

**Bail Slip**

The Appellants / Accused 1 & 2 namely 1.Chandiraraju, aged 30, S/o. Rengasamy. 2. Pandian, aged 28, S/o. Rengasamy were directed to be released on bail as per the order of this court dated 06.05.2009 in MP(MD)No.1/2009 in CRL.A.(MD)No.111/2009 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.111 of 2009

1. Chandiraraju
2. Pandian

... Appellants/Accused Nos.1&2

Vs.

State by,
The Inspector of Police,
Kandarvakottai Police Station,
Pudukkottai District.
(Crime No.380 of 2007)

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the conviction and sentence passed against them by the learned Additional District Judge/Fast Track Court, Pudukkottai, dated 23.03.2009 and made in S.C.No.161 of 2008 by allowing the criminal appeal.

For Appellants : Mr.C.Arul Vadivel Alias Sekar

For Respondent : Mr.A.Robinson,
Government Advocate (Crl. Side).

JUDGMENT

The appellants were convicted for the offence under Section 304(II) of I.P.C., and sentenced to undergo 7 years Rigorous Imprisonment vide Judgment dated 23.03.2009 in S.C.No.161 of 2008 on the file of the learned Additional District and Sessions Judge/Fast Track Court, Pudukkottai.



2. The prosecution case is that on 08.12.2007 at about 10.30 p.m., in Mela Ulavayal Village, the appellants went to the house of her sister Muthulakshmi P.W.1 and picked up a quarrel on a domestic issue. When accused No.2 Pandiyan assaulted Muthulakshmi, her husband Sivakumar intervened. The appellants thereafter, assaulted Sivakumar with hands and kicked him. Sivakumar died as a result of the injuries sustained during the assault. In this regard, P.W.1 Muthulakshmi lodged Ex.P.1 complaint before Kandarovakottai police station. Based on the same, crime No.380 of 2007 was registered for the offence under Section 302 of I.P.C.

3. Investigation was taken up and after completion of the usual formalities, final report came to be laid before the Judicial Magistrate, Pudukottai, for the offence under Section 302 of I.P.C. Cognizance of the same was taken and the case was committed to the Sessions Court in P.R.C.No.13 of 2008. The case was made over to the Additional District and Sessions Judge, Pudukottai, in S.C.No.161 of 2008. Charges were framed against the appellants for the offence under Sections 302 of I.P.C., and the appellants denied the same and claimed to be tried. The prosecution examined as many as 16 witnesses and marked Ex.P.1 to Ex.P.10. M.O.1 and M.O.2 were also marked. On the side of the appellants, no evidence was adduced. The learned trial Judge vide Judgment dated 23.03.2009, convicted and sentenced the appellants as mentioned above. Challenging the same, this Criminal appeal came to be filed.

4. Heard the learned counsel on either side.

5. The learned counsel appearing for the appellants submitted that the entire occurrence was not a premeditated one. A petty quarrel arose between the appellants and the defacto complainant over a domestic issue. The defacto complainant is none other than the sister of the appellants. The deceased Sivakumar who was the husband of the defacto complainant made a chance intervention and during the ensuing scuffle, he came to be injured and ultimately died. At no point of time, the appellants had any intention to cause the death of Sivakumar. The learned Government Advocate relied on a decision reported in CDJ (2016) MHC 6768(Raguvaran V. State rep. by The Inspector of Police, Pudukottai District) rendered by the Hon'ble Division Bench of this Court. Paragraph Nos.9 and 10 of the said decision would read as under:-

"9. Now, the next immediate question is as to what was the offence that the accused had committed by his act. From the evidence available on record, the prosecution has clearly established that the accused, the deceased and P.W.3 were residing together in the same house. On the day of occurrence, the deceased was not at home and she came sometime later. PW-3 informed her that the deceased was speaking to somebody over phone. Probably, the deceased would have felt that the



accused was speaking to the said Dhanalakshmi and therefore, the deceased questioned him. This resulted in a quarrel between them, as it has been spoken by PW-3. PW-3 had gone out thereafter. In the meanwhile, it is inferable that out of loss of self-control, due to the quarrel, the accused had attacked the deceased on her abdomen. The said kick had caused injury on her abdomen, which resulted in her death. From the above narration, it is also inferable that the accused had no intention to cause the death of the deceased. Neither he had any intention to cause injury nor had he knowledge that his act would result in death. Thus, the act of the accused would not fall under any of the limbs of Section 299 of the Indian Penal Code. The said act of the accused, in causing injuries on her abdomen, in our considered view, though is a homicide, it would not amount to culpable homicide. In law, it is not every homicide which is punishable, but, it is only a culpable homicide, which is punishable.

