

Bail Slip

The 2nd Appellant/Accused No.3, (viz) Ammasi S/o Perumal was directed to be released on bail as per the order of this Court dated 28.9.2001 and made in CrI.M.P.No.6374 of 2001 in CrI.Appeal No.483 of 2001.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2005

CORAM

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

Criminal Appeal No. 483 of 2001

1. Sekar
2. Ammasi
3. Manickam
4. Morur Periannan @ Sundar ... Appellant. (A1, A3, A4 & A6)

Vs

State rep. by
Inspector of Police,
Deevattipatti Police Station. ... Respondent
(Cr.No.706/94)

Prayer: Appeal against the judgment passed by the learned I Additional Sessions Judge-cum-Chief Judicial Magistrate, Salem, in S.C.No. 27 of 2000 dated : 30.03.2001.

For Appellants : Mr. K.V.Sridharan

For Respondent : Mr.M.K.Subramanian
Government Advocate (CrI.Side).

JUDGMENT

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

This appeal has been brought forth by the appellants, who were arrayed as A-1, A-3, A-4 and A-6 before the learned I Additional Sessions Judge-cum-Chief Judicial Magistrate, Salem, in S.C.No.27 of 2000, where, they along with three others, who were arrayed as A-2, A-5 and A-7, stood charged, found guilty and sentenced to imprisonment as follows:-

Charge Nos.1 and 2 were framed against A-1 to A-7 under Sections 148 and 449 IPC. respectively. Charge No.3 was framed against A-1 to A-3 under Section 302 IPC. Charge No.4 was framed against A-4 to A-7 under Section 302 read with 149 IPC. Charge No.5 was framed against A-4 and A-6 under Section 506 (ii) IPC. Charge No.6 was framed against A-1 to A-3, A-5 and A-7 under Section 506 (ii) read with 149 IPC. Charge No.7 was framed against A-5 under Section 324 IPC. Charge No.8 was framed against A-1 to A-4, A-6 and A-7 under Section 324 read with 149 IPC. Charge No.9 was framed under Section 325 IPC. against A-7. Charge No.10 was framed against A-1 to A-6 under Section 325 read with 149 IPC.

2. The trial Judge, on finding A-1 and A-3 guilty under Section 148 IPC. sentenced each one of them to undergo three months rigorous imprisonment. Similarly, on being convicted under Section 449 IPC., they were each sentenced to one year rigorous imprisonment and they were also directed to pay a fine of Rs.200/- each with a default sentence of three months rigorous imprisonment. On being convicted under Section 302 IPC., A-1 and A-3 were each sentenced to imprisonment for life and they were also directed to pay a fine of Rs.1,000/- each with a default sentence of one year rigorous imprisonment. A-4 and A-6, on being found guilty under Section 449 IPC., were each sentenced to the period of imprisonment, which they had already undergone during trial, and they were also directed to pay a fine of Rs.200/- each with a default sentence of one month rigorous imprisonment. Similarly, on being found guilty under Section 506(ii) IPC., A-4 and A-6 were each sentenced to the period of imprisonment, which they had already undergone during trial, and they were also further directed to pay a fine of Rs.500/- each with a default sentence of one month rigorous imprisonment. Aggrieved over the same, A-1, A-3, A-4 and A-6 have brought forth the above appeal.

3. The short facts necessary for the disposal of the case can be stated thus:-

i.P.W.1 is the elder brother of the deceased, Mathaiyan. P.W.2 is the mother of P.W.1 and the deceased. They were residing at Elathur Kadampakkadu. All the accused were neighbours. A-1 to A-3 and A-7 are the neighbouring land owners. There was a land dispute between one Narayanan, father of A-1, and the family of P.W.1 one year back, due to which, there was a quarrel and a case was also registered at Omalur Police Station against the prosecution witnesses and a criminal case was also pending at that time.

ii. On 20th December, 1994, P.Ws.1, 2 and other family members including Madhaiyan, the deceased in the case, were sleeping outside the house. At that time, the electric light was burning inside the house. At about

