

Bail Slip.

The Appellant/Accused namely R. Thiyagu was directed to be released on bail as per this court order dated 11.04.2012 in M.P.1/2012 in Crl.A. 210/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 26.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CRL.A.210 of 2012

R.Thiyagu

... Appellant

Vs

The State rep. by
The Inspector of Police,
B5, Singanallur Police Station,
Coimbatore District.
in Crime No.870 of 2010

... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., against the judgment passed by the learned Principal Sessions Judge, Coimbatore in S.C.No.133 of 2011 dated 19.01.2012, in which the appellant was convicted and sentenced to undergo seven years Rigorous Imprisonment for the offence under Section 304 (ii) IPC.

For Appellant : Mr.M.Vijayakumaran

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

J U D G M E N T
सत्यमेव जयते

The appeal is directed as against the judgment dated 19.01.2012, passed by the learned Principal Sessions Judge, Coimbatore in S.C.No.133 of 2011. The appellant herein is the sole accused. 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 Principal Session Judge, Coimbatore came to the conclusion that the appellant is found guilty for the offence under Section 304(ii) IPC and sentenced him to undergo Rigorous Imprisonment for seven years. Against which, now the appellant approached this Court by way of criminal appeal, prayed to set aside the convictions and sentence.

2. The case of the prosecution is as follows :- P.W.1 Meenakshi is the wife of the deceased; P.W.2 Mayilsamy is the cousin brother of the deceased and P.W.3 Pappammal is the cousin sister of the deceased. P.W.1 and P.W.2 are residing at C.M.C. colony, Uppilipalayman. On the date of occurrence i.e, 09.06.2010 at about 5.00 p.m., the deceased along with P.W.1 to P.W.3, proceeded towards temple in order to celebrate the festival. On the way to the temple, the appellant herein indulging in eve-teasing. After seeing the said incident, the deceased Raman questioned the same as whether the appellant/accused has sisters or not. Thereby, the appellant provoked and picked up the material object M.O.1, wooden log and assaulted the deceased on his back side of the head. After the assault made by the appellant, the deceased fell down in the ground in a faint. Further, at the time of leaving from the scene of occurrence, the appellant threatened the P.W.1, by saying that if any complaint preferred to the police, he would kill her husband and daughter. On hearing the crying of P.W.1, P.W.4 and P.W.5 came to the scene of occurrence and make arrangements for sending the deceased to the Coimbatore Medical College Hospital in an Auto rickshaw. P.W.1 is accompanied with the deceased at the time of taking treatment in Government Hospital, Coimbatore.

2.1. In the Government Hospital, Coimbatore, the deceased was treated as out patient. So the deceased returned to his home. However, at the night hours, he suffered from head ache and sleeplessness. Therefore, on the next day on 10.06.2006, P.W.1 took the deceased to the Ramvel Hospital. In the Ramvel hospital, the deceased took treatment for two days. Thereafter, the Doctor attached with the said hospital advised P.W.1 for taking scan and other clinical examination. Since the deceased did not recover from his illness till 13.06.2010, P.W.1 admitted the deceased, in G.R. Hospital situated at Udaumpalayam. On 13.06.2010 at about 9.35 a.m., P.W.1 informed the occurrence to P.W.8-Dr.Ramanathan, that the alleged occurrence was happened on 09.06.2010 between 4.00 p.m., to 5.00 p.m. In the G.R Hospital, the deceased was treated in Intensive Care Unit. After taking scan, it was identified that the deceased sustained injury in skull as follows :

"Sub-Arachnoid hemorrhage in the left sylvian fissure and temporo parietal region. Acute infarct in left middle cerebral artery and right anterior cerebral artery territory and subarachnoid hemorrhage in the left temporafrom to parietal regions".

After giving necessary treatment, the authorities in G.R. Hospital discharged the deceased and issued discharge summary under Ex.P.6. Then only, on 15.06.2010 at about 6 p.m., since the condition of the deceased Raman become bad, P.W.1 decided to prefer a complaint to the Police. For which, she narrated the

incident to a person presented in the G.R. Hospital, who reduced the same into writing under Ex.P.1, read over and obtained signature of P.W.1. After writing the complaint, P.W.1 went to the B-5 Singanallur Police Station and lodged the complaint for initiating action against the appellant.

