

Bail Slip

The Appellant/Sole Accused Viz., J.Karthi @ Karthikeyan S/o Jayabalan (in S.C.No.36 of 2008 on the file of the Additional District and Sessions Judge, (Fast Track Court No.I) Coimbatore dated 13/06/2008 was directed to be released on bail as per order of this Court dated 23/7/2008 made in M.P.No.1 of 2008 in CrI.A No.525/2008.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2018

DELIVERED ON : 21.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.525 of 2008 and
M.P.No.1 of 2008

J.Karthi @ Karthikayan ... Appellant/Accused

Vs

The State rep. by
The Inspector of Police,
B9, Saravanapatti Police Station,
Coimbatore. ... Respondent/Complainant
(Crime No.840 of 2007)

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, against the judgment of conviction passed by the learned Additional District and Sessions Judge (Fast Track Court No.I), Coimbatore, made in S.C.No.36 of 2008 dated 13.06.2008.

For Appellant : Mr.B.Ramesh Babu

For Respondent : Mrs.T.P.Savitha
Government Advocate (CrI.Side)

JUDGMENT

This criminal appeal is filed by the appellant against the Conviction and sentence passed by the Learned Additional District and Sessions Judge (Fast Tract Court No. I) Coimbatore in S.C.No.36 of 2008 dated 13.6.2008 wherein the learned trial

judge sentence the appellant to undergo seven years rigorous imprisonment for the offence under section 304(ii) and imposed fine of Rs.2000/- in default to undergo simple imprisonment for one year and acquitted in respect of the offences under section 341 r/w 34 of IPC.

2. Brief case of the prosecution:

The prosecution case is that on 27.9.2007 at about 9.00 PM the deceased Raji with his friends PWs 2 and 3 having liquor in the TASMAC bar situated in Saravanampatti Bus stop. The accused A1 and A2 were also taking liquor in the next table of the same bar. At that time, the deceased spilled the water which spread in the dress of the accused and quarrel arose between them. The employees of the TASMAC bar pacified them and when they were going out, the accused No.1 threatened the deceased stating that you will be killed and by saying that he attacked in the left head and the accused No.2 was standing nearby. Due to the attack, the deceased fell down. Immediately PWs 2 and 3 took the deceased to the Doctor PW 10, Arul Jaya Hospital. The doctor advised them to admit the deceased in the Government Hospital, Coimbatore. But PWs 2 and 3 took the deceased to his office and informed PW1 about sleeping of the deceased in his office. PW1 immediately went to the office and found the deceased in an intoxicated condition and take him to the place where he usually sleeps. Then PW1 return to his home and on the next morning at about 10.00 PM, he went to the office and found that the deceased was still sleeping in an unconscious stage. PW1 found bleeding injuries in his head and admitted him in the Government Hospital. PW 12 Doctor examined the deceased and found ruptured injury in the left side of the head. On 28.9.2007 at about 11.50 PM the deceased Raji died. Immediately intimations regarding death were sent through Exhibits-P7 and P14. PW1 preferred complaint on 29.9.2007 to the PW 15 Inspector of Police, Saravanampatti Police Station and a case was registered in Crime Number 840 of 2007 at about 5.00 AM in the morning. The complaint is Exhibit P1 and the printed FIR is Exhibit P11. The accident register issued by the doctor PW12 is Exhibit P6. PW15 took over the investigation and inspected the scene of occurrence with the help of PW 6 and examined PW 1 to 5 and others namely Prabakaran, Viswanathan, Sathiskumar, Selvaraj and drawn observation mahazar and rough sketch Exhibit P2 and P12. Then PW 15 conducted inquest for the dead body of the deceased and examined the panchayatars at about 12.00 Noon to 15.00 PM and recorded the statements from Jeyakanthan, Jesudoss and Pown. The inquest report is Exhibit P13. The body was sent to PW 14 the postmortem through PW 8 and the requisition is Exhibit P5. The doctor PW14 conducted postmortem and found abrasions in the legs, right hand and ruptured injury in the left side of the head. The postmortem report is Exhibits P9 and 10. On 30.9.2007

at about 12.00 Noon, PW 15 arrested A1 and A2 and remanded them to the judicial custody. The admissible of the portion of the A1 is Exhibit P4 which was recorded before PW7. On completion of the investigation, PW 15 filed the final report under section 302,341 r/w 34 of IPC on 28.10.2007.

3.On committal, the learned trial Court framed the charges against the accused under section 341 r/w 34 of IPC and 302 r/w 34 of IPC. The accused No.1 was charged under section 341 and 302 of IPC. During trial the prosecution examined PWs 1 to 15 and marked Exhibits-P1 to P14. Both the accused denied the evidence of the witnesses questioned under section 313 of Cr.P.C. No witness was examined on the side of the accused.

