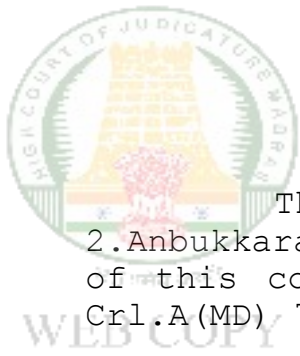


**Bail Slip**

The Appellant/Accused viz 1.Sathiyamoorthy, S/o.Samikannu
2.Anbukkarasan S/o.Dharmaraj was released on bail as per the order
of this court dated 18.08.2017 and made in Crl.MP(MD)1906/2017 in
Crl.A(MD) 75 of 2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.04.2019**

CORAM:

**THE HONOURABLE MRS.V.K.TAHILRAMANI, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

CRL.A. [MD] .No.75 of 2017

1.Sathiyamoorthy
2.Anbukkarasan

: Appellants/Accused 1 & 2

Vs.

State,
through the Inspector of Police,
Sengipatti Police Station
Thanjavur District,
Crime No.257 of 2015

: Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal
Procedure against the Judgment dated 23.02.2017 made in S.C.No.122
of 2016, on the file of the learned Principal Sessions Judge,
Thanjavur.

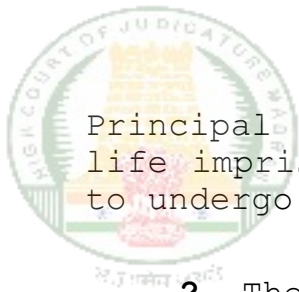
For Appellants : Mr.M.Karunanithi

For Respondent : Mr.S.Chandrasekar
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was delivered by **The Hon'ble Chief Justice**]

This appeal is directed by the appellants - original accused
against the Judgment and order dated 23rd February 2017 passed by the
learned Principal Sessions Judge, Thanjavur in Sessions Case No.122
of 2016. By the said Judgment and order, the learned Principal
Sessions Judge convicted the appellants under Section 302 IPC for
causing death of Immanuel. For the said offence, the learned



Principal Sessions Judge sentenced both the appellants to undergo life imprisonment and to pay a fine of Rs.5,000/-, each, in default to undergo rigorous imprisonment for a further period of one year.

2. The case of the prosecution, briefly stated, is as under:-

2.1. The appellants are Van Drivers. Deceased - Immanuel was also a Van Driver. There was an enmity between the appellants and Immanuel in relation to hiring of van for lesser amount, hence, on the night of 04.09.2015, at about 10.30 p.m., both the appellants caused the death of Immanuel by assaulting him with wooden brush, which was used to clean the van. In the early morning of 05.09.2015, PW-7 - Periyasamy saw Immanuel lying near the van stand. He was under the impression that Immanuel was lying there under the influence of alcohol, hence, he informed PW-9 - Sankilimuthu to inform this fact at the house of Immanuel. PW-1 - Gnanaraj, who was the father of Immanuel, was informed that Immanuel was lying near the van stand, hence, he proceeded to the spot and found that his son was lying dead, hence, he lodged the complaint [EX-P1] and it was registered, which is at EX-P9. Thereafter, the investigation commenced. The dead body of Immanuel was sent for postmortem.

2.2. PW-23 - Dr. Tamilmani conducted postmortem on the dead body of Immanuel and found the following injuries:-

"1. Laceration of size 3 X 2 X 1 cm seen over right ear lobe.

2. Contusion seen on the following areas:-

- oblique contusion of size 28 X 1 cm over right side of chest,

- 3 X 1 cm over right shoulder, 3 X 1 cm right forearm, 19 X 7 cm over left thigh.

3. Diffuse contusion noted over both eyes;

4. Abrasion seen on the following areas:

- 10 X 8 cm over right side of face, 3 X 1 cm over front of left thigh,

- 3 X 2 cm over left side of abdomen,

- 16 X 15 cm over outer aspect of left side of abdomen,

- 7 X 5 cm over back of middle of chest, 17 X 6 cm over back of right side of chest.

