

BAIL SLIP

That the Appellant/Accused Sathish Kumar, S/o.Ravi was released on bail as per order of this Court dated 04/02/2016 in Crl.MP.No. 1/2015 in Crl.A.No. 427/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2019

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.427 of 2015

Sathishkumar

... Appellant/1st Accused

-Vs-

State rep. by
Inspector of Police,
Modakkurichi Police Station,
Erode District.
(Crime No.54 of 2013)

... Respondent/Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, praying to set aside the judgment dated 30.06.2015 made in S.C.No.7 of 2015 on the file of the learned Second Additional Sessions Judge, Erode.

For Appellant : Mr.S.N.Arun Kumar

For Respondent : Mr.T.Shanmuga Rajeswaran
Government Advocate (Crl.Side)

J U D G M E N T

This appeal has been filed to set aside the judgment dated 30.06.2015 made in S.C.No.7 of 2015 passed by the learned Second Additional Sessions Judge, Erode.

2. The case of the prosecution is that Asaithambi/PW-1 was running a hotel by name Regobath at Nanjai Uthukuli village. Krishnan/deceased was working as a tea master in the said hotel and was staying there. A1 to A3 were frequent visitors to the hotel for taking food. On 09.03.2013 at about 9.00.p.m PW-1 had closed his hotel and gone home. A1 to A3 had come to the hotel with liquor bottles and had asked deceased to drink along with

them inside the hotel, for which, the deceased had accepted. At about 10.30.p.m PW-1 had returned to the hotel and saw A1 to A3 consuming liquor inside the hotel. PW-1 told them not to drink inside the hotel and asked them to go away. Angered by which, the first accused, by looking at PW-1 said "We will drink like that only and who are you to ask it" and also tried to hit him on his head by taking a wooden club that was lying below by saying "you would be done away herewith". At that time, the deceased intervened and so he got hit on his left head and chest by A2 and A3, due to which, he succumbed to injuries. A1 hit PW-1 on his right knee. A2 hit PW-1 on his left cheek with a stone. A3 hit PW-1 on his back and left eyebrow with his hands. On hearing the screaming of PW-1 and the deceased, the drivers, those who were present near by, came to the hotel. On seeing this A1 to A3 ran away from the place. The respondent police registered a case in Crime No.54 of 2013 against the appellant herein and two other accused for the offence under Sections 307 r/w 34 and 302 r/w 34 IPC and after completing the investigation laid a charge sheet before the learned Judicial Magistrate-III, Erode . The learned Magistrate taken the charge sheet on file in PRC.No.15/2013 and since the offence is exclusively triable by the Court of Sessions, he committed the case to the learned Principal Sessions Judge. In turn, the learned Sessions Judge taken the file in S.C.No.7 of 2015 and made over the case to the learned Second Additional Sessions Judge, Erode for disposal.

3. In order to prove the case, the prosecution examined as many as 16 witnesses, marked 25 exhibits and 3 material objects. After completing the prosecution witnesses, when the incriminating circumstances culled out from the prosecution witnesses were put before the accused, they denied as false. On the side of the defence no evidence was produced. After hearing the arguments on both sides and considering the materials placed before it, the learned II Additional Sessions Judge convicted the appellant and two other accused by judgment dated 30.06.2015 and sentenced them as follows:-

Accused	Offence	Sentence
A1	304(ii) and 324 of IPC	5 years Rigorous Imprisonment and fine of Rs.5,000/-, in default, 6 months Simple Imprisonment for the offence under Section 304(ii) IPC and 2 years Rigorous Imprisonment and fine of Rs.1,000/-, in default, one month Simple Imprisonment for the offence under Section 324 IPC.
A2 & A3	324 of IPC	2 years Rigorous Imprisonment and fine of Rs.1,000/-, in default, one month Simple Imprisonment for the offence under Section 324 IPC

There against, the first accused preferred the present appeal before this Court.

4. The learned counsel appearing for the appellant would submit that there are discrepancies in the accident register and also in the evidence of PW-1/injured witness. In the Accident Register/Ex.P9, it was mentioned that PW-1 was assaulted by three unknown persons. When PW-1 was admitted in the hospital, the deceased also was admitted in the hospital. Further, PW-10/Doctor has deposed that PW-1 had consumed alcohol at the time of admission in the hospital. The parota master was not examined in this case. The First Information Report-Ex-P17 was registered belatedly and the same was also sent to the Court belatedly. The prosecution has not explained the delay in sending the FIR. PW-4/father of PW-1 was turned hostile and he has not supported the case of the prosecution. Though eye-witnesses are available in this case, they have not supported the case. Some of the witnesses have not been examined in this case, which is also fatal to the case of the prosecution. There was a enmity between PW-1 and the appellant herein and therefore, PW-1 foisted a false case against the appellant. The prosecution laid a charge sheet without investigating the matter properly. Further, Ex.P11-Accident Register shows that the occurrence place was nearby Petrol Bunk, which creates doubt. Ex.P20-Rough Sketch also not shown the place of occurrence, which also creates doubt. Therefore, the finding of the learned Sessions Judge warrants interference.

5. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that PW-1 is the eye-witness and he has clearly spoken about the occurrence. The deceased was the tea master in the tea stall owned by PW-1 and on 09.03.2013 after closing the shop, PW-1 went to his house. At that time, the deceased and three others were consuming alcohol in the shop. PW-1 came to the spot and asked them not to consume liquor in the shop, duo to which, there was wordy altercation. The appellant/A1 tried to attack PW-1, whereas, the deceased came in the way and got injured on his head and after admitting in the hospital, the deceased died on 27.03.2013 and PW-1 also got injured. While PW-1 taking treatment at the hospital, the occurrence was informed to the respondent police and they came to the hospital and recorded the statement of PW-1 and also registered a case. Initially, the case was registered for the offence under Section 397 of IPC and subsequently, the injured died in the hospital after 13 days i.e., on 27.03.2013 and therefore, the prosecution altered the charge from Section 307 to 302 of IPC. Therefore, the prosecution proved its case beyond reasonable doubts. The evidence of PW-10-Doctor clearly shows that the deceased sustained grievous injury, due to which, he died in the hospital. Ex.P11-Accident Register and Ex.P19-Postmortem certificate also proved the same. The evidence of PW-

1 clearly narrated the occurrence, PWs-2 and 3 have supported the case of the prosecution. PWs-4 and 5-Mahazar witnesses spoken about the material objects, which were seized by the prosecution. From the evidence of PWs-1 to 5 and 10 and also medical records, it is seen that the defacto complainant sustained injuries and another witness died due to his injuries. In the circumstances, the prosecution has proved its case beyond reasonable doubts and therefore, the order of the trial does not warrant any interference.

6. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl. Side) appearing for the respondent and also perused the entire materials on record.

7. The case of the prosecution is that on 09.03.2013 at about 9.00.p.m when PW-1 had closed his hotel and gone home, A1 to A3 had come to the hotel with liquor bottles and had asked deceased to drink along with them inside the hotel, for which, the deceased had accepted. At about 10.30.p.m PW-1 had returned to the hotel and saw A1 to A3 consuming liquor inside the hotel. PW-1 told them not to drink inside the hotel and asked them to go away. Angered by which, the first accused tried to hit PW-1 on his head with a wooden club and at that time, the deceased intervened and got hit on his left head and chest by A2 and A3, due to which, he succumbed to injuries. A1 to A3 have attacked PW-1 also and ran away from the place of occurrence. In this case, out of 16 witnesses, PWs-1 and 2 were eye-witnesses and PW-1 is also injured witness. Since PW-1 is the injured witness, his presence in the occurrence place cannot be doubted. Further, it is not in dispute that the deceased was working in the shop of PW-1 and at that time, all the accused came to the shop and consumed alcohol and the same was questioned by PW-1, due to which, when A1 to A3 were tried to attack PW-1, the deceased intervened to prevent PW-1, for which, he sustained head injury and therefore, he fell down. Subsequently, he was taken to the hospital, due to failure of the treatment, he died. PW-1 also sustained injuries and admitted in the hospital. After receiving the intimation from the hospital, the respondent police came to the hospital and recorded the statement of PW-1 and also registered a case in Crime No.54 of 2013. PW-1 has clearly narrated the occurrence. On reading of Ex.P9-Accident Register, Ex.P10-Wound Certificate, it is seen that the appellant/A1 attacked PW-1 and the deceased with wooden log-M.O.1 and other accused also caused injuries through stone. Therefore, PWs-1 & 2 have supported the case of the prosecution. PW-3/wife of PW-1 also supported the case of the prosecution. PWs-4 and 5 have spoken about the observation Mahazar and also proved the case of the prosecution. The evidence of PW-14, Doctor, who conducted the post-mortem, clearly shows that the head injury was the cause of the death. Ex.P20-Rough sketch

shows the place of occurrence. The evidence of PWs-1, 5, 10 and all the medical records clearly show that the appellant/A1 along with other accused were tried to attack PW-1 with wooden log and the deceased came to intervene, due to which, he sustained head injury, subsequently, died after 10 days. On reading of the entire materials, it is seen that the appellant/A1 had no intention to attack the deceased. When the appellant/A1 attacked PW-1, the deceased came to safeguard his owner. The trial Court found that the prosecution has not proved the guilt of the accused for the offence under Section 302 of IPC since there is no pre-motive to kill either the deceased or PW-1 and hence, acquitted all the accused for the offence under Section 302 of IPC. The appellant/A1 was convicted for the offence under Section 304(ii) of IPC since with sudden provocation the accused attacked the deceased and PW-1 without any pre-plan or motive.

