

BAIL SLIP

The Accused 1 to 4 (Appellants 1 to 4) were directed to be released on bail by the orders of this Court

- a) dated 27.9.99 and made in CrI.M.P.No.7650/99 (Accused 1,2 and 4) and  
b) 24.8.2001 and made in CrI.M.P.5312/01 (Accused No.3) respectively

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2005

CORAM

THE HONOURABLE MR. JUSTICE N.DHINAKAR

AND

THE HONOURABLE MR. JUSTICE M.CHOCKALINGAM

CRL. APPEAL NO. 697 OF 1999

and

CRL.M.P.Nos.6832 and 6833 of 2005

- 1.Mari  
2.Puli Kutti @ Ponnusamy  
3.Thanika @ Thanikachalam  
4.Munusamy

... Appellants

Vs

The State rep. By  
Inspector of Police  
Kaveripakkam Police Station  
Vellore District

... Respondent

Criminal appeal preferred under Sec.374(2) of the Code of Criminal Procedure against the judgment of the Principal Sessions Judge, Vellore, in S.C.No.89 of 1998 dated 22.10.1998.

For Appellants : Mr.P.Thamizhkumaran

For Respondent : Mr.V.Jayaprakash Narayanan  
Government Advocate (Crl. Side)

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED BY M.CHOCKALINGAM, J.)

The appellants four in number, have challenged the judgment of the Court of Principal Sessions Division, Vellore, in S.C.No.89/98 where they stood charged as follows.

- (1) A-3 was charged under Sec.302 of I.P.C.;
- (2) A-1, A-2 and A-4 was charged under Sec.302 read with 34 of I.P.C.;
- (3) A-1 was charged under Sec.324 of I.P.C. (2 counts);
- (4) A-3 was charged under Sec.324 of I.P.C. (2 counts); and
- (5) A-2 was charged under Sec.324 of I.P.C.

2. They were found guilty by the trial Court as per the charges levelled against them. A-3 was sentenced to life imprisonment under Sec.302 of I.P.C. along with a fine of Rs.1,000/- with a default sentence of one year Rigorous Imprisonment. A-1, A-2 and A-4 were sentenced to life imprisonment under Sec.302 read with 34 of I.P.C. and to pay a fine of Rs.1,000/- each in default of which to undergo one year Rigorous Imprisonment. A-1 was sentenced to six months Rigorous Imprisonment for each counts under Sec.324 of I.P.C. (2 counts). A-3 was sentenced to six months Rigorous Imprisonment for each count under Sec.324 of I.P.C. (2 counts), while A-2 was sentenced to six months Rigorous Imprisonment under Sec.324 of I.P.C.

3. The short facts necessary for the disposal of this appeal can be stated thus:

(a) P.W.1 is a resident of Melvenbakkam Colony. The deceased Ponnusamy was his elder brother. P.W.1 is the junior paternal uncle of P.W.2. P.W.3 is the elder brother of P.W.2 and the son of the deceased. 20 days prior to the occurrence, the deceased and the first accused went to the teacher's field for doing some agricultural work. After the work was over, they were informed that the wages would be paid through A-2. Thus, they came back, and on all occasions, when the deceased was demanding wages, A-2 was giving an evasive answer. Thereafter, the deceased went over to the teacher's field and asked him about the wages. At that time, he was informed that the entire wages have already been given to A-2, and he could get from him. On the date of occurrence namely 24.9.1997, at about 8.00 P.M., P.W.1 along with others went to the house of A-2 and asked about the wages, when he gave an evasive answer. The deceased informed A-2 that A-2 got the salary for him also, and hence, he should pay the same. At that time, A-3 with a stick attacked the deceased on the left parietal region, while A-1 attacked him with a stick on the right parietal region. A-2 attacked him with a stick on his right hand, and A-4 also attacked him with a half brick on his back. P.Ws.1 to 3 interfered, when A-1 to A-3 attacked P.W.1 with the sticks while A-2 attacked P.W.2 with a stick. From the place of occurrence, all the appellants/A-1 to A-4 fled away.

