



BAIL SLIP

The Appellant/Accused was directed to be released on Bail made in CRL.MP(MD)No.1/2010 in CRL.A(MD)No.390/2010 dated 09/11/2010 on the file of the Madurai Bench of Madras High Court.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2019

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A. (MD)No.390 of 2010

G.Chandru

... Appellant/Accused No.1

Vs.

The State through
The Inspector of Police,
Kollidom Police Station.
(Crime No.303 of 2008)

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C, to set aside the judgment and conviction passed by learned I Additional District and Sessions Judge (PCR), Tiruchirapalli, dated 15.10.2010, made in S.C.No.158 of 2009.

For Appellant : Mr.S.Balakarthick

For Respondent : Mr.A.Robinson

Government Advocate (Crl. Side)

J U D G M E N T

The appellant was convicted for the offence under Section 304(ii) of I.P.C. and sentenced to undergo five years rigorous imprisonment and also levied with fine of Rs.5,000/- vide judgment dated 15.10.2010 in S.C.No.158 of 2009, on the file of the learned I Additional District and Sessions Judge (PCR), Trichirappalli.

2.The prosecution case is that P.W.13/Mayakrishnan was owning a coconut grove. In the said coconut grove on 24.08.2008 in the forenoon, P.W.1/Prabhu, P.W.2/Sathiya and the deceased Prakash went to pluck tender coconuts. It appears that the said coconut grove had already been purchased by the brother of the appellant. He therefore objected to the act of trespass committed by P.W.1, P.W.2 and the deceased. P.W.1/Prabhu is said to have claimed that since the sale deed had not yet been registered, they are entitled to usufructs. This gave rise to the quarrel between the three



accused on the one hand and P.W.1, P.W.2 and the deceased on the other. In the course of the quarrel, the appellant is said to have hit Prakash with M.O.1/Bamboo Stick. Prakash was rushed to Government Hospital, Srirangam. Intimation was given to the police, who came to the hospital and recorded his statement. Based on the statement/Ex.P.5 given by Prakash, Crime No.303 of 2008 was registered for the offence under Sections 341 and 307 of I.P.C. on the same day at 01.30 p.m. (Ex.P.6). On 26.08.2008, Prakash passed away and the FIR was altered and after conducting investigation and completing all the usual formalities, final report was filed against the appellant and two others for the offence under Sections 302 and 302 r/w. 34 of I.P.C. before the learned Judicial Magistrate No.IV, Trichirappalli. The case was committed to Sessions Court vide P.R.C.No.27 of 2008. It was made over to the learned I Additional District and Sessions Judge (PCR), Tiruchirappalli in S.C.No.158 of 2009. Charges were framed against the accused. The accused pleaded not guilty and claimed to be tried.

3.The prosecution examined as many as 14 witnesses and marked Exs.1 to 17. M.O.1 to M.O.3 were also marked. On the side of the accused Ex.D.1/sale deed, dated 02.06.2008 executed by Mayakrishnan was marked.

4.The learned Trial Judge after detailed consideration of the evidence on record acquitted A2 and A3 but convicted the appellant for the offence under Section 304(ii) of I.P.C. and sentenced him as mentioned above. Questioning the same, this criminal appeal has been filed.

5.The prosecution case is that the injury on the head of the deceased was caused by M.O.1/Bamboo Stick. But then, the medical evidence is to the effect that it was a cut injury. But then a Bamboo Stick with a sharp edge is certainly capable of causing the cut injury which was found on the head of the deceased.

6.The learned Government Advocate (Crl. Side) pointed out that the information was lodged immediately after the occurrence and the FIR was registered immediately. Both the complaint as well as the FIR reached the Court on the very next day i.e., 25.08.2008 at about 03.45 p.m. It is relevant to note that till then Prakash was very much alive. Prakash died only on the next day i.e., 26.08.2008. This clearly reinforces the genuineness of the prosecution.

7.Even though the motive appears to be rather trivial, the case against the appellant stands established by Ex.P.5. This can be construed as dying declaration. The occurrence had taken place at about 11.30 a.m. on 24.08.2008. FIR was registered on the same day at about 01.30 p.m. The Srirangam Police went to Government



Hospital, Srirangam and recorded the statement of Prakash. Prakash was in a fit condition to give a statement as could be seen from the signature, he had affixed on Ex.P.5. In Ex.P.5, he had clearly and categorically implicated the appellant. He had stated that it was the appellant, who hit him on his head. Prakash died on 26.08.2008. The postmortem certificate/Ex.P.8 mentions that the cause of the death was the cranio-cerebral wounds suffered by Prakash. P.W.1 as well as P.W.2 were with Prakash in the coconut grove. Both of them had stated that it was the appellant, who hit the deceased with M.O.1. I am therefore satisfied that the prosecution had established the involvement of the appellant beyond reasonable doubt. The Court below rightly convicted the appellant for the offence under Section 304(ii) I.P.C.

8.In fact, having regard to the evidence on record, the learned counsel appearing for the appellant does not challenge the conviction, he is only pleading for modification and reduction in the matter of sentence. The appellant's counsel would point out that the appellant had met with a major accident and suffered head injury. It appears that a part of his body is not capable of any movement. The appellant had also produced a copy of the disability certificate issued by the Welfare Department. Taking note of the present condition of the appellant, I am of the view that interest of justice will be served by reducing the sentence of imprisonment from five years rigorous imprisonment to 18 months simple imprisonment. This Court imposes only simple imprisonment on the appellant taking note of his current physical condition. The prison authorities will cause examination of the appellant and the appellant will be appropriately treated by taking into account his disability condition. With this modification in the matter of sentence, this criminal appeal is partly allowed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To:

1. THE I ADDITIONAL DISTRICT AND
SESSIONS JUDGE (PCR),
TIRUCHIRAPALLI.

2. INSPECTOR OF POLICE
KOLLIDOM POLICE STATION,
TRICHY.

<https://hcservices.ecourts.gov.in/hcservices/>



3. THE PRINCIPAL SESSIONS JUDGE,
TRICHY.

4. THE JUDICIAL MAGISTRATE NO.I,
TIRUCHIRAPPALLI.

5. THE CHIEF JUDICIAL MAGISTRATE,
TIRUCHIRAPPALLI.

6. THE SUPERINTENDENT,
CENTRAL PRISON, TIRUCHIRAPPALLI.

7. THE RECORD KEEPER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI. (2 COPIES)

+1CC TO MR.M.KARUNANITHI, Advocate Sr. No. 79552

Crl.A.(MD)No.390 of 2010
31.07.2019

GRC (CO)
TR (14.08.2019) 4P 10C