the deceased would appear to have died of Shock and Haemorrhage due to External Injury No.1 and its corresponding internal injuries.

7.In the meantime, P.W.18, investigation officer, continued the investigation and arrested the accused at about 5.00 p.m. and on such arrest, 1st accused voluntarily gave a confession and on the basis of the admissible portion of the confession of A1, he recovered M.O.1 - knife and sent the accused for judicial custody, and recorded the statements of other witnesses. Originally, the F.I.R. was registered against 10 persons, since the investigation reveals that only eight accused have involved in this case, on the very same day, P.W.18 prepared an alteration report (Ex.P.14) against eight accused, thereby excluding one Rajiv Kumar and Sivaramakrishnan, and sent the same to the concerned Judicial Magistrate Court. P.W.18 recorded the statement of the Doctor, who conducted autopsy and also P.W.17, Sub-Inspector of Police, who registered the F.I.R. Thereafter, he handed over the investigation to P.W.19, as he was transferred.

8.P.W.19, Inspector of Police, continued the investigation and recorded the statement of Assistant Chemical Examiner in the Forensic Lab, then he handed over the investigation to P.W.20 another Inspector of Police, he continued the investigation and after completing the same, filed the final report for the offences under Sections 120(b), 147, 148, 342, 302, 506(ii) r/w 149 I.P.C.

9.Based on the the above materials, the trial Court originally framed charges including the offence under Section 120(b), subsequently, the charges were altered as stated above and the accused have denied the charges. Charges were framed against 8 accused, pending trial A8 died, only seven accused faced the trial. In order to prove the case of the prosecution, as many as 21 witnesses were examined and 16 documents were marked besides seven material objects.

10.Out of the witnesses examined, P.W.1 is the wife of the deceased. She spoke about the motive against A1 and A4 with the deceased, and stated that on the date of occurrence, the deceased came from Coimbatore, the driver dropped him near one Ganesan's Tea Stall. Subsequently, she heard some quarrel near the Tea Stall, and



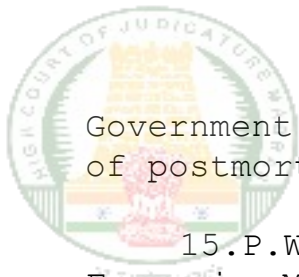
she went there along with his son Pandidurai and saw the deceased in the pool of blood with serious injuries. Immediately, she along with his son Pandidurai and one Thangadurai took him in a car to the hospital, where the deceased was declared brought dead.

11.P.W.2, the brother of P.W.1, is an eyewitness to the occurrence. According to him, at the time of occurrence, there was a quarrel between A1 to A4 and the deceased and A1 to A4 pushed the deceased to another tea shop and on hearing the quarrel, P.W.1 and Pandidurai came to the scene of occurrence. At that time, A3 and A4 caught hold of the deceased and A5 and A2 caught hold of Pandidurai and A1 took the knife and attacked the deceased on the chest, abdomen and the shoulder, A1 criminally intimidated those who tried to prevent him and they ran away from the scene of occurrence. Immediately, he took the deceased to Theni Government Hospital and on the way, he informed the occurrence to the Veerapandi Police Station.

12.P.W.3 is another brother of P.W.1. According to him, A1 to A5 quarrelled with the deceased, at that time, A2 and A5 caught hold of Pandidurai, A3 caught hold of the deceased and A1 took a knife from A4 and attacked the deceased and immediately, he was taken to Government Hospital. P.W.4, another eyewitness to the occurrence, accompanied the deceased in the car from Coimbatore to Theni and got down at the Ganesan Tea Stall, at that time P.W.1 and Pandidurai also came to the scene of occurrence, on seeing them, A2 and A5 caught hold of Pandidurai, A4 caught hold of P.W.1, A3 and A6 caught hold of the deceased and A1 took a knife from A4 and attacked the deceased.

13.P.W.5, another eyewitness to the occurrence and according to him, there was a quarrel between the parties, at that time A2 and A5 caught hold of the deceased Pandidurai, A4 caught hold of P.W.1, A3 caught hold of the deceased, A8 (since dead) instigated the other accused to attack the deceased, immediately, A1 received a knife from A4 and attacked the deceased. P.W.6, took the deceased to hospital after the occurrence, and P.W.7 and P.W.8, spoke about conspiracy, however, they turned hostile. P.W.9 is the witness to the Observation Mahazar and also recovery of M.Os.2 and 3.

