



BAIL SLIP

The Appellant/Accused namely Ravi @ Ravichandran was released on bail by this Hon'ble Court made in MP(MD)No.2 of 2009 in Cr1 A (MD)No.234 of 2009 dated 27.08.2009.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Cr1.A(MD)No.234 of 2009

Ravi @ Ravichandran

... Appellant / Accused

Vs.

The State of Tamil Nadu
represented by
The Inspector of Police,
Samayapuram Police Station,
Samayapuram,
Tiruchirappalli,
[Crime No.489 of 2006]

... Respondent/ Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records in judgment in S.C.No.174 of 2008 on the file of the Principal Sessions Judge, Tiruchirappalli and to set aside the order dated 22.12.2008.

For Appellant : Mr.M.Siddharthan

For Respondent : Mrs.S.Bharathi,
Government Advocate (crl side)

JUDGMENT

The appellant in this criminal appeal is the sole accused in SC No.174 of 2008, on the file of the Principal Sessions Judge, Tiruchirappalli, wherein, he was tried for the offence under Section 449 and 302 IPC. The trial Court, by order dated 22.12.2008 found this appellant guilty, convicted and sentenced him as follows:



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Section of Law	Sentence of imprisonment	Fine amount
304(ii)	To undergo rigorous imprisonment for seven years.	Rs.1,000/- in default to undergo rigorous imprisonment for three months.
449	To undergo rigorous imprisonment for five years.	Rs.1,000/- in default to undergo rigorous imprisonment for three months.

The sentence are ordered to run concurrently.

2.The brief facts of the case of the prosecution are as follows:

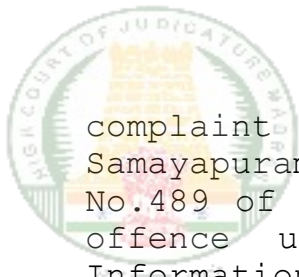
2.1.The appellant and the deceased were living at Tiruvalluvar Avenue, Lakshmi Nagar, Bikshandarkovil, Trichy. The appellant was residing in the ground floor and in the first floor, one Sekar was residing, with whom the deceased and PW1 were in good terms. The appellant family was moving closely with the deceased family. Since they were also close to the said Sekar family, PW1 and the deceased family avoided them. Thereafter, there was a strained relationship between the deceased family and the appellant family.

2.2.The wife of the appellant was in search of a rental house for her relative one Ilamathi and they have approached PW9, a neighbour, who was having a house. PW9 was very close with PW1 and the deceased. However, PW9 refused to let his house for rent to the said Ilamathi. But, the appellant and his wife were under the impression that at the instance of the deceased and PW1 only, PW9 has refused to let his house for rent. On account of which, the appellant used to abuse the deceased. On the date of occurrence, i.e., on 06.07.2006, at 8.00pm, the appellant standing in front of the deceased house, abused the deceased and the deceased questioned the same and asked him to go out of the place and there arose a wordy quarrel between the appellant and the deceased, on account of which, this appellant went inside his house and brought an Aruval [MO4] and caused injury on the chest of the deceased.

2.3.PW2 is the father of the deceased and PW3 is the friend of the deceased, who came to avail the services of the deceased for some plumbing works, witnessed the incident and they have taken the deceased to the Government Hospital at Tiruchirappalli at 8.50 pm. The Doctor, who attended the deceased on 06.07.2006, issued the Accident Register [ExP13] that the deceased was brought dead and he was assaulted by a known person by Aruval at 8.00pm on 06.07.2006 in front of his house.

2.4.PW1 is the wife of the deceased and she appeared before the Samayapuram Police Station and lodged a complaint [ExP1]. The

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complaint was received by the Sub Inspector of Police [PW12], Samayapuram Police Station and the same was registered in Crime No.489 of 2006 at about 10.00 pm, as against the appellant for the offence under Sections 452 and 302 IPC. The printed First Information Report is marked as Ex.P14.

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2.5.PW13 is the Inspector of Police, who on receipt of the information from PW12 proceeded to the place of occurrence on 06.07.2006 and found the door locked and therefore, he again went to the place of occurrence on 07.07.2006 at about 6.15am and prepared the observation mahazar [Ex.P2], rough sketch [Ex.P15] in the presence of PW.6. He also recovered a pair of maroon colour chappels [MO3], mortars with blood [MO1] and without blood [MO2] from the place of occurrence, under a cover of mahazar Ex.P3. Thereafter, he proceeded to the Government Hospital, Tiruchirappalli and conducted the inquest in the presence of witnesses and the inquest report is marked as Ex.P16. After completing the inquest, he sent the body for postmortem through Head constable namely Vijyan.

