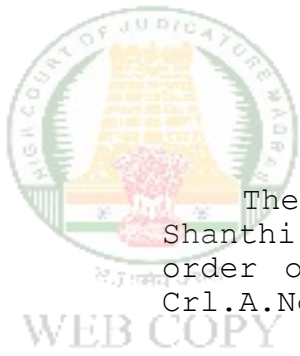




Bail Slip

The Appellant/Accused No.1 namely Shanthi Prasanna Kumar @ Shanthi S/o.C.H.Nysoon was directed to be released on bail by order of this Court dt.13.08.2010 and made in MP.2 of 2010 in CrI.A.No.452 of 2010.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 11.06.2018

JUDGMENT PRONOUNCED ON : 24.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Criminal Appeal No.452 of 2010

1. Shanthi Prasanna Kumar @ Shanthi (Age 35/2010)
S/o C.H. Nysoon
 2. Samuvel @ Sam (Age 28/2010)
S/o C.H. Nysoon
 3. Deva Prasad @ Chenni (Age 30/2010)
S/o C.H. Nysoon
 4. Mohan Babu @ Buji (Age 31/2010)
S/o C.H. Nysoon
- Appellants / Accused No.1to4

Vs

State by the Inspector of Police
Ambathur Police Station
Chennai
(Crime No. 468/2009)

Respondent / Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Criminal Procedure code, to set aside the Judgment and conviction dated 28.06.2010 by the learned Additional District and Sessions Judge, FTC II Poonamallee in SC No.2 of 2010 and acquit the appellants.

For Appellant : Mr.L. Mahendran

For Respondent : Mr. G. Ramar
Government Advocate (Criminal Side)



J U D G M E N T

The appellants are arrayed as the accused No.1 to 4 respectively in SC No.2 of 2010 on the file of the learned Additional District Sessions Judge, Fast Track Court No.II, Poonthamallee, there where as many as 2 charges were framed against them. Against the 1st accused, charges have been framed under section 302, 324 IPC, against the remaining accused No.2 to 4, charges under section 302 r/w 34 and 324 have been framed. After full trial, the 1st accused was convicted for the offence under section 304 (ii) and 324 IPC. He was sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo 1 year rigorous imprisonment for the offence under section 304(ii) IPC. Further he has convicted and sentenced to undergo 1 year rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo 3 months simple imprisonment under section 324 IPC. The trial court convicted the 2nd accused under Section 324 IPC and sentence him to undergo 1 year rigorous imprisonment and to pay a fine of Rs.5000/- in default 3 months simple imprisonment. As far as 3rd and 4th accused are concerned, they were sentenced to undergo 3 months rigorous imprisonment and to pay a fine of Rs.1000/-, in default to undergo 1 year simple imprisonment under section 323 IPC. The appellants were acquitted of by the trial Court from the other charges. Aggrieved by the conviction and sentence, the accused No.1 to 4 are before this Court with this Criminal Appeal.

2) The Case of the prosecution in brief is as follows:-

PW 1 Charles , PW 2 Johnson, PW 3 Tirupathi and PW 6 Devakumar are residing in the same locality near to Kamarajapuram, Ambattur. On 20.08.2009, there was a marriage function arranged to one Yesudoss and for celebrating the marriage, 2 flex banners were installed near to PTM Church, Kamaraj Nagar. Out of the 2 flex banners, the 4th accused Mohanbabu @ Buji took the one and kept it in his house. During the time of occurrence, due to the missing of flex board, both the deceased and the accused quarreled with each other. Consequently, the 4th accused assaulted the PW 2. Further, the accused No.2 to 4 caught hold the hands of the deceased Nagarajan on his back side and the 1st accused after taking the tube light, which was fixed in the occurrence place, assaulted the deceased on the right neck. After seeing the assault, PW 1 interfered and attempted to save the Nagaraj. But, the 1st accused by using the same broken tube light stabbed on the cheek of PW 1. Further, the 2nd accused Samuvel by using the broken tube light, stabbed PW 3. Subsequent to that, all are leaving the place of occurrence and on the next day morning, all of them informed that the injured Nagaraj was died and the dead body of the said Nagaraj was lying near to the toilet.



