

BAIL SLIP
IN Crl.MP 10768 of 2016 in Crl.A 368 of 2016

The Petitioner/Accused viz Jayapal S/o Andi, male, aged 55 years was to be released on bail vide order dated 21.07.2017 made in Crl.MP 10768 of 2016 in Crl.A 368 of 2016

BAIL SLIP
IN Crl.A 368 of 2016 Crl.MP 7865 of 2017

The Petitioners/Accused viz 1.Govindaraj S/o Thulukkanam, Aged 49 years, male 2.Parasuraman, S/o Thulukkanam, male aged 42 years 3.Mani, S/o Parasuraman, aged 55 years, male were to be released on bail vide order dated 21/07/2017 made in Crl.MP 7865 of 2017 in Crl.A 368 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.06.2022	PRONOUNCED ON : 29.06.2022
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CORAM::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

CRL.A.NO.368 OF 2016

1. Govindaraj, Aged 49 years,
S/o.Thulukkanam,
No.341, Pillayar Kovil Street,
Tiruvannamali District.
2. Parasuraman, Age 42 years,
S/o.Thulukkanam,
No.1/91, Gonniamman Nagar,
Erikkarai Theru, Mudichur,
Chennai - 48.
3. Jayapal, Age 55 years,
S/o.Andi,
No.1/91, Gonniamman Nagar,
Erikkarai Theru, Mudichur,
Chennai - 48.
4. Mani, Aged 55 years,
S/o.Parasuraman,
No.1/163, New Street, Thirumani Post,
Thirumani Village,
Tiruvannamali District. ...Petitioners/Accused 1 to 4

/versus/

State represented by,
The Inspector of Police,
Desur Police Station,
Tiruvannamalai District.
(Crime No.53 of 2002).

...Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C., against the judgement of conviction and sentence imposed on the accused by the Hon'ble Sessions Judge, Tiruvannamalai, Tiruvannamali District in Sessions Case No.178 of 2008 dated 29.04.2016.

For Petitioners: Mr.C.R.Malarvannan
For Respondent : Mr.S.Udaya Kumar,
Government Advocate (Crl.Side)

J U D G M E N T

The appellants 1 to 4, on 27/04/2002, at about 7.00 a.m, came from their Village (Pakathur Madam) to the neighbouring Village (Thennathur Colony) to have toddy. When they came to the field of Selvaraj (P.W-1) to have their drink, Selvaraj objected them. Wordy quarrel erupted and later turned into a deadly fight. Govindaraj (A-1), took a wooden log and hit P.W-1 on the right side head. Seeing the commotion, Marimuthu rushed to the spot and tried to prevent Govindaraj from attacking further. Then, A-1 to A-4 all joined together and attacked deceased Marimuthu by wooden logs and hands. Then, Parasuraman (A-2) hit P.W-1 (Selvaraj) with wooden log on the right knee. P.W-1 came to the hospital earlier and got admitted in the hospital. The deceased Marimuthu, who sustained head injury and fell unconscious was brought to the hospital later. He succumbed to the injury. Complaint from P.W-1 was recorded and the investigation proceeded in Crime No.53/2002 for offences under sections 307, 324 and 323 of I.P.C and altered to Sections 447, 323, and 302 of I.P.C.

2. At this juncture, it is also to be noted that, A-1 and A-2 are brothers and they also sustained injuries in the said fight. For their injuries, they got admitted in the hospital. A case in Crime No.54/2002 for offence under sections 341 and 323 I.P.C was registered against P.W-1.

3. The investigation in Crime No.53/2002 against these appellants completed and on filing the final report, the matter was committed to Court of sessions.

4. The Principal District and Sessions Judge, Thiruvannamalai framed charges against A-1 to A-4, for offence punishable under Sections 447 and 302 I.P.C against A-1 and A- 2 for offences punishable under Section 323 I.P.C.

5. To prove the charges, the prosecution has examined 10 witnesses, marked 13 documents as exhibits and 3 material objects were produced.

