



**BAIL SLIP**

Richard, S/o. Joseph Mariyadass, Male, age about 36 years was released on bail vide Court Order dated 28.09.2011 made in MP(MD) No.1 of 2011 in Crl.A(MD)No.211 of 2011.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.08.2019

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

Crl.A.(MD)No.211 of 2011

1.Sasi Kumar  
2.Richard

... Appellants/Accused No.1 & 2

Vs.

State represented by,  
Inspector of Police,  
K.K.Nagar Police Station,  
Thiruchirappalli District.  
(Crime No.614/2009)

... Respondent /Complainant

**Prayer:** Criminal Appeal filed under Section 374 of Cr.P.C, to set aside the Judgment passed by the Additional District and Sessions Judge, (Fast Track Court No.1), Thiruchirappalli in S.C.No.171 of 2010, dated 15.07.2011 and acquit all the appellants herein.

For Appellants : Mr.T.Senthilkumar

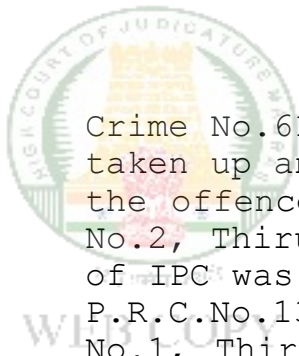
For Respondent : Mrs.S.Bharathi

Government Advocate (Crl. Side)

**J U D G M E N T**

The appellants were convicted for the offence under Section 304(2) of IPC and sentenced to five years rigorous imprisonment, vide Judgment dated 15.07.2011 in S.C.No.171 of 2010 on the file of the Fast Track Court No.1, Thiruchirappalli.

2.The prosecution case is that the appellants picked up quarrel with the deceased Arokiaraj on 20.06.2010 at about 02.00 p.m., in Jeylaniya street, 5<sup>th</sup> Cross street, Subramaniapuram, Trichy. In the said scuffle, the appellants are said to have hit the deceased Arokiaraj with a wooden plank. Arokiaraj suffered injuries and got admitted to the Hospital on 21.06.2010. On 28.06.2010, he succumbed to injuries and died. In this regard, Pakkiaseeli-wife of Arokiaraj lodged Ex.P1 complaint before the K.K.Nagar Police Station, Thiruchirappalli, leading to registration of FIR-Ex.P9 in



Crime No.614 of 2009 under Section 174 of Cr.P.C. Investigation was taken up and final report came to be laid against the appellants for the offence under Section 302 of IPC before the Judicial Magistrate No.2, Thiruchirappalli. Cognizance of the offence under Section 302 of IPC was taken and the case was committed to the Sessions Court in P.R.C.No.13 of 2010. The case was made over to the Fast Track Court No.1, Thiruchirapalli for trial in S.C.No.171 of 2010. Charge was framed against both the appellants for the offence under Section 302 of IPC. The appellant denied the charge and claimed to be tried. The prosecution examined as many as 14 witnesses and marked Ex.P1 to Ex.P14. M.O.1-Wooden Plank and two other materials objects were marked. On the side of the accused, no evidence was adduced. The learned trial Judge, while acquitting the appellants for the offence under Section 302 of IPC, convicted them for the offence under Section 304(ii) of IPC and sentenced them as mentioned above. Challenging the same, this appeal came to be filed.

3.During the pendency of this appeal, the first appellant Sasikumar passed away. Therefore, the proceedings against him stand abated. Hence, the Criminal Appeal is dismissed as far as first appellant/Sasikumar is concerned.

4.Now the question for consideration is whether the second appellant Thiru.Richard is guilty of the offence under Section 304 (ii) of IPC or not.

5.The learned counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum and wanted this Court to acquit the appellant in *toto*.

6.Per contra, the learned Government Advocate (Crl.side) submitted that the impugned Judgment does not warrant any interference and wanted this Court to dismiss this appeal.

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

8.Even according to the prosecution case, the appellants caused injury to the deceased Arokiaraj, during the scuffle on 20.06.2010 at about 14.00 hours. Arokiaraj got admitted to the Hospital on 21.06.2010. He died on 28.06.2010. Crime No.614 of 2009 was registered on the file of the K.K.Nager Police Station on 28.06.2010 at about 20.30 hours. The defato complainant is the wife of the deceased.

