

BAIL SLIP

The Petitioner/Accused/Appellant namely Dayalan, S/o.Govinda Padayachi was directed to be released on bail as per the Order of this Court dated 12.12.2008 in CrI.M.P.No.1 of 2008 in CrI.A.No.810 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

CrI.A.No.810 of 2008

Dayalan ... Appellant/Accused

Vs.

The State,by
The Inspector of Police,
Thittakudi Police Station.
Cuddalore District.
(Crime No.30 of 2008) ... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 04.09.2008 passed by the learned Additional District and Sessions Judge, (Fast Track Court No.III), Vridhachalam, Cuddalore, in S.C.No.181 of 2008.

For Appellant : Mr.T.R.Ravi

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

JUDGMENT

The sole accused, in Sessions Case No.181 of 2008, on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.III), Vridhachalam, is the appellant herein. He stood charged for offence under Section 302 of IPC. The trial Court, after trial, by judgement dated 04.09.2008, convicted the appellant/ accused for the offence under Section 304(ii) IPC., and sentenced him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.20,000/- in default, to undergo rigorous imprisonment for six months. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

(i) The deceased in this case one Nazeer is the husband of P.W.1. On 17.01.2008 at about 7.45.p.m., Pongal festival

was conducted by the villagers, in which, the son of the deceased, namely, P.W.2, participated in a singing competition, and won first prize. The deceased also went there, while he was coming back to his house, there was a wordy quarrel between the accused and the deceased, during the quarrel, the accused attacked the deceased with his fist and pushed him down, and the deceased fell down, then the accused kicked him on his chest and hip indiscriminately. At that time, P.W.1, the wife of the accused and P.W.2, the son of the accused came to the scene of occurrence and took him to their house. Since the condition of the deceased getting worst, on 19.01.2008, they took him to the Government Hospital, Cuddalore, where, he was referred to the Government Hospital, Pondicherry.

(ii) P.W.11, a in-charge Sub Inspector of Police, working in the respondent police Station. On 21.01.2008, on receipt of the information from the Government Hospital, Pondicherry, proceeded to the Hospital, since the deceased was not in a position to give statement, he obtained a statement [Ex.P1] from P.W.1 and based on her statement, he registered a case in Crime No.30.of 2008 for the offence under Sections 341, 323 and 506(i) of IPC and prepared a first information report [Ex.P5], and sent the same to the Judicial Magistrate Court, and copies of the same to the higher officials. Then, he proceeded to the scene of occurrence, prepared an observation mahazar [Ex.P3], rough sketch [Ex.P6], examined the witnesses and recorded their statements. On the same day, at about 8.30 a.m., P.W.11 arrested the accused and sent him to judicial custody. Subsequently, on 24.01.2008, the deceased succumbed injuries and on receipt of the death memo, he altered the offence under Section 302 of IPC and prepared an alteration report [Ex.P8] and sent the same to the Judicial Magistrate Court.

(iii) P.W.12, the Inspector of Police, working in the respondent police station, on receipt of the altered First Information Report, commenced investigation, examined the witnesses and recorded their statements. Then, he went to the Government Hospital and conducted inquest over the dead body of the deceased in the presence Panchayatars and prepared an inquest report [Ex.P6]. Then, he sent the dead body for postmortem autopsy.

(iv) P.W.8, the Doctor, working in the Government Hospital, Puducherry, conducted a postmortem autopsy on the dead body of the deceased on 24.01.2008 and found the following injuries:-

EXTERNAL INJURIES:

ABRASIONS WITH REDDISH-BROWN SCAB:

- (1) 1cm x 1/2 cm over the outer aspect of left eye.
- (2) 2cms x 1 cm over the front of left armpit,
- (3) 8cms x 2cms, below the left armpit,
- (4) 7cms x 4 cms over the back of left armpit,
- (5) 8 cms x 1 cm over the back of left chest,
- (6) 2 cms x 1cm over the back of left elbow,
- (7) 29 cms x

17 cms over the left side lower abdomen & outer loin, (8) 28 cms x 4 cms, over the back of left lion and (9) 10 cms x 3 cms over the outer aspect of left thigh.

He was of the opinion that the deceased would appear to have died of complication of cervical injury. He issued postmortem certificate (Ex.P4).

(vi) P.W.12, continued the investigation and examined the Doctor, who conducted postmortem autopsy and other 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 12 witnesses, exhibited 9 documents and no material object was marked.

