

BAIL SLIP

The Appellants/Accused namely 1.Sudhakar S/o Nanjundan
2.Kumaran S/o Palani Naikar were released on bail vide
order dated 26/09/2012 made in Crl.M.P.No.1/12 in
Crl.Appeal No.563 of 2012 passed by this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
28.11.2019	03.12.2019

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CRL. A. NO. 563 OF 2012

AND

CRL. M.P. NO. 17773 OF 2019

1. Sudhakar

2. Kumaran

... Appellants

- Vs -

State, rep. by

Inspector of Police

Gobichettipalayam Police Station.

... Respondent

Criminal Appeal filed u/s 374 (2) of the Code of
Criminal Procedure, against the judgment and order dated
22.08.2012, passed by the learned Principal Sessions Judge,
Erode, in S.C. No.74/2012.

For Appellants : Mr. P.M.Duraisamy, for
Mr. C.S.Saravanan

For Respondents: Ms. Kirtika Kamal. P,
GA (Crl. Side)

JUDGMENT

The present appeal has been preferred by the appellants, who were arrayed as A-1 and A-2 along with two other accused, viz., A-3 and A-4, against the judgment of conviction and sentence dated 22.08.2012 passed by the learned Principal Sessions Judge Erode, in S.C. No.74/2012.

2. The case of the prosecution could be briefly stated as under :-

The deceased, Palani Naicker, was the husband of Sivakami (P.W.1) and they are natives of Chakkarapalayam Village in Gobichettipalayam Taluk. Sudhakar (A-1) is the son of Ponnammal (A-3), and Kumaran (A-2) is the son of Vellaiyammal (A-4). Ponnammal (A-3) is the sister-in-law (younger brother's wife) of the deceased Palani Naicker. The family owns half acre of arable lands in the village and were having water sharing disputes with the appellants, who were owners of adjacent lands and who are also close relatives of the deceased.

3. On 25.6.11, around 7.00 a.m., when the deceased Palani Naicker, and his wife Sivakami (P.W.1) were working in their lands, it is alleged that Sudhakar (A-1), Kumaran (A-2), Ponnammal (A-3) and Vellaiyammal (A-4) came there and picked up a quarrel in which Sudhakar (A-1) and Kumaran (A-2) assaulted Palani Naicker with sticks and Ponnammal (A-3) and Vellaiyammal (A-4) pushed Sivakami (P.W.1) and assaulted her. Since Palani Naicker was seriously injured, Pradeep (P.W.2), sent them by ambulance to the Government Hospital, Gobi, where they were examined by Dr.Latha (P.W.10) at about 10.50 and 11.00 a.m. on the same day and issued Ex.P-9, accident register for Palani Naicker and Ex.P-10, accident register for Sivakami (P.W.1). In Exs.P-9 and P-10 it is recorded that 'alleged to have been assaulted by four known persons' and the injuries suffered by both of them have been noted.

4. While Sivakami (P.W.1) was under treatment, Eswaran (P.W.9), the Head Constable, came to the hospital and recorded her statement (Ex.P-1), based on which he registered a case in Crime No.419/2011 u/s 294 (b) and 323 IPC at about 1330 hours on 25.6.11 and prepared printed FIR, Ex.P-7.

5. Since the injuries sustained by Palani Naicker were serious in nature, the doctor, advised him to be shifted to Government Hospital, Erode, but he got himself admitted in Sri Chakra Hospital, Gobi, where he was treated by Dr.Kirubakaran (P.W.11). Dr.Kirubakaran (P.W.11), in his evidence as well as in the case sheet, Ex.P-13, has stated that Palani Naicker was brought to Sri Chakra Hospital at

1200 Noon on 25.6.11 and he found the following injuries on the person of Palani Naicker :-

- i) 2 x 2 cm, 2 x 4 cm lacerated wound in right forearm;
- ii) 2 x 2 cm, 2 x 1 cm lacerated wound in left elbow joint;
- iii) 2 x 1 cm lacerated wound in left leg mid 1/3;
- iv) 2 x 1 cm lacerated wound in posterior aspect of right heel;
- Tenderness, abnormal mobility, crepitus (+) right radius, ulna mid 1/3, right 4, 5th metacarpel.
- Right radial pulse
- Tenderness (+) left lateral epicondyle of humerus
- Tenderness (+) left fibula distal 1/3, left lateral malleolus.
- From right shoulder - elbow - painful;
- wrist - painful
- Left elbow - painful."

