



BAIL SLIP

The appellants/accused 1 to 5 namely,

3. Veeranan, Male, aged about 57 years, S/O. Palanisamy,
4. Jayalakshmi, Female, aged about 56 years, W/O. Veeranan

was directed to be released on bail as per the order of this court, dated 06/06/2019 in Crl. MP(MD) NO.4596/2019 in Crl. A(MD) NO.163/2019.

and

1. Murugan, Male, aged about 35 years, S/O. Veeranan,
2. Ganesan, Male, aged about 36 years, S/O. Veeranan,
5. Anbupandi, Male, aged about 26 years, S/O. Radhakrishnan

was directed to be released on bail as per the order of this court, dated 31/10/2019 in Crl. MP(MD) NO.6991/2019 in Crl. A(MD) NO.163/2019 on the file of this court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.03.2022

DELIVERED ON : 16.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.A. (MD)No.163 of 2019

- 1.Murugan
- 2.Ganesan
- 3.Veeranan
- 4.Jayalakshmi
- 5.Anbupandi

... Appellants / Accused Nos.1 to 5

-Vs-

State of Tamil Nadu, represented by the
Inspector of Police,
Nilakottai Police Station,
Dindigul District.
(Crime No.209 of 2013)

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C., praying to set aside the judgment of conviction dated 28.03.2019 by the learned Additional District and Sessions Judge, Dindigul in Sessions Case No.158 of 2017 and acquit the appellants.

For Appellants
For Respondent

: Mr.K.Sundaravel
: Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor.



JUDGMENT

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

This Criminal Appeal has been filed by the appellants / accused Nos.1 to 5, aggrieved over the conviction and sentence, dated 28.03.2019, made in S.C.No.158 of 2017, by the learned Additional District and Sessions Judge, Dindigul.

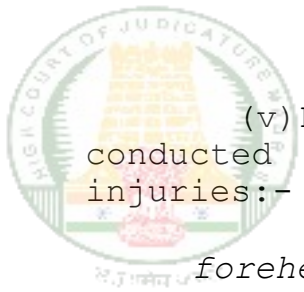
2.The brief facts of the prosecution case is as follows:

(i)The deceased is the husband of P.W.1. There was a dispute over the immovable properties between the accused and the deceased, in respect of which, a complaint was also lodged by the deceased against the accused on 28.07.2013. However, the police has advised both the parties to resolve the issue before the Civil Court. From that onwards, the accused had decided to kill the deceased.

(ii)When the matter stood thus, on 08.11.2013, when the deceased was returning in his two wheeler M.O.10 to his village, the accused travelled in a Van M.O.6 and hit against the deceased's vehicle. P.W.2 and P.W.3 were proceeding at the relevant point of time to their village. The accused after hitting the deceased with their vehicle got down from the vehicle. The 2nd accused attacked the deceased with iron rod and the 5th accused hit the deceased with the jockey and threw the body of the deceased in the nearby bushes. P.W.2 and P.W.3 have informed the same to P.W.1 and others in the village. Immediately, P.W.1 along with her children and other villagers rushed to the place of occurrence and found the dead body of her husband. Thereafter, on the next day morning ie., 09.11.2013 at about 08.00 a.m., she lodged a complaint under Ex.P.1 to P.W.13.

(iii)P.W.13 Special Sub Inspector of Police received the complaint at 8.00 a.m., on 09.11.2013 and registered the case in Crime No.209 of 2013 for the offences punishable under Sections 147, 148, 120(b) and 302 of IPC under Ex.P.15.

(iv)P.W.14 Investigation Officer took up the case for investigation and visited the place of occurrence and prepared the observation mahazar under Ex.P.3 and rough sketch under Ex.P.17 in the presence of P.W.8 and other witnesses. He also seized M.O.6 and collected blood stained soil under M.O.7 and ordinary soil under M.O.8 and collected one Vodafone cellphone found in the place of occurrence under Ex.P.4 mahazar. He also examined the witnesses and recorded their statement, thereafter, conducted inquest over the dead body and prepared inquest report Ex.P.19 and sent the dead body for autopsy.



