

Bail Slip

The Appellant/Accused Viz. Subramani @ Subramaniam, aged 42 S/o. Sengodan was directed to be release on bail by the order of this court dated 16.04.2013 and made in MP 1 of 2013 in CrI.A.795 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.795 of 2012

Subramani @ Subramaniam
S/o.Sengodan

... Appellant/Accused

-vs-

State represented by
The Inspector of Police,
Mallasamudram Police Station,
Namakkal District.
Crime No.354 of 2008

... Respondent/Complainant

Criminal Appeal filed under Section 374 of Criminal Procedure Code against the judgment of learned Principal Sessions Judge, Namakkal, passed in S.C.No.11 of 2010 dated 12.10.2012.

For Appellant : Mr.K.V.Sridharan

For Respondent : Mr.V.M.R.Rajentren
Additional Public Prosecutor

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J U D G M E N T

(Judgment of the Court was made by C.T.SELVAM, J.)

This appeal arises against judgment of learned Principal Sessions Judge, Namakkal, passed in S.C.No.11 of 2010 on 12.10.2012 convicting the appellant for offence u/s.302 IPC and sentencing him to life imprisonment and fine of Rs.10,000/- i/d 1 year S.I.

2. The case of the prosecution is that the accused and the deceased were brothers. On 21.10.2008 at about 06.00 p.m., due to dispute over property, the appellant/accused, with an intention to murder the deceased, indiscriminately assaulted him with a stick on his head and caused grievous injuries, owing to which the deceased, despite treatment died on 26.10.2008,.

3. PW-1, wife of the deceased, preferred a complaint [Ex.P1] on 22.10.2008 at about 01.00 p.m., before PW-13, Inspector of Police, Mallasamudram Police Station, who registered a case in Crime No.354 of 2008 for offence u/s.307 IPC. Ex.P11 is the First Information Report. PW-14, Inspector of Police, took up investigation. On 22.10.2008, he went to the Mohan Kumaramangalam Government Hospital, Salem, where the deceased was admitted, examined PWs.1 and 2 and recorded their statements. Thereafter, he visited the scene, prepared Ex.P12, rough sketch, and Ex.P2, observation mahazar, in the presence of PW-8. He also seized M.Os.2 to 4, blood stained earth, plain earth and blood stained lungi, under Ex.P3. PW-14 examined PWs.3, 4 and 7 and recorded their statements. PW-14 arrested the accused at the Kuthampalayam bus stand and recorded his confessional statement in the presence of PW-9, Village Administrative Officer. The admissible portion of the confessional statement of the accused is Ex.P4. Upon identification by the accused, PW-14 recovered the stick used by him under Ex.P5. PW-14 examined PW-9 and recorded their statements. He forwarded the seized materials to Court under Form-95 [Ex.P13]. Thereafter, PW-14 forwarded the accused to the Court for judicial custody. On 26.10.2008, upon receiving information regards the death of the deceased, PW-14 altered the First Information Report to one for commission of offence under Section 302 IPC and forwarded Ex.P14, alteration report, to Court of Judicial Magistrate and higher officials. On 27.10.2008, PW-14 went to Government Hospital, Chennai and received the death certificate of the deceased. Thereafter, PW-14 conducted inquest on the body of the deceased in the presence of witnesses. The inquest report is Ex.P15. After completion of inquest, he forwarded the body to Government Hospital, through PW-12, for post-mortem along with a requisition [Ex.P6]. PW-10, Doctor, conducted post-mortem. The post-mortem report is Ex.P7 and the same reads thus:

"Post-mortem Certificate

Regarding the body of a male aged about 45 years, named Periyannan S/o.Sengodan. Requisition received at 10.45 a.m. on 27.10.08 from the Inspector of Police, Mellasamuthiram Police Station, Namakkal District, with Crime No.354 of 2008 dated 27.10.2008. Body in charge of Police Constable No.HC 661 named Tr.R.Periasamy.

Identification and caste marks -

(1) A Black Mole on front of outer aspect of lower abdomen

(2) A Black Mole on the inner aspect of left heel.

The body was first seen by the undersigned at 10.50 a.m. on 27.10.08. Its condition then was Rigor Mortis all over. Post-mortem commenced at 10.50 a.m. on 27.10.08. Appearances found at the post-mortem. - A moderately built male body.

1) Oblique sutured wound 2.5 cm seen over left cheek.