2.6.On 09.07.2008 at about 10.30 am, on information, he arrested the appellant / accused at Tiruchirappalli in the presence of Village Administrative Officer [PW8] and Village Assistant. He also recorded the confession statement of the accused and recovered Aruval [MO4] and recovered a blood stained shirt [MO5] of the accused from the house of one Shanthi, who is a friend of the accused's wife, under a cover of mahazar Ex.P6 and recovered a blood stained Kaili of the accused at his instance under a cover of mahazar Ex.P7.

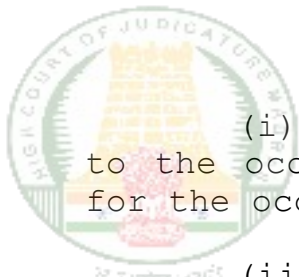
2.7.The Doctor PW11 conducted the autopsy on the dead body on 07.07.2006 at 11.15 am and noted down the injury as follows:

"Wounds: A vertically oblique, wedges shaped, stab wound, 10 cm X 5 cm X cavity deep, on the front of left side of chest, 1 cm blow the inner third of the right collar bone and 2 cm outer to the middle".

After completing the postmortem, he gave his opinion that the deceased died of Hypoxia and Haemorrhage due to stab wound of chest and its corresponding internal wounds. The post-mortem certificate is marked as Ex.P9. Thereafter, the investigating officer PW13 examined other witnesses and filed the final report as against the appellant.

3.During the trial 13 witnesses were examined and 19 documents were marked and 7 material objects were produced on the side of the prosecution.

4.The available evidence from the prosecution witness are as follows:



(i)PW1 is the wife of the deceased and also the eye witness to the occurrence, who speaks about the occurrence and the motive for the occurrence.

(ii)PW2 is the father of the deceased and has also been examined as an eye witness and a resident along with the deceased and he also speaks about the occurrence and admitting of the deceased in the hospital.

(iii)PW3 is an independent witness, who came to the house of the deceased for availing the services for plumbing work of the deceased and he also witnessed the occurrence and took the deceased to the hospital along with PW7.

(iv)PW4 is the friend of the deceased, who arranged for the Ambulance service and took him to the hospital along with other witnesses.

(v)PW5 is the resident of Thalakudi village, he came to the occurrence place for availing the services of the deceased and witnessed the incident.

(vi)PW6 is the petty shop owner, who speaks about the arranging of the ambulance service and being a witness to the observation mahazar and recovery mahazar at the place of occurrence.

(vii)PW7 is also a resident of Thalakudi village, who speaks his accompany with PW3 to the hospital.

(viii)PW8 is the Village Administrative Officer, who was examined for the purpose of the arrest of the appellant and recovery of the material objects.

(ix) PW9 is the neighbour of the deceased, who was examined for the purpose of motive. But, he did not support the case of the prosecution and he was treated hostile.

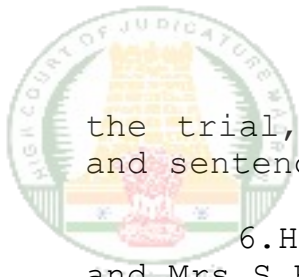
(x) PW10 is a Nathaswaram Vidwan, who speaks about the recovery of the bloodstained clothes from the accused.

(xi) PW11 is the Doctor, who conducted the postmortem on the dead body.

(xii)PW12 is the Sub Inspector of Police, who registered the FIR.

(xiii)PW13 is the Inspector of Police, who conducted the investigation and filed a final report.

5.The incriminating materials of the prosecution were put to the accused under Section 313 of CrPC and the accused denied the same. Though he has stated that he was having witnesses on his behalf, he has not examined any one in this case. In conclusion of



the trial, the trial Court found this appellant guilty, convicted and sentenced as stated above.

6. Heard Mr.M.Siddharthan, learned Counsel for the appellant and Mrs.S.Bharathi, learned Government Advocate (Crl Side).

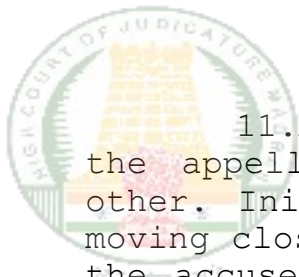
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7. The learned Counsel for the appellant by relying upon the contradictions between the evidence of PW1 and PW2 would submit that the evidence of PW1 and PW2 cannot be relied upon. He also pointed out that the Doctor PW11 deposed that the injury sustained by the deceased is depth of 5 cm, which may not be possible with the weapon MO4. The Doctor also opined that with the weapon MO4, the injury is not possible. The Investigating Officer has not examined any independent witnesses and he has also not taken any steps to send the MO4 and other material objects, which were recovered with bloodstain, for chemical analysis. Moreover, the place of occurrence as well as the weapon used in the commission of offence are not proved by the prosecution accused and the benefit of doubt has to be extended to the appellant.

