

Bail Slip

The Appellant/Sdi Accused namely Durai @ Duraisamy S/o Murugasamy Gounder was ordered to be released on bail by order of this court dt.17.12.2013 and made in MP.2/2013 in Cr1.A.587/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Cr1.A.No.587 of 2013

Durai @ Duraisamy . . . Appellant/Single Accused
Vs

The State by
Inspector of Police
Mangalam Police Station
Tiruppur District. . . Respondent/Complainant

Appeal filed u/s.374 (2) Cr.P.C., against the Judgment of conviction and sentence passed by the learned I Additional District and Sessions Judge, Tiruppur, in S.C.No.102 of 2012 on 27.06.2013.

For Appellant : Mr.P.M. Duraisamy for
Mr. N. Umapathi

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

JUDGMENT

[Judgment of the court was delivered by V.BHARATHIDASAN, J.,]

The sole accused in S.C.No.102 of 2012 on the file of the learned I Additional District and Sessions Judge, Tiruppur, is the appellant herein, he stood charged for the offence under Sections 294(b) and 302 IPC and the trial Court convicted him under Section 302 IPC and sentenced him to undergo life imprisonment and also to pay a fine of Rs.2,000/-, in default to

undergo six months simple imprisonment and acquitted him under Section 294(b) IPC. Challenging the above said conviction and sentence, the appellant filed this appeal before this Court.

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

(i) The deceased in this case one Marimuthu was an agriculturist. The accused is also an agriculturist and there was a dispute between the accused and the deceased in respect of taking water in the Well. On 05.10.2010 at about 9.30 p.m, there was a quarrel between the accused and the deceased. Hence, one Parvathy, wife of the deceased called PW.1, who is known to her and asked him to settle the issue between them. Immediately, PW.1 went to the scene of occurrence, at that time, he saw the accused attacked the deceased with sickle (Arival) and the deceased trying to escape from the scene in his moped. At that time, the accused once again kicked him. But the deceased managed to take his moped and came to the main road, there, he fell down. PW.1 and the wife of the deceased followed him. At that time, PW.2 - father of PW.1 who was also working in the field, after seeing them, came to the place and called 108 Ambulance and sent the deceased to Revathi Hospital, Tiruppur. The deceased was admitted there and given treatment and sent a memo to the police station (Ex.P8). Thereafter, the deceased was referred to the Government Medical College Hospital, Coimbatore.

(ii) PW.10, Special Sub-Inspector of police, on receipt of the memo from the hospital, proceeded to the hospital and at about 3 a.m, obtained a statement from Parvathi, wife of the deceased, based on her statement, registered a case in Crime No.2088 of 2010, for the offence under Sections 294(b) and 307 IPC and sent the copy of the First Information Report to the Judicial Magistrate Court and higher officials. The First Information Report is Ex.P18.

(iii) PW.9, Inspector of police, on receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence and prepared Observation Mahazar (Ex.P9) and also a rough sketch (Ex.P12), then recorded the statement of witnesses. He also recorded the statement of Doctor working in Revathi Hospital, Tiruppur and he arrested the accused on 06.10.2010 at about 5 p.m., on such arrest, the accused has voluntarily given a confession, and based on the disclosure statement, he recovered M.O.1 Aruval. In the mean time, on 07.10.2010, at about 12.05 a.m, the deceased succumbed to injuries and on receipt of the above death intimation (Ex.P6), PW.9 altered the case into Sections 294(b) and 302 IPC, and sent the altered First Information Report to the Judicial Magistrate Court, then he proceeded to the Government Medical College Hospital, Coimbatore, and conducted inquest in the presence of

panchayatdars, and sent a request for conducting postmortem on the dead body, Ex.P13 is the inquest report.

