

Bail Slip

The Appellant herein/Accused namely Thangaiyam S/O Thiyaga aged about 62 years Accused in S.C.No.28/2010 dated:11/02/2011 on the file of the District and sessions Judge, Thiruvarur was directed to be released on bail as per order of this Court dated:21/04/2011 made in Crl.MP.No.1 of 2011 in CRL.A.No.255 of 2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Criminal Appeal No.255 of 2011

Thangaiyan

..

Appellant/Accused

Vs

State by:

Rep. by

The Inspector of Police,
Alivalam Police Station,
Theniku Poonnirai.

Cr.No.112 of 2010

..

Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgment of conviction and sentence dated 11.02.2011 passed in S.C.No.28 of 2010 on the file of the District and Sessions Court, Thiruvarur.

For Appellant : Mr.P.Vijendran

For Respondent : M/s. T.P.Savitha
Govt. Advocate (Crl.side)

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J U D G M E N T

The present appeal has been filed by the appellant against the judgment passed in S.C.No.28 of 2010 dated 11.02.2011 on the file of the District and Sessions Court, Thiruvarur.

2.The appellant is the sole accused in S.C.No.28 of 2010 on the file of Principal District Sessions Judge, Tiruvarur.

The accused stood charged for the offence under Section 302 IPC. By the judgment dated 11.02.2011, the trial court convicted him under Section 304(Part 2) IPC and sentenced him to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.1,000/- in default, to undergo rigorous imprisonment for 6 months . Challenging the said conviction and sentence, the appellant is before this court with this appeal.

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

(i) P.W1. Susheela is the wife of the deceased Sivapadham. On the date of occurrence, at about 8.00 p.m, the deceased was about to go out from his house. P.W.1 requested him to come to the house as early as possible. Subsequent to that, after hearing the news, she went to the scene of occurrence and saw that her husband was lying in the street with head injury. On verification, she knew that the accused herein, attacked her husband on his head by using wooden log.

(ii) P.W.2 Thirugnanam and P.W.3 Thennavan, who are residing in the same village, are witnessed the occurrence.

(iii) On receipt of the complaint under Ex.P.8 from P.W.1, on 08.10.2009 at about 4.00 a.m, P.W.8, Annai Abirami, the then Sub Inspector of Police, Aavilam, registered a case in crime No. 112 of 2009 under Section 302 IPC. Ex.P.9 is the First Information Report. After registration of the case, she handed over the case records to P.W.9 for investigation.

(iv)P.W.9 Vetrivel, the then Circle Inspector of Police Thiruthuraipoondi, on receipt of First Information Report, at about 6.00 a.m, visited the scene of occurrence and in the presence of P.W.4 Stalin and one Baskar, he prepared observation mahazar under Ex.P.2. Further, he drew rough sketch under Ex.P.10. Moreover, in the presence of the same witnesses, he recovered the blood stained soil, soil from the scene of occurrence and two wheeler(TVS XL Motor cycle) bearing registration No.TN 51 X 3421 under a cover of mahazar Ex.P.3. The recovered materials are marked as M.O.2 to M.O.4. After preparation of those documents, he went to the Government Hospital, Thiruthuraipoondi and examined the Panchayatdars. He prepared an inquest report under Ex.P.11. Subsequent to that, he directed P.W.6, Rajamanickam, Head Constable for making arrangements to conduct autopsy. Further, he sent a requisition letter to the Doctor for the said purpose.

(v)P.W.7 Mukesh Kumar, attached with Government Hospital, Thiruthuraipoondi, on 08.09.2009 at 10.00 a.m, received

requisition from P.W.9 and conducted autopsy over the dead body of Sivapatham. At the time of post-mortem, he found the following injuries:

"Rigor mortis present all 4 four limbs. Nasal bleeding present. Both eyes closed. Black eye on left side present. Ear bleeding present on left side.

1.Laceration left parietal region size 6 x 2 x 1 cm, exposing bone.

2.Abrasion present the below knee 4 x 1 cm size

3.Abrasion present once the over knee 2 x 1 cm size.

Internal Examination:

Head:

Hematoma seen. Seen Scalp Muscle on Left frontal area and left parietal area.

Fracture over left parietal and palatal bones.

