

BAIL SLIP

IN CRL.APPL 545/98

The Appellant / Accused namely Subramani @ manian was directed to be released on bail as per the orders of this Court dt. 12/11/99 and made in Crl.MP. 9237/99 in Crl.A. 545/98.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-6-2005

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR

AND

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.Nos.545 and 578 of 1998

Subramani @ Manian ... Appellant in CA 545/98 /
Accused NO.2

Subramanian ... Appellant in CA 578/98 /
Accused No.1

vs

State rep. by
Inspector of Police
Malaiyampalayam Police Station
(Crime No.22/97) ... Respondent in both appeals

These criminal appeals filed under Sec.374 of the Code of Criminal Procedure against the judgment dated 24.6.1998 and passed in S.C.No.31/98 on the file of the I Additional Sessions Judge cum Chief Judicial Magistrate, Erode.

For Appellant : Mr.B.Sriramulu
in CA 545/98 Senior Counsel
for Mr.M.S.Velusamy

For Appellant : Mr.B. Sriramulu, Senior counsel for
in CA 578/98 Mr.N.A.Ravindran

For Respondent : Mr.S.Jayakumar
Additional Public
Prosecutor

COMMON JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

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This judgment shall govern these two appeals in C.A.Nos.545 and 578 of 1998. The former one has been brought forth by the second

accused, while the latter one has been brought forth by the first accused, who stood charged along with three others before the trial Court namely the I Additional Sessions Court, Erode. The accused No.1 to 5 stood charged as follows:

- (1) A-1 and A-3 under Sec.148 of I.P.C.
- (2) A-2, A-4 and A-5 under Sec.147 of I.P.C.
- (3) A-1 and A-2 under Sec.302 of I.P.C.
- (4) A-3, A-4 and A-5 under Sec.149 read with 302 of I.P.C.
- (5) A-3 under Sec.324 of I.P.C.
- (6) A-4 under Sec.323 of I.P.C.
- (7) A-5 under Sec.325 of I.P.C.

2. On trial, the trial Court acquitted A-3, A-4 and A-5 of all the charges, acquitted them and found the appellants guilty under Sec.302 of I.P.C. and awarded life sentence.

3. The short facts necessary for the disposal of these appeals are:

(a) The accused, the deceased Marimuthu and P.Ws.1 to 5 all belonged to Sathya Nagar in Kattuvalavu Village, Erode District. In the year 1996, there was a scheme of the Government for giving free dothies and sarees to the poor, and the same was also to be distributed to the poor villagers of Kattuvalavu. In that process, P.W.6, who was a Village Administrative Officer, was handed over 74 pairs of dothies and sarees to be distributed to the poor. Since he could not distribute the same, he instructed his assistant P.W.7 to do the same. On 12.1.1996, when P.W.7 went over to the village, he was able to distribute only 64 pairs only, and the remaining 10 pairs could not be distributed by him since the persons had gone for their duties. Then, the same was handed over to A-1 and A-4 for distribution. After a few days, when it was verified, they were informed that A-1 and A-4 have done so; but, they have not done so. Since the said 10 pairs were not distributed, the witnesses were aggrieved over the same. A few days prior to the occurrence, the deceased accompanied by others, went over to the house of the accused and questioned the conduct of A-1 and A-4 as to why they did not do it properly, and informed them that they should do so. There arose enmity between the parties.

(b) On 31.1.1996 at about 7.00 P.M., when P.W.1, the deceased and the wife of the deceased were all inside the house of the deceased, A-1 armed with a casuarina stick, A-3 with an aruval and A-2, A-4 and A-5 with sticks were standing outside the house of the deceased and called him outside. The deceased came out of the house, and at that time, A-1 attacked him with M.O.1 casuarina stick on the right side of the head. A-2 attacked him with a stick on his head, while all the other accused attacked him with the sticks. In that process, P.Ws.2, 3 and 4 were also attacked, and they were also injured. The accused leaving the weapons of crime, left the place of occurrence. The injured Marimuthu was taken to Erode Government Hospital, and the other injured were also taken to the hospital. P.W.14 the Doctor, who was on duty, first gave treatment to the