(b) P.Ws.1 to 3 though injured, took the deceased to Walajah Government Hospital. P.W.10, the Assistant Medical Officer, attached to the said Hospital, was on duty that time. She medically examined the deceased at about 10.30 P.M., and the injuries were noted in the Accident Register copy marked as Ex.P19. Since the condition of the deceased was serious, he was recommended to be taken to Vellore Government Hospital. Accordingly, he was taken to Vellore Government Hospital. P.W.10, the Doctor, medically examined P.W.3 at 10.40 P.M., and P.W.1 was examined by the Doctor at 10.50 P.M. In their regard, the copies of the accident register were marked as Exs.P20 and P21 respectively.

(c) On 25.9.1997 at about 7.30 P.M., P.W.12, the Sub Inspector of Police, attached to Kaveripakkam Police Station, was on duty. He received a death intimation memo, Ex.P27, from Vellore Government Hospital, wherein it is stated that Ponnusamy died on 25.9.1997 at 3.45 A.M. Immediately, P.W.12 went over to Vellore Government Hospital, where he was informed that the relatives of the deceased were admitted in the Government

Hospital, Walajah. Then, he immediately proceeded to Walajah Government Hospital, where he took the statement of P.W.1, marked as Ex.P1. Further, he found that the second accused was also admitted in the hospital. Then, he took a statement from him which was marked as Ex.P29. Along with these two statements, he came back to the Police Station and registered a case in Crime No.520 of 1997 under Sections 324, 325 and 302 of I.P.C. on the strength of the complaint, Ex.P1, given by P.W.1. On the complaint, Ex.P29, given by A-2, he registered a case in Crime No.521/97 under Sections 325 and 323 of I.P.C. Both the printed First Information Reports namely Ex.P28 in the first case and Ex.P30 in the second case, were despatched to Court.

(d) P.W.13, the Inspector of Police, attached to the said Police Station, on receipt of the copies of both the First Information Reports, took up investigation in both the cases, proceeded to the scene of occurrence, made an inspection in the presence of witnesses and prepared an observation mahazar, Ex.P3, and a rough sketch, Ex.P31. He has also recovered from the place of occurrence, bloodstained earth, M.O.7, and sample earth, M.O.8, under a mahazar Ex.P4. Then, he proceeded to Vellore Government Hospital and conducted inquest on the dead body of Ponnusamy in the presence of panchayatdars and witnesses and prepared an inquest report, Ex.P32. He sent a requisition, Ex.P11, to the concerned hospital authorities for conduct of autopsy.

(e) On receipt of the said requisition, P.W.11, the Assistant Civil Surgeon, attached to the Government Hospital, Vellore, conducted autopsy on the dead body of Ponnusamy and found the following injuries.

- "(1) A lacerated wound about 12 cm x 4 cm over the left occipital parietal region of scalp.
- (2) Contusion about 4 cm x 2 cm near Right eye.
- (3) Contusion about 5 cm x 3 cm over the left eye.
- (4) Abrasion over the Right forearm.
- (5) Abrasion over the left shoulder joint."

The Doctor issued Ex.P26, the postmortem certificate, and opined that the deceased would appear to have died due to head injury about 24 to 30 hours prior to postmortem.

(f) Pending investigation, A-3 and A-4 surrendered before the Village Administrative Officer, P.W.5, on 26.9.1997. A-3 made an extra-judicial confession before P.W.5, which was recorded by him. Ex.P5 is the said confession. P.W.5 produced A-3 and A-4 and Ex.P5 along with his report, Ex.P6, before P.W.13. Thereafter, P.W.13 arrested A-3 and A-4 at 3.00 P.M., when A-3 volunteered to give a confessional statement, which was recorded by him. The admissible part was marked as Ex.P7, pursuant to which, he produced M.Os.1 and 3, the sticks, and M.O.4, a half brick, which were recovered under a mahazar, Ex.P8. A-2 was arrested on 28.9.1997 at the Government Hospital, Walajah.