6. On further examination, P.W.11, found that his right radius was displaced; there was a compound fracture in the left humerus; fracture in the left fibula and a fracture in the 4th right metacarpal. While under treatment in Sri Chakra Hospital, Palani Naicker died on 27.6.11 at about 2.10 p.m., vide death report, Ex.P-12. Thereafter, the case was altered to one u/s 302 IPC vide alteration report, Ex.P-16.

7. Investigation of the case was taken up by the Inspector of Police, Manimaran (P.W.14), who conducted inquest over the body of the deceased and prepared inquest report, Ex.P-12. Sudhakar (A-1) and Kumaran (A-2) were arrested and the sticks used by them were recovered under mahazar, Ex.P-5.

8. Dr.Jaisingh (P.W.12), conducted autopsy on the body of the deceased and in his evidence as well as in the post-mortem certificate, Ex.P-14, he has opined that the deceased would appear to have died of multiple injuries and its complications sustained by him.

9. After examining witnesses and collecting various reports, Elango (P.W.5), the subsequent investigating officer, completed the investigation and filed the final report in P.R.C. No.15/11 before the Judicial Magistrate No.1, Gobichettipalayam, u/s 341, 294 (b), 323 and 302 r/w 34 IPC against Sudhakar (A-1), Kumaran (A-2), Ponnammal (A-3) and Vellaiyammal (A-4).

10. On appearance of the accused, the provisions of Section 207 Cr.P.C. was complied with and the case was committed to the Court of Session in S.C. No.74 of 2012 and was tried by the Principal Sessions Court, Erode. The trial court framed the following five charges :-

S. No.	Charge/Section	Against Accused
1	U/s 341 IPC	A-1 to A-4
2	U/s 294 (b) IPC	A-1
3	U/s 302 IPC	A-1 & A-2
4	U/s 302 r/w 34 IPC	A-3 & A-4
5	U/s 323 IPC	A-3 & A-4 (for causing simple injuries on Sivakami (P.W.1))

11. When questioned, the accused pleaded not guilty. To prove the case, the prosecution examined P.W.s 1 to 15, marked Exs.P-1 to P-17 and M.O.s 1 and 2. When the accused were questioned u/s 313 Cr.P.C. on the incriminating circumstances appearing against them, they denied the same. Neither any witness was examined nor any document was marked. After considering the evidence on record and hearing either side, the trial court, by judgment and order dated 22.08.2012, in S.C. No.74/2012, convicted the accused as under :-

Accused	Section	Sentence
A-1 to A-4	U/s 341 IPC	Convicted and sentenced to pay a fine of Rs.500/-, in default to undergo simple imprisonment for a period of one week.
A-1 & A-2	U/s 304 (ii) IPC	Convicted and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of one year.

A-3 & A-4	U/s 323 IPC	Convicted and sentenced to pay a fine of Rs.500/-, in default to undergo simple imprisonment for a period of one week.
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Challenging the said conviction and sentence, the appellants herein, who are A-1 and A-2 have preferred the present appeal.

