

Bail Slip

The accused 1 and 2 Viz., Raja A1 and Sivakumar A2 were released on Bail as per the High Court's order dated 28.2.2002 in CRL.M.P.No.736 of 2002 made in Crl.Appeal No.908 of 2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.08.2005

Coram :

THE HONOURABLE MR.JUSTICE N.DHINAKAR  
and  
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

Criminal Appeal No.908 of 2000

1. Raja
2. Sivakumar

Appellants

v.

Inspector of Police,  
Palacode Police Station,  
Krishnagiri District.

Respondent

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgment dated 07.07.2000 made in Sessions Case No.149/1999 on the file of the II Additional District and Sessions Judge cum Chief Judicial Magistrate, Krishnagiri.

For Appellants : Mr.AR.L.Sundaresan

For Respondent : Mr.S.Jayakumar,  
Additional Public Prosecutor

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## JUDGMENT

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

The appellants, two in number, who stood charged, tried and was found guilty as below by the Court of II Additional Sessions Judge, Dharmapuri at Krishnagiri in Sessions Case No.149/1999, have brought forth this appeal :

Accused 1 and 2 were charged under Section 302 read with 34 of the Indian Penal Code.

Accused 1 and 2 were charged under Section 307 read with 34 ( 2 counts) of the Indian Penal Code.

Accused 1 and 2 were charged under Section 324 read with 34 of the Indian Penal Code.

2. The learned Sessions Judge, on trial, found the accused guilty of the charges, awarded life imprisonment along with a direction to pay a fine of Rs.1,000/- carrying a default sentence of rigorous imprisonment for three months, for the conviction under section 302 read with 34 of the Indian Penal Code. For the conviction under section 307 read with 34 of the Indian Penal Code, the accused were awarded rigorous imprisonment for seven years and a fine of Rs.1,000/- carrying a default sentence of rigorous imprisonment for three months, for each count. The accused were also directed to undergo rigorous imprisonment for a period of two years along with a fine of Rs.1,000/- carrying a default sentence of rigorous imprisonment for three months, for the conviction under section 324 read with 34 of the Indian Penal Code. The said sentences were directed to run concurrently.

3. The short facts necessary for the disposal of this appeal are:

(a) The appellants are brothers. P.Ws.1, 2 and 5 are the daughters of Padavattammal, the deceased in this case. P.W.3 is the son of the deceased. P.W.6 is the daughter in law of the deceased and the wife of P.W.3. P.W.8 is the son in law of the deceased and the husband of P.W.2. D.W.2 Lakshmi is the sister of the appellants. P.W.3, on the false assurance of marriage, developed illicit intimacy with D.W.2 Lakshmi, After an affair, he refused to marry her and therefore, quarrels arose between the families. About eight days prior to the occurrence D.W.2 Lakshmi set fire to the field and cow shed of the prosecution witnesses and one day prior to the date of occurrence, when P.W.2 questioned the said act of Lakshmi, she beat P.W.2.

(b) On the date of occurrence, i.e., on 25.07.1995 at about 12.30 pm P.Ws.1, 2, 5 and 6 proceeded to the cow shed to take the burnt sticks. D.W.2 Lakshmi intervened and quarrelled with them. P.W.2 questioned her as to why she is quarreling, as she has already quarrelled with her on the previous day and thereafter, Lakshmi went away from that place. At that time accused 1 and 2 armed with koduvals, came to the occurrence spot and the first accused cut the neck of the deceased. When P.W.2 intervened, accused 1 and 2 attacked her on her head, hand, knee and on her back. P.W.3, who came there questioned the accused and he was cut by both the accused indiscriminately. P.W.1 was attacked by the first accused when she intervened. The accused, thereafter, fled away from the scene of occurrence with the weapons of the crime.

(c) P.W.1 proceeded to the Palacode police station and gave an oral complaint to P.W.14, the Sub Inspector of Police, Palacode, at 01.15 pm, which was reduced into writing and which stands marked as Ex.P.1. P.W.14, on the strength of Ex.P.1, registered a case in crime No.752/1995 for the offences punishable under Sections 302, 307 and 324 of the Indian Penal Code. The first information report is Ex.P.21. The deceased succumbed to the injuries.

