



Bail Slip

The Appellant/Accused namely Devanesan, S/o.Selvaraj, 2.Sarath, S/o.Ramaraj, 3.Pandi @ Thangapadi, S/o.Karuppaiah 4.Selvam, S/o. Karuppaiah was directed to be released in bail order of this court dated 06/06/2018 made in CRL.MP 3036 of 2018 in CrI.A.(MD)No.186 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.12.2021

Delivered on : 05.01.2022

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

CrI.A.(MD)No.186 of 2018

1.Devanesan, S/o.Selvaraj
2.Sarath, S/.Ramaraj
3.Pandi @ Thangapadi, S/o.Karuppaiah
4.Selvam, S/o.Karuppaiah ... Appellants/A1 to A4

-vs-

The State Rep. by
The Inspector of Police,
Saaptur Police Station,
Madurai District.
(Crime No.110 / 2013) ... Respondent / Complainant

Prayer:- Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment of conviction and sentence passed by the learned VI Additional District Judge, Madurai, in S.C.No.288 of 2015, dated 01.03.2018.

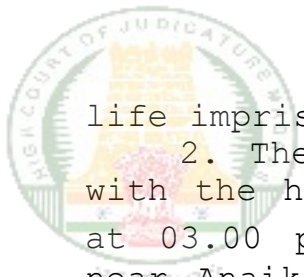
For Appellants : Mr.G.Mariappan

For Respondent : Mr.S.Ravi
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by Dr. G.JAYACHANDRAN, J.]

The appellants are Accused Nos.1 to 4 in S.C.No.288 of 2015, on the file of the VI Additional District Court, Madurai. Being aggrieved by the judgment of conviction for the offence under Section 34 of I.P.C. and sentence to undergo



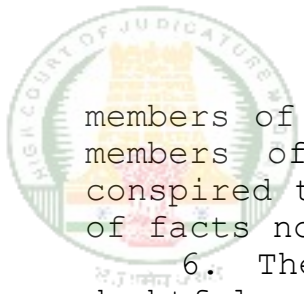
life imprisonment, the present appeal is filed.

2. The prosecution has put on trial 10 persons in connection with the homicidal death of one Gnanamuthu, occurred on 28.07.2013 at 03.00 p.m., on the Brickline (காளவாசல்) of one Sundaramoorthy, near Anaikaraipatti - Chinnavandari Road. The trial Court framed charge against A1 to A10 for the offence under Section 120-B read with Section 302 of I.P.C., for conspiracy to murder Gnanamuthu; A5, A6, A8, A9 and A10 for the offence under Section 302 read with Section 109 of I.P.C., for abetting A1 to A4 to murder Gnanamuthu; and A1 to A4 for the offence under Section 302 read with 34 of I.P.C., for common intention to murder Gnanamuthu and in furtherance of the common intention for committing murder of Gnanamuthu.

3. The trial Court on re-appreciation of evidence relied by the prosecution, disbelieved the theory of conspiracy and abetment, acquitted A5 to A10. However, from the ocular evidence of the eyewitnesses and other circumstantial evidence coupled with the recovery of material objects from the scene of crime as well as based on the confession statement of the accused persons, leading to recovery of weapon used for the crime, the trial Court held that the prosecution has proved A1 to A4 had common intention to murder Gnanamuthu and in furtherance of the said common intention, on 28.07.2013 while Gnanamuthu was proceeding to Anaikaraipatti in his unregistered TVS Star City two wheeler [M.O.1] along with his relative Eswari [P.W.5], A1 and A2 followed him in a two wheeler bearing Registration No.TN-58-AZ-1730. Along with them, A3 and A4 followed Gnanamuthu in another two wheeler bearing Registration No.TN-58-AY-3711. A2, who was riding the two wheeler, hit Gnanamuthu. When Gnanamuthu and the pillion rider Eswari fell down, before Gnanamuthu could recover from the fall, A1 to A4 attacked him with Bill Hook [Aruval] over his head, neck, shoulder, legs and hand and caused his instant death.

4. Therefore, the trial Court found the appellants [A1 to A4] guilty of the offence under Section 302 read with Section 34 of I.P.C. and sentenced them to undergo life imprisonment and to pay a fine of Rs.1,000/- each, in default, to undergo three months simple imprisonment.

