

BAIL SLIP

The Petitioner/Appellant/Accused namely Govindan was directed to be released on bail on the file of this Hon'ble Court dated 08.05.2008 made in Crl.M.P.Nos.1 & 2 of 2008 in Crl.A.No.331 of 2008 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 23.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.331 of 2008

Govindan

... Appellant/Accused

Vs.

State rep. By
The Inspector of Police,
Omalur Police Station,
Omalur.
(Crime No.585 of 2005)

... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 21.01.2008 passed by the learned Principal Sessions Judge, Salem, in S.C.No.125 of 2007.

For Appellants : Mr.M.Deivanandam

For Respondent : Mrs.M.F.Shabana
Government Advocate(Crl. Side)

JUDGMENT

The sole accused, in Sessions Case No.125 of 2007, on the file of the learned Principal Sessions Judge, Salem, is appellant herein. He stood charged for the offence under Section 302 IPC. The Trial Court, after trial, by Judgment dated 21.01.2008, convicted the accused under Section 304(ii) IPC and sentenced him to undergo seven years rigorous imprisonment and imposed a fine of Rs.2000/- in default to undergo rigorous imprisonment for one year. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this Criminal Appeal.

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

(i) The deceased in this case one Ramer is brother of P.W.1. On 14.08.2005 at about 10.00 p.m., the deceased, accused and one Selvaraj were playing cards. At that time, the accused demanded money from the deceased for buying liquor and quarrelled with him. During the quarrel, the deceased attacked

the accused with wooden log. At that time, the deceased took a Aruval, which was found near the scene of occurrence and attacked him on the head and ran away. P.W.3, who witnessed the occurrence, on the next day morning informed the same to P.W.1, the brother of the deceased. Then, P.W.1 went to the police station and gave a complaint.

(ii) P.W.14, the Sub Inspector of Police, working in the respondent police station, on receipt of the complaint from P.W.1, he registered a case in Crime No.585 of 2005, for the offence under Section 302 IPC. He prepared the First Information Report[EX.P1] and sent the same to the Judicial Magistrate Court and copies of the same to the higher officials.

(iii) P.W.16, the Inspector of Police, working in the respondent police station, on receipt of the first information report, commenced the investigation, proceeded to the scene of occurrence, prepared an Observation Mahazar[Ex.P6], rough sketch [Ex.P21]. Thereafter, he conducted inquest over the dead body in the presence of panchayators and prepared Inquest Report[Ex.P22], and then sent the dead body to the Government Hospital for postmortem autopsy. He examined the witnesses and recorded their statements.

(iv) P.W.9, the Doctor, working in the Government Mohan Kumaramangalam College Hospital, Salem, conducted postmortem autopsy on the dead body of the deceased and found the following injuries:-

INJURIES:

- (1) A gaping cut injury present on left temporal region and left ear lobe 7 x 2 cm bone depth.
- (2) Cut fracture of left temporal bone 5 cm in length present.
- (3) Sub dural and sub arachnoid haemorrhages present over both cerebral hemispheres (antemortem).

He is of the opinion that the deceased appears to have died due to head injuries. He issued postmortem certificate (Ex.P13).

(v) P.W.16, continued the investigation, on 14.08.2005 at about 12.30 p.m., he arrested the accused and on such arrest, he voluntarily given confession and based on the disclosure statement, P.W.16 seized M.O.2 Aruval in the presence of witnesses. Then, he sent the accused to the Government Hospital for taking treatment. Thereafter, he handed over the investigation to P.W.17 his successor.

(vi) P.W.17, 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 and after completion of investigation, he laid 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 17 witnesses, exhibited 22 documents and 9 material objects were marked.