12. At the outset, Mr.Duraisamy, learned counsel appearing for the appellants submitted that he has filed CrI. M.P. No.17773/2019 u/s 391 Cr.P.C. for reception of additional evidence and requested this court to take up that petition first. Along with the said petition, Mr.Duraisamy has filed copies of certain documents to show that Sivakami (P.W.1) had obtained a sum of Rs.10,000/- from the District Collector on 20.08.2012 under the Protection of Farmers Scheme for the untimely and natural death of her husband. The appellants have obtained these records under the Right to Information Act. Mr.Duraisamy contended that Sivakami (P.W.1) had submitted an application for payment of ex-gratia amount by averring that her husband had died a natural death and after enquiry, the revenue authorities have also recommended her case pursuant to which the Collector had disbursed Rs.10,000/- to her under the said scheme.

13. Mr.Duraisamy, learned counsel for the appellant further contended that except the evidence of Sivakami (P.W.1), there is absolutely no material to mulct the criminal liability on the appellants. He contended that Sivakami (P.W.1), admittedly, had animosity against the accused and, therefore, she has falsely implicated all of them. He also submitted that at one place, Sivagami (P.W.1) has stated that the incident had taken place at 7.00 a.m. and at another place, she has stated that the incident had taken place at 8.00 a.m. and, hence, there is discrepancy in her testimony. He also disputed the place of occurrence inasmuch as the prosecution was not clear as to where the incident had taken place. Therefore, Mr.Duraisamy, contended that the evidence of Sivakami (P.W.1) should be discarded and the accused acquitted.

14. This Court heard the learned Government Advocate (CrI. Side) on the above contentions and also perused the materials available on record.

15. Though learned counsel has tabled materials before this Court contending that the evidence of Sivakami (P.W.1) should be discarded and additional evidence should be

taken, however, the fact remains that Sivakami (P.W.1) was examined by the trial court on 18.7.12, but she was not confronted with these documents in cross-examination. But these documents do make this Court to raise a suspicion in the testimony of Sivakami (P.W.1). Therefore, it has become imperative for this Court to critically examine the evidence on record in order to find out if the death of Palani Naicker was a fall out of the injuries inflicted on him by the appellants or was it a natural death.

16. Sivakami (P.W.1) in her evidence has stated as under :-

"I hail from Chakkarapalayam village; the deceased in this case is my husband; I know the accused; A-1 is my brother-in-law's son and the other accused are my relatives; the lands of my husband and his brother are adjacent to each other; a quarrel ensued between them in connection with sharing of water; a year and 20 days back, my husband, my son Senthilkumar and myself had gone to our lands for watering; after watering, we were returning home around 7.00 a.m.; we were stopped near Dharmaraja's field by A-1 to A-4 and they picked up a quarrel in which A-1 and a-2 attacked my husband with sticks on his hands and legs; on seeing this, I raised alarm and intervened; at that time, A-3 and a-4 pushed me to the ground and I fell on the shrubs and sustained injuries on my hand; I started hollering and at that time, my son came running; on seeing him, the accused ran away; I was weeping; at that time, Pradeep (P.w.2) came there; I asked him to get 108 ambulance; he made arrangements and ambulance came; my husband and myself went in the ambulance; my son said that he will go home and bring money; my husband was admitted in the hospital; while I was in the hospital, police came and recorded my statement; that statement is Ex.P-1; my husband was taken to Erode hospital; in the meantime, my son came; thereafter my husband was taken to Sri Chakra Hospital; in that hospital, he was found with fractures and they put plaster of paris bandage; my husband was an in-patient in the hospital; two days later, my husband died; police came to Chakra Hospital and took me to the place of occurrence and I showed them the place; after my husband's death also, police examined me; the sticks that were used by A-1 and A-2 to attack my husband are M.O.s 1 and 2.

