



BAIL SLIP

The Appellant/Sole Accused Raju, was released on bail as per the order of this Court dated made in MP(MD)No.1 of 2009 in Crl A (MD).299 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	13.04.2019
Date of Judgment	11.07.2019

CORAM

THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.A. (MD)No.299 of 2009

Raju : Appellant/Sole Accused

Vs.

State represented by
The Inspector of Police,
Nagaihparam Police Station,
Madurai District.
Crime No.36 of 2008.

: Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code against the judgement, dated 16.09.2009 passed in S.C.No.127 of 2009 by the Additional Sessions Judge (Fast Track Court No.III), Madurai.

For Appellant : Mr.AK.Alagarsamy

For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

J U D G M E N T

This Criminal Appeal is directed against the judgement, dated 16.09.2009 passed in S.C.No.127 of 2009 by the Additional Sessions Judge (Fast Track Court No.III), Madurai.

2.The case of the prosecution is that the accused and the de-facto complainant are neighbours and the accused used to quarrel with the complainant often on the ground that the letter was giving out that the daughter of the accused Jeyaseeli would not procure children as her marriage is an intercaste marriage and on consequence thereof, on 27.07.2008 at 12 noon when the complainant's son Kannan was returning home, after purchasing provisions from the shop belonging to one Jeya in Pappunayakkanpaetti Village, the accused quarried with him, shouting at him that his mother was giving out that his daughter Jeyaseeli could not procure children and there is nobody to protect them if he is beaten by him with an



intention to his Kannan, the accused took out the stick from near by place and had beaten and back of the said Kannan and Kannan snatched said stick, the accused fisted him at the left chest of Kannan with his hands. The Inspector of Police attached to Nagaihpuram Police Station has filed a final report against the accused examining the witnesses.

3. In the trial court, 14 witnesses were examined and 22 Exhibits and 3 material objects were marked. When the accused was questioned about the incriminating circumstances, he denied the same. On the side of the accused, no witness was examined and no document was produced. The trial court convicted the appellant/accused under Section 323 IPC and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months rigorous imprisonment. Aggrieved by the judgement passed by the trial court, the appellant/accused is before this court.

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

5. The first contention raised on the side of the appellant/accused is that as per the prosecution case, the deceased was attacked by the accused on 27.07.2008, but Ex.P1 complaint was given by PW1 only on 01.08.2008 at 7.45 pm, but till the date, PW1 neither lodged a complaint nor a panchayat was held in the village and further, PW1 admitted that after the death of the deceased, police came to the Government Hospital, Thirumangalam and recorded the statement of PW1 and subsequently obtained her thumb impression and further, PW2 stated that on 01.08.2008 at about 5.00 pm, he went to the police station along with PW1 would clearly show that the earlier version given by PW1 was suppressed and hence, the suppression of earlier complaint is fatal to the prosecution and prays that the appellant/accused is entitled to acquittal.

6. In this case, PW1 categorically stated that prior to the occurrence, there was frequent quarrel between her and the accused and when it was questioned by his son, on 27.07.2008 the accused said 'Vz;lh vq;fis NgRfpwPh;fs;' and took Seemai Karuvelan stick and attempted to attack her son and it was resisted by his son on his left hand and then the accused fisted on the chest of his son and then, Rajendran and Jaya came and settled the dispute and then his son told her that he had chest pain and proceeded to Hospital and returned to their house and on the next day morning, her son told that he had again chest pain and proceeded to hospital. But her son was not yet returned and she went to search her son, but she has not found her son and then she went to the Municipality and in the Municipality, her son was lying in the floor and she asked him for that he replied that he had chest pain and then he took her son to the Government Hospital, Thirumangalam and in the hospital, her son died and then, she went to Nagaihpuram Police Station and gave Ex.P1



7. PW2 is the son of PW1. He categorically deposed that his mother told him about the death of the deceased and then, he came to the house of PW1 and then, he and PW1 went to police station and his mother gave a complaint.

8. From the evidence of PW1 and PW2, it is seen that after the death of the deceased, PW1 along with PW2 went to the police station and gave the complaint. On perusal of Ex.P1, it is stated that on 01.08.2008, the Sub Inspector of Police, Nagaihapuram police station received the complaint from PW1 and after receipt of the complaint, the case was registered.

9. PW1 during her cross examination stated that after the admission of her son, police only enquired her and she has not stated that she has given the complaint statement to the police. From Ex.P1, it reveals that PW1 went to the police station and gave the complaint. Hence, the argument put forth on the appellant/accused stating that the previous complaint was suppressed is not at all acceptable.

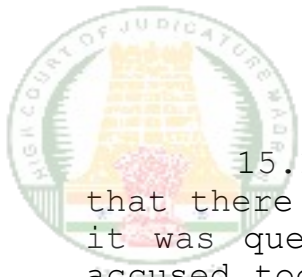
10. The next contention raised on the side of the appellant/accused is that PW1 is the sole eye witness. Hence, her evidence is not reliable and there was contradiction between the oral evidence and the medical evidence.

11. As per the case of the prosecution, the occurrence took place on 27.07.2008, but on the very next day, the deceased told PW1 that he was having chest pain. It is to be noted here that even-though, PW1 neither accompanied with the deceased to take treatment nor sent any relative along with the deceased to the hospital. This shows that PW1 had no knowledge of the occurrence. Hence, prays that the appellant/accused is entitled to acquittal.

