

Bail Slip

The Appellants 1 and 2/Accused 1 and 2, Appellants 1 and 2/Accused 4 & 5, Appellants 1 and 2/Accused 7 & 9, and Appellants 1 to 3/Accused 6, 8 and 10 in Crl.A.Nos.449,470,505 and 426/06 were directed to be released on bail in and by the orders of this Court dated (i) 17.10.2006 and 12.06.2006 and made in Crl.M.P.Nos.4328/06, 3270/06 and respectively (Crl.A.No.449/06) (ii) 19.06.2006 and made in Crl.M.P.No.3418/06 (Crl.A.470/06) (iii) 03.07.2006 and made in Crl.M.P.1/06 (Crl.A.No.505/06) and (iv) 30.06.2006 and made in Crl.M.P.No.1/06 (Crl.A.No.526/06) respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2008

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MR.JUSTICE K.N.BASHA

Criminal Appeal Nos.449, 470, 505 & 426 of 2006

- 1) Mukkannan
- 2) Rani
- 3) Velu @ Velmurugan .. Appellants in Crl.A.No.449 of 2006/A-1 to A-3
- 4)V.Vairakannu
- 5)R.Dakshnamoorthy ... Appellants in Crl.A.No.470 of 2006/ A-4 & A-5
- 6)Dasaiyan @ Dasarathan
- 7)Mani .. Appellants in Crl.A.No.505 of 2006/A-7 & A-9
- 8)Arumugam
- 9)Nallappan
- 10)Raja .. Appellants in Crl.A.No.526 of 2006/A6,A8 & A-10

Vs.

State rep by
Inspector of Police,
Bhuvanagiri Police Station,
Bhuvagiri,
Cuddalore District.
Case No.249 of 2005

.. Respondent/Complainant

Prayer : Criminal Appeals filed under Section 374 of the Code of Criminal Procedure against the Judgment of conviction passed by the

learned Additional District and Sessions Judge, Fast Track Court No.I, Chidambaram, Cuddalore District, in S.C.No.251 of 2005 dated 09.05.2006.

For Appellants in Crl.A. : Mr.R.Shanmugasundaram, Senior Counsel
Nos.449, 470 & 505/06 for Mr.A.Stalin
(A-1 to A-5, A-7 & A-9)

For Appellants in Crl.A. : Mr.K.V.Sridharan
No.526/06 (A-6, A-8 & A-10)

For Respondent : Mr.N.R.Elango,
in all Appeals Additional Public Prosecutor

J U D G M E N T

(Judgment of the court was delivered by K.N.BASHA, J.)

The appellants/A-1 to A-3, in Crl.A.No.449 of 2006, the appellants/A-4 and A-5 in Crl.A.No.470 of 2006, the appellants/A-7 and A-9, in Crl.A.No.505 of 2006 and the appellants/A-6, A-8 and A-10 in Crl.A.No.526 of 2006 have come forward with these appeals challenging their conviction and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court No.I, Chidambaram, Cuddalore District, in S.C.No.251 of 2005 dated 09.05.2006.

2. The appellants have been convicted and sentenced as follows :

A-1, A-2, A-4 to A-6 and A-8 to A-10 have been convicted under Section 147 IPC and sentenced to undergo three months rigorous imprisonment ; A-3 and A-7 have been convicted under Section 148 IPC and sentenced to undergo six months rigorous imprisonment ; A-7 has been convicted under Section 324 IPC and sentenced to undergo six months rigorous imprisonment ; A-1, A-6 and A-8 to A-10 have been convicted under Sections 324 r/w 149 IPC and sentenced to undergo six months rigorous imprisonment ; A-1 to A-10 have been convicted under Sections 323 r/w 149 IPC and sentenced to undergo three months rigorous imprisonment ; A-1 to A-10 have also been convicted under Section 341 IPC and sentenced to undergo one month rigorous imprisonment ; A-1 to A-10 have also been convicted under Section 302 r/w 149 IPC and sentenced to undergo life imprisonment and also each one of the accused imposed to pay a fine of Rs.1,000/- carrying with the default sentence of six months rigorous imprisonment ; Sentences were ordered to run concurrently.

