**BAIL SLIP**

Appellant/Accused namely Mujibur Rahman, enlarged on bail on 16.10.2015 made on MP(MD)No.1 of 2015 in Crl.A(MD)No.146 of 2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.09.2016**

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**
AND
THE HONOURABLE MR.JUSTICE **M.V.MURALIDARAN**

CRL.A[MD].No.146 of 2015

Mujibur Rahman : Appellant

Vs.

State Through the Inspector of Police,
Kollencode Police Station
Kanyakumari District.
Crime No.202 of 2008. : Respondent

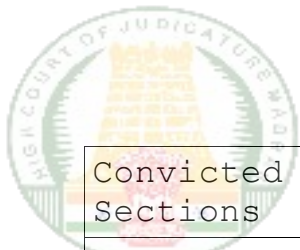
PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 20.01.2015 made in S.C.No.26 of 2009 on the file of the Sessions Court, Kanyakumari District, Nagercoil.

For Appellant : Mr.C.Ramachandran
For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

JUDGMENT

[JUDGMENT of the Court was delivered by **S.NAGAMUTHU, J**]

The appellant is the sole accused in S.C.No.26 of 2009, on the file of the Sessions Court, Kanyakumari District, Nagercoil. He stood charged for the offences punishable under Sections 294(b), 302 and 506(ii) of the Indian Penal Code. By Judgment dated 20.01.2015, the Trial Court has convicted the appellant, as detailed below:-



Convicted Sections	under	Sentence imposed	Fine amount
294 (b) IPC		To undergo rigorous imprisonment for three months.	No fine.
302 IPC		To undergo imprisonment for life.	Rs.10,000/- in default to undergo simple imprisonment for one year.
506(ii) IPC		To undergo rigorous imprisonment for three years.	No fine.

The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

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

PW-1, Mr.Mohammed Ali, a resident of Kollencode Village, is an Auto Driver by profession. The accused also belongs to the same village. The accused used to engage the auto of PW-1. On few occasions, he failed to pay auto fare. On 27.10.2008, around 08.30 PM, PW-1 had parked his auto, just by the side of the house of the accused. On seeing the auto, the accused wanted PW-1 to come for a trip. PW-1 refused to do so, because the accused had failed to pay fare on few occasions. When PW-1 refused, the accused started quarreling with him. This quarrel went on for some time, during which obscene words were also exchanged between the accused and PW-1. After some time, they stopped the quarrel and went to their respective residents.

2.1. On the same day, at about 10.30 PM, the accused came to the spot. He questioned PW-1 as to why he refused to concede to his request for hire. This again resulted in a quarrel. It is alleged that at that time, the accused attempted to stab PW-1 with a knife. The deceased, in this case, was one Mr.Thasthakir. The deceased came to the place of occurrence and intervened in the quarrel. The wife of PW-1 snatched away the knife from the hands of the accused. The accused went to a small distance, returned with a stick and attacked the deceased on his head, because, he supported PW-1. PW-1 tried to catch hold of the deceased. Thereafter, PW-1 took the deceased in an auto to a Private Hospital at Marthandam. When he was in the hospital, a Head Constable, on receiving intimation, came to the hospital. Since the deceased was not in a position to speak, the Head Constable recorded the statement of PW-1 under EX-P1. On returning to the Police Station, he registered a case in Crime No.202 of 2008, under Sections 294(b), 302 and 506(ii) of the Indian Penal Code, at 01.30 AM, on 27.10.2008. EX-P1 is the complaint and EX-P14 is



the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

2.2. Taking up the case for investigation, PW-16 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of PW-7 and another witness, at 03.00 AM, on 27.10.2008. He recovered bloodstained earth and sample earth from the place of occurrence. He examined PW-1 to PW-3, few more witnesses and recorded their statements. He recovered a knife from the possession of the wife of PW-1. On 28.10.2008, at 09.00 AM, near Idappadu Anthonyiar Kurusadi, PW-16 arrested the accused in the presence of PW-5 and another witness. On such arrest, he gave a voluntary confession, in which he disclosed the place, where he had hidden the stick. In pursuance of the same, he took the police and the witnesses and produced MO-2, the stick from the hide out. PW-16 recovered the same under a mahazer. Then, he forwarded the accused to the Court for judicial remand. When the investigation was in progress, on 29.10.2008, at 04.30 AM, the deceased succumbed to the injuries in the hospital. On receiving the intimation, PW-16 altered the case into one under Section 302 of the Indian Penal Code and forwarded the alteration report [EX-P17] to the Court. On the same day, between 08.30 AM and 10.30 AM, he conducted inquest on the body of the deceased. EX-P18 is the inquest report. Then, he forwarded the dead body for postmortem.

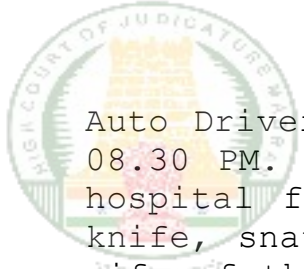
2.3. PW-10 - Dr.R.Rajesh conducted autopsy on the body of the deceased, on 29.10.2008. He noticed the following injuries:-

- "1. 5 X 4 CM abrasion seen over the right scapular region. It is reddish brown colour.
2. Contusion noted over the top of the head measuring 10 X 8 CM".