3) In this regard, PW 1 lodged a complaint before the Sub inspector of police PW 18 under Ex.P.1. On receipt of the complaint, the case has been registered in Cr.No.468 of 2009 under section 324 and 302 IPC. Ex.P.26 is the printed First Information Report. Meanwhile, on 29.05.2009 at about 2.20 pm, Dr. C. Rajasekar attached with Kilpauk Medical College Hospital, examined PW 6 and found that the patient is conscious oriented and mild tenders on the back. On the same day, at about 2.00pm, he examined PW 1 Charles and found that the patient is conscious oriented, sutured wound measuring 3cm size on the right side of the face over the lower jaw. Finally he treated PW 3 Tirupati and found that the patient is conscious oriented and mild tenderness in left cheek. In this regard, he issued the Accident Register copy under Ex.P.2 to Ex.P.5 respectively. According to him, the injuries found belonging to PW 1 to PW 3 and PW 6 are simple in nature.

4) In regard to the investigation, on 29.05.2009 at about 4.00am, PW 19 Syed Zamal received the copy of the First Information Report from PW 18. On the same day at about 4.30 am, he went to the scene of occurrence and in the presence of PW 10 Ramesh and PW 11 Anandan, he prepared Observation Mahazar under Ex.P.8. Further he drawn a Rough Sketch under Ex.P.27. In the presence of the same witnesses, he recovered blood stained tiles and the Tiles without blood stains from the scene of occurrence. (M.O.3 and M.O.4). Further, he made arrangements for taking the photographs. In continuation of the investigation, in order to avoid law and order problem, through PW 7 Sitrarasu, he sent the dead body to the Hospital. Thereafter along with the witnesses, attested in the Observation Mahazar, he went to the PTM Church and in the presence of the same witnesses, he prepared Observation Mahazar under Ex.P.29. Further, he drawn Rough Sketch under Ex.P.28. He recovered small broken pieces of tube light under the cover of Mahazar Ex.P.30. He recorded the statements from the injured and from the witnesses who are all present at the time of occurrence. In the presence of witnesses, he prepared an Inquest Report under Ex.P.31. Thereafter, he sent a requisition to the Hospital for conducting Autopsy over the dead body of Nagaraj.

5) PW 5 Dr. Tickal, on receipt of requisition given by PW 19, started the process of Postmortem. He found the following extreme and unnatural injuries.

A horizontally oblique penetrating stab wound 2.2 x 0.7-0.3 x 4-1.5 cm, on the lower part of right side front of the neck the inner end was 3.2 cms right lateral to the midline of the neck the lower border was 4.5cm above the middle third of right clavicle; the margins of the wound was irregular and the edges of the wound were inverted and bruised. On



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dissection, Dark red bruising 6 x 5-3 x 0.5 cm on the underlying subcutaneous soft tissues on the lower part of right side of the punctured wound 0.5 x 0.3-0.2 cm on the right common carotid artery; the length of the track of the stab wound was 4 cms and the direction of stab wound was backwards, upwards and inwards. 2) On reflection of the scalp; Dark red bruising 2 x 1 x 0.2 cm on the left parietal region of the scalp; Calvarium was intact; Brain was normal in size; C/S Pale.

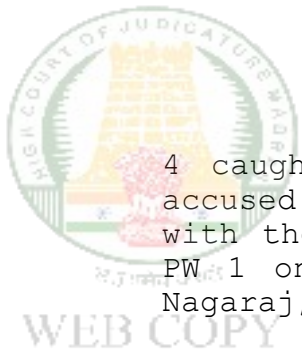
He preserved viscera and send it for chemical examination. Finally, it was found that there is no poisonous substances found in the viscera. The Viscera Report is marked as Ex.P.7. So, he gave an opinion as the deceased would appear to have died of shock and haemorrhage due to stab injury on the neck. Ex.P.6 is the Post Mortem Report. On completion of Post Mortem, PW 17, Head Constable handed over the dresses to PW 19, which were removed from the dead body.

