

BAIL SLIP

The Appellants/Accuses Nos.1 to 3 namely vetrivel, Ezhumalai & Parthiban was released on bail by order of this Court dated 03/08/2012 and made in Crl.MP.NO.1/12 in CA.No.434/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.02.2016

CORAM

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

CRL.A.No.434/2012

1. Vetrivel
2. Ezhumalai
3. Parthiban

... Appellants/A1 to 3

Vs

State by
The Inspector of Police,
J.6 Thiruvanmiyur Police Station,
Chennai.

... Respondent

Appeal filed u/s.374[2] Cr.P.C., against the Judgment of conviction and sentence passed by the learned IV Additional Sessions Judge, Chennai, in S.C.No.228 of 2011 dated 19.06.2012.

For Appellants : Mr.C.M.Gunasekaran

For Respondent : Mr.M.Maharaja,
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellants are the accused 1 to 3 in S.C.No.228 of 2011 on the file of the learned IV Additional Sessions Judge, Chennai. The 1st accused stood charged for the offences under Sections 341, 323 and 302 of IPC; the 2nd accused stood charged for the offences under Sections 341, 324 and 302 read with 34 of IPC and the 3rd accused stood charged for the offences under

Sections 341, 323 and 302 read with 34 of IPC. By judgment dated 19.06.2012, the trial court convicted the 1st accused under Sections 341, 323 and 302 IPC and convicted the 2nd accused under Sections 341, 324 and 302 read with 34 of IPC and the 3rd accused under Sections 341, 323 and 302 read with 34 of IPC.

2. The trial court sentenced the 1st accused to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one week for the offence under Section 341 IPC, sentenced him to undergo 3 months simple imprisonment and also to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one week for the offence under Section 323 of IPC and sentenced him to undergo imprisonment for life and also to pay a fine of Rs.4,000/-, in default, to undergo simple imprisonment for 3 months for the offence under Section 302 of IPC. The trial court sentenced the 2nd accused to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for 1 week for the offence under Section 341 of IPC, sentenced him to undergo simple imprisonment for 3 months and also to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one week for the offence under Section 324 of IPC and sentenced him to undergo imprisonment for life for the offence under Section 302 of IPC and also to pay a fine of Rs.4,000/-, in default, to undergo simple imprisonment for 3 months. The trial court sentenced the 3rd accused to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one week for the offence under Section 341 of IPC, sentenced him to undergo simple imprisonment for 3 months and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for one week for the offence under Section 323 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.4,000/-, in default, to undergo simple imprisonment for 3 months for the offence under Section 302 of IPC. Challenging the said conviction and sentence, the appellants/A1 to A3 are before this Court with this appeal.

3. The case of the prosecution in brief, is as follows:-

(a) The deceased in this case was one Mr.Chakkarapani. P.W.1 is his brother and P.W.2 is the yet another brother's son of P.W.1. Frequently, there were quarrels between the families of the accused and the deceased. On 05.10.2009 at about 5.30 p.m., near the house of the 2nd accused, these three accused had assaulted P.W.2. When P.W.1 intervened, he was also attacked by them. The deceased witnessed the occurrence. The accused fled away from the scene of occurrence.

(b) Thereafter, P.W.1, P.W.2 and the deceased had gone to a Private Hospital for treatment for the injuries sustained in the said occurrence. Since the Doctor was not available, at about 9.30 p.m., they returned to their house. When all the three were nearing their house, by the side of the water tank,

these three accused suddenly emerged. At that time, they challenged the deceased, P.W.1 and P.W.2 and told as to whether they were not satisfied with the attack made on them already. So saying, the 1st accused fisted the deceased on his chest. The deceased lost his balance and fell down. His head came into contact with the floor. He became unconscious. His wife Jayanthi immediately took him to the Government Hospital.