2.2. On receiving the complaint, P.W.11, the then Sub Inspector of Police attached with the above said Police Station on 15.06.2010 at about 18.00 hours registered the case in Crime No.870 of 2010 under Section 75(1)(c) of TNCP Act and u/s 324 and 506(ii) IPC under Ex.P.10. After registration of the case, P.W.11 took up the same for investigation. He visited the scene of occurrence on the same day at 6.45 p.m. In the presence of P.W.6, he prepared the observation mahazar under Ex.P.2. Further he prepared Rough sketch under Ex.P.11. Further more, he seized material object M.O.1-wooden log under Ex.P.3 mahazar in the presence of same witnesses. After preparation of these documents, he recorded the statement of witnesses, who witnessed the occurrence and other witnesses, who attested in the observation mahazar and other documents. After examination of witnesses, he visited G.R. Hospital, in which the deceased was admitted and found that the deceased was not in a position to give statement. Therefore, he examined P.W.1 and recorded her statement.

2.3. In continuation of the investigation on 16.06.2010 at about 8.00 a.m., P.W.11 arrested the accused near Singanallur bus stop and sent him to the judicial custody. In the mean while, on 07.07.2010 at about 1.50 p.m., death had happened to the deceased and the same was intimated to the Police Officer. On the receipt of the intimation, P.W.11 altered Section of offence as 302 IPC under Ex.P.12. Further he handed over the case records to P.W.12, the then Inspector of Police for investigation.

2.4. P.W.12, the then Inspector of Police attached with Singanallur Police Station took up the case and immediately, he went to the place in which the dead body was kept. He held inquest over the dead body of Raman in the presence of Panchayatars and prepared inquest report under Ex.P.13. After preparation of Inquest report, he gave requisition to the Doctor attached to the Government Hospital for conducting Autopsy. The said requisition is marked as Ex.P.9 and it was forwarded to the hospital authorities through P.W.9 Unnikrishnan, who is the Police constable attached with the Police Station, in which P.W.12 was working. Further, he examined P.W.1 to P.W.4 and recorded their statements.

2.5. P.W.10 Dr. Jayasingh, Assistant Professor, Department of Forensic Medicines, attached with Coimbatore Medical College Hospital, conducted autopsy on the dead body of Raman on 08.07.2010 at 10.10 a.m. During the time of autopsy, he

found the following injuries and other identifications :-

"Nil external injuries noted on the body. Ante-mortem injuries : On dissection of scalp, skull and dura: Sub scalp contusion in variegated in colour 12X8X4 cm noted on left fronto parietal region. Cerebra spinal fluid increased in volume with blood stain. Diffused sub dural and sub arachnoid hemorrhages noted on both cerebral hemispheres. Contusion 6X4X1cm notied on right fronto parieto termportal lobe of brain. The Medial aspect of right fronto parietal lobe found liquefied necrosed over the area of 6X4X3cm. Contusion varigated in colour 8X4cm noted on left fronto parieto temporal region, the underlying brain tissue found necrosed. OTHER FINDINGS:- -Paritoneal and pleural cavities-empty. Heart - all chambers empty, Coronaries patent. Hyoid bone-intact. Stomach contains about 75ml of yellow colour fluid no specific smell mucosa pale. Small intestine contains about 10ml of bile stained fluid. no specific smell mucosa pale. Liver, Spleen, Brain, Lungs and Kidneys - cut section pale. Urinary bladder empty."

After completion of post-mortem, the inner parts of the deceased were sent for chemical examination. In the chemical examination, it was identified that there is no poisonous substance is found in the inner parts of the deceased Raman. P.W.10 the Doctor gave opinion that the deceased would appear to have died of head injury and its complication. Ex.P.7 is the Post-mortem certificate and the final report issued by P.W.10 is Ex.P.8.

2.6. Subsequently, on receipt of final opinion, the investigation officer examined the Doctors who are attached with the Ramvel Hospital, G.R. Hospital and the Doctor who conducted the autopsy over the dead body of the deceased Raman and finally he concluded the investigation and laid charge sheet for the offence under Section 302 IPC.