severely injured Marimuthu at 9.15 P.M., and the accident register copy is Ex.P13. Following the same, at about 10.30 P.M., he medically examined P.W.3 and all the injuries found by him, are narrated in Ex.P11 accident register copy. At about 11.00 P.M., he examined P.W.4, and the wound certificate in his regard was marked as Ex.P12. After some time, at about 10.30 P.M., the injured Marimuthu succumbed to injuries caused. P.W.2 was medically examined by P.W.13 the Doctor, at 10.10 A.M. on 1.2.1996, and the accident register copy is Ex.P10.

(c) P.W.1 went to Malaiyampalayam Police Station from Erode and gave a report under Ex.P1. At about 1.30 A.M. on 1.2.1996, P.W.16, the Inspector of Police, on the strength of Ex.P1 complaint, registered a case in Crime No.22/96 under Sections 147, 148, 323, 324 and 302 of I.P.C. The printed First Information Report Ex.P16 was despatched to the Court. The Inspector of Police, who took up investigation, proceeded to the scene of occurrence, made an inspection in the presence of witnesses and prepared Ex.P2 observation mahazar and Ex.P17 rough sketch. He recovered M.O.1 casuarina stick, M.O.2 aruval and M.O.3 (series) sticks under a mahazar Ex.P3. He also recovered bloodstained earth M.O.4, and sample earth M.O.5, under Ex.P4 mahazar. The Investigating Officer, then, conducted inquest on the dead body of Marimuthu in the presence of panchayatdars and witnesses and prepared Ex.P18 inquest report. A requisition Ex.P14 was given to the Government Head Quarters Hospital, Erode, for conducting autopsy.

(d) P.W.15, the Civil Assistant Surgeon, attached to the Government Head Quarters Hospital, Erode, on receipt of Ex.P14 requisition, conducted autopsy on the dead body of Marimuthu and found the following injuries.

- "1.An oblique lacerated wound 7 cm x 1 cm x bone deep over right fronto parietal region.
- 2.A lacerated wound 3 cm x 2 cm x bone deep over parietal region 4 cm above the ear.
- 3.Right eye lids swollen and bluish.
- 4.An abrasion 1 cm x 1 cm over right shoulder.
- 5.A lacerated wound ½ cm x ½ cm x ½ cm near back of left ear."

The Doctor has issued Ex.P15 postmortem certificate with his opinion that the deceased would appear to have died of head injury about 14 hours prior to autopsy.

(e) At the time of investigation, the Investigating Officer arrested all the accused on 2.2.1996 and produced before the Court for remand. The material objects recovered from the place of occurrence and from the dead body were subjected to chemical analysis. The chemical analyst's report Ex.P7 and the Serologist's report Ex.P8 were obtained and placed before the Court. On completion of investigation, the Investigating Officer filed the final report.

4. The case was committed to the Court of Session, and all the above charges were levelled against the appellants and the other three accused.

5. In order to substantiate the charges levelled against the accused, the prosecution examined 16 witnesses and relied on 18 exhibits and 7 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses, which they flatly denied as false. No defence witnesses were examined, and no exhibits were also marked on their side. On completion of the trial, the lower Court heard the arguments advanced by both sides and on scrutiny of the materials, found A-3, A-4 and A-5 not guilty and acquitted them, while it convicted the appellants/A-1 and A-2 and sentenced them as referred to above, which is the subject matter of challenge before this Court.

6. The learned Senior Counsel appearing for the appellants inter alia would make the following submissions:

(i) The trial Court has relied on the evidence of P.Ws.1 to 3; but, it should have found them as interested, discrepant and unacceptable. It is a matter of surprise to note that A-3 to A-5 have been acquitted of the charges levelled against them, since the lower Court was not ready to believe the evidence of P.Ws.2 to 4.