6) On 30.05.2009, at about 10.00 am, PW 19 arrested the accused No.1 to 3, in the presence of PW 12 Krishnan and PW 3 Arjunan be separately recorded the confession statement given by them. In pursuance to the confession, he recovered the broken pieces of tube light. The admitted portion of the confession statement given by the accused No.1 to 3 are Ex.P.32 to Ex.P.34 respectively. Recovery Mahazars prepared by PW 19 are marked as Ex.P.35 to Ex.P.37 respectively. After recovering the material objects, he made arrangements for sending the accused No.1 ot 3 for judicial custody. Finally, he recorded the statement from the witnesses, who attested in the confession statement and due to transfer, he handed over the case records to PW 20.

7) On receipt of the case records, PW 20 Sivakumar, the then Inspector of Police, Ambattur Police Station examined the Doctor, who conducted the Post Mortem and recorded the statements. Finally, he filed a Final Report under section 326, 302 r/w 34 IPC.

8) Based on the above materials, the trial Court framed as many as 4 charges as detailed in the 1st paragraph of this judgment. All the accused denied the same. In order to prove the case on the side of the prosecution, as many as 20 witnesses were examined as PW 1 to PW 20, 39 documents were exhibited as Ex.P.1 to Ex.P.39 and 8 material objects were marked.

9) Out of the above witnesses, PW 1 is the resident of Kamarajapuram, Ambattur. He has stated that on the day of occurrence, at about 1 to 1.30 am, PW 1 and PW 3 are enquired about the flex banner, fixed near to the PTM Church. Consequently, A4 attacked PW 2 and therefore the accused No.2 to



4 caughthold of the deceased Nagaraj to facilitate the other accused to attack him. The first accused attacked the deceased with the broken tube light on his right neck, further assaulted PW 1 on his right side cheek. After knowing the death of the Nagaraj, he had lodged the complaint before the Police Station.

10) PW 2 Johnson, who is the friend of PW 1 has stated, on 28.05.2009, due to the missing of flex board, there was a quarrel arose between the accused with PW 1 to PW 3 and PW 6. Resultantly, the 4th accused assaulted him on his cheek. Subsequently, the 1st accused by using the broken tube light, stab the deceased on his right neck and PW 1 on his cheek. Finally, all of them ran away from the scene of occurrence.

11) PW 3 is the eye witness to the occurrence deposed that at the time of occurrence, the accused No.2 to 4 caught hold the deceased Nagaraj, to facilitate the accused No.1 to attack the Nagaraj. Resultantly, by using the broken tube light the 1st accused stabbed the deceased on the right neck. Further he has stated that in the occurrence, the 4th accused assaulted PW 2.

12) PW 4 is the Doctor, attached with Kilpauk Medical College Hospital stated in his evidence about the injuries found on PW 1 to PW 3 and PW 6 and about the nature of injuries sustained by them. PW 5 is the Doctor attached with the same Hospital has stated about the process of Postmortem and gave opinion in respect to the reason for death.

13) PW 6 is also an injured and eyewitness to the occurrence has stated about the assault made by the 1st accused towards the deceased by using the tube light and about the assault made towards PW 2. Further he has stated about the injuries sustained by them. PW 7 is the brother of the deceased Nagaraj has stated in his evidence about the lodging of complaint by PW 1. PW 8 is the resident in the same locality deposed that he heard the news on 28.05.2009 at about 6.00 am. PW 9 Suresh is the Photographer has stated about the taking of photographs in the scene of occurrence.