14.P.W.10, Grade - I, Police Constable, working in the respondent police station, handed over the original F.I.R. to the Judicial Magistrate Court. P.W.11 is the Judicial Magistrate, Periyakulam, recorded the statements of witnesses under Section 164 Cr.P.C., marked as Ex.P.4. P.W.12 is the witness to the confession given by the accused and also recovery of M.O.1. P.W.13 is the Head Constable, who handed over the dead body for postmortem in the



Government Hospital, Theni, and identified the dead body at the time of postmortem autopsy.

15.P.W.14 is the Associate Professor and H.O.D., Department of Forensic Medicine, Government Theni Medical College, he conducted postmortem autopsy on the dead body of the deceased and issued postmortem certificate Ex.P.7, which reads as follows:

"The body was first seen by the undersigned at 02:20 P.M. on 30.06.2015. It's condition then was rigor mortis present in upper limbs.

Post-mortem commenced at 02:20 P.M. on 30.06.2015.

Appearance found at the Post-Mortem: Moderately nourished body of a male aged about 55 years. Finger and toe nails are pale.

Following Ante mortem injuries are note on the body:

1.An oblique stab wound measuring 4cms x 0.5cm x Thoracic cavity deep noted on the left side of chest. The wound is situated 4.5 cms below the left nipple. The wound edges are clean cut.

On dissection: The Wound passes inward and forwards piercing the underlying muscles, vessels and nerves in 6th intercostal space, piercing the underlying pleura measuring 4cms x liner x through and through, and lower lobe of left lung measuring 4.5cms x 2cms x 1cms, the Wound passes further inwards and forwards piercing the underlying pericardium and left ventricle of heart and ends at a point. The pericardium contains 100ml of blood with clots. Heart - Both chambers empty. Coronaries - patent. Both Lungs-cut section -pale. Left pleural cavity contain 400 ml of blood with clots. Right pleural cavity - empty.

2) An oblique stab wound of size 2cms x 0.5cm x muscle deep noted back of left shoulder 3cms away from the left shoulder joint. The wound edges are clean cut.

3) An oblique stab wound of size 2.5cms x 0.5cm x muscle deep noted over the outer aspect of right axilla region. 6 cms below right shoulder joint. The wound edges are clean cut.

Note: The stab injuries is having regular margins, one end is pointed and other end is curved.

4) Linear Abrasion of size 1.5 cm x 0.5cm deep noted on left upper abdomen.

5) Linear Abrasion of size 1.5cms x 0.5cm deep noted on left upper abdomen, 1 cm below injury No.4.



Other findings:-

Peritoneal cavity - described. Liver, spleen and kidneys -cut section pale. Larynx and trachea -normal- Hyoid bone -intact. Stomach -contains 25ml of muscosai fluid, nil specific smell, mucosa-pale. Small intestine contains 20ml of bile stained fluid, nil specific smell, and mucosa-pale. Bladder -empty. Brain -surface vessels and cut section pale.

OPINION:

The deceased wound appear to have died of Shock and Haemorrhage due to External injury No.1 and its corresponding internal injuries, 05 hrs to 08 hrs prior to autopsy."

According to P.W.14, the deceased died of Shock and Haemorrhage due to External injury No.1 and its corresponding internal injuries

16.P.W.15, Grade - II Constable working in the respondent police Station, took photographs of the scene of occurrence. P.W.16 is the Doctor, working in Theni Government Medical College Hospital, Theni. According to him, on 30.06.2015, at 7.40 a.m., the deceased was brought to the Hospital by P.W.6, and he issued Accident Register Copy (Ex.P.8), declaring him dead. P.W.17 is the Sub-Inspector of Police working in the respondent Police Station, he registered the F.I.R. (Ex.P.9). PW.18 is the Inspector of Police working in the respondent Police Station, conducted the initial investigation, arrested the accused, recovered the material objects and recorded the statements of witnesses. P.W.19, Inspector of Police, continued the investigation and recorded the statement of Assistant Chemical Examiner in the Forensic Lab and then he handed over the investigation to P.W.20. P.W.20, Inspector of Police, after completing the investigation, filed the final report under Sections 120(b), 147, 148, 342, 302, 506(ii) r/w 149 I.P.C. P.W.21 is the Scientific Officer working in the Forensic Lab, Madurai and he examined the material objects and issued Biological Report (Ex.P.15) and Serological Report (Ex.P.16).