8. The learned Counsel for the appellant by pointing out the evidence of PW1 that PW1 has admitted in her evidence that her house was fenced with iron fencing and there is a possibility of the deceased falling down in the fence and sustaining injuries and though PW1 stated so, there is no investigation in this regard to disprove the same and therefore, that benefit has also to be extended to the accused and hence, prays for allowing this criminal appeal.

9. Per contra, the learned Government Advocate (Crl Side) would submit that the prosecution has established the case beyond reasonable doubt through the evidence of all the witnesses in this case and PW1 and PW2, the wife and father of the deceased respectively, are the natural witnesses and the occurrence has also taken place in front of the deceased house. The accused, who was residing opposite to the house of the deceased, on the date of occurrence was blaming the deceased and after sometime, the accused trespassed into the house of the deceased and caused injury at about 8.00pm and therefore, PW1 and PW2 have subsequently stated about the commission of occurrence and therefore, their evidence cannot be disbelieved. Apart from the evidence of PW1 and PW2, other independent witnesses namely PW3 and PW7 have also supported the case of the prosecution and therefore, there is no necessity to interfere with the order of the trial Court and hence prays for dismissal of this criminal appeal.

10. This Court has paid its best attention and anxious consideration to the rival submissions and perused the materials placed on record.



11.A perusal of the records would show that the deceased and the appellant were residing in the same area, opposite to each other. Initially they were in good terms. Since the appellant was moving closely with one Sekar, who was a resident in the upstairs of the accused house, it appears that there was some misunderstanding between the appellant's family and the deceased's family. The wife of the appellant was in search of a house for her friend one Ilamathi. They have also approached PW9 for rental house. However, PW9 refused to let the house for rent to the said Ilamathi and the appellant was under the impression that PW9 being the friend of the deceased, has refused to let the house for rent, only at the instance of the deceased and therefore he picked up a quarrel with the deceased. On the date of occurrence, during the quarrel, he went into the house and brought the Aruval [MO4] and caused injury on the deceased. Due to the quarrel arose between the appellant and the deceased, the occurrence has taken place all of a sudden. It is to be noted that it is only during the quarrel, the appellant went inside the house and took Aruval and caused a blow on the deceased. The Doctor, who examined the deceased noted down only one injury and in his chief examination, it is stated that the injury sustained by the deceased is possible with the tip of MO4, however, contrary to the same, during the cross examination he would state that the injury with a depth of 5 cm sustained by the deceased is not possible with the weapon like MO4.

By referring the evidence of Doctor PW11, the learned Counsel for the appellant has relied upon the decision of the **Hon'ble Supreme Court in Purshottam and another Vs State of Madhya Pradesh**, reported in **1981 SCC (CrI) 352**, and the relevant paragraph reads as follows:

"13. As here, there also it was contended that this version of P.W. 1 and P.W. 2 regarding the injury of the deceased being the result of three separate blows stood contradicted and falsified by the evidence of the medical officer (P.W. 10). While noting that there was a clear contradiction between medical testimony and the alleged eye-witnesses on this vital fact, the High Court brushed aside the evidence of P.W. 10 in regard to this pivotal fact, with the convenient remark that "the opinion of the doctor on this aspect of the matter is merely an opinion and not a fact found by him." In the opinion of the High Court, "the length of the injury, its width and its extent would indicate that ordinarily such an injury may not be possible by one blow alone". With respect, we are unable to appreciate this approach adopted by the High Court. Dr. K.M. Jain was a medical expert. He had performed the postmortem examination and noted the nature and dimensions of this wound. He has given clear, irrefutable reasons founded on physical facts noted by him at the autopsy, - which we have noticed earlier in this judgment - in support of his firm opinion that the only external injury found on the body of the deceased could not be the result



of two simultaneous blows. In the ordinary course of human events and experience also, it was extremely improbable, if not altogether impossible, that three blows simultaneously given by three different persons from different directions with sharp-edged weapons would land with such precision and exactitude so as to cause a single wound of such clean-cut margins and such dimensions and other characteristics as those of the external wound found by Dr. Jain (P.W. 10) on the head of the deceased. The version of P.W. 1 and P.W. 2 with regard to this vital fact was inherently improbable and intrinsically incredible. It could not be accepted in preference to the evidence of the medical expert."