9.As rightly pointed out by the learned counsel appearing for the appellant, Pakkiaseeli-P.W.1, merely suspected the foul play in the death of her husband Arokiaraj. She did not name anybody particularly or specifically. In fact, the case was registered only under Section 174 of Cr.P.C. But interestingly, the names of the



appellants namely Sasikumar and Richard, have been mentioned in the accused column. As rightly pointed out by the learned appellant's counsel, I too wonder as to how in the FIR, the names of the accused can be reflected, when the complaint is totally silent and does not implicate them at all.

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10. The case of the prosecution rests on the testimony of P.W.7. He claims to be a resident of the locality. He claims to have witnessed the scuffle between the appellant and the deceased on 20.06.2010. But then, he did not lodge any complaint immediately. He gave a statement before the Police only later. Even the statement recorded under Section 161 of Cr.P.C, reached the Court only on 06.08.2010. The delay in the statement recorded under Section 161 of Cr.P.C., reaching the Court has not at all been explained by the prosecution. This causes considerable on the authenticity of the prosecution case. More than anything else, the fact is that Arokiaraj did not implicate the appellants. It is not as if Arokiaraj was unconscious. He had suffered only some very minor injuries. If really, the appellants had caused the said injuries, the deceased would have definitely implicated them. Even though the prosecution would claim that Arokiaraj was admitted to the Hospital on 21.06.2010, the accident register's extract has not been marked. The accident register would have been entered only if it was a medical case. If it was the appellant who had taken the deceased to the Hospital, no entry will be made in the accident register. The testimony of P.W.7 does not inspire my confidence.

11. It is well known that the deceased Arokiaraj suffered from epilepsy. If such a person was being assaulted, certainly, P.W.7 a resident of the locality, would have intervened. In any event, he would have lodged a police complaint. But no such effort was taken by him. Only after Arokiaraj passed away, P.W.7 is said to have made a statement. Even the statement reached the Court after a very long time.

12. Next comes the medical evidence. P.W.12 is the Doctor who gave treatment to Arokiaraj. He had stated that Arokiaraj suffered epilepsy and as a result, the food articles taken by him had blocked the windpipe. As a result, he suffered gasping and eventually, cardiac arrest appears to be the cause of his death. Of-course, P.W.11-postmortem Doctor had opined that as a result of the injuries suffered by the deceased with M.O.1, the death can be caused. It is seen from the testimony of the Postmortem Doctor that the injuries suffered by the deceased Arokiaraj, were found on his left side. There is no fatal head injury also. Therefore, the defence suggested that when the deceased was riding a bicycle, he had epileptic fits and fell down and that is how, he came to suffer the injuries in question. P.W.11 answered in the affirmative to this suggestion.



13. Taking note of these aspects, I have to necessarily come to the conclusion that the prosecution had miserably failed to establish its case against the appellants. Even though the occurrence is said to have taken place on 20.06.2010, the complaint-Ex.P1 came to be lodged only on 28.06.2010, after Arokiaraj died. The Accident Register did not implicate the appellants at any time prior to his eventual death. Even though in Ex.P1-Complaint, the appellants have not been implicated, still their names appear in the accused column. The evidence of P.W.7 and P.W.8 are not trust worthy and they do not inspire one's confidence. Their statements recorded under Section 161 of Cr.P.C., reached the Court much later that is on 06.08.2010. There is no explanation whatsoever for the delay. The testimony of P.W.12 is also in favour of the defence theory with regard to the injuries said to have suffered by him on 20.06.2010.

14. I find considerable force in the submission of the appellant's counsel that the Police wanted to fix the appellants in this case by taking advantage of the unfortunate death of Arokiaraj. The appellants were not in the good books of the police, it is suggested. Otherwise, there is no reason whatsoever for naming them in the FIR, when the complaint lodged by P.W.1 is silent. The Court below did not take note of this vital point. Therefore, I have no hesitation to set aside the impugned Judgment convicting and sentencing the appellants. This criminal appeal is allowed. The second appellant is acquitted of the offence under Section 304(ii) of IPC. The fine amount, if any, paid by him shall be refunded forthwith. The bail bond, if any, executed by the second appellant shall stand cancelled.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

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To:

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

2. The Judicial Magistrate No.II, Tichy.

3. The Chief Judicial Magistrate, Trichy.



4. The Inspector of Police,  
K.K.Nagar Police Station,  
Thiruchirappalli District.

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

copy to

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

+1 CC to Mr.T.SENTHIL KUMAR, Advocate ( SR-81536[F]dated  
14/08/2019 )

Crl.A.(MD)No.211 of 2011  
13.08.2019

VB(08.05.2020) 5P 9C