

BAIL SLIP

The Appellant/1st Accused namely Velusamy was released on bail vide court order dt.20.05.2009 in MP.1/09 in CRL A.241/09

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.241 of 2009

Velusamy

... Appellant/1st Accused

Vs

State rep. By
The Inspector of Police,
Madathukulam Police Station,
(in charge) Thali Police Station,
Coimbatore District.
(Crime No.186/2008)

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment passed in S.C.No.325 of 2008 dated 28.04.2009 by the Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore.

For Appellant : Mr.S.Gunalan

For Respondent : Mrs.M.F.Shabana,
Gov. Adv. (Crl. Side)

JUDGEMENT

A1 in S.C.No.325 of 2008 on the file of the Additional District and Sessions Court, Fast Track Court-II, Coimbatore, is the appellant herein. Totally there are 3 accused. A1 stood charged for an offence under Section 302 IPC and A2 and A3 stood charged for an offence under Section 302 r/w. 109 IPC. The trial court, by judgment dated, 28.04.2009, convicted A1 under Section 304(ii) IPC and sentenced him to undergo rigorous

imprisonment for 7 years and imposed a fine of Rs.25,000/-, in default, to undergo simple imprisonment for one year. The trial court, acquitted A2 and A3 from all the charges. Challenging the above said conviction and sentence, the appellant/A1 is before this Court with this Criminal Appeal.

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

The deceased in this case one Chinnasamy was working as a coolie in the P.W.1's agricultural land. In the year 2017, P.W.1 had purchased an extent of 24 ½ acre of agricultural land from one Arumugapillai. The appellant/A1 was working as a farm servant under the above said Arumugapillai and after purchase of the land by P.W.1, the accused refused to vacate the premises and civil cases are pending between them. On 08.07.2008, at about 6.30 a.m., when the deceased was working in the field, all the accused came there and A1 attacked him with a wooden reaper and caused serious injuries. one Shanmugaraj, who belongs to the same village, informed the same to P.W.1 and P.W.1 rushed to the scene of occurrence and he took the deceased to the Government Hospital, Udumalaipet, where he was referred to the Government Hospital, Coimbatore. Since the condition of the deceased was getting worse, he was admitted in a private hospital, Coimbatore and on 10.07.2008, at about 5.45 a.m., the deceased succumbed to injuries.

3. While the deceased was taking treatment in the Government Medical College Hospital, Coimbatore, on receipt of a memo from the Government Hospital, Udumalaipettai, P.W.13, Head Constable, attached to the respondent police, went to the Government Medical College Hospital, Coimbatore and recorded the statement of the deceased at about 3.00 a.m., on 09.07.2008 and based on the said statement, P.W.13 registered a case in Crime No.186/2008 for the offences under Sections 294(b), 324 and 506 (ii) IPC and sent the First Information Report, Ex.P.9 to the higher officials and to the judicial magistrate concerned.

4. P.W.14, Sub-Inspector of Police, on receipt of the First Information Report, commenced investigation and proceeded to the scene of occurrence and prepared an observation mahazar, Ex.P.1 and drew a rough sketch, Ex.P.10, in the presence of the witnesses. Thereafter, on 09.07.2008, near the bus-stand of Kurichi Kottai, he arrested A3. Subsequently, on 10.07.2008, the deceased succumbed to injuries. Hence, he altered the charge into 294(b), 302 and 506(ii) IPC and the alteration report is Ex.P.11, and he sent the same to P.W.15. P.W.15, Inspector of police, on receipt of the alteration report, continued the investigation, and conducted inquest on the dead body of the deceased in the presence of the panchayathars. He recorded the statement of other witnesses and handed over the

investigation to P.W.16.

5. P.W.16, Inspector of police, attached to the respondent police, continued the investigation and he took A1 for police custody, who has already surrendered before the Judicial Magistrate, Udumalaipet and A1 has voluntarily given a confession, and based on the disclosure statement, P.W.16 recovered wooden reaper(M.O.1).