17.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., all the accused denied the same as false. The accused did not chose to examine any witness nor did they mark any document on their side.

18.Having considered all the above, the trial Court found the accused/appellants guilty under the said charges and accordingly sentenced them as detailed in the first paragraph of this judgment. Challenging the above judgment, the appellants are before this Court



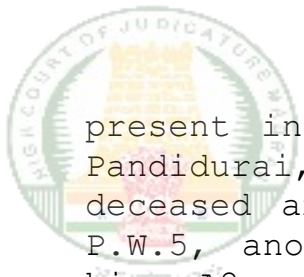
with these Criminal Appeals.

19. We have heard Mr.V.Gopinath, learned Senior Counsel appearing for A.4 to A.7/appellants in Crl.A.(MD) No.541 of 2018 and 8 to 10 of 2019 and Mr.A.K.Alagarsamy, learned counsel appearing for A.1 to A.3/appellants in Crl.A.(MD) No.548 of 2018 and Mr.S.Ravi, learned Standing Counsel for State.

20. Mr.V.Gopinath, learned Senior Counsel appearing for A4 to A7 submitted that, it is a clear case of false implication of accused. Originally, the son of the deceased Pandidurai, said to have given a complaint, Ex.P.9, naming 10 accused. On the very same day, after recording the statement of witnesses, P.W.18 filed alteration report deleting two accused. The eyewitnesses viz., P.W.2 to 5 are interested witnesses, closely related to the deceased, implicating only few accused. There are serious material discrepancies in the testimony of eyewitnesses regarding the presence of the accused.

21. According to the learned Senior Counsel, there is a serious doubt regarding the complaint, the prosecution has suppressed many earlier complaints given by other eyewitnesses. According to P.W.2, the deceased was taken to Theni Government Hospital, and he went to the respondent Police Station and given a statement before the police, that statement was recorded and he had also signed in that statement, thereafter, he has informed Pandidurai that, he has given a complaint in the Police Station. P.W.4 another eyewitness to the occurrence stated that he went to the Hospital at about 7.45 a.m., at that time, he has given a complaint before the respondent Police. Both the complaints have been suppressed, according to prosecution, the son of the deceased viz., Pandidurai said to have given a complaint at about 9.00 a.m., based on which, the F.I.R. was registered, and Pandidurai has died pending trial.

22. The learned Senior Counsel further submitted that P.W.2 and P.W.3 are brothers of P.W.1, wife of the deceased, and they are interested witnesses. That apart, there are serious material inconsistencies between their evidences, which creates a serious doubt regarding their presence at the time of occurrence. According to P.W.2, A2 and A5 caught hold of Pandidurai and A3 and A4 caught hold of the deceased and A1 took the knife and attacked the deceased. He did not speak about the presence of other accused, P.W.2 did not implicate A6 to A8. According to P.W.3, A2 and A5 caught hold of Pandidurai, A3 caught hold of the deceased and A1 received the knife from A4 and attacked the deceased, he has also not implicated A6 to A8. That apart, he has not given any statement to that effect under 161 Cr.P.C. and it is only an improvement. According to P.W.4, at the time of occurrence, P.W.1 was also



present in the scene of occurrence and A2 and A5 caught hold of Pandidurai, A4 caught hold of P.W.1, A6 and A3 caught hold of the deceased and at the instigation of A8, A1 attacked the deceased. P.W.5, another eyewitness gave a different version. According to him, A2 and A5 caught hold of Pandidurai, A3 caught hold of the deceased, A8 instigated him to kill the accused, A4 gave the knife to A1 and asked A1 to attack the deceased, A1 attacked the deceased. That apart, all the witnesses have clearly stated in the cross examination that they have come to the scene of occurrence, they saw the deceased in the pool of blood and that one young boy was holding the deceased. All these material inconsistencies clearly creates doubt regarding the presence in the scene of occurrence. The trial Court also disbelieved the evidence of P.W.3 and held that his presence is doubtful, however, without considering the material contradictions in the testimony of other witnesses, the trial Court wrongly convicted the accused.