3. The factual scenario, as unfolded during the course of trial through the evidence adduced by the prosecution, is as follows :

(i) P.W.1 is the husband of the deceased, Lalitha. P.Ws.2 and 6 are sons of the deceased. P.W.7 is the daughter of the deceased. P.W.9 is the brother of the deceased. A-2 is the wife of A-1. A-3 is the son of A-1 and A-2. The deceased party and the accused party are the residents of same village. There was a land dispute between P.W.1 and

A-1. Fifteen days prior to the occurrence, when the deceased went to her garden to tie the cattle, A-2 and A-3 objected for tying the cattle. They pulled the tuft of the deceased and beat her. P.W.1 informed about such occurrence to the panchayatdar (village headman), A-6. A-6 had not discussed about the occurrence and also not allowed them to go to the police station. Therefore, there were strained feelings between the accused and the deceased family.

(ii) On 16.04.2005, the deceased informed her brother, P.W.9 about the occurrence took place 15 days earlier to the effect that she was assaulted by A-2 and A-3 while they objected for tying the cattle. P.W.9 enquired A-1 and others and pacified both the parties.

(iii) On the fateful day of occurrence, i.e., on 16.04.2005, in the evening at about 5.00 p.m., the deceased returned to her house after meeting her brother P.W.9. The deceased informed P.W.1 about the compromise talk held by P.W.9. At 7.00 p.m., A-1, A-2, A-3 and A-10 came to the house of P.W.1 and questioned the conduct of the deceased complaining against them to P.W.9 and P.W.9 calling and enquiring them. At that time, A-9, A-4 to A-6 and A-8 came there and shouted that they have to cut P.W.1 and others and also shouted that they have to set fire to the house. P.W.1 went inside the house and looked the door. A-6, panchayatdar, at that time, requested P.W.1 to open the door for the purpose of compromise talks and advised them not to fight with each other. Immediately, P.W.1 opened the door. A-7 took a koduva knife and cut P.W.1 on his left side head. A-9 beat P.W.1 with a stick on his left side back. A-4 and A-6 beat P.W.1 on his left thigh, leg and right hand. The deceased came running to the scene from the house. A-1 pulled the tuft of the deceased and fisted on her nose. A-3 stabbed the deceased on her right side neck with a pichuva knife, M.O.2. P.W.2 intervened and A-2 snatched the stick from A-6 and beat P.W.2 on the left side of his back. A-10 snatched the stick from A-2 and beat P.W.2 on his back. A-5 snatched the stick from A-9 and beat P.W.2 on the right cheek below eye. P.Ws.1 and 2 took the deceased (injured) to the hospital and the accused prevented them and at that time, the police officials came there. Thereafter, P.Ws.1, 2, 7 took the deceased to the hospital.

(iv) The Doctor, P.W.3, attached to the Government Hospital, Chidambaram, examined the deceased on 16.04.2005 at 9.15 p.m. brought by P.W.2. It was informed to the Doctor that the deceased was assaulted by 10 persons. The Doctor found the deceased already dead and he noticed the following external injuries :

(1) A laceration right side of neck joint above right clavicle 5 X 6 cm. Clots present.

(2) Bleeding from both nostrils present.

Ex.P.2 is the Accident Register issued by the Doctor, P.W.3 to the deceased.

(v) On the same day at 9.40 p.m., the Doctor, P.W.3, examined P.W.1 and found the following external injuries :

- (1) A laceration left parietal region 3 X 2 cm. Bleeding present.
- (2) Contusion right side back 15 X 5 cm.
- (3) Contusion left thigh 3 X 4 cm.
- (4) Contusion right arm 4 X 3 cm.

Ex.P.3 is the Accident Register. The Doctor, P.W.3, opined that the injuries are simple in nature.

(vi) At 10.00 p.m., the Doctor, P.W.3 examined P.W.2 and found the following external injuries :

- (1) A contusion left side back 6 X 3 cm.
- (2) Contusion right side back 5 X 3 cm.
- (3) Contusion right side of face near eyebrow 4 X 3 cm.

Ex.P.4 is the Accident Register, in which, the Doctor, P.W.3, opined that the injuries are simple in nature.

(vii) P.W.16, Sub Inspector of Police, received the message about the occurrence on 16.04.2005 at 9.30 p.m. He went to the Government Hospital, Chidambaram, and examined P.W.1 and recorded the report, Ex.P.1. He registered the case in Crime No.249 of 2005 for offences under Sections 147, 148, 341, 324, 323 and 302 IPC. Ex.P.16 is the First Information Report. He sent the First Information Report to the Magistrate's Court and to the higher police officials.

(viii) P.W.18, Inspector of Police, received the message about the occurrence on 17.04.2005 at 2.00 a.m. and reached the police station and received the First Information Report. He took up investigation and went to the hospital at 7.00 a.m. and held inquest on the dead body of the deceased. Ex.P.17 is the inquest report. He sent the body for post-mortem.