(iv) PW.8, a Professor in Medico-Legal Department, Government Medical College Hospital, Coimbatore, conducted postmortem autopsy on the dead body and found the following injuries:

'Ante mortem injuries:

1. Vertically oblique laceration 6 x 1 cm x scalp deep noted over right frontal region, the lower medial end is 5 cm above to eye brow, the upper lateral end is 4 cm right to mid line.
2. Vertically oblique laceration 4 x 1 cm x scalp deep noted on left side frontal region, the upper medial end is started from the midline, the lower outer end is 4 cm above to left eyebrow.
3. Vertically oblique laceration 2 x 1 cm x scalp deep noted on left frontal region, the medial lower end is 5 cm left to midline, the upper lateral end is 6 cm left to midline.
4. Vertically oblique laceration 3 x 0.5 cm x scalp deep noted on right parietal region, the upper medial end is 3 cm right to midline, the lower outer end is 4 cm right to midline.
5. Vertically oblique laceration 4 x 1 x 2 cm x scalp deep noted on left lateral parietal region, the anterior medial end is 6 cm left to midline, the posterior lateral end is 7 cm left to mid line.
6. Vertically laceration 4 x 1 cm x scalp deep noted on right mid parietal region, the lower and upper end is 3 cm right to mid line;
7. Vertically laceration 7 x 0.5 cm x scalp deep noted on right posterior parietal region, the anterior end is 4 cm right to midline, the posterior end is 4 cm right to midline.
8. Vertically oblique laceration 3 x 0.5 cm x scalp deep noted on right temporal region.
9. Stab wound 3 x 1 cm x brain deep noted on right parietal region. The medial sharp end is 3 cm right to mid line and the lateral blunt end is 5 cm anterior to hamptoid suture line.

10. Cut wound with serrated edge noted on the right hand between the area of right little and ring finger, upto the meta carpal bones which are found exposing.

11. The following brownish abrasion noted on the body:-

- 4 x 2 cm noted on left cheek.
- 2 x 1 cm noted on left forehead
- 2 x 1 cm noted on right knee.
- 4 x 1 cm noted on left knee
- 4 x 3 cm noted on inner aspect of right middle leg
- 3 x 1 cm noted on left medial scapular region
- 4 x 1 cm noted on left lateral scapular region

12. Brownish graze abrasion 15 x 3 cm noted on right and left upper chest and 6 x 4 cm noted on back of left lower chest.

On dissection of Scalp, Skull and Dura :
Sub scalp contusion 6 x 4 cm noted on bifrontal region, 3 x 6 cm noted on right parieto temporal region, 5 x 4 cm noted on right posterior parieto region and 16 x 4 cm noted on right occipital region. Cut fracture 3 x 2 cm x brain deep noted on right lateral parietal region corresponding to wound no 9, on dissection the wound passes downwards, inwards and pierces, the underlying meninges and brain tissue upto 5 cm which is found pasty over the area of 3 x 1 cm x 5 cm depth. Sub dual clot weighing about 100 grams noted on right side hemisphere. Diffuse sub dural and sub arachnoid hemorrhages noted on right cerebral hemisphere.
Note : All the laceration is found sutures and surrounding area found abraded.

OTHER FINDINGS:

- Peritoneal and Pleural cavities - empty.
- Hyoid bone intact.
- Heart : right side chambers contain few cc of fluid blood, left side chambers empty.
- Coronaries patent.
- Stomach contains about 250 grams of partially digested food particles, no specific smell, mucosa congested.
- Small intestine contains about 20 ml of bile stained fluid, no specific smell, mucosa congested.
- Liver, Spleen, Lungs, Kidneys and Brain : cut section congested.
- Urinary bladder empty.
- Blood preserved and sent for analysis.

- Viscera preserved and sent for chemical analysis."

Ex.P10 is the postmortem report. The doctor was of the opinion that the accused appeared to have died of cranio cerebral injuries. Then PW.9 obtained the statement of postmortem Doctor and other witnesses and after completion of investigation, he filed the charge sheet.

3. Considering the above materials, the trial Court has framed charges as mentioned in paragraph-1 of the judgment. The accused denied the same. In order to prove the case, the prosecution examined 10 witnesses and exhibited 18 documents and marked one material objects.

