

**BAIL SLIP**

1.The Appellant/Accused Nos. 1 and 2 viz., (1)C.Perumal S/o.Chinnan. (2)[Rajendran @ Rajendar](#), S/o.Perumal, was released on bail as per the order of this Court dated 19.10.2016 and made in CrI.MP.(MD)No.5755 of 2016 in CrI A(MD)No.265 of 2016.

2.The Appellant/Accused No.3 Ammasi W/o.Perumal was released on bail as per the order of this Court dated 07.11.2016 made in CrI MP (MD)No.10372 of 2016 in CrI A(MD)No.265 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.08.2018

DELIVERED ON : .09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Criminal Appeal (MD) No.265 of 2016

1.C.Perumal

2.Rajendran @ Rajendar

3.Ammas

.. Appellants/Accused Nos.1 to 3

vs.

State rep. by

The Inspector of Police,

Incharge of Melur Police Station,

(prevention of liquor)

Kottampatti Police Station,

Crime No.422 of 2014

.. Respondent/Complainant

Criminal appeal is filed under Section 374 of Criminal Procedure Code against the judgment and conviction dated 07.04.2016, by the learned VI Additional District and Sessions Judge, Madurai in S.C.No.305 of 2015.

For Appellants

: Mrs.S.Vijayashanthi

For Respondent

: Mr.R.Anandharaj

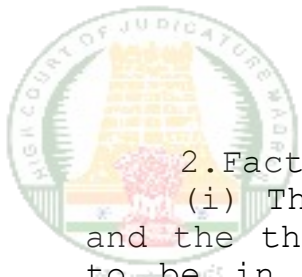
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by

M.M.SUNDRESH, J)

The appellants are accused in S.C.No.305 of 2015. They were charged for the offences under Section 302 r/w 34 I.P.C. The trial Court convicted them for the said offence and sentenced them to life imprisonment with fine of Rs.5,000/- each, in default, to undergo further 6 months simple imprisonment and thus the present Criminal Appeal.



2.Facts in brief:

(i) The first accused is the father, second accused is the son and the third accused is the mother. The appellant No.2 was stated to be in drinking habit along with the deceased. He along with others and the deceased came home on 25.11.2014 after taking alcohol. At about 10.30 p.m. the first appellant and third appellant along with second appellant came to the house of the deceased and picked up quarrel stating that he was responsible for spoiling the second appellant. The first appellant attacked the deceased with hands on the chest of the deceased, the second appellant kicked him and pushed him on the stone kept to cover the ditch and the third accused swirl his legs. The deceased fell and got injured. Thereafter, he was taken to unknown destination by the appellants. Then, he was found in the Office of the Village Administrative Officer. The deceased was taken to the hospital, where he was declared dead. Thereafter, P.W.1 gave a complaint under Ex.P.1 at 01.30 hours on 26.11.2014 and a case was registered by Kottampatti Police in Crime No.422 of 2014. The F.I.R. was sent to the jurisdictional Magistrate on the same day.

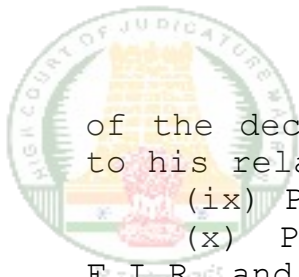
(ii) P.W.12 is the Inspector of Police, who took up the investigation. He prepared Observation Mahazar under Ex.P.2 and Rough Sketch under Ex.P.5. The accused were arrested on 26.11.2014 at about 8.00 hours. Their confessional statements were recorded. He conducted inquest over the body of deceased and prepared Ex.P.6 Inquest Report.

(iii) After the transfer of P.W.12, P.W.13 took over the investigation and after completion of investigation, filed final report against the appellants on 11.02.2015 for offence under Section 302 r/w 34 I.P.C.

3.On committal, the case was tried in S.C.No.305 of 2015 on the file of the learned VI Additional District and Sessions Judge, Madurai. Before the trial Court the prosecution examined 13 witnesses and marked 7 documents. Out of 13 witnesses 5 were official witnesses. Out of the remaining 8 witnesses 5 turned hostile except P.Ws.1, 3 and 7.

