

Bail Slip in Crl.A.743/10

1.The Appellant/Accused No.1 namely Antony S/o.Joseph was released on bail vide order dated 14/12/10 in Mp.1/10 in Crl.A.NO.743/10.

Bail Slip in Crl.A.899/17

2.The Appellant/Accused No.2 namely Ganesan S/o.Palaniappan was released on bail vide order dated 29/10/07 in MP.1/07 in Crl.A.899/07.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 12.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.899 of 2007 and Crl.A.No.743 of 2010

Ganesan ... Appellant/2nd Accused
(in Crl.A.No.899 of 2007)

Antony ... Appellant
(in Crl.A.No.743 of 2010)/Ist Accused

vs.

The State, rep. by
The Inspector of Police,
P-7, Ramanathapuram Police Station,
Coimbatore.

(Crime No.378 of 2005) ... Respondent/Complainant
(in both appeals)

PRAYER IN CRL.A.NO.899 OF 2007: Criminal Appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 10.08.2007 passed by the learned Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore, in S.C.No.364 of 2006.

PRAYER IN CRL.A.NO.899 OF 2007: Criminal Appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 10.08.2007 passed by the learned Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore, in S.C.No.364 of 2006.

For Appellants : Mr.M.L.Ramesh
(in Crl.A.No.899 of 2007)
Mr.S.N.Arunkumkar for
Mr.B.Nambiselvan
(in Crl.A.No.743 of 2010)
For Respondent : Mr.Karuppiah, APP
(in both appeals)

COMMON JUDGMENT

The accused 1 and 2, in Sessions Case No.364 of 2006, on the file of the learned Additional District and Sessions Judge, Fast Track Court No.II, Coimbatore, are the appellants herein. The first accused stood charged for offence under Sections 328 (3 counts) and 304(ii) IPC. The second accused stood charged for offence under Sections 328(3 counts) r/w 109 IPC and 304 r/w 109 IPC. The trial Court, by judgment dated 10.08.2007, convicted the first accused under Section 328(3 counts) IPC and sentenced him to undergo rigorous imprisonment for five years for each counts and to pay a fine of Rs.1000/- for each counts, in default, to undergo simple imprisonment for six months each and convicted him under Section 304(ii) IPC and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs.1000/-, and convicted the second accused for the offence under Section 328(3 counts) r/w 109 IPC and sentenced him to undergo rigorous imprisonment for five years for each counts and to pay a fine of Rs.1000/- for each counts, in default, to undergo six months (for each counts) simple imprisonment and convicted him under Section 304(ii) r/w 109 IPC and sentenced him to undergo rigorous imprisonment for five years and to pay a fine of Rs.1000/-, in default, to undergo six months simple imprisonment. The sentences are ordered to be run concurrently. Challenging the above said conviction and sentence, the first accused filed Crl.A.No.743 of 2010 and the second accused filed Crl.A.No.899 of 2007 before this Court with these appeals.

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

(i) P.W.1, the deceased, namely, Seekuraj, another person, nemaly, Selvaraj and the first accused are friends. They are all auto drivers and all of them used to consume alcohol together. A-2 in this case was working as stretcher boy in Government Medical Collage Hospital, Coimbatore. He used to stolen spirit from the Government Hospital and sold it to A-1, P.W.1, the deceased and others were used to consume the spirit. On 30.04.2005, the first accused got spirit from the second accused and the first accused handed over the same to P.W.1, deceased and one Selvaraj. The said Selvaraj took some spirit in a bottle and took it to his home, P.W.1, and the deceased were consuming remaining spirit by mixing with soda. After consuming

spirit, the deceased has developed irritation and nausea and immediately they were taken to the hospital. But, on the way to hospital, the deceased died, P.W.1, admitted in the Government Medical Collage Hospital, Coimbatore.

(ii) Based on the intimation[Ex.P23] from the Government Hospital, P.W.18, the then Inspector of Police working in the respondent police station, went to the Government Hospital ICU ward, where P.W.1 was admitted and recorded his statement and based on the said statement, he registered a case in Crime No.378 of 2005 for the offence under Section 304 of IPC and Section 4(1)(a) and Section 5 of TamilNadu Prohibition Act, prepared a first information report[Ex.P22], sent the same to the Judicial Magistrate Court and copies of the same to the higher officials.