(v) P.W.12 Medical Officer attached to the Government Hospital conducted autopsy over the dead body and found the following injuries:-

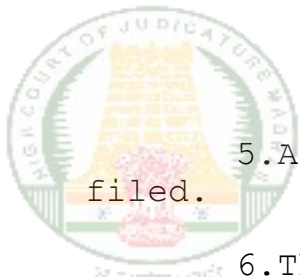
"External Injuries: A deep cut injury on left forehead about 10x1x3 cm extending intracranially involving the brain. Left eye laceration left zygomatic bone left frontal bone left mandible, left facial bone, right ear partial avulsion. Right shoulder joint contusion right clavicle 1-3 rd rib, right little finger partially cut, right forearm & arm abrasion, Bleeding both nostrils open, right tibia & fibule at the junction of middle & lower 1/3. Internal examination skull bone intact, left facial extends intracranially lungs (N), hyoid-Intact, Liver-laceration Bladder-pale is empty. Stomach filled with partially digested food materials. Heart (N) spleen, kidney appears normal intestines-pale appears normal."

and issued Ex.P.14 and opined that the deceased died due to injuries.

(vi) P.W.14 in continuation of his investigation, arrested the accused 1 to 3 on 09.11.2013 in the presence of P.W.9 Village Administrative Officer and recorded the confession of the third accused. Admissible portion of the confession is marked as Ex.P.5. In pursuance of the same, he seized iron rod M.O.1 and two wheeler M.O.9 and cellphone M.O.2 series. Thereafter, on 18.11.2013 he took the custody of the 5th accused, who surrendered before the learned Judicial Magistrate No.I, Madurai on 12.11.2013, examined him and recorded his confession, which is marked as Ex.P.6. Based on the confession, he seized the vehicle jockey M.O.3. After completion of the investigation, he filed final report against the accused persons.

3. Before the trial Court, on the side of the prosecution, P.W.1 to P.W.14 were examined, Exs.P1 to 22 and M.O.1 to M.O.10 were marked. On the side of the appellants, none was examined and no document was marked. On questioning under Section 313 of Cr.P.C., the accused persons denied charges.

4. Based on the evidences and materials, the trial Court had found the accused persons guilty, convicted the appellants 1, 2 and 5 for the offence under Section 302 of IPC and sentenced them to undergo life imprisonment each and to pay a fine amount of Rs.10,000/- in default to undergo two years rigorous imprisonment each and convicted the appellants 3 and 4 for the offence under Section 302 r/w 149 of IPC and sentenced them to undergo life imprisonment each and to pay a fine of Rs.10,000/- in default to undergo two years rigorous imprisonment each. The trial Court set off the period of sentence already undergone by the appellants / accused under Section 428 of Cr.P.C.



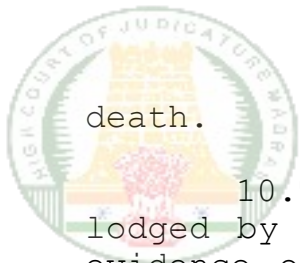
5.Assailing the same, the present Criminal Appeal has been filed.

6.The learned counsel appearing for the appellants vehemently contended that it is a classic case of false implication. The evidence of P.W.2 and P.W.3 is highly improbable and unnatural. The conduct of P.W.1 and others lodging complaint after 12 hours even after the dead body was found and seen by them, is unnatural. Ex.P.1 complaint indicates that P.W.2 is only a hearsay witness, whereas in his evidence, P.W.2 stated as if he has seen the occurrence. The evidence of P.W.2 and P.W.3, stated to be eye witnesses, is against the normal human conduct. Merely because of some civil dispute between the deceased and the accused previously, the accused could not be fastened with criminal liability, when the deceased died due to the accidental injuries. Hence, he submitted that the prosecution witnesses are highly interested. The accused have been implicated for some other purposes.

7.He further submitted that the trial Court has not properly analyzed the entire evidence. Though the prosecution is said to have seized three cellphones, one from the place of occurrence and others from the accused, no attempts whatsoever made to examine the call records to prove the complicity of the accused. There was no reason as to why the scientific evidence has not been brought up before the Court. That apart, the injury sustained by the deceased clearly shows that there was a cut injury, which also rules out the alleged injury caused with iron rod by the accused. Further, there was no fracture on the skull. If the accused used M.O.3 heavy jockey and crushed the head, there should have been a fracture on the skull. But, the evidence of Medical Officer (P.W.12) rules out any fracture. Therefore, the entire prosecution theory is highly doubtful. Hence, the conviction and sentence passed by the trial Court is to be set aside.

8.The learned Additional Public Prosecutor appearing for the respondent submitted that P.W.2 and P.W.3 have spoken about the occurrence and the prosecution also proved the previous motive. On 28.07.2013, a complaint was given in respect of the immovable properties, which has been spoken by P.W.13 and Investigation Officer P.W.14. Hence, he prayed for dismissal of the appeal.

