

BAIL SLIP

The Appellant/Accused viz., namely R.Manohar was released on Bail in CrI.MP(MD).No.9534 of 2016 in CRL A(MD)No.360 of 2016, dated 25.10.2016.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE C.T.SELVAM

And

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

CRL A(MD)No.360 of 2016

R.Manohar

... Appellant/Accused

Vs.

The State rep. by
The Inspector of Police,
Government Hospital Police Station,
Tiruchirappalli.
(Crime No.106 of 2014)

... Respondent/Complainant

Prayer: Appeal filed under Section 374(2) of the Code of Criminal Procedure, 1973, praying to set aside the order of conviction and sentence imposed on the appellants by the learned Principal District and Sessions Judge, Tiruchirappalli in S.C.No.198 of 2014, dated 14.03.2016.

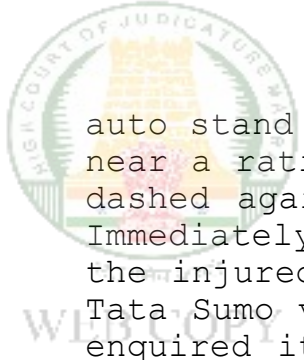
For Appellant : Mr.Mr.N.R.Elango, Senior Counsel
for Mr.B.Jameel Arasu
For Respondent : Mr.S.Chandrasekar,
Additional Public Prosecutor

JUDGMENT

(The Judgment of the Court was delivered by C.T.SELVAM, J.)

The appellant/accused has filed the Criminal Appeal, challenging the judgment, dated 14.03.2016, in S.C.No.198 of 2014 on the file of Principal District and Sessions Judge, Tiruchirappalli in and by which, he was convicted under Sections 294(b) and 302 I.P.C. and sentenced to undergo rigorous imprisonment for 3 months and fine of Rs.500/-, in default, 20 days simple imprisonment for the offence under Section 294(b) I.P.C. and sentenced to life imprisonment and fine of Rs.1,000/-, in default, three years rigorous imprisonment for offence u/s. 302 IPC.

2.The prosecution case is that on 09.04.2014 at about 10.30 p.m. when P.W.1 was erecting a flex banner along with his friends Subbiah, Ragavan, Arockiyam, Ramu and Chinnaramu near Shanmuganagar



auto stand his uncle's son Ravikumar informed his through phone that near a ration shop at First Cross in Shanmuganagar, a Tata Sumo car dashed against him and he had sustained injuries on his left leg. Immediately P.W.1 along with his friends rushed to the spot and sent the injured Ravikumar in an auto to hospital. They searched for the Tata Sumo vehicle which caused the accident and found it. When they enquired its Driver Silambarasan, he ran away and they caught hold of him at 12.20 a.m. At that time, accused being Silambarasan's uncle, came there and questioned why they were beating him and when they replied that he had dashed against the vehicle of Ravikumar and caused injuries, he abused deceased Subbiah and stabbed him with a knife on his abdomen. Deceased, he was admitted in Government Hospital, Tiruchirappalli and then at Cithar Hospital, Thillainagar, where he died at 17.31 hours on 10.04.2014.

3. P.W.1, friend of the deceased, preferred a complaint before Sub-Inspector of Police, Government Hospital Police Station on 10.04.2014 at 3.30 a.m. P.W.21, Sub-Inspector of Police registered the complaint in Crime No.106 of 2014 under Sections 294(b) and 307 IPC and prepared Ex.P.22 FIR. P.W.23, Inspector of Police, took up investigation, went to the scene and prepared observation mahazar Ex.P.6, as also rough sketch Ex.P.23. He examined the witnesses and recorded their statements and recovered M.Os.7 and 8. At 12.00 noon on the same day, he arrested the accused near Cholanparai and recorded his confession in the presence of P.W.8, namely, Kumaravel, Village Administrative Officer as also Devaraj and recovered M.O.1. He sent the accused to judicial custody on the same day. On 10.04.2014 Subbiah succumbed to injuries. On receipt of death intimation P.W.23 altered the F.I.R. to 294(b) and 302 I.P.C and sent the alteration Report Ex.P.24 to Court through P.W.14, Special Sub-Inspector of Police. He sent the body to Government Hospital, Trichy through PW-11 Head Constable for post-mortem. He conducted inquest over the body of deceased in the presence of Panchayatars and prepared Ex.P.25, Inquest Report. The Post-mortem Report is Ex.P.21. He sent a requisition for chemical analysis. He obtained postmortem report and examined P.W.20 - Dr.Saravanan and recorded his statement. Upon completion of investigation, he filed a charge sheet informing commission of offences under Sections 294(b) and 302 IPC. On committal, the case was tried in S.C.No.198 of 2014 on the file of learned Principal District and Sessions Judge, Tiruchirappalli. Before trial Court, prosecution examined 23 witnesses and marked 31 exhibits and 9 material objects. None were examined on behalf of defence but one document was marked.

