

BAIL SLIP

The Petitioner/Appellant/Accused viz., D.Srinivasan, S/o.Durai, aged 27 years (Accused in S.C.No. 145/2012 dated 03/08/2013 on the file of the Principal Sessions Judge, Tiruvallur), was directed to be released on bail as per order dated 28/04/2014 made in MP.No. 1/2014 in Crl.A.No. 614/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.12.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.614 of 2013

D.Srinivasan ... Appellant/Accused

Vs

State by
Inspector of Police,
T-2 Ambattur Estate Police Station,
Chennai-58. ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C praying to set aside the conviction and sentence of imprisonment and fine imposed on the appellant/accused by the learned Principal Sessions Judge, Tiruvallur in S.C.No.145 of 2012 dated 03.08.2013.

For Appellant : Mr.R.Rajan
For Respondent : Mr.G.Ramar, GA (Crl. Side)

O R D E R

This Criminal Appeal has been preferred challenging the judgment dated 03.08.2013 passed by the learned Principal Sessions Judge, Tiruvallur in S.C.No.145 of 2012.

2.It is the case of the prosecution that, on 26.05.2011, around 8.00 p.m., the accused, who had worked in the house of the deceased Bakthavatchalam, demanded Rs.5,000/- as hand loan and when the deceased denied, he hit him with an iron rod, which resulted in the death of Bakthavatchalam on 30.05.2011. On the complaint (Ex.P1), lodged by Venkatramanan (PW1), the nephew of the deceased, Krishnamoorthy (PW8), Sub Inspector of Police, registered a case in Crime No.215 of 2011 under Section 307 IPC and prepared the printed FIR (Ex.P8). He

went to the place of occurrence and prepared the Observation Mahazar (Ex.P2) and Rough Sketch (Ex.P9) in the presence of Balu (PW4) and Suresh (not examined). He arrested the accused at 10.30 a.m. on 27.05.2011 and recorded his confession statement, pursuant to which, he seized an iron rod (M.O.1) under the cover of Mahazar (Ex.P4) in the presence of witnesses Velu (PW5) and Velayudham (not examined).

3. Investigation of the case was taken over by Murali (PW9), the Inspector of Police. After sustaining injuries, Bakthavatchalam was rushed to Mahalakshmi Hospital, Ambattur by Venkatramanan (PW1) and Vasantha (PW2), where, he was given first aid by Dr.Chidambaram (PW6), who issued wound certificate (Ex.P5) and referred him to the Government Hospital for further treatment. Bakthavatchalam was taken to the Government Hospital, Chennai, where he was examined by Dr.Sasidharan (PW10), who, in his evidence and in the copy of the accident register (Ex.P13), has stated that he noted a laceration on the parietal region and swelling on both cheeks. Bakthavatsalam was admitted as inpatient and he died on 30.05.2011.

4. On receiving the death intimation, Murali (PW9), Inspector of Police, went to the Government Hospital and conducted inquest over the body of the deceased and prepared the inquest report (Ex.P11). He despatched the body through Gr-I PC No.3274 for postmortem. Dr.Vedanayagam (PW7) performed autopsy on the body of the deceased and issued postmortem certificate (Ex.P6). Dr.Vedanayagam (PW7), in his evidence as well in the postmortem certificate, has opined that the deceased would appear to have died of the effects of the head injury. Murali (PW9) altered the FIR into one under Section 302 IPC and submitted the alteration report (Ex.P10) to the jurisdictional Magistrate. After completing the investigation, he filed Final Report under Section 302 IPC in P.R.C.No.45 of 2011 before the Judicial Magistrate, Ambattur.

5. On the appearance of the appellant, he was served with the copies of the documents relied upon by the prosecution under Section 207 Cr.P.C. and the case was committed to the Court of Session in S.C.No.145 of 2012 for trial. The trial Court framed a charge under Section 302 IPC against the appellant. When questioned, the appellant pleaded 'not guilty'.

6. To prove the case, the prosecution examined ten witnesses, marked thirteen exhibits and one material object. When the appellant was questioned under Section 313 Cr.P.C. about the incriminating circumstances against him, he denied the same. No witness was examined nor any document marked on behalf of the appellant.

7.After considering the evidence on record and hearing either side, the trial Court, by judgment dated 03.08.2013, in S.C.No.145 of 2012, has convicted the appellant under Section 304(II) IPC and sentenced him as under.

Provision under which convicted	Sentence
Section 304(II) IPC	8 years rigorous imprisonment and pay a fine of Rs.5,000/- in default to undergo 6 months simple imprisonment

Challenging the conviction and sentence, the appellant is before this Court.

8.Heard Mr.R.Rajan, learned counsel for the appellant and Mr.G.Ramar, learned Government Advocate (Crl. Side) appearing for the respondent/State.

