

**BAIL SLIP**

Appellants namely Subramaniyan, S/o.Nallusamy, Accused 2 and Nallusamy, S/o.Palaniyandi/Accused -1, where directed to be released on bail as per Orders of this Hon'ble Court made in MP.1/13 in CrI.A(MD)No.307/2013 dated 21/4/2013 and MP.1/14 in CrI.A(MD)No.324/13 dated 4/8/2014 respectively pending disposal of the Criminal Appeals 307/2013 and 324/2013.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

CRIMINAL APPEAL(MD)Nos.307 & 324 of 2013

1.CrI.A(MD)No.307 of 2013:-

Subramaniyan

... Appellant/Accused No.2

vs.

State represented by
The Inspector of Police,
Vathalai Police Station,
Thiruchirappalli District.
(Crime No.30 of 2012).

... Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, 1973, against the Judgment dated 10.09.2013 passed in Sessions Case No.5 of 2013 by the Principal District and Sessions Court, Thiruchirappalli.

For Appellant
For Respondent

: Mr.T.Senthil Kumar
: Mr.K.S.Durai Pandian
Additional Public Prosecutor

2.CrI.A(MD)No.324 of 2013:-

Nallusamy

... Appellant/Accused No.1

vs.

State represented by
The Inspector of Police,
Vathalai Police Station,
Thiruchirappalli District.
(Crime No.30 of 2012).

... Respondent/Complainant

Prayer:- Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, 1973, against the Judgment dated 10.09.2013 passed in Sessions Case No.5 of 2013 by the Principal District and Sessions Court, Thiruchirappalli.



For Appellant

: Mr.T.Senthil Kumar

For Respondent

: Mr.K.S.Durai Pandian
Additional Public Prosecutor

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COMMON JUDGMENT

(Order of the Court was made by A.SELVAM, J)

These Criminals Appeals have been directed against the convictions and sentences dated 10.09.2013 passed in Sessions Case No.5 of 2013 by the Principal District and Sessions Court, Thiruchirappalli.

2. The case of the prosecution is that the defacto complainant by name Shanmugam has married one Poonjolai, who is none other than the daughter of the first accused and sister of the second accused. On 27.02.2012 at about 09.30 p.m., the present accused and one Juvenile accused by name Vadivelu had come to the house of the defacto complainant and asked him as to why very often he made tussle with the said Poonjolai and all of a sudden, the second accused with intention to murder the defacto complainant has attacked him by using a cudgel and during the course of occurrence, the first accused has attacked the deceased Vayitruipoovan, who is none other than the father of the defacto complainant and due to overtacts, the said Vayitruipoovan has passed away and after occurrence, the defacto complainant has given a complaint and the same has been registered by the Sub-Inspector of Police in Crime No.30 of 2012.

3. On receipt of the complaint, P.W.16 has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy on the body of the deceased. Accordingly, Dr.Ravikumar, P.W.10 has conducted Post-Mortem and he has found following external and internal injuries:-

"1) Dark fair colour abrasion on the right side of forehead 0.5cm X 0.5cm and back of left side of chest 2cm X 1cm.

2) Fracture of both collar bone and I rib on both side with (NC) thoracic wall bruising dark red. Thoracic cavity contain fluid blood.

3) Two lacerated wounds on the right lobe of liver each measuring 7cm X 1cm X 2cm and 3cm X 1cm X 2cm.

4) Bruising of frontal region of scalp dark red.

5) Sub dural and sub arachnoid hemorrhage on both cerebral and cerebellar hemisphere.

6) Fracture separation of C-1/C2 vertebral joint with displacement of spinal cord.

All the above wounds are ante mortem. No other external, internal or bony wounds.



Other finding: Abdomen peritoneum cavity vide wound column. Pleura vide wound column. Pericardium intact, cavity strew colour fluid. Heart normal insize myocardium normal. Chamber fluid blood. Valver normal. Coronary vessels patent great vessels normal. Lungs c/s congested glottis larynx trachea intact. Mucosa pale hyoid bone intact stomach contains full sized cooked rice particular. No specific smell mucossa pale. Oesophagus intact mucosa pale pancreas pale. Liver, spleen, kidneys congested. Gall bladderfull, no stones c/s.vide wound column, omentum and merentery intact, normal small intesine yellowish chyme. No specific smell mucosa pale appendia intact normal large intestine filled with gas. Bladder intact, empty. Pelvic intact scalp (NC) vide brain inside wound column. (NC) fluid blood stained. Spinal column, (NC) vide wound column. All other internal organs are c/s. pale."

The Post-Mortem Certificate has been marked as Ex.P.9. The Investigating Officer viz., P.W.16 has continued investigation and after his transfer, his successor in office viz., P.W.17 has completed investigation and laid a final report on the file of the Judicial Magistrate's Court, Musiri and the same has been taken on file in P.R.C.No.18 of 2012.