4. Out of the witnesses examined, PW.1 is a person known to the deceased and he is an eye witness to the occurrence. According to him, on 05.10.2010 at about 9.30 p.m, wife of the deceased Parvathi called him and informed him that there was a quarrel between the accused and the deceased; he immediately rushed to the place, where he saw the accused attacking the deceased with Aruval; then he along with PW.2 sent the accused to Revathi Hospital, Tiruppur. PW.2 is the father of PW.1 and according to him, on the date of occurrence, he saw the deceased coming in a moped and fell down, PW.1 was also coming behind him along with the wife of the deceased, they took the deceased and sent him to the hospital. PW.3 is the brother of PW.1. He is only a hearsay witness. PW.4 is the son-in-law of the deceased. He came to the hospital after hearing the news. He is also speaking about the motive and he took the deceased to the Government Medical College Hospital (GMCH), Coimbatore. PW.5 Doctor admitted the deceased at GMCH, Coimbatore, and conducted surgery, according to her, on 07.10.2010 at about 12.05 a.m, the deceased succumbed to injury. PW.6 is the Doctor working in Revathi Hospital, Tiruppur, where the accused was admitted and she has given details about the injuries sustained by the deceased and the treatment given to him in the hospital. PW.7 is a witness to the Observation Mahazar. PW.8 is the Doctor, who had conducted postmortem autopsy and given postmortem report (Ex.P10). PW.9, Inspector of Police conducted investigation and arrested the accused and also filed final report. PW.10 - Special Sub Inspector of police recorded the statement of the wife of the deceased in the hospital and registered the First Information Report (Ex.P18).

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same. The accused examined the Doctor who had given treatment to his mother-in-law as DW.1 and he also marked three documents viz., the First Information Report given by the wife of the accused

(Ex.D1), and the Accident Registers given to his mother-in-law (Ex.D2) and to his wife (Ex.D3).

6. Considering the above materials, the trial Court convicted the accused and sentenced him as mentioned in paragraph-1 of the judgment. As against the conviction and sentence, the present appeal has been filed by the accused before this Court.

7. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondent.

8. The learned counsel appearing for the appellant would submit that in the above occurrence, the wife and mother-in-law of the accused were also injured and the wife of the accused has also given a complaint against the deceased and a counter case has been registered by the respondent police, but the prosecution has totally suppressed the above fact and no investigation was conducted on the counter case. Hence the prosecution has suppressed the origin and genesis of the case. The learned counsel for the appellant would further submit that PW.1, the sole witness of the occurrence, cannot be an eye witness to the occurrence, admittedly he is residing 1 km away from the scene of occurrence and hence, the prosecution has miserably failed to prove the case.

9. Per contra, the learned Additional Public Prosecutor would submit that PW.1 is the eye witness to the occurrence and after hearing the quarrel between the accused and the deceased, he came to the scene of occurrence and saw the accused attacking the deceased with Aruval and he along with his father sent the deceased to the hospital, the medical evidence also corroborates the evidence of eye witness and hence, there is no reason to reject the evidence of the eye witness.

10. We have considered the rival submissions and perused the records carefully.

11. As rightly contended by the learned counsel for the appellant, in the same occurrence, the wife and mother-in-law of the accused have got injuries and the wife of the accused has given the complaint against the deceased and the same was registered in Crime No.2089 of 2010 by the respondent police for the offence under Sections 294(b), 324 and 506(ii) IPC, wherein it is stated that there was a quarrel between the deceased and the accused and at that time, the deceased was trying to attack the accused with Aruval, when she prevented him, she got injury over his head and while her mother intervened, she also got injury. The above First Information Report was marked as Ex.D1 by the accused. Apart from that, the wife and mother-in-law of

the accused were admitted in a private hospital, viz., Sri Ramakrishna Hospital and the Accident Registers issued by the hospital were marked as Exs.D2 and D3 respectively, wherein, it could be seen that both of them have suffered major injuries. The defence side also examined the Doctor working in the private hospital as DW.1. According to him, both the mother-in-law and the wife of the accused were admitted in the hospital and they have suffered major injuries in the vital part of the body. But the above counter case was totally suppressed by the prosecution.

