

B A I L S L I P

The Appellant/Accused-1, Viz., Prakash, age 19, S/o Arumugam was directed to be released on bail as per the order of this Court dated 11.6.2008 in Crl.MP.No.1/2008 in Crl.A.303/2008.

The Appellant/Accused-2, Viz., Neelakrishna @ Leela Krishnan, S/o Kandaswamy was directed to be released on bail as per the order of this Court dated 3.6.2008 in Crl.MP.No.1/2008 in Crl.A.370/2008.

The Appellant/Accused-4, Viz., Sampath alias Sampathkumar alias Silambarasan was directed to be released on bail as per the order of this Court dated 31.7.2008 in Crl.MP.No.1/2008 in Crl.A.423/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2008

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM
AND

THE HONOURABLE MR.JUSTICE C.S.KARNAN

Criminal Appeal Nos.303, 370 & 423 of 2008

Prakash ... Appellant in C.A.303/2008
(Accused No.1)

Neela Krishnan
@ Leela Krishnan ... Appellant in C.A.370/2008
(Accused No.2)

Sampath alias Sampathkumar
alias Silambarasan ... Appellant in C.A.423/2008
(Accused No.4)

Vs.

State represented by
Assistant Commissioner of Police,
B-5, Police Station (L & O),
Coimbatore.
(Crime No.261/2007)

.. Respondent in C.A.303/08 & 423/08

The Assistant Commissioner of Police,
B-5, Singanallur Police Station,
Coimbatore District.

.. Respondent in C.A.370/08

These criminal appeals have been preferred under Section 374 (2) Cr.P.C. against the judgment of conviction and sentence passed by the learned Special Court and Principal Sessions judge, Coimbatore made in S.C.No.25 of 2007 dated 10.4.2008

For Appellant
in Crl.A.Nos.303 & 423/2008 : Mr.Su.Srinivasan

For Appellant in
Crl.A.No.370/2008 : Mr.K.Kalyanasundaram

For Respondent : Mr.N.R.Elango, APP

COMMON JUDGMENT

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

All these three appeals namely C.A.Nos.303, 370 and 423 of 2008 concentrate in challenging a judgment of the Principal Sessions Division, Coimbatore, in S.C.No.25 of 2007. The appellants/accused stood charged, tried, found guilty and awarded punishment as follows:

ACCUSED	CHARGES	FINDING	PUNISHMENT
A-1 to A-4	147 IPC	Not guilty	
A-1 & A-2	148 IPC	Not guilty	
A-1 to A-4	3(1)(x) of SC/ST (Prevention of Atrocities Act), 1989	A-1 guilty. Others not guilty.	6 months RI along with a fine of Rs.1000/- and default sentence
A-1 to A-4	302 r/w 34 IPC r/w 3(2) (v) of SC/ST (Prevention of Atrocities Act), 1989	A-1 & A-2 guilty. A-3 & A-4 not guilty, but guilty under Sec.323 IPC	A-1 & A-2 - Life imprisonment with a fine of Rs.1000/- and default sentence A-3 & A-4 - 6 months RI along with a fine of Rs.1000/- and default sentence

2.The short facts necessary for the disposal of these appeals can be stated as follows:

(a) P.W.1 is a resident of Ondipudur. He has two sons. He belonged to Scheduled Caste. The deceased Dhandapani was the second son. He was working in Santhi Gears. He used to go for his work at about 7.00 A.M. and return at 6.00 P.M. P.Ws.2 and 4 were

working with the deceased. On 3.3.2007, accompanied by P.Ws.2 and 4, he was proceeding to his house. When they were crossing Jallikuli Street, they came to know that there was annadhanam (distribution of free food) at Vinayaga Temple. Immediately the deceased and P.Ws.2 and 4 went there to take food. The deceased sat along with others to take food. At that time, A-1 also tried to take the seat. On seeing the deceased who was about to take seat, A-1 uttered "Do you want to sit along with us". The deceased questioned that he did not commit anything wrong and why A-1 should talk ill of his caste. Immediately A-1 took a wooden log and attacked the deceased on his head. A-2 took another wooden log and joined A-1 in attacking him. All the other accused kicked him on different parts of the body. When a huge crowd gathered and intervened, the accused fled away from the place of occurrence with the wooden logs.