4.On completion of the trial, the learned trial judge convicted the accused No.1 under section 304(ii) of IPC and sentenced him to undergo 7 years rigorous imprisonment and imposed fine of Rs.2,000/- in default to undergo further simply imprisonment for one year and acquitted A1 in respect of the offence under section 341 r/w 34 of IPC and A2 in respect of all the charges framed against him.

5.Rival Submissions:

The learned counsel for the appellant submits that the Court below ought to have seen that PW1 who was a friend of the deceased would say that he was informed over phone about that the deceased was laying in a ducked state in front of the TASMAL bar.

6.The learned counsel for the appellant submits that the Court below ought to have seen that the PW2 and PW3 who are projected as eye witnesses have not informed to the concern police station on the date of incident on 27.9.2007 and his explanation was that he was afraid of PW2 was fatal for the prosecution.

7.The learned counsel for the appellant submits that the Court below ought to have seen that the evidence of PW2 who speaks about the prosecution case states that he and PW3 had taken the deceased to a nearby hospital for First Aid and when he was informed by PW10 that he was not having the facilities to give treatment and also advice PW2 and PW3 to take the deceased to Coimbatore Medical College Hospital but PW2 and PW3 did not take the deceased to Coimbatore but left him in front of his office and informed the PW1.

8.The learned counsel for the appellant submits that the Court below ought to have seen that although it has been stated that one Rajesh was present he has not been examined by the prosecution.

9.The learned counsel for the appellant submits that the Court below ought to have seen from the evidence of PW 1 that initially the deceased was treated as non Medical Legal Case only thereafter it was treated as Medical Legal Case.

10.The learned counsel for the appellant submits that the Court below ought to have seen that the prosecution has not proved the nexus of the motive and alleged incident as the conduct of PW2 and PW3 although being well available at the scene of occurrence had not taken steps to inform the police and neither had taken the deceased for treatment as advice by PW 10 to Coimbatore Hospital.

11.The learned counsel for the appellant submits that the Court below ought to have seen no witness has been examined in the bar of TASMAC where the alleged incident had taken place.

12.The learned counsel for the appellant submits that the Court below erred in believing the prosecution case as put forth by it and conviction the accused under Section 304(ii) of IPC without evidence or materials on the side of the prosecution and acquitted the accused under Section 341 r/w 34 of IPC.

13.The learned counsel for the appellant cited the following citations in support of his submissions:

- 1) (2003) 1 SCC 465
- 2) (2005) 12 SCC 461
- 3) (2016) 16 SCC 418

14.I heard Mr.K.P.S.Palanivel Rajan, learned counsel for the appellant and Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

15.The gist of the material evidence should be given below:

PW1 Sathyaseelan is the friend of the deceased and both were

working in the PCS broker office. On 27.9.2007 at about 10.00 PM, he received the phone call alleging that his co-employee Raji in an intoxicated condition, lying in the Saravanampatti Bus stop. Immediately he went to his office and found him in an inebriated stage and pour the water in his face and the deceased himself was normal advised him to sleep in the office. Further on the next day, in his office, he found a ruptured wound in the left side head of the deceased Raji. I took him to the hospital and admitted as inpatient in the Government Hospital, Coimbatore informing the doctor that the deceased fell down in an intoxicated condition in the TASMAC shop. Then I enquired PW 2 and he told me that A1 and A2 assaulted the deceased Raji and killed him. The complaint given by PW1 is Exhibit-P1.

16.PW1 in his cross examination deposed that he informed the doctor attached to the Vijayaragavan Hospital that the deceased Raji fell down in an intoxicated condition while admitting him. Again he stated that he informed the same to the doctor who examined the deceased in the Government Hospital, Coimbatore. PW2 accompanied me while admitting the deceased.

17.PW2 Ramesh in his chief examination deposed that the deceased Raji, PW3 Santhanakumar and himself went to the TASMAC bar on 27.9.2007 at about 9.00 PM. While we were drinking alcohol, deceased Raji spilled the water and the same was spread in A1. Immediately A1 attacked the deceased and A2 was standing in him. The TASMAC employees pacified and advised deceased Raji and accused to go out and wreak their vengeance. On coming out, A1 Raji with a wooden stick attacked the deceased Raji when he used unparliamentary words against the mother of A1. On receiving the attack, the deceased Raji fell down and PW3 with PW2 took him to the Arul Jaya Hospital. The doctor advised PWs2 and 3 to admit him in the Government Hospital. Then PWs 2 and 3 took the deceased to his office and placed him to sleep and informed PW1. PW1 reached the office and poured water on the face of the deceased and advised him to sleep in their office. Next day morning, PW1 informed PWs 2 and 3 about the injuries sustained in the head of the deceased and took him to the hospital near Ganapathi Area. The doctor who examined the deceased advised to admit the deceased in the Government Hospital. Then the deceased was admitted as in-patient in the Government Hospital. After 2.00 clock PWs 1 to 3 went for their work. Later in the evening hours, the health of the deceased become worse and died in the late hours. Then PWs 2 and 3 informed the attack made by A1 and A2 to PW1.