(iii) P.W.20, the another Inspector of Police working in the respondent police station, on receipt of the first information report, proceeded to the scene of occurrence, prepared observation mahazar [Ex.P4], rough sketch[Ex.P24]. Then, he conducted inquest over the dead body before the panchayatars, and after inquest, he sent the dead body to the Government Hospital through a Head Constable with requisition letter for Postmortem, and prepared inquest report[Ex.P25]. Then, he examined the witnesses and recorded their statements. Thereafter, he seized the plastic use and throw cup(2 Nos), Soda Bottle (2 Nos.), vomiting sand, containing vomit of the deceased and ordinary sand in the presence of witnesses and also seized one bottle from the house of Selvaraj. Then, he arrested the first accused and on such arrest he voluntarily given a confession, based on the disclosure statement, he arrested the second accused and on such arrest, the second accused also voluntarily given a confession, based on the disclosure statement, he recovered a plastic bottle[M.O.5] contain spirit. Then, he sent the accused for Judicial custody.

(iv) P.W.10, Doctor working in the Government Hospital, Coimbatore. He conducted postmortem autopsy on the dead body of the deceased and he found the following injuries on the dead body:-

"Peritoneal and Pleural cavities empty. Lungs cut section congested. Heart right side chambers contain few cc of fluid flood, left side chambers empty. Coronaries - patent. Hyoid bone- intact. Stomach contained about 100 ml of oily colourless fluid with irritating smell like that of formalin. Mucosa rugosity well preserved and congested. Small industries contained about 40ml of oily colourless fluid with irritating smell like that of formalin. Mucosa rugosity well preserved and congested. Liver, Spleen, Kidneys and Brain- cut section congested. Urinary bladder empty. Viscera preserved for chemical analysis.

He is of the opinion that the deceased would appear to have died of formaldehyde poisoning and he has given post mortem certificate Ex.P12. Then, P.W.20, handed over the case to P.W.19, the another Inspector of Police.

(v) P.W.19, the Inspector of Police, working in the respondent police station, on receipt of the case records, continued the investigation, examined the Doctor, who conducted postmortem autopsy and other witnesses and recorded their statements and after completion of investigation, 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 21 witnesses, exhibited 27 documents and 8 material objects were marked.

4.1. Out of the said witnesses examined, P.W.1 is the victim in this case. According to him, P.W.1, deceased and another injured person one Selvaraj and A-1 were used to consume liquor together. A-1 informed them that they could consume spirit which will give more intoxication and A-1 purchased spirit from A-2 and used to consume regularly. Subsequently, on the date of occurrence, namely, 30.04.2005, the first accused purchased spirit from the second accused, P.W.1 and deceased consume the spirit immediately and Selvaraj took some spirit to his house. After consuming the spirit, they have feel irritation, and immediately, they were taken to the Government Hospital, Coimbatore. But on the way to Hospital, the deceased died. P.W.1 admitted in the Hospital. In the Hospital, P.W.1 has given statement and P.W.18, the Inspector of police recorded the statement.

4.2. P.W.2 is the co-worker with P.W.1. He spoke about the collection of fund on May day function and also handing over the same to P.W.1. After some time, he came to know that the deceased died consuming spirit. P.W.3 is the relative of the deceased Seekuraj. According to him, the deceased and P.W.1 found unconscious in the Nehru Park and they took them to the house and then took them to the Government Hospital, on the way to Hospital, the deceased died. P.W.4 is the witness to the observation mahazar. P.W.5 is the witness to the observation mahazar and recovery of M.Os.1 and 2. P.W.6 is the Auto driver. He knows the accused and deceased and P.W.1. According to him on 30.04.2005 at about 2.30 p.m., they were consumed liquor in a wine shop near by auto stand and thereafter they went inside the park, later he was informed that P.W.1 and deceased have developed irritation and they took him to the Hospital.

4.3. P.W.7 is a person working in the petty shop near the scene of occurrence. According to him, at the time of occurrence, the deceased and other persons came to his shop and

purchased plastic cups, Soda and some bananas. P.W.8 is working as Health Inspector in Coimbatore Corporation. He is witnesses to the arrest and confession statement of the accused. P.W.9, is the patient used to visit Government Medical College Hospital, Coimbatore. According to him, on the date of occurrence, while he was standing in the Hospital for purchasing medicine, at that time he saw A-2 purchased spirit bottle and A-1 received the bottle from A-2 and A-2 asked him whether he is willing to consume spirit, but he refused.

4.4. P.W.10, Doctor working in the Government Medical College Hospital, Coimbatore. He conducted postmortem autopsy on the dead body of the deceased, and submitted the postmortem report. P.W.11 is working as nurse in the Government Hospital, Coimbatore. According to her, she was working with A-2 in the said Hospital and she had stated that the Hospital is not storing any formaldehyde, and it is not available in the medical store. P.W.12, the Drug Inspector working in the Government Hospital, Coimbatore. According to him, the Hospital supplied formaldehyde to the Leprosy Ward in the Hospital. P.W.13, the Head Constable working in the respondent police station. He identified the dead body for postmortem. P.W.14, the then Judicial Magistrate No.VII, Coimbatore. He recorded the statement of witnesses under Section 164 Cr.P.C. P.W.15, the Doctor working in the Government Hospital, Coimbatore. He examined one Selvaraj and found that he consumed spirit and he has given treatment. P.W.16, the Doctor working in the Government Hospital, Coimbatore. He has given treatment to P.W.1 and issued Accident Register Ex.P18.