(ii) In the instant case, the earliest information, which according to the prosecution, was given to Erode Police Station, has been thoroughly suppressed. Now what is placed in the hands of the Court namely Ex.P1, was not the first information at all; but, it was completely shrouded not only with doubts, but also with embellishments.

(iii) The statement made by the witnesses before P.W.14 the Doctor, at the time of the examination, would clearly indicate that the place of occurrence would differ, and number of persons involved in the offence are also found to be different. Hence, the lower Court should not have believed their evidence.

7. Added further the learned Senior Counsel that delay is also noticed; that the occurrence has taken place at 7.00 P.M.; but, the case has been registered at 1.30 A.M. the next day, and thus, both the delays in the registration of the case and in the F.I.R. reaching the Court would cast a doubt on the prosecution case; that these delays remained unexplained; that apart from that, in the instant case, it can be well stated that the medical evidence did not support the ocular testimony; that the lower Court has placed much reliance on the evidence of P.W.1; that P.W.1 was none else the son of the deceased, and under the circumstances, it would be highly unsafe to act upon the uncorroborated testimony of the witnesses; that the lower Court while rejecting the case of the prosecution in respect of A-3 to A-5 on the same testimony, has found A-1 and A-2, the appellants herein, guilty and convicted them, despite the fact the prosecution case is shrouded with doubts; that it is a case where the prosecution has not proved the case in any way connecting the nexus between the accused and the crime in question, and hence, the lower Court's judgment has got to be set aside, and the appellants be acquitted.

8. The Court heard the learned Additional Public Prosecutor on the above contentions.

9. It is not in controversy that one Marimuthu was attacked on 31.1.1996 at 7.00 P.M., and he was taken to the Government Hospital, Erode, where he was admitted by P.W.14 at about 9.15 P.M. and was medically examined, in respect of which the accident register copy was marked as Ex.P13. Within a short while, at about 10.30 P.M., he died. Following the same, the case came to be registered by the police under Sec.302 and other provisions of the Indian Penal Code. The inquest was conducted by the Investigating Officer at the time of investigation, and following the same, the dead body of Marimuthu was subjected to autopsy, which was conducted by P.W.15, who has given a certificate Ex.P15 with his opinion that Marimuthu died due to head injury. Thus, there is ample evidence to show that Marimuthu died out of homicidal violence. It is also pertinent to point out that the accused before the lower Court or the appellants before this Court have raised any doubt as to the cause of death. Under the circumstances, the Court feels no difficulty in holding that Marimuthu died on account of homicidal violence.

10. The case of the prosecution as could be seen from the evidence, was that on the date of occurrence 31.1.1996, A-1 to A-5 armed with deadly weapons, went to the house of the deceased, called him outside and attacked him indiscriminately, and in that process, they also attacked P.Ws.2, 3 and 4, and they also sustained injuries. They were all taken to the hospital for treatment. They were given treatment by P.Ws.13 and 14 the Doctors, and despite treatment, the injured Marimuthu died in the hospital. A careful analysis of the evidence available would clearly indicate that the prosecution has not brought forth the guilt of the accused beyond all reasonable doubts.

11. At the outset, it has got to be pointed out that the occurrence, according to the prosecution, has taken place at 7.00 P.M. on 31.1.1996; but, the case was registered at about 1.30 A.M. the next day, by P.W.16 the Inspector of Police, Malaiyampalayam Police Station. Now, it is pertinent to note that even as per the evidence of the prosecution witnesses, P.Ws.2, 3 and 4 and the deceased were taken to the Government Hospital, Erode, immediately, and they were all given treatment by the Doctors P.Ws.13 and 14. The accident register copies have also been brought forth. It is brought to the notice of the Court that Malaiyampalayam Police Station is situated about 25 kilometers away from Erode. When these persons have been brought to the Government Hospital at Erode and when the Doctors have also spoken to the fact that an intimation was given to the Out-Post Police Station at the Government Hospital, Erode, it is highly improbable that P.W.1 went over to Malaiyampalayam Police Station, which was 25 kilometers away from Erode, to give a complaint. The version of P.W.1 that he gave a complaint at Malaiyampalayam Police Station at 1.30 A.M., is thoroughly falsified by the evidence of P.Ws.2 and 3, from whose evidence it would be very clear that the police personnel reached the Government Hospital immediately on the intimation of the

