

Bail Slip

The Petitioner/Accused Viz., 1.Kumar S/o Varadhan 2.Shaji S/o George were released on bail as per order of this Court dated 16/12/2014 in Crl.M.P.No.1 of 2014 in Crl.A.645 of 2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.04.2019

PRONOUNCED ON : 10.04.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.645 of 2014

1.Kumar
2.Shaji

...Appellants

Vs

State By
The Inspector of Police,
T-10, Thirumullaivoyal Police Station,
Thiruvallur District,
(Crime No.553 of 2011)

.... Respondent

Prayer:- This Criminal Appeal is filed under Section 374 (2) Cr.P.C., to set aside the conviction and sentence passed by the learned III Additional District and Sessions Judge, Thiruvallur at Poonamallee in S.C.No.73 of 2014 by judgment dated 12.09.2014 and acquit the appellants herein.

For Appellants : Mr.K.Balu

For Respondent : Mrs.Kritika Kamal.P,
Government Advocate (crl.side)

JUDGMENT

Before the trial Court, the appellants herein were tried for offence under section 302 IPC for causing death of one Ramesh in the quarrel erupted during fishing at Iyyampakkam lake on 28/05/2011. The trial Court, held them guilty for offence under section 304 (II) IPC and sentenced them to undergo 5 years rigorous imprisonment with fine of Rs.1,000/- each in default to

undergo 2 months rigorous imprisonment. Against the said judgment, this Criminal Appeal is filed.

2.The case of the prosecution is that, on 28/05/2011 at about 20.30 hours, the Sub-Inspector of Police at T-10 Thirumullaivoil Police Station, received a written complaint from one Srinivasan, resident of Annai Satya Nagar, Ambattur, registered FIR and took up the case for investigation.

3.According to the complaint, the deceased Ramesh and the appellants Kumar and Shaji are friends. They are all professional Painters. The defacto complainant is the sister's husband of the deceased. He is a Mason by profession. The defacto complainant, deceased and the accused all used to go for work together. Whenever there is no job, they used to go for fishing in the lake at Ambattur. On the fateful day, they had no work. So, they went to the TASMACH shop and had liquor. At about 5.00 pm, they all decided to go for fishing. When they were proceeding towards the lake, near Padaiyappa Hotel, Shaji told the defacto complainant and his brother-in-law Ramesh (deceased) not to come with them. The defacto complainant stayed back, but Ramesh went along with Shaji and Kumar. The appellants told the deceased that, if he come with them, they have to give share in the catch of fish which they were not ready. So, asked Ramesh also not to come along with them.

4.Since, Ramesh (deceased) refused to leave them, they both pushed him down. Ramesh fell down on the road and became unconscious. Seeing this, both the accused ran away. The defacto complainant checked Ramesh (deceased) and found he is dead. He went home and informed his wife (sister of the deceased). After informing the relatives, they came to the spot where Ramesh was lying dead. Thereafter, went to the Police Station at about 8.30 pm and gave the complaint.

5.The case was taken up for investigation by one Srinivasan, Inspector of Police (PW-12). He went to the scene of occurrence and prepared observation mahazar (Ex P-2) in the presence of witnesses, Bullet Selvam (PW-7) and Velmurugan (PW-8). Prepared a rough sketch - Ex.P-9.

6.On 29/05/2011 between 6.30 and 8.30 hrs , both the accused were arrested near Rocky theatre, Ambattur and their confession statements were recorded. They both admitted their guilt and agreed to show the place of occurrence.

7.The autopsy report obtained from the Doctor indicate that Ramesh (deceased) sustained a lacerated injury with irregular margin with bruises measuring 4 x 3 x scalp deep over occipital region of the scalp. On reflection of scalp contusion present over the underlying tissues of injury. Sub-arachnoid hemorrhage present over the brain. The Doctor has opined that the death was due to head injury.