4.5. P.W.17 is working as Assistant Director in Forensic Lab Department. He examined the spirit recovered from P.W.1's house and he is of the opinion that it contains formaldehyde poison and given report Ex.P21. P.W.18, the Inspector of Police working in the respondent police station. According to him, on receipt of the intimation from the Government Hospital, Coimbatore, proceeded to the Hospital and recorded the statement of P.W.1, based on the statement of P.W.1, registered the case, prepared first information report, sent the first information report to the Judicial Magistrate Court and copies of the same to the higher officials. P.W.19 and 20, other Inspector of Police, continued the investigation, arrested the accused, recovered the material objects and examined the witnesses and recorded their statements and handed over the case to P.W.21. P.W.21 is the Inspector of Police, working in the respondent police station. He states that on receipt of the case records, continued the investigation, 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., they denied the same as false. Their defence was a total denial. The accused examined one Chellakrishnan as D.W.1. He was working as Jamaidar in Government Hospital, Coimbatore and he maintaining attendance register of the employees. According to him, the second accused was not attending duty from 26.04.2004 to 30.04.2004 and he has also marked the attendance register as D.Ws.1 and 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 are before this Court.

7. I have heard Mr.M.L.Ramesh and Mr.S.N.Arunkumar, learned counsel appearing for the appellants and Mr.J.Karuppiah, learned Additional Public Prosecutor, appearing for the State and I have also perused the records carefully.

8. It is the case of prosecution that the first accused was co-working along with the deceased and P.W.1. The second accused was working as stretcher boy in the Government Medical College Hospital, Coimbatore, and he used to stolen the intoxicating formaldehyde spirit from the Hospital and sold it to the first accused and the first accused in turn supply to other persons. After consume the spirit, which contains poisons substance, P.W.1 suffered injuries and another person died. Hence, the accused have committed the above said offence.

9. Even though the charge was framed under Section 328 (3 counts), the 3rd person, namely, Selvaraj who alleged to have consumed poison was not examined by the prosecution. The Doctor, who examined the P.W.1, did not say that he was not aware of the kind of liquor consumed by him. So far as the other two persons are concerned, it is the evidence of P.W.1 that the deceased, the injured persons, the first accused are used to consume liquor and the first accused purchased the spirit from second accused.

10. According to the prosecution, on the date of occurrence, namely, 30.04.2005, the first accused purchased spirit from the second accused and P.W.1, Deceased and another one Selvaraj have consumed the same and thereafter the deceased died and P.W.1 suffered injuries. In order to prove the offence under Section 328 IPC, the prosecution required to prove that the substance is in question is poison or intoxicating unwhole some drug, and the accused administered the substance to the complainant with intention to cause hurt, or knowing it to be likely cause hurt or with a intention facilitated the commission offence.

11. Now, we have considered whether the first accused is committed any offence under Section 328 IPC. Considering the evidence of P.W.1, it could be seen that the first accused, P.W.1 and deceased were co-workers and used to consume liquor, together frequent in several occasions and they used to consume the spirit together. P.W.6, the auto driver, who is known to the first accused and others, and he has stated that on the date of occurrence at about 2.30 p.m., first accused and other three persons were consumed liquor near a petty shop. Thereafter, they went inside the Park, but, absolutely, no other evidence is available to prove that the first accused has purchased the spirit from the second accused in the Hospital and no evidence is available that the second accused has supplied spirit with intention to cause hurt, which is necessary for convicting the accused for the offence under Section 328 IPC. Admittedly, all the accused are co-employees and they are used to consume spirit regularly, and on the date of occurrence also the first accused purchased the spirit and gave it to P.W.1 and others. Hence from the evidence, it could be seen that the first accused has no intention to cause hurt on the deceased as well as P.W.1. Even though, yet another person was also consume spirit, namely, Selvaraj who has not examined by the prosecution. P.W.6, the Doctor who examined P.W.1, did not say what kind of liquor consumed them. In the above circumstances, in the absence of any evidence that the first accused has given poisons spirit with intention to cause hurt on the deceased as well as P.W.1 he cannot be convicted under Section 328 IPC, consequently under section 304(ii) IPC.