Extending from left Supra orbital Ridge in anterior to left parietal occipital junction in posterior.

Extra dural and subdural Hematoma present above 50ml present.

Brain was found to be edematous.

Neck: No injury to neck bones, Hyoid Bone intact.

Thorax: No injury to ribs, Thorax cage normal, no bleed in the pleural, Pericardial Cavity.

Heart: No injury. Normal in size.

Lungs: Congested and edematous.

Abdomen Stomach: about loom viscous fluid present.

2.Liver, spleen, kidneys, congested. No edema seen.

3.Small and large intestine - Peculent matter present.

Pelvis - Intact. Spine and long bones - No fracture.

Stomach, Kidney, Large intestine, Liver, Hyoid bone for bio chemical analysis."

(vi)He preserved the viscera and sent it for chemical examination. On examination, it was found that there is no poison or alcohol found in the dead body. Accordingly, P.W.7 gave a final opinion that the deceased would appear to have died due to injury in the vital organ and in the brain. Further, he issued a post-mortem report under Ex.P.7.

(vii)After completion of post-mortem, the dead body was handed over to P.W.1. Thereafter, P.W.6 the Head Constable, collected M.O.5 and M.O.6, which are the clothes worn by the deceased and handed over the same to P.W.9 through the special report Ex.P.6.

(viii)In continuation of the investigation, on the same day, at about 18.00 hours at Alathampadi Bazaar, P.W.9 arrested the accused and recorded the confession statement given by him in the presence of P.W.5 Sivanandham and his Assistant Krishnamurthy. In the confession statement, the accused admitted his guilt and disclosed about the particulars of the weapon used in the offence.

(xi)Pursuant to the confession statement, P.W.5 Sivanandhan and P.W.9 Inspector of Police along with the accused went to the house of the accused and on identification by the accused, P.W.9 recovered wooden log under the cover of mahazar Ex.P.5. The said wooden log is marked as M.O.1. Consequent to the recovery of M.O.1, P.W.9 made arrangements for sending the material objects for chemical examination. After completing the investigation, on 29.10.2009, P.W.9 laid a charge sheet against the accused under Section 302 IPC.

4.Based on the above materials, the trial Court framed the charges under Section 302 IPC. The accused denied the charge and opted for trial. Therefore, the accused was put on trial. During the course of trial proceedings, in order to prove the charge against the accused, the prosecution examined as many as 9 witnesses as P.W.1 to P.W.9 and marked 11 documents as Ex.P.1 to P.11, besides 6 material objects as M.O.1 to M.O.6.

5.Out of the said witnesses, P.W.1 is the wife of the deceased as well as the de facto complainant in this case. In her chief examination, she has stated that she did not know how the deceased sustained injury. Because of the said evidence, the learned Government Advocate, in the trial Court, treated her as hostile witness.

6.P.W.2, who is the resident of the same village, deposed that on 07.10.2009, when he was in his residence, he heard the noise near from the occurrence place. When he came up from his house, the deceased and his brother are fighting with each other. Immediately, the accused, who is the father-in-law of Ganesan, came to the occurrence place and on seeing the Ganesan and Sivapadam, went inside to his house and took a wooden log and went to the scene of occurrence, thereafter, he attacked the deceased on the back side of the head. Immediately, the deceased went to the stage of unconsciousness and fell down. Later, when P.W.1 came to the scene of occurrence, her husband was found dead.

7.P.W.3, Thennavan, who is a resident of the same village, has stated in his evidence that he is running a cycle shop near to the scene of occurrence. On 07.10.2009 at about 8.00 p.m, when the deceased and his brother were quarreling with each other, the accused came with a wooden log and assaulted on the head of the deceased. Subsequently, he was found dead.

8.P.W.4 Stallin, who is the witness to the preparation of observation mahazar and seizure mahazar has stated in his evidence that on 08.10.2009 at about 6.30 a.m, P.W.9 came to the scene of occurrence and prepared observation mahazar under Ex.P.2 and rough sketch under Ex.P.10. He has further stated that P.W.9 recovered material objects M.O.2 to M.O.4 under the cover of recovery mahazar Ex.P.3.