3. In the trial Court, on the side of the prosecution 12 witnesses were examined as P.W.1 to P.W.12, besides 13 documents were exhibited as Ex.P.1 to Ex.P.13. Apart from that the wooden log recovered by the investigating officer was marked as M.O.1. On the side of the defence, two witnesses were examined as D.W.1 and D.W.2 and no documents were marked.

4. After concluding the trial, the learned Principal Session Judge, Coimbatore came to the conclusion that the appellant is not found guilty of the charges under Section 302 IPC and he found guilty for the offence under Section 304(ii)

IPC and sentenced him to undergo Rigorous Imprisonment for seven years.

5. Today, when the appeal is taken up for hearing, heard the arguments advanced by Mr.M.Vijayakumar, learned counsel appearing for the appellant and Ms.T.P.Savitha, learned Government Advocate (Crl. Side) appearing for the State and perused the available records.

6. The learned counsel for the appellant would initially contend that in this case, the complaint with regard to the occurrence has lodged to the Police Officer after the lapse of 6 days from the date of occurrence, which itself clearly shows that the appellant is falsely implicated in this case.

7. On going through the records, it is true that the alleged occurrence was happened on 09.06.2010, but the complaint had been lodged before P.W.11 only on 15.06.2010. In the said circumstances, the witness who was examined as P.W.1 to P.W.5 had not stated any explanation for not lodging the complaint immediately after the alleged occurrence. In this regard, on going through the judgment rendered by the trial Court, it was held that the deceased was working as Sweeper in Corporation of Chennai and his wife P.W.1 being an illiterate, she had not the knowledge for lodging of the complaint immediately after the occurrence. In this regard, the reason stated by the trial Court in the judgement for non lodging of complaint immediately is satisfactorily explained as above. As already stated, the evidence with regard to the assault made by the appellant is clearly told and hence the delay in lodging the complaint alone is not the reason for allowing this appeal.

8. The learned counsel for the appellant would further contend that no such occurrence was happened as alleged by the prosecution and the Doctor in the Government Hospital, who had initially treated the deceased was not examined by the prosecution.

9. In this case, as per the case of the prosecution, after the occurrence, immediately on the same day, the deceased was got treatment in Government Hospital. Thereafter, he went to Ramvel Hospital and subsequently he got treatment at Ramvel Hospital for two days on 10.06.2006 and 11.06.2006. Finally, he admitted in the G.R. Hospital from 13.06.2010 till the date of death. Even though, the Doctor who had given treatment in Government Hospital has not been examined as witness, on the next day, he got treatment in Ramvel hospital stating that on 09.06.2010 itself, the deceased sustained injury on the back of his head. It is true that it is the duty of the Investigating Officer to collect the particulars from the Government Hospital,

in which the deceased was first treated. The non collection of materials from the Government Hospital, Coimbatore is nothing but the defect in the case of prosecution. In this regard, the lower Court clearly held based on the judgement reported in "State of U.P. Vs. Harimohan (2001) M.L.J. (Cri) 182" that

"Defective investigation, cannot be made a basis for acquitting the accused it despite defects and failures of the investigation, a case is made out against all the accused or any one of them"

Hence the above said contention raised by the learned counsel for the appellant is not acceptable.

10. Secondly, the learned counsel for the appellant has also contended that there may be the chance that the deceased may fell down and sustained head injury due to the consumption of liquor. In this regard, in the trial Court on the side of the appellant, two witnesses were examined. D.W.1, the Chief Doctor in Krishna Hospital, Coimbatore, deposed that as per the requisition made by the Municipal Corporation, he started de-audition ward in his hospital. In the said branch, the deceased was treated from 24.02.2010 to 09.03.2010. Further he stated, after getting discharge from the hospital, the deceased had not come for review and for further examination. He also deposed that in this regard, it was enquired by the corporation authorities and found that the deceased has again started to consume liquor. Even though the said evidence is in favour of the arguments advanced by the learned counsel for the appellant, the evidence given by D.W.1 has not supported by any documents. Being a famous hospital in Coimbatore, necessarily they have to maintain the records with regard to the treatment given to the patients. If any document marked in respect of the treatment given to the deceased, it is a duty of the Court to accept the evidence of D.W.1. But in this case, D.W.1 has not produced any document in order to corroborate the evidence given by him. More over, he stated in his evidence that on 10.06.2010, he had enquired about the deceased for which, P.W.1 replied that the deceased sustained injury and admitted in the hospital. Further, on 01.07.2010, the Councilor attached with the said Krishna Hospital visited the Government Hospital and saw P.W.1 and the deceased. Therefore, at any circumstances, the evidence given by the Doctor -D.W.1, without any document, cannot be reliable.