18.PW2 in his cross examination deposed that he and PW3 took the deceased to the hospital and to his office after attack made by A1 and A2 and informed PW1. At about 10.00 PM PW1 reached the office and poured the water on the face of the deceased and after that the deceased Raji who is sleeping in the floor, wakeup and sit in the office. Then PW 1 confirmed that the deceased Raji is well and advised him to sleep in the office. At that time PW1 found the bloodstains in the shirt of the deceased and enquired. Due to fear, PWs 2 and 3 screened the real occurrence happened against PW1. On next day PWs 1 to 3 admitted the deceased Raji in Vijayaragavan Hospital and then to the Government Hospital, Coimbatore. After hearing the death news, PW 2 informed the attack made by A1 and A2 in the bar to the PW1.

19.PW2 in his cross examination deposed that the deceased Raji is a conscious stage while admitting him in the first hospital and he did not know the names and address of the accused. When police examined PW2 on 29.9.2007 at 3.00 PM, A2 Rajkumar was there in the police station. A1 was shown to him after 2 days. Then he identified the accused in the test identification parade.

20.PW3 Santhanakumar deposed in his evidence that he along with PW 2 had liquor in the TASMAC shop and due to the quarrel A1 attacked the deceased Raji with the wooden stick and PWs 1 and 2 admitted him in the hospital and he had not gone to the hospital along with PW2. PW3 states that he do not know the accused nor identified them in the parade. He has not seen PW1 nor spoke to him about the occurrence happened in the TASMAC bar.

21.PW4 Karthic is the supplier working in the TASMAC shop and he deposed that the deceased Raji scolded bad words against the mother of A1 and on quarrel; A1 attacked the deceased in left side of his head.

22.PW4 in his cross examination deposed that he could not remember the names and address of the accused nor identified to the police has not requested him to identify the accused. The police examined him on 29.07.2007 at about 8.00 AM. The deceased Raji used to come to the TASMAC shop for the past two years and he do not know the details regarding the status of the deceased.

23.PW5 Elango is also the supplier working in the TASMAC shop and deposed about the assault made by A1. But in his cross examination, he declined to identify the accused.

24.PW6 is the mahazar witness attested Exhibit P2 observation mahazar drawn by the Investigation Officer.

25.PW7 is the attester to the confession recorded from the accused through Exhibit P1.

26.PW10 Doctor attached to the Arul Jaya Hospital deposed that two or three persons carry one person to his hospital at about 9.50 p.m. on 29.09.2007 and on examination, he advised them to admit the person in the Government Hospital. The doctor specifically deposed that she did not examined the deceased Raji nor given the first aid and did not state about the injury to the Investigation Officer since he did not examined the person.

27.PW 11 Doctor attached to the Vijayaragavan Hospital deposed that one person was brought to him in the Auto in an unconscious staged and he could not speak because of the injury sustained in the left side of the head and he advised the persons to immediately admit him in the Government Hospital.

28.PW12 Doctor attached to the Government Hospital deposed that he examined the deceased Raji on 28.9.2007 and issued the accident register Exhibit P6 and found ruptured wound in the left side of his head. The deceased was brought by PW1 and he stated that the deceased was assaulted by unknown persons in the TASMAC bar situated near Saravanampatti Bus Stand.

29.The doctor in his evidence deposed that he examined the deceased Raji while admission and noted the same in the accident register Exhibit P6. Further the doctor mentioned in Exhibit P6 the person assaulted by unknown persons with unknown weapon. The accident register was prepared by him at about 11.20 p.m. and could not state the exact time of death of the deceased.

30.PW14 Doctor in his evidence deposed that he conducted postmortem on the body of the deceased and opinioned that the death could have happened due to head injury vide report Exhibit-P8 and noted the following injuries:

1.Reddish Abrasions seen over back of right hand measuring 3x1cm back of right elbow 3x2 cm and 2x1 cm and back of left elbow 1x1cm.

2.Laceration noted in the left part to temporal region 9x3 cm, with underlying sub scalp contusion. Multiple crack fractures over an area of 9x5 cm noted in the left parieto temporal bones. Epidural clot weighing 25 gm in the left parieto temporal region and subdural clot 10 gm in the left temporal region. Subdural and subarachnoid hemorrhage over entire brain surface denser over left side cerebral hemispheres. Hemorrhagic confusion noted over superior surface of left fronto temporal lobes noted.