12. So far as the second accused is concerned, he was convicted with the aid of Section 109 IPC. It is the case of prosecution that the second accused was working in the Government Hospital and used to take spirit from the hospital and supplied to the first accused and on the date of occurrence, namely, 30.04.2005, he has sold spirit to the first accused. But, P.W.11, who is the nurse working in the Government Hospital, in which the second was also working, has stated that the alleged spirit containing formaldehyde, which is poisons substance is not available in the Department. P.W.12, the Health Inspector working in the Government Hospital has stated that formaldehyde is not supplied to the Department, where the accused was working. Apart from that, D.W.1, the another person working in the same Hospital who is maintaining attendance register has stated that from 26.04.2004 to 30.04.2005, the second accused was absent and he is not attending duty. In the said circumstances, there is occasion for the second accused to sold the spirit to first accused. So far as the evidence of P.W.9, a patient who said to have seen the second accused handed over the spirit to the first accused in the Hospital on 30.04.2005, is concern, in view of the evidence of P.W.s.11 and 12 that the above said formaldehyde liquor is not available in

the hospital and the second accused also not attending the duty on 30.04.2005, it is very difficult to believe his evidence. In the above circumstances, I am of the considered view that the prosecution has failed to prove it is only this second accused stolen the spirit from the hospital and sold it to the first accused and thereby committed offence. In the above circumstances, the second accused also entitled for acquittal from the charge levelled against him.

13. In the result, the Criminal Appeals are allowed. The conviction and sentence imposed on the appellants/accused in S.C.No.364 of 2006 dated 10.08.2007 on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.II), Coimbatore is set aside and the appellants/accused are acquitted of all the charges levelled against them and bail bond, if any, executed by them shall stand cancelled and the fine amounts paid by them are ordered to be refunded forthwith.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional District and Sessions Judge,
Fast Track Court No.II,
Coimbatore.
- 2.The Inspector of Police,
P-7, Ramanathapuram Police Station,
Coimbatore.
- 3.The Judicial Magistrate No.VI,
Coimbatore.
- 4.The Chief Judicial Magistrate,
Coimbatore.
- 5.The Superintendent,
Central Prison,
Coimbatore.
- 6.The District Collector,
Coimbatore.

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

8.The Public Prosecutor,
High Court, Madras.

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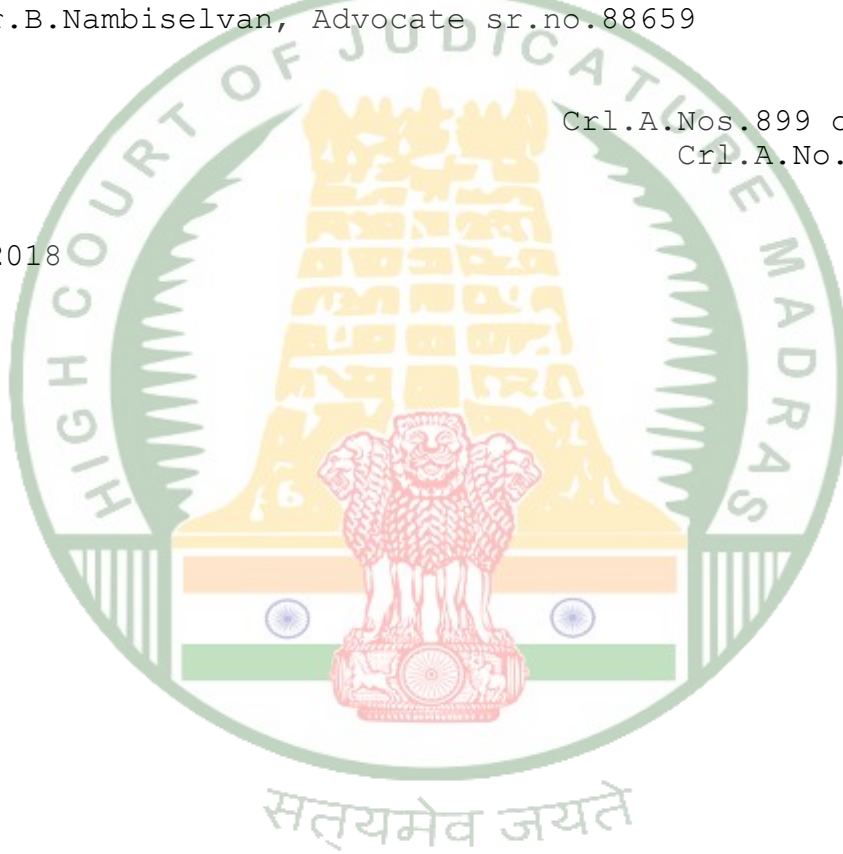
The Section Officer,
Criminal Section,
High Court, Madras-104

+lcc to Mr.M.L.Ramesh, Advocate sr.no.88208

+lcc to Mr.B.Nambiselvan, Advocate sr.no.88659

Crl.A.Nos.899 of 2007 and
Crl.A.No.743 of 2010

PVS (CO)
NR 10/07/2018



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