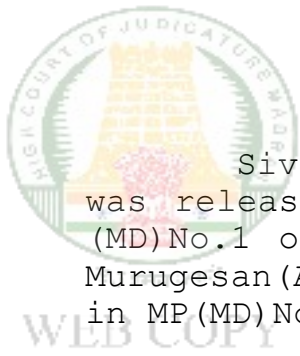


**BAIL SLIP**

Sivakumar, S/o.Mokkasamy, aged about 30 years, 2nd accused was released on bail vide Court order dated 28.02.2011 made in MP (MD)No.1 of 2011 in Cr1 A(MD)No.429 of 2010 and Nagaraj (A-1) and Murugesan(A-3) were released on bail on 30/11/2010 vide order made in MP(MD)No.1 of 2010 in the Cr1 A(MD)No.429 of 2010.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.A(MD)No.429 of 2010

- 1.Nagaraj
- 2.Sivakumar
- 3.Murugesan

... Appellants/Accused Nos.1 to 3

Vs

State rep. by
Inspector of Police,
Theni Police Station,
Theni.
(Crime No.448/2009)

... Respondent/Complainant

PRAYER: Criminal Appeal is filed under Section 374(2) of Cr.P.C., to set aside the Judgment and Conviction dated 14.10.2010 by the learned Additional District Sessions Judge (FTC), Periyakulam in S.C.No.2 of 2010 and acquit the appellants.

For Appellants : Mrs.R.Chinna Ponnu
Legal Aid Counsel

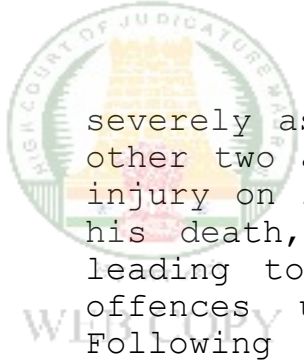
For Respondent : Mrs.S.Bharathi
Government Advocate (Cr1.side)

JUDGMENT

The appellants are three in number. They were convicted and sentenced by the impugned Judgment in S.C.No.429 of 2010 on the file of the Additional District and Sessions Court, Fast Track Court, Periyakulam, as follows:

Accused	Penal Provision	Punishment
A1 and A3	304 (ii) r/w 34 IPC	To undergo 10 rigorous imprisonment.
A2	304(ii)	To undergo 10 years rigorous imprisonment.

2. The case of the prosecution is that on 20.04.2009, at about 2.30 p.m., due to petty quarrel, the deceased Ganesan was



severely assaulted on his chest portion by A2-Sivakumar, while the other two accused held him. Ganesan died, as a result of the said injury on 24.04.2009, at about 1.45 p.m. In this regard, prior to his death, Ganesan himself lodged Ex.P7 complaint on 21.04.2009, leading to registration of FIR in Crime No.448 of 2009 for the offences under Sections 323, 341, 324 and 506(ii) of IPC. Following the death of Ganesan, FIR was altered and alteration report vide Ex.P15 was submitted. Final report came to be laid against the appellants for the offences under Sections 302 and 302 r/w 34 of IPC before the Judicial Magistrate, Theni. Cognizance of the offence was taken and the case was committed to the Sessions Court in P.R.C.No.10 of 2009. It was made over to the Additional District and Sessions Judge, Fast Track Court, Periyakulam for trial in S.C.No.2 of 2010. As against the second accused-Sivakumar charge was framed under Section 302 of IPC. As against A1 and A3, charge was framed under Section 302 r/w 34 of IPC. The appellants pleaded not guilty to the charges and claimed to be tried. The prosecution examined 18 witnesses and marked Ex.P1 to Ex.P16 and M.O.1. The learned trial Judge, by the impugned Judgment dated 14.10.2010, while acquitting the appellants of the charge under Section 302 of IPC, convicted the appellants for the lesser offence under Section 304(ii) of IPC and sentenced them as mentioned above. Questioning the same, this criminal appeal came to be filed.

3. When the case was taken up for hearing, there was no representation on the side of the appellants. This Court, therefore, directed the Registry to appoint a Legal Aid Counsel. The learned Legal Aid Counsel appeared today and reiterated all the contentions set out in the appeal memorandum. She also took me through detailed written notes and wanted this Court to reverse the impugned Judgment and acquit the appellant in toto.

4. Per contra, the learned Government Advocate (Crl.side) submitted that the impugned Judgment does not warrant any interference.

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

6. In support of its case, the prosecution examined P.W.1 who is the friend of the deceased. P.W.2 is also a friend of the deceased. P.W.3 is the brother of the deceased. P.W.4 and P.W.5 are fellow villagers. P.W.6 is a Mahazar Witness who turned hostile. P.W.7 is also a mahazar witnesses. P.W.8 had treated Ganesan. P.W.13 performed the postmortem.

7. The learned counsel appearing for the appellant contended that Ex.P7-Complaint said to have been given by the deceased Ganesan prior to his death, cannot inspire the confidence of this Court. She pointed out that though it is dated 21.04.2009, it appears to have reached the Court only on 24.04.2010. But the Court seal bears the date 27.04.2010. The date 20.04.2009 at about 2.30 p.m., had been inserted in the complaint. These erasures and interrelations



throw considerable doubt as to whether Ganesan could have really given a complaint or not.