4.1. P.W.1 - M.Seenivasan is a friend of the deceased. His complaint is marked as Ex.P.1. He spoke to the accident in which his uncle's son Ravikumar sustained injury, search for the vehicle which caused the accident and its driver, securing of its driver Silambarasan, attack by the accused of the deceased, preferring complaint and death of the deceased.

4.2. P.W.2 - Raghavan, P.W.3 - J.Arocia Doss, P.W.4 - N.Ramachandran friends of deceased corroborated the evidence of P.W.1.



4.3. P.W.5 - Raja, brother of deceased, spoke to seeing the deceased at Government Hospital, taking him to Chithar Hospital for treatment and of his death.

4.4. P.W.6 - Ravikumar, son-in-law of P.W.1, spoke to the accident in which he suffered injuries.

4.5. P.W.7 - S.Ramu, spoke to accompanying P.W.6 to hospital for treatment.

4.6. P.W.8 - N.Kumaravel, Village Administrative Officer, spoke to arrest, confession and recovery.

4.7. P.W.9 - Dhayanithi, Zonal Assistant Commissioner, Co-Abhishekapuram, Trichirappall Corporation, spoke to issuing of a certificate regarding the good conditions of the street lights at Keelatheru, Uyyakundan Thirumalai.

4.8. P.W.10 - S.Chandirasekar, spoke to attesting observation mahazar and recovery of material object.

4.9. P.W.11 - Sekar, Special Sub-Inspector of Police, spoke to registration of case in Crime No.96 of 2014 u/s.279 and 337 I.P.C., and of forwarding Ex.P.8, Original First Information Report to Judicial Magistrate No.1, Trichy and copies thereof to higher officials.

4.10. P.W.12 - Balaji, Head Constable, spoke to handing over the body of deceased to Doctor for post-mortem and on completion thereof and of handing over the body to the relatives.

4.11. P.W.13 - P.Senthil Murugan, spoke to typing the statements of the witnesses in the laptop as dictated by the Inspector of Police.

4.12. P.W.14 - V.Dhanabalan, spoke to receiving Alteration Report and of handing over the same to Judicial Magistrate No.4, Trichy.

4.13. P.W.15 - Dr.Prabhu, spoke to the examination of deceased and accused and of treatment given to them.

4.14. P.W.16 - Dr.S.Vishnu Kumar, spoke to the treatment given to deceased at Chithar Hospital and of his death at the hospital.

4.15. P.W.17 - Dr.S.Senthilvel, spoke to examining the deceased, his having been fit to give dying declaration and of discharge of the deceased from hospital, against medical advice.

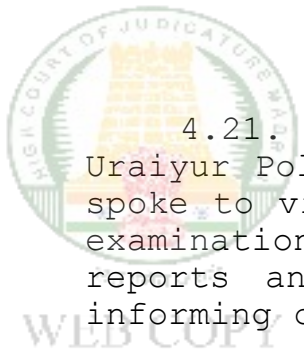
4.16. P.W.18 - Dr.Ramakrishnan, spoke to examining the deceased at Chithar and of his death.

4.17. P.W.19 - G.K.Velumayil, Judicial Magistrate, spoke to recording the dying declaration of the deceased.

4.18. P.W.20 - Dr.S.Saravanan, who conducted postmortem on the body of deceased, opined that the deceased would appear to have died due to effects of stab injury to the abdomen.

4.19. P.W.21 - V.Azhahar, Sub-Inspector of Police, spoke to registration of case in Crime No.106 of 2014 u/s.294(b) and 307 I.P.C., and of forwarding Ex.P.22, Original First Information Report to Judicial Magistrate No.4, Trichy and copies thereof to higher officials.

4.20. P.W.22 - E.Silamparasan, who caused the accident, in which P.W.6 injured, and was attacked by deceased and his friends was examined to speak to the occurrence and he turned hostile.



4.21. P.W.23 - V.Seetharamam, was Inspector of Police, at Uraiyur Police Station, who conducted investigation in the case and spoke to visiting the place of occurrence, preparation of mahazars, examination of witnesses, arrest of accused and of obtaining various reports and on completion of investigation, filing charge sheet informing commission of offences under Sections 294(b) and 302 IPC.

5. When the accused was examined under Section 313 Cr.P.C. on the incriminating materials against him, he denied his complicity and stated that he had been falsely implicated.

