

Bail Slip

The appellant/accused, aged 39 years AnnaDurai S/o Periya samy devan to be released on bail in WMP.NO.2/10 IN CRL A.NO.426/2010 order dated 23/12/2010 on the file of this Hon'ble court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Criminal Appeal No.426 of 2010

Annadurai

... Appellant/
Accused

Vs.

State represented by
The Station House Officer,
Lawspet Police Station,
Puducherry.

... Respondent/
complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, to set aside the order dated 24.06.2010 made in S.C.No.72 of 2008 on the file of the learned Principal Sessions Judge, Puducherry.

For Appellant : Mr.T.Muruganantham,
Legal Aid Counsel

For Respondent : Mr.D.Bharatha Chakravarthy
Public Prosecutor (Puducherry)

J U D G M E N T

The present appeal has been directed against the conviction and sentence awarded by the learned Principal Sessions Judge, Puducherry in S.C.No.72 of 2008 dated 24.06.2010.

2. The appellant / accused herein is the sole accused in the above said case. After concluding the trial, the learned Principal Sessions Judge, Puducherry, convicted the accused for the offence under Section 304 [Part-I] of IPC and sentenced him to undergo ten years rigorous imprisonment with a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for one year. Now, against

the said conviction and sentence, the present appeal has been preferred by the appellant praying to set aside the same.

3. From the materials available in the case records, the case of the prosecution is projected as follows:-

(i) P.W.1 [Kannan], the appellant [Annadurai], the deceased [Murthy] and the witness [Murugan] are having residence in southern parts of Tamil Nadu. On 29.05.2008, at about 4.30p.m., all of them went to the Restaurant of P.W.2 [Taraknath Pal] and ask to give some employment, for which, P.W.2 replied to them to take rest and join duty on the next day. Thereafter, all of them went to the town and returned to the Restaurant at about 8.30 p.m. After returning from the town, the accused and the deceased [Murthy] went to upstairs while P.W.1 and the witness [Murugan] went to the downstairs to sleep. Before that in the upstairs portion, the appellant and the deceased made a quarrel in intoxicated mood. P.W.1 [Kannan] and the witness [Murugan] pacified them. On knowing the quarrel, P.W.2 went upstairs and insisted the deceased [Murthy] to go and sleep in the downstairs. Thereafter, P.W.1 and the appellant slept in the upstairs of the restaurant.

(ii) On the next day morning, at about 6.30 a.m., P.W.1 [Kannan] found the deceased [Murthy] in upstairs portion of the restaurant with bleeding injury on his head. At the same time, the appellant [Annadurai] found missing with his belongings. Immediately, the deceased [Murthy] was admitted in the General Hospital, Puducherry, at about 6.30 a.m. At that time, P.W.9 [Dr.Tamizharasi], who is the in-charge of casualty admitted the deceased [Murthy] as inpatient and provided necessary treatment. Further, she sent an intimation memo under Ex.P.11 to the police officers. Meanwhile, P.W.1 went to the police station and lodged a complaint under Ex.P.1.

(iii) On receipt of the complaint, P.W.6 [Bharathidasan] registered a case in Crime No.109 of 2008 for the offence under Section 324 of IPC. Ex.P.7 is the printed First Information Report. After registration of the case, he went to the occurrence place and prepared crime details form under Ex.P.8. Further, he went to the Government Hospital, Puducherry for enquiring the injured [Murthy]. But the injured is in unconscious stage. On 30.05.2008, P.W.11 took up the case for investigation, he went to the hospital and enquired P.W.1 [Kannan] and other witnesses, he recorded their statements. On the basis of the statement given by P.W.1 [Kannan], he altered the Section of Law as 308 of IPC under Ex.P.12 and sent the alteration report to the jurisdictional Court and the same was received by the Court on 02.06.2008.

(iv) In continuance of investigation, he sent an information about the occurrence to P.W.10 [Segar], who is the father of the injured [Murthy]. After receiving the information, P.W.10 rushed to the Puducherry General Hospital for seeing his son. P.W.11 [Jayasankar] enquired the P.W.10 [Segar] on 03.06.2008 and confirmed the identity of the injured [Murthy] and at the same time, he came to know that the name of the injured is Ulaganathan and it is the contention of P.W.10 [Segar] that the friends of the injured had called him as Murthy.