5. A1 to A4, who suffer life conviction, are the appellants in this Criminal Appeal. The trial Court judgment of conviction and sentence is challenged on the ground that there is inordinate delay in registering the F.I.R. and forwarding the same to the learned Judicial Magistrate. The delay in forwarding the F.I.R. not explained by the prosecution. Reading of the evidence of P.W.1 [de-facto complainant] and P.W.4 Scribe of the complaint [Ex.P.1] coupled with the evidence of the Investigation Officer [P.W.18] exposes the delay in forwarding the F.I.R. to the learned Magistrate was only to suppress the actual first information and to manipulate the F.I.R. Since there was previous enmity between the family



members of Selvaraj and the family members of the deceased, all the members of the family were roped in falsely alleging they all conspired to murder Gnanamuthu. The overstatement and embellishment of facts not properly appreciated by the trial Court.

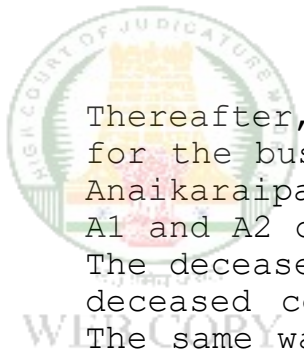
6. The presence of P.W.5 at the scene of crime is highly doubtful, since there is no necessity for her to get down at Vadakaraipatti instead of Anaikaraipatti, where she resides. The bus ticket alleged to be carried by P.W.5, not been identified by P.W.5 and she has not spoken about the alleged recovery of cloth hand bag [M.O.3] in her evidence. While so, her very presence at the scene of crime has become doubtful, hence, the trial Court ought to have disbelieved her evidence.

7. The medical evidence regarding the time of death is contrary to the ocular evidence, particularly, when P.W.1 had deposed that the deceased took his lunch between 01.30 p.m. and 02.00 p.m. on that day, the prosecution case is that, the deceased was done to death about 03.00 p.m. The postmortem certificate indicates that 'stomach empty.' No digested or semi-digested food particles were present. Also, according to the postmortem Doctor P.W.13, the autopsy commenced at 10.45 a.m. on 29.07.2013. P.W.13 Doctor had opined that the death would have caused 19 to 22 hours before the autopsy. If so, the death would have not occurred at 03.00 p.m., on the previous day, as contended by the prosecution witnesses.

8. The close relationship of the witnesses with the deceased and previous enmity with the appellants' family not taken serious note of by the trial Court, which has resulted in erroneous conclusion.

9. Also, the non-recovery of blood stained soil from the scene of crime and not forwarding the material objects to the Forensic Laboratory for testing. Hence, the conviction of A1 to A4 in the judgment of the trial Court is to be set aside.

10. The learned Additional Public Prosecutor submitted that before the trial Court, the prosecution has examined 18 witnesses, marked 26 exhibits and 12 material objects. The motive for the crime was the death of one Inbaraj, the husband of A7, a few months prior to the incident, since the brothers and sisters of Inbaraj as well as his wife were under the impression that Gnanamuthu was the cause for the death of Inbaraj on 26.07.2013. All the 10 accused met at the house of A6, who is the brother of A7, at 08.00 p.m., while they were discussing among themselves and abetted A1 to A4 to murder Gnanamuthu, P.W.6 - Mariammal, a resident of neighbouring house along with her Aunt P.W.7 - Selvarani, overheard the conspiracy hatched by the accused persons. Previous day to the occurrence, A1 to A4 followed the deceased in two wheelers and it was noticed by P.W.3, daughter of the deceased when she came from Madurai to visit her parents at Anaikaraipatti. She informed the same to her father [deceased]. The next day, the deceased took her



Thereafter, while returning back, the deceased saw P.W.5, waiting for the bus, so, he gave lift to her. Both were proceeding towards Anaikaraipatti and when they reached near Sundaramoorthy Brickline, A1 and A2 dashed the two wheeler of the deceased with their vehicle. The deceased and P.W.5 were thrown out from the vehicle. Before the deceased could realize and recover, he was attacked by A1 to A4. The same was witnessed by P.W.5. She, in her evidence, has deposed about the specific overt act of each of the accused. On seeing the brutal attack, P.W.5 fled from the scene of crime and informed to P.W.1, the wife of the deceased. In panic, she left her bag at the scene of crime. Later, the cloth hand bag, which she was carrying, was found in the scene of crime and recovered under Mahazar. The same find place in the Observation Mahazar.