(ix) The Doctor, P.W.4, conducted post-mortem on 17.04.2005 at 12.00 noon and found the following injuries on the deceased :

External Injuries : An incised wound 2 1/2 cm X 2 cm X 10 cm on the right lateral aspect of neck. On gently probing wound going downwards oblique towards the centre (n.c.)

Internal injury : Muscles were cut transversely, blood vessels and nerves cut on the (N.C.) Trachea ring cutting linearly, obliquely. Chest symmetrical, ribs intact. Heart pale, Chambers empty.

Injuries :

Lacerated wound of the left apex of the lung 2 X 2 X 2 cm. Thorax cavity contains 300 ml of blood. Hyoid : Intact. Stomach distended with gas partially digested food 200 ml present. Liver, spleen, kidneys are pale. Uterus : atrophied. Bladder : empty. (N.C.) Opening of skull. Skull intact. Membrane intact.

Ex.P.5 is the Post-mortem certificate. The Doctor, P.W.4, opined that

the deceased would appear to have died of extensive injuries to the muscles, the neck, blood vessels, trachea, lungs, heart and shock due to it.

(x) P.W.18 went to the scene of occurrence and prepared observation mahazar, Ex.P.12 and the rough sketch, Ex.P.18. He recovered M.O.6, bloodstained tar rods, M.O.7, sample tar rods in the presence of witnesses. On information, he went to Kothavacherry bus stop and arrested A-1, A-3, A-5, A-6, A-8 and A-9. In pursuance of the admissible portion confession of A-3 under Ex.P.14, he recovered M.O.1, aruval, M.O.2, pichuva knife, and M.Os.3 to 5, sticks. Thereafter, the accused have been remanded to judicial custody through the Court. He recovered M.Os.8 to 10, bloodstained clothes of the deceased. He examined P.W.9, P.W.11, P.W.4 and others and recorded their statements. He examined the Doctors, P.Ws.3 and 5 and others. He received the Serologist's report, Ex.P.11 and the Post-mortem certificate, Ex.P.5. After completing the investigation, he filed the charge sheet against the accused on 03.06.2005 for offence under Sections 147, 148, 341, 323, 324 and 302 r/w 149 IPC.

4. The prosecution, in order prove its case, examined P.Ws.1 to 18, marked Exs.P.1 to P.18 and M.Os.1 to 10.

5. When the accused were questioned under Section 313 Cr.P.C. in respect of the incriminating circumstances appearing against each one of them, all the accused denied their complicity with the crime and stated that they are contrary to the facts. It is further stated by A-5 that only the deceased party, namely, the deceased and P.W.2, came to attack them and while A-5 ward off, he sustained injury on the right hand. Thereafter, on seeing the attack, the villagers came and prevented the deceased party and pushed them down. At that time, the deceased fell down on an iron rod and sustained injury on her neck. A-1 also sustained injury at the hands of the deceased party. It is further stated that they have been sent to the Government Hospital, Chidambaram, by the police.

6. The defence also examined D.Ws.1 and 2. D.W.1 stated that there was a wordy quarrel between the deceased and the accused party. The deceased beat A-1 on his neck. P.W.2 came with a knife and attempted to attack and while A-5 ward off the cut, he sustained an injury on his hand. D.W.2 also stated about the quarrel and attack as stated by D.W.1.

7. Mr.R.Shanmugasundaram, learned senior counsel appearing for A-1 to A-5, A-7 and A-9 vehemently contended that the prosecution case suffers from serious infirmities and inconsistencies. It is contended that A-5 and A-1 have also sustained injuries, as per the Accident Registers, Exs.D.1 and D.2, but the prosecution has not given any explanation for such injuries sustained by A-5 and A-1 and as such the genesis and origin of the occurrence is suppressed by the prosecution. It is submitted by the learned senior counsel that there was a wordy

quarrel between the prosecution party and the accused party and only thereafter, the actual occurrence took place. The learned senior counsel would submit that there is no common intention or common object for all the accused to cause the death of the deceased. The learned senior counsel further submitted that A-2 has also given a report, as admitted by P.W.16, and in that report, A-2 has implicated P.W.1 and the deceased for attacking the accused party and the investigating officer has not investigated the report given by the accused. It is contended that the entire occurrence took place due to a sudden quarrel and both sides have attacked each other and as such this is a case of free-fight and therefore, each one of the accused should be held liable for their individual acts. It is contended that only A-1 and A-3 were said to have attacked the deceased and among them, A-1 has not used any weapon and only A-3 was said to have stabbed the deceased with a pen knife and as such A-1 and A-3 are liable to be punished only for lesser offences. It is pointed out by the learned senior counsel that the other accused have not attacked the deceased and they were alleged to have attacked only P.Ws.1 and 2.