12. In reply to that learned Government Advocate (Crl side) has relied upon the decision of the Hon'ble Supreme Court in **Gosu Jayarami Reddy and Another Vs State of Andhra Pradesh**, reported in (2011) 11 SCC 766 and the relevant paragraphs are extracted hereunder:

"32. To the same effect are the depositions of PW 2 and PW3 who too have fully supported the prosecution case and the narrative given by PW1. The version of these witnesses who according to the prosecution were eye witnesses to the occurrence has been accepted as truthful by the trial court as also the High Court in appeal. In the absence of any material contradiction in the version given by these witnesses and in the absence of any other cogent reason rendering the depositions unacceptable, we see no reason why the said version should not be accepted as truthful.

38. Mr. Kumar next argued that the weapons allegedly used by the appellants were said to be hunting sickles, whereas the injuries found on the person of the deceased were said to have contused margins which could not be caused by a hunting sickle. It was also argued that while the eye witnesses had attributed to A3 an injury on the neck of the deceased no such injury was reported by the doctor in the post mortem examination. This was, according - to the defence, a major contradiction, that would render the prosecution story doubtful.

39. It is true that PW 1 has in his depositions attributed an injury to A 3 which according to the witness was inflicted on the neck of the deceased. It is also true that the post mortem examination did not reveal any injury on the neck. But this discrepancy cannot in the light of the evidence on record and the fact that it is not always easy for an eye witness to a ghastly murder to register the precise number of injuries that were



inflicted by the assailants and the part of the body on which the same were inflicted. A murderous assault is often a heart-rending spectacle in which even a witness wholly unconnected to the assailant or the victim may also get a feeling of revulsion at the gory sight involving merciless killing of a human being in cold blood. To expect from a witness who has gone through such a nightmarish experience, meticulous narration of who hit whom at what precise part of the body causing what kind of injury and leading to what kind of fractures or flow of how much blood, is to expect too much.

40. Courts need to be realistic in their expectation from witnesses and go by what would be reasonable based on ordinary human conduct with ordinary human frailties of memory and power to register events and their details. A witness who is terrorised by the brutality of the attack cannot be disbelieved only because in his description of who hit the deceased on what part of the body there is some mix up or confusion. It is the totality of the evidence on record and its credibility that would eventually determine whether the prosecution has proved the charge against the accused.

42. Two aspects are clear from the above. First is that injury no.6 (supra) was found over the right clavicle. The injury was bone deep and the clavicle fractured. A witness who has a momentary view of the incident which is over within a few minutes may not have his testimony rejected only because instead of describing the injury to the clavicle he described the same to be an injury to the neck. It is not a case where the witness attributes an injury to the assailants on a vital part like the head but no such actual injury is found in that region of the body. Instead an injury is found say on the leg or any other portion of the body. It is a case where the witness describes the infliction of the injury in a region which may not be accurate from the point of view of human anatomy but which is capable of being understood in a layman's language to be an injury in an area that is proximate.

43. The other aspect is that the deposition of the doctor establishes the fact that the injuries noticed on the dead body of the deceased had been inflicted by sharp cutting instrument like sickles. It is further stated by the doctor that in all probability the deceased might have died on receipt of the first injury itself. There is nothing in the examination of the eye-witnesses from which the court may infer that the injuries found in the post mortem examination of the deceased could not have been caused by sharp edged sickles that the accused were

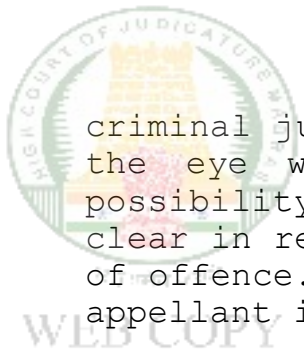


carrying with them and are said to have used in the course of the incident. The argument that there is a material contradiction between the ocular evidence on the one hand and the medical evidence on the other must therefore fail and is hereby rejected."

13. In this case, the occurrence has taken place on 06.07.2006 at 8.00pm in front of the deceased house. Admittedly, the appellant was residing opposite to the deceased house. Immediately after the occurrence, the deceased was taken to the Government Hospital, Tiruchirappalli at 8.40pm. The complaint was also lodged at 10.00pm and the complaint has also reached the Court without any delay. PW1 and PW2 are the wife and father of the deceased respectively and they are the residents of the same area and are the natural witness to the occurrence and they have also stated about the commission of occurrence as narrated by the prosecution case. Apart from the evidence of PW1 and PW2, the evidence of PW3 and PW7, who came to the place of occurrence, to avail the services of the deceased for the purpose of plumbing work, have also witnessed the occurrence and they have also spoken about the occurrence and admitting the deceased in the hospital immediately after the occurrence.

