WEB COPY

BAIL SLIP

1)Chinnaponnu,aged.30/14 W/O.Late Mahaprabhu@Prabhu was returned on bail vide order of this Court dt.14.09.2015 in M.P (MD).No.1 of 2015 in CrlA.(MD).No.216 of 2015.

2)Mayandi,S/o.Muthalaghu, aged 60/14was released on bail vide order of this Court dt.29.10.2015 in MP(MD)No.2 of 2015 in Crl A(MD)No.216 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.10.2016

CORAM:
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal(MD)No.216 of 2015

1.Mayandi
2.Chinnaponnu ... Appellants/Accused 1 & 3

Vs.

The State of Tamil Nadu represented by
The Inspector of Police,
Melavalavu Police Station,
Madurai District.
(Crime No.19 of 2009) ... Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C to set aside the impugned judgment of conviction and sentence passed by the learned VI Additional District and Sessions Judge, Madurai in S.C.No.152 of 2012, dated 18.08.2014.

For Appellants : Mr.N.Dilip Kumar

For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor.

JUDGMENT

(Judgment of the Court was delivered by **M.V.MURALIDARAN, J.**)

The appellants are the accused 1 & 3 in S.C.No.152 of 2012 on the VI Additional District and Sessions Judge, Madurai. The trial court framed charges under Sections 341 & 302 of I.P.C against this Appellants/Accused 1 & 3.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

2.The Trial Court by Judgment dated 17.12.2014 convicted the appellants/accused 1 & 3 for the offence under Section 302 r/w 34 of I.P.C to undergo Life Imprisonment and to pay a fine of Rs.500/- in default to undergo simple imprisonment for 3 months and further convicted and sentenced for the offence under section 341 of I P C to undergo simple imprisonment for one month. Challenging the said conviction and sentence passed against them, the present appeal has been filed by the appellants/accused.

3.The case of the prosecution is that on 22.02.2009 at about 16:15 hrs PW.15 the Sub-Inspector of Police attached with Melavalavu Police Station, Madurai District received a complaint from PW.1, namely Suman and registered a case on the file of the said police station in Crime No.19/2009 for the offence Under Section 341,323,302 of Indian Penal Code. It is alleged in the complaint that the father of PW.1 namely Muthalagan was assaulted by his elder brother namely Mayandi and his son-in-law Mahaprabhu along with his daughter namely Chinnaponnu. The complaint lodged by PW.1 was marked as Exhibit P1 and the same has disclosed that PW.1 is an agricultural Kooli studied up to 3rd standard and he returned back to India from Dubai after his employment 15 days prior to the occurrence. His father had four brothers and 2 sisters. Further, a landed property about 12 cents was sold by his father and his brothers to one Veeranan of his village for a sum of Rs.8,000/-. The sale amount was shared by the father of the PW.1 and his brothers and each one got Rs.18,000/- PW.1 came to know about this matter after reached his village. Since the land was in the name of the paternal uncle of the PW.1 Mayandi after deducting the major part of the sale amount of Rs.72,000/-, the paternal uncle PW.1 retained the balance amount of Rs.8,000/-. Subsequently, the father of PW.1 insisted his brother to part with his share amount, but he was replied that only after surveying the land, the balance amount would be given as stated by one Nallusamy on behalf of the aforesaid Veeranan. Accordingly, six days prior to the occurrence, the said land was surveyed. Even thereafter the balance amount was not given and the paternal uncle of PW.1, informed his father, the deceased that the purchaser denied to give the balance amount. In turn the father of the PW.1 fixed responsibility upon his brother Mayandi. On the day of the complaint that is on 22.02.2009 at about 03.30 P.M., the father of PW.1 went to know whether any things are supplied in the fair price shop, PW.1 and PW.2 returned from a place namely Periyathoppu (Bigger grow). At that time, the 1st accused Mayandi and his brother-in-law namely Mahaprabhu and his daughter Chinnaponnu waylaid, the father of the PW.1 and started to quarrel with him saying that what they can do, if