31.PW15, Inspector of Police received the complaint from PW1 at 5.00AM on 29.9.2007 and registered the FIR and conducted the investigation and filed the final report on 28.10.2007 against the accused under section 302 and 341 r/w 34 of IPC.

32.PW15 in his evidence admitted the fact that the complaint was given after 30 hrs and no blood stains were recovered in the deceased office or in the TASMACH shop and no identification parade were conducted to identify the accused.

33.The learned trial Court after appreciating the evidences placed by the prosecution modified the conviction and sentence against A1 under section 304(ii) of IPC.

34.In the case on hand, the trial Court after an elaborate evaluation of the material and evidence on record and after discussing the legal question involved in the matter, found that Sections 302 of I.P.C. is not attracted and modified the conviction under 304(ii) of IPC. Going by the above evidences, it can be seen that the prosecution has miserably failed to adduce evidence to prove the case beyond reasonable doubt even under Section 304(ii) of IPC.

35.As pointed out earlier, counsel for the appellant submits that absolutely there is no independent evidence to support the prosecution case since the evidences of PWs.1 to 3 are not free from doubt and therefore, the appellant is entitled to get the benefit of doubt with respect to the offence alleged. As I have observed earlier, the entire prosecution case, especially with respect to the incident was set up based upon the evidences of PWs.2 and 3. The trial Court misread the evidence of PW2 and failed to appreciate the fact that he is giving an exaggerated version. In the chief examination, PW1 has stated that he has not seen the occurrence and PW 3 informed him after the incident. The crime was alleged to have registered on the basis of Ex.P1 belatedly and by the deposition of PW1, the correctness

and the legitimacy of Ex.P1 is doubtful. If that be so, it is to be held that there was attempt from the part of the Police to create document against the appellant in order to suit the situation in favour of the prosecution. Further perusal of deposition of PWs 1 to 3 would show that he had made substantial improvements from Ext.P1.

36.Thus, the evidences of PWs1 to 3 are not capable to instill the confidence of the Court. They had a tendency to depose before the Court untrue and incorrect facts. The trial Court itself came to the conclusion that PW1 has not witnessed the origin of the incident and therefore, what all stated by him regarding the origin of the incident were discarded. From the above facts and as pointed out by the learned counsel for the appellant, it is further clear that the prosecution has a tendency to adduce artificial or unreal evidence in support of its case. As pointed out by the learned counsel for the appellant, Ex.P1 is a concocted statement which is the basic document for the initiation of the crime and investigation. Therefore, the evidence of PWs 1to 3 cannot be believed as such.

37.In the present case, except the evidences of PWs.1 to 3, there is no independent evidence to lend assurance of the correctness of the evidence of PWs.3 and 4 and to corroborate their version. PWs-2 and 3 has stated that several persons were gathered and witnessed the incident. But, the Police have miserably failed to cite and examine independent witnesses to prove the prosecution case.

38.Thus, it can be seen that the prosecution has failed to adduce independent and convincing evidence to establish its case beyond doubt. On the other hand, it is clear from Ex.P1 and the deposition of PW1 that the prosecution has tried to create artificial evidence suppressing the real state of affairs of the incident. If that be so, in the absence of sufficient evidence to prove the prosecution case against the appellant and since the evidences adduced are doubtful, the appellant/accused is entitled to get the benefit of doubt also.

39.In the light of the above discussion and also on the basis of the available materials and records, I am of the view that the prosecution failed to establish the case against the appellant beyond reasonable doubt and the accused are entitled to get benefit of doubt.

40.In the result:

(a) this Criminal Appeal is allowed by setting aside the conviction and sentence imposed in S.C.No.36 of 2008, dated 13.06.2008, on the file of the learned Additional District and Sessions Judge, Fast Track Court No.I, Coimbatore;

(b) the appellant/accused is acquitted from all the charges;

(c) the bail bond, if any, executed by the appellant stands cancelled and set at liberty and the fine amount, if any paid by the appellant/accused shall be refunded. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional District and Sessions Judge,
(Fast Track Court No.I), Coimbatore.
- 2.The Judicial Magistrate No.II,
Coimbatore.
- 3.The Chief Judicial Magistrate,
Coimbatore.
- 4.The Superintendent,
Central Prison, Coimbatore.
- 5.The Inspector of Police,
B9, Saravanapatti Police Station,
Coimbatore.
- 6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.P.S.Palanivelrajan, Advocate sr.3914

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srg 25/02/2019