



BAIL SLIP

Appellants/Petition was already released on bail vide this Court order dated 05.09.2008, and made in MP(MD) No.1/08 in CRL A (MD) No.397/08.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	10.06.2019
Date of Judgment	06.09.2019

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI****Crl.A(MD)No.397 of 2008**

1.Periyasamy

2.Singaram

: Appellants/A1 and A2

Vs.

State rep. by the Inspector of Police,
Vattathikottai Police Station,
Pattukottai District.
(Crime No.92 of 2005)

: Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment passed by the Additional Sessions Judge & Fast Track Court No.1, Tanjore, in S.C No.177 of 2008, dated 21.08.2008.

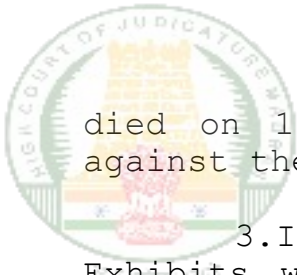
For Appellants : Mr.A.Thiruvadi Kumar

For Respondent : Mr.A.Robinson,
Government Advocate
(Criminal side)

J U D G M E N T

This Criminal Appeal is directed against the judgment passed by the Additional Sessions Judge & Fast Track Court No.1, Tanjore, in S.C No.177 of 2008, dated 21.08.2008.

2.The case of the prosecution is that on 08.06.2005 at about 6.00 pm, the accused and the deceased were sitting in a Malayalee Tea Stall at Neyveli and the accused made an abusive comment on the deceased to shave and due to which, the deceased got angry and quarrel with the accused and both the accused pushed the deceased down and sat on his back and due to the pressure the neck bone fracture, the deceased admitted in a hospital and subsequently he



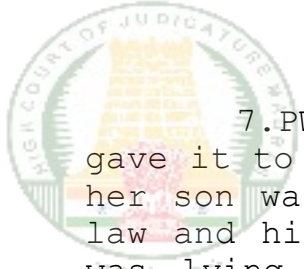
died on 14.06.2005. The respondent police has registered a case against the accused for the offence under Section 302 r/w 34 IPC.

3. In the trial court, 12 witnesses were examined and 14 Exhibits were marked. When the accused were questioned about the incriminating circumstances, they denied the same. On the side of the accused, no witness was examined and no document was marked. The trial court convicted the appellants for the offence under 325 r/w 34 IPC, instead of 302 r/w 34 IPC and sentenced them to undergo two years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment. Aggrieved by the judgment passed by the trial court, the appellants are before this court.

4. Heard both sides and perused the materials available on record.

5. The main contention raised on the side of the appellants/accused is that in Ex.P1, it is specifically stated that PW1 preferred the complaint, since her husband/deceased was not able to speak and further PW1 in her evidence admitted that her husband was admitted in the hospital as in-patient for 6 days. In all six days, he did not speak anything and further, the Investigating Officer admitted in his cross examination that he did not examine the deceased since he was not in a position to speak anything and further the alleged statement of the deceased Ex.P2 was recorded by PW10 from the deceased on 10.06.2005 at 10.00 am, but PW1 stated during her evidence that her husband was not in a position to speak, when he was admitted in the hospital and hence Ex.P2 is not a genuine one and hence, on the basis of Exs.P1 and P2, the appellants/accused cannot be punished and prays that the criminal appeal has to be allowed.

6. In this case, PW1 is the wife of the deceased and she gave Ex.P1 complaint. PW3 is the father of the deceased. PW1 in her complaint and evidence stated on 08.06.2005 at 4.00 pm, her husband gave fish to her, which was purchased by him in the market and then he told her that he is going to bazaar and at 6.00 pm, she heard that her husband was lying before the Malayalee Tea Stall and she, her father-in-law and mother-in-law went to the Malayalee Tea Shop and she enquired her husband and her husband told that when the accused and he were sitting in Malayalee Tea Stall in Neyveli, both the accused made an abusive comment on him to shave and for that, he got angry and got quarrelled with the accused and both the accused pushed him down and sat on his back and due to the pressure neck bone was fractured and then she took her husband to Vattathikottai Police Station. Since her husband was not able to speak, she gave the complaint and took her husband to Pattukottai Government Hospital and then, her husband was referred to Tanjore Government Hospital for further treatment. Hence, the evidence of PW1 is corroborated with the contents found in Ex.P1 complaint.



7.PW3 deposed that on 08.06.2005, his son purchased fish and gave it to his wife and went to Bazaar and at 6.00 pm, he heard that her son was lying in Malayalee Tea Stall and then his daughter-in-law and his wife went to the above tea stall and saw that his son was lying in the above tea stall and enquired and the deceased stated that due to abusive comment to shave by the accused, her husband told that when the accused and he were sitting in Malayalee Tea Stall in Neyvelli, both the accused made an abusive comment on him to shave and for that, he got angry and got quarrelled with the accused and both the accused pushed him down and sat on his back and due to the pressure neck bone was fractured and then his wife took her husband to Vattathikottai Police Station. Since his son was not able to speak, his daughter in law gave the complaint and took her husband to Pattukottai Government Hospital and then, her son was referred to Tanjore Government Hospital for further treatment.

8.The Government Advocate (Criminal side) appearing for the respondent submitted that when the deceased was admitted in Tanjore Government Hospital, the police came and recorded the statement of the deceased, hence it can be treated as Dying Declaration of the deceased and in both the complaint and the statement of the deceased, it was categorically stated that due to the quarrel between the accused and the deceased due to the abusive comment to shave by the accused, and it was refused by him, they assaulted and caused injury to the deceased and due to the injury, the deceased died and hence the accused can be punished and they are not entitled for acquittal.