On removal of sutures:

The margins are irregular and the underlying tissues are contused. On further dissection: Bluish black contusion seen over left side of face measuring 8 x 4 x 0.5 cm.

Abrasion 1.5 x 1 cm on the back of right elbow.

O/D of Head:

- scalp contusion measuring 21 x 18 x 0.5 cm seen on left frontal, left temporal and parietal region of scalp.
- Communitated fracture over left Temporo parietal region of skull over an area of 12 x 10 cm.
- Extra dural measuring 8 x 6 x 0.5 cm seen over left temporo parietal region.
- Thin film of sub dural haemorrhage seen over both cerebro hemisphere.
- Extensive sub arachnoid haemorrhage seen over both frontal, temporal and parietal region of Brain.
- Laceration 3 x 2 x 1 cm over left temporal lobe of Brain.
- Laceration 4 x 3 x 1 cm over undersurface of Right temporal region of Brain.
- Ventricles filled with blood stained fluid.

O/D Therax :

Heart: Normal in size.

Chambers contain fluid Blood.

Valves - Normal.

Coronary vessels : Patent.

Lungs : Normal in size. C/s: congested.

O/D Abdomen:

Stomach : Empty. Mucosa - NAD.

Liver, spleen, kidneys : normal in size. C/s: congested.

Bladder : Empty

Spinal column, Hyoid Bone, Pelvis : Intact.

Opinion as to cause of death:-

(a) Reserved pending report of

(b) the deceased would appear to have died of due to effects of Head Injury."

In continuation of investigation, PW-14, examined PWs.1, 2 and three others and recorded their statements. PW-14 examined

PWs.3 to 6 and two others and recorded their statements. He forwarded the seized materials for chemical analysis. The chemical analysis report is Ex.P9. The serology report is Ex.P10. Thereafter, he examined PW-10, Doctor, who conducted postmortem and recorded his statement. PW-14 examined PW-11, Head Clerk, Judicial Magistrate Court, Tiruchengode and recorded her statement. Upon completion of investigation, PW-14 filed charge sheet informing commission of offence u/s.302 IPC.

4. To substantiate its case, the prosecution examined, PWs.1 to 17, marked Ex.P1 to P18 and MOs.1 to 4. None were examined on the side of the defence nor were any exhibits marked. On questioning u/s.313 Cr.P.C., the accused denied the charges.

5. On appreciation of evidence, the trial Court found the appellant guilty of offence u/s.302 IPC and sentenced him to life imprisonment and fine of Rs.10,000/- i/d 1 year S.I. Against his conviction and sentence, the appellant is before this Court with this Criminal Appeal.

6. Heard learned counsel for appellant and learned Additional Public Prosecutor.

7. Learned counsel for appellant submitted that the evidence of PWs.1, 2 and 5, wife, daughter and friend of the deceased, all of whom claimed to be eye-witnesses were variant and contended that they could not have witnessed the occurrence. He also contended that the deceased had died five days after the occurrence and Ex.P7, Post-mortem Certificate, informs the cause of death as sufferance of a heart attack.

8. Heard learned Additional Public Prosecutor on the above submissions.

9. It is the evidence of PW-2, daughter of the deceased, that upon witnessing a scuffle between her father, the deceased and her paternal uncle, the accused, she headed home to inform and accompanied her mother, P.W.1 to the scene. P.W.1, wife of the deceased informed that she witnessed the occurrence from 1½ furlongs, i.e., the distance between her house and the scene of occurrence. PW-5, has stated that upon hearing a noise, he and others ran over to the scene, that when he reached there, there were several other persons present and that the deceased was found lying down. He has admitted to his 161(3) Cr.P.C. statement having been recorded after 10 days. The first version regards the occurrence is to be found in Ex.P16, Accident Register, relating to the deceased. Therein, it is informed that the appellant and his wife had set upon the deceased and caused him injury. The deceased had been taken to hospital by one Sundaram who has

not been examined. Ex.P.18, medical records inform that the deceased eventually had suffered a heart attack and died on 26.10.2008 at 11.50 a.m., 4 days after the date of occurrence. The deceased continuously has been under treatment. The heart attack suffered by him and which resulted in his death cannot be found unrelated to the occurrence, wherein he suffered injury. Even so, we are unable to arrive at a finding of conviction in the instant case. From a reading of the evidence of alleged eye-witnesses P.Ws.1, 2 and 5, it is clear that none of them have witnessed the occurrence.

