



Bail Slip

The Appellant/Accused No.1 viz., Jeyapandi, Male, 56/13, S/O.Thangaiah Nadar in the above Criminal Appeal, was directed to be enlarged on bail vide order of this Hon'ble Court made in MP(MD) No.1/2013 in Crl A(MD)No.69/2013 dated 27.02.2013.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A. (MD)No.69 of 2013

Jeyapandi

... Appellant/Accused No.1

Vs

State represented by
The Inspector of Police,
Panakudi Police Station,
Tirunelveli District.
(Crime No.406 of 2011)

... Respondent/Complainant

PRAYER: Appeal filed under Section 374 of Criminal Procedure Code, to set aside the Judgment dated 19.02.2013 passed in S.C.No.183 of 2012 on the file of the III-Additional Sessions Judge, Tirunelveli and acquit the appellant/accused No.1 of all charges.

For Appellant : Mr.C.S.S.Pillai
for Mr.J.Ashok

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

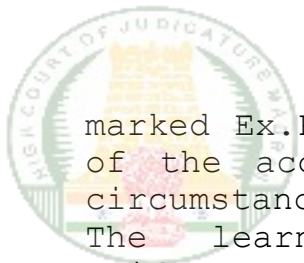
JUDGMENT

The appellant was convicted and sentenced by the Third Additional District and Sessions Judge, Tirunelveli, in S.C.No.183 of 2012 vide Judgment dated 19.02.2013 as follows:-



1 st Accused	(i) Acquitted for offence under Section 294(b) IPC and S.3 of TNPPDL Act (ii) Convicted for offence under Section 326 of IPC for causing grievous injury against P.W.1 and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.5000/- in default to undergo three months rigorous imprisonment. (iii) Convicted for offence under Section 304(ii) IPC for causing culpable homicide not amounting to murder and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for six months.
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2.The prosecution case is that P.W.1 Ramesh is the brother of A2-Kalaiyarasi and the appellant herein is the husband of Kalaiyarasi. A3-Prasanth @ Rajendra Prasath is the son of A1 and A2. Ramesh and Kalaiyarasi had a civil dispute pending before the Valiyoor Court. While so, on 14.09.2011, at about 04.00 a.m., P.W.1 was taking his lorry for loading. According to P.W.1, he stopped the lorry before the local temple. The accused were coming from the opposite direction. The accused are said to have picked up quarrel with P.W.1. On the ensuing scuffle, Gomathi Nayakam-driver of P.W.1's lorry also intervened. It is the case of the prosecution that A1 to A3 assaulted P.W.1-Ramesh and his driver Gomathi Nayakam with M.O.1-Jockey Lever. P.W.1 suffered fracture on his arm, while Gomathi Nayakam suffered fatal injuries. Both were rushed to the hospital. Gamathi Nayakam was brought dead. In this regard, P.W.1-Ramesh lodged Ex.P1-Complaint before the Panakudi Police Station. Ex.P22-FIR in Crime No.406 of 2011 was registered for the offences under Sections 294(B), 323, 342, 324, 302 IPC and Section 3 of TNPPDL Act. Investigation was undertaken and after completing the usual formalities, final report was filed before the Judicial Magistrate, Valliyoor. Cognizance of the offences was taken. Since the case was exclusively triable by the Sessions Court, it was committed in P.R.C.No.11 of 2012. It was made over to the Third Additional District and Sessions Judge, Tirunelveli in S.C.No.183 of 2012. Charges were framed against the appellant under Sections 294(b), 326 and 302 of IPC. The accused denied the charges and claimed to be tried. The prosecution examined 18 witnesses and

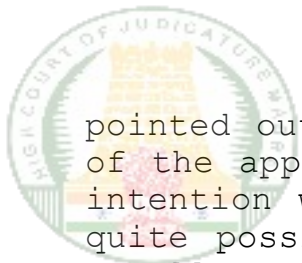


marked Ex.P1 to Ex.P25. M.O.1 to M.O.11 were marked. On the side of the accused, two witnesses were examined. The incriminating circumstances were put to the accused under Section 313 of Cr.P.C. The learned trial judge, after a detailed consideration of the evidence on record, acquitted A2 and A3 and convicted and sentenced the appellant/A1 alone as mentioned above. Challenging the same, this appeal has been filed.