4. Out of the witnesses examined, P.W.1 is the wife of the deceased. According to her, on the date of occurrence, there was a wordy quarrel between the accused and deceased, during such quarrel, the accused attacked the deceased with his fist in his head and pushed him down, and when he was fell down, the accused kicked his chest and hip indiscriminately. She further stated that she along with P.W.2 took the deceased to their house. After two days, the condition of the deceased had deteriorated and they took him to the Government Hospital, Cuddalore, and he was referred to the Government Hospital, Pondicherry. Subsequently, on 24.01.2008, he succumbed injuries. Hence, she filed a complaint against the accused. P.W.2 is the son of the deceased. According to him, at the time of occurrence, there was a wordy quarrel between the accused and the deceased, at that time, he went to the scene of occurrence with his mother P.W.2 and saw the accused attacked the deceased with his fist on the head and the deceased fell down, then he kicked him in his chest and hip, both P.Ws.1 and 2 took him to their house, and they did not give any complaint. Thereafter, the condition of the deceased had deteriorated, they took him to the Government Hospital, Cuddalore, where, he was referred to the Government Hospital, Pondicherry. Subsequently, on 24.01.2008, he succumbed injuries.

5. P.W.3 is the brother of the deceased, after he came to know about the occurrence, he along with others took the deceased to Government Hospital. P.W.4 is the resident of Thittakudi. He is only a hearsay evidence. P.W.5 is the Doctor working in the Government Hospital, Cuddalore. According to him, on 19.01.2008, he admitted the deceased in the hospital and he has issued an accident register. He further stated that at the time of admission, the deceased told him that one known person attacked him with his fist on his head and pushed him down. P.W.6 is the resident of Thittakudi, he is only a hearsay evidence. P.W.7 is a witness to the observation

mahazar. P.W.8, a Assistant Surgeon, working in the Government Hospital, Pondicherry. He conducted postmortem autopsy on the dead body of the deceased on 24.01.2008, and issued Postmortem Certificate. P.W.9 is a Head Constable attached to the respondent police station. He submitted the first information report to the Judicial Magistrate Court. P.W.10, another Head Constable attached to the respondent police station, he identified the dead body for postmortem and after postmortem, handed over the dead body to the relatives of the deceased. P.W.11, a Sub Inspector of Police attached to the respondent police station. According to him, on receipt of the complaint from P.W.1, he registered the case and sent the first information report to the Judicial Magistrate Court and copies of the same to the higher officials. He further stated that he examined the witnesses and recorded their statements, arrested the accused and remanded him to judicial custody, and after the death of the deceased, he altered the FIR and sent the alteration report to the Judicial Magistrate Court. P.W.12 is the Inspector of Police attached to the respondent police station. In his evidence he has stated that on receipt of the FIR, commenced the investigation, examined the Doctor, who conducted postmortem autopsy and other witnesses and recorded their statements, and after completing the investigation, he laid the charge sheet.

6. 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.

7. 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 are before this Court.

8. I have heard Mr.T.R.Ravi, 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.

9. P.W.1 is the wife of the deceased. P.W.2 is the son of the deceased. The occurrence took place on 17.01.2008 at about 4.45 p.m. According to P.Ws.1 and 2, at the time of occurrence, there was a wordy quarrel between the deceased and accused, at that time, the accused attacked the deceased with his fist on his head and pushed him down, then the accused kicked him at his chest and hip indiscriminately. Thereafter, both P.Ws.1 and 2, took the deceased to their house, and on that day they did not give any complaint. After two days on 19.01.2008, the condition of the deceased had deteriorated and they took him to the Government Hospital, Cuddalore, where, he was referred to the Government Hospital, Pondicherry. Subsequently, on 24.01.2008, he succumbed injuries. P.W.8, the

Doctor, working in the Government Hospital, Pondicherry, conducted postmortem autopsy and issued a postmortem certificate, and he has given a opinion that the deceased would appear to have died of complication of cervical injury. P.Ws.1 and 2, the wife and son of the deceased, their consisting evidence is that there was a wordy quarrel between the deceased and accused, at that time, the accused attacked the deceased with his fist on his head and pushed him down, the accused kicked his chest and hip indiscriminately, as the occurrence took place near the house, the presence of P.Ws.1 and 2 in the scene of occurrence cannot be doubted and their evidence also corroborated by medical evidence P.Ws.5 and 8. According to P.W.5, the Doctor, he treated the deceased at Cuddalore, according to him at the time of admission, the deceased told him that one known person attacked him with his fist, and postmortem certificate also confirm the injuries on the deceased. Hence, in my considered view the prosecution has clearly established that only this accused had attacked the deceased with his fist and pushed him down, and he sustained a fracture on the cervical vertebra, later he succumbed to injuries. In the above circumstances, I am of the considered view that the prosecution had clearly proved the guilt of the accused beyond any reasonable doubt.

