



Bail Slip

The Appellant/Accused No.4 namely Regan S/o.Subramaniyan was released on bail as per order of this Court dated 01.03.2013 and made in MP(MD)No.1 of 2013 in Crl.A(MD).No.74 of 2013 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

Crl.A(MD).No.74 of 2013

S.Regan : Appellant / Accused 4
Vs.

State
Rep. by Inspector of Police,
Kuzhithurai Police Station,
Nagercoil
Crime No.628 of 2004 : Respondents / Complainant

PRAYER : Criminal Appeal filed under Section 374 of Cr.P.C, to set aside the order passed by the learned Principal District and Sessions Court, Kanyakumari Division at Nagercoil in S.C.No.55 of 2005, dated 13.02.2013.

For Appellant : Mr.P.Andiraj
For Respondent : Mrs.S.Bharathi
Government Advocate (Crl.Side)

JUDGMENT

The appellant was convicted for the offences under Sections 352 and 304(ii) of IPC and sentenced vide the impugned judgment as follows:-

Accused	Penal Provisions	Punishment
A4	352 IPC	To undergo imprisonment for three months rigorous imprisonment with fine of Rs.500/- in default, to undergo rigorous imprisonment for two months.



304(ii) IPC

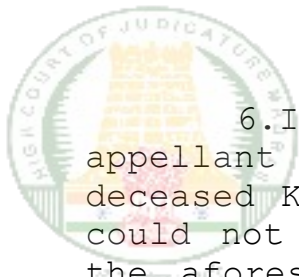
To undergo imprisonment for seven years rigorous imprisonment with fine of Rs.2000/- in default, to undergo rigorous imprisonment for three years.

2.The case of the prosecution is that on 05.07.2004, a quarrel took place between the deceased Kamaladhas, on the one hand, on the accused No.4 and other on the other side. The quarrel is said to have taken place in a building known as Stephen Complex at Marthandam. The occurrence took place on 05.07.2004, at about 10.30 p.m. In the said quarrel, Kamaladhas was pushed down and he was lying in that condition till he was seen by P.W.2, who was his brother. On the next day, Kamaladhas was rushed to the Vikram hospital, Marthandam, but he succumbed to the injuries on 16.07.2004. P.W.1, the wife of the deceased, lodged complaint (Ex.P.1) on 07.07.2004, which led to the registration of the First Information Report (Ex.P.12) in Crime No.628 of 2004 for the offence under Section 325 of IPC. Following the death of Kamaladhas, alteration report (Ex.P.13) was submitted to the learned Judicial Magistrate incorporating the offence under Section 302 of IPC. Investigation was conducted by P.W.18 and P.W.19, final report was filed before the learned Judicial Magistrate No.I, Kulithurai, against all the four accused for the offences under Sections 352, 302 and 294 (b) of IPC. Cognizance of the offences of the case was committed to the Sessions Court in P.R.C.No.22 of 2004. The case was taken up for trial by the learned Principal District and Sessions Judge, Kanyakumar Division at Nagercoil in S.C.No.55 of 2005. Charges were framed against the accused as follows:-

Charge: 1st accused - U/s. 352, 302 of IPC.
2nd accused - U/s. 352, 294(b) of IPC.
3rd accused - U/s. 352 of IPC.
4th accused - U/s. 352, 302 of IPC.

3.The accused pleaded not guilty and claimed to be tried. The prosecution examined as many as 19 witnesses and marked Exs.P.1 to P.15 and M.O.1. The defence examined D.W.1 and marked Exs.P.1 and P.2.

4.The learned Trial Judge, after a detailed consideration of evidence on record, by Judgment, dated 13.02.2013, acquitted A1 to A3 and found the appellant herein as guilty on the offences under Sections 352 and 304(2) of IPC and sentenced him as mentioned above. Challenging the same, this appeal came to be filed.



6.It is seen that P.W.7-Rajesh clearly deposed that the appellant herein was one of the accused, who actually pushed the deceased Kamaladhas, down the stair-case. The testimony of P.W.7 could not be shaken in the cross-examination. Having regard to the aforesaid unshaken testimony of an eye-witness, the learned counsel appearing for the appellant rightly did not challenge the finding of guilt, but rather confined his prayer for modification and reduction of the sentence imposed on the appellant. He pointed out that even according to the prosecution, none of the accused including the appellant were armed. It was deceased who had gone to the place of the accused and that is how the quarrel arose. It is clear from a reading of the evidence on record that the quarrel took place out of sudden provocation and that there was no premeditation on the part of any of the accused, particularly, the present appellant. It is also seen that the dispute was only between A1 and the deceased and A4 was only the son of A1. It is an admitted case of the prosecution that except pushing the deceased Kamaladhas, A4 had not done anything else.

7.The learned Government Advocate also drew my attention to Ex.P.8- copy of the Accident Register marked through P.W.13 indicating the spinal fracture suffered by the deceased. But in Ex.P.11, Postmortem Certificate, it has been opined that the deceased would have died of head injury. The fact remains that all these injuries were caused only as a result of single push leading to the fall of the deceased Kamaladhas. The appellant is aged about 32 years and he has a family to support. The appellant has not come under adverse notice subsequently. The occurrence took place 15 years ago. Taking note of all these mitigating factors, even while sustaining the conviction imposed on the appellant, the sentence is reduced from 7 years R.I to 4 years R.I.

8.With this modification in the matter of sentence, this Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Principal District and Sessions Court,
Kanyakumari Division at Nagercoil.

2.The Judicial Magistrate No.I, Kulithurai.

3.Do Through
The Chief Judicial Magistrate,
Kanyakumari District at Nagercoil.

4.The Superintendent, Central Prison, Palayamkottai.

5.The Inspector of Police,
Kuzhithurai Police Station,
Nagercoil.

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

7.The Record Keeper,-2 copies
V.R. Section, Madurai Bench of Madras High Court,
Madurai.

Crl.A(MD) .No.74 of 2013
28.08.2019

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