

BAIL SLIP

The Appellant/Accused namely Jeyaraman S/o.mahalingam was directed to be released on bail as per order dated 28.06.2011 in MP.1 of 2011 in CMA.384 of 2011 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 27.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.384 of 2011

Jeyaraman

... Appellant/Accused

Vs

The State rep. by
The Inspector of Police,
Thalayamangalam Police Station,
Thalayamangalam Post,
Mannargudi Thaluk,
Thiruvarur District.
(Crime No.31 of 2008)

...Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 374(2) of Cr.P.C., against the conviction and sentence made in S.C.No.46 of 2009 dated 09.03.2011 on the file of the District and Sessions Court, Thiruvarur.

For Appellant : Mr.D.Veerasekaran

For Respondent : Ms.T.P.Savitha
Government Advocate(Crl.Side)

J U D G M E N T

The appellant herein is the sole accused in S.C.No.46 of 2009 on the file of the District and Sessions Court, Thiruvarur. Initially, in the trial Court, during the time of framing charges, the offence under Section 302 IPC had been framed against the accused. Thereafter, after concluding the trial, the learned District and Sessions Judge, Thiruvarur came to the conclusion that the appellant is found guilty for the offence under Section 304(ii) IPC and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1,000/- i/d to undergo 6 months rigorous imprisonment. Against the said judgment, the appellant approached this Court by way of this

criminal appeal and prayed to set aside the conviction and sentence.

2. The case of the prosecution is as follows :- The appellant Jeyaraman was residing at Piankattur, East bazaar street. The deceased Radha was also residing in the same place. The son of the deceased P.W.5 -Kubendran is having resident near to the house of the appellant. For the past three years, the son of the deceased P.W.5 - Kubendran had enmity with the appellant. On 16.04.2008, at about 8.00 p.m., near the house of the appellant, the cycle driven by P.W.5 was dashed against the appellant/ accused. For which, the appellant and P.W.5 quarrelled with each other. On hearing the noise, the deceased came to the scene of occurrence and questioned the same. Due to which, the appellant assaulted the deceased by using bamboo stick on his head and chest. Due to the said assault the deceased sustained fatal injury. P.W.1, Vadivambal took the deceased to the Government Hospital, Mannargudi. The said occurrence was witnessed by P.W.7 Pichamuthu and P.W.8 Anbalagan.

2.1. After admitting the deceased in the hospital, P.W.2 Dr.Chitra examined and reported that the deceased was brought dead. Subsequently, the dead body was sent to the Mortuary. P.W.10, Balasubramanian who was working as Special Sub Inspector, Mannargudi Police Station received the information with regard to the above said occurrence and intimated the same to Thalayamangalam Police Station. After receiving the intimation, P.W.11 Nagarajan, the then Special Sub Inspector, Mannargudi Taluk Police Station went to the Government Hospital, Mannargudi and obtained the statement from the wife of the deceased (P.W.1) under Ex.P.1. Based on the statement, a case has been registered in Crime No.31 of 2008 under Section 302 IPC. Ex.P.9 is the First Information Report. After registration of the case, the case records were handed over to the Inspector of Police for investigation.

2.2. P.W.14, the then Inspector of Police, Mannargudi Police Station, on 18.04.2008, after receiving the case records, went to the scene of occurrence at 8.15 p.m. Further, in the presence of P.W.8 Anbalagan and one Rengaraj, he prepared an observation mahazar under Ex.P.6. Further, he prepared rough sketch under Ex.P.10. Thereafter, he went to the Government Hospital and recorded the statement of the witnesses between 10 to 12 hours. Further, he prepared inquest report in the presence of witnesses and Panchayathars. Ex.P.11 is the inquest report. Thereafter, he sent a requisition to the Doctor attached with Mannargudi District Head Quarters Hospital, through P.W.13 Pandian for conducting autopsy over the dead body. After receiving the requisition from the Inspector of Police, P.W.3,

Dr. Sureshkumar conducted autopsy and found the following injuries :-

" Moderately build. Moderately nourished body of a male lying on its back with extremities by the side of body. Bite mark seen in left forearm. No other visible external injuries. On opening of body all organs are congested. Heart contains blood. Stomach had 100ml of food particle - undigested. Opening of skull reveals 5X1 cm crack-stellate # seen in left temporal bone. tear 10X5 cm haematoma seen in sub dural area in left temporal bone spinal cord. Hyoid bone intact."

After completion of Post-mortem, he collected the inner parts of the dead body for chemical examination. After receiving viscera report, he gave opinion as due to the injury sustained by the deceased on the head, death may occurred before 12 to 20 hours from the time of post-mortem. The Post-mortem report is marked as Ex.P.4 and final opinion as well as the visra report is marked as Ex.P.5. Further, he gave an opinion that when a person attacked by using the bamboo stick (M.O.1), there may be a chance for sustaining injury as like that of deceased is having.

