

**BAIL SLIP**

Palaniappan
S/o.Anandan Padayachi

... Appellant/Sole Accused

Was released on bail of this Court order dated 30.03.2009 made in MP(MD)No.1 of 2010 in CRL A(MD)No.108 of 2010.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.A.(MD)No.108 of 2010

Palaniappan

... Appellant/Sole Accused

Vs.

The State Rep. by
The Inspector of Police,
Pasupathipalayam Police Station,
Karur District.
(Crime No.708 of 2007)

... Respondent/Complainant

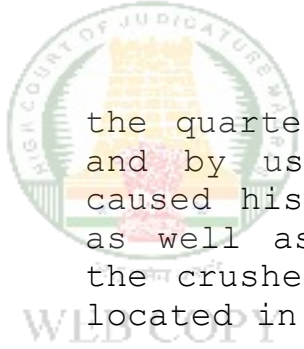
Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C, to set aside the judgment dated 25.02.2010 made in S.C.No.76 of 2009, on the file of the Sessions Court, Karur and allow the appeal.

For Appellant	: Mr.S.Gokulraj
For Respondent	: Mr.A.Robinson
	Government Advocate (Cr1. Side)

JUDGMENT

The appellant was found guilty of the offence under Section 304(i) of I.P.C. and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo further two months rigorous imprisonment vide judgment dated 25.02.2010 in S.C.No.76 of 2009, on the file of the learned Sessions Court, Karur. Challenging the same, this Criminal Appeal has been filed.

2.The case of the prosecution is that on 16.10.2007 at about 09.30 p.m. when Chinnapaiyan/deceased was sleeping outside
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the quarters of the crusher unit, the appellant went to the spot and by using M.O.1/Wooden log hit on his head repeatedly and caused his death. It is seen that both the appellant/Palaniappan as well as the deceased/Chinnapaiyan were working as labours in the crusher unit run by P.W.4/Chellamuthu. The crusher unit was located in Navaladi near Sukkaliyur.

3.The case of the prosecution is that the deceased was giving sexual torture to Kamalam, who is the wife of the appellant herein. This is said to be the motive for the appellant to attack the deceased on 16.10.2007 at about 09.30 p.m.

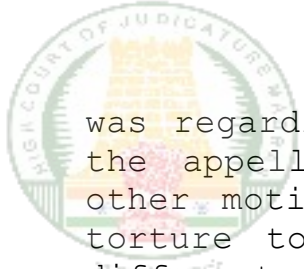
4.Immediately after the attack, the deceased became unconscious. He was rushed to Amaravathi Hospital by one Vijayakumar. The deceased was initially treated by P.W.9/Dr.Velusamy. The deceased succumbed to the injury on 19.10.2007 at about 04.45 a.m.

5.Immediately after the occurrence, one Chinnathambi lodged Ex.P.1/complaint, based on which, Crime No.708 of 2007 was registered on the file of Pasupathipalayam Police Station (Ex.P.10). The case was initially registered under Section 307 of I.P.C. Following the demise of Chinnapaiyan, FIR was altered to one under Section 302 of I.P.C. Ex.P.15 is the express report containing alteration of the FIR. P.W.14 is the Inspector of Police, who took over the investigation and after completing all the usual formalities filed the final report before the learned Judicial Magistrate No.I, Karur. Since the case was exclusively triable by the Sessions Court, it was committed to Sessions Court in P.R.C.No.17 of 2008. The case was tried in S.C.No.76 of 2009, on the file of the learned Sessions Court, Karur. Charges were framed against the appellant under Section 302 of I.P.C. The appellant denied the charges and claimed to be tried.

6.The prosecution examined as many as 14 witnesses and marked Exs.1 to 16. M.O.1 to M.O.3 were also marked. On the side of the accused no evidence was adduced.

7.The learned Trial Judge after a detailed consideration of the evidence on record came to the conclusion that the appellant did not have any intention to cause death of Chinnapaiyan and that therefore, he was convicted for the offence under Section 304(i) of I.P.C. Challenging this judgment of conviction and sentence and contending that he should be acquitted in toto, this criminal appeal has been filed.

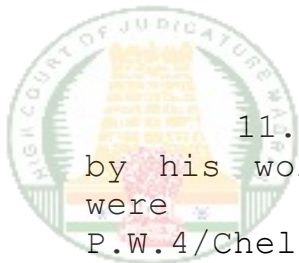
8.The learned counsel appearing for the appellant reiterated all the contentions set out in the appeal memorandum. ~~According to the prosecution~~, the prosecution had projected two versions. One



was regarding a petty quarrel that appears to have arisen between the appellant and the deceased regarding sharing of tea. The other motive is that the deceased is said to have given sexual torture to Kamalam. I am of the view that merely because two different versions have been projected in the testimony of the witnesses, that is not a ground to doubt the case of the prosecution. It is relevant to note here that in both the version Kamalam is figuring.

9. The other contention urged by the appellant's counsel is that the witnesses claimed that the appellant attacked the victim with a stick known in Tamil (kuchi). M.O.1 is actually a wooden log (Kattai). According to the appellant's counsel, there is a world of difference between stick and wooden log. But then, this aspect of the matter has been clarified by P.W.2/Jothimathi in the cross examination itself. When a question was put to the said witness that M.O.1 was actually a wooden log, the said witness clarified that even though M.O.1 is wooden log, they used to call it only as stick (Kuchi). The appellant's counsel would further claim that in this case recovery is also doubtful. Though in Ex.P.1/complaint, it had been stated that the weapon of attack was left in the spot itself, it was actually recovered from a far away place. He would also claim that the occurrence spot itself is doubtful. More than anything else one Vijayakumar who admitted the deceased in the Hospital was not examined. Likewise, Kamalam wife of the appellant, who is a central character in the entire incident has also not been examined.

