

**BAIL SLIP**

Pandi, S/o.Arumugam, male, aged about 36 years was released on bail by the order of this Court dated 29.01.2018 made in CrI.M.P(MD) No.11513 of 2017 in Criminal Appeal (MD) No.508 of 2017.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Criminal Appeal (MD) No.508 of 2017

1.Pandi

2.Deva @ Devaraj

.. Appellants/Accused Nos.1 & 2

vs.

State rep. by

The Inspector of Police,

Thondi Police Station,

Ramanathapuram District.

Crime No.188 of 2016

.. Respondent/Complainant

Criminal appeal is filed under Section 374(2) of Criminal Procedure Code against the judgment and conviction dated 04.10.2017, by the learned Additional District and Sessions Judge, Ramanathapuram in S.C.No.48 of 2017.

For Appellants : Mr.G.Karuppasamy Pandian
for M/s.J.Vijayaraja
For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

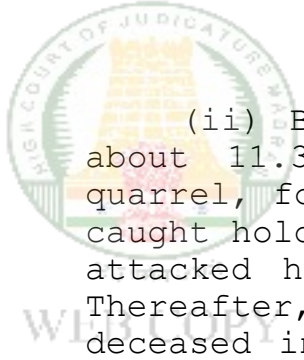
JUDGMENT

**(Judgment of the Court was delivered by
M.M.SUNDRESH, J)**

The accused Nos.1 and 2, who stood charged for the offences under Sections 323 and 302 r/w 34 I.P.C, before the learned Additional District and Sessions Judge, Ramanathapuram in S.C.No.48 of 2017 and convicted for the offence under Section 302 r/w 34 I.P.C. are appellants before us.

2.Facts in brief:

(i) It is the case of the prosecution that the first appellant and the deceased were friends. The deceased lent a sum of Rs.5,000/- to the first appellant. The non-payment of the amount borrowed resulted in misunderstanding between them, leading to a wordy quarrel and the attack. Accordingly, the accused attacked the deceased.



(ii) Both the accused and the deceased were having liquor. At about 11.30 p.m. on 24.08.2016, once again there was a wordy quarrel, followed by the attack. The first appellant is said to have caught hold of the hands of the deceased, while the second appellant attacked him with the broken beer bottle on the neck and chest. Thereafter, the first appellant with the help of P.W.4 took the deceased in an Ambulance, which was brought in after a phone call from him and admitted him in Government Hospital, Ramanathapuram. The deceased died at about 3.00 a.m. on 25.08.2016. A complaint (Ex.P.3) was given by P.W.7, who was not an eye-witness and a case was registered by Thondi Police in Crime No.188 of 2016 on 25.08.2016 at 18.30 hours.

(iii) P.W.17 is the Inspector of Police, who took up the investigation. He prepared Observation Mahazar under Ex.P.16 and Rough Sketch under Ex.P.17. The accused were arrested, based upon the secret information obtained, on 26.08.2016 at about 0.15 hours. The confession statement given by the first appellant was thereafter recorded, pursuant to which M.O.3 was recovered. He conducted inquest over the body of deceased and prepared Ex.P.22 Inquest Report at about 6.00 a.m on the same day. After completion of investigation, final report was filed.

3. On committal, the case was tried in S.C.No.48 of 2017 on the file of learned Additional District and Sessions Judge, Ramanathapuram. Before the trial Court 19 witnesses have been examined, while marking 24 documents along with material objects M.Os.1 to 3. Out of 19 witnesses most of the witnesses turned hostile inclusive of all the eye-witnesses to the occurrence. Hostile witnesses would include P.Ws.12 and 13, who are Village Administrative Officer and the Village Assistant respectively.

4. Prosecution Witnesses:

(i) P.W.1 was the owner of the shop which situated nearer to the shop of the first appellant. He was stated to be an eye-witness.

(ii) P.W.2 was also another tea shop owner. He was also arrayed as eye-witness.

(iii) P.W.3 was a shepherd. While turning hostile, he has stated that he did make a statement under Section 161 Cr.P.C. in tune with case of prosecution as an eye-witness.

(iv) P.W.4 has stated that he along with appellants travelled in the Ambulance and admitted the deceased in the hospital. However, he denied the attack, while turning hostile.