(v) In spite of giving necessary treatment, the injured [Murthy] died on 26.06.2008 at about 1.15 a.m. So, the hospital authorities sent an intimation memo to P.W.11 [Jayasankar] under Ex.P.13. After receiving the intimation from the hospital authorities, P.W.11 altered the Section of Law as 304 of IPC. Further, he sent the alteration report to the Court. Ex.B.14 is the alteration report. On 27.06.2008, he went to the hospital and conducted enquiry over the dead body of the deceased in the presence of the witnesses and he prepared inquest report under Ex.P.15. Thereafter, he made arrangements for taking photographs of the dead body. P.W.8 [Selvacanabady] took photographs on the dead body of the deceased [Murthy]. Further, P.W.11 sent a requisition to the hospital authorities to conduct autopsy over the dead body. On requisition, P.W.5 [Dr.Balaraman], who is working as a Special Doctor in the Department of Forensic Medicine conducted autopsy on 27.06.2008 between 12.50 p.m and 1.50 p.m.

(vi) On external examination, he found the following injuries on the dead body of the deceased, namely, Ulaganathan @ Murthy:

- "1.Tracheostomy wound 2 x 1 cms. over the front of middle of the neck.
- 2.Infected wound 3 x 2 cms. over the helix of right ear.
- 3.Infected wound 2 x 1 cms. behind the right ear.
- 4.Healing wound 2 x 1 cms. over the helix of left ear.
- 5.Healed wound 2 x 1 cms. over the right wrist.
- 6.Infected wound 10 x 4 cms. over the right leg.
- 7.Infected wound 9 x 3 cms., 10 x 2 cms., 9 x 4 cms. skin deep over the back of chest (bed sore) and
- 8.Infected wound 20 x 9 x 1/2 cms. over the mid gluteal region."

(vii) On internal examination, he found the following injuries:

<https://hcservices.ecourts.gov.in/hcservices/> "Contusion on the right parietal

region in scalp, comminuted and depressed fracture over the right parietal bone in the skull and resolving contusion over the right parietal and right temporal lobes of brain and hyoid intact, neck muscles and other organs are in normal and stomach and its contents is in dark brown fluid 200 ml. and no specific smell.

He sent the viscera to the Public Health Laboratory for chemical examination and he issued Post-mortem Examination Report Ex.P.4 and after obtaining Chemical examiner's report Ex.P5 he issued the Final opinion Ex.P6 on post mortem report stating that the cause of death of the deceased Ulaganathan @ Murthy was due to septicaemia and head injuries."

(viii) After completing all the formalities, P.W.11 handed over the dead body of the deceased to his relatives. Further, he enquired panchayatars, other witnesses and recorded their statements. P.W.7 [Nagarajan] was deputed to arrest the accused [Annadurai] with a team. On 26.07.2008, at about 2.00 p.m., he arrested the accused [Annadurai] in Nainar Koil Bus Stand, which is the native of the appellant.

(ix) During the time of interrogation, the appellant gave confession statement and on the basis of the confession given by the accused/appellant, P.W.11 went to the scene of occurrence and seized M.O.1 [casuarina log] in the upstairs portion particularly in a gap place. For the recovery of the said material object, he prepared seizure mahazar under Ex.P.3, which was attested by P.W.4 [Anandh]. After receiving the postmortem report, on 26.09.2008, after completing the investigation, P.W.11 laid a final report under Section 304 of IPC before the learned Judicial Magistrate No.II, Puducherry.

(x) After receiving the final report, the learned Judicial Magistrate No.II, issued a summon to the accused. On appearance, the documents, which are all relied on by the prosecution were furnished to the appellant. Thereafter, the case has been committed to the Court of Session, Puducherry for disposal.

number was assigned as S.C.No.72 of 2008. In the trial Court, a charge has been framed for the offence under Section 302 of IPC, the appellant denied the charge and pleaded not guilty.

(xii) Thereafter, on the side of the prosecution, as many as 11 witnesses were examined as P.W.1 to P.W.11 and 16 documents were marked as Exs.P.1 to P.16, besides, one material object viz., Casuarina log was marked as M.O.1.

(xiii) After concluding the prosecution side evidence, the appellant was examined under Section 313(1) (a) Cr.P.C. During the time of examination, he denied the incriminating materials available in the evidence of prosecution witnesses. On the side of the appellant, one Janaki was examined as D.W.1 and no document has been marked.

(xiv) After conclusion of trial, the learned Principal Sessions Judge, Puducherry came to the conclusion that the appellant is found guilty of the offence under Section 304 (Part-I) of IPC and awarded the punishment as stated above. Now, challenging the said conviction and sentence, the appellant is before this Court.

4. When the appeal is taken up for consideration, I have heard the arguments of Mr.T.Muruganantham, the learned legal aid counsel appearing for the appellant and Mr.D.Bharatha Chakrvarthy, the learned Public Prosecutor (Puducherry) appearing for the respondent.

