

Bail Slip

The Appellant/Accused viz Manikandan, S/o.Lakshmanan, was released on bail and in by the order dated 16.4.2010 made in MP.1 of 2010 in Crl.A.247 of 2010 on the file of this Hon'ble High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2018

Coram

The Honourable Mr.Justice R.PONGIAPPAN

Criminal Appeal No.247 of 2010

Manikandan

...Appellant/1st Accused

Versus

State rep. by Inspector of Police,
Mamallapuram Police Station,
Kancheepuram District.
Crime No.598 of 2006

...Respondent/Complainant

This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the learned Principal Sessions Judge of Kancheepuram District at Chengalpattu in S.C.No.142 of 2007 dated 05.04.2010 convicting and sentencing him to undergo one year R.I and Rs.1,000/- fine in default 3 months RI for the alleged offence under Section 323 I.P.C.

For Appellant : Mr.M.Sasikumar

For Respondent : Mrs.T.P.Savitha
Govt. Advocate(Crl.Side)

J U D G M E N T

This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the judgment passed by the learned Principal Sessions Judge of Kancheepuram District at Chengalpattu in S.C.No.142 of 2007 dated 05.04.2010.

2. The appellant is the first accused in S.C.No.142 of 2007 on the file of the learned Principal District Judge, Chengalpattu. The appellant/accused was charged for the offence under Section 302 of I.P.C. By judgment dated 05.04.2010, the

Trial Court convicted him under Section 323 of I.P.C and sentenced him to undergo one year rigorous imprisonment and imposed a fine of Rs.1,000/- in default to undergo three months simple imprisonment. Challenging the said conviction and sentence, the appellant/accused is before this Court.

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

P.W.1 Antony Sagayanathan is the General Manager of Ideal Beach Resort, Mamallapuram in which the accused herein was working as a Cook. On 23.11.2006 at about 10:45 a.m, P.W.2, Mohan informed to P.W.1 about the quarrel happened between the deceased and the appellant. On seeing the appellant/accused he assaulted the deceased on his cheek, P.W.1 went to the scene of occurrence and warned both the appellant and the deceased to go to their department in which they are working. P.W.6, Kumari who was working as sweeper witnessed the said occurrence. After ten minutes, it was informed to P.W.1 over phone that the deceased fell unconscious due to the chest pain in the rest room, thereby P.W.1 arranged a vehicle through P.W.4, Boopalan and sent the deceased along with P.W.7 to Srudeep Hospital in which the deceased was given first aid. However, P.W.8, Dr.Indiragandhi, Doctor attached to Srudeep Hospital treated the deceased and advised them to go to some other reputed Hospital.

3.2. P.W.7, Elumalai informed P.W.1 over phone that deceased was referred to some reputed hospital and P.W.1 instructed P.W.7 to go to Chettinad Hospital and then frequently questioned over phone about the condition of the deceased for which P.W.7 replied that the deceased was unconscious. After few minutes, Doctor declared that deceased brought dead. Immediately, P.W.1 preferred a Complaint to Mahabalipuram Police Station under Ex.P.1.

3.3. P.W.12, then Sub Inspector of Police, Mahabalipuram registered the case in Crime No.598 of 2006 under Section 302 of I.P.C. Ex.P.7 is the First Information Report (FIR). After the registration of the case, P.W.12 handed over the case records to P.W.13, Gunasekaran, Inspector of Police, Mamallapuram Police Station for further investigation. P.W.13 took the same for investigation and rushed to scene of occurrence. In the presence of one Natarajan and P.W.5, Yesuraj, he prepared the Observation Mahazar under Ex.P.9 and the Rough Sketch under Ex.P.8. He examined the witnesses and recorded their statements.

3.4. Thereafter, P.W.13 went to the Chettinad Hospital and conducted inquest on the dead body of the deceased Muruganandham in the presence of the witnesses. Ex.P.10 is the Inquest Report. After completing the above formalities, he made arrangements for sending the dead body to Chengalpattu Medical College Hospital for conducting postmortem, for which P.w.13

directed P.W.10 Arumugam, Head Constable.

