

**BAIL SLIP**

Ajmalkhan, Appellant / Accused, S/o. Mohamed Arif, is released on Bail vide Court order dated 25.3.2010 made in MP(MD)No.1 of 2010 in CrI.A(MD)No.104 of 2010.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED: 12.07.2019****CORAM****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CrI.A.(MD)No.104 of 2010**

Ajmalkhan

... Appellant / Accused

Vs.

State:

The Inspector of Police,
Karaikudi North Police Station,
Karaikudi,
Sivagangai District.

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C, to set aside the order passed by the learned Sessions Judge, Sivagangai in S.C.No.25 of 2009, dated 17.02.2010.

For Appellant : Mr.V.Kannan

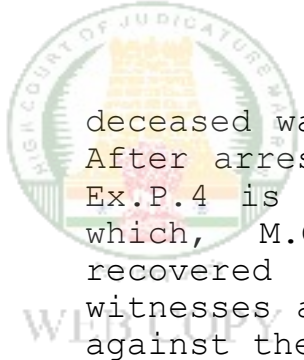
For Respondent : Mr.A.Robinson

Government Advocate (CrI. Side)

JUDGMENT

The appellant was convicted for the offence under Section 304 (ii) of I.P.C. and sentenced to undergo five years rigorous imprisonment vide judgment dated 17.02.2010 in S.C.No.25 of 2009, on the file of the learned Sessions Court, Sivagangai. Questioning the same, this criminal appeal has been filed.

2.The case of the prosecution is that the appellant as well as the deceased were beggars. P.W.1 and P.W.2 are also beggars. There was dispute among them with regard to sharing of the begging money. The deceased/Rajendiran @ Abdulla had thrown away the walking stick of the appellant, who was physically challenged. Angered by the same, the appellant is said to have hit the deceased on the back of his head with his walking stick (M.O.1). Due to such assault, the appellant fell unconscious and later died. This was found out only on the next morning. Thereupon P.W.1 along with P.W.2 went to Karaikudi North Police Station to lodge Ex.P.1/complaint. Based on the same, Ex.P.16/FIR was registered in Crime No.207 of 2008, for the offence under Section 302 of I.P.C. against the appellant herein. Investigation was undertaken by P.W.8, Inspector of Police, who visited the scene of crime and prepared Ex.P.2/observation mahazar and Ex.P.17/rough sketch. He collected samples of blood stained earth as well as samples without such blood stain. Inquest was conducted and Ex.P.18/inquest report was prepared. The body of the



deceased was sent to Government Hospital, Karaikudi for postmortem. After arresting the accused, his confession statement was recorded. Ex.P.4 is the admissible portion of the confession. Pursuant to which, M.O.1/walking stick, M.O.6/shirt and M.O.7/lungi were recovered from him. After recording the statement of other witnesses and completing all the formalities, final report was laid against the appellant under Section 302 of I.P.C. before the learned Judicial Magistrate, Karaikudi. Since the case was exclusively triable by the Sessions Court, the case was committed to the Sessions Court in P.R.C.No.12 of 2008, the case was taken on file in S.C.No.25 of 2009. Charge under Section 302 of I.P.C. was framed against the appellant and he was questioned on the same. The appellant pleaded not guilty of the charge and claimed to be tried.

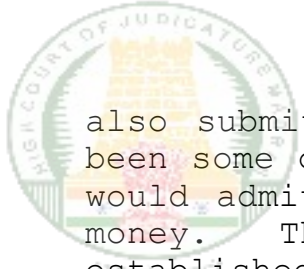
3.The prosecution examined as many as 8 witnesses and marked Exs.1 to 18. M.O.1 to M.O.8 were also marked. On the side of the accused no evidence was adduced.

4.The learned Trial Judge by judgment dated 17.02.2010 came to the conclusion that even though the appellant is not guilty of the offence under Section 302 of I.P.C., he was guilty of the offence under Section 304(ii) of I.P.C. and he was sentenced to undergo rigorous imprisonment for five years. Challenging the same, this criminal appeal has been filed.

5.The learned counsel appearing for the appellant reiterated all the contentions set out in the appeal memorandum. He would also point out that there was a serious discrepancy among the prosecution witnesses as to the time of the occurrence. While Ex.P.6/FIR would claim that the occurrence took place at 09.00 p.m. on 05.05.2008, P.W.1 would state that it occurred at 04.00 p.m. and P.W.2 would claim that it occurred at 05.00 p.m. Even though according to the prosecution witnesses the death of Rajendran @ Abdullah became known even at 06.00 a.m. in the morning. Ex.P.1/complaint was given only at 03.00 p.m. There is no explanation whatsoever for the delay. Even Ex.P.1/complaint and the FIR reached the Court after much delay.

6.The appellant's counsel would contend that from the testimony of P.W.1. one can come to the conclusion that the original complaint was given by Thangavelu and P.W.1. But in Ex.P.1/complaint, P.W.1 alone signed as defacto complainant. Her thumb impression is not found in Ex.P.1/complaint. From this the appellant's counsel would contend that an earlier complaint was lodged and that the same has been suppressed.

