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Bail Slip

That the appellant herein/Accused viz Arunachalam was directed to be released on bail as per the order of this court dated 05.01.2007 and made in CrI.M.P. No. 1/2007 in CrI.A. 21/2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 13.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.21 of 2007

Arunachalam

... Appellant

vs.

The State, rep. by
The Inspector of Police,
Attayampatty Police Station,
Salem District
(Crime No.274 of 2005)

... Respondent

Criminal Appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 17.11.2006 passed by the learned Principal Sessions Judge, Salem in S.C.No.228 of 2006.

For Appellants : Mr.S.Ashokumar

For Respondent : Mr.R.Prathapkumar
Additional Government Pleader

JUDGMENT

The sole accused, in Sessions Case No.228 of 2006, on the file of the learned Principal Sessions Judge (i/c) I Additional Sessions Judge, Salem, is the appellant herein. He stood charged for offence under Section 302 IPC. The trial Court, by judgment dated 17.11.2006, convicted the accused for the offence under Section 304(i) IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for one year. Challenging the above said conviction and sentence, the accused is before this Court with this appeal.



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

(i) The deceased in this case one Manickam and the accused are belongs to same village. On 23.08.2005 at about 7.00 p.m., the deceased found a cock died near a manual bit in front of the deceased house. While he was enquiring about the same, the accused came there and identified the cock, as it is belonged to him. and blamed the deceased that he killed it, then there was a quarrel between the accused and deceased, at that time, the accused stabbed the deceased with knife in the chest and below the hip, and ran away from the scene of occurrence, while he was running he fell down and sustained minor injuries. Immediately, P.W.1, a close relative of the deceased along with another person took him to the Government Mohan Kumaramangalam Hospital, Salem. P.W.5, the Doctor, working in the Government Hospital, Salem admitted the deceased and found a stab injury in the chest and he admitted him in the emergency ward, and send a intimation to the respondent police station.

(ii) P.W.9, the Sub Inspector of Police working in the respondent police station, on receipt of the information from the Government Hospital, Salem, proceeded to the Hospital and he recorded the statement of the deceased, based on the said statement, registered a case in Crime No.274 of 2005 for the offence under Section 324 IPC, prepared first information report[Ex.P14] and sent the same to the jurisdictional Judicial Magistrate Court and copies of the same to the higher officials. Then, on 24.08.2005 at about 6.30 a.m., he proceeded to the scene of occurrence, prepared Observation Mahazar[Ex.P1], Rough Sketch [Ex.P15] in the presence of witnesses. He examined the witnesses and recorded their statements. Thereafter, on 24/25.08.2005 at about 1.30 a.m., the deceased succumbed injuries. On receipt of death information from the Hospital, he altered the first information report for the offence under Section 302 IPC the altered first information report is [Ex.P17] and sent the same to the Judicial Magistrate Court and copies of the same to the higher officials.

(iii) P.W.10, the Inspector of Police, working in the respondent police station, on receipt of the altered first information report, commenced the investigation, again visited the scene of occurrence, prepared observation mahazar and rough sketch. On 25.08.2006 at about 7.30 a.m., he conducted inquest over the dead body of the deceased in the presence of panchayatars and prepared inquest report[Ex.P18]. Then, he sent the dead body to the Government Hospital for postmortem autopsy through a Head Constable.

(iv) P.W.6, the Doctor, working in the Government Mohan Kumaramangalam Medical College Hospital, conducted postmortem autopsy on the dead body of the deceased and found the following injuries:-

(1) A structured stab injury was present on outer aspect of the chest wall on right



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side over the anterior axillary line situated 4 cm below and 9 cm lateral to right nipple measuring 4 x 1cms. On removal of sutures. The injury was found cavity deep, on further dissection. A stab injury was seen on lateral aspect of right lung 3.5cm x 1 x 4cm piercing lung and emerging through the under surface of right lung piercing diaphragm 3 cms sutured with vicryl piercing superior aspect of right lobe or liver 4 x 1 cm sutured with omentum sutures intact. No oozing stab wound track was 7cms length and found piercing to the under surface of liver 3.5cm x 1 cm piercing the right kidney on its upper aspect 3.5cm x 1 x 2.5 cm. Stab injury was directed inwards and obliquely downwards and wound track was found tope infected .

(2) A surgical drainage wound present over the outer lateral chest wall on right 6th intercostal space in the midaxillary line.

(3) A vertical sutured wound present on middle of abdomen 28 cm x 2 x cavity deep sutures intact(surgical).

(4) A surgical wound was present over right flank 2 x 1 x cavity deep.(All the above stab wounds were antemortem).

He opined that the deceased died due to effects of stab injury to lung, liver and kidney and he issued postmortem certificate [Ex.P4].