12. Apart from that, PW.9 - Investigating Officer has also admitted in his cross examination that he is aware of the registration of counter complaint, in which, the deceased was shown as accused; he is also aware that the wife of the accused suffered injury in her head and she was admitted in the hospital as an in-patient for three days; he also examined the Doctor, who had treated the wife of the accused, but he did not mark the Accident Registers. From the above evidence, it is clear that in the same occurrence, wife and mother-in-law of the accused were also suffered major injuries and the prosecution has suppressed the same. Hence, it is clear that the prosecution has suppressed the origin and genesis of the occurrence. In the above circumstances, it is very difficult to believe the evidence of PW.1 as he has not disclosed the real fact before the Court. Hence, it is highly unsafe to convict the accused based on the testimony of the sole eye witness PW.1. In the above circumstances, the accused is entitled for acquittal.

13. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the accused on 27.06.2013 in S.C.No.102 of 2012 on the file of I Additional District and Sessions Judge, Tiruppur, are set aside. The accused is acquitted and fine amount already paid, if any, shall be refunded to him. The bail bond shall stand terminated.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The I Additional District and Sessions Judge,
Tiruppur.

2 do Thro The Principal Sessions Judge,
Coimbatore District

3 The Judicial Magistrate No.II, Tiruppur

4 do thro the chief judicial Magistrate Tiruppur

5 The Judicial Magistrate I, Tiruchirapalli

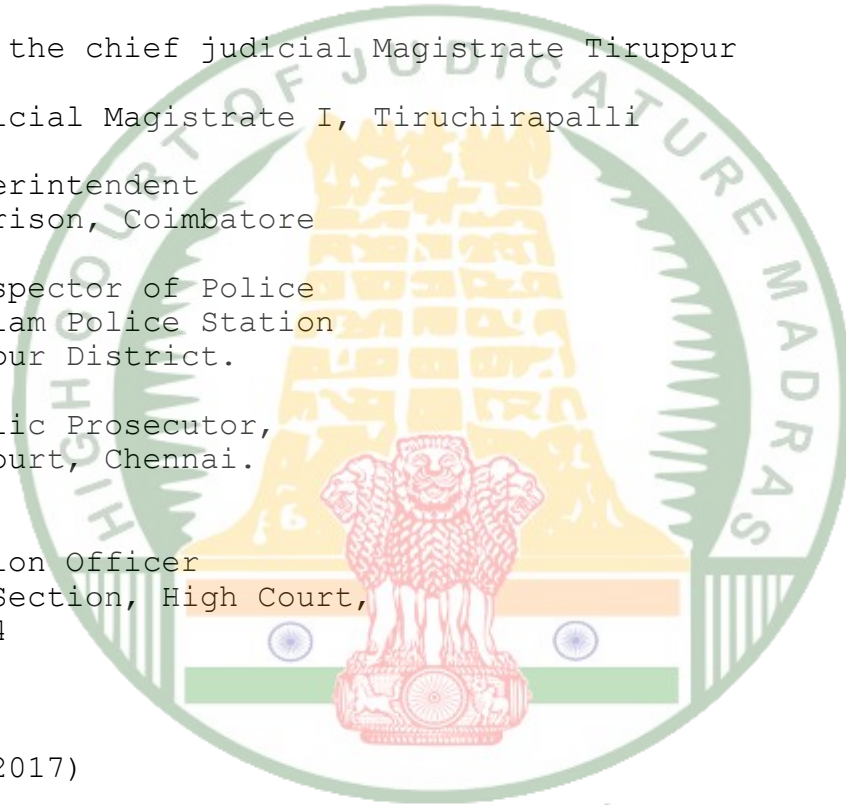
6 The Superintendent
Central Prison, Coimbatore

7. The Inspector of Police
Mangalam Police Station
Tiruppur District.

8.The Public Prosecutor,
High Court, Chennai.

Copy to:
Thro Section Officer
Criminal Section, High Court,
Madras 104

sv(CO)
md(27/01/2017)



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