

Bail Slip

The Appellant / Accused namely Justin @ Tustin was directed to be released on bail as per the order of this court dated 19.03.2014 made in M.P.No.1 of 2014 in Crl A. No.130 of 2014 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.130 of 2014

Justin @ Tustin ...Appellant/Accused

Vs.

State represented by  
The Inspector of Police,  
F-2, Egmore Police Station,  
Egmore, Chennai-600 008. ...Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374 of Cr.P.C. to admit and allow this appeal by setting aside the order of the Trial Court dated 12.02.2014 in S.C.No.576 of 2010 sentencing the Appellant for five years rigorous imprisonment concurrently under Section 304(ii) of I.P.C., on the file of the I Additional Sessions Judge (TADA), City Civil Court, at Chennai.

For Appellant : M/s.A.Veeramarthni  
Legal Aid Counsel

For Respondent : Mr.R.Sekar  
Government Advocate (Crl.Side)

JUDGMENT

The instant Criminal Appeal is preferred as against the Judgment of conviction passed in Sessions Case No.576 of 2010, on the file of the learned I Additional Sessions Judge (TADA), Chennai dated 12.02.2014. Originally, the appellant/accused was

charged for the offence under sections 302 and 506(ii) of IPC. But, the learned trial judge found the appellant/accused is guilty of the offence under section 304(ii) of IPC and sentenced him to undergo rigorous imprisonment of 5 years, accordingly, the appellant/accused was acquitted from the charges punishable under sections 302 and 506(ii) of IPC.

2. Feeling aggrieved over the judgment of conviction, the appellant has preferred the instant appeal. The case of the prosecution is that on 06.08.2010, at about 03.00 hours in the early morning, at the junction of Velayutham Street and Harris Road, Pudupettai, Egmore in Chennai, the appellant / accused with an intention to murder one Sekar assaulted him indiscriminately with a wooden log on his head, face and other parts of his body and thereby inflicted injuries upon him which resulted the death of the said Sekar later in the hospital on 10.08.2010 as the treatment given to him did not rescue him from death. Moreover, at the time of the occurrence, the appellant/accused also caused intimidation of the witnesses by uttering that he would kill them, if they tried to catch him.

3. In this connection, the daughter of the deceased namely, Suganya lodged complaint to the Inspector of Police, Egmore Police Station on 07.08.2010 at 15.00 hours and a case in Crime No.685 of 2010 was registered for the offence under section 307 and 506(ii) of IPC. Thereafter followed by the death of the injured Sekar, Inspector of Police, filed alteration report and thereby the appellant was charged for the offence under section 302 of IPC.

4. On the completion of the investigation, final report was filed before the learned XIV Metropolitan Magistrate, Egmore, Chennai and the same was taken on file as PRC No.204 of 2010. Subsequently, the accused was furnished copies under section 207 of Cr.P.C. Later, the case was committed under section 209 of Cr.P.C., to the file of the Principal Sessions Court, Chennai as the offence of 302 of IPC is exclusively triable by the sessions Court. Followed by the committal, the case was taken on file by the learned Principal Sessions Court, Chennai as Sessions Case No.576 of 2010 and thereafter the same was made over to the file of the learned I Additional Sessions Court, Chennai for trial and disposal. In order to prove the case, the prosecution examined PWs.1 to 15, marked Exhibits P1 to P12 and produced the Material Object M.O.1, the wooden log. At the end of the trial, the appellant/accused was found guilty as stated above.

5.The appellant/accused has filed the instant appeal along with the grounds as the judgment of the trial Court is contrary to law, weight of evidence and probabilities of the case. In the grounds of appeal, it is mainly focused that though the occurrence was said to have taken place by 03.00 a.m., on 06.08.2010, complaint was lodged by PW-1 by 15.00 hours on 07.08.2010 which prove that the case was foisted by the prosecution. Moreover, it is also canvassed that the material contradictions reflected in the records pertaining to the time of the occurrence have not been taken into consideration by the learned trial Court. Further, it was also pointed out that except PW-1 no other witness has seen the alleged occurrence and PW-1 is the daughter of the deceased which needs corroboration, but the learned trial Court has not appreciated this vital factor. Further, the evidence of PW-9 has disclosed about the availability of the blood stain, but the evidence of PW-15 has disclosed the non-availability of blood stain would create doubt over the prosecution case.