(c) P.W.5 Dr.Thanigai Arasu at Government General Hospital, Chennai examined the deceased on 05.10.2009 at 10.16 p.m. At 09.40 p.m., he was told by Jayanthi that the deceased was attacked by a known person with hands near his house at 09.00 p.m. When P.W.5 examined the deceased, he was unconscious. There was a lacerated wound on the back of his head. He admitted him as an inpatient. Ex.P.4 is the Accident Register. He also gave intimation to the police regarding the same.

(d) P.W.8, the then Sub-Inspector of Police attached to J.6 Thiruvannamiyur Police Station, on receiving an intimation from the hospital, rushed to the hospital on 06.10.2009 at 12.30 a.m. At that time, the deceased was undergoing treatment in unconscious state in Ward No.201. P.W.1 was by his side. P.W.8 recorded the statement of P.W.1 and on returning to the Police Station, he registered a case in Cr.No.780 of 2009 for the offences under Sections 341, 324 and 506(ii) of IPC. Ex.P.1 is the statement of P.W.1 and Ex.P.7 is the First Information Report. He forwarded both the documents to court, took up the case for investigation, proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.3 and another witness. Then, he examined P.Ws.1 to 3 and also Jayanthi and recorded their statements. On 06.10.2009, he arrested the 1st accused at 2.00 p.m. near Thiruvannamiyur Bus Depot and forwarded him to the court for judicial remand.

(e) The deceased, who was undergoing treatment in the hospital, succumbed to the injuries on 09.10.2009 at 07.00 p.m. P.W.6 declared him dead and gave intimation to the police.

(f) Based on the above, the case was altered into one under Section 302 of IPC. P.W.9 took up the case for investigation. On 10.10.2009 between 6.30 a.m. and 09.30 a.m., he conducted inquest on the body of the deceased and forwarded the body for postmortem. P.W.7 conducted Postmortem on the body of the deceased and found the following injuries:

'I. External Injuries:

A. Healing abrasion with dark brown scar seen on (1) outer aspect of left elbow 5 x 3 c.m. (2) back

of left elbow 3 x 2 c.m.

B. Sutured wound of 5 c.m. long with 4 intact suture seen on left occipital region. On removal of sutures margins are irregular with surrounding contusion.

II. On dissection of Head : Scalp shows diffuse contusion over posterior part of left parietal and left occipital region vault and duramater intact. Subdural hemorrhage seen over right cerebral hemisphere and under surface of right temporal lobe and left parietal region. Brain cut section soft, contested. Brain stem shows 1 x 0.5 x 0.5 c.m. contusion. Bone of skull intact.

III. On dissection of thorax and abdomen intact. Both lungs normal in size, cut section congested. Heart normal in size. Chambers contain few ml. Fluid blood. Valves, great vessels and coronaries are normal. Stomach contains 50 ml. Of brown coloured fluid with no specific odour. Mucosa congested. Liver, spleen and kidneys are normal in size. Cut section congested. Urinary Bladder empty. Hyoid bone, Pelvis bone and spinal column are intact."

Ex.P.6 is his Postmortem Certificate. He gave opinion that the deceased would appear to have died due to the effects of the head injury.

(g) P.W.9 during the course of the investigation, arrested the 2nd accused on 12.10.2009 at 4.30 p.m. and forwarded him to court for judicial remand. The 3rd accused surrendered before the court on 09.03.2010. On completing the investigation, he laid charge sheet against the accused.

4. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 9 witnesses were examined and 13 documents were also marked.

5. Out of the said witnesses, P.W.1 and P.W.2 are the eye-witnesses to the occurrence who have vividly spoken about the occurrence. P.W.3 has spoken about the preparation of the Observation Mahazar and Rough Sketch at the place of occurrence. P.W.5 has spoken about the treatment given to the deceased and about the death of the deceased. P.W.7 has spoken about the Postmortem conducted by him and his final opinion regarding the cause of death. P.W.8 has spoken about the registration of the F.I.R. and also the preliminary investigation done by him.

P.W.9 has spoken about the investigation done by him and the final report filed.

6. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not choose to examine any witness nor mark any document on their side.

7. Having considered all the above, the Trial Court convicted all the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellants are before this Court.

