

BAIL SLIP

The Appellants herein/Accused 1 & 2 namely Rakesh Roshan, aged 20 years, S/o.Parveen Kumar, and Ankit Kumar, aged 19 years, S/o.Suman Kumar, were directed to be released on bail, vide order dated 14.12.2012 made in MP.No.1 of 2012 in CrI.A.765 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 03.04.2019	Pronounced on: 12.04.2019
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Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.768 of 2012

1. Rakesh Roshan,

2. Ankit Kumar,

... Appellants/Accused

/versus/

State by represented by:

The Inspector of Police,
Annamalai Nagar Police Station,
Annamalai Nagar, Chidambaram.

(Crime No.378 of 2011)

... Respondent/Complainant

Prayer:

This Criminal Appeal is filed under Section 374(2) of Cr.P.C, praying to set aside the conviction and sentence made in S.C.No.1 of 2012 dated 11.09.2012 on the file of the Principal Sessions Judge, Cuddalore Division.

For A1

: Mr.J.John

For A2

: Mr.S.N.Arun Kumar

For Respondent

: Mrs.Kritika Kamal.P.
Government Advocate

JUDGMENT

The appellant herein are the accused in S.C.No.1 of 2012 on the file of Principal Sessions Court, Cuddalore, they were tried for offences under Sections 294 (b), 302 r/w 34 and 427 of I.P.C, alleging that on 25.10.2011 earlier morning at

about 2.45 a.m they broke the window panes of the house bearing door no.21, Muthaiah Nagar Extension, Annamalai Nagar, Chidambaram. When one of the inmates of the house Duruba Jothi Dutta open the door and came out. They abused with filthy language and attacked him with reapers on his head and body causing his death.

2. The trial Court, after considering the evidence let by the prosecution held that the appellant's are guilty of offences under Sections 304 (ii) of I.P.C and 427 of I.P.C., sentenced them to undergo 10 years R.I for offence under Section 304(ii) and two years R.I for offence under Section 427 of I.P.C. The period of sentence was ordered to run concurrently.

3. The case of the prosecution is that the defacto complainant Randeep Kumar Chakravarty and other three of his friends hailing from Assam were perusing their Engineering course in the Annamalai University. They rented a house at Muthaiah Nagar Extension, Annamalainagar, Chidambaram and staying there. The accused/appellants are from Bihar. They were also students of Annamalai University staying in a private accommodation nearby. The accused frequently used to visit the place of the defacto complainant to consume liquor and take narcotics drug. This was objected by the deceased Duruba Jothi Dutta. The accused persons were also used to make obscene comment about Assam girls. On 24.10.2011, at 7.00 p.m, during their visit to the defacto complainant house, the accused persons engaged in scandalizing the Assam girls. The deceased Duruba Jothi Dutta reprimanded them and asked them to go out from that place. Enraged by that, after midnight at about 2.45 a.m, the accused persons broke the window glass panes. When the inmates awoke up and came outside, the accused persons who were armed with wooden reapers attacked Duruba Jothi Dutta indiscriminately with reapers, causing grievous injury leading to his death. The accused have damaged the window panes worth Rs.1,000/- and ran away from the place. Hence the accused have committed an offence punishable under Section 294 (b), 427, 302 r/w 24 of I.P.C.

4. PW.1 Ranjith Kumar Chakaravathy, who was staying along with deceased Duruba Jothi Dutta was examined as PW.1. He is the defacto complainant who given the written complaint to the police on 25.10.2011, at about 6.30 hours. In this complaint, he has stated about the incident which took place at their place on 24.10.2011 and the attack of the accused persons on early morning of 25.10.2011, at about 2.45. He and the other inmates took the injured Duruba Jothi Dutta to the hospital, there he was declared dead. With this information, the complaint of Randeep Kumar Chakaravathy (Ex.P.1) was taken

cognizance and the First Information Report was registered at 6.30 a.m. The complaint was registered by PW.3 (Bhargab Jyoti Phykan) thereafter, PW.14 Thiru.Arokiyaraj, Inspector of Police, has taken up the investigation, at about 7.30 hours, on 25.10.2011. He has gone to the scene of crime, prepared the observation mahazar [Ex.P.2]. The broken glass pieces, blood stained soil, soil without blood and abandoned slipper were recovered under mahazar (Ex.P.3) in the presence of PW.7 (Natarajan). On receiving information that the accused persons were seen near Usuppur Railway gate, with intention to fled from the clutches of law, PW.14, the Inspector of Police attached to Annamalai Nagar Police Station, Chidambaram went there and apprehended both the accused. In the presence of VAO Rajmohan (PW.8), their confession statement was recorded pursuant to the information given by the accused persons. The wooden cricket bat like reaper were recovered under mahazar, at about 14 hours.

