

Bail Slip

The Appellant/Accused Nos.1 & 2 Viz., Subramani, S/O Periyamurthy, aged 37 Years and A.Steepan, S/o Sivakumar, aged 22 years were directed to be released on bail as per order dated 11/12/2009 made in CrI.M.P.No.1/2009 in CrI Appeal No.779/2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2016

(Judgment reserved on 18.08.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

CrI.A.No.779 of 2009

1. Subramani
2. Steepan .. Appellants/Accused No.1 & 2

Vs.

State rep. by Inspector of Police,
D-2 Anna Salai Police Station,
Chennai. ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment dated 18.11.2009 in S.C.No.236 of 2009 on the file of the Additional District and Sessions Judge, [Fast Track Court No.IV], Chennai-1.

For appellants : Mr.Gopalakrishna Lakshmana Raju,
Senior Counsel for
M/s.R.Radhapandian

For respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

This Criminal Appeal is filed by the appellants/A1 and A2 against the judgment dated 18.11.2009 in S.C.No.236 of 2009 on the file of the Additional District and Sessions Court, Fast Track Court No.IV, Chennai-1, in and by which, each of them were convicted for the offence under Section 304 (Part-2) IPC and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.1,000/- each, in default, each to undergo simple imprisonment for three months.

2. The gist of the prosecution case leading to the conviction of the appellants/A1 and A2 is that the appellants were residing in III floor of Hindustan Tyre Shop situated in Whites Road, Chennai. The deceased Sambandam was a Night Watchman of that building. On 22.09.2008 at about 12.30 hours, when the deceased Sambandam was on duty as Night Watchman, the appellants came there in late hours, and hence the deceased questioned them harshly as to why they were coming late, due to which, A1 and A2 caught hold of the shirt of the deceased, abused him in filthy language, beat him with hands and dragged the deceased Sambandam towards the wall, due to which, the deceased sustained injuries on the left side of the back of his head. Immediately, the deceased was taken to hospital by one Ilayaraja and others and admitted in Government General Hospital for treatment as an in-patient. P.W.1 who was a Loadman in TVS Company in Whites Road, who was near the place of occurrence, lodged complaint Ex.P-1 with P.W.7 Sub-Inspector of Police, Anna Salai Police Station, Chennai, at about 7 hours on 23.09.2008, who registered a case in Crime No.989 of 2008 for the offences under Sections 341 and 323 IPC. P.W.7 arrested the accused persons on 26.09.2008. In the meanwhile, inspite of treatment given to the deceased, he succumbed to injuries on 02.10.2008. Thereafter, the offence was altered to one under Section 304 IPC and P.W.8 sent the offence-alteration-report to the jurisdictional Magistrate. He conducted inquest over the body of the deceased in the mortuary of the Government Hospital and prepared Ex.P-9 inquest report. He examined Ilayaraja and other witnesses and recorded their statements. Subsequently, he sent requisition to Doctor through Court to conduct post-mortem/autopsy on the body of the deceased, and on receipt of the said requisition, P.W.5 Doctor conducted post-mortem and gave opinion in Ex.P-4 post-mortem report that the deceased had died due to injuries sustained on his head. On completion of the investigation, P.W.8 filed charge sheet against the accused persons before the jurisdictional Magistrate Court. The case was taken on file in S.C.No.236 of 2009 by the trial Court. During the course of trial, on the side of prosecution, P.Ws.1 to 8 were examined and Exs.P-1 to P-9 were marked. Upon hearing the submissions of either side and considering the oral and documentary evidence available on record, after conducting trial, the trial Court convicted and sentenced as stated above. Challenging the same, the appellants/A1 and A2 have filed this appeal.

3. Learned Senior Counsel appearing for the appellants/A1 and A2 submitted that the trial Court, by placing reliance on the evidence of P.Ws.1 and 6, convicted the appellants, but the evidence on record would show that P.Ws.1 to 6 might not have witnessed the occurrence of the alleged beating. In this regard, learned Senior Counsel appearing for the appellants submitted that P.W.1, in his chief examination stated that on 22.09.2008

at about 11.30 p.m., on hearing the noise of the deceased, he went to the place of occurrence. At that time, he saw the appellants/accused persons catching hold of the shirt of the deceased. He did not see the alleged beating made by the appellants herein. Thus, learned Senior Counsel for the appellants further submitted that P.Ws.1 and 6 have not whispered anything about the alleged occurrence with regard to the alleged beating by the appellants with their hands and pushing the deceased towards the wall. Learned Senior Counsel also submitted that P.W.1 has stated in his evidence in cross-examination that when he went to the Police Station on 23.09.2008 to lodge the complaint, his signature was obtained in the complaint in white papers after the contents were written in the complaint. In Ex.P-1 complaint, P.W.1 stated that on 22.09.2008 at about 12.30 hours, the accused persons attacked the deceased with hands and on hearing the noise, P.W.1 shouted as to why the accused persons were beating him. On hearing the noise of P.W.1, the appellants dragged the deceased towards the wall and ran away. In his chief examination, P.W.1 did not state anything about the beating of the deceased by the accused persons with hands or about moving him towards the wall. P.W.1 in his cross-examination, admitted that he did not witness the occurrence directly. Thus, P.W.1 has disowned his version in Ex.P-1, and therefore, Ex.P-1 cannot be taken as a corroborative document of his evidence or the gospel truth of the occurrence.