4. The Judicial Magistrate, Musiri, after considering the fact that the offences alleged to have been committed by both the accused are triable by Sessions Court, has committed the case to the Court of Sessions, Thiruchirappalli Division and the same has been taken on file in Sessions Case No.5 of 2013.

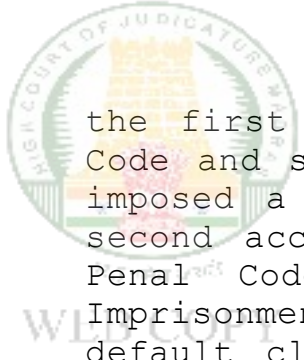
5. The trial Court, after hearing arguments of both sides and upon perusing the relevant records, has framed first charge against the second accused under Section 307 of the Indian Penal Code and the second charge against the first accused under Section 302 of the Indian Penal code and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.W.s.1 to 17 have been examined and Exs.P.1 to P.21 and M.Os.1 to 5 have been marked.

7. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. However no oral and documentary evidence have been adduced on the side of the accused.

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

8. The trial Court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, has found



the first accused guilty under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and also imposed a fine of Rs.1,000/- with usual default clause and the second accused has been found guilty Section 307 of the Indian Penal Code and sentenced him to undergo 7 years Rigorous Imprisonment and also imposed a fine of Rs.1,000/- with usual default clause. Against the convictions and sentences passed by the trial Court, the first accused has preferred Criminal Appeal (MD)No.324 of 2013 and second accused has preferred Crl.A(MD) No.307 of 2013.

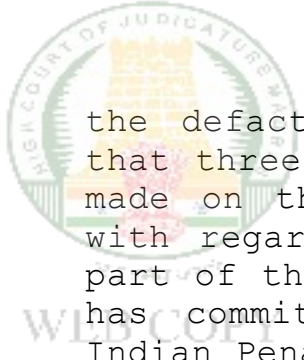
9. Since common questions of law and facts are involved in both the Criminal Appeals, common Judgment is pronounced.

10. The sum and substance of the case of the prosecution is that the defacto complainant is the son-in-law of the first accused and brother-in-law of the second accused. On 27.02.2012 at about 09.30 p.m., the present accused and one Juvenile accused by name Vadivelu have come to the house of the defacto complainant and questioned him as to why he made frequent tussle with his wife and all of a sudden, the second accused with intention to murder the defacto complainant has attacked him by using a cudgel and thereby caused injuries on his person and during the course of occurrence, the first accused has attacked the deceased by name Vayitropoovan and due to his overtacts, he passed away.

11. The entire case of the prosecution hinges upon Ex.P.1, complaint. The author of Ex.P.1 viz., defacto complainant has been examined as P.W.1. The mother of P.W.1 has been examined as P.W.2. The neighbours have been examined as P.Ws.3 to 6 and all of them have consistently stated about the occurrence and also details of attack alleged to have been made by the second accused on the person of P.W.1 and second accused on the person of the deceased. The Doctor, who conducted autopsy of the deceased, has been examined as P.W.10 and Post-Mortem Certificate has been marked as Ex.P.9. The Doctor, who treated P.Ws.1 and 2, has been examined P.W.11.

12. The trial Court, after considering the materials found in Ex.P.1 coupled with the evidence given by the witnesses mentioned supra, has found the first accused guilty under Section 302 of the Indian Penal Code and second accused under Section 307 of the Indian Penal Code and imposed sentences as mentioned in the Judgment.

13. The learned counsel appearing for the appellants/accused 1 and 2 has repeatedly contended that in Ex.P.1, complaint, specific names of persons who participated in the occurrence have not been mentioned, whereas in Ex.P.13, copy of Accident Register it has been mentioned to the effect that four persons have participated in the occurrence and

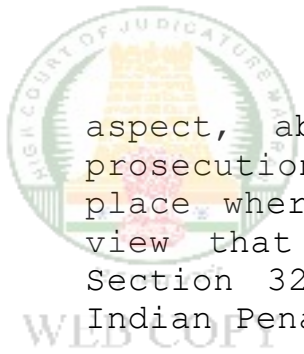


the defacto complainant viz., P.W.1 has stated in his evidence that three persons have attacked him. Since with regard to attack made on the person of P.W.1, no specific evidence is available with regard to specific accused, it is highly impossible on the part of the Court to come to a conclusion that the second accused has committed an offence punishable under Section 307 of the Indian Penal Code and further no specific evidence is available as to which injury has caused death of the deceased. Under the said circumstances, the first accused cannot be mulcted with liability under Section 302 of the Indian Penal Code. The trial Court, without considering the lack of evidence on the side of the prosecution, has erroneously found the second accused guilty under Section 307 of the Indian Penal Code and first accused under Section 302 of the Indian Penal Code and therefore, the convictions and sentences passed by the trial Court are liable to be set aside.