4. Out of the above said witnesses examined, P.W.1 is the brother of the deceased. According to him, after the occurrence, on the next day morning P.W.3 informed him that the accused attacked the deceased with aruval, and he died and thereafter he has given complaint before the respondent police. P.W.2 is the resident of Thekkampatti. According to him, he is known to the accused and deceased. On the date of occurrence at about 9.30 p.m., there was a quarrel between the accused and deceased and then he left for his house. He further stated that on the next day morning, he came to know that the deceased died. P.W.3 is the eye witness to the occurrence. According to him, on the date of occurrence at about 10.00 p.m., there was a quarrel between the accused and deceased, the accused demanded money from the deceased for purchasing liquor, the deceased refused, at that time the deceased attacked the accused with a wooden log, thereafter, the accused attacked the deceased with aruval, then he ran away. On the next day morning he informed the same to P.W.1. P.W.4 is the hearsay evidence. P.W.5 a person known to the deceased, according to him, he saw the dead body and informed the same to P.W.1. P.W.6 turned hostile. P.W.7 is Village Administrative Officer. He is witnesses to the observation mahazar, recovery of M.O.2 Aruval and arrest of the accused. P.W.8 is the learned Judicial Magistrate working at Mettur. He recorded the statement of the witnesses under Section 164 Cr.P.C. P.W.9, the Assistant Surgeon, working in the Government Mohan Kumaramangalam College Hospital, Salem. He conducted postmortem autopsy on the dead body of the deceased on 15.08.2005, and issued Postmortem Certificate and he was of the opinion that the deceased appears to have died due to head injuries. P.W.10, the Head Clerk working in the Judicial Magistrate Court, Aathur. He sent the material objects to the Forensic Department for chemical examination. P.W.11 is the Head Constable working in the respondent police station, he submitted the first information report to the Judicial Magistrate Court. P.W.12 a Head Constable working in the respondent police station, he identified the dead body for postmortem autopsy and after postmortem, he recovered the material objects and then handed over the dead body to the relatives of the deceased. P.W.13 is the Head Constable working in the respondent police station. He took the accused to the Government Hospital and admitted him for taking treatment. P.W.14, is the Sub Inspector of Police working in the respondent police station, on receipt of complaint from P.W.1, he registered a case and prepared first information report and sent the same to the Judicial Magistrate Court and copies of the same to the higher officials. P.W.15, the Doctor, working in the Government Hospital, Omalur. He examined the accused and found some injuries on him and he has given report that all the injuries are simple injuries. P.W.16 is the Inspector of Police working in the respondent police station. According to him, on receipt of the first information report, commenced the investigation, proceeded to the scene of occurrence, prepared observation mahazar, rough sketch,

examined the witnesses and recorded their statements, arrested the accused and remanded him to judicial custody, recovered the material objects and handed over the investigation to P.W.17 his successor. P.W.17 is the Inspector of Police working in the respondent police station, continued the investigation, he examined the witnesses and recorded their statements and after completion of investigation, he laid 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 did not examine any witness and no document was marked on their side.

6. Having considered all the above, the Trial Court convicted and sentenced the accused for the offences as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused is before this Court with this appeal.

7. I have heard Mr.M.Deivanandam, learned counsel appearing for the appellant and Mrs.M.F.Shabana, learned Government Advocate(Crl. Side) appearing for the State and I have also perused the records carefully.

8. P.W.3 is the sole eye witness to the occurrence. According to him, on the date of occurrence, there was a quarrel between the accused and deceased, the accused demanded money from the deceased for purchasing liquor and thereafter the accused attacked him with Aruval available near the scene of occurrence. Except the evidence of P.W.3, there is no other evidence is available to support the prosecution case. P.W.6, the another witness, in front of his shop, the occurrence said to have taken place. But, he turned hostile.

9. Now, we have considered the conduct of P.W.3 who was sole eye witness to the occurrence. According to him, the occurrence had taken place at about 10.00 p.m., and after the occurrence, he left the scene of occurrence and stayed in his relatives house, and he did not inform the same to anybody else, and only on the next day morning he informed the same to the relatives of the deceased. It is unbelievable that after witnessing a murder, a person who is very well known to the deceased and his family kept quiet and inform the same only on the next day. Hence, the above conduct of P.W.3 is created doubt regarding his presence in the scene of occurrence, and it is highly unsafe to rely upon the solitary testimony of P.W.3 to convict the appellant, in absence of any other evidence to corroborate him. Even though, some injuries were found on the accused, but absolutely there is no investigation regarding the same. In the above circumstances, I am of the considered view that the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt. Hence, the accused/appellant is entitled for acquittal.

10. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the Appellant in S.C.No.125 of 2007 dated 21.01.2008 on the file of the learned Principal Sessions Judge, Salem is set aside and the appellant/accused is acquitted from the charge levelled against him and bail bond, if any, executed by him shall stand cancelled and the fine amount, if any, paid by him is ordered to be refunded forthwith.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The District Munsif Cum Judicial Magistrate,
Omalur.

2.The Chief Judicial Magistrate,
Salem.

3.The Superintendent,
Central Prison,
Salem.

4.The Principal Sessions Judge,
Salem.

5.The Inspector of Police,
Omalur Police Station,
Omalur.

6.The District Collector,
Salem.

7.The Director General of Police,
Mylapore, Chennai 04.

8.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Deivanandam, Advocate, S.R.No.4517

CrI.A.No.331 of 2008

RV(CO)
CA(01/11/2017)