9.Mr.R.Rajan, learned counsel for the appellant formulated the following submissions and pleaded for the acquittal of the accused :

- a) the appellant was nowhere in the scene of occurrence;
- b) Venkatramanan (PW1) and Sampath (PW3) were not available at the time of occurrence and Vasantha (PW2) was also not there;
- c) Dr.Chidambaram (PW6), who is said to have examined the deceased in Mahalakshmi Hospital has not recorded as to how, the deceased had sustained the injuries;
- d) there are discrepancies in the timing of the admission of the deceased to the Government Hospital, Chennai for treatment;
- e) there is no legal evidence to show that the injuries sustained by the deceased would have caused his death in the ordinary course of nature;
- f) the recovery of the weapon by the Police has also not been satisfactorily established.

10.Per contra, learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel for the appellant.

11.This Court gave its anxious consideration to the rival submissions.

12.To appreciate the contentions of Mr.Rajan, learned counsel for the appellant, it may be necessary to carefully scrutinize the evidence of Vasantha (PW2), wife of the deceased. Vasantha (PW2), who was aged about 60 years when the incident had taken place, has stated that she was residing with her

husband in the first floor of their house in Menambedu and she knows the appellant; on 26.05.2011, around 07.45 p.m., the appellant came to their house and demanded Rs.5,000/- from her husband, which, her husband refused to part with; the appellant insisted that he needed the money immediately saying that, he would give it the next day and warned her husband; when her husband refused, the appellant took out an iron rod, which he was keeping in his bag and belaboured on his head, due to which, he fell down; she screamed for help; on hearing her screaming, Sampath (PW3), their neighbour, came there followed by her nephew Venkatramanan (PW1); the appellant pushed both of them and ran down; her husband was taken immediately to Mahalakshmi Hospital, where, he was given first aid; from there, he was sent to the Government Hospital, Chennai for treatment, where, he was admitted for three days; however, he died on 30.05.2011; Venkatramanan (PW1) gave the complaint (Ex.P1).

13. In the cross-examination of Vasantha (PW2), she has admitted that the appellant was known to their family, as he used to come and do odd jobs for them. She has also stated that her nephew Venkatramanan (PW1) was living with his family away, but, he would frequently visit them. It was ultimately suggested to her that, the deceased asked the appellant to procure liquor and after drinking, he abused the appellant, lost his balance and fell down, resulting in the head injuries, which suggestion, she denied.

14. Venkatramanan (PW1) has stated that, the deceased is his paternal elder uncle and he was issueless; he (PW1) would visit the deceased frequently on his way back from work; on 26.05.2011, around 8.00 p.m., he came to his uncle's house and at that time, heard his aunt screaming; on hearing that, Sampath (PW3), who has his mechanic shop nearby, also rushed up stairs; at that time, the appellant came down the staircase and after pushing them both, he fled; on going up, they found Bakthavatchalam bleeding with injuries over his face and so, he, along with Sampath (PW3) and his aunt (Vasantha/PW2), took him to Mahalakshmi Hospital, where, first aid was given; at that time, he asked his aunt (Vasantha/PW2) as to what had happened, for which, she told him that the appellant demanded Rs.5,000/-, which the deceased refused to give and so, the appellant attacked him with an iron rod.

15. Venkatramanan (PW1) has further stated that after admitting his uncle in the hospital, he went to the Police Station and gave the complaint (Ex.P1). In the cross-examination, he has stated that he gave the complaint on 27.05.2011 at 01.30 a.m., but, in the complaint, he has given the date as 26.05.2011.

16.Mr.Rajan, learned counsel for the appellant contended that the evidence of Dr.Sasidharan (PW10) and the Accident Register copy (PW13) show that the deceased was examined at the Government Hospital, Chennai at 01.00 a.m., whereas, Venkatramanan (PW1) has stated that he gave the complaint (Ex.P1) at 01.30 a.m. on the way from Mahalakshmi Hospital to the Government Hospital, Chennai and therefore, the very lodging of the complaint and the consequent case built upon that have become shaky.

17.This Court is unable to agree with the said submission of Mr.Rajan because, the deceased was alive for three days after the attack and when he was examined by Dr.Sasidharan (PW10) at the Government Hospital, Chennai, he has told him that he was assaulted by Srinivasan on the head with an iron rod at 8.00 p.m. on 26.05.2011. In the cross-examination of Vasantha (PW2), the defence has not denied the presence of the appellant in the house of the deceased in and around that time. It is the case of the defence that the deceased had asked the appellant to procure liquor and after drinking liquor, he picked up a quarrel and fell on the floor and sustained injuries. The injuries referred to in Ex.P5 (wound certificate) and Ex.P13 (accident register) have been found on the parietal region, which would not have occurred in the manner projected by the defence. Admittedly, the deceased was 73 years old on the date of the incident. Had he consumed liquor and sustained the injuries, as contended by the defence, he might not have been conscious when he was examined by Dr.Chidambaram (PW6) at Mahalakshmi Hospital and by Dr.Sasidharan (PW10) in the Government Hospital, Chennai.