11. Further on the side of the defence one Subramani was examined as D.W.2. He also stated in his evidence that on the day, on which the alleged occurrence was happened, it was heard by D.W.2 that the deceased was fell down and admitted in the hospital. Even though, he stated in the chief examination like that, subsequently, in the cross examination, he stated that he did not know, who gave the information with regard to

the falling of the deceased. Hence, there was a reasonable doubts arose that the said evidence given by D.W.2 in the chief examination is true or not.

12. The next stand taken by the learned counsel for the appellant is that the recovery of the material object is not proved, by means of cogent evidence. In the trial Court, as per the evidence of P.W.11, after lodging the complaint by P.W.1, in the presence of P.W.6, the material object was recovered from the scene of occurrence. Since the complaint to the alleged occurrence was lodged after six days, it is not possible for P.W.11 to recover the material object from the scene of occurrence, since the occurrence had happened in a busy area. So it is true, the recovery of the material object has not been proved beyond the reasonable doubts. However, on considering the cogent and undoubtful evidence given by the eye witnesses, the said lacuna did not spoil the case of the prosecution.

13. The next contention raised by the learned counsel for the appellant is that some discrepancies are available in the evidence of P.W.1 and P.W.4, in respect of the place in which, the appellant was attacked the deceased.

14. It is seen from the Post-mortem certificate, a contusion found in the back side of the deceased head with multiple colour. The Doctor, who initially gave treatment has also confirmed that the injury was found on the back side of the head. On going through the evidence, it was found that the prosecution witnesses were examined after 15 months from the date of the alleged occurrence. Hence, we cannot expect the entire history stated in the complaint shall be necessary for accepting the evidence of P.W.1 and P.W.4. In this regard, reliance is placed in the judgment reported in "(2011) 6 SCC 279 - A.Shankar Vs. State of Karnataka" in which our Hon'ble Apex Court held as follows :-

"22. minor contradictions, inconsistencies, embellishments or improvements on trivial matters which do not affect the core of the prosecution case, should not be made a ground on which the evidence can be rejected in its entirety."

Considering the observation of our Hon'ble Apex Court with the case in our hand, this Court is also in a position to hold that the minor contradiction available in the evidence given by the witnesses do not affect the case of the prosecution. Thereby, the contention raised by the learned counsel for the appellant is not the ground for disbelieving the case of the prosecution.

15. Now coming to the quantum of punishment, the accused was an adolescent offender. He was only aged 22 at the time of occurrence. He had no bad antecedents. Having regard to the mitigating as well as the aggravating circumstances, this Court is of the view that the sentencing the accused to undergo Rigorous Imprisonment for four years would meet the ends of justice.

16. In the result, this Criminal Appeal is partly-allowed and the conviction and sentence under Section 304(ii) IPC, imposed on the appellant, is modified to the extent that the appellant is sentenced to undergo Rigorous Imprisonment for four years for the offence under Section 304(ii) IPC. 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.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate III, Coimbatore.
2. The Chief Judicial Magistrate, Coimbatore.
3. The Principal Sessions Judge, Coimbatore
4. The Inspector of Police,
B5, Singanallur Police Station,
Coimbatore District.
5. The District Collector, Coimbatore.
6. The Director General of Police
Mylapore, Chennai 4.
7. The Superintendent , Central Prison
Coimbatore.
8. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.M. Vijayakumar, advocate sr 41190.

CRL.A.210 of 2012

SP(23/07/2018)