Doctors. The evidence of P.W.3 would further indicate that a statement was recorded by the police, and he has also put his signature in the same. Thus, it would be quite clear that an information was given to the police at the hospital, and the same was recorded, and at about 10.00 P.M., the intimation was sent to the Out Post Police Station. As rightly pointed out by the learned Senior Counsel for the appellants that the first information given to the police, has been thoroughly suppressed, and in view of the same, Ex.P1 cannot be termed as the first information. Apart from that, it should have come with embellishments.

12. Yet another circumstance is that not only the case was registered at 1.30 A.M. with the delay, but also the F.I.R. has reached the Court at about 10.10 A.M. This delay has not been explained by the prosecution in any manner, and thus, it can be well stated that there was an inordinate delay noticed not only in the registration of the case, but also in the F.I.R. reaching the Court, which remained unexplained, and the same, in the opinion of the Court, has affected the prosecution case.

13. The second aspect of the matter which would go to the root of the prosecution case is that according to the prosecution, A-1 to A-5 armed with deadly weapons, constituted unlawful assembly and attacked the deceased and P.Ws.2, 3 and 4. The earliest document which came into existence, is the accident register copy. So far as the deceased was concerned, Ex.P13 accident register copy was issued by P.W.14. As regards P.W.2, the accident register copy is Ex.P10. The accident register copy in respect of P.W.3 is Ex.P11. Ex.P12 is the accident register copy relating to P.W.4. A perusal of these earliest documents would clearly indicate that the deceased has informed to P.W.14 the Doctor, that four persons attacked him, which is recorded in Ex.P13. P.W.3 has informed to P.W.14 that four persons attacked him, and it is also recorded in Ex.P11. At about 11.00 P.M., P.W.14 has examined P.W.4, and the wound certificate issued by him, is Ex.P12 wherein it is found that two persons attacked P.W.4. It is further pertinent to point out that P.W.2 was examined by P.W.13 on 1.2.1996 at 10.10 A.M., and the accident register copy is marked as Ex.P10, wherein P.W.2 has stated that he was attacked by six persons, and thus, different versions are given by the witnesses in these documents as to how many persons involved in the crime. But, the prosecution comes with the specific case that five persons attacked the deceased and the witnesses, which is inconsistent with the earliest statements made by the witnesses, who, according to the prosecution, are eyewitnesses.

14. The lower Court was not ready to believe the evidence of P.W.2 to 5 and has rejected that part of the prosecution case and found that the involvement of A-3 to A-5 is not satisfactorily proved by the prosecution and recording so, acquitted them. If to be so, how the lower Court believed their evidence in respect of the other part to convict the appellants remains unknown. A perusal of the impugned judgment does not indicate so. Thus, as rightly pointed out by the learned Senior Counsel, the available evidence was only that of P.W.1. Needless to say, P.W.1 is the son of the

deceased, and his evidence has got to be scrutinised carefully. If this test is applied, it would be highly unsafe to sustain a conviction on the uncorroborated testimony of the witness.

15. Apart from the above, as to the scene of occurrence, different versions are given by the witnesses. P.W.4 would say that the occurrence has taken place in a bunk shop. One of the witnesses would say that it took place inside the house, while the other witness would speak that it has taken place outside the house. Thus, it can be stated that the place of occurrence is also different. A perusal of the evidence what is available before the lower Court, would go to show that the first information placed before the trial Court, is shrouded with suspicion, and different versions are given by the witnesses as to the number of persons involved and as to the scene of occurrence also. Hence, it cannot be stated that on the evidence available before the lower Court, the prosecution can sustain a conviction.

