

Bail Slip

The Appellant/Accused namely 1.Krishnamoorthy S/O Sivagnanam and 2.Muthukannan S/o Sivagnanam were directed to be released on bail as per the order of this Court dated 13/9/2005 in CrI.M.P.No.5440 of 2005 in CrI.Appeal No.559 of 2005 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CrI.A.No. 559 of 2005

1.Krishnamoorthy
2.Muthukannan ... Appellants /Accused 1 & 2

/Vs/

State rep by
Inspector of Police
K-8 Police Station
Chennai.
Crime No.1650 of 2004. Respondent/Complainant

PRAYER: Criminal Appeal filed under section 374 of the Criminal Procedure Code, against the order passed by the Additional Sessions Judge, Chennai at Poonamallee in S.C.No.698 of 2004 dated 08.04.2005.

For Appellants : Mr.S.V.Karthikeyan

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

J U D G M E N T

The Criminal Appeal has been filed against the order passed by the learned Additional Sessions Judge, Chennai at Poonamallee in S.C.No.698 of 2004 dated 08.04.2005, wherein, the trial Judge found the appellants guilty for offence under Section 304(ii) IPC, convicted and sentenced them to undergo Rigorous Imprisonment for 7 years and the period of detention already undergone by the accused, during the trial was ordered to be set off under Section 428 (1) Cr.P.C.

2.The case of the prosecution is that, Rameshkumar-deceased is a money lender, from whom the appellants were said to have borrowed money and issued a cheque for repayment, which got dishonoured. Hence on 23.09.2004, at about 6.00 a.m., the deceased along with his brother-P.W.1 and mother-P.W.2 went to the house of the appellants and demanded for repayment of money. A wordy quarrel arose between them and Nagarajan (A3) who was doing carpentry work in the house of appellants threatened the deceased with a wooden log and the appellants 1 and 2 kicked the deceased and he fell down and after he fell down, the appellants stamped on his abdomen, thereby causing injuries, which resulted in death of the deceased, Ramesh Kumar. Hence A1 to A3 were charged with offence under Section 302 r/w 34 IPC.

3.The above case was taken on file as PRC No.240 of 2004 on the file of the learned V Metropolitan Magistrate, Chennai, and upon appearance of the accused, necessary copies of documents relied on by the prosecution under Section 207 Cr.P.C., were furnished to them. After scrutiny of the documents, the learned Magistrate finding that the case is exclusively triable by the Court of Sessions, committed the case to the Principal Sessions Judge, Chennai and thereafter, this case was made over to the learned Additional Sessions Judge, Chennai at Poonamallee, for trial.

4.Upon appearance of the accused and after hearing both sides, and on the basis of records available, charges under Section 302 r/w 34 IPC were framed against the accused and it was read over and explained to the accused, in the language known to them and they pleaded not guilty and claimed to be tried.

5.During trial in order to prove the guilt of the accused. PW.1 to PW.17 were examined on the side of the prosecution; Exs.P.1 to Ex.P.21 were marked and material objects M.O.1 to M.O.8 were marked. On the side of the defence no witnesses were examined and no documents were marked on conclusion of trial.

6. The learned trial Judge after hearing both sides found the accused A1 and A2 guilty for offence under Section 304(ii) IPC and convicted and sentenced them as stated above and acquitted A3 from all the charges

7.The learned counsel for the appellant would submit that the deceased and his family members are usurious money lenders involved in finance business and even as per the evidence of prosecution, P.W.1, 2 and 3 are stated to be witnesses to the occurrence. P.W2-mother of the deceased, had categorically submitted in her cross examination that the occurrence took

place on the 2nd floor, in front of the house of the appellants and that she had not climbed upstairs. It has been admitted by P.W.2 that she remained in the 1st floor and she raised alarm, when the deceased fell down in the stair case. Thereby, she could not have witnessed what happened in the 2nd Floor. P.W.3 is a tenant in the house of the appellants and he had deposed in his cross examination that he came out of his house only after hearing the alarm of P.W.2, thereby, both P.W.2 and PW.3 could not have witnessed the occurrence and the only witness available was P.W.1-brother of the deceased. In so far as the evidence of P.W.1 is concerned, he cannot be a reliable witness since he was not stable in his statement. The learned counsel for the appellants/accused would further submit that there are contradictions between the evidence of P.W.1, 2 and 3 and the 1st document which had come into existence is the Ex.P.1-Complaint, stated to have been given by P.W.1 and in that complaint nothing had been stated as if the appellants stamped the deceased on his stomach. Whereas only after the Post mortem Certificate-Ex.P.12, came into existence and having found that the death was due to Cardiac Failure due to vagal shock due to sudden Traumatic injury to intra abdomen, the prosecution has projected the case, as if the accused had stamped on the stomach of the victim deceased, after he had fallen down. Further even taking into consideration the evidence of P.W.3, he had attributed the overt act of stamping on the stomach of the deceased only to the 1st appellant/1st accused and not to the 2nd appellant/2nd accused and in view of the same, the presence of PW.1 and PW.2 at the scene of occurrence being highly doubtful and their testimony have to be discarded in total. The further contradictions in the evidence creates grave doubt on the prosecution case and thereby, the appellants/accused are entitled to benefit of doubt and entitled for acquittal.