The inmates staying along with deceased were examined as PW.1 to PW.4. They have narrated about the visit of the accused persons on 24.10.2010, at about 7.00 p.m and they have spoken about the incident and brutal attack of the appellants on the deceased. The neighboring house owners around the place of occurrence were examined by the prosecution as PW.5 and PW.6. They have deposed about the incident and witnessing the attack on the deceased Duruba Jothi Dutta. The Doctor at Rajamuthaiya Medical College and Hospital, Chidambaram, who admitted the injured on 25.10.2011, at about 3.05 a.m was examined as PW.9. The post-mortem doctor examined as PW.10. The doctor's evidence indicate the admission of the deceased in the hospital for the injury sustained by him and the death was due to the said injury.

5. The learned counsel appearing for the appellant would submit that the case of the prosecution is a fabricated case. Admittedly, the accused know only Hindi though it is contended by the prosecution that PW.11 Ezhilarasan had translated the statement of the accused in Tamil language and same was recorded. The statement of accused not been recorded in the language, he said and not been certified by the translator to accept the Tamil version of the alleged confession statement of the accused persons. Further, the learned counsel would contend that the correction in the complaint regarding the weapon used is a clear manipulation. The alleged recovery of the reapers under mahazar (Ex.P.5) also doubtful since, the witnesses have not properly described the weapon used. It is contended that in the accident register Ex.P.6, there is a correction regarding the number of persons attacked. It is admitted by PW.9 (Dr.Karunanithi) that initially the attender who brought the patient informed him that Duruba Jothi Dutta was attacked by six persons. However, the other persons who accompanied him corrected as two persons. Therefore, the

learned counsel would contend that the records were manipulated at the instance of third person, at all level to fix the appellants, who hail from Bihar and not conversant with the local language. The delay in registering the First Information Report was also taken as a point for defence to press the point that the correction and manipulations in the complaint besides the delay in F.I.R cumulatively give a suspicion about the prosecution case.

6. The learned counsel for the appellants would submit that the occurrence took place on new moon day. Admittedly, there was no adequate lighting at the scene of crime. It is highly impossible for PW.5 (Manogaran) a resident of Muthamizh Nagar and PW.6 (Ravichandran) is resident of Meenashiamman Nagar to witness the occurrence at Muthamizh Nagar. These witnesses are employees of Annamalai University, Chidambaram. In order to support the case of the management, which has been put to great disgrace and shame for the violence upon their students had falsely deposed implicating the appellants.

7. Further, the learned counsel for the appellants would also submit that at the time of occurrence, the accused persons were between 18 to 19 years old. In fact, the 1st appellant was given custody to the Tamil Nadu Borstal School, at the time of his arrest. Since, they have crossed the age of 23, at present. Considering the age and the Tamil Nadu Borstal School Act, 1925, appropriate order has to be passed on appreciation of the evidence.

8. Per contra, the Learned Government Advocate (Crl.Side) representing the State/respondent would submit that the defacto complainant Randeep Kumar Chakravarty (PW.1) and his roommates PW.2, PW.3 and PW.4 have spoken about the visit of the accused persons on 25.10.2011, at 7.00 p.m, to their house. The quarrel between the deceased and accused also been spoken by these witnesses. To prove their motive, the accused have left the place with the grudge on the same night, they have returned to their house, damaged the window glass panes. The contention of the appellants that the witnesses PW.1 to PW.4 along with the deceased were staying in four different rooms and therefore, the possibility of seeing the occurrence is remote and it is only an illusionary argument. The house bearing door No.24, Muthaiah Nagar Extension is a simple dwelling unit. The witnesses PW.1 to PW.4 along with the deceased were staying together. The deceased and PW.1 to PW.3 belong to state of Assam. The appellants are from Bihar. The quarrel between the deceased and the appellants was due to the abusive comment on women folk of