(v) Thereafter, on 26.08.2005 at about 7.30 a.m., P.W.10 arrested the accused and on such arrest, he voluntarily given confession and based on the disclosure statement, he recovered a knife [M.O.1] used in the occurrence. In the meantime, since the accused also sustained head injuries in the occurrence, he has also given a complaint against the deceased and the same was also registered in Crime No.277 of 2005, for the offence under Sections 294(b) and 323 of IPC. P.W.10 sent the accused for further treatment in the Government Hospital, Salem. He examined the Doctor, who conducted postmortem autopsy and other witnesses and recorded their statements and after completion of investigation, he filed the charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 10 witnesses, exhibited 21 documents and 3 material objects were marked.

4. Out of the said witnesses examined, P.W.1 is the person who closely related to the deceased. He is an eye witness to the occurrence. According to him, on the date of occurrence at



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about 7.00 p.m., the deceased found a dead cock near the scene of occurrence, at the time the accused came there and told the deceased that the cock belongs to him and he blamed the deceased that he only killed the cock, due to the same there was a quarrel between them near a T.V. Room. At that time, the accused attacked the deceased with knife below the hip, then the accused ran away from the occurrence place, and while he was running, he fell down and sustained injuries on his head. Immediately, P.W.1 and his sister-in-law took the deceased to the Government Hospital, Salem. Later, the deceased died in the Hospital. P.W.2 is a child witness and she is a neighbour of the deceased and related to him. According to him, the deceased enquired about a dead cock, due to the same, there was a quarrel between the accused and deceased, and the accused scolded the deceased with filthy language, and abused him then the accused attacked the deceased with knife and ran away. She has identified M.O.1 knife. P.W.3, working as Foreman in TamilNadu Electricity Board, Vembadithalam Office. According to him, on the date of occurrence in the scene of occurrence there was no power cut. P.W.4 is the witness to the observation mahazar. P.W.5 is Doctor working in the Government Hospital Salem. He admitted the deceased and issued Accident Register and he found stab injury in his chest. P.W.6, the Doctor working in the Government Hospital Salem. He conducted post mortem autopsy on the dead body of the deceased and given postmortem certificate. P.W.7 was working as a Village Administrative Officer. He spoke about the arrest, confession statement and recovery of M.O.1 knife. P.W.8 was working as Head Clerk in Judicial Magistrate No.IV, Salem. He sent the blood stained material object for chemical examination. P.W.9 is the Sub Inspector of Police working in the respondent Police Station. On receipt of the intimation from the Hospital, he registered a case in Crime No.274 of 2005 for the offence under Section 324 of IPC and prepared first information report. He commenced the investigation, went to the scene of occurrence, prepared observation mahazar and rough sketch, examined the witnesses and recorded their statements. On 24.08.2005, the deceased succumbed injuries, he altered the first information report and handed over the case to his higher officials. P.W.10, the Inspector of Police working in the respondent police station, on receipt of the case records, continued the investigation, examined the witnesses and recorded their statements, arrested the accused, recovered the material objects, sent the accused to the judicial custody, examined the Doctor, who conducted postmortem autopsy and other witnesses and recorded their statements and after completion of investigation, he laid the charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused examined a Doctor, who has given treatment to the accused as D.W.1 and intimation



Ex.D2, Case sheet Ex.D3 and wound certificate Ex.D4. He also examined one Head Constable as D.W.2.

6. Considering the above materials, the Trial Court convicted and sentenced the accused for the offences as stated in the first paragraph of this judgment. Challenging the above said conviction and sentence, the accused is before this Court.

7. I have heard Mr.S.Ashok Kumar, the learned counsel appearing for the appellant and Mr.R.Pratap Kumar, the learned Additional Government Pleader, appearing for the State and I have also perused the records carefully.

8. The learned counsel appearing for the appellant would submit that the prosecution has deliberately suppressed the origin and genesis of the case. Even though the accused sustained head injury, he was admitted in the hospital, and given a complaint and based on the same, a crime has been registered. But, the prosecution has failed to explain the injury sustained by the accused. Even in the Chief examination, P.Ws.1 and 2 says that the accused fell down and sustained injury, but in their cross examination they denied the same. Apart from that P.Ws.1 and 2 are not eye witness to the occurrence and they are closely related to the deceased and they are interested witnesses. The accused complaint in Crime No.277 of 2005 for the offence under Sections 294(b) and 323 IPC, and the copy of the first information report was only marked. Even though the Investigation Officer stated in his evidence that he has referred the complaint as mistake of fact, and copy of the final report has not been marked before the trial Court. Further, the prosecution did not prove the motive. P.W.1, the eye witness to the occurrence, says that the occurrence took place due to the quarrel between the accused and deceased and due to the same, the accused attacked the deceased with knife. P.W.2 also an eye witness to the occurrence deposed that the accused has attacked the deceased for some other reasons. Hence, the motive also not proved by the prosecution and he prays for allowing the appeal.