6. On appreciation of materials before it, trial Court, under judgment dated 14.03.2016, convicted appellant/accused under Sections 294(b) and 302 I.P.C. and sentenced to undergo rigorous imprisonment for 3 months and fine of Rs.500/-, in default, 20 days simple imprisonment for the offence under Section 294(b) I.P.C. and sentenced to life imprisonment and fine of Rs.1,000/-, in default, three years rigorous imprisonment for offence u/s. 302 IPC. Against such finding, the present appeal has been filed.

7. Heard learned counsel for appellant and learned Additional Public Prosecutor for the respondent and perused the evidence on record.

8. The FIR regards the alleged occurrence at 12.20 hrs on 10.04.2014 was registered at the instance of P.W.1 who went to the Police station and preferred a complaint at about 3.30 hrs. P.W.1 specifically would depose that he did not know the name of the father of the accused and had not mentioned the same in the complaint preferred by him. Ex.P.1 - complaint makes specific mention of the name of the father of accused. From this it follows that the complaint originally preferred by P.W.1 has been suppressed. P.W.21- Sub Inspector of Police has admitted to interpolations in Ex.P.1- complaint. Despite Ex.P.1- complaint not informing the area to which the accused belong, Ex.P.22 - informs the address of the accused. P.W.1 has admitted to statement having been recorded at hospital by Police at about 1.45 hrs. While there is reason to suspect the genuineness of Ex.P.22 - FIR as both alteration report informing alteration of offence from 294 (b) and 307 I.P.C to 294 (b) and 302 IPC as also FIR Ex.P.22, have reached the Magistrate only after death of the deceased at around 5.30 p.m on 10.04.2014. This is admitted by P.W.14- Constable. As held in Marundal Augusri vs. State of Kerala, 1980 SCC (Cri) 985, once the FIR is held to be fabricated the very fabric of the prosecution case falls. Doctor - P.W.15 had admitted the accused into hospital. The Accident Register is marked as Ex.P.14. The entry therein reveals that the accused had informed having been assaulted by three known persons with a knife in the night around at 12.20 a.m. on 10.04.2014. No case has been registered regards the injury suffered by him. Ex.P.14 reveals that the Police had been informed about the admission of the accused in the hospital. The accused having suffered injury at the same time and place non-explanation thereof



seriously affects the prosecution case and the decision of the Apex Court in Lakshmi Singh vs. State of Bihar, AIR 1976 SC 2263, informs us that there from, Court can draw the following inferences;

- i) that the prosecution has suppressed the genesis and the origin of the occurrence and has thus not presented the true version
- ii) that the witnesses who have denied the presence of the injuries on the person are lying on the most material point and therefore their evidence is unreliable.
- iii) that in case there is a defence version which explains the injuries on the person of the accused it is rendered probable so as to throw doubt on the prosecution case.

9. According to the prosecution P.Ws to 4 were engaged in erecting a flex board for their friend's sister marriage. They went along with the deceased in search of the person who had brushed against the auto of their friend P.W.6 and caused injury. On being found, P.W.22 escaped and ran towards his residence. However, the prosecution witnesses chased, caught and dragged him to the road. It was only then that the accused came to the scene and questioned their conduct. Evidence on record reveals that all five members of the prosecution party were drunk. They assaulted the accused and he sustained a stab injury in his thigh. Towards saving himself and P.W.22 the accused has snatched a knife from his assailants and dealt a single blow. That he dealt a single blow is reflections of his action not being premeditated or cruel but it was one forced upon him. The accused cannot be said to have exceeded his right of private defence. Even on arrest and recovery at the hands of the accused stands falsified. P.W.23- Investigation Officer has spoken to having arrested the accused near Cholanparai at about 12 noon in the presence of P.W.8.- the ever obliging Village Administrative Officer. P.W.2 who admitted the deceased into hospital has spoken to the accused having come to the hospital for taking treatment and that the accused was taken away from there by the Police. Judged at from any angle, the prosecution case fails.

In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant/accused by learned Principal Sessions Judge, Tiruchirappalli in S.C.No.198 of 2014, dated 14.03.2016, are set aside. The appellant is acquitted of the charges levelled against him. Fine amount, if any, paid by the appellant shall be refunded to him. Bail bonds executed by the appellant shall stand cancelled.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1.The Principal District and Sessions Judge,
<https://hcservices.ecourts.gov.in/hcservices/>
Tiruchirappalli Division,
Tiruchirappalli.



2.The Judicial Magistrate No.IV,
Tiruchirappalli.

3.The Inspector of Police,
Government Hospital Police Station,
Tiruchirappalli.

4.The Superintendent,
Central Prison,
Trichy.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

6.The Section Officer,
Criminal Record Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.B.Jameel Arasu , Advocate SR.No. 75742

Judgment made in
CRL A (MD) Nos.360 of 2016
27.07.2018

sj
JM/SKN RSK/SAR 4/05.09.2018/6P/9C