Assam. Though, the witnesses have politely asked the appellants to go out from the house and not to come again, the appellants have re-visited the house during the night, with intention to cause death. Having armed with deadly weapon, they forced the deceased to come out of the house by throwing stones and damaging the window glass panes. This has been witnessed by PW.5 and PW.6, who are neighboring residents. Though, the address of these witnesses appears to be located at different Nagars, in fact, their houses are nearby, the scene of occurrence and opposite to each other. The evidence of PW.5 and PW.6 would clearly show that they were the residence opposite to the scene of occurrence and they saw the occurrence. The depositions scene of occurrence of PW.1 to PW.6 would prove the prosecution case regarding the incident, without any iota of doubt. The broken glass pieces and bloodstained soil are recovered from the scene of crime would go to show that there was violence at that place as spoken by the witnesses.

9. Even assuming the confession statement of the accused persons given in Hindi not been verbatim recorded in Hindi and placed before the Court, this will not take away the evidentiary value of the eye witnesses who have spoken about the incident and identified the accused persons. The accused persons are not strangers, they are known to PW.1 to PW.4. The place of occurrence is a residential locality therefore, the contention of the learned counsel appearing for the appellant that there is no evidence to prove that there was adequate light to identify the accused is a baseless argument. Therefore, contended that the accused persons with intention caused death of Duruba Jothi Dutta, should be punished severally. Though, they have committed the crime, when they were about 19 years. Hence, the Tamil Nadu Borstal school Act, need not be applied to them since, they have caused error in the mind of students hailing from other states.

10. The learned counsel appearing for the appellant had made an elaborate argument and also submitted a written submission with judgments to substantiate his submissions.

11. Pointing out the corrections made in the complaint regarding the weapon used would submit that the said manipulation is fatal to the prosecution. On reading the complaint, this Court finds that, Randeep Kumar Chakravarty (PW.1) after writing a "wooden sticks", he has struck of the word "sticks" and written as "reaper". In the cross examination, he admits that the word stick was strike out and replaced by a word ripper and it was not in his hand writing.

However, in the cross examination, he has identified the material objects used by the accused to attack the deceased Duruba Jothi Dutta. A wooden stick or wooden reaper does not make much difference, when the person who has witnessed the weapon used identifies the same in the Court. The object which was used is relevant and not the name of that object. In this case, the object used to attack the deceased is identified by the witnesses. Therefore, the corrections in the complaint lose significance, when the eye witness has identified the object. It is pertinent to note that this witness was examined in chief on 05.03.2012 and cross-examined on 20.04.2012. For the obvious reason, this witness was again re-called by the accused and examined on 21.07.2012. He has been subjected to cross examination. The witness withstood the cross examination and stuck to his version.

12. Similarly, the other witnesses PW.2, PW.3 and PW.4 who are all staying with the deceased has deposed cogently without any iota of inconsistency about the incident. The accused persons and PW.1 to PW.4 are all known to each other. The accused are frequent visitors to the house of these witnesses. While so, the advantage of darkness is not available for the accused/appellants who are close associates of the witnesses. It is correct that the Hindi version of the accused persons were not placed before this Court. PW.11 (Ezhilarasan) who has translated the Hindi statement has not certified the Tamil version. However, the recovery of the material objects, based on the information given by the accused persons is corroborated by the independent witness PW.7. The material objects which were found concealed was recovered in the presence of the VAO (PW.8), based on the information given by the accused. The M.O.1 and M.O.2 were recovered from bush behind the residence of the accused persons. The contention of the learned counsel for the appellants that the confession statement leading to recovery is not reliable pales to insignificance, in view of the fact, the recovery of the material object. Apart from the confession statement, the evidence of PW.1 who has identified the material object and the evidence of other witnesses who have seen the occurrence, it would be suffice to hold that M.O.1 and M.O.2 were the material objects used to attack the deceased.

13. In the light of the overwhelming evidence pointing the guilt of the accused for causing death of Duruba Jothi Dutta using dangerous weapon. It is necessary to consider the submission of the counsel regarding the sentence in view of their age.