17. In cross examination, P.W.1 stated that police came around 9 or 10 in the morning; I do not correctly remember; my husband also told the police who all had attacked them; I told the police that the attack took place while we were bunding the water way in our field; the distance between our field and the canal bund will be about ½ km.; the road leading to Sakthi Sugars is to the north of our field; if we go east of the road and down north, we can reach our house; between the canal bund and our lands,

there will be lands of around five people; the lands were under cultivation; to go to our lands, we should go only through the road; we can also go through the canal and also through the fields; M.O.s 1 and 2 were lying on the west of the bund; the canal bund is about 7 feet above the field; if one does not carefully walk over the bund, he may slip and fall; the pathway is very good; on either side of the bund, there are palm trees; I sustained injuries because I fell on the palm branches; I did not notice whether my husband fell on his back or on his front because I was myself pushed down; first they attacked my husband on his legs; immediately after that he fell down; I did not know on which part of the leg he was attacked; adjacent to our lands, sewage canal passes; the sewage canal runs 10 feet below the main road; square stones have fallen in the canal; it is not correct to say that my husband slipped from the bund and that he fell down on the sewage canal and sustained injuries; water will first flow into the lands of the accused and only then it will flow into our lands; my husband was talking to me in the hospital; 108 ambulance came within 15 minutes; it is not correct to suggest that I have no purpose to go over the tank bund and that I should go only by the tar road; people, who go by walk will naturally take the shorter route; my son is in Pollachi; off and on, he will come home; on that day, he had come home; it is not correct to say that I did not say in my complaint and in the police statement that my son had come with us; it is true that five days prior to the incident, A-1's wife delivered a child; it is incorrect to say that at the time of the incident, A-1 was with his child; there is an Anjaneya Temple and Perumal Temple near the road; when I went to the place of occurrence with the Inspector, Thangaraj was there in his fields; I deny the suggestion that the incident had not taken place in the way I have deposed; I deny the suggestion that A-1 and A-2 had not assaulted my husband and that A-3 and A-4 had not assaulted me; I was weeping after the incident; on hearing my cries only, Pradeep came; I deny the suggestion that my son was not there and that he was in Pollachi at the time of the incident; I deny the suggestion that my husband had sustained injuries in a fall and that has been foisted as a case of assault.

18. Pradeep (P.W.2), in his evidence, has stated as under :-

I am residing in Chakkarapalayam village; I know P.W.1 and her deceased husband; I also know the accused; about an year back, around 8.30 a.m., I called the ambulance and sent the injured to the hospital.

Since he did not thereafter support the case of the prosecution, he was declared as hostile.

19. It is the contention of the accused that the deceased Palani Naicker had slipped and fell from the canal bund and had sustained injuries in question. From the evidence of P.W.s 1 and 2, it is clear that the incident had taken place in the morning hours between 7 and 8.30 a.m.

20. A copy of the accident registers, Exs.P-9 and P-10 show that the doctor had examined Palani Naicker at 10.50 a.m. and Sivakami (P.W.1) at 11.00 a.m. On 25.6.11. At the time of admission itself, six injuries have been found on the body of Palani Naicker, which are noted in the accident register, Ex.P-9. Similarly, one abrasion measuring 5 x 1 cm to 4 x 1 cm has been noted in the forearm of Sivakami (P.W.1). Even in the accident registers (Exs.P-9 & P-10), which are the earliest document to have come into existence, it is recorded as "H/o assault by 4 known persons on 25.6.11 at 8.30 a.m. by stick near Dharmaraj fields at Palangarai." From Government Hospital, Gobi, the deceased Palani Naicker, has been taken to Sri Chakra Hospital, by his son Senthil Kumar at 1200 Noon on 25.6.11, as could be seen from Ex.P-13.

21. X-ray was taken in Kripa Ortho Foundation, which is a part of Sri Chakra Hospital and those records have also been marked as Ex.P-13. It is not the case of the accused that even the doctors, who had treated the deceased and P.W.1 in the two hospitals had connived with P.W.1 and foisted this case on the accused. The nature of the injuries, viz., fractures, suffered by the deceased, have been noted even by Dr.Jaisingh (P.W.12), who conducted autopsy and issued post-mortem certificate, Ex.P-14.