6. The Trial Court, on appreciating the evidence held that, the murder of Marimuthu is not a pre-meditated murder. It is a culpable homicide not amounting to murder. The death caused in an incident which has taken place at spur of the moment without any intention. Therefore, altered the charge of Section 302 I.P.C to Section 304(ii) I.P.C and convicted and sentenced the accused A1 to A4 to undergo 10 years R.I.

7. All other charges were held not proved and accused were acquitted from other charges.

8. Aggrieved by the judgement of the conviction and sentence, the present appeal is preferred by A-1 to A-4.

9. The Learned Counsel for the appellants, assail the Trial Court judgement on two grounds.

(i). The belated registration of the complaint and suppression of the earlier information given by P.W-1 to the police on his way to hospital. The contradiction in the testimony of P.W-1 and P.W-9 regarding the time and place of first information received leads to suspect manipulation of the facts.

(ii). Failure of the Investigation Officer to disclose the injuries sustained by the accused. By suppressing the facts about the injuries sustained by the accused during the same transaction, the prosecution has screened the real aggressor. The omission to proceed with the investigation in the case in counter registered in Crime No.58/2002, the accused were deprived of their valuable right of fair trial.

10. The Learned Counsel for the appellant submitted that, P.W-1 the first informant also alleged to have injured in the incident occurred on 27/04/2002 at about 7.00 a.m in his field. He, in his examination-in-chief had clearly stated that

on 27/04/2002 before going to the hospital, he, went to the Desur Police Station and informed the police about the incident. They registered the complaint and got his signature. P.W-1 has identified Ex.P-1 in the Court as the complaint given by him to the police. However, in Ex.P-1, it is mentioned that, the statement of P.W-1 was recorded on 27/04/2002 at about 13.00 hrs in the hospital.

11. The case of the prosecution is that, on receipt of the intimation from the hospital, Kasilingam (P.W.9), Sub Inspector of Police, went to the Hospital and recorded the statement of P.W-1 at about 1.00 p.m. He, then came back to the station and registered the F.I.R in Crime No.53/2002 at about 2.00 pm. In the Accident Register of Selvaraj (Ex.P-3), it is clearly mentioned that Selvaraj (P.W.1) came to the hospital at 11.30 a.m on 27/04/2002. Therefore, it is clear that, Ex.P-1 (complaint) is not the information given by P.W-1 to the police before he got admitted in the hospital. The information received from P.W-1 much prior to Ex.P-1 is suppressed by the police and the subsequent statement of P.W-1 given in the hospital is taken for registration of F.I.R and investigated, causing prejudice to the appellants. The said suppression of earlier complaint gains more significance in view of the fact that out of four accused two accused had sustained injuries in the same transaction. Counter complaint also registered in Crime No.54/2002 on the same day. However, no investigation done on this complaint. The registration of the counter complaint is not disclosed in the final report or placed before the trial Court. The Investigating Officer erred in not following the Police Standing Order and the guidelines of the Courts regarding procedures to be followed while investigating case and counter case. The grave violation of these procedure has caused miscarriage of justice.

12. Apart from the two grounds, the Learned Counsel for the appellants submitted that, the trial Court having rightly held that, the injuries caused were not intentional, ought to have also considered that the injuries found on the deceased are not likely to cause death in normal course. In this connection, the reply elicited from P.W-7, the Dr.Vijayalakshmi, who conducted autopsy that, had the victim been brought to the hospital earlier he could have been saved is very crucial and relevant since while P.W-1 who sustained simple injury went to the hospital at 11.30 a.m, the deceased Marimuthu was brought to the hospital only at 3.30 p.m. The Accident Register (Ex.P-4) Marimuthu indicates that, he was semi-conscious and drowsy. The abrasion over right side of scalp 2x1 c.m size was the only external injury found on him, when P.W-6 examined him.

13. Hence, the Learned Counsel for the appellants submitted that, the prosecution failed to prove who caused the injury on the scalp which was presumed to be the cause for death. The prosecution failed to prove that it was intentional and sufficient to cause death. The injuries found on the accused persons might have been caused during exercising self defence or by accident fall. Therefore, the trial Court ought to have extended the benefit of doubt to the accused and ought not to have sentenced them for 10 years R.I which is disproportionate to the offence not proved beyond doubt.

