



BAIL SLIP

1. The Appellant/Accused No.1, Ganesan, S/o.Subramani, Male, aged about 34 years. and
2. The Appellant/Accused No.2, Rajeswari W/o.Ganesan, Female, aged about 30 Years were released on bail vide order made in MP(MD)No.1 of 2011 and MP(MD)No.2 of 2011 in CRL A(MD)No.76 of 2011 dated 05.04.2011 and 20.05.2011 respectively.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.76 of 2011

1.Ganesan

2.Rajeswari

... Appellants/Accused No.1 & 2

Vs

State represented by
The Inspector of Police,
Jeyamangalam Police Station,
In Cr.No.2 of 2007,
Theni District.

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to admit this appeal on file and call for the records from the lower Court and set aside the Judgment of the Lower Court passed by the Learned Additional District Sessions Judge (Fast Track Court), Periyakulam, Theni District in S.C.No.59 of 2008, dated 28.02.2011, by allowing this appeal.

For Appellant : Mr.P.Senguttarasan

For Respondent : Mr.A.Robinson
Government Advocate (Crl.side)

JUDGMENT

The appellants are the husband and wife. They along with seven others were tried in S.C.No.59 of 2008 on the file of the Additional District Sessions Judge (Fast Track Court), Periyakulam. Vide Judgment dated 28.02.2011, A3 to A9 were acquitted while A2 was found guilty of the offence under Section 323 of IPC and sentenced to pay a sum of Rs.500/- as fine. A1 was found guilty for the offence under Section 304(ii) of IPC and sentenced to five years rigorous imprisonment and he was also



has been filed.

2.The prosecution case is that there was a pathway dispute between the accused on the one hand and the deceased Mayil on the other. On the occurrence day ie., 01.01.2007, a quarrel arose between the accused and the said Mayil. The accused are said to have assaulted the deceased. A1 was said to have hacked the deceased Mayil with M.O.1 Aruval on the left back side of her head. The occurrence had taken place at around 08.00 a.m. Mayil was taken by Sakkarai who was her close relative to Jeyamangalam Police Station. The Police instead of registering an FIR issued only CSR. Mayil was thereafter taken to Government Hospital, Periyakulam. Since her condition was rather serious, she was referred to the Government Hospital, Theni. In the said hospital, she was given treatment. But then, she succumbed to the injuries on 06.01.2007 and died. Based on Ex.P1-Complaint lodged by Sakkarai, Crime No.2 of 2007 was registered for the offences under Sections 341, 323, 324 and 506(ii) of IPC on 02.01.2007. FIR was altered to one Section 302(ii) of IPC following the death of Mayil on 06.01.2007. Investigation was undertaken and after completing all the formalities, the final report was filed against the nine accused for the various offences before the Judicial Magistrate, Periyakulam. Cognizance of the offence was taken and since the case was exclusively triable by the Sessions Court, it was committed vide P.R.C.No.15 of 2007. The case was made over to the Additional District and Sessions Judge (Fast Track Court), Periyakulam in S.C.No.59 of 2008. Charges were framed against the accused herein as follows:-

Accused	Charges
A1	148 and 302 of IPC
A2	147, 323 and 302 of IPC r/w 149

3.The accused pleaded not guilty and claimed to be tried. The prosecution examined as many as 15 witnesses and marked Exs.P1 to P11. On the side of the accused, only C.S.R was marked. M.O.1-Aruval was also marked. On the side of the accused, no other evidence was let in. The learned trial Judge, after a detailed consideration of the evidence on record, by the impugned Judgment dated 28.02.2011, acquitted A3 to A9, but convicted and sentenced the appellants as mentioned above. Challenging the same, this appeal has been filed.

4.The learned counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum. His foremost contention is that FIR itself was lodged with a delay of 25 hours. According to the prosecution, the occurrence had taken place on 01.01.2007 at about 08.00 a.m. But then, a mere look at the FIR would indicate that the same was registered only at 9.30



a.m., on 02.01.2007. The appellant's counsel would also draw my attention to the testimony of P.W.10 who examined Mayil initially. It is seen from the said testimony that the Doctor had informed that the deceased was hit by a stone by some known persons. But then, this clearly belies the eventual prosecution case that by using M.O.1, the deceased was hacked on the back side of her head. He also drew my attention to the cross examination of P.W.1 which causes considerable doubt on the recovery of M.O.1. The appellant's counsel submitted that the impugned Judgment will have to be reversed and wanted this Court to allow this appeal.