9.P.W.5 Sivanandam, working as a Village Administration Officer, has stated before the trial Court that on 08.10.2009 at about 6.30 p.m, P.W.9 arrested the accused and recorded the confession statement. Further, pursuant to the confession statement, all of them went to house of the appellant and recovered the wooden log under the cover of recovery mahazar. He signed as witness in the recovery mahazar.

10.P.W.6, the Head Constable, attached to Thirukkalar Police Station, has deposed that, as per the direction given by P.W.9, he handed over the dead body to P.W.7 for conducting post-mortem. Further, he has stated that after completion of the post-mortem, he received lungi and shirt, which are all removed from the dead body and the same were handed over to P.W.9 through the special report.

11.P.W.7, the Doctor has deposed about the particulars of injury found on the dead body and about the issuing of final opinion about the cause of death. P.W.8 and P.W.9 are the police officers, stated in their evidence about the registration of the case, preparation of inquest report, recovery of material objects and with regard to the arrest of the appellant and finally, about the filing of final report.

12.The learned trial Judge, with regard to the incriminating materials available on the side of the prosecution, questioned the accused under Section 313 Cr.P.C., for which, he pleaded not guilty. However, he did not choose to examine any witness or mark any document on his side.

13.The learned trial Judge, on a perusal of the materials available on record and considering the arguments advanced by the learned counsel on either side, convicted and sentenced the appellant as stated supra. Challenging the same, the present

appeal has been filed by the appellant/accused.

14.I have heard Mr.P.Vijendran, learned counsel for the appellant and Ms.T.P.Savitha, learned Government Advocate (Criminal side) appearing for the respondent. I have also perused the records carefully.

15.Before going into the arguments advanced by the learned counsel on either side, it is necessary to see the history of the case.

16.In the trial Court, the evidence given by P.W.2 and P.W.3 established that during the time of occurrence, the accused had attacked the deceased on his head. Complimentary to the said eye witnesses, the Doctor, who conducted post-mortem, has stated that the deceased sustained injury in the left parietal region. So, the evidence given by the Medical Officer corroborated the evidence of eye witness.

17.Secondly, as per the evidence of P.W.9, the blood stained soil, the blood stained wooden log and the blood stained clothes worn by the deceased were recovered during the time of investigation. After recovering the material objects, he has not taken any steps to sending the same to the chemical examination. The reason for not sending the material objects is best known to the investigating officer only. However, that alone is not sufficient to hold that the case of the prosecution is false one.

18.The learned counsel for the appellant submitted that P.W.2 and P.W.3 are interested witnesses, thereby, their evidence cannot be looked into for considering the case in favour of the prosecution.

19.Now, considering the said arguments with the facts of the case, it could be seen that in the trial Court, on the side of the accused, it was suggested before the P.W.2 that due to the previous enmity, P.W.2 gave false evidence against the accused. It was a specific suggestion that prior to 15 days, a complaint has been given by P.W.2 against the accused. But, the said suggestion was denied by P.W.2. In the said circumstances, on the side of the accused, in order to prove the previous enmity, he has not shown any material (i.e.) (complaint) given by the P.W.2. So, without any document to show that P.W.2 had previous enmity with the accused, it is unbelievable that P.W.2 gave false evidence against the accused. In other wise, P.W.2 has clearly stated that at the time of occurrence seeing that the fight is going on, the accused in this case, went to his

house and came with a wooden log. Finally, attacked the deceased on the back side of the head. It is an admitted fact that the occurrence had happened in the bazaar at about 8.00 p.m. So, it is probable that the occurrence would have been witnessed by so many persons. So, it is probable that P.W.2 has also seen the occurrence.

20. On the other hand, P.W.3, who is the relative of the deceased, has stated that he is running a cycle shop near the place of occurrence. Further, he described the occurrence as stated by P.W.2. Since he is running a cycle shop near to the occurrence place, it is quite natural for him to see the occurrence at the time of occurrence.

21. In this regard, the learned counsel for the appellant submitted that in the cross examination of P.W.3, he specifically stated that on the day of occurrence, he closed his shop at 8.00 p.m. thereby, it is impossible for him to see the occurrence on that day. Further, he added due to the strained relationship with the accused, he gave false evidence against the accused in the trial Court.