14. The learned counsel for the appellant would rely upon the judgment of the Hon'ble Supreme Court rendered in Karunamoorthy Vs. The State, rep.by the Sub Inspector of Police reported in 2012 2 MLJ (Cri) wherein, Section 8 of the Tamil Nadu Borstal Schools Act, 1925, has to be interpreted and applied in a case where the accused who was found guilty and convicted for the offence committed while he was 19 years and five months.

Section 8 of the Tamil Nadu Borstal School Act, 1925:-

"Where it appears to a Court having jurisdiction under this Act that an adolescent offender should, by reason of his criminal habits or tendencies, or association with persons of bad character, be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation and the repression of crime, it shall be lawful for the Court, in lieu of passing a sentence of imprisonment, to pass a sentence of detention in a Borstal school for a term which shall not be less than two years and shall not exceed five years' [but in no case extending beyond the date on which the adolescent offender will, in the opinion of the Court, attain the age of twenty three years]"

15. Following the Judgment of Hon'ble Supreme Court in Elumalai Vs. State of Tamil Nadu reported in AIR 1985 SC 118, the High Court in the case cited supra, modified the life sentence imposed by the learned Principal Sessions Judge, Cuddalore, to the effect that the appellants shall be detained in Borstal School, Pudukkottai, till he completes the age of 23 years. Pointing out that this appellant was sent to Borstal School, immediately after his arrest, till he was granted bail after 9 months. The benefit of Section 8 has been to be extended to him, if his conviction is confirmed.

16. In the case, which was cited supra, the trial Court after considering the facts of the case called for report from the Probation Officer and thereafter imposed life imprisonment.

17. The appellant herein have committed heinous crime

attacking the students studying with them. Their intention to kill him with deadly weapon, with due preparation also well established by the time of attack and the weapon used. Their intention to fled from the place to escape the clutches of law is well found through the evidence of PW.14 and PW.8. In the said circumstances, just because, the appellants are adolescent and offenders below age 21, the benefit of Borstal School Act cannot be extended. The Court cannot be lenient towards the perpetrator of heinous crime just because, they are below the age of 21 years old. The appellants herein have all come from Bihar to Chidambaram, to peruse the course. They have indulgence in Act of violence, causing terror in the minds of the other students. Any leniency shown in punishment or extending the benefit of Section 8 of the Tamil Nadu Borstal School Act, will give a wrong signal to the general public.

18. It is also pertinent to note that the Larger Bench of this Court consist of Five Judges have subsequently considered the relevancy of Tamil Nadu Borstal School Act, in the light of Juvenile Justice (Care and Protection of Children) Act, 2015. The Larger Bench has held that the said Act has outlived its purpose and suggested the State Government to repeal the same. The Larger Bench of this Court in N. Gowthaman @ Babu Vs. The Government of Tamil Nadu reported in 2016 (4) MLJ (Crl) 129, has answered the question of reference as below:-

PART - I

1. The convicting court (be it original or appellate) is vested with jurisdiction to act under Section 8 of the Borstal Schools Act only upon convicting the accused and before passing its sentence. An order under Section 8 of the Borstal Schools Act can be passed by the Appellate / Revisional Court, if the person has not crossed the age of 21 years on the date of the judgment/order, subject to conduct of enquiry under Sections 8(2) and 11 of the Borstal Schools Act.

2. The term "imprisonment" in Section 8 of the Borstal Schools Act does not include "imprisonment for life".

3. The judgment of the Full Bench in Thangammal's case does not lay down the correct law and accordingly, stands overruled.

PART - II

(a) Sections 8 and 11 of the Borstal Schools Act do not cast a duty upon the Court to examine whether an adolescent offender who is convicted would be entitled to the benefit of the Act and it is for the offender to avail of the privilege after his conviction and before the passing of sentence.

(b) The convicted person does not have a vested right to claim the benefits of the Borstal Schools Act retrospectively after crossing the age of 21 years.

(c) The under-trial prisoners will not be entitled to the benefits of the Borstal Schools Act.