7.The other contention is that in M.O.1/walking stick, which was said to be the weapon of attack for causing the death of Rajendran @ Abdullah, no blood stain was discovered as per the serologist report. He would also draw my attention to the fact that admittedly the deceased was heavily drunk during the relevant point of time. Alcohol was found in his stomach, liver and kidney. He

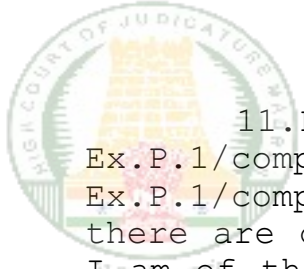


also submitted that the motive for the occurrence appears to have been some dispute over the sharing of the begging money. But P.W.2 would admit that there is no such practice of sharing the begging money. Thus, the very motive for the occurrence has not been established by the prosecution. The appellant's counsel would also submit that the appellant is physically challenged and he cannot move without walking stick. The appellant's counsel would therefore submit that the impugned judgment will have to be reversed and this appeal is to be allowed.

8.Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent would submit that the impugned judgment does not warrant any interference and that it has to be sustained.

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

10.It is true that there is no consistency among the prosecution witness with regard to the time of occurrence. P.W.1 would claim that when they were sharing the begging money, it was around 04.00 p.m. P.W.2 would claim that the occurrence took place around 05.00 p.m. in the evening. The charge against the appellant is that on 05.05.2008 at about 09.00 p.m., the accused hit the deceased on the back of his head with M.O.1/walking stick. But I am not persuaded by the appellant's counsel submission that on the ground of discrepancy in the matter of time, the case of the prosecution should be doubted. As rightly pointed out by the learned Government Advocate (Crl. Side) considering the social background of P.W.1 and P.W.2, this Court can safely ignore the discrepancy with regard to time. The fact remains that the accused suggested to P.W.2/Thangavelu that it was P.W.2/Thangavelu and P.W.1/Rani in order to grab the money of the deceased/Rajendran @ Abdullah murdered him and ran away to Aranthangi. Thus, the accused has come out with a specific case that Rajendran @ Abdullah died a homicidal death. Even according to the appellant, the death of Rajendran @ Abdullah was not natural. Now the only question that arises for consideration is that whether the prosecution had established its case beyond reasonable doubt against the appellant herein. It is not as if the appellant lodged any information before the Police with regard to the actual occurrence and that the same was suppressed by the prosecution. Admittedly, the appellant did not go to the Police Station. From the fact that alcohol was found inside the liver, kidney and stomach of the deceased, one can only come to the conclusion that he was heavily drunk during the relevant point of time. P.W.1 and P.W.2 have consistently deposed that when he was hit on the back of the head, he fell down and there was some oozing of blood, which the deceased wiped with his own shirt. P.W.12 had stated that they were under the genuine impression that the deceased had gone to sleep. Only on the next day, they came to know that Rajendran @ Abdullah had actually died.



11.P.W.1 is the defacto complainant, who gave Ex.P.1/complaint. She owned up the signature attributed to her in Ex.P.1/complaint. Though the appellant's counsel would contend that there are discrepancies between the testimonies of P.W.1 and P.W.2, I am of the view that they are not major and in any case do not go to the root of the matter. P.W.1 had deposed before the Court that when they were sitting in the occurrence spot near karaikudi new bus stand and were sharing the begging money, the deceased provoked the accused by throwing away his walking stick. Angered by the conduct of the deceased, the accused hit the deceased on the back of his head with M.O.1/walking stick. It is true that in M.O.1/walking stick no blood stain was noted by the Serologist. But it is not necessary that blood stain should be always found on the weapon of attack. Of course, as rightly pointed by the appellant's counsel, the Investigating Officer had claimed that in M.O.1/walking stick, blood stains were there. M.O.1 was seized on 06.05.2008 but the examination by the Serologist took place on 19.05.2008. It is quite possible that the blood stain on M.O.1 was so minimal that it got disintegrated in the meanwhile. In any event absence of blood stain on M.O.1 will not shake the case of the prosecution.

12.P.W.1 and P.W.2 are professional beggars and they along with the accused as well as the deceased have been begging in the same locality. While P.W.1 and P.W.2 would beg together, the deceased and the appellant would beg separately. The testimonies of P.W.1 and P.W.2 are quite convincing and credible and evoke the confidence of this Court.

13.The Court below after considering the evidence on record rightly came to the conclusion that the appellant could not be fastened with penal liability under Section 302 of I.P.C. The Court below rightly came to the conclusion that the appellant did not intend to cause the death of Rajendran @ Abdullah. But then hitting a person with walking stick that too on a vital part of the body cannot be condoned. The said act is to be presumed to have been done with the knowledge that it is likely to cause death. Therefore, I hold that the Court below rightly found the appellant guilty of the offence under Section 304(ii) of I.P.C. The sentence imposed on the appellant cannot be said to be excessive. I find no ground to interfere. The Criminal Appeal stands dismissed. The learned Trial Judge shall enforce this order. The bail bond executed by the appellant stands cancelled.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To:

1.The Principal Sessions Judge,
Sivagangai.

2.The Judicial Magistrate, Sivagangai

3.The Inspector of Police,
Karaikudi North Police Station,
Karaikudi,
Sivagangai District.

4.The Superintendent of Police,
Central Prison, Trichy.

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

+1 CC to M/s.V.KANNAN, Advocate (SR-75344[F] dated 16/07/2019)

Crl.A. (MD) No.104 of 2010

12.07.2019

SMA/13/01/2020/5P/7C