



Bail Slip

The Appellants/Accused was directed to be released on bail vide order in Crl.MP(MD)No.1/2011 in Crl.A(MD)No.246 of 2011 dated 29.09.2011 on the file of the Madurai Bench of Madras High Court.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.246 of 2011

1.Natarajan
2.Kathiresan

... Appellants

Vs

State By
The Inspector of Police,
Vaiyampatti Police Station,
Trichy District.
Crime No.137 of 2010

... Respondent

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the conviction and sentence passed by the Principal District and Sessions Judge, Trichy in S.C.No.186 of 2010, dated 22.07.2011 and allow the criminal appeal.

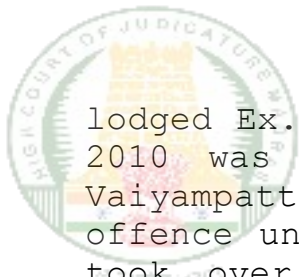
For Appellants : Mr.N.Sankar Ganesh

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

JUDGMENT

The appellants herein were convicted for the offence under Section 304 (ii) of IPC and sentenced to seven years rigorous imprisonment and also levied with fine, vide Judgment dated 22.07.2011 in S.C.No.186 of 2010 on the file of the Principal District and Sessions Judge, Thiruchirappalli. Questioning the same, this appeal has been filed.

2.The case of the prosecution is that there was a land transaction related dispute between A1 Natarajan and deceased Chellagownder and that, on 11.06.2010, at about 6.30 p.m., when the deceased and the eye witnesses were having their evening tea, the accused A1 and A2 came to the spot, picked up quarrel with the deceased and dragged him outside and assaulted him and thereafter, by throwing M.O.1 and M.O.2 caused injuries on the person of the deceased and caused his death. P.W.1 is the eye witness who



lodged Ex.P1-Complaint. Based on Ex.P1-Complaint, Crime No.137 of 2010 was registered on the file of the Inspector of Police, Vaiyampatti Police Station. Ex.P4-FIR was registered for the offence under Section 302 of IPC. P.W.12 the Inspector of Police took over the investigation and after carrying out the usual formalities, filed the final report against the appellants herein for the offence under Section 302 r/w 34 of IPC before the Judicial Magistrate, Manapparai. Since the case was exclusively triable by the Sessions Court, it was committed to the Sessions Court in P.R.C.No.16 of 2010. The Principal District and Sessions Judge, Trichy, took the case on file in Session Case No.186 of 2010. Charge under Section 302 r/w 34 of IPC was framed against the appellant herein. The appellant pleaded not guilty to the charge and claimed to be tried. The prosecution examined as many as 12 witnesses and marked Ex.P1 to Ex.P18. M.O.1 to M.O.5 were also marked. On the side of the accused, Ex.D1-Wound Certificate of A1 was marked. The learned trial Judge, after a detailed consideration of the evidence on record, found both the accused guilty of the offence under Section 304(ii) of IPC and sentenced them to seven years rigorous imprisonment. They were directed to pay a sum of Rs.25,000/- each as fine and out the fine amount, Rs.40,000/- was directed to be paid as compensation to the wife of the deceased.

3.The learned counsel appearing for the appellants initially reiterated the grounds of appeal and pleaded for total acquittal. But then, after arguing for a while, the learned counsel appearing for the appellants submitted that he would not challenge the conviction insofar as the first appellant was concerned and that, he would confine the argument for acquittal of A2 alone. He, however, pleaded for leniency in the matter of punishment for A1.

4.Even according to the prosecution case, the fatal injury was the one caused to the cubic region of the deceased by throwing M.O.1-Stone. Admittedly, A2 did not throw M.O.1. Even according to the prosecution, A2 is said to have thrown only a brick on the head of the deceased and it was said to have caused only a minor abrasion. The eye witnesses have testified that M.O.1 was available on the ground and the same was picked and thrown by A2 on the deceased. Therefore, I am of the view that neither A1 nor A2 came armed to the spot. Therefore, A2 cannot be said to have any common intention to cause the death of the deceased. In as much as, the death of Chellagownder was caused only by throwing M.O.1-stone on the cubic region of the deceased by A1. Since I have already held that A2 did not have common intention to cause his death, I am of the view that A2 can be found guilty only for lesser offence of causing hurt which is punishable under Section 323 of IPC. A2 is said to have spent in Prison for about four



months. Therefore, I am of the view that even while sustaining the levy of fine of Rs.25,000/-, his conviction is modified to one under Section 323 of IPC. The period of imprisonment imposed on him will stand reduced to the period already undergone by him.