(d) The injured witnesses, P.Ws.1 to 3 were taken to the Palacode Government Hospital, where they were examined by P.W.4, the doctor. P.W.4 examined P.W.3 at 01.00 pm and found on him the following injuries:

- 1.Incised wound right shoulder 10 cm x 10 cm x bone deep.
- 2.Incised wound right elbow 10 cm x 5 cm x bone deep.
- 3.Incised wound over right cheek 10 cm x 5 cm x bone deep.
- 4.Incised wound right forearm 10 cm x 7 cm x bone deep.
- 5.Incised wound left hand 15 cm x 10 cm x bone deep.
- 6.Incised wound right side of chest 3 cm x 1 cm x depth not known.
- 7.Incised wound left side of chest 3 cm x 1 cm x muscle deep.

He issued Ex.P.4 wound certificate for the injuries sustained by him. P.W.2 was examined at 1.30 pm for her injuries by P.W.4, who issued Ex.P.5 noting the following injuries found on her:

- 1.Incised wound left forearm wrist 7 cm x 3 cm x bone deep.
- 2.Incised wound occipital region 10 cm x 5 cm x bone deep.

3.Incised wound left parietal region 7 cm x 5 cm x bone deep.

4.Incised wound right arm 7 cm x 3 cm x muscle deep.

P.W.1 was also examined by P.W.4 at 08.00 pm and the doctor gave wound certificate, Ex.P.6, where he narrated the injuries found on P.W.1, which are as follows :

1.Incised wound right middle finger 2 cm x ½ cm x muscle deep.

2.Incised wound right ring finger 2 cm x ½ cm x skin deep.

P.Ws.2 and 3 were referred to the Government Hospital, Dharmapuri for better treatment.

(e) P.W.16, the Inspector of Police, on receipt of the first information report, proceeded to the scene of occurrence at 02.15 pm, made an inspection in the presence of two witnesses and prepared a mahazar, Ex.P.8 and drew a rough sketch, Ex.P.22. He conducted inquest over the dead body of the deceased in the presence of witnesses and panchayatdhars between 04.00 pm and 07.30 pm and prepared Ex.P.23 inquest report. He recovered M.Os.3 to 5, blood stained earth, sample earth and burnt sticks, from the place of occurrence under cover of mahazar, Ex.P.9. He issued Ex.P.2 requisition to the doctor to conduct autopsy on the body of the deceased.

(f) P.W.4, the doctor attached to the Government Hospital, Palacode conducted postmortem on the body of the deceased at 10.00 am on 26.07.1995 and found the following injuries on her :

1. An incised wound with gapping over the back of neck 25 cm x 10 cm x 1 cm.

Fracture and division of spinal column at C3 level with division of spinal cord. All the major vessels of neck both carotids, jugular severed in the wound. Head is attached to the body only by trachea and a piece of neck in front of trachea.

2.Incised wound over right side of back 3 cm x 1 cm x muscle deep.

He has opined that the deceased would appear to have died of shock and haemorrhage and injury to vital organ like spinal cord. He issued Ex.P.3 postmortem certificate.

(g) Pending investigation, both the accused were arrested at 06.00 am on 27.07.2005 when they were standing near Palacode bus stand. The first accused gave the confession statement, the admissible portion of which is marked as Ex.P.24, pursuant to which M.O.1 koduval was recovered in the presence of witnesses



under cover of a mahazar, Ex.P.25. The second accused also volunteered to give a confession statement, which was recorded in the presence of two witnesses. The admissible portion of that statement is marked as Ex.P.25, pursuant to which he produced M.O.2 knife was recovered in the presence of the same witnesses under Ex.P.27, mahazar. Both the accused were sent to remand. All the material objects recovered from the place of occurrence, from the dead body and from the accused on production were subjected to chemical analysis by the Forensic Department, on a requisition made by the Judicial Magistrate concerned. On completion of the investigation, the Investigating Officer filed the final report. The case was committed to Court of Sessions and necessary charges were framed. The case was taken up for trial before the trial Court.

4. In order to substantiate the charges levelled against the appellants/accused, 17 witnesses were examined by the prosecution. The prosecution relied on 27 exhibits and 18 material objects. On completion of the evidence on the side of the prosecution, all the accused were questioned under Section 313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses, and they flatly denied the same as false. Two witnesses were examined on the side of the defence, namely, D.W.1, the doctor attached to the Government Hospital, Palacode, who medically examined Lakshmi and the said Lakshmi was examined as D.W.2, and the wound certificate in respect of the injuries on D.W.2 was marked as Ex.D.1. After hearing both sides, the trial Court was of the opinion that the prosecution has proved its case, and therefore, found the appellants guilty of the charges framed against them and awarded imprisonment as mentioned above.