8. On a reading of the entire evidence, it is seen that the Trial Court, being the Court of fact finding, has rightly appreciated the entire evidence of prosecution and also oral evidence and convicted the appellant/A1. Neither the prosecution nor the victim filed any appeal either for acquittal of the accused for the offence under Section 302 of IPC or for quantum of sentence, this Court can not go beyond the scope of the appeal. This Court finds that there is no reason to interfere with the judgment of the Court below and the appeal is liable to be dismissed.

9. Accordingly, this Criminal Appeal stands dismissed. The judgment dated 30.06.2015 in S.C.No.7 of 2015 passed by the learned Second Additional Sessions Judge, Erode, is hereby confirmed. The trial Court is directed to secure the custody of the appellant/A1 to undergo the remaining period of sentence, if any.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

KMI

To

- 1.The Principal Sessions Judge,
Erode.
- 2.The II Additional Sessions Judge,
Erode.

3.The Inspector of Police,
Modakkurichi Police Station,
Erode District.

4.The Public Prosecutor,
High Court, Madras -104.

5.The Judicial Magistrate 3,
Erode.

6.The Superintendent,
Central Prison,
Coimbatore.

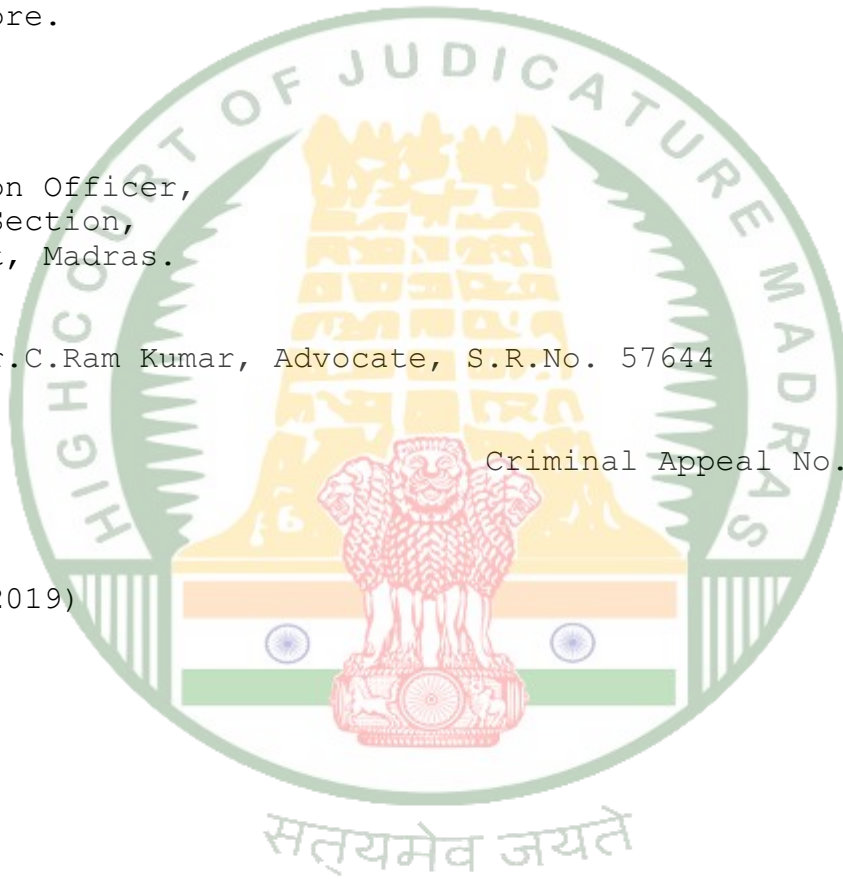
Copy To

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

+1cc to Mr.C.Ram Kumar, Advocate, S.R.No. 57644

Criminal Appeal No.427 of 2015

AD(CO)
GN(15/10/2019)



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