6.The scrutiny of the deposition of the prosecution witnesses would show that PW-1, Suganya is the daughter of the deceased; she would depose that she witnessed the occurrence. PW-2, namely Gopi, is working in the nearby broiler shop, who did not see the occurrence, but on hearing the alarm of PW-1 went to the scene of occurrence. PW-3, namely Indhra is brother-in-law of the accused, who has not given any evidence to support the prosecution case. PW-4, namely Selva Arasu is also one of the residents of the locality where the occurrence said to have taken place whose evidence is also not worthwhile in supporting the case. PW-5, namely Velankanni was treated as hostile witness. PW-6, namely Gunasundari, is the nearby resident and whose evidence with regard to the occurrence is only hearsay in nature. PW-7, namely Govindan, also a hearsay witness, PW-8, namely Senthilkumar, who is the Junior Assistant of the Electricity Department, he deposed about the availability of street light at the occurrence place. PW-9, namely, Malarkodi is the witness of Observation Mahazar Ex.P-2. PW-10, namely Veera is the recovery mahazar (Ex.P-3) witness related to the recovery of the wooden log. PW-11 namely, Dr.Sasidar, is the doctor, who treated the deceased first and issued Accident Register Ex.P-4. PW-12 is Dr.Geethanjali, who conducted the post-mortem. PW-13, namely Lazar, is the head-constable went to the Government Hospital after preliminary examination of the wife of the deceased namely Thilaka, he gave information to the police station. PW-14, namely Srirangan is the Special Sub-inspector of Police, who recorded the information given by PW-13, went to the

hospital but did not record any information regarding the assault of the injured. PW-15, namely Subramani, is the Inspector of police who registered the First Information Report, conducted the investigation and filed the Charge Sheet against the accused.

7.I heard M/s.A.Veeramarthni, learned counsel for the appellant and Mr.R.Sekar, learned Government Advocate (Criminal Side) for the respondent and perused the entire records.

8.The learned Counsel for the appellant would submit that the case of the prosecution has commenced its motion through Ex.P-1 the complaint statement given by PW1 Suganya who is the daughter of the deceased. According to her complaint, her father was assaulted by the accused Justin, who is her uncle, with wooden log caused injury upon her father and thereby caused his death subsequently. At this juncture, it is the submission of the learned counsel for the appellant that the perusal of Ex.P-5 would reveal no information whether the first information was received by PW-15 is oral or written from PW-1. Nowhere in the printed FIR, is stated about the nature of information.

9.Apart from that it is also pointed out that the Head Constable PW-13 though went to the hospital and enquired the wife of the deceased Akila, she was not examined as witness. Further, when the daughter of the deceased appeared before PW-15 and gave statement of complaint, it is not the case that on the basis of the complaint only the investigation was commenced. Further, no statement is recorded from the PW-1 at the hospital as she was not available when PW-14 went to the hospital. So, there is no cogent and reliable evidence is available in respect of the lodging of the complaint and the same would seriously affect the root of the prosecution case.

10.The learned counsel for the appellant further submitted that except the evidence of PW-1, no other eye witnesses are available to substantiate the prosecution case. The other prosecution witnesses in this regard are only hearsay in nature and reliance can be placed upon them. So, this Court once again carefully perused the evidence of PW-1 as she is the sole eye witness. It is revealed from the evidence of PW-1 that she saw the occurrence and raised alarm to protect her father. But no record would show that she either went to the hospital along with her father in the 108 ambulance. On the other hand Ex.P-5 would show that immediately after the occurrence she went to the

police station and lodged the complaint Ex.P-1. On the other hand, it is the evidence of PW-13 that he went to the police station followed by the information received from the out-post police station of the Government Hospital and the said information was received by 06.20 a.m., and went to the hospital by 13.00 hours. But the evidence of PW-15 would show that he received the information from PW-1 by 3'0' clock in the morning on 07.08.2010 and commenced his investigation. From the analysis of these evidence, the prosecution has miserably failed to prove that PW-1 was the eye witness. If at all she was the eye witness, she would have available in the hospital when PWs.13 and 14 went to the hospital. Moreover, her evidence does not firm in respect of the date of occurrence whether it was on the 7<sup>th</sup> day of August 2010 or 5<sup>th</sup> day of the same month and year.

11.It is the further submission of the learned counsel for the appellant that the evidence of PW-1 would show that the occurrence was witnessed by PW-2 Gopi and PW-3 Indira whereas when the evidence of PW-2 and 3 are perused, they did not say that they had witnessed the occurrence. So, the evidence of PW-1 is lacking of corroboration. Moreover, she is the interested witness and she is not firm as to the date of the occurrence. Apart from that she deposed that she accompanied with her injured father to hospital, but as per the evidence of PWs-13 and 14 she was not available at the hospital when they enquired the wife of the deceased namely Thilaga and the said Thilaga was not examined as witness. So, the surrounding circumstance over the evidence of PW-1 has not inspired confidence in the mind of this Court. So, no person could be punished on presumption as per the settled legal position in the criminal jurisprudence. However, the learned counsel for the appellant would further submit that the learned trial Court without considering these vital factors which are contradictory in nature, but recorded conviction which is absolutely not as per law and the intervention of this Hon'ble Court is required in the interest of justice.