5.Per contra, the learned Government Advocate (Cr1.side) submitted that the impugned Judgment does not warrant any interference and wanted this Court to dismiss this appeal.

6.I carefully considered the rival contentions and perused the evidence on record. At the very out set, I must record my serious displeasure over the conduct of the respondent Police. This is a case where a woman suffered serious cut injury on her head. The complaint was lodged immediately before the Jeyamangalam Police Station. One Gandhi, Head Constable No.596 had received the complaint from Sakkari-P.W.1. The complaint clearly mentions about hacking on the head of Mayil with Aruval. But then, instead of straightaway registering an FIR, only C.S.R.No.1 of 2007 was issued. FIR itself came to be registered only on the next day ie., 02.01.2007 at about 9.30 a.m.,

7.As already pointed out, Mayil passed away on 06.01.2007. Her body was sent for postmortem and P.W.11 conducted postmortem on the body of the deceased and issued Ex.P7 postmortem certificate. Now the question that arises for consideration is whether the prosecution had established its case against the first appellant beyond reasonable doubt or not. The prosecution had examined the witness namely P.W.1-Sakkari. P.W.1-Sakkari had clearly stated that there was a pathway dispute between the accused and the deceased and that on the fateful day, A1 through M.O.1 Aruval hacked Mayil on the back side of her head. This testimony of P.W.1 could not at all be shaken during the cross examination. Of-course, P.W.10 Doctor who examined Mayil initially had stated that Mayil was hit on her head by a stone. But the appellant's counsel cannot take advantage of such answer given by the Doctor who initially treated her. The Hon'ble Supreme Court in the decision reported in **(1994) SCC (Cr1.) 424]** **(P.Babu and others v. State of Andhra Pradesh)** held as follows :

"It is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to a statement. At that stage the doctor was



required to fill up that column in a normal manner and it was not the duty of the doctor to enquire from the injured patient about the actual assailants and that the inquiry would be confined as to how he received the injuries namely the weapons used etc."

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8.This decision was followed by the Madras High Court recently in the decision reported in **2018 (1) MLJ (Cr1) 119 (Saranraj vs. State)**. The Doctor is not at all concerned as to who committed offence or the manner in which committed. His primary concern is only to give treatment to the person who came in an injured condition. It is quite possible that the statement was made to P.W.10 either by the injured victim Mayil herself or P.W.1 Sakkarai. But then, this discrepancy will not in any way advance the case of the appellant.

9.There is again no merit in the contention that FIR was registered belatedly. Jeyamangalam Police Station had been grossly negligent in discharging their duties. The appellant cannot derive any advantage out of it. This Court had a look at the original record. The complaint given by Sakkari had reached the Court concerned on 03.01.2007 itself. Mayil passed away only on 06.01.2007. The accused have marked Ex.D1-CSR issued by the Jeyamangalam Police Station. It clearly states that on 01.01.2007 itself P.W.1 -Sakkari had lodged a complaint. In the said CSR, the essence of the complaint has also been mentioned. It states that there was an attack with an Aruval. Ex.D1 marked by the accused coupled with Ex.P1 complaint and the testimony of Sakkari before the Court are sufficient to come to the conclusion that the prosecution had established its case against the appellants beyond reasonable doubt.

10.I find no ground to interfere with the conviction and sentence passed by the Court below. This Criminal Appeal stands dismissed. The Trial Judge is directed to secure the first accused to undergo the remaining period of sentence.

Sd/-

Assistant Registrar(AD-II)

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Sub Assistant Registrar(CS)

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To

1. The Additional District and Sessions Judge,
(Fast Track Court), Periyakulam.

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2. Do Through The Principal Sessions Judge, Theni.

3. The Judicial Magistrate, Periyakulam.

4. Do Through the Chief Judicial Magistrate, Theni.

5. The Superintendent, Central Prison, Madurai.

6. The Inspector of Police, Jeyamangalam Police Station,
Theni District.

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

Crl.A(MD)No.76 of 2011
24.07.2019

AL(CO)

TR(13.05.2020) 5P 8C