

BAIL SLIP

Ramachandran, S/o. Rajendran, (aged about 26 years) Appellant / Sole Accused was already released on bail vide this Court order dated 4.06.2014 in MP(MD)No.1/14 in CrI.A.(MD)128/2014.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**CrI.A.(MD)No.128 of 2014**

Ramachandran .. Appellant/ sole accused

Vs.

State through
The Inspector of Police,
Theni Police Station,
Theni.

Crime No.77 of 2011 .. Respondent/complainant

PRAYER: Petition filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence passed by the Additional District and Sessions Judge, Theni at Periyakulam in S.C.No.219 of 2011 dated 20.03.2014.

For Appellant : Mr.B.Chandramohan
For Respondent : Mr.K.Suyambulinga Bharathi,
G.A., (CrI. Side)

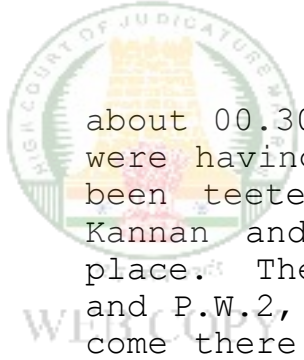
JUDGMENT

The appellant is the single accused in this appeal. He was charged for the offence under Sections 294(b) and 302 of I.P.C. The trial Court, by its judgment dated 20.03.2014, found the appellant guilty for the offence under Sections 294(b) and 304(ii) I.P.C. and sentenced him to undergo 5 years RI and to pay a fine of Rs.1,000/- in default to undergo 1 month SI for the offence under Section 304(ii) IPC and sentenced him to undergo 1 month SI for the offence under Section 294(b) IPC and both the sentences are ordered to run concurrently. Against the said conviction and sentence, this present appeal has been filed.

2.The prosecution, in this case, has examined P.Ws.1 to 12 and marked Exs.P1 to 13 and M.O.1 in this case.

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

3.The case of the prosecution is that on 08.02/09.02.2011 at



about 00.30 hours, P.W.1 and his friend Kannan, who is the deceased were having dinner. At that time, the appellant was said to have been teetered into the house, which was questioned by the said Kannan and thereafter, a wordy altercation and fight has taken place. The appellant had abused him and both of them had a scuffle and P.W.2, who is the friend of P.W.1 as well as the deceased, had come there and they had attempted to separate the deceased and the appellant from the scuffle and thereafter, the deceased was left unconscious and the appellant ran away from the scene of occurrence and thereafter, P.W.1 had informed P.W.3, the wife of the deceased about the incident and the injured Kannan was taken to the Government Hospital, Theni. P.W.8 is the casualty medical doctor, who examined and admitted the injured Kannan and issued Accident Register Ex.P5. Thereafter, P.W.3 taken her husband Kannan to Government Rajaji Hospital, Madurai. P.W.9 is the casualty medical doctor, who had issued Ex.P6, Accident Register. Thereafter, on 15.02.2011, the deceased had succumbed to the injuries. P.W.6 is the police constable, who produced the body for postmortem. P.W.11, postmortem doctor conducted postmortem issued postmortem certificate Ex.P8. In the meanwhile, after admitting the injured Kannan to the hospital, P.W.1 had come to the respondent police lodged a complaint to P.W.10, Special Sub Inspector of Police, who registered an FIR Ex.P7. P.W.12, Inspector of Police taken up investigation, visited the scene of occurrence, prepared observation mahazer, seized articles from the scene of occurrence examined witnesses to the occurrence. Thereafter, on coming to know that the accused had surrendered himself, he was taken to police custody, formal arrest done, recorded the confession statement and also recovered M.O.1. Thereafter, examined the doctors and after obtaining postmortem certificate, forensic report, he filed the charge sheet in this case.

4.The contention of the appellant is that P.W.1 and 2 said to be eye witnesses, their evidences are contradictory to each other. P.W.1 states that the appellant had teetered into the house, which was objected by the deceased and thereafter, fight broke out between them and they had scuffled on the stones, which were spilled up near the railway track and thereafter, assaulted the appellant and ran away, after seeing the crowd gathering, which was also witnessed by P.W.2. But, P.W.2 had stated that he had come to the scene of occurrence at a later point of time.

5.Further, according to P.W.1, he had taken the injured Kannan along with P.W.3 to the hospital in his Auto and thereafter, he had come to the police station and lodged the complaint. P.W.2 had not stated about he accompanying the injured to the hospital. P.W.3 had stated that she had not informed the doctor, who treated the deceased about the incident and it was P.W.1. But, P.W.1 states that it was P.W.3, who had informed about the incident to the doctors. It was further stated that the appellant and the deceased belong to rival political parties and hence, the appellant was implicated in this case.



6. Further, as per Ex.P5, it was found that the deceased was smelling of alcohol and due to which, he would have crippled and fallen over the stones and the appellant is not the cause of injuries to the deceased. It is further submitted that all the statements, documents in this case had reached the Court with inordinate delay. Even the complaint said to have dated 09.02.2011 reached the Court only on 11.02.2011. Further, from the alteration report Ex.P11, it is found that the offence has been altered from Section 324 IPC to 307 IPC and the same has reached the Court along with the complaint only on 11.02.2011. The statements of the witnesses also reached the Court belatedly.