19. Both the appellants have already crossed the age of 21 years. They have not made any request to consider the sentence under Section 8 of Tamil Nadu Borstal School Act, 1925, before the convicting Court. The plea of the learned counsel to invoke the provisions of Tamil Nadu Borstal School Act, 1925, does not arise.

20. In the light of the above fact and circumstances and the law discussed, this Court confirms the conviction of the trial Court. Regarding the sentence imposed on the appellants, considering their age and to provide an opportunity for them to rehabilitate themselves to lead a better life, this Court modifies the sentence imposed on the appellants from 10 years R.I to 5 years R.I, for offence under Section 304 (ii) of I.P.C.

As far as conviction under Section 427 of I.P.C., the sentence of 2 years R.I is confirmed.

21. Accordingly, the Criminal Appeal is partly Allowed with the above said modification. The trial Court is directed to secure the presence of the accused/appellants to undergo the remaining period of sentence. The Bail Bond stand discharged. The period already undergone by the accused shall be given set off as provided under Section 428 Cr.P.C.

Sd/-

Assistant Registrar (CS III)

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Sub Assistant Registrar

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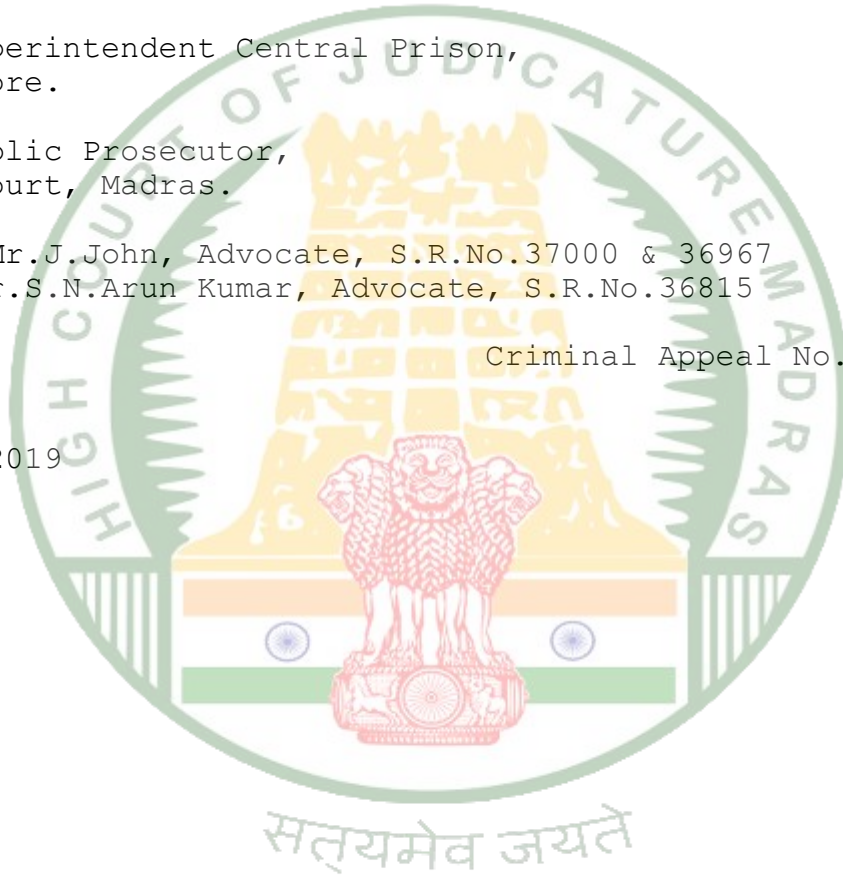
1. The Principal Sessions Judge, Cuddalore.
2. The Chief Judicial Magistrate, Cuddalore.
3. The Judicial Magistrate, Cuddalore.
4. The Inspector of Police,
Annamalai Nagar Police Station,
Chidambaram.
5. The Superintendent Central Prison,
Cuddalore.
6. The Public Prosecutor,
High Court, Madras.

+2ccs to Mr.J.John, Advocate, S.R.No.37000 & 36967

+1cc to Mr.S.N.Arun Kumar, Advocate, S.R.No.36815

Criminal Appeal No.768 of 2012

GJ-II(CO)
CS/13/06/2019



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