(b) P.Ws.2 and 4 took the deceased and left him nearby his house and went away from the place. P.W.1 on seeing the injuries, enquired the deceased. Then he took him to the clinic of P.W.3 a private doctor. P.W.3 medically examined the deceased between 10.45 P.M. and 11.00 P.M. and gave the initial treatment. Thereafter, P.W.1 took the deceased to the Government Hospital, Coimbatore. On 4.3.2007, at about 5.37 A.M., when P.W.18, the Doctor, was on duty, he examined the deceased. The accident register copy is marked as Ex.P7. Despite the treatment given by P.W.17, another Doctor, he died at about 0915 hours. An intimation was given to the respondent police.

(c) On receipt of the death intimation, Ex.P8, P.W.24 the Inspector of Police, proceeded to the Government Hospital and recorded the statement of P.W.1 which is marked as Ex.P1. On the strength of Ex.P1, the report, a case came to be registered in Crime No.261/2007 under Sections 147, 148, 302 of IPC and Sec.(3) (2)(v) of SC/ST (Prevention of Atrocities) Act. The printed FIR, Ex.P18, was despatched to the Court.

(d) P.W.25, the Assistant Commissioner of Police, took up investigation, proceeded to the spot, made an inspection and prepared an observation mahazar, Ex.P2 and also a rough sketch, Ex.P19. Then P.W.15, the photographer, took the photos. The Investigating Officer conducted inquest on the dead body in the presence of witnesses and panchayatdars and has prepared an inquest report, Ex.P20. Then a requisition was sent to the hospital authorities for the purpose of postmortem.

(e) P.W.18, the Medical Person, attached to the Coimbatore Medical College and Hospital, on receipt of the said requisition, conducted autopsy on the dead body and has given his opinion in the post-mortem certificate, Ex.P10, wherein he opined that the deceased would appear to have died of head injuries sustained by him.

(f) Pending the investigation, on 6.3.2007, A-1 was arrested. He gave a confessional statement. The admissible part is marked as

Ex.P3, pursuant to which he produced M.O.1, wooden log, which was recovered under a cover of mahazar. At the time of arrest, A-4 came forward to give a confessional statement which was recorded in the presence of witnesses. All other accused surrendered before the Court. The Investigating Officer obtained the community certificate for the deceased from P.W.21, the Tahsildar, wherein it was shown that he belonged to Arunthathiyar Community. Equally, he obtained the community certificates of A-1 to A-4 marked as Exs.P14 to P17 respectively, wherein it was shown that they belonged to Kurumba Community. On completion of investigation, the Investigator filed the final report.

3.The case was committed to Court of Session, and necessary charges were framed. In order to substantiate the charges, the prosecution examined 25 witnesses and also relied on 23 exhibits and 5 material objects. On completion of the evidence on the side of the prosecution, the accused were questioned under Sec.313 of Cr.P.C. as to the incriminating circumstances found in the evidence of the prosecution witnesses which they flatly denied as false. No defence witness was examined. The trial Court heard the arguments advanced and took the view that the prosecution has proved the case beyond reasonable doubt and hence found the appellants guilty and awarded punishment as referred to above. Hence these appeals at the instance of the appellants.