(v) P.W.5, who was made an eye-witness with respect to the demand made by the deceased also turned hostile.



(vi) P.W.6, who signed the Observation Mahazar and Seizure Mahazar turned hostile as well.

(vii) P.W.7, similarly, who is the author of the complaint turned hostile.

(viii) P.W.8 is the mother of the deceased. She only states that the deceased and the first appellant are very close friends, who used to sleep together. The first appellant received money from the deceased. He picked up a quarrel with the deceased and he threw the money by stating that "You left away with this".

(ix) P.W.9 is the Scientific Officer, through whom the Biological report and Serological report were marked as Exs.P.4 and P.5. As per Viscera report Ex.P.6, Ethyl Alcohol was found in the Viscera of the deceased.

(x) P.Ws.10 to 13 also turned hostile. P.W.10 was an eye-witness.

(xi) P.W.11 was an witness for observation mahazar and seizure mahazar, who merely admitted the signatures.

(xii) P.Ws.12 and 13 are Village Administrative Officer and his Assistant. P.W.12 stated that on information from P.W.17 he along with P.W.13 went to the police station and signed the statement said to have been given by the first appellant. He had further stated that he has put his signatures under Exs.P.9 and P.10 only at the police station.

(xiii) P.W.13 has also given an evidence in tune with the statement of P.W.12.

(xiv) P.W.14 is the Police Constable, who handed over the body of the deceased to the doctor and after postmortem to the deceased to his relatives.

(xv) P.W.15 is the doctor, who conducted postmortem. He has also stated that Ethyl Alcohol found in the internal organs of the deceased. In his cross-examination he has stated that it is possible that injury Nos.1 and 2 could have happened by falling, which depends upon the extent of force and velocity.

(xvi) P.W.16 is the Sub-Inspector of Police, who registered the F.I.R.

(xvii) P.W.17 is the Inspector of Police, who conducted the investigation, through him Exs.P.16 to 22 were marked.

(xviii) P.W.18 is the Inspector of Police, who filed the charge



(xix) P.W.19 is the doctor, who attended the deceased. She speaks about the injuries sustained and signing of the Accident Register under Ex.P.23 by P.W.4.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C, they denied the same as false. The trial Court placing reliance upon the evidence of P.Ws.3 and 4 coupled with the evidence of P.W.8 held that the charges are proved and convicted the first appellant under Section 302 r/w 34 I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs.25,000/-, in default, to further undergo two years of simple imprisonment and convicted the second appellant under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs.50,000/-, in default, to further undergo three years of simple imprisonment. Hence, challenging the same the appellants are before us.

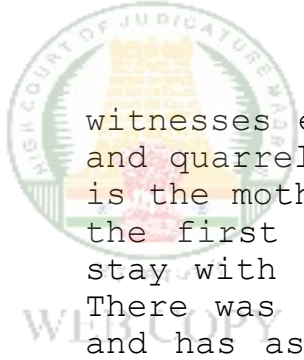
6. The learned counsel for the appellants would submit that there is absolutely no eye-witness available. All the so called eye-witness have turned hostile. The trial Court has committed an error in placing reliance upon the evidence of P.Ws.3 and 4. The statement given under Section 161 Cr.P.C. being inadmissible in law ought not to have been relied upon by the trial Court. The acknowledgment of a previous statement given before the police cannot make it admissible in evidence especially when the case of the prosecution is denied. What was accepted was a statement given while denying the factum of being present in the place of occurrence as eyewitness. The deceased was also found to be drunk as seen from Exs.3 and 13. The delay in the first information report has not been explained. The trial Court rendered a conviction on mere surmise and conjecture. Even the evidence of P.Ws.12 and 13 did not support the case of the prosecution. P.W.7 has stated that the complaint was written by somebody else. Thus, the conviction rendered by the trial Court is liable to be set aside.

7. The learned Additional Public Prosecutor appearing for the respondent would submit that the evidence of P.Ws.3 and 4 though turned hostile along with Exs.P.4 to P.6 and P.13 would suffice to sustain the conviction. The motive has been established by the prosecution through the evidence of P.W.8. Hence, no interference is required.