1.00 a.m. on 21st December, 1994, all the accused, arming with deadly weapons, came to the house of P.W.1. On seeing them, P.Ws.1 and 2 tried to get up. At that time, A-1 attacked Mathaiyan with a knife, M.O.1, on his head, A-2 attacked him with a knife on his left ear, A-3 attacked the deceased on the stomach and his back, and A-4 caused criminal intimidation. When P.W.1 intervened, he was attacked with a stone by A-5. A-6 threatened P.W.1 by showing a spade. A-7 attacked P.W.2 with a wooden log. A-3 also attacked P.W.2 with a wooden log. When the prosecution witnesses raised alarm, other villagers gathered and the accused fled away from the place of occurrence. P.Ws.1, 3 and 4 took Mathaiyan to Government Hospital, Omalur, where P.W.14, doctor, who was on duty at about 1.45 a.m., examined Mathaiyan and referred him to Government Hospital, Salem, for better management. Ex.P-25 is the copy of the accident register issued by him. Accordingly, Mathaiyan was taken to Government Hospital, Salem, at about 2.30 a.m., where he was declared dead by P.W.8, the Medical Officer, who was on duty at that time. Ex.P-8 is the copy of the accident register issued by him. The death intimation, Ex.P-9, was sent to Out-post Police Station.

iii. At about 3.15 a.m., P.W.8 examined P.W.1, who informed the doctor that he was attacked by 6 known persons and 15 unknown persons. X-Rays were also taken. Ex.P-10 is the copy of the accident register issued in respect of the injuries found on P.W.1.

iv. In the meantime, P.W.13, Sub Inspector of Police, Deevattipatti Police Station, received the death intimation from the hospital authorities. At 10.30 a.m., P.W.1 came to the said police station and gave a complaint under Ex.P-1, on the strength of which, a case in Crime No.206 of 1994 was registered under Sections 147, 148, 448, 323, 506(2) and 302 IPC. Ex.P-24 is the printed first information report. The express reports were sent to Court.

v. Investigation in the case was taken up by one Syed Gulam Thasthagir, Inspector of Police, Omalur Police Station. Since he was admitted in the hospital, he was not examined and the investigation conducted by him was spoken to by P.W.15, the Inspector of Police, Omalur Police Station. The investigating officer, on taking up investigation in the case, proceeded to Government Hospital, Salem, where, at the mortuary, he conducted inquest over the dead body of Madhaiyan in the presence of Panchayatdars and witnesses and prepared the inquest

report under Ex.P-27. Following the same, he issued a requisition under Ex.P-12 to the doctor for conducting autopsy on the dead body of Mathaiyan.

vi. P.W.9, the Assistant Professor and District Police Surgeon attached to Government Mohan Kumaramangalam Medical College, Salem, conducted autopsy on the dead body of Mathaiayn and found the following injuries:-

I.A lacerated wound on the left parietal region 3.5 cm x 1 cm x bone deep 2 cm outer to the midline.

II. An incised wound on the sagittal plane 2.5 cm x 0.5 cm x skin deep, 2 cm outer to the injury No.1 on the left parietal region.

III. An incised wound in the coroneal plane 1.5 cm x 0.5 cm x skin deep on the left parietal region out to injury No.II.

IV. A lacerated wound 7 cm x 1 cm x bone deep on the left fronto parietal region, 1.5 cm anterior to injury No.1.

V. A lacerated wound on the left forehead 4 cm x 2.5 cm x bone deep.

VI. A lacerated wound on the left forehead 1 cm x 0.5 cm x bone deep 1 cm outer to the above mentioned wound No.V. Both V and VI these two wounds are 2.5 cm above the left eye brow.

VII. A transverse cut wound on the upper of nose, 4 cm x 1 cm exposing the underlying structures with marginal brusing - reddish. On dissection, the underlying nasal bones and blood vessels nerves are found cut completely in a communicated manner.

VIII. A lacerated wound on the right side lower lip 1 cm x 0.2 cm x muscle deep.

IX. A transverse cut wound involving the lower part of pinna or the left ear and left mastoid region, 5 cm x 3 cm x bone deep.

X. A cut wound on the web space of right thumb and index finger 3 cm x 1 cm x bone deep with marginal bruising - reddish.

XI. A transverse stab wound 3 cm x 0.5 cm entering the left thoracic cavity on the back of left chest in the 9th intercostal space, 5 cm outer to the midline. Edges are clean cut, outer end is acute, inner end is abtuse. On dissection the underlying intercostal muscles, blood vessels, nerves are found cut. Left thoracic cavity contain 50 ml of fluid blood, right side empty. On further examination a stab wound 1 cm x 0.5 cm x through and through on the lower lobe of left lung. Left lung is found collapsed. Right lung-cut section pale.

XII. A vertical incised wound on the back of right chest, 6 cm x 0.5 cm x skin deep.

XIII. Abrasions are present on the following areas:-

- a) Right forehead 1 x 0.5 cm.
- b) Front of upper part of right chest 2 x 1.5 cm.
- c) Back of left shoulder 3 x 1 cm.
- d) Back of upper part of left chest 3 x 0.5 cm. (All are dark brown in colour).