4. Advancing the argument on behalf of the appellants learned counsel would submit that according to the prosecution, the occurrence has taken place at 9.00 p.m. on 3.3.2006. When P.Ws. 2, 4, 5 and the deceased Dhandapani were going near the Vinayaga temple, they saw distribution of free food at Vinayaga Temple. The deceased Dhandapani and P.Ws.2 and 4 went there to take food. The deceased sat along with others to take food. On seeing that A1 abused by uttering the caste of the deceased and in that transaction, A1 took a wooden log and attacked the deceased on his head. A2 also took a wooden log and attacked the deceased, while A3 and A4 kicked the deceased and as a direct consequence Dhandapani died at about 9.15 a.m., the next day in the Government Hospital.

5. The learned counsel would submit that in order to substantiate the charges levelled against the appellants, the prosecution marched P.Ws. 2, 4 and 5 as eye witnesses. From their evidence, it would be quite clear that they not only belonged to the community of the deceased but also they were close friends and relatives and their houses are situated very nearby to the house of the deceased. While those witnesses claim that they saw the occurrence in which the deceased was severely beaten by the accused and took him to his house since he could not walk, they left him in the street itself even without informing to the parents or relatives of the deceased, which by itself would clearly indicate to the fact that P.Ws. 2, 4 and 5 would not have seen the occurrence at all. P.W.1 though not an eye witness would claim that at about 10.00 p.m., he took the deceased to a private clinic of

P.W.3 doctor where P.W.3 gave initial treatment. P.W.3 has categorically stated in his evidence, it was told that the deceased fell down and sustained injuries.

6. Added further learned counsel, the deceased was taken to the Government Hospital at 4.00 a.m. where P.W.16 doctor gave treatment to the deceased and the accident register copy was also marked as Ex.P7 wherein it is clearly stated that he sustained injuries while riding bicycle and fallen into a pit on the road at 9.00 p.m. on 3.3.2007 near Ondipudur. Thus, it would be quite clear both the statement made by P.W.3 and P.W.16 doctors and also which is found in record in Ex.P.7 would go against the prosecution case that the deceased was attacked by the accused at the place of occurrence. Thus, it would bely the evidence of the prosecution witness. Learned counsel would further add, much reliance was placed on the recovery of M.O.1-wooden log pursuant to the confessional statement alleged to have been made by A1 on 6.3.2007. though it was claimed that recovery was made in a public place where there was number of independent witnesses, no independent witness was examined. The prosecution examined R.D.O and the R.D.O. would claim that he travelled in the jeep along with the Assistant Commissioner during recovery. On the contrary, the Investigating Officer/Assistant Commissioner has deposed that he travelled only with a police personnel and the discrepancies in the evidence would clearly indicate the fact that the recovery of M.O.1 as alleged by the prosecution cannot be but false and the prosecution cannot have advantage of that evidence.

7. Learned counsel would further add that P.W.1 would claim that P.W.2 4 and 5 came to the hospital at 9.30 a.m. after the death of his son and gave information to him. If to be so, it should have been brought to the notice of the police immediately, but the case was actually registered in Ex.P1 report at about 1.30 p.m. on the same day. Thus, the delay would clearly indicate that Ex.P1 was a fabricated one and it is an afterthought. Under such circumstances, the prosecution case actually suffers from all angles.

8. Coming to the second line of argument, learned counsel would submit that in the instant case, there is nothing to indicate that the accused had any common intention to kill the deceased or shared the same. Under such circumstances, the injuries that has been sustained were only simple in nature and the same has to be considered by this Court.

9. Learned counsel appearing for CrI.A.No.370/2007 would submit that the prosecution did not place any evidence that A2 had any common intention to kill the deceased or share the same. On the contrary the evidence would clearly indicate that he caused simply injury below the eye of the deceased. Even assuming the factual position putforth by the prosecution is taken to be not proved, it would not certainly attract the penal provision of murder but he should be found guilty for the simple injuries caused to the

accused. Under such circumstances, this has got to be considered by this Court.

10. The Court heard the learned Additional Public Prosecutor on the above contentions and paid its anxious consideration on the submissions made.