14) PW 10 and PW 11 have stated in their evidence about the preparation of Observation Mahazar by PW 19. However he has not supported the evidence given by PW 19, with regard to the recovery of blood stained tiles from the scene of occurrence. PW 12 and PW 13 are the witnesses to the confession statement given by the accused No.1 to 3 but they turned as the hostile witnesses, thereby they have not support the case of the prosecution. PW 15 is the sweeper working in Ambattur Municipality stated in his evidence about the marriage held at SPM Mahal. PW 15 has also stated about the quarrel happened



between the accused and PW 1 to PW 3.

15) PW 16 is running a Sound Service business has stated that on 29.05.2009, when he went to the scene of occurrence, it was found that the tube lights fixed in the area were damaged. PW 17 is a Head constable has stated about the handing over the dead body to the Hospital for postmortem and about the handing over the dresses which were removed from the dead body. PW 18 to Pw 20 are the police officers has stated about the registration of the case, investigation and about the filing of Charge Sheet.

16) The learned trial Judge, with reference to the incriminating evidence adduced by the prosecution, questioned the accused under section 313 Cr.P.C. and for which, they denied the same as false. However they did not chose to examine any witness, nor to mark any documents on their side. Their defence was total denial. Having considered all the above, the trial Court convicted them as detailed in the 1st Paragraph of this Judgment. Challenging the above said conviction and sentence, the accused No.1 to 4 are now before this court through the present criminal appeal.

17) I have heard. Mr.L. Mahendran, learned Counsel for the appellant, Mr. G. Ramar, learned Government Advocate (Criminal Side) for the respondent and perused the records carefully.

18) The learned Counsel for the appellant would submit that the occurrence had happened on 28.08.2005 at about 2.00 am, whereas the complaint was given by PW 1 on 29.09.2005 at about 4.00 am. In the said situation, the reason for the delay in giving the complaint is not explained on the side of the prosecution. Further he would contend that the evidence given by PW 1 to PW 3 and 6 shows and create a doubt whether the occurrence is said to have taken place opposite to the Church in Kamarajapuram Township Road or near to PTM Church. Further, he submit that none of the witnesses examined on the side of the prosecution substantiated about the presence of light in the scene of occurrence. Further, he made his submission that the flex banner, which was in dispute is not recovered. Finally, the documents, Mahazar and Statements are reaching the Magistrate Court belatedly. Therefore, the appellants are entitled to acquittal.

19) Per contra, the learned Additional Public Prosecutor would however oppose this Criminal Appeal. According to him, there is no reason to reject the evidence of PW 1 to PW 3 and PW 6. The very fact that the evidence given by the Medical



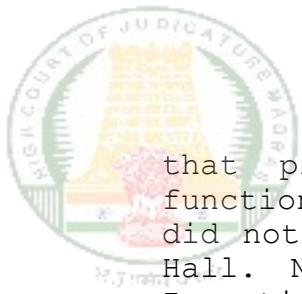
Officer corroborated the evidence of injured would go to fortify that PW 1 to PW 3 and PW 6 were present at the scene of occurrence. He would further submit that even though the witnesses attested in the Observation Mahazar and Confession Statement is not support the case of the prosecution and that alone is not sufficient ground to disbelieve the evidence of PW 1 to PW 3 and PW 6. Accordingly, the interference of this court in the findings arrived by the trial Court is not necessary.

20) I have heard the rival submission and perused the available records carefully.

21) Before enter into the submission made by the accused Counsel, it is necessary to see the evidence given by PW 1 to PW 6. According to the case of the prosecution, PW 1 to PW 3 and PW 6 sustained injury due to the assault made by the accused. Further for the injury sustained by them, PW 4 gave treatment and also issued Accident Register copy. Now on go through the evidence given by the injured is in accordance with the injuries stated by PW 4. In the said circumstances, during the time of occurrence, the 1st accused assaulted the deceased as well as PW 2 and PW 6. Further PW 5 Doctor, who conducted postmortem has also stated only due to the stab injury, death had happened to the Nagarajan. So on culling the entire evidence, clearly shows the injuries sustained by the injured and by the deceased are corroborated through the evidence of medical Officer.