3.5. On 24.11.2006, P.W.9, Dr.Parasakthi who was on duty on Chengalpattu Medical College Hospital received the requisition letter sent by P.W.13 through P.W.10. During the time of postmortem, he found the following injuries:

- 1) Abrasions seen on back of Right shoulder 2 cm x 1 cm, left temple 1 x 0.5 cm left mandible 5 cm x 1 cm
- 2) Contusion seen on front of left side of neck measuring 6 cm x 4 cm O/D - Underlying areas found Congested
- 3) Diffuse Contusion seen On front of Left Chest 7 cm x 3 cm O/D - Fracture seen on 2nd to 4th ribs along its lateral Geenateue with surrounding areas of contusions Pevi cerebral Cavity contained 50 ml of fluid blood. Heart chambers contained few CC of fluid blood. Great Vessels Intact. Skull - Intact. Brain-NAD Stomach-Empty. Nil Specific smell. Nuecissa - NAD All other internal Organs NAD, C/S-pale-Bladder-Empty Viscaner-Presceid for chemical analysis and blood for grouping opinion-Reserved Pending Chemical analytic Report, Death would have occurred 26 - 30 hours prior to postmortem.

P.W.9 preserved the viscera and sent the same for chemical examination. After receiving the Chemical Examination Report, P.W.9 gave an opinion that the deceased would have died due to the impact of the injury sustained by him on his neck and chest. She issued the Postmortem Report under Ex.P.3 and the Opinion Report given by P.W.9 was accepted as Ex.P.4.

3.6. In continuation of the investigation, on 25.11.2006, at about 05:00 a.m, P.W.13 arrested the accused at Kovalam Bus Stand and send him for remand. On the same day, P.W.13 enquired the Doctor who gave first aid treatment to the deceased at Srudeep Hospital, Mamallapuram. Further, on 08.12.2006, P.W.13 enquired the Doctor who conducted autopsy and recorded his statement. After the receipt of chemical examination report, he had completed investigation and laid a Charge Sheet against the appellant/accused for the offence under Sections 302 r/w 34 of I.P.C.

4. Based on the above materials, the trial Court framed charges against the accused/appellant and the accused denied the same. In order to prove the case on the side of prosecution, as many as 13 witnesses were examined and 10 documents were marked. Further, a copy of the order passed by this Court in CrI.O.P.No.1272 of 2006 dated 20.12.2006, was accepted as Ex.C.1.

5. Out of the said witnesses, P.W.1 stated in his evidence about the information given by P.W.2 and with regard to the quarrel between the deceased and the accused/appellant and also

about the arrangement of the vehicle for sending the deceased to the Hospital and also stated about the instruction given to P.W.7 for admitting in the reputed hospital.

6. P.W.2 is a sweeper in the same Hotel stated in his evidence as on 23.11.2006, at about 10:30 to 10:45 a.m, the appellant/accused assaulted the deceased on his cheek. Further, he deposed evidence with regard to the information given to P.W.1. P.W.3 is also a staff in the said Hotel who heard the news about the death of the deceased. P.W.4, Travel Manager in the Ideal Beach Resort gave evidence with regard to the arrangement of vehicle for sending the deceased to the hospital. P.W.5 is the witness present at the time of preparing the Observation Mahazar by the P.W.13 but he had not supported the case of prosecution in the trial Court. P.W.6, Staff in the same Hotel heard about the death of deceased. Further he stated in his evidence that when the deceased and the appellant are quarreled with each other, P.W.1 is also present.

7. The next witness P.W.7 is a person accompanying the deceased at the time of getting first aid in Srudeep Hospital situated in Mamallapuram and as per the instructions given by P.W.1, P.W.7 admitted the deceased in the Chettinad Hospital. P.Ws.8 & 11 were stated in their evidence with regard to the treatment given to the deceased. P.W.9 is the Medical Officer who conducted autopsy on the dead body of the deceased and gave opinion that death had been occurred due to the injury sustained by the deceased in his neck and chest. Thereafter, P.Ws.12 & 13 gave evidence with regard to the manner of investigation viz., preparation of Observation Mahazar, Recovery of M.Os and laying of Charge Sheet.

8. The learned Trial Judge with reference to the incriminating materials adduced by the prosecution witnesses, accusation to the accused under Section 313(1)(b) of Cr.P.C and for which he pleaded not guilty. Further, he did not just examined any witnesses except to mark Ex.C.1. The learned trial Judge on perusal of the materials placed and considering the arguments advanced in this case convicted and sentenced the appellant/accused as stated supra. Challenging the same, the present Appeal has been filed.

9. Heard the learned counsel for appellant and the learned Government Advocate for the respondent and perused the records carefully.

