

**BAIL SLIP**

The Appellant/Accused namely Karuppiah, S/o.Periambilai, was released on bail by this Hon'ble Court made in MP(MD)No.2/2011 in Crl A(MD)No.338 of 2011 dated 11.4.2012.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED : 09.07.2019****CORAM:****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CRL A(MD)No.338 of 2011**

Karuppiah

... Appellant / Accused

Vs.

State, rep.by
The Inspector of Police,
Sivagangai Taluk P.S,
Sivagangai District.
(Cr.No.152 of 2008)

... Respondent / Complainant

Prayer : This Criminal Appeal is filed under Section 374 of the Criminal Procedure Code, to call for the records from the lower Court and hear the counsel for the accused and set aside the conviction and sentence imposed on the accused under Section 304 part I IPC by the Sessions Judge, Sivagangai as per judgment dated 08.07.2010 and passed in S.C No.40 of 2009 and set aside the accused at liberty.

For Appellant

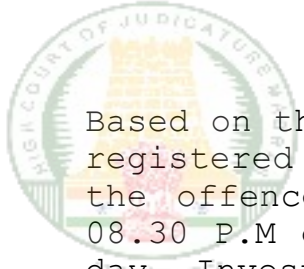
: Mrs.S.Vengalakshmi

For Respondent

: Mr.A.Robinson
Government Advocate (crl.side)**JUDGMENT**

The appellant was convicted the sentenced to undergo seven years rigorous imprisonment and levied with a fine of Rs.5,00/- for the offence under Section 304(I) IPC vide judgment dated 08.07.2010 in S.C No.40 of 2009 on the file of the learned Sessions Judge, Sivagangai. Challenging the same, this appeal has been filed.

2.The case of the prosecution is that one Rakkan and the appellant entered into a quarrel on 05.07.2008 at about 07.30 P.M and that the appellant had stabbed the said Rakkan in the rib <https://hservices.reports.gov.in/hcservices/> P.W.1 dagger causing his instantaneous death. In this regard, Ex.P1 complaint was lodged by P.W.1 Arumugam. The said Arumugam is none other than the brother of the deceased Rakkan.



Based on the Ex.P1 complaint, Ex.P10 FIR in Crime No.152 of 2008 was registered on the file of the Sivagangai Taluk Police Station for the offence under Section 302 of IPC. The case was registered at 08.30 P.M on the same day. The appellant was arrested on the next day. Investigation was undertaken. The appellant gave a confession and the admissible portion of the confession was marked as Ex.P4. Based on the same, M.O.1 that was used for commission of offence was recovered under Ex.P5. After examining the relevant witnesses and recording their statements under Section 161 of Cr.PC, the investigation officer filed his final report before the learned Judicial Magistrate No.2 Sivagangai. Cognizance of the offence was taken and the same was committed to the Sessions Court for trial in S.C No.40 of 2009. The appellant pleaded not guilty of the charge and claimed to be tried.

3.The prosecution examined as many as eight witnesses and marked Exs.P1 to P.17. M.O.1 to M.O.7 were marked. On the side of the accused no evidence was adduced. The learned Trial Judge came to the conclusion that the prosecution had not established the charge of murder under Section 302 IPC but that the accused was liable to be convicted for the offence under Section 304(I) of IPC. By judgment dated 08.07.2010, the appellant was convicted for the said offence and sentenced as mentioned above. Challenging the same, this appeal has been filed.

4.The learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds. The learned counsel for the appellant would contend that the entire case of the prosecution rests on interested witnesses. She therefore wanted this Court to discard their evidence. If according to P.W.1 and P.W.2 they were present and witnessed the occurrence and had taken the body of the deceased to their nearby house, certainly their dresses would have been stained by blood. But, in this case, no such blood stain was found on their dresses. The learned counsel for the appellant drew my attention to the relevant portion of the evidence of P.W.1 that the appellant was drunk during the relevant time and that therefore, he obviously did not have any intention to cause the death of Rakkan. She also submitted that while the witnesses would claim that knife was used for attacking the deceased Rakkan, what eventually came to be recovered was M.O.1 which cannot be called as knife. Therefore, she called upon this Court to disbelieve the prosecution witnesses in toto.