18.Mr.Rajan, learned counsel for the appellant contended that the police have failed to record the statement of the deceased, when admittedly, he was conscious at the time of his admission as inpatient in the Government Hospital, Chennai.

19.Though this is a remiss in the investigation, that can, by itself, not impeach the testimony of Vasantha (PW2), Venkatramanan (PW1) and Sampath (PW3). Venkatramanan (PW1) and Sampath (PW3) have stated that while they were going upstairs, the appellant came down the staircase and after pushing them, ran away. The appellant was aged 23 years at the time of the incident. The death of Bakthavatchalam on 30.05.2011 has been established beyond cavil by the prosecution and that has not been disputed by the defence. It is the case of the defence that the appellant had not cause the injuries which were found on the deceased. As stated above, the evidence of Vasantha (PW2), who was the only eye-witness to the incident, does inspire the confidence of this Court. In such view of the matter, this Court does not find any infirmity in the findings of the trial Court warranting interference.

20.Mr.Rajan, learned counsel for the appellant pleaded for leniency in sentence by submitting that the appellant has three small children to take care and that, he is eking out his livelihood as a small time carpenter and also contended that the appellant has no bad track record.

21.Taking these aspects into consideration, this Court reduces the sentence slapped on the appellant from 8 years rigorous imprisonment to 5 years rigorous imprisonment.

In the result, this appeal is partly allowed. The conviction made under Section 304(II) IPC by the trial Court in S.C.No.145 of 2012, stands confirmed. The substantive sentence of imprisonment alone is reduced to 5 years rigorous imprisonment. The sentence of fine and the default sentence remain unaltered. The trial Court is directed to secure the presence of the appellant to undergo the remaining period of sentence, if any.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate,
Ambattur.
- 2.do thro The Chief Judicial Magistrate,
Tiruvallur District.
- 3.The Principal Sessions Judge,
Tiruvallur.
- 4.The Inspector of Police,
T-2 Ambattur Estate Police Station,
Chennai-58.
- 5.The Superintendent ,
Central Prison,
Puzhal, Chennai.

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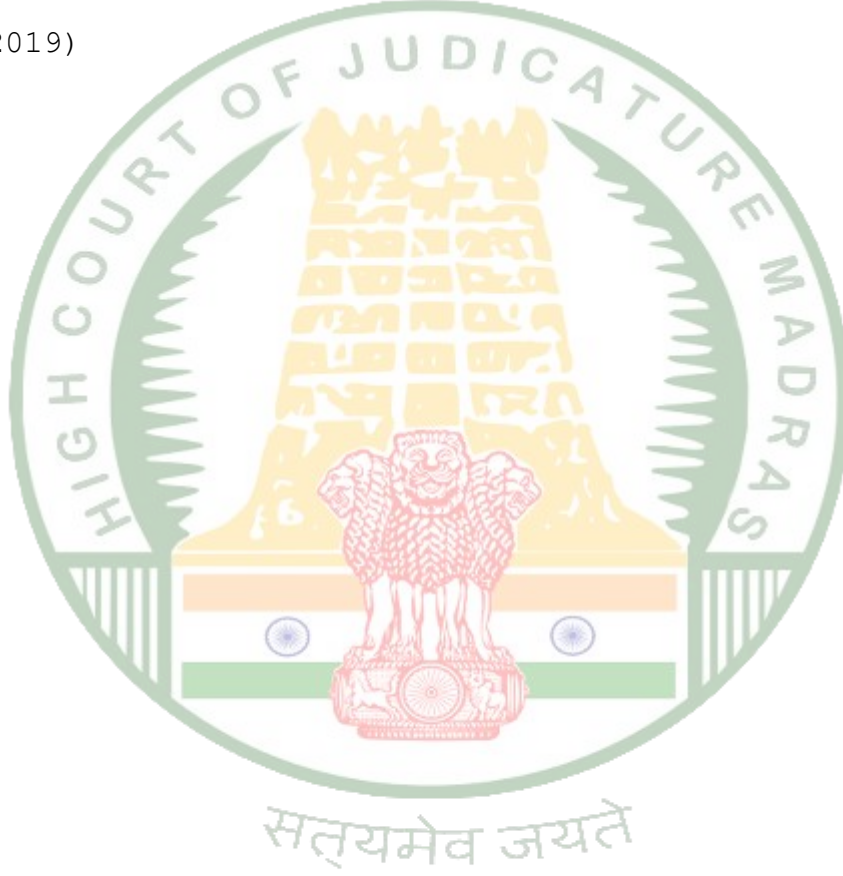
1.The Public Prosecutor,
High Court, Madras.

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

+1cc to Mr.R.Rajan, Advocate, S.R.No.89866

CRL.A.No.614 of 2013

VG I(CO)
GN(01/02/2019)



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