23.Learned Senior Counsel further submitted that, the motive alleged by the prosecution was also very weak and trivial. Different motives have been attributed against A1 to A3 and A4 to A7. Though, initially a charge has been framed under Section 120(b), that charge was subsequently deleted. When two sets of accused are having two different motives, the prosecution has to establish that they hatched a conspiracy and in furtherance of the same they joined together and attacked the deceased. A7 is the married daughter of A4, who is not at all residing in the Village, and A5 and A6, who are wife and son of A4, and entire family has been falsely implicated in this case.

24.Learned counsel for the appellants in Crl.A.(MD) No.548 of 2018 submitted that all the eyewitnesses are interested witnesses and there are serious inconsistencies in their evidence, and the presence of the eyewitnesses in the scene of occurrence is highly doubtful. That apart, evidence of the eyewitnesses are not corroborating each other. Even as per the evidence of eyewitnesses, originally the occurrence took place near Selvam Tea Stall, thereafter, the deceased run to another tea stall owned by one Ramar, wherein he fall down, but P.W.18, investigation officer in his evidence stated that there is no trail of blood between Ganesan Tea Stall and Ramar Tea Stall and the occurrence took place only in front of Selvam Tea Stall. He further submits that it is a clear case of false implication and the entire family members of A1 and A4 have been implicated in this case in order to wreak vengeance.

25.Mr.S.Ravi, the learned Standing Counsel appearing for State would submit that, there are four eyewitnesses to the occurrence. Even though all the eyewitnesses are relatives of the deceased,



their testimonies are consistent and they have stated that A1 only attacked the deceased and the medical evidence is also corroborating their evidence. Even though there is some minor discrepancies, it is not material in nature, it is not affecting the prosecution case, as all the four eyewitnesses have consistently stated that it is A1, who attacked the deceased with knife, which is corroborated by the medical evidence. The occurrence took place at 7.00 a.m. and immediately thereafter, at about 9.00 a.m. a complaint was given. There is no delay in registering the F.I.R. all the accused were named in the F.I.R. the F.I.R. also reached the Judicial Magistrate at 12.00 noon and there is no delay in sending the F.I.R. to the Court. Hence, there is no chance of deliberation and false implication of the accused. Even though P.W.2 and P.W.3 are closely related to the deceased, their presence in the scene of occurrence is natural. The other two eyewitnesses P.W.4 and P.W.5 are independent witnesses, their evidence corroborating the evidence of P.Ws.2 and 3 and their evidence need not be disbelieved merely because they are closely related to the deceased.

26.The learned Standing Counsel for the State further submitted that even though the trial Court disbelieved the evidence of P.W.3, the testimonies of other eyewitnesses are consistent and the trial Court rightly relied upon the other eyewitnesses and convicted the accused and there is no infirmity or illegality in the judgment of the Trial Court, requiring interference.

27.We have considered the rival submissions and the evidence produced.

28.A1 to A3 and A4 to A7, belongs to two different families and related to the deceased. Prosecution attributes two set of motive. According to the prosecution, A1 was working as a Police Constable, earlier he had quarrelled with the deceased, and based on the complaint given by the deceased, his service was terminated, hence, he is having a motive against the deceased. A4, who is closely related to the deceased, was a Village Level Secretary of a political party and at the instance of the deceased, he was removed from that post and in his place the deceased was appointed. Hence, he had a motive against the deceased. A2 and A3 are parents of A1. A5 to A7 are wife, son and daughter of A4 respectively.

29.P.W.1 is the wife of the deceased. Admittedly, she is not an eyewitness to the occurrence. She went to the scene after the occurrence. P.Ws.2 and 3 are brothers of P.W.1. P.Ws.4 and 5 also belong to the same Village. They are well known to the accused and deceased.



30.The original charge was that all the accused hatched a conspiracy and in pursuance of the same, they formed an unlawful assembly and some of the accused caught hold of the deceased and A1 attack the deceased with knife. Subsequently, the charges have been altered and the conspiracy charge was deleted.

WEB COPY

31.The primordial contention of the learned Senior Counsel for the accused is that, it is a case of false implication. From the perusal of Ex.P.9, complaint, said to have been given by one Pandidurai, son of the deceased, who died pending trial, he implicated 10 named persons. However, on the very same day of occurrence, based on the preliminary investigation, P.W.18, investigation Officer, filed an altered F.I.R., thereby deleting two accused viz., one Rajiv Kumar and Sivaramakrishnan, who are all brothers of A1, and it is clear that, both of them falsely implicated in the case.