5.I am unable to agree with the submissions of the learned counsel for the appellant. As rightly pointed out by the learned Government Advocate (crl.side) appearing for the prosecution, the occurrence had taken place on 05.07.2008 at about 07.30 P.M. The complaint was lodged within an hour thereafter. FIR itself came to be registered at 08.30 P.M. The appellant was arrested the very next day. The confession of the appellant yielded the weapon used for committing the offence. It is true that M.O.1 is dagger and not a knife. But, this mis-description has been clearly explained by P.W.1. Merely because the correct description of M.O.1 was not given by P.W.1 and P.W.2, the case of the prosecution is not



weakened thereby.

6. In this case, the prosecution examined the witnesses namely Arumugam and P.W.2 Thavidu @ Thavamani. They have spoken clearly and categorically about the entire sequence of events. They would state that in their village, there was a water body by name Kosavan Oorani. The appellant is said to have committed an encroachment on a portion of the same. In this regard, some complaints were sent to authorities. That is said to be the motive for the enmity entertained by the appellant against the deceased. On the occurrence date, when the deceased and the eyewitnesses and others were chatting in the cement road in their village, the appellant is said to have abused the villagers in filthy language. He had approached the deceased and others in an aggressive manner. The deceased had challenged the accused as to why he was speaking in that fashion. This is said to have provoked the appellant to attack the deceased Rakkan.

7. The deceased Rakkan suffered injuries and in the left rib portion, the appellant inflicted a stab injury. This is certainly a vital part of the body. Even though P.W.1 was cross examined at great length, his testimony could not be shaken. P.W.2 had corroborated the testimony of P.W.1. P.W.3 is a mahazar witness and Ex.P2 is the observation mahazar. He had also spoken about the encroachment committed by the appellant. P.W.4 is the Village Administrative Officer. The said P.W.4 and the Village Assistant witnessed the recovery of M.O.1 under Ex.P5. They had also attested the confession of the appellant.. Ex.P4 is the admissible portion of the confession statement. Since M.O.1 was recovered pursuant to the confession made by the appellant, Ex.P4 is admissible in evidence in terms of Section 27 of the Evidence Act.

8. P.W.5 is the Doctor who performed the postmortem on the body of the deceased. He had clearly mentioned that between rib nos.6 and 7, a stab injury measuring 7x2x8 c.m was found. He had also clearly deposed that the said injury was capable of being caused by M.O.1 dagger. When the incriminating circumstances were put to the appellant under Section 313 of Cr.PC, the appellant merely denied the same and did not come out with any defence version.

9. The learned Trial Judge after a detailed consideration of the entire evidence on record, rightly came to the conclusion that the accused/appellant herein had caused the fatal injury. The accused must consider himself lucky that he was not found guilty under Section 302 IPC and that he was convicted only under 304 (I) IPC. The court below had awarded seven years rigorous imprisonment. The learned counsel for the appellant submitted that the appellant is presently aged about 75 years. Even the prosecution witnesses have stated that the appellant was drunk at the time of occurrence.

10. Taking note of the mitigating circumstances, I am of the view that interest of justice would be served by reducing the period of sentence from seven years to three years rigorous imprisonment. Accordingly, the conviction and fine imposed on the appellant is confirmed and the sentence of imprisonment alone is reduced from



seven years rigorous imprisonment to three years rigorous imprisonment. The learned Trial Judge shall take steps to enforce this Judgment and commit the appellant in prison to undergo remaining period of sentence.

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11.This criminal appeal is partly allowed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The The Inspector of Police, Sivagangai Taluk P.S,
Sivagangai District.
- 2.The Sessions Judge, Sivagangai
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Chief Judicial Magistrate,
Sivagangai.
- 5.The Judicial Magistrate No.II,
Sivagangai.
- 6.The Superintendent,
Central Prison, Trichy.
- 7.The Superintendent of Police,
Sivagangai.
- 8.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 cc M/s.S.VENGALAKSHMI ,Advocate, SR.No. 74384

CRL A(MD) No.338 of 2011

09.07.2019