8. We have heard the learned Counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

9. Learned Counsel for the appellants would submit that in Ex.P.1 which is the earliest statement, the presence of accused 2 and 3 has not been mentioned at all.

10. In our considered opinion, as rightly pointed out by the learned Counsel for the appellants, had it been true that the accused 2 and 3 also participated in the occurrence, nothing would have prevented P.W.1 from mentioning the same in the Ex.P.1. Ex.P.1 mentions only about the presence and participation of the 1st accused. For a moment, we do not treat Ex.P.1 as a substantive piece of evidence. Ex.P.1 has been used to contradict P.W.1 wherein the above facts have been elicited. This creates doubt in the case of the prosecution as against the accused 2 and 3. Though P.W.2 has stated about the presence of the accused 2 and 3, in the light of the earliest information, the presence and participation of the accused 2 and 3 have been omitted, we find it difficult to give any importance to the evidence of P.W.2 so far as it relates to the accused 2 and 3 are concerned. Above all, at the earliest opportunity, when the deceased was taken to the hospital, the doctor was informed that the deceased was attacked by "a known person". Of course, this statement was made by one Jayanthi, the wife of the deceased. This statement is nothing, but a former statement of Jayanthi which cannot be treated as a substantive evidence. Therefore, we are not attaching any importance to this statement of the said Jayanthi. Above all, even P.W.1 and P.W.2 have not stated that these two accused attacked the deceased. From these materials, we are of the view that the prosecution has failed to prove the alleged participation of these two accused in the occurrence. Therefore, we hold that the appellants 2 and 3/accused 2 and 3 are entitled for acquittal.

11. Now turning to the 1st accused, it is in the evidence of P.W.1 and P.W.2 that he fisted the deceased on his chest and

pushed him down. Quite naturally, the head dashed against the floor and as a result, he sustained a lacerated injury on the backside of his head. According to the medical evidence, the death was due to the effects of the head injury. Thus, it is crystal clear that the prosecution has proved that the 1st accused pushed the deceased down, the deceased sustained injury by fall and then, he died due to the said injury.

12. Now the question is as to what is the offence that the 1st accused has committed by the said act. Certainly, the 1st accused would not have had any intention to kill the deceased at all. Absolutely, there is no evidence even to infer that the 1st accused had such an intention to kill the deceased. Thus, his act would not fall under the first limb of Section 299 of IPC. Similarly, he would not have had any intention to cause any injury which is either likely to cause death or sufficient to cause death in the ordinary course of nature. Thus, his act would not fall either under the second limb of Section 299 of IPC or the third limb of Section 300 of IPC.

13. Lastly, so much of knowledge as it is required under the third limb of Section 299 of the IPC cannot be attributed to the accused for his simple act of pushing the deceased down. Thus, his act would not fall under the third limb of Section 299 of IPC also. Since, the act of the 1st accused does not fall under the purview of Section 299 of IPC, the causing of death of the deceased by the accused would not amount to culpable homicide, though it is a homicide. Therefore, the conviction of the 1st appellant/1st accused for the offence under Section 302 of IPC cannot be sustained. Neither he could be convicted under Section 304 of IPC.

14. By pushing the deceased down, the 1st accused had caused injury which is in the nature of endangering human life. This would squarely fall within Section 320 of IPC. Thus, the 1st accused has voluntarily caused grievous hurt which is punishable under Section 325 of IPC.

15. By restraining the deceased from proceeding further, the 1st accused has committed an offence under Section 341 of IPC. Thus, the 1st accused/1st appellant is liable to be punished for the offences under Sections 341 and 325 of IPC alone.

16. Now turning to the quantum of punishment, going by the age and also by the other attending circumstances, we are of the view that the period of sentence already undergone by the 1st appellant/1st accused would be sufficient besides a sum of Rs.20,000/- as fine for the offence under Section 325 of IPC. For the offence under Section 341 of IPC, the period of sentence

already undergone by him shall be sufficient. The said fine amount shall be paid to Jayanthi, the wife of the deceased as compensation.