14. In order to sustain the convictions and sentences passed by the trial Court, the learned Additional Public Prosecutor has contended that in the instant case injured eye witnesses have been examined as P.Ws.1 and 2 and independent witnesses have been examined as P.Ws.3 to 6 and all of them consistently stated about the occurrence and also details of attack made by each accused on the persons of P.W.1 and deceased and in fact their evidence has been corroborated by medical evidence and the trial Court, after considering the enormous evidence available on the side of the prosecution, has rightly found the first accused guilty under Section 302 of the Indian Penal Code and second accused guilty under Section 307 of the Indian Penal Code and therefore, the convictions and sentences passed by the trial Court are not liable to be set aside.

15. On the basis of the rival contentions raised on either side, the Court has to first analyse as to whether the second accused has committed an offence under Section 307 of the Indian Penal Code. As rightly pointed out on the side of the appellants/accused 1 and 2, in Ex.P.1, it has been clearly mentioned about the specific overtact of each and every accused. The defacto complainant has been examined as P.W.1 and even in his chief-examination, it has been clearly mentioned that all the three accused have attacked him and due to that, he has sustained injuries on his lips. Further, in Ex.P.13, it has been mentioned to the effect that four persons have involved in the occurrence. Considering the overall evidence available on record with regard to attack made on the person of P.W.1, the Court cannot easily come to a conclusion that the second accused has not attacked P.W.1.

<https://hcservices.courts.gov.in/hcservices> 16. The specific case of the prosecution is that only with intention to murder P.W.1, the second accused has attacked on his person and thereby caused grievous injury. With regard to the said



aspect, absolutely there is no evidence on the side of the prosecution. Under the said circumstances and also considering the place where P.W.1 has sustained injuries, this Court is of the view that the second accused can be found guilty only under Section 326 of the Indian Penal instead of Section 307 of the Indian Penal Code.

17. Now the Court has to analyse with regard to argument putforth on the side of the appellants/accused 1 and 2 in respect of attack made by the first accused on the person of the deceased.

18. The specific case of the prosecution is that the first accused has attacked the father of P.W.1 and thereby caused vital injuries and due to that he passed away. The Doctor, who conducted autopsy, has been examined as P.W.10 and he has opined that the death would have occurred only due to injuries sustained by the deceased. Considering the specific evidence given by P.W.10, the Court can very well come to a conclusion that only due to attack alleged to have been made by the first accused on the person of the deceased, he passed away.

19. It has already been pointed out that in the instant case, two injured eye witnesses have been examined as P.Ws.1 and 2 and some independent witnesses have been examined as P.Ws.3 to 6. Even though P.Ws.3 to 6 are related to P.Ws.1 & 2, their evidence cannot be discarded or eschewed, since no motive has been in existence between accused and P.Ws.3 to 6.

20. It is not an adulation to say that in the instant case on the side of the prosecution plethora of evidence is available with regard to occurrence and also details of attack alleged to have been made by both the accused. Under the said circumstances, the remaining contention putforth on the side of the appellants/accused 1 and 2 cannot be accepted.

21. It has already been pointed out that the second accused can be found guilty under Section 326 of the Indian Penal Code instead of Section 307 of the Indian Penal Code and to that extent CrI.A(MD)No.307 of 2013 is liable to be allowed-in-part and CrI.A(MD)No.324 of 2013 is liable to be dismissed.

22. In fine, CrI.A(MD)No.324 of 2013 is dismissed. The conviction and sentence passed under Section 302 of the Indian Penal Code against the appellant/first accused in Sessions Case No.5 of 2013 are confirmed.

23. CrI.A(MD)No.307 of 2013 is allowed in part. The conviction and sentence passed under Section 307 of the Indian Penal Code against the appellant/second accused are modified as follows:-

<https://hcservices.ecourts.gov.in/hcservices> The appellant/second accused is found guilty under Section 326 of the Indian Penal Code and sentenced him to undergo three years Rigorous



Imprisonment and no modification is required in respect of fine amount."

24. The trial Court is directed to take appropriate steps so as to imprison the appellants/accused 1 and 2 to serve out the remaining period of sentence.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Principal District and Sessions Judge,
Tiruchirappalli.
- 2.The Judicial Magistrate, Musiri
- 3.Do through the Chief Judicial Magistrate, Trichy
- 4.The District Collector, Trichy District, Trichy
- 5.The Director General of Police, Mylapore, Chennai-4
- 6.The Superintendent, Central Prison, Trichy
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 8.The Inspector of Police,
Vathalai Police Station,
Thiruchirappalli District.

+One cc to Mr.T.Senthil Kumar, Advocate, SR.No.7966

ps

RL/10C/PM/MP/25/2/2016

Common Judgment made in
Cr1.A(MD)Nos.307 & 324 of 2013

10.02.2016