32.It is the evidence of P.W.2 - Nattudurai, after the occurrence, he along Pandidurai and some other persons took the deceased to Theni Government Hospital, on the way, he went to Veerapandi Police Station and gave a complaint. According to him, he alone went to the Police Station, and given a statement before the police, his statement was recorded by the police, and obtained signature from him. P.W.2, has clearly stated in the cross-examination that, the said Pandidurai did not accompany him to the Police Station. That complaint was not brought to light by the prosecution. P.W.4, another eyewitness to the occurrence. According to him, he reached Theni Government Hospital, at 7.45 p.m., at that time he gave an oral complaint to the Police and it was recorded by the police. That was also not brought to the light. However, according to P.W.17, Sub-Inspector of Police, it was son of the deceased viz., Pandidurai, came to the Police Station and given a written complaint at about 9.00 a.m. and the same has been registered. There is no explanation from the prosecution regarding the earlier two complaints given by P.Ws.2 and 4 and the earliest statements have been suppressed by the prosecution.

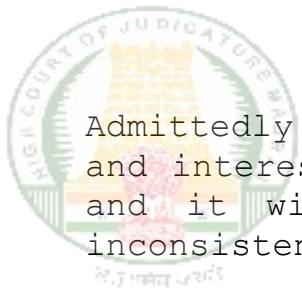
33.So far as the testimony of the eye-witnesses, there are serious inconsistencies in their evidence. As rightly contended by the learned Senior Counsel, the eyewitnesses attribute different overact against each accused, and it creates a doubt regarding their presence in the scene of occurrence. According to P.W.2, on 30.06.2015 morning, there was a quarrel between the deceased and A1 to A4 in front of one Ganesan Tea Stall and all the four accused pushed the deceased to another Tea Stall. At that time P.W.1 and Pandidurai came to the scene of occurrence, A2 and A5, caught hold of Pandidurai, A3 and A4 caught hold of the deceased, A1 took the



knife and attacked the deceased, he has not stated anything about the presence of the other accused. P.W.3 only implicated A1 to A5. According to him, A2 and A5 caught hold of Pandidurai, A3 caught hold of the deceased and A1 took the knife from A4 and attacked the deceased, his evidence was doubted by the trial Court. P.W.4 has given a different version, according to him, all the accused quarrelled with the deceased and at that time, A2 and A5 caught hold of Pandidurai, A4 caught hold of P.W.1, A6 and A3 caught hold of the deceased, A8 instigated the other accused to attack the deceased, A1 took the knife from A4 and attacked the deceased. P.W.5 come out with another version. According to him, A2 and A5 caught hold of Pandidurai, A4 caught hold of P.W.1, A3 caught hold of the deceased, A8 instigated the accused to attack the deceased, A4 gave the knife to A1 and instigated him to attack the deceased and A1 attacked the deceased. Interestingly, none of the witnesses implicated A7, who is a married daughter of A4.

34. From the testimony of P.Ws.2 to 5, it could be seen that all the accused spoke about the presence of P.W.1 and Pandidurai, but it is the clear evidence of P.W.1 that both P.W.1 and Pandidurai came to the scene after the occurrence, and when they reached the scene of occurrence, they saw the deceased with stab injuries, thereafter, Pandidurai and one Thangadurai took him to hospital, according to her testimony she was not present at the time of occurrence. That apart, P.W.2 in the cross-examination has clearly stated that, when he came to the scene of occurrence, after hearing the noise, he found the deceased in the pool of blood and a boy was keeping the deceased in his lap. The trial Court has disbelieved the presence of P.W.3 and held that he ought not to have seen the occurrence. P.W.4 also in the cross-examination stated that he has seen the deceased with stab injuries in the lap of one boy. From their evidence, one thing is clear that after the occurrence only a young boy was keeping the deceased in his lap and P.W.2 and P.W.4 reached there only after the occurrence.