3.It is relevant to mention here that the occurrence, according to the prosecution, took place on 14.09.2011 at about 04.00 a.m. P.W.1 was rushed to the private hospital initially and there from, referred to the Government Medical College Hospital at Asaripallam. Ex.P19 and Ex.20 is the extract of the accident register. It can be seen there from that P.W.1 was admitted at about 6.30 a.m. It is mentioned in the said accident register that P.W.1 was assaulted by the four known persons by using iron rod. P.W.1 had clearly testified that he had suffered a fracture on his left arm. This was confirmed by the earliest entry made vide Ex.P19 and Ex.P20. Intimation was given to the Police and the Assistant Sub Inspector of Police attached to the Panagudi Police Station came to the Hospital and received Ex.P1-Complaint from P.W.1. FIR in Crime No.406 of 2011 was registered at around 10.00 a.m. I went through the original records and it is seen that Ex.P1-Complaint as well as Ex.P22-FIR reached the Judicial Magistrate Court, Valliyoor on the same day at about 03.00 p.m., There is absolutely no delay whatsoever in lodging the complaint or in registering the FIR or in reaching the Court.

4.The prosecution had examined P.W.1-Ramesh, P.W.3-Thangaiya and P.W.4-Ponkani. P.W.1's testimony inspires my confidence. P.W.3-Thangaiya and P.W.4-Ponkani are husband and wife and they hail from the very same locality. P.W.4 had clearly deposed in her evidence that the appellant with M.O.1-lever hit not only P.W.1 but also the deceased Gomathi Nayakam on his head. P.W.4 has no motive against the appellant. More than anything else, P.W.1 is a severely injured witness. Therefore, the Court below was absolutely justified in coming to the conclusion that it was the appellant who was guilty of the offence, with which, he was charged.

5.Having regard to the evidence on record, the learned counsel appearing for the appellant would submit that he would not challenge the finding of guilt and that he would only plead for modification in the matter of sentence. The appellant's counsel pointed out that the appellant is now aged about 64 years and that he is having cardiac related issues. More than anything else, this appellant is taking care of his brother-in-law who is mentally challenged. He is also having five daughters out of whom three are yet to be married off. The appellant also comes forward to deposit a sum of Rs.2,00,000/- as compensation, so that, the same can be paid to the wife of the deceased-Ratha. The appellant's counsel



pointed out that there was only a property dispute between A2 wife of the appellant and P.W.1 Ramesh. The appellant did not have any intention whatsoever to cause the death of Gomathi Nayakam. It is quite possible that when there was a scuffle going on between the appellant and P.W.1-Ramesh, Gomathi Nayakam had intervened and he was probably having lever in his hand. The whole occurrence took place more out of sudden provocation.

6.Taking note of these aspects, particularly, the age of the appellant, I am of the view that substantial indulgence can be shown in the matter of punishment. Therefore, even while sustaining the conviction imposed on the appellant, this Court reduces the period of imprisonment imposed on the appellant for the offence under Section 304(ii) of IPC from 10 years Rigorous Imprisonment to two years rigorous imprisonment. The sentence of imprisonment imposed on the appellant for the offence under Section 326 of IPC is also reduced from three years to two years rigorous imprisonment. The period of incarceration already undergone by the appellant will not be set off. The sentence for both the offences will run concurrently.

7.The appellant's counsel submits that the appellant will surrender before the trial Court to undergo the sentence within a period of two months from the date of receipt of a copy of this order. It is further undertaken that the appellant will deposit a sum of Rs.2,00,000/- to the credit of S.C.No.183 of 2012, on the file of the Third Additional Sessions Judge, Tirunelveli, within a period of two months from the date of receipt of a copy of this order. In the event of failure on the part of the appellant to deposit the compensation amount, he will have to undergo the default sentence of one year simple imprisonment.

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

Sd/-

Assistant Registrar (AD-II)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The III-Additional Sessions Judge,
Tirunelveli.



2.-Do-thro' The Principal Sessions Judge, Tirunelveli.

3.The Inspector of Police,
Panakudi Police Station,
Tirunelveli District.

4.The Superintendent, Central Prison,
Palayamkottai.

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

COPY TO:

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai. (2 Copies)

+1 CC to M/s.J.ASHOK, Advocate (SR-78337[F] dated 29/07/2019)

CrI.A. (MD)No.69 of 2013
26.07.2019

RMI

TK/SAR./17.03.2020/5P/9C