8.The prosecution has examined 12 witnesses. PW-1 is the eyewitness to the occurrence. He has deposed about the facts as found in his complaint. Rest of the eye witnesses, PWs-2 and 3 did not support the prosecution case, hence, they were treated as hostile witnesses. PW-4 - the Police Photographer, who has taken the photo of the corpse lying. PW-5, the sister of the deceased and PW-6 the wife of the deceased are only hearsay witnesses. They have gone to the place of occurrence on hearing the news from PW-1. The witnesses to the observation mahazar, Bullet Selvam and Velmurugan were examined as PWs-7 and 8. Ramdoss witness to the confession statement examined as PW-9 had deposed about the incriminating information given by the accused Kumar and Shaji.

9.The trial Court has held that the death has caused due to the head injury sustained by the deceased. The accused had pushed the deceased with force. Their intention was to prevent the deceased joining them in fishing which may cost them to share the catch. Though, the intention to cause death is absent, the forcible push to the ground has caused the head injury which likely to cause death. Hence the trial Court held them guilty for offence under section 304(ii) IPC instead of section 302 IPC.

10.The learned counsel for the appellants would submit that, even if the evidence of PW-1 is taken as gospel truth, the act of the appellants neither fall under section 304(ii) IPC nor any other offence. The push by force has not caused the death. The head injury sustained by the fall has caused the death. The accused have not done the act with any criminal intention. The witnesses to the prosecution admits that the deceased is a drunkard and he might have fallen on ground, on his own. PW-1 who claims to have been present at the occurrence has not reported to the Police immediately but, had gone to his house. He has given the complaint only at 8.30 pm on 28.05.2011. Whereas, PW-2 has deposed that on 28/05/2011 at about 7.00 pm, he saw Police at the spot and saw two persons with fishing rods in their hand. PW-3 has deposed that he saw the dead body of

Ramesh at about 5.30 pm on 28.05.2011 and there was a small crowd. Whereas, as per the prosecution case, the Police gone to the spot only at 9.30 pm on 28.05.2011.

11.The contradiction in the prosecution case, not been properly considered by the trial Court. Hence, according to the learned counsel for the appellants, the trial Court judgment has to be set aside.

12.Per contra, the Government Advocate (crl.side) appearing for the respondent submitted that the fight between the accused and the deceased is proved through the evidence of PW-1. The post mortem report-Ex.P-9 indicates that the deceased sustained injury on his head. The medical evidence clearly proves that the death was due to the head injury. The trial Court has held them guilty of culpable homicide not amounting to murder since, they had no intention to cause death. If a person fall on a hard surface and broke his scalp, the likelihood of causing death is within the common knowledge of any prudent person.

13.The testimony of PW-1, the eye witness to the occurrence and the testimony of PW-9, the witness to the confession statement and the arrest proves the case of the prosecution that the death of Ramesh was due to the force applied by the appellants on Ramesh due to which, he has fallen down and broke his skull. Having proved their overt act which has caused the death, the trial Court has rightly concluded the guilt of the accused hence, the same needs no interference.

14.The appreciation of the prosecution witnesses and documents, though many witnesses have not fully supported the case of the prosecution, substantially, the case against the accused is proved. The deceased, accused and the defacto complainant all were together at the time of occurrence. After the death of Ramesh (the deceased), all have left the body at the scene. While PW-1 had gone to home and informed about the incident to the sister and wife of the deceased, the accused were apprehended at Rocky theatre the next day.

15.The death caused due to the head injury sustained due to the push on ground. The injury is not due to the attack by the appellants directly. It was the fall on the ground which has caused the injury. The gravity of injury on the head has caused the death. Unless the force is high, the gravity of injury will not be high. PW-1 has deposed that, when the appellants pushed

the deceased they uttered, 'only if you are alive, you will ask share' , this utterance is an indication that the appellants had knowledge that, such injury likely to cause death. Therefore, the conviction of the appellants under section 304 (ii) IPC requires no interference. If it was an accident fall, then they need not have run away from the scene.