10. The learned counsel for the appellant would contend that there are lot of contradictions in the evidences of P.Ws.1 to 7. Eventhough the Trial Court has correctly converted the offence from Section 302 of I.P.C to 323 of I.P.C, sentenced one

year rigorous imprisonment to the accused is too harsh. In other words, merely based on the surmises and conjectures and without any legal evidences, the Trial Court convicted the appellant/accused. As per the evidences of P.Ws.1 & 6, at the time of occurrence, P.W.1 & 2 have to come to Koyambedu Market for purchasing the vegetables but the case of prosecution raises based on the information given by P.Ws.2 that P.W.1 which is nothing but false. Accordingly, the Trial Court without considering the evidence perspectively convicted the appellant is nothing but an error. On the other hand, the learned Government Advocate would contend that the minor contradictions arising between the evidences of eyewitnesses cannot be looked into for deciding the case of prosecution.

11. I have considered the rival submissions made in this case admittedly, after seeing the occurrence, P.W.2 informed the same to P.W.1. Based on the information given by P.W.2, P.W.1 went to the scene of occurrence. However, P.W.1 instructed the appellant to go to his room. In the meanwhile, the evidence given by P.W.4 clearly stated that after sometime from the occurrence, the deceased complaining to him about the chest pain then only with the help of P.W.4, P.W.7 admitted the deceased in the Surdeep Hospital and subsequently, in Chettinad Hospital. The evidence given by P.Ws.4 & 7 with regard to this aspect is no way connected to the Court's examination of the appellant/accused. In the said circumstances, it is an admitted fact that if the appellant is assaulted as stated by P.Ws. 1 & 2, there could not be a chance of sustaining injury in the chest. In this regard, Doctor who gave treatment in the Chettinad Hospital clearly stated in his evidence, during the time of treatment in CPR (Cardio Pulmonary Resurrection) method, there may be the possibility of fracture. In this regard, applying the said evidence with the contents of the Postmortem, it was seen that before the death of the deceased, the left rib bone numbering from 2 to 4 were found fractured. Culling out the entire evidence before the prosecution, it is probably the fracture of the bone is only due to treatment given to the deceased in the Chettinad Hospital.

12. With regard to the presence of P.W.2 in the occurrence place, it relate the elements given by P.W.2 who have admitted in the cross-examination that in the morning, he went to the Koyambedu Market for purchasing the vegetables. Further, basically P.W.2 is a Sweeper, so he is having the liability to perform his duty only on the instructions given by his Superior Officers. In the said circumstances, the above evidence alone is not sufficient to hold that it is not probable for P.W.2 is present at the time of occurrence even assume that P.W.2 is not present at the time of occurrence, the evidence given by P.W.1 alone sufficient to hold before the death of the deceased, the

appellant/accused assaulted the deceased by using his hands.

13. Accordingly, the submission made by the learned counsel appearing for the appellant is rejected. Now coming to the quantum of punishment, the trial Court has sentenced one year rigorous imprisonment to the appellant/accused for offence under Section 323 of I.P.C. No doubt, the punishment awarded by the Trial Court is nothing but 1 year is the maximum punishment provided under 323 of I.P.C. From the year of 2010 onwards, the appellant/accused is coming to the Court. Further by provision, the appellant/accused is the last grade servant. Hence, considering the above circumstances, this Court is inclined to modify the sentence imposed on the appellant/accused by the trial Court as 6 months simple imprisonment instead of one year rigorous imprisonment.

14. In the result, this Criminal Appeal is partly allowed and the conviction imposed on the appellant/accused for the offence under Section 323 of I.P.C is confirmed and the sentence imposed by the trial Court is modified and the appellant/accused is directed to undergo 6 months simple imprisonment and to pay a fine of Rs.1,000/-. Further, the period of punishment already undergone by the appellant/accused shall be set off as under Section 428 of Cr.P.C.

mrr

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sessions Judge,
Kancheepuram District,
Chengalpattu.

2.The Inspector of Police,
Mamallapuram Police Station,
Kancheepuram District.

3.The Public Prosecutor,
High Court, Madras.

4.The District Munsif cum
Judicial Magistrate, Thirukallukundram

5.The Chief Judicial Magistrate,
Chengalpet (for information)

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

AK(CO)
sm:29.10.2018

Cr1.A.247 of 2010



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