8. I am also of the view that Ex.P7-Complaint cannot be believed. It has obviously been prepared later. But then, there are eye witnesses to the occurrence. P.W.1 is a close friend of the deceased. He had clearly deposed that on 20.04.2009, he contacted Ganesan over phone and requested him to accompany him to Theni. Ganesan is an auto driver. The association meeting was going on at Aranmanai Poothoor below the new bridge. When P.W.1 went there, he saw the auto of the deceased. He sat in it along with the brother of the deceased namely Thiagu. Ganesan asked them to wait in the auto. When they were sitting in the auto along with one Prabu, Al-Nagaraj came to the spot. Seeing P.W.1 wearing coloured sun glasses, he assaulted him and threw it away. Seeing this, Prabhu went to fetch Ganesan. When Ganesan protested, the fury of Nagaraj turned towards Ganesan. While Nagaraj and Murugesan caught hold Ganesan, Sivakumar took M.O.1-Stone that was lying nearby and gave him a hard blow on his chest portion. Ganesan collapsed. Immediately, P.W.1, Thiagu-P.W.3 and Prabu-P.W.2 took Ganesan to Vinayagam Hospital. He was given first aid and then, he was referred to another hospital. After ECG was taken, it was stated that the condition of the Ganesan was quite serious and he was referred to Government Hospital. Ganesan was in ICU for about three days and died 24.04.2009 at about 1.45 p.m.

9. Ex.P13 is the Accident Register extract issued by the Theni Medical College Hospital, Theni. It also states that the Ganesan was brought by his brother Thiagu. P.W.1 states that he was sitting in the auto along with P.W.3-Thiagu and P.W.2-Prabhu, were also present. All these three are eye witnesses. They have strongly supported the prosecution case and the testimony of P.W.1 is more than corroborated by the testimony of P.W.2 and P.W.3. That is why, even if this Court does not take into account the so called complaint Ex.P7 attributed to the deceased Ganesan, still the prosecution case can effectively rest on the testimony of these three witnesses.

10. Ex.P11 is the postmortem report. Ex.P12 contains the final opinion. It has been mentioned that the deceased would appear to have died of Myocardial Infraction. Thus, the testimony of P.W.1 to P.W.3 as to what had happened is corroborated by the medical opinion also.

11. There is no previous motive for P.W.1 to falsely implicate the appellants herein. It appears that the first appellant Nagaraj felt infuriated P.W.1's brother who was wearing coloured dark sun glasses. Wearing of coloured dark sun glasses is said to be a mark of superiority. This was objected to by Nagarajan. He not only threw away the sun glass worn by P.W.1, but also assaulted him. This was objected by Ganesan. Therefore, the appellants' fury turned towards Ganesan. The whole occurrence



appears to have taken place all on a sudden. There was no pre-meditation. That is why, the Court below rightly acquitted the appellants of the charge under Section 302 of IPC. But then, they were found guilty of a lesser offence.

12. I am of the view that the Court below has given strong and convincing reasons for finding the appellants guilty. On a careful re-appreciation of the entire evidence on record, I do not find any ground to take a different view. Therefore, the conviction of the appellants for the offence under Section 304(ii) of IPC stands confirmed. Now comes the question of sentence.

13. The learned counsel would submit that the Court below had imposed uniform sentence of 10 years rigorous imprisonment on all the three appellants. She pointed out that A1 and A3 only caught hold the deceased and it was A2-Sivakumar who gave the fatal blow on Ganesan. She further contended that imposing an uniform sentence on all the three accused cannot be justified. I find considerable force in the said submission. The entire occurrence was triggered by the unjustified conduct of A1-Nagaraj. Therefore, A1-Nagaraj and Murugesan cannot be placed on the same pedestal. A3-Murugesan merely appears to have caught hold of the deceased and he had not done anything. Therefore, even while sustaining the conviction of A3-Murugesan, I modify and reduce the sentence of his imprisonment to the period already undergone by him. But then, Nagaraj cannot be viewed so leniently. It was he who had egged Sivakumar to commit the crime in question. Even while sustaining the conviction imposed on A1-Nagaraj, the sentence of imprisonment is modified and reduced from ten years rigorous imprisonment to three years rigorous imprisonment. The period of incarceration already undergone by him will be set off in terms of Section 428 of Cr.P.C. As far as A2-Siva Kumar is concerned, taking note of the other mitigating circumstances, the period of imprisonment is reduced from 10 years rigorous imprisonment to five years rigorous imprisonment.

14. With this modification in the matter of sentence, this criminal appeal is partly allowed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

- 1.The Additional District Sessions Judge (FTC), Periyakulam.
- 2.The Principal Sessions Judge, Theni.
- 3.The Chief Judicial Magistrate, Theni.
- 4.The Judicial Magistrate, Theni.
- 5.The Superintendent, Central Prison, Madurai.
- 6.The Inspector of Police,
Theni Police Station,
Theni.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+ 1cc to Mr.R.CINNA PONNU ,Advocate, SR No.83019

Cr1.A(MD)No.429 of 2010
22.08.2019

KK/27.05.2020/ 5P- 9C