9.We have perused the entire materials placed on record. The crux of the prosecution case is that there was a complaint given by the deceased against the accused on 28.07.2013. Therefore, the accused developed animosity and decided to kill the deceased. Accordingly, on 08.11.2013 at about 7.15 p.m., while the deceased was coming in two wheeler (M.O.10), all the accused came in a van (M.O.6) and dashed against the two wheeler of the deceased. As a result, he was thrown off his vehicle, thereafter, the accused 2 and 5 caused injuries by using iron rod and jockey and caused

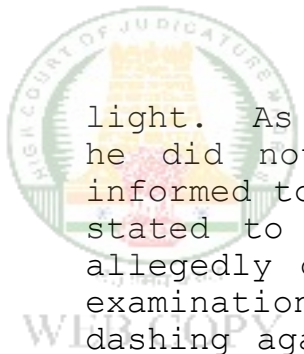


death.

10.The law was set in motion on the basis of Ex.P.1 compliant lodged by the wife of the deceased. After carefully perusing the evidence of P.W.1, we come to the conclusion that her evidence is unreliable and unnatural and against the normal human conduct for the simple reason that having heard the death of her husband on previous night on 08.11.2013, immediately she rushed to the spot along with villagers and family members in two wheelers and found the dead body in the place of occurrence, however, she has not chosen to give report to the police. It is her definite case that as nobody was carrying cellphone, she has not informed to anybody. The entire evidence is carefully scanned and she has never spoken about material objects in the form of iron rod and cellphone scattered in the place of occurrence. Whereas, she lodged a complaint with P.W.13 on the next day morning at about 8.00 a.m., on 09.11.2013 very leisurely. Therefore, when the husband was found dead, having known that he was murdered, she has casually gone to the police station on the next day morning after 12 hours. It is against the normal human conduct and unnatural. Therefore, her evidence is attached with artificiality. Therefore, the very lodging of the complaint (Ex.P.1) and the delay in lodging the complaint assumes great significance in this case to doubt the prosecution version. Ex.P.1, three page written complaint shows that after hearing the occurrence from one Paramasivam (P.W.5), P.W.1 rushed to the place of occurrence along with one Ramakrishnan, Rathinam (P.W.2), Ganesan and Kanagaraj. The complaint does not indicate the presence of any of the material objects in the place of occurrence. Further, her complaint itself came to be lodged with support of the villagers on the next day morning.

11.It is also to be noted that the so-called persons referred in the complaint, who accompanied P.W.1 after hearing the news, except P.W.2 and P.W.5, have not been examined. Paramasivam though examined as P.W.5, he never stated anything about the occurrence. He stated in his evidence that he found the deceased, lying dead in an accident and immediately informed the same to the village people over the cellphone. He never stated anything against the accused. In the Ex.P.1, it is specifically stated that P.W.2 accompanied P.W.1 to the place of occurrence, after hearing the death of the husband of P.W.1 from one Paramasivam. Whereas, P.W.2 has given evidence as if he saw the occurrence. His evidence is that he travelled in two wheeler with the said Paramasivam (P.W.5) and on hearing the sound, he saw the deceased being thrown out from the vehicle, thereafter, all the accused got down from the vehicle and the 2nd accused attacked the deceased with iron rod and the 5th accused threw the jockey on the head of the deceased.

12.It is relevant to note that his cross-examination also
<https://hcmiscourtsgov.in/judicialservices> if he saw the occurrence only in his two wheeler



light. As he did not carry cellphone at the relevant point of time, he did not inform the same to the police immediately and only informed to the family of the deceased. Whereas, P.W.3, who is also stated to be the eye witness, has stated that the accused have allegedly caused injury on the deceased. However, in his cross-examination, he stated that he has not seen the accused's vehicle dashing against the two wheeler and he immediately informed to the ambulance by the cellphone of P.W.2. Though P.W.2 and P.W.3 claimed to have seen the occurrence, the evidence of P.W.3 shows that as if the occurrence took place in the main road itself and he never stated anything about the accused allegedly dumping the dead body into the bushes, whereas, P.W.2 has stated in his evidence as if the accused dumped the body into the bushes.

13.It is relevant to note that P.W.2 is not an ordinary rustic villager, he was a Director of the Co-operative Bank at the relevant point of time and the deceased was holding the post of President. The cross examination of P.W.2 also indicates that he is a politician. Therefore being the politician and holding the post of Director in the Co-operative Bank, he is not an ordinary rustic villager to contend that he has no knowledge about his duty to inform the police. Nothing prevented him from informing the occurrence to the police immediately. But he has not done so, whereas the evidence of P.W.3 shows as if on the same day they informed to the ambulance. Therefore, the evidence of P.W.2 and P.W.3 creates serious doubt about the prosecution story, particularly, witnessing the occurrence. Therefore, we are unable to rely upon the evidence of P.W.2 and P.W.3 to base conviction. Their conduct is remaining silent and not taking action despite witnessing such alleged assault by the accused on the deceased, is unnatural and against the normal human conduct.

