

Bail Slip

The Appellant/Accused No1 Goveindasamy was directed to be released on Bail in and by the order of this Court dated 15.12.2000 and made in Crl.M.P.No.8946/2000 in Crl.Appeal 781/2000.

The Appellants/Accuseds Nos.2,3,4 namely No.2.Chinnapaiyan @ Arjunan No.3 Govindan @ Krishnan, No4 Chinnapaiyan were directed to be released on Bail in and by the order of this Court dated 28.9.2000 made in Crl.M.PNo.9187/2000 ub Crl. Appeal No.781/2000

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2005

CORAM

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

Criminal Appeal No.781 of 2000

1. Govindasamy  
2. Chinnapaiyan @ Arjunan  
S/o Chinnapullai  
3. Govindan @ Krishnan  
4. Chinnapaiyan  
S/o Punnusoothan @ Perumal ... Appellants

Vs

State rep. by Inspector of Police,  
Taluk Police Station,  
Krishnagiri. ... Respondent

Prayer: Appeal against the judgment passed by the learned II Additional Sessions Judge cum Chief Judicial Magistrate, Dharmapuri District at Krishnagiri, made in S.C.No.116/99 dated 11.7.2000.

For Appellants : Mr.V.Gopinath, Senior Counsel for  
Mr.K.Selvarangan

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

J U D G M E N T

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

This appeal has been brought forth by the appellants who were arrayed as A1 to A4. They stood charged by the II Additional Sessions Judge cum Chief Judicial Magistrate, Dharmapuri at Krishnagiri, in Sessions Case.No.116/99 as follows:

(i) Charge No.1 was framed against A-1 to A-4 under Section 449 I.P.C.

(ii) Charge No.2 was framed against A-1 to A-4 under Section 302 I.P.C.

(iii) Charge No.3 was framed against A-3 and A-4 under Section 436 I.P.C.

(iv) Charge No.4 was framed against A-1 and A-2 under Section 436 r/w 34 I.P.C.

2. The learned trial Judge, found A1 and A2 guilty of the offences under Sections 449, 302 and 436 r/w 34 of I.P.C. and awarded punishment of rigorous imprisonment for a period of seven years each along with a fine of Rs.1000/- each, in default, to undergo six months rigorous imprisonment each for the offence under Section 449 I.P.C., life imprisonment along with a fine of Rs.1000/- each, in default, to undergo six months rigorous imprisonment each for the offence under Section 302 I.P.C., and rigorous imprisonment for a period of five years each along with a fine of Rs.1000/- each, in default, to undergo six months rigorous imprisonment each for the offence under Section 436 r/w 34 I.P.C. The learned trial Judge found A3 and A4 guilty of the offences under Sections 449, 302 & 436 I.P.C. and awarded punishment of rigorous imprisonment for a period of seven years each along with a fine of Rs.1000/- each, in default, to undergo six months rigorous imprisonment each for the offence under Section 449 I.P.C., life imprisonment along with a fine of Rs.1000/- each, in default, to undergo six months rigorous imprisonment each for the offence under Section 302 I.P.C., and rigorous imprisonment for a period of five years each along with a fine of Rs.1000/- each, in default, to undergo six months rigorous imprisonment each for the offence under Section 436 I.P.C. The learned trial Judge has directed that the sentence of imprisonment imposed upon A-1 to A-4 should run concurrently.

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

a) P.W.1 is the wife of the deceased. P.W.2, who is aged 13 years, is the daughter of the deceased. The deceased along with the family members were living at Thumbalahalli. A1 is the younger brother of the deceased. A2 to A4 were brother-in-laws of A1. One year prior to the date of occurrence, the mother of the deceased sold part of her lands and gave a sum of Rs.20,000/- to A1 and a sum of Rs.10,000/- to the deceased. The same was questioned by the deceased and he also assaulted his father. 15 days prior to the date of occurrence, A1's wife took Rs.60/- from P.W.1's house. When the same was questioned, she placed the same in the house of P.W.1 subsequently. Following the same, the deceased assaulted her. On coming to know that the deceased assaulted his wife, A1 challenged that one day or the other he will do away with the deceased and would go to jail. On 19.11.1997 at 8.00 a.m., when P.Ws. 1 and 2 were in front of their house, A1 along with the other accused came there. At that time, A1 was armed with Pitchuval in one hand and a diesel can in the other hand while the other accused were armed with Koduvals. A1 attacked the deceased with the knife, while the others attacked the deceased with Koduval and poured the diesel on the doors and windows of the house of the deceased and set fire. The same was witnessed by P.Ws. 1 to 3. Since the house properties got fire, the persons who were present there tried their best to put down the fire. The deceased succumbed to the