10. Now, the question is "what was the offence that was committed by the accused by the said act". P.Ws.1 and 2 have clearly said that there was a wordy quarrel between the deceased and accused, at that time, the accused attacked the deceased with his fist on his head, and pushed him down and after he fell down, the accused kicked him in the chest and hip indiscriminately, due to the same he suffered injuries. The appellant did not have any previous motive against the deceased and only during a wordy quarrel, he pushed him down and attacked him with hand and while he fell down, he suffered a fracture on his cervical vertebra. But, it was not noticed by P.Ws.1 and 2, after two days, the condition of the deceased had deteriorated, then they took him to the Hospital and thereafter the deceased succumbed injuries. From the above, it is clear that the appellant neither had any intention to cause the death of the deceased nor any intention of causing such badly injuries as it is likely to cause death, or he has any knowledge that his act is likely to cause the death of the deceased. It is not a premeditated murder and hence the act of the appellant will not come under any of the limbs of Section 300 IPC. It is the consistent evidence of P.Ws.1 and 2 that the accused attacked the deceased only with his hand and pushed him down and hence the appellant is liable to be punished only for the offence under Section 323 IPC.

11. Turning to the quantum of punishment, the accused is a poor man and he had no bad antecedence only during a wordy quarrel between the accused and the deceased, the accused attacked the deceased with his hand on his head and pushed him down and while he fell down and he suffered a fracture on his

cervical vertebra. Taking into consideration of the mitigating as well as aggravating circumstance, I am of the considered view that reducing the sentence of imprisonment to the period of sentence already undergone and to pay a fine of Rs.50,000/- in default to undergo rigorous imprisonment for six months would meet the ends of justice. Taking into consideration the fact that the deceased family is also very poor, the fine amount paid by the appellant should be given as compensation to the wife of the deceased under Section 357 Cr.P.C.

12. In the result, the Criminal Appeal is partly allowed and the conviction of the appellant/accused under Section 304 (ii) IPC is set aside and instead, the appellant is convicted for an offence under Section 323 IPC., the appellant was sentenced to undergo sentence already undergone by him, and to pay a fine of Rs.50,000/-, in default, to undergo six months rigorous imprisonment. The fine amount paid by the appellant should be given as compensation to the wife of the deceased(P.W.1) under Section 357 Cr.P.C.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
Fast Track Court No.III,
Vridhachalam at Cuddalore District.
2. The Inspector of Police,
Thittakudi Police Station.
Cuddalore District.
3. The District Munsif cum
Judicial Magistrate,
Thittakudi, Cuddalore District.
4. The Chief Judicial Magistrate,
Cuddalore (For information).
5. The Superintendent,
Central Prison,
Cuddalore.

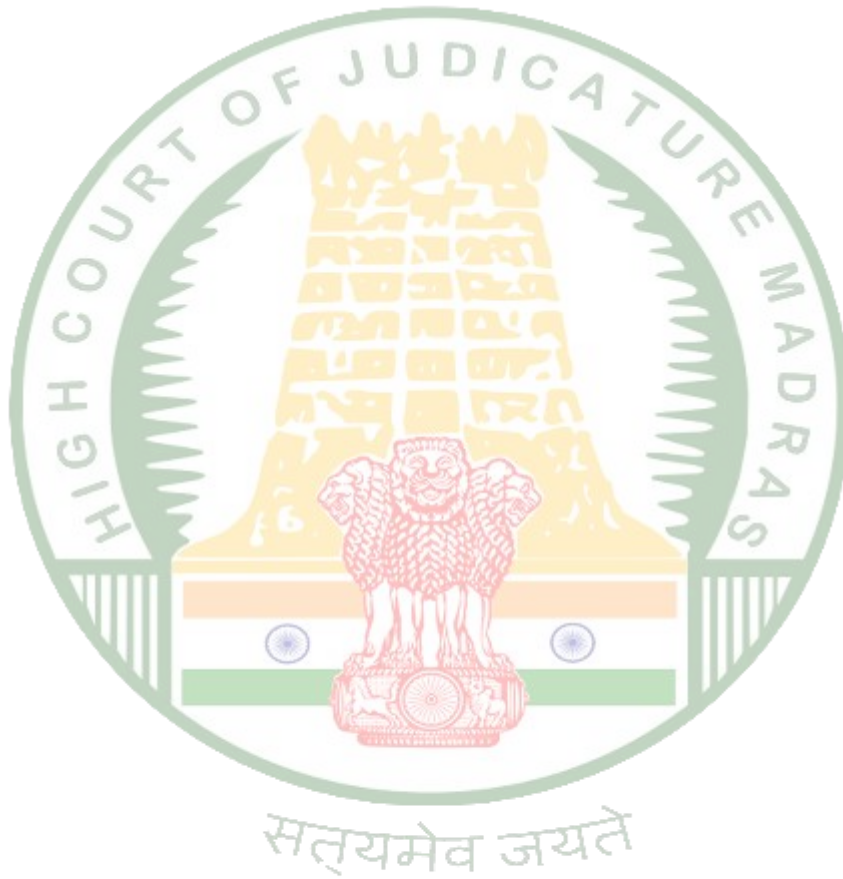
6. The Public Prosecutor,
High Court, Madras.

7. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.T.R.Ravi, Advocate, S.R.No.4245

Cr1.A.No.810 of 2008

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



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