4.Prosecution Witnesses:

- (i) P.W.1, who is the mother of the deceased, is an eyewitness.
- (ii) P.W.2, who is the sister of the deceased, turned hostile.
- (iii) P.W.3 is another sister being an eyewitness along with P.W.1.
- (iv) P.W.4 to P.W.6 have turned hostile.
- (v) P.W.7 is the brother-in-law of the deceased, who signed the observation mahazar under Ex.P.2.
- (vi) P.W.8 is the Village Administrative Officer, who saw the body of the deceased.
- (vii) P.W.9 is the doctor, who conducted postmortem.
- (viii) P.W.10 is the Head Constable, who handed over the body



of the deceased to the doctor and after postmortem of the deceased to his relatives.

(ix) P.W.11 also turned hostile.

(x) P.W.12 is the Inspector of Police, who registered the F.I.R. and conducted major part of the investigation.

(xi) P.W.13 is the Inspector of Police, who filed the charge sheet.

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.1 and 3 held that the charges are proved and convicted the appellants under Section 302 r/w 34 I.P.C. and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to further undergo six months of simple imprisonment. Hence, challenging the same the appellants are before us.

6. The learned counsel appearing for the appellants would submit that there are material contradictions between the evidences of P.Ws.1 and 3 and Ex.P.1. The deceased was found drunk. The presence of P.W.3 itself is doubtful as stated by P.W.1. The parameters required for attraction of Section 34 of Indian Penal Code are not available. There was no prior meeting of minds and acting in concert. The earlier information given was suppressed. The another son who was present along with P.W.1 was not examined. Even as per the evidence of P.Ws.3 and 7 police was found at the place of occurrence much prior to Ex.P.1. There is no recovery of wooden log used. There is no corresponding injury to it. The deceased was one of bad character. At the time of his death there was a case of rape and murder pending against him. He was also convicted in one case and he was out on the bail, granted by this Court. The postmortem certificate also indicates the presence of alcohol. The learned trial Judge has merely relied upon the evidence of P.Ws.1 and 3 in convicting the appellants. Thus, the conviction rendered by the trial Court is liable to be set aside. In support of her submission, she relied on the decision of the Hon'ble Apex Court in *Devi Lal v. The State of Rajasthan* [(1971) 3 SCC 471].

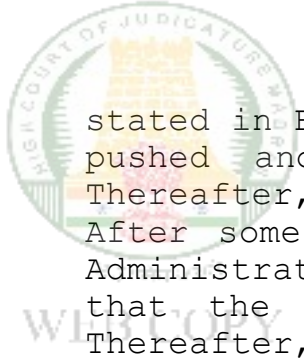
7. The learned Additional Public Prosecutor appearing for the respondent would submit that P.Ws.1 and 3 being the eyewitnesses spoke about the occurrence. The discrepancies being trivial, they cannot be taken into consideration. Hence, no interference is required.

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.

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10. P.W.1 has totally given a different version than the one

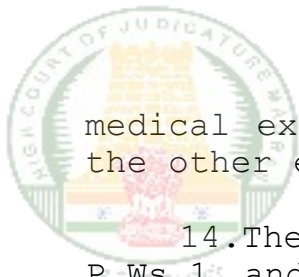


stated in Ex.P.1 - complaint. P.W.1 has stated that the deceased was pushed and he fell on the stone resulting in head injury. Thereafter, the appellants 1 and 2 along with P.W.6 took him out. After some time, the deceased was found in the office of Village Administrative Officer. However, in her deposition she has stated that the appellants attacked the deceased with a wooden log. Thereafter, the third appellant squeezed his scrotum. This is contrary to the statement given in the complaint. The postmortem report also did not support the evidence of P.W.1. She has further stated that an earlier complaint was given. The police came to the place of occurrence and recorded her complaint. It is the specific case of the prosecution that P.W.1 went to the police station and gave a complaint. In this connection, we have to see even P.W.12, who is the Inspector of Police Registered the F.I.R. under Ex.P.4 has stated that the complaint was given in the police station. Ex.P.1 says that P.W.4 was also present and P.W.6 accompanied the deceased. However, both of them turned hostile. P.W.1 also has not stated anything about P.W.4 in her evidence. Strangely she has stated that she did not know who took her son/the deceased. She has further stated that P.Ws.2 and 3 were not present at the time of occurrence, which is contrary to the evidence of P.W.3. The evidence given by P.W.1 is also contrary to the complaint given by her. She goes to the extent of denying the factum of consumption of liquor by the deceased. Therefore, we are unable to lend credence to the evidence of P.W.1.