injuries instantaneously. On the same day, at about 9.00 a.m., when P.W.4, the Village Administrative Officer was in his office, on getting information about the said incident, he went to the scene of occurrence, where he received a complaint from P.W.1 which was marked as Ex.P1. P.W.4 prepared a special report, Ex.P2, and presented both Exs.P1 and P2 to P.W.12, the Inspector of Police, Krishnagiri Taluk Police Station. At 11.00 a.m., on the strength of the report, P.W.12, registered a case in Crime No.1047/1997. The printed First Information Report, Ex.P17 was despatched to Court.

b) P.W.12, the Investigating Officer took up investigation. He proceeded to the scene of occurrence, made an inspection in the presence of two witnesses and prepared Ex.P3, an observation mahazar and Ex.P18, a rough sketch. He recovered the material objects which were available at the scene of occurrence under a cover of mahazar, Ex.P4. The place of occurrence and the dead body were photographed through P.W.19, a photographer, and M.O.15 series are the photographs taken by P.W.19. The Investigating Officer conducted inquest on the dead body of the deceased in the presence of witnesses and panchayatdars and prepared Ex.P19, an Inquest report. Following the same, the dead body was sent for autopsy to the Government Hospital, Krishnagiri. P.W.7, the Assistant Surgeon, attached to Government Hospital, Krishnagiri, conducted autopsy on the dead body of the deceased and found the following injuries.

1. Deep cut injury across thyroid cartilage extending from right St. Mastoid towards the left side cutting all the neuromuscular structures and cervical vertebrae upto posterior border of muscles.
2. Head is hanging with a piece of skin and right St. Mastoid.
3. Deep cut injury across anterior lateral thigh cutting size 10' x 8' x 5 inches. Muscles were cut.
4. Deep cut injury across the dorsum of left hand size 6' x 3' x 2'.
5. Deep cut injury across upper lateral aspect of left leg size 6' x 4' x 4'.
6. Deep cut injury volar aspect of right hypotheral cutting muscles and exposing bones. Size 6' x 2' x 2'.
7. Cut injury right shoulder joint 2' x 1' x 1'.
8. Multiple small lacerations over right shoulder.
9. Deep laceration right parietal area 5' x 2' x 1'.

The Doctor issued the post mortem certificate Ex.P.10 wherein he has opined that the deceased would appear to have died due to shock and haemorrhage due to multiple injuries to vital neurovascular structures.

c) During investigation, on 22.12.97, A2 to A4 were arrested by the Investigating Officer and were sent for judicial remand. A2



volunteered to give a confessional statement and the same was recorded in the presence of two witnesses. The admissible part of the statement given by A2 is marked as Ex.P20. Pursuant to his statement, M.Os. 2 and 10, Koduval and shirt respectively were recovered under Ex.P6, mahazar. A4 gave a confessional statement and the admissible part of the same is marked as Ex.P21, pursuant to which, M.O.4, a knife and M.O.11, a shirt were recovered under Ex.P8, mahazar. A3 gave a confessional statement and the admissible part of the same is marked as Ex.P22 pursuant to which, a knife M.O.3, a knife and M.O.12, shirt were recovered under Ex.P.8, mahazar. A1 surrendered before the Judicial Magistrate, Krishnagiri. Coimbatore. The Investigating Officer made a requisition for police custody of A1 and on the order of the Court, A1 was taken into police custody. A1 volunteered to give a confessional statement and the same is recorded in the presence of two witnesses. The admissible part of the statement of A1 is marked as Ex.P.15. Pursuant to the confessional statement, A1 produced M.O.16 blood stained banian which was recovered under a cover of mahazar, Ex.P16. All the material objects which were recovered from the place of occurrence, from the dead body and material objects recovered from the accused, were all subjected to chemical analysis, pursuant to the requisition forwarded by the Investigating Officer. The chemical analyst's report and the serologist's report Exs.P.13 to P.14 respectively were obtained and placed before the Court. On completion of investigation, P.W.12, the Inspector of Police, filed a final report and the case was committed to the Court of Sessions and necessary charges were framed.

4. In order to substantiate the charges levelled against the appellants/accused, the prosecution marched 12 witnesses and relied on 23 exhibits and 19 material objects. On completion of the evidence on the side of the prosecution, all the accused were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. The accused denied them as false. No defence witnesses were examined. After hearing both sides and on scrutiny of the available materials, the trial Judge found the appellants/accused guilty and awarded the punishment referred to above. Hence, this appeal at the instance of the accused/appellants.