(g) P.W.14, the Inspector of Police, took up further investigation. On 1.10.1997, he came to know that A-1 surrendered before the Court and filed an application before the Court for police custody of A-1. On the orders of the Court, he took A-1 into police custody. Then, A-1 made a confessional statement, which was recorded by him. The admissible part was marked as Ex.P9, pursuant to which, A-1 produced M.O.2, a stick, and M.O.5, a billhook, which were recovered under Ex.P10, the mahazar. All the material objects recovered from the place of occurrence and from the dead body were subjected to chemical analysis by the Forensic Sciences Department, and the Biologist's report, Ex.P17, and the Serologist's report, Ex.P18, were produced before the lower Court. On completion of investigation, the Investigating Officer filed the final report in the



case in question, and the case in Crime No.521/97 which was registered at the instance of A-2, was referred to as mistake of fact.

4. The case was committed to Court of Session and necessary charges were framed against the accused by the lower Court for the purpose of trial.

5. In order to substantiate the charges levelled against the appellants/accused, the prosecution marched 14 witnesses and relied on 32 exhibits and 10 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. They flatly denied them as false. No defence witnesses were examined. After hearing the arguments advanced by both sides, the trial Court found the appellants/accused guilty as per the charges and awarded the punishments referred to above. Hence, this appeal.

6. The learned Counsel Mr.P.Thamizhkumaran, appearing for the appellants, inter alia made the following submissions.

(i) In the instant case, there were three eyewitnesses who are all closely related to the deceased. Apart from that, it is true that the accident register copies showing the injuries sustained by A-2 and A-4 at the time of the occurrence, have also been brought to the notice of the lower Court; but, the lower Court has been carried away by the fact that three witnesses were injured at the time of occurrence, and hence the prosecution story was true, but not so.

(ii) In the instant case, actually P.Ws.1 to 3 and the deceased were the aggressors. The occurrence has taken place in the place of the accused. The injury sustained by A-2 at the time of occurrence namely an incised wound on the head, was never explained by the prosecution in any manner, which would clearly show that the prosecution witnesses along with the deceased armed with deadly weapons, went over to the place of occurrence, and they have caused injuries to the accused.

(iii) Apart from the above, the prosecution has not explained the inordinate and inexcusable delay in giving the first information statement to the police. In the instant case, the occurrence has taken place at about 8.00 P.M. on the date of incident, and immediately, the injured witnesses and the deceased went to Walajah Government Hospital for treatment. Even according to the Doctor, P.W.10, who treated them medically, she gave the information to the Police that day itself at about 11.00 P.M. According to the prosecution, the said information reached the Police Station at 7.30 A.M. on 25.9.1997. According to P.W.1, the distance between the Police Station and the Hospital is, admittedly, 4 kilometres. If to be so, there was no necessity for the police officials to record a statement at the Government Hospital, Walajah, at about 11.00 A.M. This would go to show that it was a planned one, and with all embellishments and introductions, the prosecution has projected such a story. The prosecution has no explanation to offer for such a huge delay that had happened.

(iv) In the instant case, the prosecution has in no way proved that there was any common intention to be shared by A-1, A-2 and A-4. Even if the facts of the prosecution case are proved, as they had no common intention to cause the death of the deceased, they could be found guilty only in respect of their individual overt acts. The lower Court has been carried away by all the extraneous circumstances and has not considered the defence plea, but found them guilty. Hence, the judgment of the lower Court has got to be set aside.