10. I am of the view that non-examination of these witnesses again will not shake the case of the prosecution. The appellant as well as the deceased/Chinnapaiyan were working in the crusher unit, run by P.W.4/Chellamuthu. P.W.1, P.W.2 and P.W.3 are all workers working in the very same unit. It is not the case of the appellant that these workers have any animosity towards him. All these witnesses have clearly testified that when Chinnapaiyan was sleeping outside the workers quarters, the appellant assaulted him on his head with M.O.1/Wooden log and thereby, caused his death. Their testimony could not be shaken in the cross-examination. Of course the appellant's counsel would bring out the fact that these witnesses had not actually seen the appellant attacking the deceased on his head and that they became aware of what was happening only when some alarm was raised. Even that would not weaken or undermine the prosecution case. The presence of the appellant and the role played by him had been spoken in unambiguous and categorical terms by the eye witnesses. Even if they had actually not seen the attack, they had seen the appellant a few seconds later and this would not detract from the value of their testimony.



11.P.W.4 is the owner of the crusher unit. He was informed by his workers that the deceased/Chinnapaiyan and the appellant were quarreling with each other. When P.W.4/Chellamutu came to the spot, he saw the deceased/Chinnapaiyan was lying on the floor. He immediately arranged to have him taken to the hospital. Even though P.W.4 is not an eye witness, his evidence is relevant to show that he received information about the quarrel between the appellant and the deceased. The observation mahazer/Ex.P.2 and rough sketch/Ex.P.11 were prepared in the presence of P.W.6 and he had signed in the same as one of the eye witnesses. The blood stained earth samples and earth samples without blood stain were also collected in his presence. P.W.7 is the son of the crusher unit owner. The appellant was arrested and P.W.7 had signed in the confession given by the appellant. Pursuant to the confession made by the appellant, M.O.1/wooden log was seized. Admissible portion is Ex.P.5. P.W.7 had signed in Ex.P.5. P.W.7 could not be shaken in the cross-examination. P.W.7 is not some stock witness; he is the son of crusher unit owner. Therefore, I hold that the recovery of M.O.1 had been proved through Ex.P.5 and by examination of P.W.7.

12.P.W.8 is the son of deceased. He speaks about the quarrel that took place between the appellant and the deceased prior to the occurrence. He also claims to be an eye witness. P.W.9 is the Doctor, who treated the deceased initially. Ex.P.6 is the Accident Register Entry, which also contains the intimation to the police. In Ex.P.6, it has been mentioned that the deceased/Chinnapaiyan was attacked only by a known person. This in my view quite significant. The entry in the Accident Register is consistent with the prosecution case. P.W.10 is the Doctor, who performed the postmortem. He had clearly stated that the deceased had suffered injury only on the head and not on any other part, the inner parts of the body were not sent for chemical examination. P.W.11 is the constable, who took the express report as well as the alteration of FIR to the Magistrate. P.W.12 is the Head Constable, who handed over the body for postmortem and then to the relatives. P.W.13 is the Sub Inspector of Police, who registered the FIR. P.W.14 is the Investigating Officer, who carried out the investigation and laid the final report.

13.The learned Trial Judge has been rather indulgent. This is a case in which the accused/appellant herein clearly had motive against the deceased. He had gone to the spot when the deceased was sleeping. He hit him with M.O.1/wooden log on his head. Though the deceased did not die on the spot, he died later. The occurrence was witnessed by quite a few witnesses, who are all natural witnesses. All of them are workers of the crusher unit.

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accused did not have any intention to cause the death of Chinnapaiyan.

14. The eye witnesses have clearly deposed about the role played by the appellant herein. The learned Trial Judge has found them to be credible. The prosecution has thus proved the involvement of the appellant in the occurrence beyond reasonable doubt. Of course the prosecution came out the case of murder. But then, the Court below chose to render the finding of guilt only under Section 304(i) of I.P.C. The appellant in my view is lucky. The State has not filed any appeal, challenging the acquittal of the appellant for the offence under Section 302 of I.P.C. I find no ground to interfere with the finding of the conviction. However, taking note of the fact that the deceased is having three children to support, the sentence of imprisonment is reduced from seven years rigorous imprisonment to five years rigorous imprisonment. In all other aspects, the judgment of the Court below is confirmed. With this modification in the matter of sentence, the criminal appeal is partly allowed.

Sd/-

Assistant Registrar(AD-II)

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Sub Assistant Registrar(CS)

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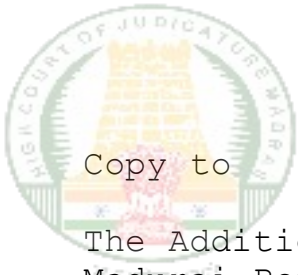
1. The Sessions Court,
Karur.

2. The Judicial Magistrate, Karur.

3. The Chief Judicial Magistrate, Karur.

4. The Superintendent,
Central Prison, Trichy.

5. The Inspector of Police,
Pasupathipalayam Police Station,
Karur District.



Copy to

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

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+1 CC to M/s.S.GOKULRAJ, Advocate (SR-75282[F] dated 15/07/2019)

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15.07.2019

srk(CO)
TR(10.06.2020) 6P 8C