9. Per contra, the Additional Government Pleader appearing for the respondent would contend that P.Ws.1 and 2 are eye witnesses to the occurrence and the occurrence took place near the house of the deceased. P.W.1 is a close relative and P.W.2 is neighbour of the deceased, hence their presence in the scene of occurrence is natural, and their evidence is also consistent that there was a quarrel between the accused and deceased, and due to the same, the accused attacked the deceased with knife and caused injuries. The injuries sustained by the accused also clearly established by the prosecution that after the occurrence, when the accused run away from the scene of occurrence, fell down and sustained injuries on his head. Apart

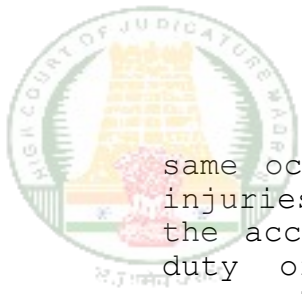


from that the accused has given complaint and based on the same a crime has been registered and after investigation, the case was closed as mistake of fact. Further, the evidence of eye witnesses, namely, P.Ws.1 and 2 duly corroborated by the medical evidence. P.W.6, the Doctor clearly stated that the stab injury has penetrated in the lungs, kidney and liver. Considering all those materials, the trial Court rightly convicted the accused under Section 304(i) IPC as the occurrence took place, due to a wordy quarrel between the accused and deceased, and due to sudden provocation, the accused has attacked the deceased with knife, hence, there is no reason to interfere with the well consider judgment of the trial Court.

10. I have considered the rival submissions and perused the materials.

11. The first and foremost contention of the learned counsel appearing for the appellant that the prosecution has suppressed the origin and genesis of the case. It is the admitted case that the accused also sustained injuries on his head in the same incident and he has also given complaint against the deceased before the respondent police station and based on his complaint, a case was registered in Crime No.277 of 2005 for the offence under Section 294(b) and 323 IPC. Even though, P.W.10, the Inspector of Police has stated that the complaint has been investigated and closed as mistake of fact, but the final report was not filed before the Judicial Magistrate Court and the same has not been marked before the trial Court during trial, and only the first information report has been marked. P.Ws.1 and 2, who are the eye witness to the occurrence, even though they have stated in their chief examination that after the occurrence, while the accused was running away from the scene occurrence, fell down and sustained injuries on his head. But, in their cross examination, they have clearly admitted that they have not stated so during the investigation. Hence, it is only an improvement during the trial.

12. In order to prove his case, the accused examined a Doctor as D.W.1, the Doctor was working in a private hospital, has given treatment to the accused. He has stated that on 23.08.2005 at about 8.00 p.m., the accused came to the Hospital with head injury and inform him that at about 7.30 p.m., he was attacked by a known person with stone and he has admitted the accused as in patient and he issued wound certificate and the same was marked as Ex.D4. The intimation given to police is marked as Ex.D2, it has been stated that the accused sustained lacerated injury in his left side frontal region of scalp, wound is bleedings. Further, in the intimation also it is stated that he was attacked by a known person with stone. The discharge summary was marked as Ex.D3. From those evidence, it could be seen that the accused has sustained injuries on his head in the



same occurrence, but the prosecution has failed to explain the injuries sustained by the accused. It is settled law that when the accused sustained injury in the same occurrence, it is the duty of the prosecution to explain the injuries, if the prosecution failed to explain the injuries sustained by the accused, it will create a serious doubt in the prosecution case. The Hon'ble Supreme Court in LAKSHMI SINGH AND OTHERS Vs. STATE OF BIHAR, reported in 1076(4) SCC 394, has held as follows:-

"It seems to us that in a murder case, the non-explanation of the injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw the following inferences:

(1) That the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version;

(2) that the witnesses who have denied the presence of the injuries on the person of the accused are lying on a most material point and therefore their evidence is unreliable;

(3) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

The omission on the part of the prosecution to explain the injuries on the person of the accused assumes much greater importance where the evidence consists of interested or inimical witnesses or where the defence gives a version which competes in probability with that of the prosecution one."

13. In the instant case, the accused clearly established that, he has sustained injuries on his head in the same occurrence and the prosecution failed to give proper explanation for the injuries sustained by the accused, which creates a doubt in the prosecution case. In the above circumstances, this Court is of the considered view that the prosecution has suppressed the origin and genesis of the case. Hence the benefit of doubt should be given in favour of the accused and the accused is entitled for acquittal.



14. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellants/accused in S.C.No.228 of 2006 dated 17.11.2006 on the file of the learned Principal Sessions Judge (i/c) (I Additional Sessions Judge) Salem is set aside and the appellant/accused is acquitted of the charge levelled against him. Bail bond, if any, executed by him shall stand cancelled and the fine amounts paid by him is ordered to be refunded forthwith.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

- 1.The Principal Sessions Judge,
Salem.
 2. The Judicial Magistrate No.IV
Salem.
 3. Do Thro The Chief Judicial Magistrate
Salem.
 4. The Superintendent, Central Prison
Salem.
 - 5.The Inspector of Police,
Attayampatty Police Station,
Salem District
 - 6.The Public Prosecutor,
High Court, Madras.
- +1 CC to Mr.M. Rajkumar, Advocate sr 88694.

Crl.A.No.21 of 2007

MP(CO)
SP(08/06/2018)