2.3. In the mean while, on 18.04.2008 at about 9 a.m., P.W.14 arrested the appellant and recorded his confession statement in the presence of P.W.9 Gunasekaran and one Veeramani. In the confession statement, the appellant admitted the guilt. After recording the confession statement, the appellant willing to identified the bamboo stick, which was used for commission of offence, in the presence of the same witnesses, the same was recovered under the cover of recovery mahazar (Ex.P.8). The bamboo stick, which was used for the commission of offence is marked as M.O.1. Subsequent to the arrest of the appellant, P.W.14 sent a requisition to the Magistrate for sending the inner parts of the dead body to the chemical examination. Thereafter he handed over the case records to P.W.15, Neelakandan, Inspector of Police for further investigation. Again the case records were handed over to P.W.16, Inspector of Police for further investigation. Subsequently, after receiving the chemical report, P.W.16 laid a final report against the appellant.

3. Initially, in the trial court, during the time of framing charges, the offence under Section 302 IPC had been framed against the accused. 16 witnesses were examined on the side of the prosecution as P.W.1 to P.W.16, besides 11 documents were exhibited as P.1 to P.11. More over, the property which was used for commission of offence was marked as M.O.1. On the side of the defence, Arrest mahazar prepared by the Investigating

Officer is marked as Ex.D.1.

4. After concluding trial, the learned Judge came to the conclusion that the appellant is not found guilty for the offence under Section 302 IPC, however, he is found guilty for the offence under Section 304(2) IPC and sentenced him as stated above. Now challenging the said conviction, the appellant approached this Court by way of this appeal.

5. Today, when the appeal is taken up for hearing, heard Mr.D.Veerasekaran, learned counsel appearing for the appellant and Ms.P.Savitha, learned Government Advocate appearing for the State and perused the records.

6. The first and foremost contention raised by the learned counsel for the appellant is that as per the evidence and the particulars available in the post mortem certificate, the deceased have not sustained any external injury. Further, he added that the Doctor, who conducted the Post-mortem has stated in the cross-examination that a person who has fell down on the cement floor, there might be a chance for sustaining injury as sustained by the deceased. Further he made a submission that as per the evidence of P.W.1 to P.W.5, prior to the occurrence, P.W.5 and the appellant were quarrelled each other and in the quarrel, the deceased fell down and sustained the said injury. So, the injury sustained by the deceased is not due to the assault made by the appellant. Accordingly, the appellant is entitled for acquittal.

7. On the other hand, the learned Government Advocate appearing for the respondent would submit that there is no evidence to show that the deceased fell down on the cement floor. Accordingly, she prayed to dismiss the appeal.

8. The next contention raised by the learned counsel appearing for the appellant is that as per the arrest memo, the appellant sustained injury during the time of occurrence. So, it is the duty of the prosecution to explain on what circumstances, the appellant sustained injury. Further more, for the injury sustained by the appellant, the investigating Officer necessarily have to register a case and investigate the same along with the case in our hand. But, the said procedure was not followed by the Investigating Officer, which is fatal to the prosecution. Thereby, he prayed to set aside the judgment of the trial Court.

9. In the trial Court, in order to prove the case of the prosecution, the defacto complainant, who is the wife of the deceased was examined as P.W.1, and the son of the deceased was examined as P.W.5. P.W.7 and P.W.8, who are the neighbours of

the deceased was examined as eye witnesses to the alleged occurrence. All the above said witnesses were stated in the chief examination as on the fateful day, before the occurrence, P.W.5 and appellant were quarrelled with each other. When the same was questioned by the deceased, the appellant assaulted the deceased by using bamboo stick. In the other way, on the side of the appellant, it was stated that during the time of occurrence, P.W.5 pushed the deceased from the clutches of appellant and hence the deceased fell down on the cement floor. The said suggestions put up by the appellant was denied by P.W.1 in her evidence. Further, before P.W.5, the same suggestion was put up by the defence counsel and the same was denied. More over, in order to prove the said defence taken by the appellant, no body was examined before the trial Court on the side of the appellant. Thereby, the above contention raised by the appellant is rejected.

10. Now, on going through the exhibits, on the side of the appellant, the arrest memo, which prepared by the Investigating Officer is marked as Ex.D.1. On going through the particulars made in the said document, it is to be seen that in the quarrel which happened on 16.04.2008, the appellant sustained simple injury, for which, he referred to the Government Hospital, Mannargudi. So according to the endorsement made in the arrest memo, it is proved that the appellant sustained simple injury in the quarrel happened on 16.04.2008. But after sending the appellant for treatment, a copy of the Accident Report or any other documents in respect of the injury sustained by the appellant, have not been exhibited by the prosecution before the trial Court. In general, the non explanation to the injury sustained by the accused is fatal to the prosecution. However, recently our Hon'ble Apex Court in a case of "Dashrath Vs. State of Chhattisgarh reported in 2018(4) SCC 428" held at paragraph No.8, as follows :-