4. Learned Senior Counsel further submitted that it is the admitted case of the prosecution that Ilayaraja took the deceased to the hospital and admitted him, but the said Ilayaraja has not been examined. One Appanraj was examined as P.W.6, but P.W.1 did not refer P.W.6's name in his Ex.P-1 complaint. Therefore, the presence of P.W.6 in the place of occurrence is highly doubtful. P.W.6 has stated in his chief examination that he along with one Raman, at about 12.30 hours, came to the Hindustan Tyre building, and P.W.6 in his evidence has further stated that he was conversing with one Raman on the date of occurrence near Rajarathinam Tyre Shop and at that time, the accused persons came to II floor of the Hindustan Tyre building and on seeing them, the deceased shouted at them and enraged over the same, the accused persons dragged the deceased towards the wall, resulting in the deceased sustaining injuries on the back of his head. This piece of evidence of P.W.6 is totally contradictory to the version of P.W.1, as the same has not been corroborated by the evidence of P.W.1.

5. In the above context, learned Senior Counsel appearing for the appellants invited the attention of this Court to P.W.5 (post-mortem Doctor)'s evidence and submitted the Doctor's evidence shows that there was healed abrasion on the temporal rigor of scalp. Thus, P.W.5 Doctor's evidence could not be relied upon, as the injury sustained by the deceased could not

be stated that he sustained the same only due to attack by the appellants, more particularly, he adduced that there was healed abrasion.

6. From the contradictions found in the evidence of P.W.6 with regard to the place of occurrence, it could be safely inferred that P.W.6 would not have definitely witnessed the occurrence, because, in his evidence, P.W.6 has spoken about two buildings, namely Rajasthan Tyre Building and Hindustan Tyre Building.

7. Without considering all the above contradictions, the trial Court, by solely relying upon the evidence of P.Ws.1 and 6, convicted the accused and hence, the learned Senior Counsel appearing for the appellants prayed for acquitting the appellants/A1 and A2 by allowing this appeal.

8. Per contra, learned Additional Public Prosecutor appearing for the respondent submitted that the prosecution has proved its case beyond reasonable doubt, by cogent, clinching and convincing evidence. P.W.6 had categorically stated in his chief-examination that in the building-Hindustan Tyre Company, on the date of occurrence, he was conversing with one Raman and he saw the appellants coming to the said building and since they came late, the deceased scolded them, enraged over which, the appellants dragged the deceased towards the wall, resulting in instantaneous injury on the back of the head of the deceased, and he died subsequently. This piece of evidence of P.W.6 in his chief-examination was not shattered in his cross-examination made by the appellants/accused persons. He further contended that the trial Court correctly relied upon the evidence of not only P.W.6, but also P.W.1, the loadman working in the neighbouring building. Hence, he prayed that no interference is called for in the impugned judgment of conviction and sentence and prayed for dismissal of the appeal by confirming the conviction and sentence imposed on the appellants/A1 and A2.

9. Keeping in mind the above submissions made by the learned counsel on either side, I have given my anxious consideration to the submissions made by learned counsel on both sides and perused the materials available on record.

10. It is the case of the prosecution that on 22.09.2008 at about 12.30 hours, since A1 and A2 (appellants) came in the late hours, they were questioned by the deceased harshly and unable to bear the same, the appellants beat the deceased and dragged him towards the wall, which resulted in injury on the left side

back of his head, and thereafter, he succumbed to the injuries on 02.10.2008 in the hospital inspite of treatment. In order to prove the case, the prosecution examined the material witnesses, namely P.Ws.1 and 2; P.W.1 who is the Loadman working in the nearby TVS Company, lodged Ex.P-1 complaint and in his cross-examination, he has stated that he has not directly witnessed the occurrence, though he came to know about the occurrence on hearing the noise. It is the admitted case of the prosecution that one Ilayaraja took the deceased (victim) to the hospital and admitted him, which is clear from the evidence of P.W.4 Doctor who treated the deceased, as the Doctor stated that the victim was brought by one Ilayaraja, but curiously, the said Ilayaraja had not been examined by the prosecution.

11. In order to drive home the case of the defence, the prosecution has also examined P.W.6 Appanraj, but his name was not specified by P.W.1 either in his chief-examination or in his Ex.P-1 complaint. P.W.6 stated in his chief examination that after finishing his work, he was sitting in front of the Hindustan Tyre Building, but the occurrence took place inside the building, but in his cross-examination, P.W.6 has mentioned about two buildings, i.e. Hindustan Tyre Building and Rajasthan Shop- building. Therefore, it is highly doubtful as to whether P.W.6 is really present in the place of occurrence.