8.The learned Additional Public Prosecutor would submit that it is the categorical case of P.W.1, 2 and 3 that the appellants pushed the deceased and after he had fallen down they have stamped on the stomach of the deceased which had resulted in the death of the victim. The oral evidence of P.W.9-Dr.Alli, who issued death certificate, Ex.P.11 and the evidence of P.W.10-Dr.Manohar, who conducted the autopsy are categorical regarding the cause of death. Further the P.W.10-Dr.Manohar has opined that at the time of autopsy he found three injuries on the deceased on various dimensions viz.,

- (i) Brown colour abrasions: Right side of lower lip 5x1cm, middle of upper lip 1x1cm, intra scapular region 2x1cm : 1x1cm;
- (ii) Reddish haemorrhage (subcutaneous) over right side of neck, above the right supra claviclar region;
- (iii) Reddish haemorrhage seen over the omental sac, Right side of kidney capsule part of small and large intestine.

His finding regarding injury No.3 would ultimately go to establish that the cause of the death of the deceased and would submit that the trial Court has rightly convicted the appellants/accused.

9.Now, what is to be seen is whether the prosecution had proved the case beyond reasonable doubt and whether the trial Judge is right in convicting the accused ?.

10.In this case, the appellants are brothers and the acquitted accused-A3-Nagarajan is a Carpenter working in their house and he was stated to be present along with the appellants/accused, at the time of occurrence. P.W.1-Moorthy is the elder brother of deceased Rameshkumar. P.W.2-Jayalakshmi is the mother of the deceased. As per the prosecution, the 2nd appellant/A2 and the deceased were close friends and for the construction of a house, A2 had borrowed a sum of Rs.90,000/- from the deceased Rameshkumar on two different dates. However, he did not repay the amount within a period of two years and the amount borrowed inflated to Rs.1,40,000/- along with interest and thereby the deceased had demanded money from the A2. But he did not repay the same and the deceased had demanded A2, to execute a lease deed in his favour in respect of the house of A2, which was turned down by A2 and there was enmity between A2 and the deceased.

11.On 22.09.2004, the 2nd appellant/A2 had issued a cheque for Rs.1,40,000/- drawn on UCO Bank, T.Nagar, towards the repayment of the debt amount. When the above cheque was presented for collection, the cheque got bounced due to the closure of bank account even in the year 2000 by A2. Therefore, on 22.09.2004, P.W.2-Jayalakshmi, mother of the deceased went to the house of A2 and demanded the amount for which the 2nd appellant/A2 did not yield and he had challenged P.W.2, to recover the amount if possible. P.W.2 had gone back to her house and discussed the problem with her sons and at about 10.00 p.m., on the same day Rameshkumar, P.W.1 and 2 had gone to the house of the appellants and having found the house locked, had returned back and thereafter, on the next day early morning 6.00 a.m., P.W.1, 2 and the deceased Rameshkumar have once again gone to the house of the appellants. At that time all the three accused were available at the place of occurrence and when Rameshkumar questioned the 2nd appellant/A2, why he had scolded and challenged his mother Jayalakshmi on the previous day, there occurred a wordy quarrel which had resulted in scuffling. P.W.1 also questioned A2, as to how he could scuffle Rameshkumar, after keeping the money for years without repayment. During that time, A3 was stated to have come there with log and threatened the witnesses with dire consequences. At the same time, the 1st appellant/A1 pounced on Rameshkumar by tightly

holding his throat and kept him pinned against the wall and gave several kicks by using right knee on the abdomen of the deceased. Due to which he fell down on the staircase, just near the portion occupied by the accused. Meanwhile A2 and A3 prevented P.W.1 and 2 from rescuing Rameshkumar and thereby the deceased collapsed and fell down on the stairs. On seeing this P.W.1 and 2 raised hue and cry and thereafter the accused 1 to 3 had stated to have escaped from the place of occurrence after mercilessly stamping on the abdomen of the deceased Rameshkumar.