8. Mr.K.V.Sridharan, learned counsel appearing for A-6, A-8 and A-10 submitted that there is absolutely no common object or common intention for A-6, A-8 and A-10 to cause the death of the deceased. It is contended that even as per the admitted version of the prosecution, A-6, A-8 and A-10 have not attacked the deceased and they were only said to have attacked P.Ws.1 and 2. The learned counsel adopted the other contentions put forward by the learned senior counsel appearing for the other appellants/accused.

9. Per contra, Mr.N.R.Elango, learned Additional Public Prosecutor, contended that A-1 and A-5 sustained only simple injuries and as such the non-explanation of the injuries sustained by A-1 and A-5 is not fatal to the prosecution case. It is submitted that the injuries found on A-1 and A-5 show that they have participated in the alleged occurrence. It is contended that the evidence of the eye-witnesses, P.Ws.1, 2, 6 and 7 is quite clear and natural and there is no infirmity in their evidence. The learned Additional Public Prosecutor would further contend that the version of the eye-witnesses is also corroborated by the medical evidence as the perusal of the post-mortem certificate, Ex.P.5 and the wound certificates in respect of P.Ws.1 and 2, namely, Exs.P.3 and P.4, disclose corresponding injuries on them.

10. We have given our careful and anxious consideration to the rival contentions put forward by either side and thoroughly scrutinized the entire materials and perused the impugned judgment of conviction.

11. The prosecution mainly placed reliance on the evidence of the eye-witnesses, P.Ws.1, 2, 6, 7 and 11. It is seen that one of the eye-witnesses, P.W.8, has turned hostile. Yet another eye-witness, P.W.11, has not implicated any one of the accused by mentioning the names of the accused and as such his evidence is not helpful to the prosecution case. Excluding the evidence of P.Ws.8 and 11, we are left with the evidence

of eye-witnesses, P.Ws.1, 2, 6 and 7. The fact remains that all these eye-witnesses are closely related to the deceased and on that score itself, we cannot discard their evidence and only we have to scrutinize their evidence with great care and caution.

12. The evidence of eye-witnesses, P.Ws.1, 2, 6 and 7, is quite clear and natural. They have come forward with the categorical and consistent version and there is absolutely no infirmity in their evidence. Though it is contended by the learned senior counsel that the prosecution has not explained the injuries sustained by A-1 and A-5 and as such the prosecution suppressed the genesis and origin of the occurrence, the prosecution case cannot be discarded altogether in view of the clear, cogent and consistent version of the eye-witnesses.

13. The Hon'ble Apex Court has held in *Shajahan V. State of Kerala* reported in 2007 AIR SCW 2123 that,

"17. Non-explanation of the injuries sustained by the accused at about the time of occurrence or in the course of altercation is a very important circumstance. But mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases. This principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested, so probable, consistent and credit-worthy, that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries."

As far as the instant case is concerned, the fact remains that A-1 and A-2 sustained only simple injuries, as per the opinion of the Doctor, P.W.3 and as per the Accident Registers, Exs.D.1 and D.2, and as such the clear, cogent and consistent evidence of the eye-witnesses cannot be rejected.

14. Yet another aspect to be borne in mind is that A-1, A-2, A-3 and A-10 first came to the house of P.W.1. Thereafter, there was a wordy quarrel between them. At the time of wordy quarrel, the other remaining accused, A-4, A-5, A-6, A-8 and A-9 came to the scene. The accused were said to have attacked P.W.1 at the first instance and while the deceased came there she was attacked by A-1 and A-3. The fact remains that A-1 only pulled the tuft of the deceased and fisted on her nose. A-3 was said to have given a single stab on the right side neck of the deceased. Therefore, except A-1 and A-3 none of the other accused touched or attacked the deceased and the other remaining accused only attacked P.W.1 and P.W.2. As pointed out by the learned senior counsel, A-1 and A-5 have also sustained injuries and of-course, the injuries are simple in nature. The entire occurrence was said to have taken place after a wordy quarrel. It is seen that before the actual occurrence of attacking the deceased and P.Ws.1 and 2, A-1, A-2, A-3 and A-10, who came first to the house of P.W.1, have not immediately attacked P.W.1. It is pertinent to be noted that A-6, who came subsequently with the other remaining accused, requested P.W.1 to come