11. It is not in controversy that the son of P.W.1, following the incident that took place at 9.00 p.m. on 3.3.2007 was taken to private hospital of P.W.3 doctor and thereafter to Government Hospital Coimbatore, where despite treatment given, died at 9.15 a.m on 4.3.2007. Following the inquest made by the Investigation officer/Assistant Commissioner, the dead body was subjected to post mortem by P.W.18 and he has given categorical statement as a witness before the Court and also through the post mortem certificate marked as Ex.P.10 that the deceased would appear to have died of head injuries sustained by him. The fact that the deceased died out of homicidal violence was never disputed by the appellants before the trial Court. Under such circumstances, no impediment is felt by this Court in recorded so.

12. In order to substantiate that the accused persons at the time of occurrence at 9.30 a.m on 3.3.2006, attacked the deceased with wooden log, the prosecution marched P.Ws.2, 4 and 5 as eye witnesses. True it is, P.W.2, 4 and 5 were not only friends but also relatives and residing in the same area where the deceased was living. The Court is very mindful of the caution made by the learned counsel for the appellants and also the settled principles of law that in a given case like this when the witnesses are close relatives, their evidence must be accepted after careful scrutiny. When the evidence of P.Ws.2, 4 and 5 are marshalled properly and after the application of the test of careful scrutiny, the Court is thoroughly satisfied that their evidence has got to be accepted.

13. In the instant case, P.Ws.2, 4 and 5 have spoken in one voice that after the work was over they accompanied the deceased and while they were crossing the Vinayaka temple, they saw that free food distribution was going on. Immediately, the deceased went to take food along with others. At that time, A1 found fault with the deceased and made utterance of the community to which the deceased belong. Immediately, the deceased questioned him about what was wrong committed by him. Suddenly, A1 took a wooden log and attacked the deceased on his head and A2 got the wooden log from A1 and attacked the deceased. Further, A3 and A4 kicked and beat the deceased. All the three witnesses have spoken to this fact and despite cross examination in full their evidence remain unshaky and it inspires the confidence of the Court. Apart from this, the ocular testimony projected before the trial Court through these witnesses fully corroborates with the medical evidence. The post mortem certificate clearly indicate that there were injuries found on the back side of the head and also simple injuries below the right eye.

14. Yet another circumstance in favour of the prosecution was the recovery of M.O.1 pursuant to the confessional statement voluntarily given by the first accused and recovered by the Assistant Commissioner Investigating officer. This recovery of weapon of crime which was identified by the witnesses before the Court would show the nexus between the crime and the accused. Hence, the trial Court is perfectly correct in accepting the evidence of P.Ws.2, 4 and 5. Now, the contention put forth by the learned counsel for the appellants that the ocular testimony projected through P.Ws.2 4 and 5 should be rejected since they have not brought to the notice of the father or relatives of the deceased immediately about the incident but they kept calm, cannot be countenanced. It could be well stated that when such an incident had taken place, they have taken it lightly since the injuries were not found outside the body of the deceased Dhandapani. Thus, they did not make the matter much and they went to their respective houses.

15. It is also pertinent to point out that when the deceased got into the house, his father enquired him what had happened but he was unable to express the same and showed in action that he has got some pain in his head. P.W.1 immediately took him to P.W.3 clinic and gave initial treatment and brought him back home. Thus, no one had informed P.W.1 about the incident and thereafter, P.W.1 kept quiet. At about 4.00 a.m., on seeing the physical condition of his son, he took his son to the Government Hospital. It is true that he informed to the doctor P.W.16 that his son sustained injuries by falling down from a cycle. At this juncture, it is pertinent to point out that this answer of P.W.1 to P.W.16 is imaginary since P.W.1 was not informed by anybody either by the deceased or by P.Ws.2, 4 and 5 how the incident had taken place and how he sustained injuries. It is further to be pointed out that the information passed on to P.W.16 only by P.W.1 and not by the deceased. The explanation actually tendered by P.W.1 at the time of cross examination was, in order to save his son, he gave such an information to the doctor.