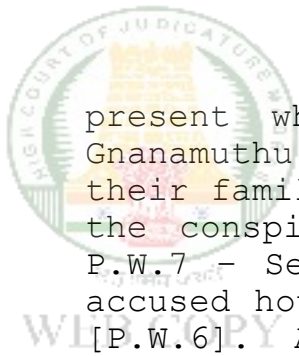
11. The learned Additional Public Prosecutor further submitted that the trial Court though disbelieved the evidence of P.W.6 and P.W.7, who had overheard the conspiracy hatched by the accused persons on 26.07.2013, two days prior to the occurrence, in view of unassailable clinching evidence of P.W.5, corroborated by the evidence of other witnesses, P.W.2 and P.W.8, though their evidence was not wholly relied, the trial Court rightly held that the evidence placed by the prosecution was sufficient to prove the overt act of the appellants herein for holding them guilty of the charge under Section 302 read with Section 34 of I.P.C.

12. The learned Additional Public Prosecutor also submitted that minor discrepancies, which are highlighted by the counsel for the appellants are very trivial in nature and those discrepancies no way discredits the evidence of P.W.5. Hence, the judgment of the trial Court has to be confirmed.

13. Heard the learned counsel appearing for the parties and perused the records.

14. A1 and A5 are the brothers of Inbaraj; A2, A3 and A4 are the sons of Inbaraj's two sisters; A6 is the brother-in-law of Inbaraj; A7 is the wife of Inbaraj; A8 is Inbaraj brother's wife; A9 and A10 are the sisters of Inbaraj. The deceased Gnanamuthu is maternal uncle of A1. Thus, both the accused family and the deceased are related to each other. The land dispute between the two groups is a fact spoken by the witnesses as well as the accused in their confession statements.

15. The case of the prosecution is that regarding a land dispute, there was feud between the deceased family and the accused family for quite some time. Inbaraj, the husband of A7 died few months prior to the occurrence. His family members, suspected Gnanamuthu was the cause for the death of Inbaraj and therefore, on 26.07.2013, two days prior to the occurrence, they all gathered at the house of A6, who is the brother of A7 and hatched a conspiracy to murder Gnanamuthu. Further, they abetted A1 to A4, who were

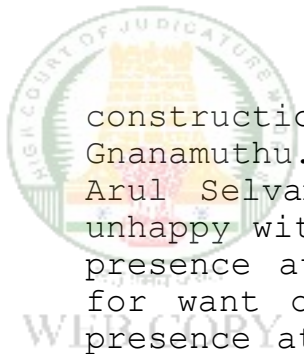


present while hatching the conspiracy, to cause the death of Gnanamuthu and assured A1 to A4 that rest of them will take care of their family, if they go to prison. While the accused were hatching the conspiracy, the same was overheard by P.W.6 - Mariammal and P.W.7 - Selvarani. The said Mariammal is residing near the sixth accused house. Selvarani [P.W.7] is the maternal aunt of Mariammal [P.W.6]. After considering the distance between the house of A6 and the house of P.W.6, the trial Court has disbelieved their evidence that they overheard the accused persons conspiring to kill Gnanamuthu sitting on the Pail [Thinnai]. As far as the charge of conspiracy against the accused persons are concerned, the trial Court has acquitted them. The reason to negate the theory of conspiracy is that the delay in informing about the said incident to the Police by P.W.6 and P.W.7 at the earliest point of time. The reason given by the trial Court for acquitting the accused persons from the charge of conspiracy is reasonable. Further, neither the prosecution nor the victim had challenged the said portion of the judgment.

16. Regarding the occurrence on 28.07.2013, the testimony of P.W.1, the wife of the deceased, P.W.3, the daughter of the deceased, P.W.5, the occurrence witness, P.W.9, who is the witness to the observation mahazar and sketch and P.W.10, Village Administrative Officer, who witnessed the confession statement of the accused persons, followed by recovery of material objects and preparation of recovery mahazar, are the witnesses for the prosecution relied by the trial Court to convict A1 to A4.

17. P.W.1, the wife of the deceased, has deposed that her daughter staying in a hostel and pursuing B.A. degree course at Madurai, she visited the home during the weekend and on Sunday, she was taken by her husband to Vadakaraipatti bus stop to board the bus for Madurai. She left home at 02.15 p.m.

18. P.W.2 - V.Guruvaiya, 70 years old man, had deposed that on 28.07.2013 at 03.00 p.m., he saw Gnanamuthu coming in his two wheeler along with Eswari. They were followed by A1 and A2 in one two wheeler and A3 and A4 in another two wheeler. Sarath [A2] dashed Gnanamuthu's two wheeler, due to which, Gnanamuthu fell down from his two wheeler. Eswari [P.W.5] jumped down. Immediately, Devanesan [A1] took the bill hook [Aruval] carried by him and attacked Gnanamuthu on his head. Sarath [A2] attacked Gnanamuthu on his neck and shoulder. Pandi @ Thangapandi [A3] and Selvam [A4], who were carrying bill hooks [Aruval], attacked Gnanamuthu on his leg and hand repeatedly. Eswari [P.W.5] got scared and fled towards western direction. P.W.2 got nervous and left the place rolling his cycle, at that time, he saw the owner of the Brickline [Sundaramoorthy - P.W.8]. The chief-examination of P.W.2 was recorded on 09.02.2016 and he was re-called after seven months for cross-examination. In the cross-examination, he elicited the conversation between Gnanamuthu and Arul Selvam regarding