7. It is also submitted that there are corrections in the observation mahazer and other document, no explanation has been offered by the prosecution. P.W.11, the postmortem doctor admits that the injuries sustained by the deceased could have occurred due to a person fall in a drunken stage on spilled up stones.

8. The certain case of the prosecution is that the appellant was a neighbour, who teetered into the house of P.W.1 and thereafter, the fight broke out. From the rough sketch, Ex.P 10, it is seen that there is no mention that the appellant was residing there. Further, the lower Court on wrong appraisal of the facts, held that due to sudden provocation in single blow, the death has occurred and failed to look the facts in correct prospective, the prosecution has miserably failed to prove the case as against the appellant.

9. The learned Government Advocate (criminal side) submitted that in this case, P.W.1 and the appellant are neighbours and as could be seen from the evidence of P.Ws.1 and 2, there is no motive and the fight had arisen at the instance of the appellant. P.W.1 and the deceased were having food at their place and at that time, the appellant picked up quarrel and assaulted the deceased with M.O.1, stone and the doctors, who had treated the deceased viz., P.Ws.8 and 9 as well as P.W.11, the postmortem doctor had opined that the injury could have caused only because of the hit by stone. P.W.2 is the friend of P.W.1, they have categorically stated about the fight and the assault of the appellant on the deceased with the stone. P.W.3 had stated about taking of the deceased to the hospital for treatment. P.W.4 is the witness for observation mahazer. P.W.5 is the witness for confession and recovery. P.W.10 is the Sub Inspector of Police, who received the complaint registered the FIR and thereafter, P.W.12, Inspector of Police, had taken up the investigation.

10. He further submitted that in this case, the chief examination of P.Ws.1 to 3 were taken earlier and 8 months thereafter only, they have cross examined. In cross examination, some minor discrepancies would occur due to passage of time, which now appellant cannot take advantage. The lower Court, on a proper



analysis of the evidence of the witnesses and documents, had rightly convicted the appellant under Section 304(ii) IPC, which need not be interfered with.

11. Considering the rival submission and perusal of the materials, this Court finds that though P.Ws.1 to 3 were cross examined after 8 months after their chief examination, that since all the three witnesses were deposing to the identical facts, the appellant sought to defer the cross examination and on the same day, all the three witnesses have been cross examined. Further, the scene of occurrence had been shifted. According to Ex.P1, the occurrence had taken place in front of house of P.W.1 and in the evidence, P.W.1 stated that the fight had moved out to a far away place near the railway track, where stones were stocked and piled, over which, both the appellant and deceased were fighting. Further, it is seen that 20 or 30 persons were available in the scene of occurrence, none of them were examined in this case. P.W.2 is the friend of P.W.1, the deceased is residing elsewhere and no reason had been given for the presence of deceased at that point of time. It is seen that P.W.2 was present at Government Rajaji Hospital, Madurai, as per P.W.1, but, P.W.2 has not stated to have gone to the hospital. P.W.3's evidence is in the nature of hearsay as regards the occurrence place.

12. is also seen that the complaint, FIR, statement of witnesses have reached the Court belatedly, despite, the alteration report Ex.P11 for the offence under Section 307 IPC made as early as on 09.02.2011 itself. It is also seen from Ex.P10 rough sketch and Ex.P2 observation mahazer, there is no mention of the appellant's house, as neighbour of P.W.1. It is also seen from Ex.P5 that the accused had consumed alcohol and P.W.11, postmortem doctor admits that the injuries sustained by the deceased could have occurred by falling on the stones.

13. It could be seen from Ex.P2, observation mahazer, there is a specific recording that "rk;gt ,lj;jpy; ifg;gw;wf;Toa vJt[k; bjd;gltpy;iy. ,Jnt rk;gt ,lj;jpd; gh;it kf\$uhFk;.". If that being so, the existence of M.O.1 and its recovery becomes highly doubtful. The shifting of scene of occurrence cast doubt on the complaint and present of P.W.1 and P.W.2 in the scene of occurrence, coupled with inordinate delay in sending these documents and statement to the Court.

14. In view of the same, this Court find that the prosecution had not proved the case beyond the reasonable doubt as against the accused and hence, the appellant is entitled to get benefit of doubt and acquittal.

15. Accordingly, this criminal appeal is allowed and the conviction and sentence passed by the Additional District and Sessions Judge, Theni at Periyakulam in S.C.No.219 of 2011 dated 20.03.2014 finding the appellant found guilty for the offence under



sections 294(b) and 304(ii) IPC is set aside and appellant is acquitted from all the charges as against him.

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Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Additional District and Sessions Judge,
Theni at Periyakulam
- 2.- DO-Thro' The Principal District Judge, Theni.
- 3.The Judicial Magistrate, Theni.
- 4.-Do- Thro' The Chief Judicial Magistrate, Theni.
5. The Inspector of Police,
Theni Police Station,
Theni.
- 6.The Superintendent, Central Prison,
Madurai.
- 7.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.A. (MD) No.128 of 2014
02.12.2019

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