5. Coming to the first appellant, I am of the view that the prosecution had established its case beyond reasonable doubt. P.W.1 is the eye witness who lodged Ex.P1-Complaint. P.W.1, in his testimony, states that when A1 came to know that P.W.1 was rushing to the police station to report the crime, he caused a self inflicted injury on his head. This evidence of P.W.1 is amply corroborated by Ex.D1-"Wound Certificate" issued in respect of A1-Natarajan. The occurrence had taken place at about 6.30 p.m., on 11.06.2010. FIR was registered on the same day at about 08.00 p.m., It is true that the case of P.W.1 was that when they were taking tea in the tea shop owned by one Sivasubramanian, the occurrence took place. It is equally true that when the investigating officer was examined, the investigating officer had stated that according to Sivasubramanian, he closed the tea shop on the said day at about 05.00 p.m., Yet, I am not in a position to come to the conclusion that the prosecution case has been weakened.

6. It is seen from the evidence on record that the deceased Chellagownder was ex-communicated and that, the festival donations were not collected from him. The defacto complainant also appears to be rather unpopular. However, A1 appears to be a powerful person. Therefore, the tea shop owner in order to avoid further trouble, claims to have closed the shop at 05.00 p.m., on the day in question. I am convinced that the tea shop owner was not telling the truth to the Investigating Officer. It is true that P.W.4- Chellamani, wife of the deceased had also deposed that due to accidental fall, Chellagownder passed away. But then, the testimony of P.W.4 is falsified by the medial evidence. P.W.11 is the Postmortem Doctor. He issued Ex.P6-Postmortem Certificate. In the Postmortem Certificate, as many as four injuries on the body of the deceased have been mentioned. Two of them were punctured wounds and Chellagownder would not have suffered such punctured wounds in an accidental fall. The Doctor had indicated that M.O.1 is capable of causing such punctured wounds. Therefore, the homicidal nature of the death of Chellagownder has been amply established by the prosecution. P.W.4-Chellamani is closely related to A1 and therefore, she is obviously not telling the truth. Though the defence has attributed motive to P.W.1 and P.W.2, they appear to be natural witnesses. P.W.1 is the person who had lodged Ex.P1-FIR. A reading of his testimony indicates that he is a natural witness. I am of the view that the prosecution had proved its case against the first accused beyond reasonable doubt. I therefore, sustain the conviction of



the first accused under Section 304 (ii) of IPC.

7.The learned counsel appearing for the appellant submitted that the first accused is now aged about 75 years. It is clear that he did not come armed to the spot in question. A1 and A2 had picked up quarrel with Chellagownder and used the stones that were available on the ground and assaulted him. Thus, A1 did not have any prior intention to cause murder or death of Chellagownder. Therefore, taking note of these mitigating circumstances, particularly, the age of A1, this Court reduces the sentence from seven years rigorous imprisonment to two year rigorous imprisonment. The appellants will of-course have to remit the fine amount, so that, the compensation amount can be paid to P.W.4-Chellamani wife of the deceased.

8.With this modification in the matter of conviction and sentence in respect of A2 and sentence in respect of A1, this appeal is partly allowed. The period of incarceration already undergone by A1 will of-course be set off in terms of Section 428 of Cr.P.C. The trial Judge shall take steps to enforce this order.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Principal District and Sessions Judge, Trichy.

2.The Judicial Magistrate, Manapparai.

3.Do Through:

The Chief Judicial Magistrate, Trichy

4.The Superintendent, Central Prison, Trichy

5.The Inspector of Police,
Vaiyampatti Police Station,
Trichy District.



6.The Section Officer,-2 copies
Criminal Section
Madurai Bench of Madras High Court, Madurai

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

+1 CC to Mr.N.SHANKAR GANESH, Advocate (SR-75334[F] dated
15/07/2019)

CrI.A(MD)No.246 of 2011
15.07.2019

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