11.P.W.2, who is the sister of the deceased, turned hostile. P.W.3 another sister of deceased deposed that she was present at the time of occurrence. As stated above, her evidence is contrary to the one given by P.W.1. P.W.3 also stated that earlier a complaint was given by P.W.1, which was not registered. She has further stated that the accused took the deceased out by stating that they were taking him to the hospital. They were followed by P.W.7 and her brother Narasimman, who has not been examined. In clear terms she has stated that an earlier complaint was given by her brother and P.W.7. The complaint was taken only after it was given to the Superintendent of Police. Strangely, this complaint was suppressed. She also denies the factum of consumption of liquor by the deceased. Therefore, we are of the view that it is unsafe to rely upon the evidence of P.W.3.

12.P.W.7 is the one, who signed the observation mahazar under Ex.P.2. He also says that the earlier complaint has not been taken. Not only that, he stated in the same line as that of P.W.3 about the presence of the police even before the registration of the complaint - Ex.P.1. In view of the above, the evidence of P.W.7 cannot be accepted.

13.P.W.8, who is the Village Administrative Officer, has stated that he has given a complaint to the police after seeing the body of the deceased. There is no explanation for the suppression of the complaint given. P.W.12 has also not sent the second appellant for



medical examination to find out the consumption of liquor. None of the other eyewitnesses have also been examined.

14. The trial Court substantially relied on the evidence of P.Ws.1 and 3 and the contradictions were treated only minor in nature. There are too many contradictions between the evidence of P.Ws.1, 3 and 7. Material contradictions are also available between Ex.P.1 - compliant and the evidence of P.W.1. We are of the view that the contradictions are very serious making the evidence given as untrustworthy. P.W.1 has stated that the appellants took the deceased by attacking him after she went inside the house to bring her son Narasimman. This evidence shows that she would not have seen the occurrence. As stated above, even the said Narasimman has not been examined. It is highly doubtful as to whether P.Ws.1 and 3 were present at the occurrence place. Therefore, we are of the view that the trial Court has not analyzed the evidence produced by the prosecution in proper perspective.

14. Further, in order to attract Section 34 I.P.C. prior meeting of mind and acting in concert are required. The prosecution has not proved the same warranting conviction. On a consideration of the above, we are of the view that the appellants certainly are entitled for benefit of doubt. In such view of the matter, we are constrained to set aside the conviction and sentence rendered by the trial Court.

15. Accordingly, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellants/A1 to A3 by learned VI Additional District and Sessions Judge, Madurai in S.C.No.305 of 2015, dated 07.04.2015, 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. Bail bonds executed by appellants/A1 to A3 shall stand cancelled.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The VI Additional District and Sessions Judge,
Madurai.

2.-do-thro- The Chief Judicial Magistrate,
Madurai District.

<https://hcservices.ecourts.gov.in/hcservices/>
3. The Judicial Magistrate,
Melur, Madurai District.



4. The Commissioner of Police,
Madurai.
5. The District General Of Police,
Egmore, Chennai.
6. The Superintendent of Prison,
Central Prison, Madurai.
7. The Superintendent of Prison,
Special Prison for Women, Madurai.
8. The Inspector of Police,
Incharge of Melur Police Station,
Kottampatti Police Station,
Madurai District.
9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Section Officer,
Criminal Record Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

SJ

DS SV SAR-4 09.10.2018 6P/12C

order in
Criminal Appeal (MD) No.265 of 2016
04.09.2018