https://hcservices.ecourts.gov.in/hcservices/

the purchaser denied to pay the balance amount, but the deceased replied his elder brother that he has to take the responsibility, as he only sold the land. Suddenly, the paternal uncle of PW.1 shouted at the deceased that he would not live in peaceful manner if the deceased is alive and so he has to be killed. He stabbed the father of PW.1 on his back by using a crow'bar. By this stab, the deceased sustained blood injuries on the back of his left ear and also right ear. Then another accused namely Mahaprabhu chided his father-in-law that he did not properly stabbed and so he brought the crow'bar from his father-in-law and stabbed upon the deceased on the side of the head. At the time another accused namely Chinnaponnu assaulted the father of PW.1 by using a stick on his right hand which caused swelling. So, the father of PW.1, fall and down and on seeing this PW.1 and PW.2 shouted that their father was killed and run at their father. The accused fled away towards northern side of the village. PW.1 found that his father was died on the spot and by 04.30 P.M., he lodged the complaint with PW.15 based on that the aforesaid case came to be registered.

4.In pursuance of the registration of case, PW.15 gave wireless information to PW.19, Circle Inspector of Melur Police Station and he commenced his investigation by preparing the Rough Sketch, Exhibit-P.13 and Observation Mahazar Exhibit P.4 in the presence of witnesses namely Vellaisamy and Nagu. Further, at about 18.15 hrs., in the presence of the very same witnesses, he collected blood stained soil and non-blood stained soil through exhibit P.15. That apart on the very same day that is at about 18.30 hrs., PW.19 conducted inquest and prepared Exhibit P.14 on the dead body of the deceased in the presence of Panchayathars. Thereafter, he sent the dead body for Postmortem through PW.12 and examined some witnesses. On 23.02.2009, he arrested the accused namely Mayandi and Chinnaponnu and recorded their confessional statement in the presence of witnesses Kuppan PW.7 and one Pitchai. Based on the confessional statement, he recovered the crow'bar and stick through an Atthachi Exhibit P.3 and remanded the accused into judicial custody. Further, he also sent the materials object to the court through Exhibit P.16. Further, through Exhibit P.17, he sent the dresses worn by the deceased to the court. As PW.19 got transfer, he entrusted the investigation to PW.20. Accordingly PW.20 commenced his investigation on 25.02.2009 and arrested an accused namely Prabhu @ Mahaprabhu and remanded him into judicial custody. Thereafter he examined some witnesses and filed final report for the offence under sections 341, 302 r/w 340 of Indian Penal Code. Further the 2nd accused was died during course of trial. So, two accused were tried for the offences aforesaid.

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

5.After filing the charge sheet before the Learned Judicial Magistrate, Melur in P.R.C.No. 23 of 2009, the case was committed to the VI Additional District and Sessions Judge, Madurai and came to be numbered as S.C.No.152/2012. In this case, 20 witnesses were examined as prosecution side witnesses and 17 Exhibits were marked on the side of prosecution and there are 6 material objects produced before the Trial court. There was one witness examined and no exhibits marked on the side of the accused.

6.We have heard Mr.N.Dilip Kumar, learned counsel for the appellants and Mr.K.S.Duraipandian, learned Additional Public Prosecutor for the respondent and we have also perused the records carefully.

7.It is the categorical case of the Pw1 and 2 that in their presence their father was assaulted to death. However, it is also an admitted fact that the place of occurrence is nearby the residence of the accused that is when the deceased came to the fair price shop for enquiry about goods. According to the evidence of Pw1 and 2 that the 1st appellant caused injury on the backside of the head upon the deceased. There is no evidence available that the commission of the offence was committed in sharing the common intention. On the other hand, it is also to be noted that even according to the complaint Exhibit P1 that the accused did not carry the weapons. At the same time there is no evidence that the crow'bar was lying on the place of occurrence. But it is the settled legal position that if two views are possible, the view in supporting the case of the accused is to be taken into consideration. Accordingly this court has taken the view that the 1st appellant did not carry the crow'bar for the commission of the offence.

8.Apart from that Pw1 and 2 have deposed that their father was assaulted by the accused followed by quarrel between their father and his brother. Further it is not necessary for the Pw1 and 2 to implicate the accused in the commission of offence that too the own brother of the deceased. So the version of Pw1 and 2 are to be taken into consideration. Moreover, Pw13, the doctor has given postmortem certificate exhibit P7 by mentioning the following injuries.