22. In the cross-examination of Dr.Kirubakaran (P.W.11), it was only suggested to him that because of improper treatment given to the deceased, he had died. It was not suggested to him that Ex.P-13 records were fabricated for the case and that the deceased would have sustained fractures while slipping down the canal bund. Similarly, Dr.Jaisingh (P.W.12), who conducted post-mortem on the body of the deceased, in his cross-examination has stated that the fractures that he had noticed on the body of the deceased were found attached. Even to him, it was not suggested that the injuries found by him could have been sustained when the deceased had slipped from the canal bund.

23. Mr.Duraisamy, learned counsel contended that in the complaint given by P.W.1, she has stated that the incident took place while they were irrigating their lands, whereas in the evidence, she has stated that while they were returning home, the accused had attacked them. In the opinion of this court, this is too trivial a discrepancy to give much credence to. That apart, it is the duty of the

defence to have confronted P.W.1 with her averments in the complaint as provided u/s 145 of the Evidence Act.

24. To sum up, even if the evidence of P.W.1 is viewed with suspicion in the backdrop of her claim of Rs.10,000/- from the Government, this Court is unable to conclude that Palani Naicker had sustained injuries in question while slipping and falling from the canal bund. Even at the earliest point of time, when both of them were admitted in the Government Hospital, Gobi, they have told the doctor that they were attacked by four known persons. The fact that they were taken by ambulance has been spoken to by P.W.s 1 and 2. Though P.W.2 had turned hostile, his evidence cannot be completely discarded and those portions of his evidence, which are consistent with the case of the prosecution, could be relied upon in view of Section 154 (2) of the Evidence Act.

25. Now coming to the additional evidence, which the appellants want to adduce, a perusal of the ex-gratia funeral claim application shows that P.W.1 has affixed her left thumb impression in a cyclostyled paper in which the blanks have been filled in Tamil. The death of her husband did not occur immediately after the attack and had occurred two days later in the hospital. In the cyclostyled statement given by P.W.1, the following averments finds place :-

“இறந்தவர் உடல்நிலை . மாறாமை . வயோதிகம் காரணமாக காலமாகி விட்டார். இறந்தவருக்கு நான் மட்டும் மனைவி ஆவார். மேற்படியார் விவசாயம்/விவசாயக் கூலி தொழில் செய்து வந்தார் இதன் மூலம் மேற்படியாருக்கு வருட வருமானமாக ரூ.24,000/ (ரூபாய் இருபத்தி நான்காயிரம்) பெற்று வந்தார்.”

26. It is pertinent to state that P.W.1 has scored off khuilg;g[(heart attack) and tnahjpfk; (old age) and has stated that her husband has died out of ill-health. The proximate cause of death of her husband was not on account of the assault, but on account of the ill-health that ensued as a fall out of the attack. In fact, the trial court has rightly not convicted A-1 and A-2 u/s 302 IPC, but has only convicted them u/s 304 (ii) IPC. In the opinion of this Court, the accused could only be convicted u/s 326 IPC. The accused had not attacked the deceased on his vital parts like head, etc. They had attacked him on his hands and legs due to which he had suffered multiple fractures. The fractures suffered by the deceased falls under seventhly to Section 320 IPC. It is obvious that P.W.1 is a rustic lady and some good Samaritans, belonging to local political parties, would have volunteered to get her this paltry sum of Rs.10,000/- from the Government for which she would have affixed her left thumb impression in

the application without application of mind. Of course, the revenue authorities, who conducted the enquiry should have brought to the notice of the District Collector about the case in Crime No.419/2011 registered by the police in connection with the death of her husband for which an enquiry by the District Collector requires to be conducted.

27. On an overall consideration of the entire materials available on record, this Court is, therefore, of the considered opinion that the prosecution has proved the case beyond doubt and this Court finds no infirmity in finding the appellants guilty of the offence. However, considering the facts and circumstances of the case, this Court is of the view that the appellants should have been found guilty u/s 326 IPC and not u/s 304 (ii) IPC.