22. In this regard, it is true P.W.3 in his cross examination had admitted that on the day of occurrence, he closed his cycle shop at 8.00 p.m. However, he has stated in his cross examination, that his residence is situated near to the occurrence place. Further, he has specifically stated that when at the time of returning home, he saw the fighting of the deceased with his brother. In the said circumstances, even though P.W.3 is related to the deceased through his son, that alone is not sufficient ground to disbelieve his evidence.

23. In the decision of the Hon'ble Apex Court in Ashok Kumar Pandey vs. State of Delhi [2002 (4) SCC 76], the relevant portion reads as follows:

"It is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or both, if otherwise the same is found to be credible."

24. So, on following the principles laid down by the Apex Court, only because of the reason that P.W.3 is distant relative of the accused, we cannot reject the testimony of P.W.2 entirely.

25. Even though the evidence given by the de facto complainant/P.W.1 is not sufficient to hold the prosecution case entirely the evidence given by P.W.2 and P.W.3 is more than sufficient to hold that the appellant at the time of occurrence,

assaulted the deceased.

26. Secondly, the learned counsel for the appellant would contend that the evidence given by the Village Administrative Officer and the investigating officer are found to be inconsistent with regard to the arrest of the accused. Accordingly, the prosecution has not proved the arrest made by the investigating officer, thereby, he prayed to allow the appeal.

27. In this regard, in the trial Court, the Village Administrative Officer, who attested in the confession statement was examined as P.W.5. At the time of giving evidence, P.W.5 has stated that when at the time, he went to the place of occurrence, he saw the accused with the investigating officer. On the other hand, the investigating officer has stated in his evidence that the accused in this case was arrested after being identified by P.W.5. So, in respect of securing the accused, P.W.5 and P.W.9. deposing the different versions.

28. However, in this case, P.W.2, P.W.3 and the deceased are all the residents of the same village. Since the occurrence in this case properly proved through the evidence given by P.W.2 and P.W.3, the contradictory evidence with regard to securing the accused alone is not a ground for disbelieving the entire prosecution case. Because the said evidence did not raise any prejudice to the accused. Accordingly, the submission made by the learned counsel for the appellant is not helpful for allowing the appeal.

29. Further, in this case, the final opinion given by the Doctor, the opinion arrived at by the investigating officer in the inquest report, have all proved that at the time of occurrence, the accused assaulted the deceased by using wooden log on the back side of the head and caused his death. The trial Court also carefully considered the evidence recorded in this case and came to the conclusion that accused is found guilty of the offence under Section 304 (part 2) IPC. Therefore, I am of the view that the findings arrived by the trial Court found correct. There is no specific reason available for interfering with the findings arrived at by the trial Court.

30. At the concluding stage, the learned counsel appearing for the appellant submitted before this Court that the alleged occurrence had happened due to the provocation made by the accused. Further, at the time of assaulting the deceased, the appellant is not having any intention to kill the deceased. Hence, in the said circumstances, awarding rigorous imprisonment for 10 years is excessive one and prayed this Court to show some

leniency on the appellant.

31.Considering the request made by the learned counsel for the appellant, it is true that the alleged offence happened without any pre-planned manner and without any intention. Moreover, the witnesses, accused and the deceased are residing in the same village. Hence, this Court is inclined to reduce the sentence from 10 years rigorous imprisonment to 7 years rigorous imprisonment.

In the result, the appeal is partly allowed. The sentence awarded to the appellant is modified to the extent that of Rigorous Imprisonment for 7 years. The trial Court is directed to secure the accused and send him to jail for serving the remaining period of sentence if any. The sentence already undergone, if any, by the accused shall be set off under Section 428 Cr.P.C.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate, Thiruvavarur.

2.The Chief Judicial Magistrate,
Tiruvavarur.(for Information)

3. The District and Sessions Judge
Thiruvavarur.

4.The Inspector of Police,
Alivalam Police Station,
Theniku Poonnirai

5.The Superintendent,
Central Prison, Trichy.

6.The Public Prosecutor,
High Court, Madras.

7.The District Collector
Thiruvarur District.

8.The Director General of Police,
Mylapur Chennai.

+lcc to Mr.P.Vijendran, Advocate, S.R.No.53314

Cr1.A.No.255 of 2011

SAI (CO)
GSP (31/10/2018)



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