16.As far as the sentence is concerned, the trial court has imposed sentence of 5 years rigorous imprisonment on the appellants, for each, for the offence under section 304(ii) IPC. The sentence has to be based on the circumstances under which the incident has occurred and the real intention. In this case, from PW-1 testimony, it is clear that, the accused pushed the deceased to prevent him from joining them, in fishing. While pushing the deceased, the intention for use of 'force' is inferable from the evidence of PW-1. In such circumstances, the appellants be sentenced to three years rigorous imprisonment instead of 5 years rigorous imprisonment, for offence under Section 304(ii) I.P.C.

17.In the result, the Criminal Appeal is partly allowed. While the conviction imposed by the trial Court is confirmed, the sentence is modified as three years rigorous imprisonment, for the offence under section 304 (ii) IPC. In all other aspects, the trial Court judgment shall stand confirmed. The trial Court shall secure the appellants and commit to prison to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CS VIII)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

To

1.The III Additional District and Sessions Judge,
Thiruvallur,
Poonamallee.

2.The Judicial Magistrate,
Ambattur, Thiruvallur District.

3.The Chief Judicial Magistrate,
Thiruvallur (for information)

4.The Superintendent,
Central Prison, Puzhal.

5.The Inspector of Police,
T-10 Thirumullaivoyal Police Station,
Thiruvallur District.
Crime No.553 of 2011

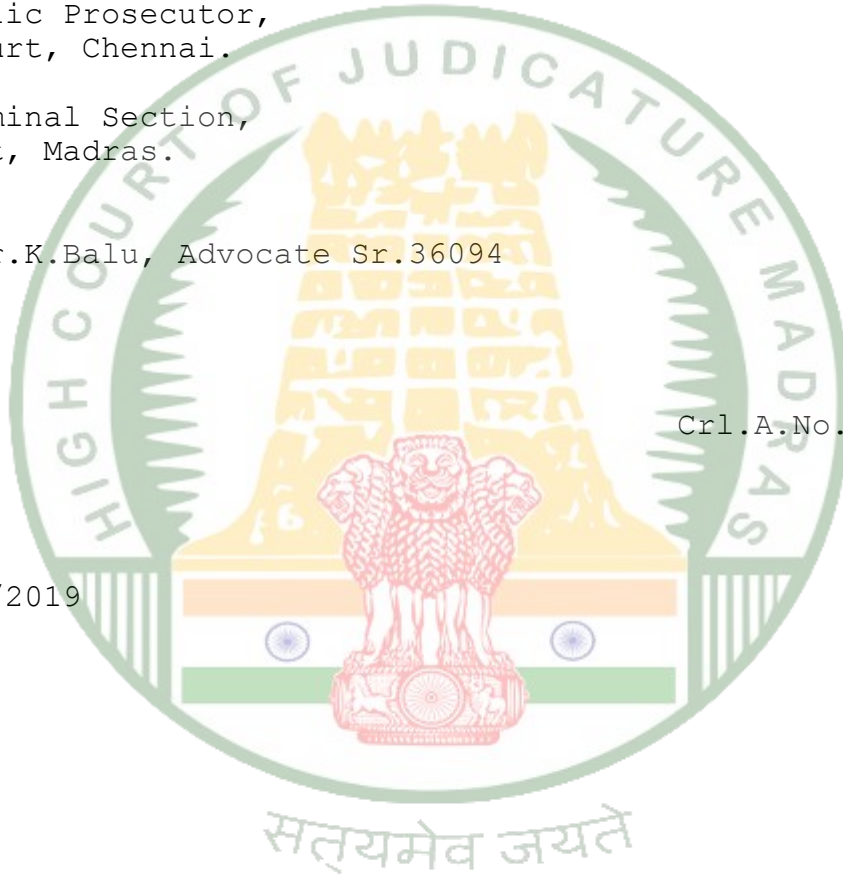
6.The Public Prosecutor,
High Court, Chennai.

7.The Criminal Section,
High Court, Madras.

+1cc to Mr.K.Balu, Advocate Sr.36094

Crl.A.No.645 of 2014

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srg 09/07/2019



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