17. In the result, the appeal is partly allowed in the following terms:

(a). The conviction and sentence imposed on the appellants 2 and 3/accused 2 and 3 are set aside and they are acquitted from all the charges. The bail bonds, if any, executed by them shall stand discharged. The fine amount, if any, paid, shall be refunded to the respective accused;

(b). The conviction and sentence imposed on the 1st appellant/1st accused under Sections 323 and 302 of IPC are set aside and instead, he is convicted under Section 325 of IPC and it is directed that the period of sentence already undergone by him shall be sufficient punishment and he shall pay a fine of Rs.20,000/-, in default of payment, he shall undergo rigorous imprisonment for four weeks; and the said fine amount of Rs.2,0,000/- shall be paid to Jayanthi, the wife of the deceased as compensation; and

(c). The conviction of the 1st appellant/1st accused under Section 341 of IPC is confirmed, however, the sentence imposed on him is set aside and instead it is directed that the period of sentence already undergone by him shall be the sufficient punishment.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The IV Additional Sessions Judge,
City Civil Court, Chennai.
2. -Do-Thro The Principal Sessions Judge
Chennai
3. The Superintendent Central Prison Puzhal
Chennai

4. The Inspector of Police,
J.6 Thiruvanmiyur Police Station,
Chennai.

5.The Public Prosecutor,
High Court, Chennai.

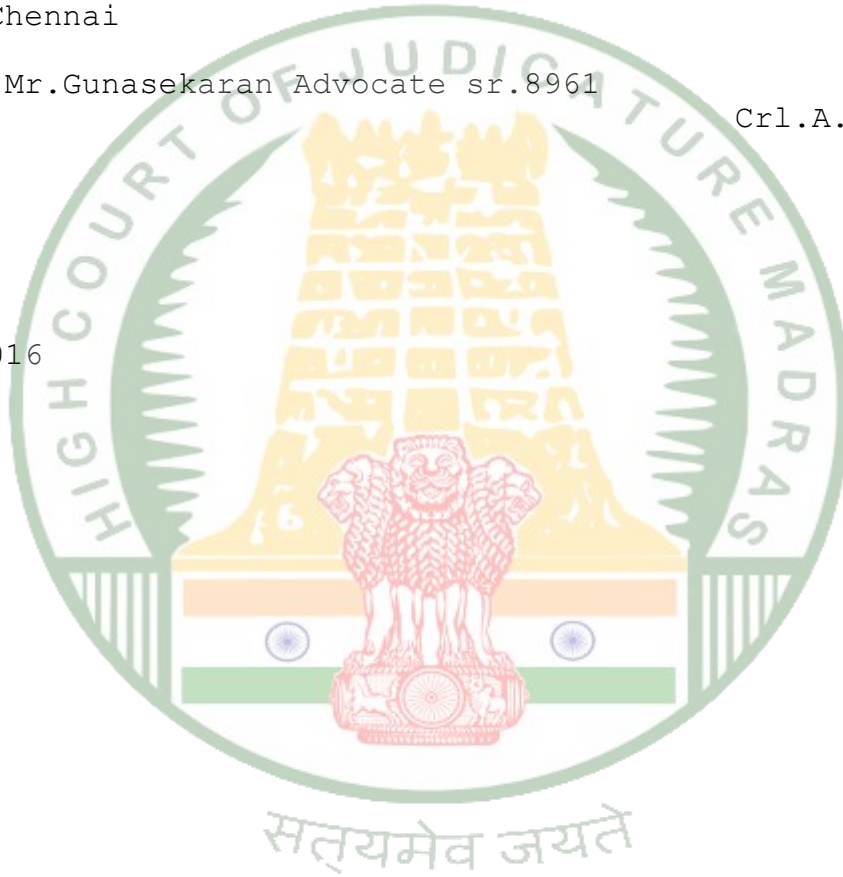
Copy to

The XVIII Metropolitan Magistrate
Saidapet Chennai

+2 ccs to Mr.Gunasekaran Advocate sr.8961

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