5. While advancing his arguments on behalf of the appellants, Mr. Gopinath, learned Senior counsel has made the following submissions:

According to the prosecution, the occurrence was witnessed by P.Ws 1 to 3 but P.W.3 has turned hostile. P.W.1 is none else than the wife of the deceased. P.W.2 is the daughter of the deceased. She was aged 13 years at the time of occurrence. Apart from that the name of P.W.2 does not find place in the F.I.R. Hence, it is highly doubtful whether P.W.2 was present at the time of occurrence. So far as P.W.1 is concerned, she could not have seen the occurrence. According to the prosecution, she gave a statement to P.W.4, the Village Administrative Officer which is marked as Ex.P1. It is highly doubtful whether Ex.P1 could have been given by P.W.1. A reading of Ex.P1 would make it clear that at the time of occurrence both her brothers were present who came

to her house the previous day but in evidence she has stated that her brothers left the place, the previous day itself and they were not present at that time. Apart from that according to P.W.1, Ex.P1 report was given by her and it was attested by one Chinnadurai, but, Ex.P1 does not contain the attestation of the said person. According to P.W.1, she affixed her thumb impression in two pages in Ex.P1, report but her thumb impression was seen only in one page in the said report. All these, would go to show that she could not have been the author of Ex.P1, report. Thus, it is highly doubtful whether she could have been present at the time of occurrence. Added further learned Senior counsel that even as per her statement, the deceased had got number of enemies. On the previous day to the date of occurrence, the deceased went to the police station in order to give a complaint against the accused. Apart from that, when P.W.1 went along with P.W.4, Village Administration Officer on the date of occurrence, those persons against whom her husband gave a complaint the previous day were also present and they were kept in the lock up room. The police also enquired them about the incident. Hence, it would be clear that the police were doubtful about the assailants of the crime, even though P.W.1 has given a complaint against the accused. Under such circumstances, P.W.1 could not have seen the occurrence or could not have been the author of Ex.P1, report. Apart from that, the deceased had got number of enemies. Hence, in the absence of evidence of P.W.1, the prosecution has no case before the lower Court but the lower Court was carried away by the extraneous circumstances and has not carefully scrutinised the evidence of P.W.1 who is none else than the wife of the deceased. Added further learned Senior counsel, the evidence that was adduced by the prosecution in respect of the confessional statement alleged to have been given by A2, 3 and 4 pursuant to which the recoveries were made, would clearly show that such recoveries pursuant to the confessional statements, could not have taken place at all and that their evidence should not have been relied on by the lower court. Under such circumstances, the trial Court should have outrightly disbelieved the case of the prosecution, but has failed to do so. Hence, it has got to be considered by this Court.

6. Heard learned counsel for the State on the above contentions.

7. This Court has considered the contentions made by both sides and made a thorough scrutiny of the evidence available, both oral and documentary. In the instant case, there is no controversy that the husband of P.W.1 was done to death instantaneously. P.W.7, the doctor attached to Government Hospital, Krishnagiri, who conducted autopsy on the dead body of the deceased, has given his opinion in the post mortem certificate, Ex.P.10, that the deceased would appear to have died due to shock and haemorrhage due to multiple injuries to vital neurovascular structures. This fact was not questioned by the accused/appellants either before the Court below or before this Court. Hence, it could be safely recorded that the deceased died out of homicidal violence.

8. The allegation made against the appellants/ accused are that all the four appellants/accused armed with deadly weapons came to the house of the deceased on 19.1.97 at 8.00 a.m. and attacked the deceased. Apart from that, they have set fire to the house and caused damage to the properties therein. The prosecution marched three witnesses, out of whom P.W.3 turned hostile. Thus, the prosecution had the benefit of two witnesses before the court.