6. In the mean time, P.W.11, Doctor, working in the Government Medical College Hospital, conducted postmortem on the dead body of the deceased and gave a postmortem certificate, Ex.P.6 and he opined that the deceased died due to the injuries sustained by him in his stomach. Then, P.W.16 after recording the statements of the doctor, who conducted postmortem and on completion of investigation he laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove its case, on the side of the prosecution, as many as 17 witnesses were examined and 14 documents were exhibited, besides one material object were marked.

8. Out of the witness examined, P.W.1 is the owner of the land, where the deceased was working. According to him, he has purchased the property from one Arumugavel Pillai in the year 2007 and A1 was working as a farmer servant under Arumugavel Pillai and staying in the said land. After purchase, P.W.1 requested A1 to vacate the premises. Since A1 refused to vacate the premises, P.W.1 filed a civil suit against him and the same was pending. The deceased was working as a coolie in the agricultural land belonging to P.W.1. On the date of occurrence, all the accused attacked the deceased with wooden reaper and caused serious injuries to him, on coming to know about the occurrence, P.W.1 took the deceased to the Government Hospital, Udumalaipet, there, he was referred to Government Medical College Hospital, Coimbatore. Since the condition of the deceased became worse, he was taken to Ramakrishna Hospital, where the deceased succumbed to injuries.

9. P.Ws.2 and 3 have turned hostile. P.W.4 is the witness to the Observation mahazar. P.W.5 is the father of the deceased and he is only a hearsay witness. According to him, after coming to know about the occurrence, he went to the hospital and the deceased told him that all the three accused attacked him with a wooden reaper. P.W.6 is the daughter of the deceased. She has deposed that after hearing about the occurrence, she went to the Government Hospital, Coimbatore and saw her father.

10. P.W.7, Doctor, who admitted the deceased in the Government Hospital, Udumalpet has deposed that at the time of admission, the deceased informed him that 5 persons attacked him with wooden logs and he also found alcoholic smell emanating from the deceased. P.W.8, Doctor, working in the Ramakrishna Hospital, Coimbatore, treated the deceased and after the death of the deceased he has given death memo to the respondent police. P.W.9, is the person who was working in the field where the deceased was working. Even though in his chief-examination, P.W.9 has stated that he saw all the 3 accused attacking the deceased, in his cross examination he has stated that he reached the place of occurrence only after getting information about the occurrence. P.W.10 is a witness to the arrest and confession statement given by A1 and also recovery of the Wooden Reaper(M.O.1). P.W.11, Doctor, working in the Government Medical College Hospital, Coimbatore, conducted postmortem/autopsy on the dead body of the deceased and gave a report. He also opined that the deceased appears to have died of the injuries sustained by him.

11. P.W.12, Head Constable, who accompanied the dead body of the deceased to the Government Hospital, Coimbatore, identified the same for postmortem to the doctor. P.W.13, Head Constable, on receipt of intimation, went to the Government Medical College Hospital, Coimbatore, and recorded the statement of the deceased and registered the First Information Report. P.W.14, Sub-Inspector of Police, commenced investigation and after the death of the deceased, he altered the charge into 302 IPC and handed over the investigation to the higher officials. P.W.15, took the case for further investigation and conducted inquest on the dead body of the deceased in the presence of the panchayathars and then, he handed over the investigation to P.W.16. P.W.16, Inspector of Police, arrested the accused and recorded the statement of the Doctor, who conducted postmortem on the dead body of the deceased and other witnesses and after completion of investigation, he laid charge sheet against the accused.

12. P.W.17, is an eye-witness to the occurrence. According to him on 08.07.2008, at about 6.00 p.m., all the 3 accused quarreled with the deceased and A1 attacked the deceased with a wooden reaper and the deceased shouted and he, along with others rushed there. But, in his cross examination, he has admitted that only P.W.1 took him to the court for giving evidence and also stated that he was working in the field and only after hearing the noise, he reached the scene of occurrence. In the meantime all the accused ran away from the scene of occurrence.

13. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness or mark any documents.