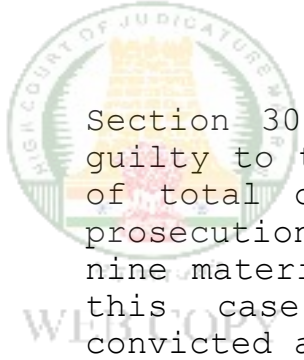
5. Abraded contusion of size 11 X 9 cm over left side of abdomen.

According to the doctor, deceased - Immanuel might have died of multiple injuries caused to vital organs and failure of the same.

2.3. During the course of investigation, both the appellants came to be arrested. After completion of the investigation, charge sheet came to be filed. In due course, the case was committed to the Court of Session.

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

3. Charge came to be framed against both the appellants, under



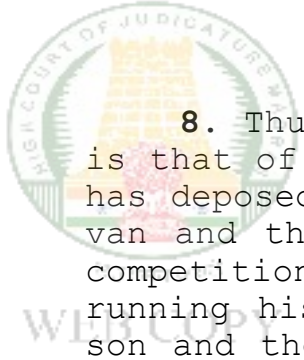
Section 302 of the Indian Penal Code. The appellants pleaded not guilty to the said charge and claimed to be tried. Their defence is of total denial and false implication. To support its case, the prosecution examined PW-1 to PW-25 and marked EX-P1 to EX-P20 and nine material objects. After going through the evidence adduced in this case, the learned Principal Sessions Judge, Thanjavur, convicted and sentenced the appellants, as stated in paragraph No.1, above, hence, this appeal.

4. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor for the State. After giving anxious consideration to the facts and circumstances of the case, the arguments advanced by the learned counsel for the appellants and the learned Additional Public Prosecutor for the State, the evidence on record and the judgment delivered by the learned Principal Sessions Judge, for the reasons stated hereinbelow, we are of the opinion that the prosecution has not proved beyond reasonable doubt that the appellants caused the death of Immanuel.

5. According to the prosecution, there are eight eyewitnesses to the incident, namely, PW-4, PW-5, PW-6, PW-10, PW-11, PW-12, PW-13 and PW-14. However, on going through their evidence, it is seen that all the eyewitnesses have turned hostile. Moreover, nothing has been elicited in the cross-examination of these eight eyewitnesses, which would help the prosecution in any manner. We find that this evidence led by the prosecution is totally worthless and that no reliance can be placed on the same.

6. Thereafter, reliance was placed by the prosecution on the circumstance of recovery of wooden brush [MO-5], at the instance of the appellants. According to the prosecution, this wooden brush was used by the appellants to assault deceased - Immanuel, in addition to which, the appellants kicked and punched him, due to which, he sustained injuries and died. PW-19 - Vincent and PW-20 - Paulraj, according to the prosecution, were the mahazer witnesses, who witnessed the recovery, at the instance of the appellants. We may state here that both these witnesses have turned hostile.

7. In addition to the above, we would like to refer to the evidence of PW-1 - Gnanaraj, who is the father of Immanuel. PW-1 - Gnanaraj has stated that from the place, where his son was found dead, the police seized wooden brush used to assault Immanuel. Thus, it is seen that the wooden brush was seized from the spot itself, hence, there can be no question of recovery of wooden brush at a later point of time, at the instance of the appellants. Thus, we find that this recovery is a planted one, hence, we are not inclined to place any reliance on the recovery of wooden brush. We may further state that according to the prosecution, this wooden brush was used to assault deceased - Immanuel. However, the wooden brush was not at all sent for chemical analysis, hence, another important link is lost.