35. According to P.W.5, the occurrence took place near the Tea Stall of one Ganesan. In the cross-examination he has stated that he found the deceased near one Ramar Tea Stall and there was blood in front of the tea stall and blood shed found from the scene of occurrence to Ramar Tea Stall. But, P.W.18, in his evidence has clearly stated that the occurrence took place only near Ganesan Tea Stall, and there is no trail of blood from the Ganesan Tea Stall and Ramar Tea Stall. Considering the evidence of all the eyewitnesses, it could be seen that there are material inconsistencies and each of the eyewitnesses have given different accounts and they have not implicated all the accused. Therefore, it creates a doubt regarding the presence of the eyewitnesses at the time of occurrence.



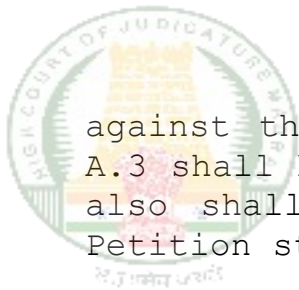
Admittedly all the eyewitnesses are closely related to the deceased, and interested witnesses. Their evidence do not inspire confidence, and it will be unsafe to convict the accused based on their inconsistent testimony.

36. It is also pertinent to state that, there are two set of accused having different motive. Further, the prosecution has not satisfactorily explained how the two sets of accused with two different motive have come together and committed the offence, especially in the absence of charge for conspiracy under Section 120 (b) I.P.C. Admittedly, motive is attributed only against A1 and A4. A2 is the mother of A1 and A3 is the father of A1. Likewise, A5 is the wife of A4 and A6 and A7 are son and married daughter of A4. Further, P.W.3 did not implicate A6 to A8, P.W.2 did not implicate A5 to A8 and P.W.5 also did not implicate A6 and A7, which also strengthen the contention of the appellants that they were falsely implicated in this case. Considering all those materials, we are of the considered view that the false implication of accused cannot be ruled out.

37. Considering the cumulative effects of the above circumstances and having carefully scrutinised the testimonies of the witnesses, we are not inclined to place reliance on their evidence and we are also of the view that it is highly unsafe to convict the accused based on the doubtful testimonies of the interested eyewitnesses.

38. It is the contention of the learned Standing Counsel for the State that, leaving alone the other accused, the evidence of all the eyewitnesses is consistent with respect to the overtact of A1, and all of them have clearly stated that, it is A1 attacked the deceased with knife and caused his death, hence, the evidence of the eyewitnesses could be accepted to that extent. But, we are unable to countenance that contention, the prosecution has not come out with the truth, we have already held that, the testimonies of the eyewitnesses are unreliable and improbable, hence, we are of the opinion that it is unsafe to convict A1 alone based on their testimonies. In fine, we are of the considered opinion that the prosecution has miserably failed to prove the guilt of the accused beyond reasonable doubt, and hence, they are entitled for acquittal.

39. In the result, Crl.A.(MD) Nos.541, 548 of 2018 and 8 to 10 of 2019 are allowed and the conviction and sentence imposed on the appellants/A.1 to A.7, by the learned Additional District and Sessions Judge, Fast Track Court, Theni, in S.C.No.162 of 2016, by the judgment dated 10.12.2018, are hereby set aside. The appellants/A.1 to A.7 are acquitted of all the charges levelled



against them. Fine amounts, if any, paid by the appellants/A.1 to A.3 shall be refunded to them. Bail bonds, if any, executed by them also shall stand cancelled. Consequently, connected Miscellaneous Petition stands closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sj

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.

To

- 1.The Additional District and Sessions Judge,
(Fast Track Court), Theni.
- 2.The Principal District Judge, Theni.
3. The Judicial Magistrate,
Theni.
- 4.The Chief Judicial Magistrate, Theni.
- 5.The Superintendent, Central Prison, Madurai.(+1 Copies)
(in duplicate for communication to detenuted)
- 6.The District Collector, Theni.
- 7.The Director General of Police, Mylapore, Chennai.
- 8.The Superintendent of Police, Theni District.
- 9.The Inspector of Police,
Veerapandi Police Station,
Theni District.



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

WEB COPY
Copy to

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

+1 CC to Mr.P.ANDIRAN, Advocate SR.No. 29275

Judgment in
Criminal Appeal No.(MD) Nos.541, 548 of 2018
and 8 to 10 of 2019
Delivered on 14.09.2021

PK(CO)
TR/SKN/SAR-II(14.09.2021) 16P 15C