5. Learned counsel for the appellants, while advancing his arguments, inter alia, would submit that though the prosecution has marched P.Ws.1 to 3, 5 to 7 as eye witnesses to the occurrence, P.W.7 has turned hostile and all the witnesses, who have supported the prosecution, are closely related. It is an admitted position that there was prolonged enmity between the families and thus the prosecution witnesses have come forward with a false version implicating the accused with the crime. In the instant case Lakshmi with whom P.W.3 had illicit intimacy on the false assurance of marriage was examined as D.W.2. She has narrated the occurrence and she has also sustained injuries. Though she has been medically examined by D.W.1, the doctor and the wound certificate in that regard has also been marked as Ex.D.1, the prosecution had no explanation to offer as to the injuries sustained by D.W.2. In the instant case, the attack on Lakshmi by the prosecution witnesses and the alleged occurrence, which is the subject matter of appeal before this Court, are

part and parcel of the same transaction, but in a clever manner, the prosecution has projected the attack on Lakshmi as an independent transaction and has come out with this case. It is also an admitted fact by P.W.16, the Investigating Officer that a case came to be registered on the complaint made by the said Lakshmi in crime No.754/1995 and the case is also pending. But, the records in respect of crime No.754/1995 were not produced before the Court. So long as both the transactions are one and the same, a duty is cast upon the prosecution to produce the records enabling the Court to find out the truth of the matter, but the prosecution had miserably failed to do so and that would go to show that the genesis of the occurrence has been suppressed by the prosecution.

6. Added further the learned counsel, that the occurrence, according to the earlier version of the prosecution, had taken place at Melatheru, but, as could be seen from the evidence now available before the Court, the occurrence had taken place at the fields of Mariappan and no explanation has been brought forth in order to show how the discrepancy arose in respect of the place of occurrence. Apart from that, recoveries of the material objects 1 and 2 should have been rejected by the lower Court out right, since P.Ws.10 and 11, in whose presence the accused gave confessional statement, according to the prosecution, and who attested the recovery mahazars, have turned hostile. Thus, the available witnesses are interested witnesses and if their testimony is carefully examined, their testimony would not stand scrutiny. Apart from that, this is a case where the prosecution has miserably failed to produce necessary documents before the Court enabling the Court to find out the truth. Under the circumstances, the lower Court should have rejected the case of the prosecution outright giving the appellants the benefit of doubts.

7. The Court heard the learned counsel for the State on the above contentions, paid its anxious consideration on the submissions made and also made thorough scrutiny of the available materials.

8. In the instant case, it is not in controversy that the mother of P.Ws.1 to 3 and 5 died on account of homicidal violence. In order to prove the same, the prosecution relied on the evidence of P.W.4, the doctor, who conducted postmortem, and Ex.P.3, postmortem certificate, issued by him, where he has opined that death would have occurred on account of shock and haemorrhage. Apart from that it was not a fact disputed by the appellants/accused either before the trial Court or before this Court and hence it can be safely concluded that the deceased died on account of homicidal violence.

9. In order to substantiate the allegation against the appellants/accused, the prosecution examined number of eye witnesses. They are closely related to the deceased. Even according to the prosecution, P.W.3 gave a false assurance of marriage to D.W.2, Lakshmi, the sister of appellants 1 and 2 and there was also an earlier occasion in which the said Lakshmi set fire to thatched shed of the deceased and on the date of occurrence when P.Ws.1 to 3 and 5 went to take burnt sticks, on the way, when they questioned D.W.2 for her conduct of setting fire, a quarrel arose, in which Lakshmi was assaulted and beaten by the prosecution witnesses and in that regard, she went to the police station, gave a complaint and a case was registered in crime No.754/1995 and that occurrence took place at about 12.30 pm. In the instant case the occurrence had taken place at 01.00 pm and at 01.15 pm the first information report came into existence. Therefore, it would be very clear that the occurrence in crime No.752/1995 (subject matter of appeal) should have taken place at or about the time at which the occurrence in crime No.754/1995 took place. According to the prosecution, when the prosecution witnesses went to take the burnt sticks, Lakshmi came over there and there was a quarrel between them and at that time, the deceased, who went near them along with P.W.3 was attacked by both the accused who came there armed with weapons, which shows that Lakshmi was present at the place of occurrence and she was assaulted and in continuation to the attack made on her and in the same transaction the deceased was attacked by the accused and P.Ws.1 to 3 were also injured in the course of same transaction. The case in crime No.754/1995 is that in that occurrence Lakshmi, D.W.2 sustained injuries. She was also examined by D.W.1, the doctor attached to the Government Hospital, Palacode and Ex.D1 has also been marked in which the following injuries are found noted :