12. Moreover, P.W.4 Doctor in his evidence in chief examination stated that when the deceased was brought to hospital, he was informed by the person who brought the deceased to hospital, that the deceased was beaten in Rajathan Shop-Building. Therefore, the contradictions found with regard to the place of occurrence in the evidence of P.W.6 and also P.W.4 Doctor, shows that P.W.6 would not have actually witnessed the occurrence.

13. Moreover, P.W.1 has clearly stated in his evidence that he has signed in the complaint only after the same was written in white papers, though P.W.1 is the author of Ex.P-1 complaint, he has not stated about the presence of P.W.6 in the complaint. Furthermore, P.W.7 investigating officer has stated in his evidence that in the wall of the building, there was dry blood stain, but the same was not collected for getting the opinion of a serologist.

14. Therefore, in my considered opinion, the evidence of P.Ws.1 and 6 are totally brimming with contradictions with each other, which would undoubtedly give rise to a suspicion about their physical presence in the place of occurrence. Except the material evidence of P.Ws.1 and 6, no other independent witness

was examined by the prosecution to prove their case and the trial Court has not properly appreciated their evidence.

15. As discussed above, non-examination of Ilayaraja, who actually brought the deceased to hospital, which is also evident from the evidence of P.W.4 Doctor, has not been examined by the prosecution, which is fatal to the case of the prosecution.

16. Hence, for the reasons stated above, it could be safely inferred that the prosecution has not proved its case beyond reasonable doubt and reproach, from which, the inevitable conclusion is to set aside the impugned judgment of conviction and sentence.

17. Accordingly, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellants/A1 and A2 are set aside. The bail bond, if any, executed by the appellants shall stand cancelled. The fine amount(s), if paid by the appellants, shall be refunded.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Copy to

1. The Metropolitan Magistrate No.XIII,
Egmore, Chennai.
2. The Chief Metropolitan Magistrate,
Egmore, Chennai.
3. The Additional District and Sessions Judge (FTC-IV),
Chennai.
4. The Public Prosecutor,
High Court, Madras.
5. Inspector of Police,
D-2 Anna Salai Police Station,
Chennai.

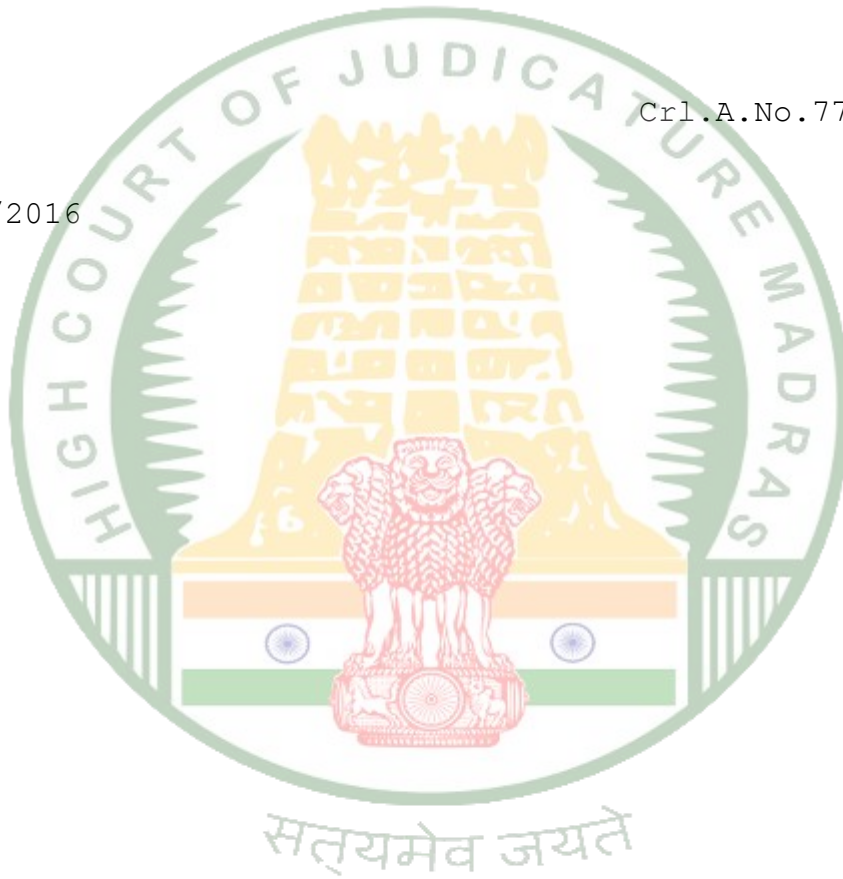
6. The Record Keeper,
Criminal Section (Records),
High Court, Madras.

7. The Superintendent,
Central Prison,
Chennai.

+1cc to M/S.Radha Pandian, Advocate Sr.49047

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srg 23/09/2016



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