9. It is true that P.W.1 is the wife of the deceased and P.W.2 is the young daughter of the deceased. The Court is mindful of the caution that in a case where an eyewitness is a close relative of the deceased, the evidence of the said witness has got to be carefully scrutinized. In the instant case, despite that exercise, the evidence of P.W.1 stood the scrutiny of law. On scrutiny of the evidence of P.W.1 in its entirety, the Court is of the considered opinion that her evidence is natural, cogent, convincing and acceptable. P.W.1 has given a graphical narration of the earlier incident, and has also given a graphical narration of the entire incident that had happened at the time of occurrence. It is true that the name of P.W.2, the young daughter of the deceased aged 13 years, does not find place in the First Information Report. Taking into consideration that P.W.2 is a girl of 13 years old, naturally she is expected to be in the house of P.W.1, her mother. Hence, the non-mentioning of the name of the eye-witness P.W.2 in the F.I.R. cannot be a reason to disbelieve her evidence. Apart from that the contention put forth by the learned Senior counsel for the appellant in the opinion of the Court is a minor-most thing which will not in any way shake the prosecution case. It is pertinent to point out that according to Ex.P1, two of her brothers were present at the time of occurrence but in her evidence she has stated that they left the previous day. P.W.3 was one of her brothers who was present the previous day and continued to be present at the time of occurrence also. According to the prosecution, he was one of the eye-witnesses, though he turned hostile. Hence, the minor contradiction cannot in any way help the defence. The contention of the learned Senior counsel for the appellant that according to P.W.1, Ex.P1 was attested by one Chinnadurai, but Ex.P1 does not contain the attestation of the said Chinnadurai, and P.W.1 has stated that she had affixed her thumb impression in the report Ex.P1 in two pages but her thumb impression was found only in one page, will not in any way shake the case of the prosecution. A statement was given by P.W.1 to P.W.4, the Village Administrative Officer. On the strength of the same, a case was registered by the police. According to P.W.4, the author of Ex.P1, document, is P.W.1. He has also been examined by the prosecution. Apart from that the Police Officer who has registered a case on the strength of Ex.P1 has also been examined by the prosecution. It is pertinent to note that the prosecution has relied on Ex.P1 to the extent that in which manner the crime like this, was set in motion. Hence, the minor discrepancies in the evidence cannot in any way take away the case of the prosecution. The occurrence had taken place at 8. a.m. and P.W.4, the Village Administrative Officer had recorded the statement of P.W.1 at 9.00 a.m. The F.I.R. was



registered at 11.00 a.m. and the same had reached the court at 12.15 a.m. Therefore, within a short interval, all these had happened, which would show the truth and genuineness of the prosecution case. The other contention of the learned Senior counsel for the appellant that there were number of enemies to the deceased and the deceased gave a complaint to the respondent police on the previous day to the date of occurrence and some persons were taken into police custody and were kept in lock up room, and when P.W.1 gave a report, those persons were also enquired at that time, and hence, the police was unable to fix the culprit even after the complaint given by P.W.1, cannot be countenanced. It remains to be stated that those persons were taken to the police station pursuant to the complaint given by the deceased on the previous day and there is no material to show that those persons were secured by the prosecution regarding the complaint in question. Under such circumstances, those persons were available in the police station, cannot be a reason to connect them in this crime. In the instant case, the prosecution examined P.Ws 1, 2 and 3 as eye-witnesses but, P.W.3 turned hostile. The evidence of P.Ws.1 and 2 was fully supported by the medical evidence also. Under such circumstances, the lower court was perfectly correct in accepting their evidence. The court does not find any reason to disbelieve or cast doubt on the evidence of P.Ws.1 and 2. In the instant case, all the four accused, armed with deadly weapons, went to the scene of occurrence, inflicted cut injuries on the deceased and caused his death instantaneously and hence, they have committed a crime. Apart from that, they have damaged the properties by setting fire and sufficient evidence had also been let in by the prosecution in that regard. Hence, the lower Court was perfectly correct in finding the accused guilty as per the charges framed. This Court is unable to find any illegality or infirmity in the judgment of the lower court.

10. The conviction and sentence imposed on the appellants/accused by the trial Court are confirmed. Accordingly, the appeal fails and the same is dismissed. It is reported that the appellants/accused are on bail. The Sessions Judge shall take steps to commit them to prison to undergo the remaining period of sentence imposed upon them.

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

vsi

To

1.The II Additional Sessions Judge cum Chief Judicial Magistrate,  
Dharmapuri.

2. -do- Thro' The Principal District & Sessions Judge,  
Dharmapuri District at Krishnagiri.
3. The Judicial Magistrate, Krishnagiri
4. -do- Thro' The Chief Judicial Magistrate, Dharmapuri.
5. The District Collector, Dharmapuri District.
6. The Director General of Police, Mylapore, Chennai-4.
7. The Public Prosecutor, High Court, Madras.
8. The Superintendent, Central Prison, Vellore.
9. The Inspector of Police, Taluk Police Station, Krishnagiri.
- 1 CC To Mr.K.Selvarangan, Advocate Sr 36739.

Crl.A.No.781 of 2000

AK(CO)  
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