12. Thereafter, Rameshkumar was stated to have been taken to the private hospital with the assistance of P.W.5 and his wife and brother-in-law and from there taken to Kilpauk Medical College Hospital and on arrival, the Doctor, who examined the Rameshkumar had reported that the deceased was brought dead and thereafter P.W.1 gave a complaint before the respondent police under Ex.P.1. P.W.16-Dhanaraj, Sub-Inspector of Police, who received the complaint, registered a case in Crime No.1680 of 2004. On receipt of the same, P.W.17-Chandrasekar, Inspector of Police, took up the investigation, went to the place of occurrence at No.96, N Block, MMDA Colony, Arumbakkam, and prepared Ex.P.5-Observation Mahazar in the presence of the witnesses Chinnappa and another and also prepared Ex.P.18-Rough Sketch. Thereafter he went to the KMC hospital and took photo of the deceased at mortuary and conducted inquest in the presence of the witnesses and panchayatars and prepared Ex.P.19-Inquest Report. He examined the witnesses P.W.1, 2 and 5 and their statements were also recorded.

13. After inquest, body of the deceased was handed over to P.W.15-Singamurthy, Head Constable for being taken over for postmortem and it was done by P.W.10-Dr.Manohar, who prepared the Ex.P.12-post mortem certificate. On the basis of requisition given by the Inspector, viscera was collected and sent to Forensic Science Laboratory. The report was received marked as Ex.P.13 and it is stated that neither alcohol nor any toxic materials were detected from the viscera.

14. On 23.09.2004, by 12.30 p.m., A1-Krishnamoorthy and A3-Nagaraj were arrested by the respondent police, upon being identified by Sekar and Yuvaraj and their confession statements were recorded separately. On the basis of Ex.P.7, admissible portion of confession given by A3, M.O.1-log was recovered in Ex.P.8 mahazar in the presence of the witnesses. Likewise, from A1, his torn full sleeve shirt without button, M.O.7 was recovered from him under Ex.P.6 mahazar.

15. On 24.09.2004, at about 3.30 p.m., the A2-Muthukannan was arrested by the Inspector on being identified by the witnesses Ragothaman and Panchamoorthy and a voluntary confession

statement was recorded from him. On the basis of Ex.P.9-admissible portion of confession statement, certain records were secured from him through Ex.P.10-mahazar in M.O.8 series. On the basis of Ex.P.6-special report given by P.W.15-Singamuthu, personal belongings of the deceased M.O.2 to M.O.6 were recovered by the Inspector through Form 95. On the requisition given by the Inspector in Ex.P.20, M.O.1 to M.O.7 were sent for the opinion of the Forensic Expert through Court and the same was received under Ex.P.21.

16.P.W.11-Chandran, Bank Manager of UCO Bank was examined and the Inspector of Police obtained Ex.P.14-application and Ex.P.15-statement of account of A2's bank account, prior to its closure. P.W.12-Ajees, an auto man, who escorted Rameshkumar, to a private hospital and thereafter to KMC hospital was examined and his statements were recorded by the Inspector. P.W.9-Dr.Alli, who gave death certificate in Ex.P.11 and Dr.Manohar were also examined by the Inspector and their statements were also recorded. The arrested accused were sent for judicial custody and in the process of investigation, recovered properties were sent to Court through Form 95. Thereafter, the final report was filed against A1 to A3.

17. The trial Court after looking into the evidence convicted the appellants/accused herein and acquitted A-3.

18. I have carefully and consciously analysed the evidence on record. PW.10, Dr.Manohar had conducted the Post mortem. As per his opinion at the time of conducted autopsy, he had found three injuries on the person of the deceased on various dimensions. His opinion with regard to the injury No.3 "Reddish haemorrhage seen over the omental sac, Right side of Kidney capsule part of small and large intestine" would go to establish the reason and cause of the death of the victim. He had further stated that the injury was found to be serious and further he had noted petchial haemorrhage over apex of heart and right atrium and found clotted blood in all the chambers of heart in its cut section, the congestion of lungs, liver, spleen, haemorrhage in both adrenals and opined the death to be unnatural. He had finally opined that the deceased had died due to Cardiac failure due to vagal shock due to sudden Traumatic injury to intra abdomen.

19. As per the Viscera Report no alcohol or poisonous substance was found in the body and thereby, conclusively evidencing that the death was due to the sudden Traumatic injury to intra abdomen, thereby, confirming that the death was only

due to the injury suffered in the abdomen. Now, looking into the testimonies of PW.1 and PW.2 and connected documents, as per Ex.P1, complaint given by PW.1/Murthi, the brother of the deceased nothing had been stated as if the accused stamped on the stomach of the deceased. However, after the receipt of the Post mortem certificate, Ex.P12 on 23.09.2004, finding that the cause of death was due to sudden Traumatic injury to intra abdomen, documents have been made ready as if, the accused have caused the death by stamping on the stomach of the deceased. The inquest report, Ex.P19 and Ex.P19 had been prepared on 23.09.2004 and it had been sent to the Court only 24.09.2004.