XIV. Sub Scalpular bruising of the left parietal and frontal region 10 cm x 7 cm (Reddish in colour).

The doctor has given the post-mortem certificate under Ex.P-13, wherein he has stated that the deceased would appear to have died of multiple injuries sustained by him.

Vii. During the course of investigation, the investigating officer examined witnesses and recorded their statements. At 5.30 p.m. on 21.12.1994, he proceeded to the scene of occurrence, made an inspection and prepared an observation mahazar under Ex.P-28 and also drew a rough sketch under Ex.P-29. Thereafter, he

recovered M.Os.2 to 4, 11 and 12 under Ex.P-30 mahazar from the place of occurrence. On 24.12.1994, he arrested A-5 and A-6 and questioned them. They gave confessional statements, which were recorded in the presence of witnesses. Thereafter, they were sent to Court for remand. On 28.12.1994 at 11.30 a.m, the investigating officer arrested A-3, who was questioned, and after recording his statement, he was sent to Court for remand.

Viii. Further investigation in the case was taken up by P.W.15, the Inspector of Police, Omalur Police Station. He examined the doctors and recorded their statements. On 30.1.1995, he sent all the material objects, which were recovered from the place of occurrence and from the dead body of the deceased, to the Court to subject them for chemical analysis and obtained Exs.P-13 and P-14, the reports of the Chemical Analyst and the Serologist respectively.

ix. Further investigation was taken up by P.W.16, Inspector of Police, Deevattipatti Police Station. On 19.4.1995, he arrested A-4, who volunteered to give a confessional statement, which was recorded in the presence of witnesses. On 10.5.1995, he examined the doctors and recorded their statements. On 25.5.1985, after completion of investigation, he filed the final report against the accused.

4. The case was committed to the Court of Sessions. Necessary charges were framed. In order to substantiate the charges levelled against the accused, the prosecution examined 16 witnesses and relied on 30 exhibits and 12 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 of the Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses. They flatly denied them as false. Though D.W.1 was examined, no document was marked on the side of the defence. The trial Court, after hearing both sides and on scrutiny of the materials available, while finding A-1, A-3, A-4 and A-6 guilty as per the charges framed against them and sentencing them as referred to above, acquitted A-2, A-5 and A-7 of all the charges framed against them. Hence, the above appeal by A-1, A-3, A-4 and A-6. Pending appeal, it is reported that A-1 died. Hence, the appeal, insofar as A-1 is concerned, abates.

5. The learned Counsel appearing for the appellants/A-1, A-3, A-4 and A-6, inter alia, made the following submissions:-

(a) In the instant case, the occurrence took place at about 1.00 a.m. on 21.12.1994. But the case came to be registered after a delay of 10 hours. Though the prosecution attempted to give some explanation, it is neither acceptable nor convincing.

(b) In this case, though P.Ws.1 to 5 were examined as eye witnesses, P.Ws.3 to 5 turned hostile. From the very evidence of P.W.2, it would be quite clear that P.W.2 could not have seen the occurrence at all. Even in the cross-examination, P.W.1 has categorically admitted that on suspicion that the accused could have murdered the deceased, he has mentioned their names in the first information report. Hence, the above said evidence destroys the entire prosecution case.

(c) In the instant case, though the lower Court was not ready to believe the evidence of P.Ws.1 and 2 in respect of the injuries sustained by them and acquitted the other accused in that regard, it has accepted their evidence for convicting the other accused, viz., the appellants herein.

(d) In the instant case, the earliest document, which came into existence, was Ex.P-25, the copy of the accident register issued by P.W.14, the doctor attached to Government Hospital, Omalur, with regard to the injuries found on the deceased, wherein it has been found mentioned that the deceased was attacked by 20 known persons. Later, Ex.P-10, the copy of the accident register, was issued with regard to the injuries found on P.W.1 by P.W.8, the doctor attached to Government Hospital, Salem, wherein 6 known persons and 15 unknown persons were shown as accused. Thus, the contents found in Ex.P-1, which came into existence after a delay of 10 hours, are contrary to what were found in the earlier two documents, viz., Exs.P-10 and P-25, and there is no proper explanation tendered by the prosecution, which would go to show that with all embellishments and developments, the first information report has come into existence.

(e) Added further, the learned Counsel, that under such circumstances, when three witnesses out of five, who were examined as eye witnesses, turned hostile, and the evidence of P.Ws.1 and 2 was not believed by the lower Court in respect of the injuries sustained by P.Ws.1 and 2 and hence, acquitted the other accused in that regard, the lower Court ought to have rejected the prosecution case in its entirety and acquitted the appellants also. Hence, the counsel would submit that the appellants are entitled for acquittal in the hands of this Court.