16. As rightly pointed out by the learned Counsel for the appellants, the lower Court has been partly rejecting the evidence and has taken the other part of the evidence for the same occurrence and found the appellants guilty. This Court has to necessarily disagree with the view taken by the learned trial Judge. In view of the doubts narrated above, it would be highly unsafe to sustain a conviction and find the appellants/accused guilty. Therefore, the judgment of the lower Court has got to be set aside, and the appellants are entitled for an acquittal.

17. In the result, both these criminal appeals are allowed, setting aside the judgment of conviction and sentence, passed by the lower Court in respect of A-1 and A-2. The appellants/A-1 and A-2 are acquitted of the charges levelled against them. It is reported that the appellants are on bail. Hence, the bail bonds executed by them, shall stand cancelled.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1)The I Additional Sessions Judge cum Chief Judicial Magistrate, Erode.

2)The I Additional Sessions Judge cum Chief Judicial Magistrate, Erode.

Through The Principal Sessions Judge, Erode.

3)The District Munsif-cum-Judicial
Magistrate, Kodumudi, Erode District.

4)The District Collector, Erode.

5)The Director General of Police, Mylapore, Chennai

6)The Superintendent, Central Prison, Coimbatore.

7)The Inspector of Police, Malaiyampalayam Police Station.
Erode District.

8)The Public Prosecutor, High Court, Madras.

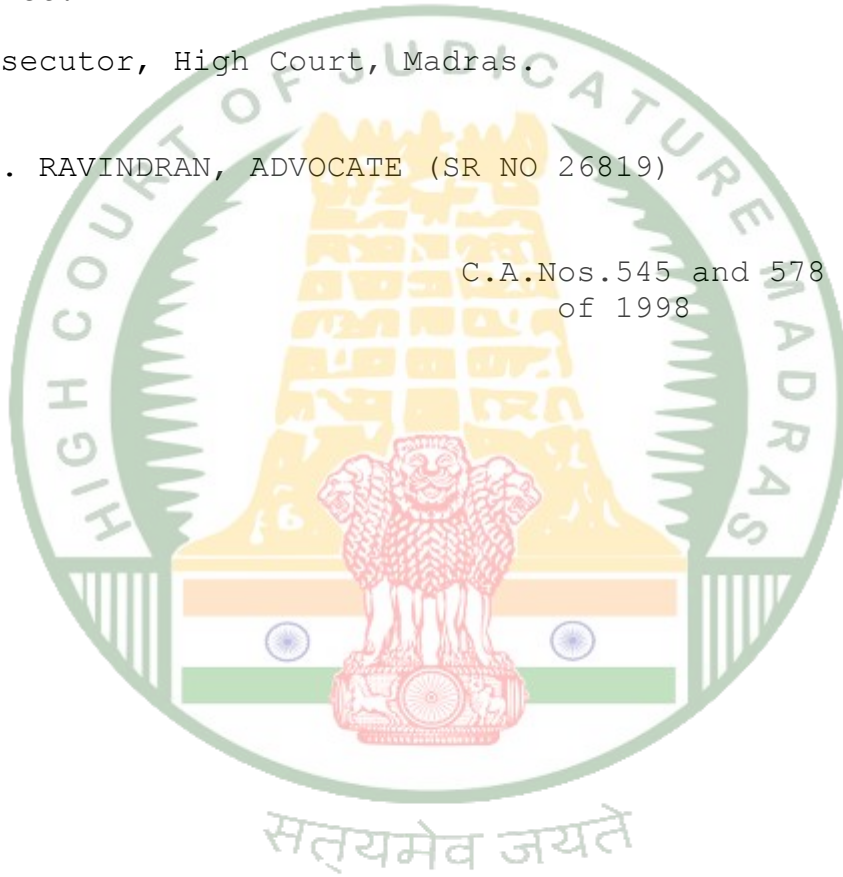
+ 1 CC TO MR.N.A. RAVINDRAN, ADVOCATE (SR NO 26819)

nsv/

C.A.Nos.545 and 578
of 1998

jp (co)

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