9.In this case, the statement given by the deceased has been marked as Ex.P2. On careful perusal of Exs.P1 and P2, it was categorically stated that on 08.06.2005 at 06.00 pm, when the accused and the deceased were sitting in Malayalee Tea Stall, both the accused made an abusive comment on the deceased to shave and due to it, the deceased got angry and quarrel arose between the accused and the deceased and both the accused pushed the deceased down and sat on his back and due to the pressure the neck bone was fractured and due to the injury the deceased died. 10.It is to be noted here that Ex.P1 was given on 08.06.2005, but Ex.P2 the statement of the deceased was recorded on 10.06.2005. As per the evidence of PW1 on 08.06.2005, her husband was not in a position to speak and she has stated that her husband was not able to speak fluently as before the occurrence and on 10.06.2005, the police came to Tanjore Government Hospital and recorded the statement given by the deceased.

11.The Doctor, who gave first treatment to the deceased was examined as PW4. PW4 deposed that on 08.06.2005 at 9.00 pm, when he was on duty, the deceased was brought to hospital and when he enquired the deceased, he stated that he was assaulted by known persons at 7.00 pm with hand and legs. On Examination of the injured, the injured told that he had pain on the **spinal cord** and not able to sit and stand and he gave first aid and referred to



Tanjore Government Hospital for further treatment. PW4 has not stated that the injured was not in a position to speak on the date.

12. The Doctor, who gave further treatment to the deceased in Tanjore Hospital was examined as PW5. PW5 stated that he admitted the deceased as in-patient and X-ray for hip, two legs and left forearm was taken for the deceased.

13. The Doctor, who conducted post-mortem on the deceased was examined as P.W.11 and he found the following injuries:-

External injuries:

1. Abrasion 3 x 2 cm over the occipital region.
2. Bitoneporal surgical puncture wound (traction mark) noted over the scalp. (treatment purpose).
3. Partially healed abrasion with scab formation noted over:-
 - a) 2 x 1/2 cm over the right side of chin
 - b) 3 x 1/2 cm over the left side of chin
 - c) Multiple in number over and area 6x4 cm over the back and medial aspect of right elbow.

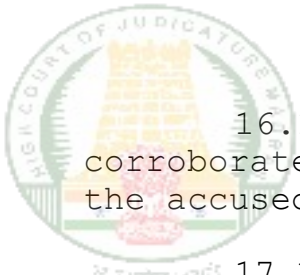
Internal injuries:

4. On dissection of front of neck, contusion over an area of 6x4 cm noted in the lower cervical region, involving the pre and para vertebral muscles. On dissection fracture dislocation of C5 over C6 noticed with injury the underlying spinal cord.

Extremities - Cyanosed ; Heart - Normal in size, all chambers contained fluid blood ; Valves - Normal, great vessels - normal, coronary vessels - patent ; Lungs - Both lungs congested and oedematous ; Larynx and hyoid bone - Intact ; Stomach - Contained 100 ml of reddish brown coloured fluid no specific smell. Mucosa showed congestion with few haemorrhagic patches ; Liver, Spleen, Kidneys - C/S congested : Small Intestines - Empty, Mucosa congested : Bladder - Empty ; pelvis - Intact : Brain - Oedematous c/s normal.

14. PW13 found injuries on the back side of the scalp, right and left cheek, right hand, fracture of C5 and C6 on the neck and spinal cord of the deceased.

15. PW1 and the deceased stated in Ex.P2 that both the accused caused injuries on the neck of the deceased. Hence, the evidence of PW1 is corroborated with the evidence of the Doctors, PW4, PW5 and



16. It is settled law that when the medical evidence is corroborated with the oral evidence of the prosecution witnesses, the accused can be punished.

17. From the evidence of the Doctor PW4, it reveals that at the time of giving Ex.P2 statement, the deceased was in a position to speak. Hence, the argument put forth on the side of the appellants/accused stating that at the time of occurrence and after the occurrence, the deceased was not able to speak and hence, Ex.P2 cannot be relied on is not at all acceptable.

18. In this case, even though the learned counsel appearing for the appellants/accused argued on merits, however, the he filed a memo stating that the appellants/accused were in jail for the past seven months and prays for leniency of sentence already undergone by the appellants/accused.

19. Keeping in view of the facts, this court is of the considered view that the judgment of the trial court does not require any interference by this court. However, considering the facts and circumstances of the case and also considering the family circumstances of the appellants/accused, the punishment imposed on the appellants/accused requires modification and accordingly, the punishment imposed on the appellants/accused is reduced to 7 months of Rigorous Imprisonment and the appellants are liable to pay compensation of Rs.50,000/- (Rs.25,000/- each) to PW1.

20. In the result the Criminal Appeal is partly allowed. The punishment imposed on the appellants is reduced to 7 months RI. The appellants/accused are directed to pay Rs.50,000/- (each Rs.25,000/-) to PW1 within a period of two week from the date of receipt of a copy of this order. The fine amount imposed by the trial court is confirmed. The period of sentence, if any already undergone by the accused is set off under Section 428 of Cr.P.C. The appellants are set at liberty, if their further detention is no longer required in connection with any other case.

Post the matter after four weeks for reporting compliance.

Sd/-
Assistant Registrar (CS-III)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Additional Sessions Judge
(Fast Track Court No.1),

<https://hcservices.ecourts.gov.in/hcservices/>
Bangalore.



2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

3.The Superintendent,
Central Prison,
Trichy.

4.The Inspector of Police,
Vattathikottai Police Station,
Pattukottai District.

COPY TO:
THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI. (2 COPIES)

+1 CC to M/s.A.THIRUVADI KUMAR, Advocate (SR-85851[F] dated
09/09/2019)

CRL.A(MD) No.397 of 2008
06.09.2019

SMN/ER
JM/18.09.2019/6P/8C