out from the house for compromise talk to sort out the dispute and it is also seen that A-6 is a village headman (panchayatdar) and only thereafter, the occurrence is said to have taken place. Therefore, considering the sequence of events and totality of circumstances, we are unable to hold that all the accused came to the scene with the common object of causing the death of the deceased. Considering the injuries sustained by A-1 and A-5, we are of the considered view that this is a case of free-fight and as such each one of the accused is liable for their individual acts. In view of such finding, only A-1 and A-3 were said to have attacked the deceased.

15. As far as A-1 is concerned, he has not used any weapon and he is only said to have assaulted the deceased by fisting on her nose and as such he would be held liable for the offence under Section 323 IPC.

16. As far as A-3 is concerned, it is seen that he has given a solitary stab on the right side neck of the deceased by a sharp-edged weapon, namely, pichuva knife, M.O.2. A perusal of the post-mortem certificate, Ex.P.5, shows that the deceased sustained an incised wound 2 1/2 cm X 2 cm X 10 cms on the right lateral aspect of neck, on internal examination, it is seen that the muscles were cut transversely, blood vessels and nerves Trachea ring cutting linearly and obliquely. The Doctor, P.W.4, has opined that the deceased appeared to have died of extensive injuries to the muscles, the neck, blood vessels, trachea, lungs, heart and shock due to it. Therefore, it is seen that A-3 has given severe stab as a result of which there were injuries to the muscles, blood vessels, nerves and trachea ring. It is needless to state that A-3 was said to have given a stab on the vital part namely, on the neck of the deceased. It is pertinent to be noted that A-3 has not attempted to give further stabs. Therefore, we have no hesitation to hold that A-3 must be imputed with the intention to cause such bodily injury as was likely to cause death, if not, the intention of causing death and as such it would be appropriate to convict A-3 for the offence under Section 304 (I) IPC.

17.1. In view of the aforesaid findings, the conviction and sentenced imposed on the appellants/accused by the learned Additional District and Sessions Judge, Fast Track Court No.I, Chidambaram, Cuddalore District, in S.C.No.251 of 2005 by the judgment dated 09.05.2006, for the offence under Sections 147, 148, 324, 324 r/w 149, 323 r/w 149, 341 and 302 r/w 149 IPC are hereby set aside and instead the appellants stand convicted and sentenced as follows :

(i) A-3 is convicted under Section 304 (I) IPC and sentenced to undergo seven years rigorous imprisonment for attacking the deceased ;

(ii) A-1 is convicted under Section 323 IPC and sentenced to undergo six months rigorous imprisonment for attacking the deceased ;

(iii) All the accused are convicted under Section 324 IPC and sentenced to undergo six months rigorous imprisonment for causing injuries on P.Ws.1 and 2 ;

(iv) Conviction and sentence imposed on A-1 and A-3 by this Court are ordered to run concurrently ;

17.2. The trial Court is directed to secure the custody of the accused and thereafter, to commit them to jail in order to undergo the remaining period of sentence, if any.

17.3. Fine amount imposed on the appellants by the learned trial Judge is hereby set aside and as such fine amount paid, if any, is directed to be refunded to them.

With the above modification in conviction and sentence, these appeals are partly allowed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

gg

To

1. The Additional District and Sessions Judge,
Fast Track Court No.I, Chidambaram.
2. - do - thro" The Principal Sessions Judge, Cuddalore.
3. The District Munsif-cum-Judicial Magistrate, Portonovo.
4. - do - thro" The Chief Judicial Magistrate, Cuddalore.
5. The Inspector of Police, Bhuvanigiri Police Station,
Chidambaram, Cuddalore District.
6. The Public Prosecutor, High Court, Madras.
7. The Judicial Magistrate, Parangipettai.
8. The Superintendent, Central Prison, Cuddalore.
9. The Superintendent, Central Prison for Women, Vellore.
10. The Chief Judicial Magistrate, Chenglepet.
11. The Chief Judicial Magistrate, Vellore.

- 1 cc To Mr.K.V.Sridhar, Advocate, SR.41928.
1 cc To Mr.A.Stalin, Advocate, SR.41793.

CrI.A.Nos.449, 470
505 & 526 of 2006

KG(CO)
RVL 12.08.2008