16. After the death of the deceased P.Ws.2, 4 and 5 have reached the hospital and they informed P.W.1 how the incident had taken place and only then P.W.1 came to know about the incident and the injuries sustained by his son. Thereafter, he brought the same to the notice of the police. It is true that there was delay, but for this delay, the case of the prosecution, cannot be rejected. The contention put forth by the learned counsel for the appellants and recorded above, do not carry any merits whatsoever. The Court is satisfied that there are sufficient evidence to indicate that A1 and A2 assaulted the deceased with wooden log while A3 and A4 kicked the beat him.

17. From the narration of the incident that had taken place, it would be quite clear that none of the accused had any intention or pre-meditation to kill the deceased but only due to the sudden act of the accused, the incident had happened. A1 was not armed

with any weapon and the wooden log was taken suddenly at the spot. Thus, it is clearly ruled out that they got any intention or pre-mediation but the act of the accused has caused the death of the deceased as a direct consequence. Therefore, the Court is of the opinion that the act of the first accused would not attract the penal provision of murder but would attract Section 304(ii) of I.P.C. r/w 3(1)(x) of SC/ST (Prevention of Atrocities Act), 1989, and the award of five years rigorous imprisonment would meet the ends of justice. A2 has caused only simple injuries and there is nothing to indicate that he has common intention of causing death of the deceased and therefore, the Court is of the opinion that the act committed by A2 would not attract the penal provision of murder but would attract section 323 I.P.C. and the award of six months rigorous imprisonment would meet the ends of justice. As far as A3 is concerned, he has not preferred any appeal before this Court. As far as A4 is concerned, the conviction under Section 323 I.P.C. and the sentence of six months rigorous imprisonment awarded by the trial Court are sustained.

18. In the result, the judgment of conviction and sentence imposed on A1 under Section 3(1)(x) of SC/ST (Prevention of Atrocities Act), 1989 is confirmed. The conviction and sentence imposed on A-1 under Section 302 r/w 34 of I.P.C r/w 3(2)(v) of SC/ST (Prevention of Atrocities Act) 1989 are modified, instead A1 is convicted under Section 304(ii) of I.P.C. and sentenced to undergo five years rigorous imprisonment. The judgment of conviction and sentence imposed on A-2 under Sections 302 r/w 34 of I.P.C. r/w 3(2)(v) of SC/ST (Prevention of Atrocities Act) 1989 are modified, instead A2 is convicted under Section 323 of I.P.C. and sentenced to undergo six month years rigorous imprisonment. The fine amount imposed by the trial Court on A1 & A2 will hold good. As far as A4 is concerned, the conviction under Section 323 I.P.C. and the sentence of six months rigorous imprisonment awarded by the trial Court are confirmed.

19. With the above modification in conviction and sentence, the criminal appeals are disposed of. It is reported that the appellants are on bail. The learned Sessions Judge is directed to take steps to secure the presence of the appellants and commit them to prison to serve the remaining period of sentence imposed upon them.

vsi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate No.III, Coimbatore.
 2. Do Through The Chief Judicial Magistrate, Coimbatore.
 3. The Special and Principal Sessions Judge, Coimbatore.
 4. The Assistant Commissioner of Police,
B-5, Police Station (L & O), Coimbatore.
 5. The Assistant Commissioner of Police,
Coimbatore City East, B-5, Singanallur Police Station,
Coimbatore.
 6. The Superintendent of Central Prison, Coimbatore.
 7. The District Collector, Coimbarore.
 8. The Director General of Police, Mylapore, Chennai 4.
 9. The Public Prosecutor, High Court, Madras.
 - + 1 cc to Mr. S.V. Srinivasan, Advocate, SR No.27442
 - + 1 cc to Mr. K. Kalyanasundaram, Advocate, SR No.27411
- Crl.Nos.303, 370 and
423 of 2008

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SR/20.7.2009

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