14. Though the learned Counsel for the appellant would point out certain contradictions with regard to the evidence of PW1 and PW2 that PW2 has stated that there was a scuffle between the appellant and the deceased, before the commission of offence, whereas the scuffle prior to the occurrence has not been stated by PW1. Admittedly, there was a quarrel between the deceased and the appellant on the date of occurrence. They were quarrelling with each other in a small distance and during the quarrel, the appellant went inside the house and brought Aruval and caused injury on the deceased. The version of PW1 that there was a no scuffle on the date of occurrence cannot be taken into account for disbelieving the evidence of PW1 and PW2, who are supposed to be the natural witnesses in this case, where occurrence has taken place in the house of the deceased, since, the cross examination was done after four years from the date of occurrence.

15. The learned Counsel for the appellant also submitted that the evidence of the Doctor cannot be accepted, as he has deposed that the injury would not have been caused by MO.4 and when there is a contradiction between medical and ocular evidence, the medical evidence can be taken. It is to be noted that the Doctor has not stated that the injury would not have been caused with MO.4 and the injury to the length of 10cm is possible with MO4 and further stated that the injury is sufficient enough to cause death. Besides, the prosecution witnesses have stated that the accused attacked the deceased with Aruval on the left side of chest, which is supported by the evidence of the Doctor. Even if there is a contradiction between the medical evidence and the ocular evidence, the ocular evidence has to be taken into account and in the administration of



criminal justice, it is not conducive to disbelieve the evidence of the eye witness on the basis of the Doctor's opinion on the possibility of injury. Moreover, the evidence of PW1 and PW2 is clear in respect of the injury and the weapon used in the commission of offence. Therefore, the contention of the learned Counsel for the appellant is not acceptable.

16.The alternate plea taken by the appellant that the deceased sustained injury due to a fall on the iron pole kept for fencing purposes. But, the evidence of PW1 and PW2 clearly stated that the accused attacked the deceased and caused injury. Though the Doctor in his cross examination deposed that when a person has fallen on a sharp edged article, the injury can be caused. It is well settled position of law that the alternate opinion of the Doctor, cannot override the ocular evidence. Therefore, merely on the basis of the Doctors opinion, the prosecution case cannot be disbelieved.

17.The learned Counsel for the appellant also submitted that there are contradictions in respect of the time and place of arrest between the evidence of PW8 and PW13. As per the arrest report, the accused was arrested on 09.07.2006 and the PW13 has also stated that the arrest was made on 09.07.2006 at Thuraiyur Bus Stop. Therefore, it is clear that the accused was arrested on 09.07.2006 at Thuraiyur Bus Stop.

18.Though the investigation agency has not taken any steps for referring the weapon and the bloodstained material objects for chemical analysis, they are not material defects to disbelieve the evidence of eye witnesses and to disbelieve the case of the prosecution. Therefore, this Court is not inclined to interfere with the order of the conviction of the trial Court and accordingly, the same is confirmed. However, insofar as the sentence is concerned, considering the commission of offence has taken place out a sudden provocation and emotion, during the quarrel between the neighbours and prior to the occurrence the appellant and the deceased were in good terms and under the wrong impression that PW9 refused to let his house for rent to the friend of the deceased wife, at the instance of the appellant, he caused only one blow with Aruval, this Court modifies the sentence, for the offence under Section 304(ii) IPC from seven years rigorous imprisonment to four years rigorous imprisonment and for the offence under Section 449 IPC from five years rigorous imprisonment to three years imprisonment. The sentence shall run concurrently. The fine imposed and the default sentence imposed by the trial Court shall stand confirmed. The period of imprisonment already undergone by the appellant shall be set off under Section 428 CrPC.

19.In the result, the Criminal Appeal is partly allowed and the order dated 22.12.2008 passed in SC.No.174 of 2008 by the

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Principal Sessions Judge, Tiruchirappalli, is modified to the extent indicated above. Since the appellant is on bail, the learned Trial Judge is directed to secure the appellant and confine him, in accordance with law.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

- 1)The Principal Sessions Judge,
Tiruchirappalli,
- 2)The Inspector of Police,
Samayapuram Police Station,
Samayapuram,
Tiruchirappalli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4)The Judicial Magistrate No.III, Trichy.
- 5.The Chief Judicial Magistrate, Trichy.

Copy to

The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Crl.A(MD)No.234 of 2009

19.09.2019

VB(06.03.2020) 11P 8C