



Bail Slip

Raja @ Rajkumar, S/o. Vallavasamy, sole accused was released on bail vide order of this Court dated 26.02.2010 made in MP(MD)No.1 of 2010 in CRL A(MD)No.28 of 2010.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANCrl.A.(MD)No.28 of 2010

Raja @ Rajkumar

... Appellant/Accused

Vs.

State : The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai District.

... Respondent/Respondent

Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the Judgment passed by the learned Sessions Judge, Sivagangai, in S.C.No.27 of 2008, dated 11.01.2010.

For Appellant : Mr.Mohamed Sherbudeen

For Respondent : Mr.S.Bharathi,

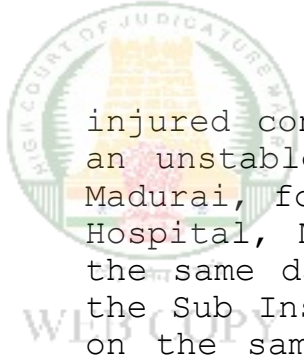
Government Advocate (Crl. Side).

JUDGMENT

The appellant was found guilty of the offence under Section 304 Part-II of I.P.C and sentenced to undergo 5 years Rigorous Imprisonment and also to pay a fine of Rs.1,000/- vide Judgment dated 11.01.2010 in S.C.No.27 of 2008 on the file of the learned Sessions Judge, Sivagangai. Questioning the same, this Criminal appeal has been filed.

2. Heard the learned counsel on either side.

3. The case of the prosecution is that on 09.12.2007 at about 12.40 p.m, the Government Transport Corporation bus bearing Registration No.TN 63-N-0742 was plying in Melur-Sivagangai road. When it was crossing Pudhupatti Village, the appellant and his wife tried to board the running bus. This was censured by the deceased who was the conductor in the said bus. This led to altercation between the appellant and the deceased. The appellant is said to have kicked the deceased conductor who fell down from the moving bus and suffered fatal injury. He was rushed to Sivagangai Government Hospital at around 1.00p.m. The driver of the bus had taken the



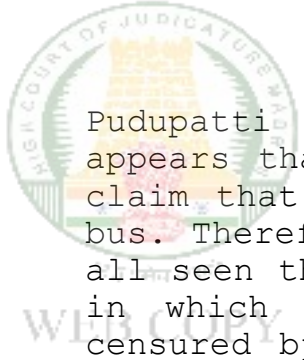
injured conductor to the hospital. Since he was unconscious and in an unstable state, he was referred to Government Rajaji Hospital, Madurai, for further treatment. He was admitted in Government Rajaji Hospital, Madurai, at around 3.15 p.m. He died in the evening on the same day. The driver of the bus lodged Ex.P.1 complaint before the Sub Inspector of Police, Town police station, Sivagangai. Based on the same, Crime No.794 of 2007 was registered for the offence under Section 302 of I.P.C.(Ex.P.9).

4. The appellant herein was named as the sole accused in the First Information Report. Investigation was taken up by P.W.15 Inspector of Police. After arresting the appellant and after recording the statement of the witnesses and after completing all the usual formalities, P.W.15 laid final report before the learned Judicial Magistrate No.1, Sivagangai. Since the case was exclusively triable by the Sessions Court, it was committed to the Sessions Court in P.R.C.No.1 of 2008. The case was taken up for trial in S.C. No.27 of 2008 on the file of the learned Sessions Judge, Sivagangai.

5. Charge under Section 302 of I.P.C. was framed against the appellant herein. The appellant denied the charges and claimed to be tried. The prosecution examined 15 witnesses and marked Ex.P.1 to Ex.P.14. M.O.1 to M.O.4 were also marked. On the side of the accused, Ex.D.1 Death Intimation Report was also marked. The learned trial Judge after a consideration of the evidence on record, came to the conclusion that the findings against the appellant herein was liable to be convicted for the offence under Section 304 Part-II of I.P.C. and sentenced the appellant to undergo five years Rigorous Imprisonment and he was levied with a fine of Rs.1,000/-. Challenging the same, this Criminal Appeal has been filed.

6. The learned counsel appearing for the appellant reiterated the contentions set out in the memorandum of grounds. His core argument is that P.W.2 could not have been an eyewitness. Likewise P.W.1 who is the defacto complainant in this case also could not have been an eyewitness. If the testimony of these two witnesses are eschewed, there is no evidence whereby the Court can sustain the conviction of the appellant. He would alternately project the theory that in the road in question, there were quite a few speed breakers and that the deceased was standing in the footboard and when the bus crossed the speed breaker, the conductor lost his balance, fell on the road and died. In other words, the appellant's counsel's submission is that P.W.1 the driver of the bus in question wanted to shift the blame.