8. Thus, the only evidence which remains against the appellants is that of motive. PW-1 - Gnanaraj, who is the father of Immanuel, has deposed about the motive. He has stated that his son was plying van and the appellants were also plying van. There was a business competition between his son and the appellants. As his son was running his van for minimal rent, there was a rivalry between his son and the appellants. Thus, on going through the evidence, it is seen that the only reliable material brought on record by the prosecution is motive. In our opinion, motive alone in the absence of any other circumstantial evidence would not be sufficient to convict the appellant. Useful reference could also be made to the decision of the Supreme Court in **Sampath Kumar Vs. Inspector of Police, [2012 (4) SCC 124]**, wherein the Supreme Court has held as follows:-

".....Having discussed the circumstances relied upon by the prosecution, this Court rejected motive which was the only remaining circumstance relied upon by the prosecution stating that the presence of a motive was not enough for supporting a conviction, for it is well-settled that the chain of circumstances should be such as to lead to an irresistible conclusion, that is incompatible with the innocence of the accused.

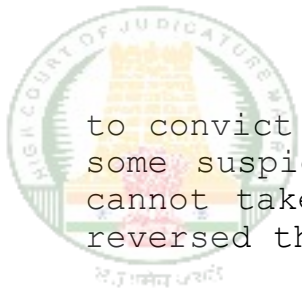
30. To the same effect is the decision of this Court in Santosh Kumar Singh v. State through CBI. (2010) 9 SCC 747 and Rukia Begum v. State of Karnataka, AIR 2011 SC 1585 where this Court held that motive alone in the absence of any other circumstantial evidence would not be sufficient to convict the appellant. Reference may also be made to the decision of this Court in Sunil Rai @ Paua and Ors. v. Union Territory, Chandigarh (AIR 2011 SC 2545). This Court explained the legal position as follows :

"31. In any event, motive alone can hardly be a ground for conviction.

32. On the materials on record, there may be some suspicion against the accused but as is often said suspicion, howsoever, strong cannot take the place of proof."

31.One could even say that the presence of motive in the facts and circumstances of the case creates a strong suspicion against the appellant but suspicion, howsoever strong, also cannot be a substitute for proof of the guilt of the accused beyond a reasonable doubt".

9. The Supreme Court in Sampath Kumar (supra) has observed that motive alone can hardly be a ground for conviction. In the absence of any other circumstantial evidence, motive would not be sufficient



to convict an accused. From the material on record, there may arise some suspicion against the accused, but suspicion, however strong, cannot take the place of proof. Observing thus, the Supreme Court reversed the conviction.

10. In **Sheila Sebastian vs. R. Jawaharaj and another, (2018) 7 SCC 581**, the Supreme Court observed as under :-

"Law is well settled with regard to the fact that however strong the suspicion may be, it cannot take the place of proof. Strong suspicion, coincidence, grave doubt cannot take the place of proof. Always a duty is cast upon the Courts to ensure that suspicion does not take place of the legal proof."

11. This case is based only on circumstantial evidence. In a case of circumstantial evidence, there must be a chain of evidence so complete as not to leave any reasonable ground for conclusion consistent with innocence of accused and must show that in all human probability, the act must have been done by the accused. On evaluating the evidence, we found many missing links in the chain of circumstances and thus, it cannot be said that the prosecution has proved its case, against the appellants, beyond reasonable doubt.

12. Thus, the Judgment of conviction passed by the Trial Court cannot be sustained. In the result,

- this Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused by the learned Principal Sessions Judge, Thanjavur, in S.C.No.122 of 2016, dated 23.02.2017 is set aside and the appellants/accused are acquitted of the charge framed against them.
- Bail bonds and the sureties executed by the appellants shall stand terminated.
- Fine amount, if any paid, shall be refunded to the appellants.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Principal Sessions Judge,
Thanjavur.

2.The Judicial Magistrate No.III,
Thanjavur.

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

3.Do Through The Chief Judicial Magistrate,
Thanjavur District at Kumbakonam.



4. The Superintendent,
Central Prison,
Trichy.

5. The Inspector of Police,
Sengipatti Police Station
Thanjavur District,

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

Copy to : The Section officer/Records
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.M.KARNANITHI, Advocate in SR-59314

CRL.A.[MD].No.75 of 2017
05.04.2019

NB/RSB
PK/25.04.2019 : 6P/10C