20. When the presence of PW.1 and PW.2 is doubtful. The case of the prosecution rests on the sole evidence of PW.3, neighbour, who is stated to have witness the occurrence. In the above circumstances, a bounden duty is cast on the trial Court to critically scrutinize the evidence of PW.3 with a view to assure itself whether the witness is stating the truth and whether his evidence is so convincing and it appears to be so natural and truthful that it is not necessary to look for other evidence to record a conviction. In this case though PW.3 in his chief examination had stated that the appellants/accused stamped the deceased on the stomach, during his cross examination, had stated that the 1st appellant/accused alone had stamped the deceased on his stomach and he has not stated that the other two accused stamped the deceased.

21. Now, coming to the evidence of PW.1, for the first time in the Court, it had been stated by PW.1 that after the accused pushed the victim, the victim fell down and the accused had stamped on his stomach and thereafter, the victim was taken to one Mohan Hospital from there, he was taken to Kilpauk Medical College Hospital. However, in his cross examination, PW.1 had admitted that at the time of giving complaint, he had not stated about the accused stamping on the stomach of the deceased. PW.2, the mother of the deceased had only stated that the 1st accused only caused injury in the stomach, she has not spoken as if the 2nd and 3rd accused stamped on the stomach. PW.3, who is the tenant in the house of the accused though had stated in his chief that while running away, the accused stamped on the stomach of the deceased, in his cross examination, it is his specific evidence that the 1st appellant alone stamped on the stomach of the deceased, he has not deposed as if the 2nd and 3rd accused stamped on the stomach of the deceased and thereby, suggesting that the reason for the death of the victim was due to the internal injury sustained by him due to stamping on the stomach by the 1st appellant/accused.

22. When the presence of PW.1 and PW.2, at the time of incident is doubtful taking into consideration, the contradictions in their evidence, the only other evidence available is PW.3 is an independent witness, a neighbour and tenant of the accused. Taking into consideration, the entire evidence of PW.3, he has specifically spoken only about the 1st appellant/accused having stamped on the stomach of the deceased, which had resulted in the victim having died. The trial Court taking into consideration, the evidence in total and finding that the deceased along with his relatives have gone to the house of the accused and had created a ruckus had convicted the appellants/accused for offence under Section 304(ii) IPC.

23. A heavy burden is cast upon the prosecution to prove the case beyond reasonable doubt. In this case as discussed above, the evidence of PW.3 is clear that it is only the first appellant/accused who had stamped on the stomach of the deceased, due to which the deceased suffered internal injuries and died. However, as discussed above, there is no other material against the 2nd appellant/accused to implicate him or connect to the injury suffered by the deceased. In view of the same, this Court is of the opinion that the conviction and sentence imposed on the 2nd appellant/accused is not proper and hence, it is liable to be set aside.

24. Now, while appreciating the evidence on record, it is a case where the family of the deceased are usurious money lender and they have gone, on an earlier night, to the house of the accused and created a ruckus and again in the earlier morning, the deceased had gone to the house of the accused and created a problem, resulting in the incident happening. Admittedly, no weapon had been used and as per the entire evidence, it is only A-1, who had stamped on the deceased on his stomach which had resulted in his death. In so far as the appellant/A-1 is concerned, the conviction for offence under Section 304(ii) is confirmed. However, taking into consideration the facts of the case, this Court is of the opinion that the sentence of seven years imposed on the appellant/ A-1 is excessive and harsh.

25. In the result, the Criminal Appeal is partly allowed. In so far as the Appellant/A2 is concerned, the impugned judgement of conviction and sentence is set aside and he is acquitted of the charges levelled against him and the bail bond if any executed by him shall stand cancelled. In so far as the Appellant/A1 is concerned, the impugned judgement of conviction

is confirmed and the sentence is modified to four years and the bail bond if any executed by him shall stand cancelled and the Appellant/A1 is directed to surrender forthwith to under go the remaining period of sentence or in the alternative, the respondent shall arrest him and produce before the trial Court, to undergo the remaining part of sentence if any.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kv/jer
To

1.The Additional Sessions Judge,
Chennai at Poonamallee.

2.The Vth Metropolitan Magistrate,
Egmore, Chennai.

3.The Chief Metropolitan Magistrate,
Egmore, Chennai.

4.The Principal Sessions Judge,
Chennai.

5.The Superintendent,
Central Prison, Vellore.

6.The Inspector of Police
K-8 Police Station
Chennai.
Crime No.1650 of 2004.

7.The Section Officer
Criminal Section,
High Court of Madras.

8.The Public Prosecutor
High Court of Madras.

+1cc to M/s.S.V.Karthikeyan, Advocate Sr.27808

Cr1.A.No. 559 of 2005

vp[co]
srg 18/07/2019