14. In support of his submission, the Learned Counsel for the appellants relied upon the following judgments:-

(i). Lakshmi Singh and others etc., -vs- State of Bihar reported in AIR 1976 SC 2263 (1).

(ii). Muniyandi and others -vs- State and others reported in 2017(1)MLJ (Cr1) 729.

(iii). Rupinder Singh Sandhu -vs- State of Punjab and others reported in AIR 2018 SC 2395.

(iv). Kumar -vs- State reported in AIR 2018 SC 2386.

(v). Balu and others -vs- State (U.T of Pondicherry) reported in (2016) 15 SCC 471.

(vi). State of Rajasthan -vs- Rajendra Singh reported in (2009) 11 SCC 106.

(vii). Panneerselvam and others -vs- Inspector of Police, Karur Branch reported in 2020(3)MLJ (Cr1) 157.

(viii). Bhaval Shiva -vs- State of Gujarat reported in MANU-GJ-0338-1991.

(ix). State of M.P -vs- Ratan Singh and others reported in (2020) 12 SCC 630.

(x) Arvind Kumar and Ors -vs- State of Rajasthan reported in MANU/SC/1108/2021.

15. The Learned Government Advocate (Cr1.Side) for the respondent submitted that there is no suppression of earlier information. The only information received from P.W-1 was Ex.P-1 and based on it, F.I.R was registered and taken up for investigation. The stray statement of P.W-1 that, he gave complaint to the police on his way to hospital without any particulars and contrary to document does not carry any merit for consideration or impeach the consistent evidence of the prosecution witness. Further, the fact of registration of counter case is borne by record. It was not suppressed. The

injuries alleged to have sustained by A-1 and A-2 were simple in nature and the said fact has less significance for the case under trial for murder. The injured A-1 and A-2 never took any steps to file protest petition on the closure of their complaint. The Investigating Officer having found that the case in counter by the accused persons is only to get over the prosecution in Crime No.53/2002, closed the counter case. There is no procedural error. Further, no prejudice caused to the accused person by not disclosing their counter complaint which was closed for want of prima facie evidence.

16. Heard the Learned Counsel for the appellants and the Learned Government Advocate (Crl.Side) for the respondent. Records perused.

17. Selvaraj (PW-1) is the defacto complainant/informant and injured witness. The scrutiny of P.W-1 deposition reveals that, the incident took place on a festival day in the Village. The accused persons have come to his field to take toddy. He has objected to it. The accused 4 in numbers had attacked him with wooden log. Ex.P- 3 indicates P.W-1 sustained the following injuries.

1. Lacerated wound over right side of scalp 4 c.m x 1 c.m x 1 c.m.

2. Abrasion over right side knee 1 c.m x $\frac{1}{2}$ c.m.

18. The specific case of the prosecution is that, Marimuthu a stand-byer came to rescue P.W-1 but was attacked indiscriminately by A-1 to A-4, in which, Marimuthu sustained injuries and later, died in the hospital. The Accident Register issued for Marimuthu is marked as Ex.P-4. The post mortem report is marked as Ex.P-7.

19. In the course of trial, the fact that A-1 and A-2 also sustained injuries and got admitted in the hospital proved through oral evidence of P.W-1 (defacto complainant), P.W-10 (Investigating Officer) and P.W-6 (Dr.B.Prabakar, who issued Accident Register for A-1 and A-2). These accused had sustained the following injuries as per the Accident Register (Ex.P.6).

A-1: Govindaraj:

(i). Lacerated wound over right side of scalp 2 c.m x 1 c.m x 1 c.m.

(ii). Abrasion over left arm 2 c.m x 1 c.m x 1 c.m.

(iii). C/o.pain left chest.

A-2: Parasuraman:

- (i). Lacerated wound over scalp right side 3cmx2cmx1cm.
- (ii). Lacerated wound over left index finger $\frac{1}{2}$ cm x $\frac{1}{2}$ cm x $\frac{1}{2}$ cm.