22) With regard to the first submission made by the Counsel, in the Trial Court, the printed First Information Report prepared by PW 18 was marked as Ex.P.26. Now on go through the particulars available in the said Exhibit, which shows the occurrence had happened on the midnight of 28.05.2009 at about 2.00 am. On the other hand, the complaint was received by the Police officers within 2 hours from the time of occurrence. In the trial Court, PW 1 to PW 3 are deposed that the occurrence had happened on 28.05.2009 in the night hours. Further, PW 18, who is the Police officer preferred the First Information Report has stated that on the same day at 4.00 am, PW 1 came and given the complaint before him. So giving the complaint within the two hours from the time of occurrence is not a delay. In this regard, the learned appellant Counsel mis construed the case and made submission that the complaint has been lodged after 1 day from the date of occurrence.

23) The 2nd submission of the appellant counsel is that the evidence of PW 1 to PW 3 and PW 6 shows that the occurrence had happened near to PTM Church. On the other hand, the case of the prosecution rests by saying the occurrence has not happened opposite to the PTM church in Kamarajapuram Township. In the trial Court, all the injured witnesses in this case had stated



that prior to the occurrence, they attended the marriage function celebrated in SPM Marriage Hall. So the said evidence did not indicate that the offence had happened in SPM Marriage Hall. Now, on go through the Rough Sketch, prepared by the Investigating Officer, it was painted out that the occurrence place is near to the Toilet. Situated in Kamarajapuram Township Road. Further, all the eyewitnesses are deposed in their evidence as the dead body was lying near to the toilet. Furthermore, the injured witnesses are clearly stated during the time of occurrence, in order to save his life, the deceased jumped into the Toilet. So the entire circumstances show that the occurrence place is only near to the Toilet situated in the township Road. Accordingly, the prosecution has proved the place of occurrence through the cogent and convincing evidence.

24) The third ground raised by the appellants Counsel is that none of the witnesses has stated about the presence of light in the occurrence place. According to him, the said lapse is a fatal to the case of the prosecution. It is true that since the occurrence had happened in the mid night 2.00 am, light is necessary to see the faces of the accused. Further, it is true that none of the witnesses examined on the side of the prosecution has stated about the presence of light in the place of occurrence. However, on go through the Rough Sketch, prepared by the Investigating Officer, near to the occurrence place, lamp post was situated. Hence, by using the said light, it is very easy for the injured to see the accused. Moreover, since all the accused are known to all the injured in earlier before the occurrence, it is very easy to identify the accused. Hence, the said submission also not substantiated through the relevant evidence.

25) Further during the time of investigation, the blood stained material object recovered in this case are sent to the Chemical examination. Further, the Chemical Examination Report is marked as Ex.P38 and Ex.P.39. But the said report did not disclose the group of blood found in the Material object. Furthermore, in the trial Court, the witnesses examined on the side of the prosecution to prove the recovery of material objects are all turned as hostile witnesses. In the said circumstances, the Chemical Examiner has not identified the blood group and accordingly, the prosecution fails in its attempt to prove the case through the Chemical Examination Report. Even though the attempt made by the prosecution to prove their case through the Chemical examination is failed, that alone is not a sufficient ground to disbelieve the evidence of injured witnesses. Moreover, the report given by the Chemical examiner is not a conclusion one.

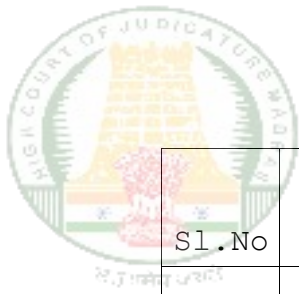


26) I am of the opinion that the evidence given by the injured witness is sufficient to hold the case of the prosecution is genuine one. The evidence given by the injured with regard to the assault made by the accused is cogent and convincing one. Further, after the registration of the case, within 3 hours the First Information Report reaches the Magistrate, even though the other documents reaches the Magistrate on the next day, that alone is not sufficient to reject the case of the prosecution entirely. Hence, the submission made by the appellant counsel is not legally justifiable for allowing the appeal. In the said circumstances, there is no need to interfere with the findings arrived by the trial Court.