construction of house on the vacant site near the property of Gnanamuthu. He admits that since he sold the property to Gnanamuthu, Arul Selvam, who is the son of the eighth accused Nesamani, was unhappy with him and therefore, they were not on talking terms. His presence at the time of occurrence was doubted by the trial Court for want of corroboration from P.W.8, who turned hostile and his presence at the scene of crime is improbable, since he admitted in the cross-examination as he used to stay in his granddaughter's house at Vadakaraipatti, between 03.00 p.m. and 05.00 p.m. daily. Further, his grandfather and Gnanamuthu's grandfather are blood brothers, despite the close relationship, he did not attend the funeral ceremony of Gnanamuthu.

19. P.W.5 - Eswari is the star witness for the prosecution, whose evidence totally relied by the trial Court for convicting the appellants. She is a chance witness, who was waiting at Vadakaraipatti to reach her home at Anaikaraipatti, at that time, Gnanamuthu, who came to drop his daughter [P.W.3], had offered lift to P.W.5, since P.W.5 is not unknown person to the deceased and they are closely related and hail from the same Village, it is natural she went with the deceased. In the cross-examination of P.W.5, she has explained why she got down at Vadakaraipatti instead of Anaikaraipatti. The witnesses for prosecution has consistently deposed that since there is less frequency of bus service to their Village and due to traffic diversion, they had to alight or board bus from Vadakaraipatti. P.W.5 has gone to Madurai for medical check up and while returning home, she has got down in Vadaikaraipatti and while waiting for auto to reach Anaikaraipatti, the deceased, who came there to drop his daughter [P.W.3], has offered lift to P.W.5 and both were proceeding to Anaikaraipatti. At that time, A1 and A2, accompanied by A3 and A4, followed them. A2 dashed the Gnanamuthu's two wheeler in order to restrain him and to attack him. In furtherance of the common intention of causing death, all the four persons caused injuries with Aruval [Bill Hook]. The overt act of each of the accused has clearly spoken by P.W.5 and P.W.2. The trial Court in fact totally rejected the evidence of P.W.2, for flimsy reason. The fact that P.W.2 was cross-examined after six months not taken note by the trial Court. Nevertheless having relied the evidence of P.W.5, had rightly concluded that they are guilty of committing murder in furtherance of common intention.

20. P.W.13 Dr.Thenmozhi, who conducted autopsy had given postmortem certificate [Ex.P.18]. As per postmortem certificate, four cut injuries on the head; three cut injuries over the neck; three cut injuries on the right hand; and one injury on the right leg were noted as ante-mortem injuries. Further, on internal examination, P.W.13 Doctor has observed as below:-

(i) A fracture wound at the anterior forehead region about 10 cm x 5 cm x 2 cm.

(ii) Membrane congested.

(iii) Brain matter exposed.

<https://hcservices.ecourts.gov.in/hcservices/> (iv) A fracture wound at the right side forehead and on both



the parietal bones.

21. The overt act spoken by these two witnesses and the injury found on the body of the deceased tallies.

22. P.W.5 fled from the scene of crime on witnessing the brutal attack on Gnanamuthu. P.W.5 has deposed that after informing P.W.1, she went to her home, P.W.1 and her brother Sanjeev Kumar [P.W.4] went to the scene of crime. Ex.P.1 is the written complaint given by P.W.1, based on which, F.I.R. has been registered. The complaint has been written by P.W.4 as stated by P.W.1. P.W.14 Sub-Inspector of Police attached to Saptur Police Station, has received the complaint at 16.30 hours, registered case against the appellants for the offence under Section 302 read with Section 34 of I.P.C., in Crime No.110 of 2013. The complaint has reached the learned Judicial Magistrate on the next day. P.W.15 Grade - I Police Constable had deposed that midnight of 28.07.2013, he collected the F.I.R. from the Station and proceeded to Usilampatti Judicial Magistrate Court. Since the Magistrate was not available, the F.I.R. has been handed over to the night watchman Kannan and P.W.15 has returned back to the Station on the next day by 07.00 a.m.