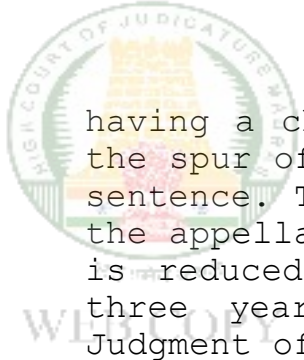
7. I am unable to agree with the submissions of the appellant's counsel. P.W.1 was the driver of the bus in question. He had categorically stated that when the bus had started from



Pudupatti bus stop, the appellant and his wife came running. It appears that they boarded the running bus. Of course P.W.1 would claim that when he saw the appellant and his wife, he stopped the bus. Therefore, P.W.1 cannot be treated as somebody who has not at all seen the occurrence. P.W.1 had clearly deposed about the manner in which the appellant boarded the bus, how he was seriously censured by the deceased and how there was an altercation between the two eventually resulting in the occurrence in question.

8. From Ex.P.4, one can see that it was P.W.1 who had taken the deceased to the hospital. In Ex.P.1 which was lodged before the respondent police at about 6.30 p.m, P.W.1 had clearly named the appellant as the person who was responsible for the occurrence. Of course P.W.1 and the appellant did not have any prior acquaintance. But in Ex.P.1 complaint, he had described him as some one who had taken vow of Sabarimala pilgrimage. He had also mentioned that after the conductor fell down, he came to know that he was Raja, son of Vallavasamy, Pudupatti, who kicked the deceased out of the bus. Of course in the testimony of P.W.1, he had not stated as to who revealed the identity of the appellant. But that would not weaken the prosecution case. The appellant is a resident of Pudupatti. He hails from that village. The bus was about to start from Pudupatti bus stop and was on the move, when he came running along with his wife to board the bus. Since the appellant is said to have run away after he realised that the conductor fell down from the moving bus. Therefore, it was very natural for the driver to make an enquiry as to who that person was. It is relevant to note that in Ex.P.1 complaint registered on the same day, the name of the appellant had been implicated. P.W.1 and the appellant are not in inimical terms. P.W.1 also stated that P.W.2 had travelled as a passenger in the said bus. P.W.1 identified the appellant in the Court also. P.W.2 had also spoken graphically about the manner of occurrence. I am therefore satisfied that the prosecution had proved the involvement of the appellant beyond reasonable doubt. I am satisfied that it was the appellant who boarded the running bus, angered by the harsh words used by the deceased conductor, had hit him. As a result, the conductor lost his balance and fell down on the road. Of Course, the appellant would not have intended the death of the deceased. But then, physically attacking someone who is standing on the footboard would definitely lead to his death. The appellant must be imputed with the knowledge that his act would lead to the death of the victim.

9. I therefore sustain the conviction imposed by the Court below on the appellant under Section 304 Part-II of I.P.C. Now comes the question of sentence. The appellant and the deceased were not enemies. The appellant became enraged, when he was scolded by the deceased. This Court is able to visualise the situation. Only out of a sudden provocation, the appellant had attacked the deceased and he did not have any malicious intention as such. The appellant is



having a child to support. Since the occurrence took place more at the spur of the moment, this Court shows indulgence in the matter of sentence. Therefore, even while sustaining the conviction imposed on the appellant, the sentence of imprisonment imposed on the appellant is reduced and modified from five years Rigorous Imprisonment to three years Rigorous Imprisonment. In all other respects, the Judgment of the Court below is affirmed.

10. The Criminal Appeal stands partly allowed, accordingly. The period of incarceration already undergone by the appellant will be set off under Section 428 of Cr.P.C. No costs.

Sd/-

Assistant Registrar(Writ)

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/ /2020

Sub Assistant Registrar(CS)

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To:

1. The Sessions Judge, Sivagangai.
2. The Chief Judicial Magistrate,
Sivagangai District.
3. The Judicial Magistrate NO.1, Sivagangai,
Thro the CJM, Sivagangai District.
4. The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai District.
5. The Superintendent, Central Prison, Trichy.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
7. The Section Officer,
Criminal Section (Criminal Record Section),
Madurai Bench of Madras High Court, Madurai.

Cr1.A. (MD) No.28 of 2010
15.07.2019

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