27) Now coming to the quantum of sentence, the learned counsel for the appellants would submit that the appellants 1 to 4 are nearing the age of 30 years. They are the only breadwinners to their family. At the time of occurrence, they had no intention to commit the crime. They have no bad antecedents and they are having family to look after. If they are committed to prison at this length of time, it will completely destroy their family circumstances. Having considered all these facts, the learned counsel for the appellant would pray for leniency.

28) In this case, having regard to the all the relevant facts, such as the age of the appellants, family background pointed out by the counsel for the appellants, gravity of the offence, nature of the weapon used, nature of injuries and other circumstances, I am of the opinion that the sentence to pay a sum of Rs.1000/- the 3rd and 4th appellants for the offence under Section 323 IPC and the sentence to pay a fine of Rs.5000/- to the 2nd appellant under section 324 IPC would meet the end of justice. As far as the first accused is concerned, even though he has committed the offence without any intention, due to the said act committed by him, now the family of the deceased is in fore corner. Hence, I am of the opinion that before awarding the sentence, the Court must necessarily looked in to the family of the other side also. However, since the case is pending from the year 2010 onwards, I am inclined to modify the sentence to some extent.

29) In the result, the Criminal Appeal is partly allowed and the sentence imposed by the trial court upon the appellants have been modified as detailed below



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Sl.No	Name of the accused	Sentence imposed by the Trial Court	Sentence Modified by this Court
1	Shanthi Prasanna Kumar @ Shanthi S/oC.H.Nysoon	304(2) IPC - 7 years Rigorous imprisonment and to pay a fine of Rs.10,000/- in default, he has to undergo 1 year simple imprisonment 324 IPC - 1 year Rigorous imprisonment and to pay a fine of Rs.5,000/- in default, he has to undergo 3 months simple imprisonment	304(2) IPC - 5 years Rigorous imprisonment and to pay a fine of Rs.10,000/- in default, he has to undergo 1 year simple imprisonment 324 IPC - No modification and confirms the sentence imposed by the trial Court
2	Samuvel @ Sam S/oC.H.Nysoon	324 IPC - 1 year Rigorous imprisonment and to pay a fine of Rs.5,000/- in default, he has to undergo 3 months simple imprisonment	Fine of Rs.5000/- in default, he should undergo 3 months simple imprisonment.
3	Deva Prasad @ Chennai S/oC.H.Nysoon	323 IPC - 3 months Rigorous imprisonment and to pay a fine of Rs.1,000/- in default, he has to undergo 1 month simple imprisonment	Fine of Rs.1000/- in default, he should undergo 1 month simple imprisonment.
4	Mohan Babu @ Buji S/oC.H Nysoon	323 IPC - 3 months Rigorous imprisonment and to pay a fine of Rs.1,000/- in default, he has to undergo 1 month simple imprisonment	Fine of Rs.1000/- in default, he should undergo 1 month simple imprisonment.



The trial Court is directed to secure the 1st appellant for the purpose of sentencing him to undergo the modified period of sentence. It is also directed that the period of sentence already undergone by the appellants, if any, shall be given set off as required under Section 428 Cr.P.C. It is further ordered that the sentence awarded to the 1st appellant is to run concurrently.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vrn

To

1. The Additional District and Sessions Judge,
Poonthamallee
2. -do-thro The Principal Sessions Judge, Thiruvallur
3. The Inspector of Police
Ambathur Police Station
Chennai
4. The Public Prosecutor
High Court
Madras
- 5 . The Section Officer
Criminal Section
Madras High Court
Chennai.
6. The Superintendent
Central Prison, Puzhal
7. The Additional Sessions Judge,
Fast Track Court I, Ponnammallee.

SV(co)
sm:12.9.2018

Criminal Appeal No.452 of 2010