20. From the chief examination of P.W-1 as well as cross of P.W-2, it is elicited that the occurrence took place at about 7.00 a.m. P.W-1 came to the police station and gave the complaint. Then, went to the hospital. In the cross examination of P.W-1, he has stated that, his blood strained shirt was removed in the police station and taken possession by the police. The said blood strained shirt of P.W-1 not produced before the court.

21. The Accident Registers of A1 and A2 indicates that, they went to the Government Hospital, Vandavasi at 11.35 a.m., on 27.04.2002 to take treatment for their injuries and they have informed the Doctor that they were assaulted by known persons near lake. They both got lacerated wound over scalp and few other injuries over the body.

22. As far as the post mortem of the deceased Marimuthu it says, the sub-dural haematome in the right parietal region about 4 x 6 c.m which corresponds to the external injury of abrasion over right side of scalp 2 c.m x 1 c.m.

23. There is also doubt over the scene of occurrence because the Investigating Officer had stated that the quarrel occurred in the land of Srinivasan. The F.I.R indicates that, the scene of occurrence is the land of P.W.1 (Selvaraj). The observation mahazar Ex.P.2 states the scene of occurrence is in the land of Selvaraj but Ex.P.3 the Accident Register of Selvaraj shows the place of occurrence is Srinivasan's land. The Accident Register of deceased Marimuthu indicate the place of occurrence as Thennathur lake bunk. The Accident Register (Ex.P.5) of Parasuraman (A2) states the place of occurrence as Thennathur lake bunk. The Accident Register of Govindaraj (A1) also say the place of occurrence as Thennathur lake bunk. The inquest report (Ex.P.12) prepared in the hospital mentions the place of occurrence as the land of Srinivasan (P.W.1). This contradiction creates a serious doubt about the place of occurrence particularly when, where, and by whom the deceased Marimuthu was assaulted.

24. P.W.5 is the father of deceased Marimuthu, he had deposed that, he heard his son Marimuthu was injured and he went to the lake at 10.00 a.m., saw his son alone lying injured and took him to the hospital at around 11.00 a.m. Therefore, the incident if had occurred at P.W.1 land, then the prosecution ought to have explain why the injured Marimuthu was lying on the lake bunk which is about 60 feet away from scene of occurrence.

25. The Investigation Officer (P.W.10) admits that, he did not recover the blood stain shirt from P.W.1. Whereas, P.W.1 in the cross examination has deposed that, shirt was recovered from him by police when he went to the police station to report the incident. The Investigating Officer has not prepared the rough sketch to show whether the land of P.W.1, land of Srinivasan and the lake are in close proximity so as to presume the witnesses were referring one of the same place by different identification. Particularly, in the observation mahazar (Ex.P.2) it is specifically stated that, the lake and lake bunk is 60 feet away from the scene of occurrence. There is no reference about the land of Srinivasan.

26. For the aforesaid reason, this Court finds that there is serious doubt about the case of the prosecution and the manner in which incident projected by the prosecution, hence benefit of doubt is extended to the accused persons.

27. Hence, the Criminal Appeal is allowed. The conviction and sentence imposed by the Sessions Judge, Tiruvannamalai, in S.C.No.178 of 2008 is hereby set aside. Fine amount paid if any, shall be refunded to the appellant. Bail bond executed shall stand discharged.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

bsm

To,

1.The Sessions Judge, Tiruvannamalai.

2.The District Munsif cum
Judicial Magistrate, Vandavasi.

- 3.The Chief Judicial Magistrate,
Tiruvannamalai(For Information)
- 4.The Inspector of Police, Desur Police Station,
Tiruvannamalai District.
- 5.The Superintendent
Central Prison, Vellore.
- 6.The Inspector of Police,
Villupuram Town Police Station,
Villupuram.
- 7.The Public Prosecutor, High Court, Madras.

Copy to
The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.C.R.Malarvannan, Advocate, Sr.No.40878

Pre-delivery judgement made in
Crl.A.No.368 of 2016

PMK(CO)
KKV/08/07/2022