7. The Court heard the learned Government Advocate (Criminal Side) on the above contentions.

8. It is not in controversy that the brother of P.W.1, Ponnusamy, died out of homicidal violence. From the evidence, it would be clear that from the place of occurrence, the deceased was taken to Walajah Government Hospital, where he was given first treatment by P.W.10, the Doctor. Then, on the advise of the Doctor, he was taken to the Government Hospital, Vellore, on account of his serious condition, and in the hospital, he succumbed to injuries. In order to substantiate the said fact, the prosecution has examined P.W.11, the Doctor, who conducted autopsy, and produced the postmortem certificate, issued by him, wherein he has opined that the deceased would have died due to head injury. It is also not a fact disputed by the appellants' side either before the trial Court or before this Court. Hence, it could be concluded that Ponnusamy died on account of homicidal violence.

9. In order to substantiate the accusations made against all the appellants/accused, the prosecution has examined P.Ws.1 to 3. In the instant case, all the three witnesses have spoken to the fact that they along with the deceased went to the house of A-2 for asking for their wages. At that time, the accused have attacked them. In the instant case, all the injured persons along with the deceased immediately went over to the Government Hospital, Walajah, where they were treated by the Doctor, P.W.10, and the accident register copies in their regard, have also been produced before the trial Court. All these witnesses have spoken to the occurrence in the first statement given to the Doctor immediately. Under such circumstances, the contention of the appellants' side that there was a delay in registering the case, in the opinion of the Court, cannot be given much importance, because within a few hours, they have made the statements before the Doctor P.W.10, who recorded the same as found in the accident register copies. That apart, the seriously injured was taken from the Government Hospital, Walajah, to the Government Hospital, Vellore, where he succumbed to the injuries. The medical evidence in that regard also stood in full corroboration of the ocular testimony. Hence, without any hesitation, it can be found that due to the injuries sustained by the deceased, he died.

10. A perusal of the postmortem certificate would clearly reveal that it was the act of A-3, which caused injuries to vital part, and the death had occurred. Thus, in the instant case, as rightly pointed out by the learned Counsel for the appellants, there is nothing to hold that A-1, A-2 and A-4 have shared the common intention. P.Ws.1 to 3 and the deceased went to the house of A-2 for asking for their coolie, and at that time, there was a fight between them, and in that transaction, both parties were injured. Under the circumstances, there is no common intention to be shared by them. It is well settled proposition of law that when the prosecution is unable to prove that there is common intention shared by the accused, there is no provision in law to find the accused guilty for the same. Thus, it can be held that there is no common intention in the instant case.

11. So far as the act of A-3 is concerned, it is pertinent to point out that the injuries suffered by the deceased, have been found to be fatal, and it caused his death. This Court is of the view that it is highly doubtful whether his act would fall within the ambit of murder in view of the facts and circumstances recorded above. In the instant case, not only the prosecution witnesses and the deceased were injured, but also A-2 and A-4 suffered injuries. It remains to be stated that at the instance of A-2, a case came to be registered by the police in Crime

No.521/97, and the printed First Information Report has also been produced before the lower Court. A perusal of the accident register copy in respect of A-2, would clearly show that a cut injury was sustained by him, and thus, it would be very clear that both parties were injured at the same time, and going in excess, A-3 gave a blow, and it caused the death of the deceased. In such circumstances, A-3 has acted so, and hence, it would not fall within the ambit of murder; but, in view of the mitigating circumstances, the same would fall within the Exception to Sec.300 of I.P.C. This Court is of the opinion that A-3 can be found guilty under Sec.304 (Part II) of I.P.C. and awarding of a punishment of five years Rigorous Imprisonment would meet the ends of justice. Accordingly, the conviction of A-3 under Sec.302 of I.P.C. and the consequent sentence imposed upon him are set aside, and instead, he is convicted under Sec.304 (Part II) of I.P.C. and is directed to undergo five years Rigorous Imprisonment for the same.

12. So far as A-1, A-2 and A-4 are concerned, the judgment of the lower Court finding them guilty under Sec.302 read with 34 of I.P.C. and awarding the punishment, is set aside, and they are acquitted of the said charge. So far as the charges under Sec.324 of I.P.C. framed against A-1, A-2 and A-4, are concerned, considering their individual overt acts, the judgment of the lower Court finding them guilty and awarding punishment in that regard, is found to be correct. Accordingly, the judgment of the lower Court in respect of the charges under Sec.324 of I.P.C. against A-1, A-2 and A-4, is sustained.