EX-P8 is the postmortem certificate. He gave opinion that the injuries found on the body of the deceased would have been caused by a stick. He gave further opinion that the deceased would appear to have died of shock and hemorrhage due to head injury.

2.4. PW-16, during the course of investigation, examined many more witnesses, including the doctors, recovered the medical records and on completing the investigation, he laid charge sheet against the accused.

2.5. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on the side of the prosecution, 16 witnesses were examined, 20 documents and three material objects were marked. Out of the said witnesses, PW-1 and PW-2 are the husband and wife, who have claimed that they have witnessed the entire occurrence. PW-1, an



Auto Driver, has spoken about the earlier occurrence took place at 08.30 PM. He has further stated that he took the deceased to the hospital for treatment. PW-2 has stated that she handed over the knife, snatched away from the accused, to the police. PW-3 is the wife of the deceased. She has also claimed that she witnessed the entire occurrence. She has spoken about the occurrence in a vivid manner. PW-4 is yet another eye-witness to the occurrence. He is a neighbour of the deceased. He has spoken about the entire occurrence. PW-5 has spoken about the arrest of the accused, the confession made by him and the consequential recovery of MO-2, from the possession of the accused. PW-6 has spoken about the shifting of the deceased to the Government Hospital at Aasaripallam and the treatment given in the hospital till his death. PW-7 has spoken about the preparation of the Observation Mahazer and the Rough Sketch.

2.6. PW-8, Dr. Isac Sundarsen, has stated that on 28.10.2008, around 12.15 AM, the deceased was brought to the hospital for treatment. He was told that the deceased was attacked by a known person. He gave first aid treatment to the deceased and referred him to the Government Hospital for further treatment. PW-9 has stated that when he was on duty at the Government Medical College Hospital at Kanyakumari, on 29.10.2008, at 04.30 AM, the deceased was brought to the hospital. Since he died in the hospital, he gave intimation to the police. PW-10 has spoken about the autopsy conducted by him and his final opinion regarding the cause of death. PW-11 is yet another doctor. He has stated that he treated the deceased in a Private Hospital, on 29.10.2008, at 01.47 AM. According to him, when he conducted CT Scan examination, he noticed a fracture on the skull. Then, he was taken to the Government Hospital. PW-12 has spoken about the death intimation given by the Hospital Authorities. PW-13, a Head Constable, has stated that he handed over the dead body for postmortem. PW-14, yet another Head Constable, has stated that he handed over the alteration report to the Court. PW-15 has spoken about the registration of the case, on the complaint made by PW-1. PW-16 has spoken about the investigation conducted by him and the filing of final report.

2.7. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. However, he did not choose to examine any witness nor to exhibit any document. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before this Court with this Criminal Appeal.

<https://hcservices.courts.gov.in/hcservices> 3. We have heard the learned counsel appearing for the appellant, the learned Additional Public Prosecutor appearing for

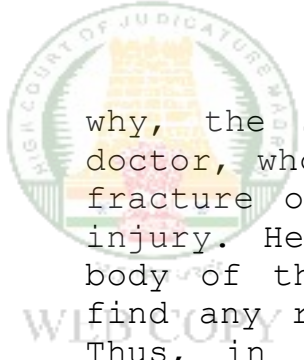
the respondent and also perused the records carefully.

4. In this case, as we have already pointed out, the prosecution mainly relies on the eye-witnesses account of PW-1 to PW-4. PW-1 and PW-2 have spoken about the earlier occurrence, which took place at 08.30 PM. According to them, on 27.10.2008, at 08.30 PM, there was a quarrel between the accused and PW-1, on account of the fact that PW-1 refused to come for a trip, since, on few occasions, the accused had failed to pay auto fare to him. PW-1 and PW-2 have further stated that at 10.30 AM, the accused came to the spot and again quarrelled with PW-1. In the said quarrel, obscene words were also exchanged between them. When the accused attempted to stab PW-1, his wife, PW-2, snatched away the knife. The deceased has nothing to do with the occurrence. The accused had no motive against him. But, since the deceased intervened in the matter, the accused got provoked, took up a stick and attacked him on his head, which resulted in his death. This has been spoken by PW-3 and PW-4 also. Though these two witnesses have been cross-examined at length, nothing could be brought on record so as to disbelieve their evidences. Thus, the evidences of PW-1 to PW-4 fully inspire the confidence of the Court.

5. The learned counsel for the appellant would submit that the First Information Report, in this case, is a doubtful document. According to him, PW-1 did not know to read and write Tamil, as his mother tongue is Malayalam. Thus, according to the learned counsel, EX-P1 would not have been given by PW-1.