14. Having considered all the above materials, the trial Court convicted the appellant/A1 as stated in the first paragraph of this judgment and acquitted A2 and A3. Challenging the same, the appellant/A1 is before this Court with this Criminal Appeal.

15. Mr. S. Gunalan, learned counsel appearing for the appellant would submit that there is no eye-witness to the occurrence. P.W.9 and 17, who claims to have seen the occurrence, P.W.9 turned hostile and P.W.17 has deposed in his cross-examination that when he reached the scene, all the 3 accused ran away from the scene of occurrence. Hence, P.W.17 may not be taken as an eye-witness to the occurrence and the trial court only convicted A1 on presumption without any legal evidence and acquitted A2 and A3 and he sought for acquittal of the appellant.

16. Per contra, Mrs. M. F. Shabona, learned Government Advocate (Crl. Side) appearing for the State would submit that even though P.W.9 turned hostile, during the cross examination by the Additional Public Prosecutor, he has stated that all the three accused attacked the deceased and P.W.17 also categorically stated that A1 attacked the deceased with a wooden reaper and two other accused also attacked him with a wooden reaper and hence, the trial court rightly convicted the appellant/A1 and sought for dismissal of the appeal.

17. I have considered the rival submissions and also perused the records, carefully.

18. According to P.W.1, he came to know about the occurrence, after P.W.9 informed him about the same, he rushed to the scene and took the deceased to the Government Hospital, Udumalaipet. P.W.7, Doctor, who admitted the deceased in the Government Hospital, Udumalalaipet, has deposed that at the time of admission, the deceased has told him that 5 known persons attacked him. Then, the deceased was taken to the Government Medical College Hospital, Coimbatore, where he has given a statement implicating only 3 persons. P.W.9 and P.W.17 are said to be eye-witnesses to the occurrence. P.W.9 even though has stated in the chief examination he saw the occurrence, in his cross examination he has stated that the deceased fell down in the cart-track, and he was treated as hostile by the prosecution. Another eye-witness, P.W.17 in his cross

examination has stated that only P.W.1 has took him to the court to give evidence and further stated that there was a quarrel between the deceased and the accused and at that time A3 came there and he only heard the noise, and when he rushed there, all the 3 accused were ran away from the scene of occurrence, hence, he also cannot be considered as an eye-witness to the occurrence. Considering all the above materials and partly disbelieving the evidence, the trial court has acquitted A2 and A3 but convicted only A1 that to under Section 304(ii) IPC.

19. Considering all the above material, I find, there is no eye-witness to the occurrence and there is no other circumstance available to establish the guilt of the accused. In the above circumstances, I am of the considered view that the prosecution has failed to prove the guilt of the appellant/A1 beyond any reasonable doubt. Hence, he is entitled for acquittal.

20. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant/A1 in S.C.No.325/2008 dated 28.04.2009 is set aside and the appellant/A1 is acquitted. Fine amount, if any, paid by the appellant, shall be refunded to him. Bail bond, if any, executed by him, shall stand cancelled.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

mrp

To

1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
FAST TRACK COURT NO.II, COIMBATORE.

2 THE INSPECTOR OF POLICE
MADATHUKULAM POLICE STATION IN
CHARGE THALI POLICE STATION
COIMBATORE DISTRICT

3 THE JUDICIAL MAGISTRATE NO.II
UDUMALPET.

4 THE CHIEF JUDICIAL MAGISTRATE, COIMBATORE.

5 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

6 THE SUPERINTENDENT,
OF POLICE UDUMALPET.

7 THE DISTRICT COLLECTOR
COIMBATORE.

8 THE DIRECTOR GENERAL OF
POLICE MYLAPORE.

9 THE PUBLIC PROSECUTOR,
HIGH COURT, MADRAS.

10 THE SECTION OFFICER,
CRIMINAL SECTION, HIGH COURT,
CHENNAI 104

+1cc to Mr.S.GUNALAN Advocate, S.R.No. 4218

Cr1.A.No.241 of 2009

PVS (CO)
TR(06/12/2017)



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