23. A perusal of Ex.P.19 F.I.R., we find that the learned Judicial Magistrate has initialled on the printed F.I.R. on the left hand side top mentioning the date and time as ''29.07.2013, 06.00 a.m.''. The contention of the learned counsel for the appellants that the delay in forwarding the F.I.R. to the learned Judicial Magistrate suppressing the earlier complaint and to implicate the others, falls to the ground as baseless for the simple reason that, when the complaint Ex.P.1 was given based on the information given by the eyewitness P.W.5 to the de-facto complainant P.W.1 rightly, only the name of the appellants find place in the F.I.R. The F.I.R. has been forwarded to the learned Magistrate at the earliest possible time, which could be seen from the evidence of P.W.15 and endorsement made by the learned Judicial Magistrate in Ex.P.19. For the occurrence, which took place at 03.00 p.m., the complaint has been registered at 04.30 p.m., F.I.R. is forwarded to the learned Judicial Magistrate at 12 'O' clock midnight and the same has been handed over to the night watchman and seen by the learned Judicial Magistrate on the next day morning at 06.00 a.m. Meanwhile, the investigation has commenced, the body of the deceased sent to the Hospital around 17.25 hours. Therefore, the contention of the counsel for the appellants alleging delay in forwarding the F.I.R. does not carry any merit in view of the evidence discussed above.

24. A5 to A10, who were acquitted by the trial Court, were subjected to trial, since there was *prima facie* material regarding conspiracy and abetment. This fact was unraveled during investigation and not known at the time of registering the F.I.R. Had there been a manipulation of fact or exaggeration of fact and



accused persons could have found place in the F.I.R., since the complaint contains the facts disclosed by P.W.5, who saw the occurrence as informed the same to P.W.1, this Court, on perusal of the records, has no doubt over the F.I.R.

25. Regarding the opinion of the Doctor P.W.13 Thenmozhi about the probable time of death, it is well settled principle of law that the ocular evidence will have primacy over the medical evidence, which is based on the expert opinion. The discrepancies pointed out by the learned counsel for the appellants are very minor and trivial. When the ocular evidence is overwhelming and inspiring about the date and time of occurrence, implicating the appellants, the case of the prosecution cannot be negated based on the minor contradictions between the ocular evidence and medical evidence.

26. Regarding the witness to occurrence, though it has been emphasised by the learned counsel for the appellants that P.W.5 is not a reliable witness, this Court, on re-appreciating the evidence, wish to record that P.W.5 is the reliable witness, her evidence is very natural and her evidence is corroborated by the evidence of P.W.2, who is also a natural witness. The misunderstanding with the accused family or not attending the funeral ceremony of the deceased, will not discredit his evidence. Since the evidence of eyewitnesses corroborated through other circumstances, the sequence of event well proved by the prosecution through P.W.1, the wife of the deceased, P.W.2 a chance witness, P.W.3 the daughter of the deceased and P.W.5 a chance witness.

27. It is trite principle of law even if the witnesses are declared as hostile, the portion of evidence, which are reliable and which inspires the confidence, can be taken for consideration with extreme caution and circumspection. The evidence of P.W.2 cannot be rejected in toto to doubt his presence at the scene of crime on that particular day. He has no axe to grind against the accused persons and implicate them in a murder case.

28. Apart from those witnesses for prosecution, the evidence of Village Administrative Officer [P.W.10] regarding the recovery of weapon based on the confession given by the accused persons, proved beyond doubt the charge against the appellants herein for the offence under Section 302 read with Section 34 of I.P.C.

29. As a result, the judgment of the trial Court is confirmed. This Criminal Appeal is dismissed. The appellants/accused are directed to surrender before the trial Court within a period of four weeks from today to undergo the remaining part of sentence, failing which, the respondent Police shall secure the appellants and commit them to prison.

30. The order of the trial Court regarding the Material Objects ~~seized from the accused persons~~. The period of imprisonment, if any, pending trial,



shall be taken into account for set off under Section 428 of Cr.P.C., in case, the appellants are considered for any remission in future.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar(CS)

To

- 1.The VI Additional District Judge,
Madurai.
- 2.The Judicial Magistrate II, Usilampatti.
- 3.The Chief Judicial Magistrate, Madurai.
- 4.The Superintendent, Central Prison, Madurai.
- 5.The Inspector of Police,
Saaptur Police Station,
Madurai District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:-

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

+1 CC to M/s.G.MARIAPPAN, Advocate (SR-322[F] dated 05/01/2022)

CrL.A. (MD)No.186 of 2018

05.01.2022

MGJ(11.01.2022) 9P 10C