14.One Sankar was examined as P.W.4, who has spoken that on 08.11.2013 he has also seen the accused, causing death to the deceased and after informing the family members, they came to the place of occurrence and the body was taken to the hospital by ambulance. His evidence, in fact believes the prosecution version that the dead body was recovered only on the next day morning after conduct of the inquest.

15.It is also relevant to note that the presence of the so-called eye witness is highly doubtful. In the inquest report (Ex.P.19), the investigation officer on the basis of the inquest and examination of the witnesses recorded that the dead body was lastly seen by the said Paramasivam (P.W.5) in the place of occurrence. P.W.5 in his evidence has also substantiated the same and also stated that he has found the dead body of the deceased after the accident occurred. If really P.W.2 and P.W.3 have seen the deceased alive at the time of occurrence, there was no reason as to why they have not given any statement to the investigation officer during the inquest report. This also creates serious doubt about the version of P.W.2



and 4. These infirmities coupled with the unnatural conduct of P.W.1, lodging the complaint casually after 12 hours, even after knowing that her husband was allegedly killed by the accused, create serious doubt about the entire prosecution case. The delay in lodging the complaint is also not explained by the prosecution.

WEB COPY

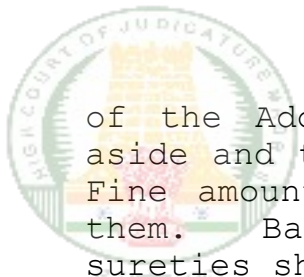
16.It is also to be noted that the evidence of medical officer shows that the deceased has not sustained any fracture on the skull. In fact, the medical officer noted a deep cut injury on the left forehead. She has also admitted that the injuries are also possible by the accident. If the iron rod and jockey alone are used, there should have been a fracture on the skull. But, no fracture was found by the medical officer, which also creates a serious doubt about the prosecution version.

17.Though P.W.1 and others have visited the place of occurrence, none of the witnesses have spoken about any material objects said to have been found in the place of occurrence. Whereas, the investigation officer claimed that he seized the cellphone and the vehicle from the place of occurrence. The so called eye witnesses, except P.W.5, have not spoken anything about the presence of the vehicle in the place of occurrence. This also create serious doubt about the prosecution case. Having seized the alleged cellphone from the place of occurrence and also from the other accused during the arrest, there was no reason as to why the investigation officer has not obtained call details to prove the presence of the accused at the relevant point of time. Further, the prosecution has also not taken any steps to examine the so-called vehicle by the Motor Inspector to prove the nature of damages to the vehicle. There was no explanation in this regard by the investigation officer. This also cannot be ignored together.

18.Further, the First Information Report has reached to the Court on 12.30 p.m., on 09.11.2013 with delay, which is also not explained properly. Therefore, merely on the basis of some earlier complaint given in respect of some dispute over the immovable property, the Court cannot presume the guilt against the accused for the grave crime. The delay in lodging the First Information Report and despatch delay coupled with the conduct of P.W.1 and other witnesses not informing to the police on the same day leads to the only inference that the entire prosecution story is a result of deliberations and fabrications with exaggerated version.

19.Therefore, the judgment of the trial Court, convicting the accused is not based on the proper evidence and law. Accordingly, we have no other option to hold that the entire case of the prosecution is doubtful.

20. In the result, the Criminal Appeal stands allowed and the conviction and sentence imposed on the appellants / accused, by



of the Additional District and Sessions Court, Dindigul, is set aside and the appellants / accused are acquitted from the charges. Fine amount, if any, paid by the appellants shall be refunded to them. Bail bond, if any, executed by the appellants and the sureties shall stand terminated.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Myr
To

- 1.The Additional District and Sessions Judge,
Dindigul.
- 2.The Judicial Magistrate, Nilakottai.
- 3.Do Through
The Chief Judicial Magistrate, Dindigul District.
4. The Director General of Police,
Mylapore, chennai.
5. The District Collector, Dindigul.
- 6.The Superintendent,
Central Prison, Madurai.
- 7.The Inspector of Police,
Nilakottai Police Station,
Dindigul District.
- 8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
9. The Section Officer,Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.M.KARTHIKEYA VENKITACHALAPATHY, Advocate (SR-12542[F]
dated 16/03/2022)

delivered in
CRL.A. (MD)No.163 of 2019
16.03.2022

na (CO)
TR(23.03.2022) 8P 12C

<https://hcservices.ecourts.gov.in/hcservices/>