13. In the result, with the above modification in conviction and sentence, this criminal appeal is disposed of. It is reported that the appellants 3 and 4 are on bail. Hence, the Sessions Judge shall take steps to commit appellant No.3 to prison to undergo the remaining period of sentence. As regards appellant No.4, the Sessions Judge shall take steps to commit him to prison to undergo the remaining period of sentence, if any. Consequently, connected Crl.M.Ps. are closed.

Sd/-

Asst. Registrar.

/true copy/

Sub Asst. Registrar.

nsv/

To:

- 1) The Principal Sessions Judge, Vellore.
  - 2) The District Collector, Vellore.
  - 3) The Director General of Police, Chennai.
  - 4) The Public Prosecutor, High Court, Madras .
  - 5) The Superintendent, Central Prison, Vellore.
- [In duplicate for communication to the accused]



6) The Inspector of Police, Kaveripakkam Police Station  
Vellore District

7) The Judicial Magistrate No.I, Walajahpet.

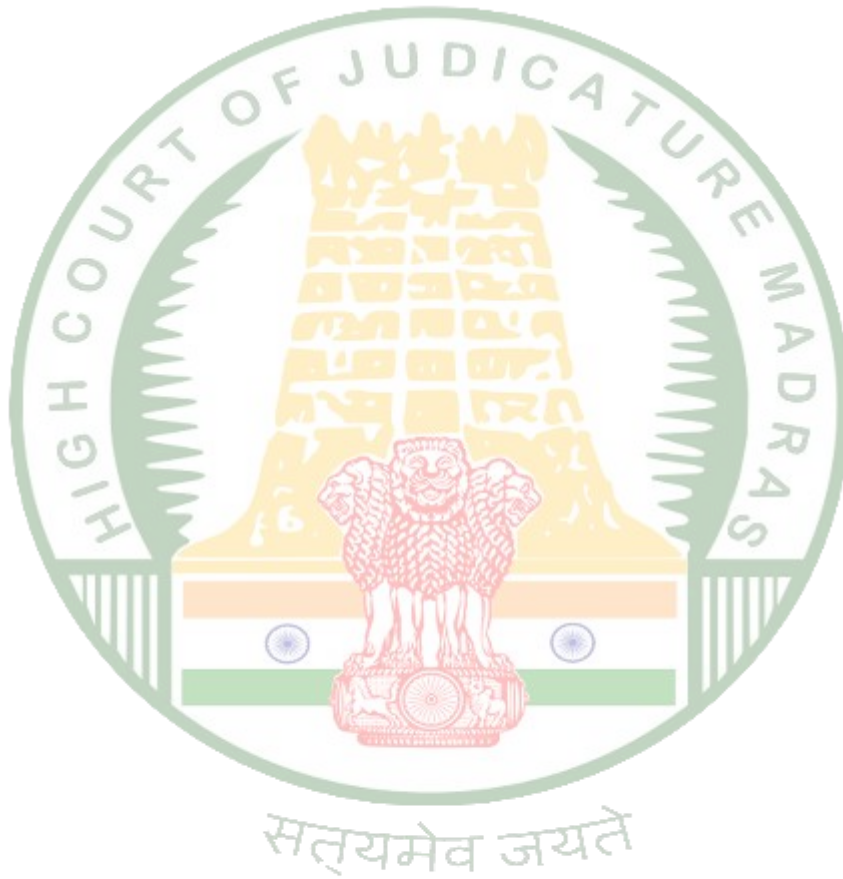
8) -do- through the Chief Judicial Magistrate, Vellore.

+ 1 CC to Mr. P. Tamizhkumaran, Advocate SR NO 36570

C.A.No.697 of 1999

Dt: 31-8-2005

rl(co)  
gp/



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