12.Per contra, the learned Government Advocate (Criminal side) would submit that the prosecution has proved the case on hand with sufficient evidence and the well considered judgment of the learned trial Court shall no way be liable for any interference of this Hon'ble Court. Hence, he prays for the dismissal of the criminal appeal.

13.The case of the prosecution is totally resting upon the evidence of PW-1. However, the close appraisal of the evidence of PW-1 is in any manner inspire confidence to sustain charge of the prosecution. Inspite of the fact that she is not more educated, she could forget the date of the occurrence probably, but the total appraisal of her evidence is not ascertained her presence in the scene of occurrence. It is needless to say that PW-1 alone is the sole eye witness of the prosecution case. So, it is for the prosecution to prove its case with legally acceptable evidence. When the evidence of PW-1 is not absolutely supporting the prosecution case, this Court has no hesitation at all to hold that the prosecution has failed to prove the case with reliable evidence. Once, the evidence of the prosecution is found insufficient to hold the conviction of the learned trial Court then the judgment of the learned trial Court is necessarily liable for intervention in the interest of justice.

14.Therefore, viewing from in any angle, the aforesaid two aspects that is lack of corroboration and the probability of the absence of PW-1 in the place of occurrence would affect the prosecution case and therefore, the conviction recorded by the learned trial Court is liable to be set-aside and accordingly, set-aside.

15.In the result, this Criminal Appeal is allowed and the conviction recorded by the learned trial Court dated 12.02.2014 in S.C.No.576 of 2010, is set aside.

Sd/-  
Assistant Registrar(CCC)

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सत्यमेव जयते  
Sub Assistant Registrar

vs

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To

1. The The Inspector of Police,  
F-2, Egmore Police Station, Chennai-600 008.
2. The I Additional Sessions Judge (TADA),  
City Civil Court, Chennai.
3. The Superintendent,  
Central Prison, Puzhal,  
Chennai.

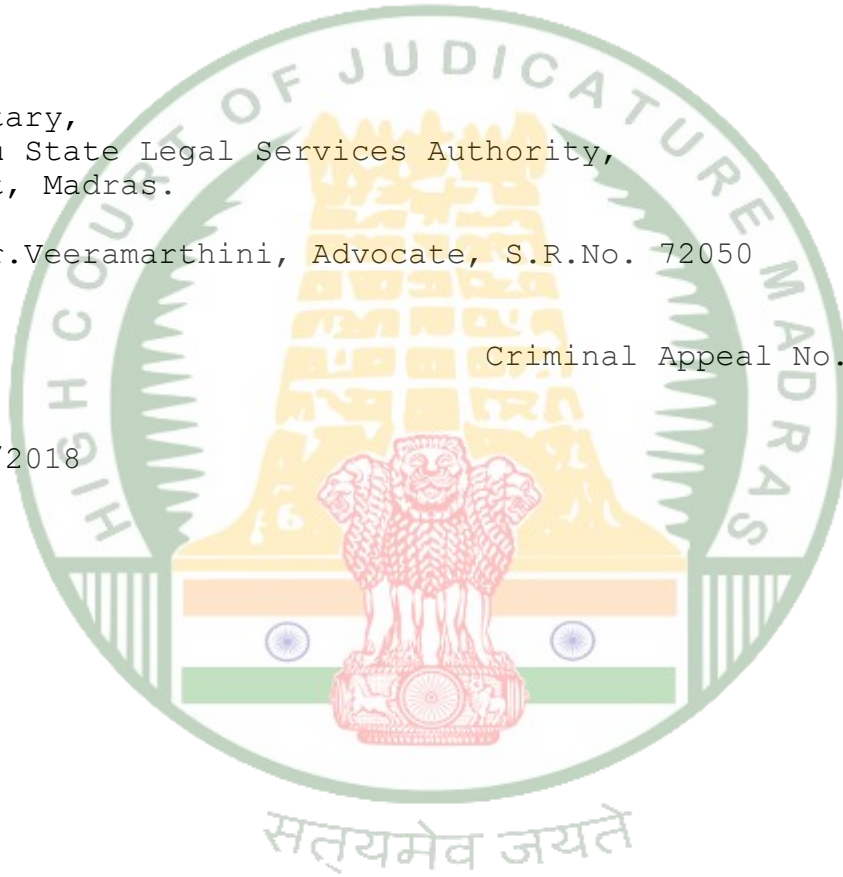
Copy to

The Secretary,  
Tamil Nadu State Legal Services Authority,  
High Court, Madras.

+1cc to Mr.Veeramarthini, Advocate, S.R.No. 72050

Criminal Appeal No.130 of 2014

GMR (CO)  
RMP 31/01/2018



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