6. The above said argument advanced by the learned counsel for the appellant does not persuade us. PW-1, during cross-examination, had categorically stated that he knew to speak Tamil, but he did not know to read and write Tamil. He has further stated that though it is true that he did not know to read and write Tamil, he orally narrated the entire occurrence and it was reduced to writing. EX-P1 was read over to him and thereafter, PW-1 signed the same. Thus, according to PW-1, he is very well aware of the contents in the First Information Report. To the question posed by the Court, he had also categorically stated that he could speak in Tamil and understand the same. That is how EX-P1 came into being. Thus, in our considered view, there can be no doubt about EX-P1.

7. The medical evidence, in this case, duly corroborates the eye-witnesses account. At the earliest point of time, when the deceased was taken to the hospital, PW-8, Dr. Isac Sundarsen, was told that on 28.10.2008, around 12.15 AM, the deceased was attacked by a known person. The doctor, who treated him in the private hospital, on 29.10.2008, at 01.47 AM, conducted CT Scan examination and found a fracture on the skull. At that time, according to the doctor, the deceased was unconscious. That is



why, the statement of the deceased could not be recorded. The doctor, who conducted autopsy on the body of the deceased, found a fracture on the skull. He opined that the death was due to head injury. He has further opined that the said injury found on the body of the deceased could have been caused by MO-2. We do not find any reason to reject the said opinion given by the doctor. Thus, in our considered view, the medical evidence also duly corroborates the eye-witnesses account of PW-1 to PW-4.

8. Next comes the recovery of stick, on the confession of the accused. The learned counsel for the appellant would submit that there are certain anomalies in respect of recovery of stick. He would also submit that MO-2 was not identified by PW-1 to PW-4. On that score alone, we cannot reject the case of the prosecution. As we have already pointed out, from the evidences of PW-1 to PW-4, which draw adequate corroboration from the medical evidence, the prosecution has proved the case beyond all reasonable doubts that it was this accused, who alone attacked the deceased with a stick, which resulted in his death.

9. Having come to the said conclusion, now, the next immediate question is as to what is the offence, that the accused had committed by his act. Before the occurrence, there was a wordy quarrel between the accused and PW-1. The quarrel went on for some time. This has been spoken to by PW-1 to PW-4. The arrival of the deceased, at the place of occupation, was also incidental. The deceased intervened in the matter. At that time, the accused lost his mental balance and on account of the same, he stabbed the deceased, which resulted in his death.

10. From the above, it is inferable that there is every possibility that the deceased would have provoked the accused. Thus, on account of the said provocation, the accused would have attacked the deceased on his head. Thus, in our considered view, the act of the accused would squarely fall within the ambit of Fourth limb of Section 300 of the Indian Penal Code and it would fall within the ambit of First Exception to Section 300 of the Indian Penal Code. Therefore, the appellant is liable to be punished under Section 304(ii) of the Indian Penal Code, besides under Sections 506(ii) and 294(b) of the Indian Penal Code.

11. Now, turning to the quantum of punishment, the accused, at the time of occurrence, was hardly aged about 28 years. Either prior to the occurrence or subsequent to the occurrence, he has not involved in any crime. There is every possibility for his reformation. Having regard to the gravity of the offence, as narrated above and these mitigating circumstances, we are of the considered view that sentencing him to undergo rigorous imprisonment for seven years with fine of Rs.5,000/-, in default of payment, or to rigorous imprisonment for four weeks for the offence under Section 304(ii) of the Indian Penal Code, sentencing him to



undergo rigorous imprisonment for three months, for the offence under Section 294(b) of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for one year for the offence under Section 506(ii) of the Indian Penal Code would meet the ends of justice.

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12. In the result, the Criminal Appeal is partly allowed in the following terms:-

- The conviction and sentence imposed by the Trial Court on the accused/appellant under Section 302 of the Indian Penal Code is set aside and instead, the accused/appellant is convicted under Section 304(ii) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- [Rupees Five Thousand only], in default to undergo rigorous imprisonment for four weeks.
- The conviction of the appellant/accused under Section 506(ii) of the Indian Penal Code is confirmed. However, the sentence is reduced to one year rigorous imprisonment.
- The conviction and sentence imposed on the appellant/accused under Section 294(b) of the Indian Penal Code is confirmed.
- It is directed that all these sentences shall run concurrently. It is further directed that the period of sentence already undergone by the appellant/accused shall be set off under Section 428 of the Code of Criminal Procedure. Fine amount, if any paid by the appellant/accused, shall be adjusted and the balance amount, if any, shall be refunded to him.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

To

- 1.The Sessions Judge,
Kanyakumari District, Nagercoil.
- 2.The Principal Sessions Judge,
Kanyakumari at Nagercoil.
- 3.The Judicial Magistrate No.II,
Kuzhithurai.
- 4.Do through The Cheif Judicial Magistrate,
Kanyakumari District at Nagercoil.
- 5.The Superintendent,
Central Jail, Palayamkottai.
- 6.The Inspector of Police,
Kollencode Police Station, Kollencode, Kanyakumari District.



7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to M/s.C.Ramachandran, Advocate in SR.No.52064

JUDGMENT MADE IN
CRL.A[MD] .No.146 of 2015
12.09.2016

NB

CSL/CK/28.09.2016: 8P/9C