12. PW1 during her evidence stated that due to attack by the accused, her son went to the hospital and then returned to his house and on the next day, her son told her that he had chest pain and went to hospital for taking treatment.

13. It is not the case of the prosecution that due to the attack by the accused, the deceased sustained grievous injury and he was not in a position to move.

14. On careful perusal of the evidence of PW1, it reveals that after the occurrence, the deceased was not able to move and he was not in a serious condition. If at all the deceased is in a serious condition, he will definitely informed his aliment to his mother. In this case, the deceased was not in a serious condition and he went to the hospital for taking treatment. If PW1 saw the deceased in a critical condition, she and others would admit the deceased in the hospital. It is seen that after the occurrence, the deceased was in a position to move anyway and PW1 was not accompanied with him. Hence, this court is of the view that it will not affect the case of the prosecution.



15. In this case, PW1 in her complaint and evidence stated that there was frequent quarrel between her and the accused and when it was questioned by the accused on 27.07.2008 at 12.00 noon, the accused took a Karuvelan stick and assaulted him on the back of his son and his son snatched the stick and then the accused fisted him on the left chest of her son with his hands knowing that her son was already having chest pain and he would die in such condition, if he fisted on his chest and then, after the occurrence his son went to Government Hospital, Thirumangalam for treatment and subsequently, he was not returned and then she went to search her son and she saw her son in Thirumangalam Municipality in an unconscious condition and she took him to the Government Hospital, Thirumangalam with a help of some persons, but in spite of treatment, her son died.

16. PW2 and PW3 are the sons of PW1. But they turned hostile. PW2 stated that he accompanied with PW1 to the police station to give the complaint and he stood as attesting witness in Ex.P1 complaint. PW3 deposed that after hearing the death of the deceased over phone, he went to the Government Hospital, Thirumangalam.

17. PW4 deposed that he helped for taking injured to the Government Hospital, Thirumangalam, from the Thirumangalam Municipality Office. The Doctor, who gave treatment to the deceased was examined as PW8. PW8 deposed that the injured was taken by his mother Chinnathai to the hospital on 27.07.2008 and at that time, the deceased was in unconscious stage and no external injuries were found and he died on the same day.

18. The Doctor, who conducted post-mortem on the body of the deceased was examined as PW9. He found the following injuries on the body of the deceased:-

"External Injury:- Contusion left side chest.

Internal Examination:-

Skull - No fracture skull bone, No clot or Haemorrhage.

Thorax Hyoid bone intact thorax contusion left side (NC) muscle. Chest no fracture ribs.

Heart - No clot or Haemorrhage

Lungs - No external injuries C/S congested.

Abdomen - Stomach contained greenish fluid about 100 ml, No specific odour spleen, liver normal.

Intestine - Contain Gas and (NC)

Kidney - Congested and Haemorrhage

Bladder Empty.

Spinal cord no fractures spine (NC) location."

19. PW9 deposed that he found blood clot on the chest of the deceased and it may be due to fisting by hand and the blood clot affect the lungs and heart and due to it, death may be occurred. Further, PW9 during his cross examination stated that due to

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21. In this case, PW1 in her complaint stated that only the accused alone assaulted her son. While cross examining PW1, the learned counsel for the accused put a question that whether PW1 told the Doctor, when and how many persons attacked her son. No suggestion was put to PW1 stating that PW1 told the Doctor PW8 that her son was assaulted by two persons.

23. In this case, PW1 categorically stated that at that time of occurrence, the accused assaulted the deceased with stick on his back side and it was resisted by the deceased and then the accused fisted on the chest of the deceased with his hands and further PW1 stated that after the occurrence, her son told her that he had chest pain.

25. In this case, the motive for the occurrence is that there were frequent quarrels between the deceased, de-facto complainant and the accused and due to it, the accused scolded PW1 and when it was questioned by the deceased, he was assaulted by the accused. PW1 categorically stated the above motive in her complaint and evidence. Hence, in this case motive is proved.

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the same day, he died and afterwards, PW1 gave the complaint and hence, proper explanation was given for the delay in giving to the complaint and therefore, it is not fatal to the prosecution.

27. In this case, PW1 stated that on 27.07.2008, the accused attacked her son and her son went to the hospital for taking treatment. But he was not turned up and when she went to search of her son, she found that her son was found in the Thirumangalam Municipality in an unconscious condition on 01.08.2008 and then, she took her son and admitted in the Thirumangalam Government Hospital and on the same day, her son died. Hence, this court is of the considered view that proper explanation was given for the delay in giving to the complaint and therefore, it is held that it is not fatal to the prosecution.

28. On careful perusal of the evidence of witnesses and documents, it reveals that even-though PW1 is the sole eye-witness, her evidence is trustworthy and reliable and hence, her evidence can be relied on. The trial court after careful perusal of the evidences and documents came to the conclusion that the accused found guilty under Section 323 IPC.

29. For all the reasons stated above, this court is of the firm view that the trial court, after perusing the entire materials available on record, had a correct finding, which does not required any interference by this court.

30. In the result, the Criminal Appeal is **dismissed**.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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To,

1. The Additional District and Sessions Judge,
Fast Track Court No.III,
Madurai.

2. The Judicial Magistrate, Tirumangalam.

3. The Inspector of Police,
Nagaihparam Police Station,
Madurai District.



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

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11.07.2019

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