10.P.W.1, wife of the deceased claims to have witnessed the occurrence from a distance of 1 ½ furlongs. She has admitted to having turned dark at the time of occurrence. While so, she has deposed that hearing a noise and going to the scene, where she was joined by others, including her daughter, P.W.2, it is the evidence of such daughter that she having witnessed the scuffle between her father, the deceased and her uncle, the accused, she ran over to her house to inform her mother. According to P.W.2, the occurrence took place near a public water tank. The topo-sketch Ex.P.12 informs, such water tank is quite a distance from the scene of occurrence. P.W.5, whose presence has not been spoken by P.W.1 has admitted to having arrived at the scene after the occurrence. The evidence of P.Ws.1, 2 and 5, alleged eye-witness does not inspire confidence. Sundaram, the person, who has admitted the deceased at Hospital, would be a material witness and he has not been examined. The spotting material in the evidence, which informs the manner in which the deceased came to suffer injury which led to death or the appellant/accused who caused the same, the benefit of doubt would have to flow to the accused.

11.This Criminal Appeal is allowed. The conviction and sentence imposed on appellant/accused by the trial Court, is set aside. Appellant is acquitted of the charge. Appellant is directed to be set at liberty forthwith, unless his custody is required in connection with any other case. Bail bond(s), if any executed by him, shall stand cancelled. Fine amount paid by him, shall be refunded.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

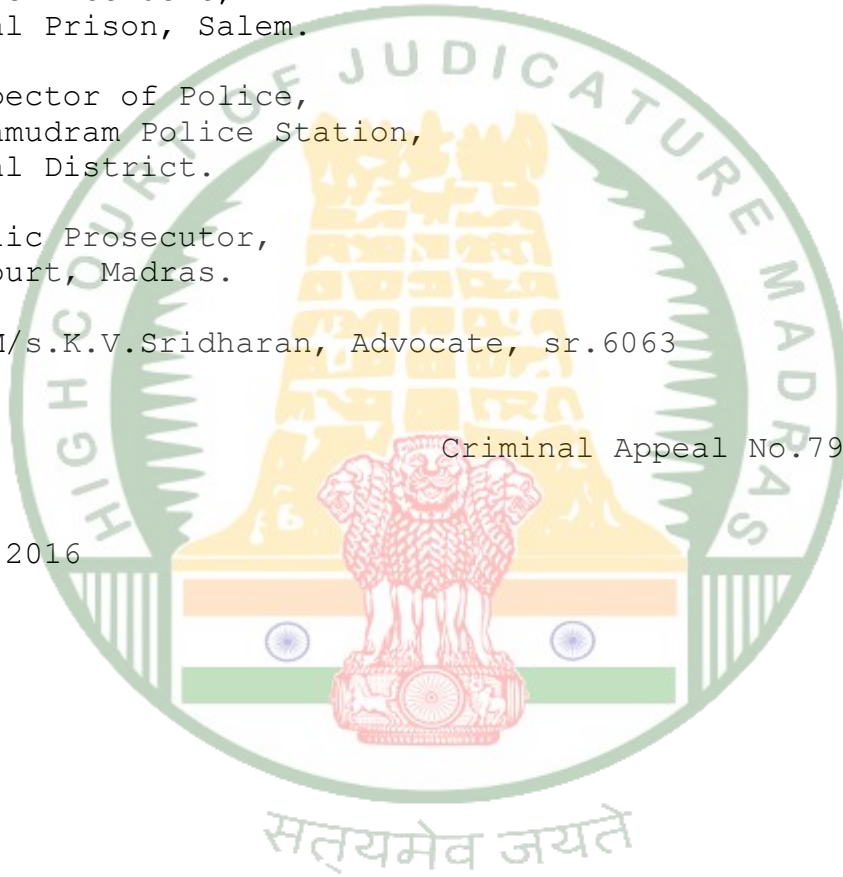
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To

- 1.The Principal Sessions Judge,
Namakkal.
 2. The Judicial Magistrate,
Tiruchengode.
 3. The Cheif Judicial Magistrate,
Namakkal.
 4. The Superintendent,
Central Prison, Salem.
 - 5.The Inspector of Police,
Mallasamudram Police Station,
Namakkal District.
 - 6.The Public Prosecutor,
High Court, Madras.
- +1 cc to M/s.K.V.Sridharan, Advocate, sr.6063

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