8. We have considered the rival submissions and perused the evidence available on record.

9. The point for consideration before this Court is as to whether the prosecution has proved its case beyond reasonable doubt and the order of the trial Court is to be reversed.

10. Admittedly, in the case on hand, all the so called eyewitnesses have turned hostile. The deceased and the first appellant were friends. To this extent, there is no dispute. All the



witnesses except P.W.8 did not say anything about the prior enmity and quarrel between the deceased and the first appellant. P.W.8, who is the mother of the deceased, has stated that both the deceased and the first appellant were very close friends. The deceased used to stay with the first appellant. Second appellant was known to them. There was a fight during which the first appellant throw the money and has asked the deceased to run away with that. Therefore, from the evidence of P.W.8 we cannot come to a conclusion that the appellants have committed the offence.

11. Reliance has been placed on the evidence of P.Ws.3 and 4 by the trial Court. P.W.3 has only stated that the deceased and the first appellant were having liquor together. Thereafter, he left the place. In the cross-examination, he had merely stated that he was an eyewitness to the occurrence in the statement given to the police under Section 161 Cr.P.C. This is only an acknowledgment of prior statement made before the police. This statement cannot make the prior statement made before the police as admissible. To put it differently, P.W.3 had not stated before the Court that he was an eyewitness. When he has specifically denied of seeing the occurrence as an eyewitness, no conviction can be made on the ground that such a statement has been made under Section 161 Cr.P.C. What is relevant is the deposition before Court. Thus, we find that the trial Court has committed an error under law in construing the evidence of P.W.3.

12. Reliance has been placed on the evidence of P.W.4, while dealing with the evidence of P.W.3. P.W.4 had only stated that the first appellant woke him up on the night and told him about the injury suffered by the deceased. Appellants called the Ambulance and along with P.W.4 took him to the hospital. In the cross-examination he has denied on the prior occurrence leading to a quarrel between the deceased and the first appellant. Further, he denied seeing the occurrence. Therefore, there is nothing to corroborate the evidence of P.W.4 with P.W.3. Thus, the reasoning of the Trial Court cannot be sustained in respect of the appreciation of evidence of P.W.4.

13. On the conjoint analysis of the evidence of P.Ws.3 and 4, we are of the view that though the law has quite settled in relying upon that part of the evidence given by a witness as culled out by the examination despite being turned hostile, we do not find any material statement from the evidence of P.Ws.3 and 4, incriminating the appellants.

14. P.Ws.12 and 13 also turned hostile. They have stated tat they went to the police station and signed the confession statement said to have given by the first appellant. Similarly, they have stated that Exs.P.9 to 12, which are nothing but their signatures, which were signed in the police station. The witnesses, who signed the observation mahazar and seizure mahazar in Exs.P.16, 18 and 20 also turned hostile. Therefore, we find that the trial Court has committed an error in rendering a conviction against the appellants

by placing reliance on the evidence of P.Ws.3 and 4, who also turned hostile. Thus, we are inclined to give the benefit to the appellants as we find that the prosecution has not proved its case beyond reasonable doubt.

15. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellants/A1 & A2 by learned Additional District and Sessions Judge, Ramanathapuram in S.C.No.48 of 2017, dated 04.10.2017, are set aside. The appellants are acquitted of the charges levelled against them. Fine amount, if any, paid by the appellants shall be refunded to them. The appellant/A2 is directed to be set at liberty forthwith, if he is not required for detention in connection with any other case. Bail bonds executed by 1st appellant/A1 shall stand set aside.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS- I)

To

- 1.The Additional District and Sessions Judge,
Ramanathapuram.
- 2.The Judicial Magistrate, Thiruvadanai.
- 3.The Principal District and Sessions Judge, Ramanathapuram.
- 4.The Superintendent, Central Prison, Madurai.
- 5.The District Collector, Madurai.
- 6.The Director General of Police, Mylapore, Chennai.
- 7.The Inspector of Police, Thondi Police Station,
Ramanathapuram District.
- 8.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 9.The Section Officer,
Criminal Record Section,
Madurai Bench of Madras High Court, Madurai. **(2 Copies)**

+1CC to M/s.J.Vijayaraja, Advocate, SR.No.79498

Criminal Appeal (MD) No.508 of 2017
16.08.2018