"8. The next contention urged by the learned counsel is that the prosecution has not chosen to explain the injuries on the person of the appellants and this is fatal to the case of prosecution. It cannot be held as a matter of law or invariably a rule that whenever the accused sustained an injury in the same occurrence, the prosecution is obliged to explain the injury and on the failure of the prosecution to do so, the prosecution case should be disbelieved. Before holding that non-explanation of the injuries on the persons of the accused persons by the prosecution witnesses may affect the prosecution case, the Court has to be satisfied of the existence of two

conditions :

i) that the injury on the person of the accused was of a serious nature; and

ii) that such injuries must have been caused at the time of the occurrence in question (Vide Takhaji Hiraji V. Thakore Kubersing Chamansing², SCC P.154 Para 17)"

11. Now considering the observation made in the above said order, with our case in hand, the endorsement made in the arrest memo clearly proves that the nature of the injury sustained by the appellant is simple in nature. Further, there is no doubt that the injury had happened during the time, in which the alleged occurrence was happened. If really the appellant was suffered with serious injury, it is very easy to him to submit the records relevant to the injury sustained by him. But, no steps was taken on the side of the appellant to prove the same by way of producing wound certificate or other documents in respect of the treatment taken by the appellant. Thereby, this Court holds that the appellant was sustained only simple injury during the alleged occurrence. The evidences given by P.Ws. 1 to 7 are clearly disclosed the occurrence and the reason for the fatal injury sustained by the deceased. Accordingly, the contention raised by the learned counsel for the appellant is not a ground for allowing the appeal.

12. More over, since the offence has happened without any motive or intention, the trial Court itself altered the Section of law and awarded the punishment under Section 304(ii) IPC. Hence, it does not want any interference from this Court and this Criminal appeal is liable to be dismissed.

13. Accordingly, the criminal appeal is dismissed and the sentence awarded by the learned District and Sessions Judge, Thiruvarur in S.C.No.46 of 2009 on 09.03.2011 is confirmed. The respondent is directed to secure the appellant for the purpose of sentencing him to undergo the remaining period of conviction. It is also directed that the period of sentence already undergone by the appellant shall be given set off, as required under Section 428 Cr.P.C.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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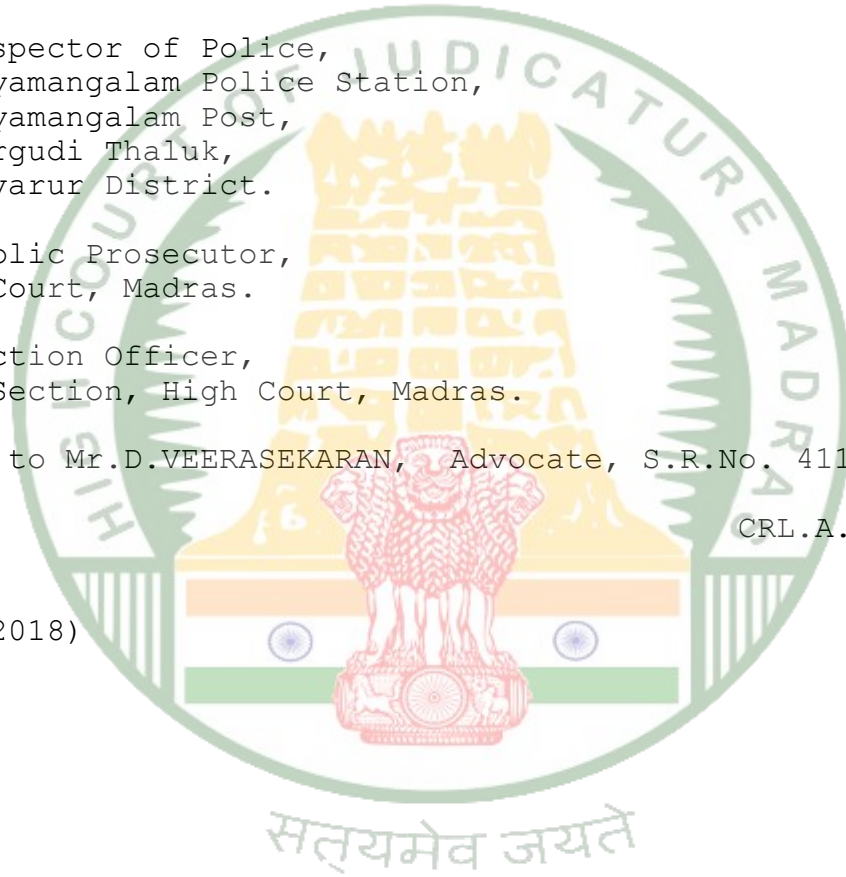
To

1. The Presiding Officer
The District and Session Judge,
Thiurvarur.
2. The Judicial Magistrate - V, Mannargudi
3. do thro The Chief Judicial Magistrate, Thiurvarur.
4. The Superintendent, Central Prison, Trichy.
5. The Inspector of Police,
Thalayamangalam Police Station,
Thalayamangalam Post,
Mannargudi Thaluk,
Thiruvarur District.
6. The Public Prosecutor,
High Court, Madras.
7. The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.D.VEERASEKARAN, Advocate, S.R.No. 41110

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KK(CO)
TR(25/07/2018)



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