External Injuries:

1. Bleeding from nose present
2. Right (NC) lacerated on upper aspect
3. Right upper eyelid contusion swollen
4. Incised wound 3x1x1 cm Right parietal scalp
5. Incised wound ½ x ½ cm Right forehead
6. Lacerated injury behind left ear 3 x 1 x 1 c.m
7. A contusion 3x2x2 cm right four arm.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

Internal Examination:
1. Mandible fracture on left side just lateral to midline
2. Hyoid bone fracture on left side
3. Ribs Normal heart, lung, pale, C/S pale

9.This court puts its anxious consideration in respect of the external injury no. 6 that is a contusion 3x2x 2cm right found in the fore arm of the deceased. However, the postmortem doctor Pw13 has deposed that the injuries found in right forearm could be caused due to fallen-down in a rough surface. The allegation of Pw1 and 2 is that the 2nd Appellant caused injuries upon the forearm of their father. At the same time their version is not supported by the evidence of the doctor. So, from the above discussion, this court comes to the conclusion that the prosecution has not proved the case as against the 2nd Appellant beyond reasonable doubt.

10.As far as the evidence available against the 1st accused are concerned that he inflicted injuries on the back side of the head of the deceased by using a crowbar. The crowbar was recovered under Exhibit P3 and the same was forwarded for forensic opinion. Item 3 is the rusty metal crowbar as per exhibit P11. In the said report, human blood was detected in item No.3 crowbar. So, the usage of metal crowbar in the commission of the offence is proved by the prosecution. At the same time it is for the prosecution to prove that the crowbar was used in the occurrence. Again the evidence of Pw1, 2, 4, and 5 are subjected for judicial scrutiny and found that the crowbar was used in the assault of the deceased by the 1st Appellant and by his son-in-law (since died). Apart from that on 23.02.2009, both Appellants were arrested and gave confessional statement in the presence of Pw7, based on the confessional statement recovery of the crowbar MO No. 1 and MO No. 2 stick were recovered. So, the recovery of crowbar MO No.1 is proved by the prosecution beyond reasonable doubt. Apart from that through the evidence of Pw-9, the wife of one Veeranan namely Alagu, the prosecution has proved about the sale of the land by the deceased, 1st Appellant and their brothers to her husband namely Veeranan. All other witnesses are supporting the case of the prosecution.

11.When the learned counsel for the Appellants advanced his arguments, he has pointed out that Pw1 is not the author of Exhibit P1 and the non examination of author of P1 would affect the case. But, this court comes to the conclusion that when the prosecution has proved the occurrence beyond reasonable doubt, the non examination of the author of Ex.P1 will not affect the case of prosecution. At the same time it

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

is to be noted that the commission of the offence is followed by predetermination or not. The evidence on record would so, that due to sudden provocation; the 1st Appellant committed the culpable homicide. So, the same cannot be treated as an offence punishable under section 302 of IPC, but it would fall within the ambit of 304(I) of IPC.

12.In the result the Appeal is partly allowed and the 2nd Appellant is acquitted from the charges as framed by the Learned Trail Court. At the same time the sentence of Life Imprisonment imposed upon the 1st Appellant is modified into 5 years along with to pay a fine of Rs.1000/- and in default, he undergo Rigorous Imprisonment for three months.

Sd/-
Assistant Registrar[P&A]

/True copy/

Sub Assistant Registrar

To

1.The VI Additional District and Sessions Judge,Madurai.
2.-Do thro-The Principal District and Sessions Judge, Madurai.
3.The Judicial Magistrate,Melur.
4.The Judicial Magistrate, Madurai.
5.-Do thro-The Chief Judicial Magistrate,Madurai.
6.The Director General of Police,Mylapore,Chennai.
7.The District Collector,Madurai.
8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.
9.The Superintendent, Central Prison,Trichy.
(In duplicate communicate to the detenu)
10.The Superintendent,Central Prison,Madurai.
(In duplicate communicate to the detenu)
11.The Inspector of Police, Melavalavu Police Station,
Madurai District.

Copy to:

The Section officer,Criminal Section,
Madurai Bench of Madras High court,
Madurai.

Criminal Appeal(MD)No.216 of 2015
18.10.2016

VSA/SKN
KK-SV-MMS-SAR3-22.02.2017-6 P-15C

https://hcservices.ecourts.gov.in/hcservices/