1. A lacerated injury over the left frontal region 3 cm x 1 cm x 1 cm.
2. A lacerated injury over the right parietal region of scalp 3 cm x 1 cm x 1 cm.
3. A lacerated injury over the left parietal region of scalp 3 cm x 1 cm x 1 cm.
4. A lacerated injury over the back of left elbow 1 cm x 1 cm x 1 cm.
5. A diffuse contusion over the back of left forearm 5 cm x 5 cm.
6. A diffuse contusion over the back of right hand 5 cm x 3 cm.
7. A skin coloured contusion over the back of right chest 5 cm x 5 cm.



8.C/o pain over the back of left lower leg- no external injury.

The injuries are lacerated and contused and it would be quite clear that these injuries could not have been caused without the aid of weapons, and once the attack on D.W.2 was a part of the transaction, a duty is cast upon the prosecution to explain as to how such an injury was sustained by D.W.2 at that time. In order to escape such a situation, the prosecution has now come forward with a case that at that time of occurrence D.W.2 was attacked and she left the place and subsequently another crime in crime No.752/95 has taken place, but, the materials are otherwise, which would be indicative that both the transactions are only one and the same.

10. Apart from that, in the instant case, as rightly pointed out by the learned counsel for the appellants that the first information report regarding the occurrence in which D.W.2 was attacked, was not marked before the trial Court. Had it been filed before the Court, it would have enabled the Court to find out the truth, but the prosecution has miserably failed to do so. The materials placed before the Court would indicate that the origin of the occurrence was the attack on Lakshmi and in that regard, a case came to be registered, but no documentary or oral evidence was placed before the Court to prove it enabling the Court, to find out the genesis of the occurrence.

11. Apart from that, in the instant case, the place of occurrence, according to the earlier version of prosecution is Melatheru, but, according to the prosecution witnesses when they were examined before the Court, the occurrence took place at the fields of Mariappan and this discrepancy was not brought to the notice of the Court.

12. In the instant case witnesses are all closely related and their evidence is discrepant. The prosecution has also not produced all the materials before the Court enabling the Court to find the genesis of the case and there is no explanation for the injuries sustained by D.W.2 and for the discrepancy in the place of occurrence. Under such circumstances, it would be highly unsafe to rely on their evidence and find the appellants/accused guilty, and the lower Court has not looked at their evidence or marshalled it properly to find out the truth of the evidence, but has been carried away with the cogent evidence of the prosecution witnesses in crime No.752/1995, while the case in crime No.757/1995 is pending and under such circumstances, the contentions put forth by the learned counsel for the appellants have got to be accepted and the benefits of these doubts have got



to be given to the appellants/accused and they are entitled for an acquittal. Accordingly, the conviction and sentence imposed on the appellants/accused are set aside. The criminal appeal is allowed. The bail bonds executed by the appellants shall stand cancelled. The fine amounts paid by the appellants/accused are directed to be refunded to them.

mf

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copies to

1. The Second Additional Sessions Judge cum Chief Judicial Magistrate , Krishnagiri
2. The Additional Sessions Judge, Krishnagiri, through the Principal District & Sessions Judge, Krishnagiri
3. The Judicial Magistrate, Palacode. through the the Chief Judicial Magistrate, Krishnagiri.
- 3a. The Judicial Magistrate, Krishnagiri.
4. The District Collector, Krishnagiri
5. The Director General of Police, Mylapore, Chennai 4.
6. The Superintendent of Central Prison, Vellore.
7. The Public Prosecutor, High Court, Madras.
8. The Inspector of Police, Palacode Police Station, Krishnagiri District.

+ 1 cc to Mr.AR.L.Sundaresan, Advocate SR No.36377

GG(CO)  
SR/12.9.2005

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