28. Accordingly, the conviction of A-1 and A-2 u/s 304 (ii) IPC in S.C. No.74/2012 recorded by the Principal Sessions Judge, Erode, is set aside. This Court finds the appellants are guilty u/s 326 IPC, accordingly, convicts the appellants under Section 326 IPC and sentences them to undergo rigorous imprisonment for a period of three years. The conviction of the appellants insofar as the other offences are concerned stands confirmed. Fine amount imposed by the trial court also stands confirmed.

29. Accordingly, the criminal appeal is allowed in part with the above modification. Consequently, Crl. M.P. No.17773/2019 is dismissed. It is reported that the appellants are on bail. The trial court is directed to take steps to secure the presence of the appellants and commit them to prison to undergo the balance portion of the sentence imposed on them. The District Collector, Erode, is directed to conduct enquiry into the circumstances under which the subordinate revenue officials suppressed the registration of the case in Crime No.419/2011, while recommending the payment of funeral expenses to Sivakami (P.W.1) and take appropriate action in accordance with law.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

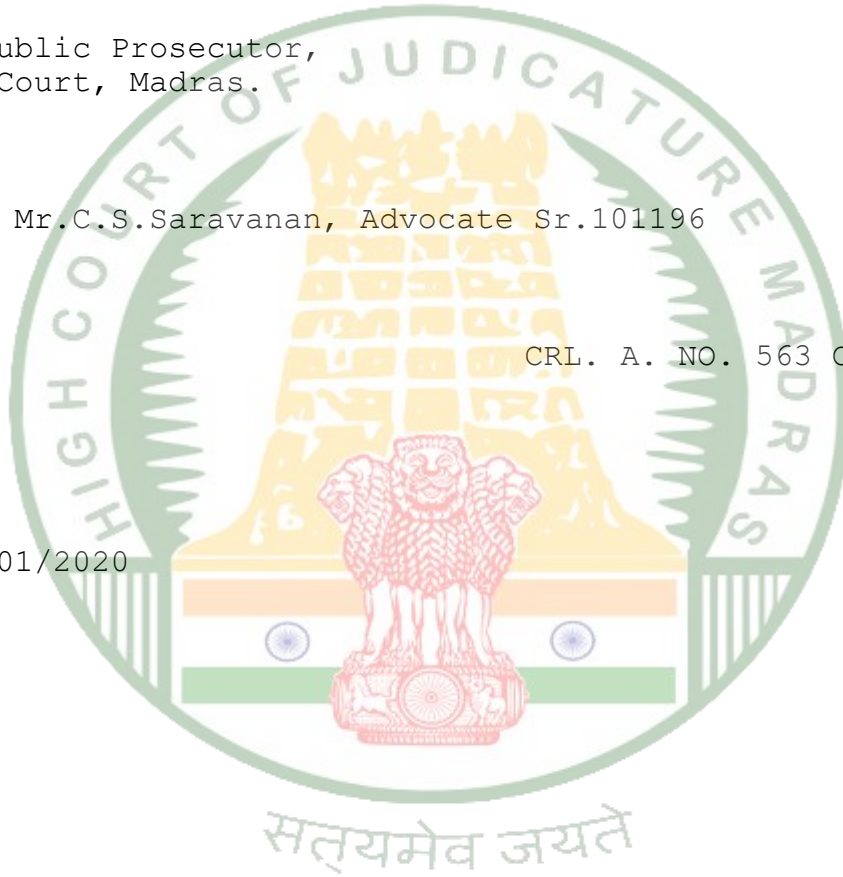
1. The Principal Sessions Court,
Erode.

- 2.The Judicial Magistrate No.1,
Gobichettipalayam.
- 3.The Chief Judicial Magistrate,
Gobichettipalayam.
- 4.The District Collector,
Erode District.
- 5.The Inspector of Police,
Gobichettipalayam Police Station.
- 6.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.C.S.Saravanan, Advocate Sr.101196

CRL. A. NO. 563 OF 2012

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