6. The Court heard the learned Government Advocate (Crl.Side) appearing for the State on the above contentions.

7. It is not in controversy that one Mathaiyan died out of homicidal violence. From the evidence, it would be quite clear that on the night of 20.12.1994, the occurrence took place in front of the house of P.W.1, where the deceased was attacked and he was first taken to Government Hospital, Omalur, from where, he was taken to Government Hospital, Salem, for further management, where he was declared dead by the doctor, P.W.8, who issued Ex.P-13, the post-mortem certificate, wherein he has opined that the deceased died due to multiple injuries sustained by him. The said fact was also never disputed by the appellants either before the trial Court or before this Court. Hence, there is no impediment in recording that Mathaiyan died out of homicidal violence.

8. In the instant case, in order to establish the charges levelled against all the accused, P.Ws.1 to 5 were examined as eye witnesses by the prosecution. But the prosecution could not claim any benefit over the evidence of P.Ws.3 to 5, since they turned hostile. Insofar as P.Ws.1 and 2, who are the elder brother and the mother of the deceased, are concerned, they have given contradictory evidence about the occurrence. Insofar as P.W.1 is concerned, there was a clear admission in his cross-examination that only on suspicion, he has mentioned the names of the accused in the first information report, which would clearly show that he could not have seen the occurrence at all.

9. In the instant case, the Court made a careful scrutiny of the evidence of P.W.1 and it could be seen from the said evidence that in Ex.P-25, the copy of the accident register issued by P.W.14, the doctor attached to Government Hospital, Omalur, in respect of the injuries found on the deceased, it was found mentioned that about 20 persons have attacked the deceased and in the other document, Ex.P-10, the copy of the accident register issued by P.W.8 in respect of the injuries found on P.W.1, it has been mentioned that 6 known persons and 15 unknown persons have participated in the occurrence. Thereafter, the present first information report, Ex.P-1, came into existence after a delay of 10 hours. P.W.1, in cross-examination, has admitted that he took the deceased to Government Hospital, Omalur, immediately after the occurrence, and on the way, the Police Station at Omalur is there, but no complaint was given at that time and the complaint was given only after a delay of 10 hours and the lower Court was not prepared to accept the explanation tendered by the prosecution. In a case like this, though there was 10 hours delay in laying the complaint, the said delay can be excused, if the other circumstances have been proved in favour of the prosecution. But, in the instant case, it was noticed that P.W.1 has given different versions before two doctors at Government Hospital, Omalur and Salem and thereafter, he has given Ex.P-1 after a delay of 10 hours implicating the names of all the accused before the

Court. Apart from that, he has further stated in the said complaint that since he entertained suspicion, he gave the names of the accused. In the above circumstances, it is quite clear that he could not be an eye witness in this case and the prosecution has miserably failed to establish the same.

10. It is also pertinent to point out that the lower Court was not even prepared to accept the evidence of P.Ws.1 and 2 for the injuries sustained by them and acquitted the rest of the accused in that regard. If it be so, then there can be no reason for accepting the said evidence to sustain the conviction of the appellants.

11. Hence, the Court is of the considered opinion that all the circumstances narrated above would clearly suffice to reject the prosecution case out right, as pointed out by the learned counsel for the appellants and accordingly, the contentions raised by the Counsel are accepted in view of the merits they carry and hence, the judgment of the lower Court has got to be set aside and the appellants are got to be entitled for acquittal.

12. In the result, the appeal is allowed and the appellants are acquitted. It is reported that the 2nd appellant is on bail. His bail bonds shall stand cancelled. The fine amount, if paid, will be refunded to them.

bs/

/true copy/

Sd/
Asst.Registrar

Sub Asst.Registrar

To

- 1.The I Additional Sessions Judge-cum-Chief Judicial Magistrate, Salem.
- 2.-do- through the Principal Sessions Judge, Salem.
- 3.The District Munsif cum Judicial Magistrate, Omdur.
- 4.-do- Thro The Chief Judicial Magistrate, Salem.
- 5.The District Collector, Salem.
- 6.The Director General of Police, Madras.
- 7.The Inspector of Police, Theevattipatti Police Station, Salem.
- 8.The Superintendent, Central Prison, Coimbatore.
- 9.The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.K.V.Sridharan, Advocate SR No. 40375

PV(CO)

SR/29.9.2005

Cr1.A.No.483 of 2001