5. The learned counsel appearing for the appellant would submit that in the trial Court, the story put forth by the prosecution is entirely false. To prove the case of the appellant, the sister of the appellant was examined as D.W.1. In her evidence, she has clearly stated that on the day of occurrence, the appellant returned to her home (at 6.00 a.m.) early in the morning on 30.05.2008. He has further submitted that the evidence given by the sister of the appellant is true and genuine one. But, the learned Principal Sessions Judge, Puducherry, without considering the said aspect, erroneously came to the conclusion that the evidence of D.W.1 is not proved by any documents and rejected the contention of the appellant.

6. On considering the said submission in the trial Court on the side of the accused, no documents were

produced in support of the evidence given by D.W.1. Further, the accused had not appeared before the police officers till the death of the deceased [Murthy]. The said circumstances shows the appellant set up a unproved story which shows the contention raised by the appellant is false one.

7. Initially, in the trial Court, the prosecution has attempted to prove their case through the circumstantial evidence.

8. First of all, on going through the judgment rendered by the trial Court, the learned Principal Sessions Judge, Puducherry has considered the decision of the Honourable Apex Court in Kashiram vs. State of Madhya Pradesh (1999 MLJ (Criminal) 188), wherein, it has held as follows:

"When a false suggestion regarding he plea of alibi has been put by the accused to the witness, then it has to be considered as another circumstances to link the accused with the crime."

9. The learned Principal Sessions Judge, has also considered yet another decision of the Honourable Apex Court in Kuldeep Singh and Other vs. State of Rajasthan (2000 MLJ (Criminal) 748), wherein it has observed as follows:

"In a case on the circumstantial evidence, false answer given by an accused will be an additional or missing link in completing the claim of circumstances."

10. The learned Principal Sessions Judge after considering the decisions cited supra, came to the tangible conclusion that the appellant is found guilty for the offence under Section 304 (Part-I) of IPC.

11. In that way, the learned Principal Sessions Judge relied on the decisions of our Hon'ble Apex Court reported in AIR 1989 SC 1890 (Ashok Kumar Chatterjee vs State Of Madhya Pradesh), 1952 (3) SCR 1091 (Hanumant vs The State Of Madhya Pradesh) and 1973 (2) SCC 793 (Shivaji Sahebrao Bobade & Anr vs State Of Maharashtra).

12. On applying the principles of the above decisions, it is necessary to prove the following circumstances for believing the prosecution:

(a) Firstly, before the occurrence, both the

appellant and deceased joined together and after the occurrence, the appellant immediately absconded from the place of occurrence.

(b) Secondly, the recovery of alleged M.O.1 [Casuarina log], alleged to be the weapon of attack on the inforamatory statement given by the accused.

13. In this case, the evidence given by P.W.1 and P.W.2 clearly proved that before the date of occurrence along with P.W.1, both the appellant and the deceased came to the Restaurant run by P.W.2 and verified about the employment. Further, the evidence of P.W.1 and P.W.2 proves that both the appellant and the deceased stayed in the said Restaurant.

14. In this regard, the learned counsel appearing for the appellant would submit that as per the evidence of P.W.1, the deceased was going to sleep in the downstairs. On the other hand, in the next day morning, he saw the deceased lying in the upstairs with some bleeding injuries. From the above, it is seen that P.W.1 has not given any satisfactory explanation, thereby, there is a contradiction in the evidence given by P.W.1 and the Court below has not taken into account the said contradiction.

15. Considering the said arguments, it is true before the occurrence, the deceased went to downstairs for sleeping. However, since the alleged occurrence happened in the Restaurant, it is very easy to reach upstairs within a reasonable time by the deceased. So, the said contradiction alone is not sufficient to hold that the entire evidence is presumed to be false. According to the evidence of P.W.1 and P.W.2, both the appellant and the deceased are talking before the occurrence.

16. The next submission is that, in the trial Court the Doctor, who conducted the postmortem opined that the death had happened due to septicaemica as well as due to head injury. Further, the Doctor, who given the treatment to the deceased has stated that the deceased found with a cut injury on his forehead. If really, a person is attacked with M.O.1 [casuarina log], it would not create a cut injury, thereby, the evidence given by the Doctor with regard to the injury sustained by the deceased is almost not in favour of the prosecution. From the above, it is seen that the deceased was not assaulted by using casuarina log. The trial Court has not looked into these aspects in perspective manner and convicted the appellant, which is nothing but erroneous.