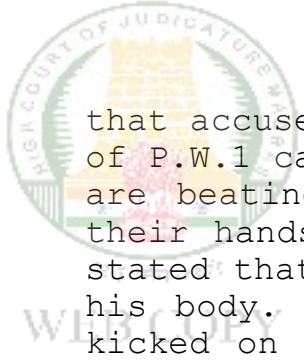
10. In this case, since the culpability of the accused as enshrined in Section 299 of the Indian Penal Code has not been established, the accused cannot be held liable for punishment either for an offence under Section 302 of the Indian Penal Code or under Section 304 of the Indian Penal Code. For having voluntarily caused grievous hurt to the deceased, by kicking her on her abdomen, the accused could be punished only under Section 325 of the Indian Penal Code and 201 of the Indian Penal Code."

6. The appellants' counsel therefore submitted that in the case on hand also, the appellants were found guilty for the offence under Section 304(II) of I.P.C. They could have been punished only for the offence under Section 325 of I.P.C. The appellants' counsel also submitted that the appellants were in their middle 20s, when the occurrence took place and that they had subsequently settled 2 acres of land on their sister. The appellants are having a large family to support and that therefore, the learned counsel wanted the Court to adopt an indulgent attitude in the matter of sentence.

7. Per contra the learned Government Advocate(Crl. Side) submitted that the impugned Judgment does not call for any interference and he wanted this Court to dismiss the appeal.

8. I carefully considered the rival contentions and perused the evidence on record.

9. P.W.1 is none other than the sister of the appellants. She had categorically deposed as to what happened on the fateful night. She deposed that at about 10.00 p.m., on 08.12.2007, the appellants came to her house and picked up a quarrel. She specifically stated



that accused No.2 Pandiyan slapped her. Thereupon Sivakumar, husband of P.W.1 came out from the house and demanded to know as to why they are beating P.W.1. Thereupon the accused assaulted Sivakumar with their hands and after he fell down, kicked him. P.W.1 had clearly stated that the appellants stamped her husband on the vital part of his body. In fact she would specifically state that Sivakumar was kicked on his scrotum. This was confirmed by the medical opinion also. P.W.14 is the doctor who conducted autopsy on the body of Sivakumar. He had only issued Ex.P.6. He had clearly deposed that the scrotum of Sivakumar was found swollen and that due to injury suffered in the scrotum of Sivakumar, he would have died. Even though P.W.14 was cross examined, this part of the evidence was not even formally cross examined. No one can deny that scrotum is a vital part of the body and that the injury to the said part can even lead to one's death. Therefore, I am not in a position to agree with the submission that Section 299(1) of I.P.C. cannot be attracted in this case. Section 299 of I.P.C. talks not only about intention but also knowledge. If a person who causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

10. Therefore, I am of the view that the Court below rightly came to the conclusion that the appellants are liable to be convicted for the offence under Section 304(II) of I.P.C. The prosecution by examining P.W.1 as well as P.W.14, had proved beyond reasonable doubt the charge under Section 304(II) of I.P.C. I am therefore of the view that the conviction of the appellants does not warrant any interference.

11. Now comes the question of sentence. The appellants were young men, when the occurrence took place. The occurrence had taken place for almost 12 years ago. It is stated by the appellants' counsel that some offer had been made by the appellants in favour of P.W.1. The first appellant is having five children. It is beyond doubt that the appellants did not come to the spot with any intention to cause the death of Sivakumar. Their fight was only with their sister. The occurrence had taken place at the outside the house of P.W.1. It is on account of intervention by Sivakumar. Since Sivakumar intervened in the quarrel between the brothers and sister, the ire of the appellants turned towards Sivakumar.

12. Taking note of the mitigating factors, I am of the view that interest of justice will be served by reducing the sentence of imprisonment imposed on the appellants from seven years Rigorous Imprisonment to two years Rigorous Imprisonment. The period of incarceration already undergone by the appellants will be set off under Section 428 of Cr.P.C. The learned trial Judge is directed to secure the appellants to undergo the remaining period of sentence. The bail bond, if any, executed by them shall stand cancelled.



13. With this modification in the matter of sentence, the Criminal Appeal is partly allowed. No costs.

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Sd/-

Assistant Registrar (CS-II)

/ /2020

Sub Assistant Registrar(CS)

To:

1. The Judicial Magistrate, Pudukottai.
2. The Chief Judicial Magistrate, Pudukottai District.
3. The Additional District Judge/
Fast Track Court, Pudukottai.
4. The Inspector of Police,
Kandarvakottai Police Station, Pudukkottai District.
5. The Superintendent, Central Prison, Trichy.
6. The Additional Public Prosecutor,
Madras High Court-Madurai Bench, Madurai.

+1 CC to M/s.C.ARUL VADIVEL @ SEKAR, Advocate (SR-80492[F] dated 08/08/2019)

Crl.A.(MD)No.111 of 2009
07.08.2019

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SDS(10.01.2020) 5P-8C