



Bail Slip

Sankili Karuppaiah, S/o.Sangalinga Thevar age about 45 years/2012 is released on bail of vide Court order dated 31.07.2012 made in MP(MD)No.1 of 2012 in Crl.A.(MD)No.153 of 2012.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.153 of 2012

Sankili Karuppaiah

... Appellant / Accused

Vs.

The State

Rep. by Inspector of Police,

M.Kallupatti Police Station,

M.Kallupatti,

Madurai District.

Crime No.57/2011

... Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374 of Cr.P.C, to allow the appeal and consequently, set aside the order of conviction and sentence imposed on the appellant by means of a Judgment, dated 13.07.2012 made in S.C.No.1 of 2012 by the learned Principal District and Sessions Judge, Madurai Division, Madurai and acquit them in the said crime.

For Appellant : Mr.S.Thirupathy

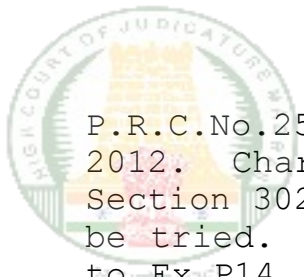
For Respondent : Mr.A.Robinson

Government Advocate (Crl. Side)

J U D G M E N T

The appellant was convicted for the offence under Section 304 (2) of IPC and sentenced to seven years rigorous imprisonment and levied with fine of Rs.30,000/-, vide Judgment dated 13.07.2012 in S.C.No.1 of 2010 on the file of the Principal District and Sessions Judge, Madurai.

2.The prosecution case is that the appellant and his brother Pitchai had a property dispute. On 25.06.2011 at about 09.00 a.m, scuffle arose between the appellant and the deceased, during which, the appellant is said to have hit the deceased Pitchai on the back of his head with M.O.1 wooden handle. Pitchai succumbed to the injuries on 06.07.2011 at about 6.30 a.m. Though the occurrence took place on 25.06.2011. P.W.1-Wife of Pitchai lodged Ex.P1 complaint before the M.Kallupatti Police Station only on 27.06.2011. Ex.P8-FIR in Crime No.57 of 2011 was registered for the offences under Sections 294(b), 323 and 506(ii) of IPC. After Pitchai died, Ex.P11-Alteration Report was submitted and the offence under Section 302 of IPC was incorporated. Investigation was further conducted and final report came to be laid against the appellant for the offence under Section 302 of IPC before the Judicial Magistrate No.1, Usilampatti. It was committed to the Sessions Court in

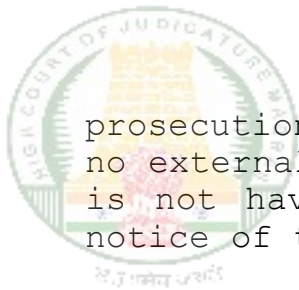


P.R.C.No.25 of 2011. It was taken up for trial in S.C.No.01 of 2012. Charge was framed against the appellant for the offence under Section 302 of IPC. The appellant pleaded not guilty and claimed to be tried. The prosecution examined nine witnesses and marked Ex.P1 to Ex.P14. M.O.1 and M.O.2 were also marked. On the side of the appellant/accused, no evidence was adduced. After a detailed consideration of the evidence on record, the learned trial Judge, by the impugned Judgement, convicted and sentenced the appellant as mentioned above. Challenging the same, this appeal came to be filed.

3.P.W.1 is none other the wife of the victim. P.W.2 is the son of the victim. P.W.3 is an independent witness. P.W.4 is the brother of P.W.1 and he signed as a witness for the arrest and confession statement. P.W.5 signed in the Observation Mahazar. P.W.6 conducted the postmortem. P.W.7 produced the body for postmortem. P.W.8 was the Sub Inspector of Police who registered the FIR and conducted the investigation initially. P.W.9 was the Inspector of Police and he completed the investigation and laid the final report finally.

4.It is true that there are some lacuna in the prosecution case. For instance, the accident register was not marked. The victim was originally admitted to Usilampatti Government Hospital. Later, he was shifted to Meenakshi Mission Hospital, Madurai. The accident register opened in both the hospital were not marked. But then, as rightly pointed out by the learned Government Advocate, this is not a fatal lacuna. If the prosecution can otherwise sustain itself, non marking of the accident register will not undermine the prosecution case. There is some delay in lodging the FIR. But then, this delay has been very easily explained. It is not as if, Pitchai died immediately. The occurrence took place on 25.06.2011. He died only on 06.07.2011. Probably, the parties did not suspect the injury caused to Pitchai to be fatal. Therefore, the delay in this case has also been explained. As rightly pointed out by the learned Government Advocate, injuries found on the body of the deceased are amply corroborated by the actual evidence of P.W.1 and P.W.2. Merely because, P.W.1 and P.W.2 are the wife and son of the deceased, their testimonies cannot be casually brushed aside as that of interested witnesses. In the very nature of things, they are natural witnesses. Their testimonies are corroborated by the evidence of P.W.3 who is an independent witness.

5.Having regard to the evidence on record, the learned counsel appearing for the appellant rightly did not challenge the finding of guilt and that, he only wanted modification in the matter of sentence. The appellant's counsel pointed out that the deceased and the appellant are own brothers and that the quarrel had taken place more on the spur of the moment. He also pointed out that the appellant had inflicted only a single blow. Even according to the



prosecution, he had used only a wooden handle. In fact, there was no external injury found on the body of the deceased. The appellant is not having any bad antecedent. He did not come under adverse notice of the respondent subsequently.

6.Taking note of all these mitigating factors, even while sustaining the conviction imposed on the appellant, the sentence of seven years rigorous imprisonment is reduced to thirty months rigorous imprisonment. The period of incarceration already undergone by the appellant will be set off in terms of Section 428 of Cr.P.C.

7.With this modification in the matter of sentence, this criminal appeal is partly allowed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To:

1. THE PRINCIPAL DISTRICT SESSIONS JUDGE, MADURAI.
2. THE CHIEF JUDICIAL MAGISTRATE, MADURAI.
3. THE INSPECTOR OF POLICE
M.KALLUPATTI POLICE STATION, M. KALLUPATTI,
MADURAI DISTRICT
4. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
5. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.S.THIRUPATHY, Advocate (SR-81669[F] dated 14/08/2019)

Crl.A.(MD)No.153 of 2012
13.08.2019

SMA/23/03/2020/3P/7C