17. Now, considering the said argument with the

<https://hcservices.ecourts.gov.in/hcservices> evidence given by the prosecution witnesses, it is true

that at the time of giving treatment, the appellant sustained cut injury on the forehead. In this regard, in the Textbook of "Medical Jurisprudence and Toxicology" [Modi], it was mentioned in Page 613 as "on wounds produced by a blunt weapon or by a fall, the skin splits and may look like incised wounds when inflicted on tense structures covering the bones, such as the scalp, eyebrow, iliac crest, skin, and perineum, or by a fall on the knee or elbow when the limb is flexed.".

18. Now, applying the said explanation in this case also, since the casuarina log is a blunt objected weapon, if the accused attacked the deceased by using the said weapon, it would cause the cut injury, thereby, the submission of the learned counsel appearing for the appellant is no way dilute the case of the prosecution.

19. Furthermore, on going through the opinion given by the Doctor, with regard to the cause of death, septicaemica is also one of the reason. However, on close reading of the opinion given by the Doctor, septicaemica was formed only due to the head injury as well as due to the long treatment given to the deceased. So, only due to the incident now alleged in this case, the deceased sustained head injury and consequently, he was taking treatment for months together, thereby, the reason for forming the fuss is nothing but the assault made by the accused. So, the medical opinion given by the Doctor is also in support of the other circumstances.

20. The next contention raised by the learned counsel appearing for the appellant is that in the records created during the time of investigation reveals that the name of the deceased is Murthy actually, the name of the deceased is not Murthy. But the trial Court not considered the said aspect and convicted the accused. In this regard, on considering the said submission, in the trial Court P.W.10, who is the father of the deceased clearly deposed that the name of the deceased is Ulaganathan @ Murthy. Furthermore, in this regard, on the side of the defence, there is no suggestion put forth to the prosecution witnesses by saying that the name of the deceased is not Murthy. So, the said submission is no way helpful to the case of the accused.

21. Further, the last submission made by the learned counsel appearing for the appellant is that no blood stained material object/weapon is recovered and not sent for chemical examination. In a way, the investigation conducted by the police is a defective one. Accordingly, he prayed for allowing this appeal.

22. It is true that the weapon, which was used for the attack on the deceased was not sent for chemical

examination. The said aspect is admitted by the investigation officer in his cross examination. Further, on going through the another circumstances, in this case, the appellant was arrested only after two months from the date of occurrence. After arresting the appellant, the said weapon was recovered by the police officer. On going through the recovery mahazar, it was not stated that the weapon recovered through the disclosure statement is having blood stain. So, it is not necessary to send the said M.O.1 for chemical examination.

23. Apart from that, in the decision of our Honourable Apex Court in M/s.Mandvi Co-op. Bank Ltd., vs. Nimesh B.Thakore [2010 SCC CrL. 1402], it has held that the defect in the investigation alone is not a reason for saying that the prosecution case is false one. So, not sending the material object for chemical examination cannot be presumed that the prosecution is a false one. Accordingly, the submission made by the learned counsel appearing for the appellant is rejected.

24. Now coming to the point of punishment, the trial Court convicted the appellant for the offence under Section 304 (Part-I) of 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 one year. However, after registration of the case, the appellant is in the judicial custody for nearly 2½ years and faces this case for the past 8 years. Hence, this Court is inclined to modify the sentence to 7 years of Rigorous imprisonment from 10 years of Rigorous imprisonment.

25. In the result, this Criminal Appeal is partly allowed. The conviction and sentence imposed upon the appellant by the learned Principal Sessions Judge, Puducherry in S.C.No.72 of 2008, dated 24.06.2010, is modified to the extend of 7 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-. The trial Court is directed to secure the accused and send him to jail for serving the remaining period. The sentence already undergone, if any, by the accused shall be set off under Section 428 Cr.P.C.

26. While parting with the case, I appreciate the services rendered by Mr.T.Muruganandam, learned counsel appeared on behalf of the appellant as Legal Aid Counsel. The High Court Legal Services Authority is directed to pay his remuneration.

cla/sri

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sessions Judge
Puducherry.

2.The Station House Officer,
Government of Puducherry,
Lawspet Police Station,
Puducherry.

3.The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

4.The chief Judicial Magistrate,
Pudhucherry(for information)

5.The Judicial Magisrete NO.II
Pudhucherry.

6.The Superintendent,
central Prison,pudhucherry.

7.The secretary,
legal services authority
high court, madras.

8.The Public prosecutor,Pudhucherry

+1 cc to The Public prosecutor,Pudhucherry SR.NO. 47172

+1 C.C. to M/S.T.MURUGANANDAM Advocate SR.NO. 46528

Cr1.A.No.426 of 2010

SJ(cO)

ASK(23/08/2018)

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