



**BAIL SLIP**

The Appellant / Accused Thangaraj was directed to be released on bail as per order of this Court dated 21.08.2014 made in MP(MD) No.1/2014 in Crl.A(MD)No.223 of 2014.

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 20.12.2019**

**CORAM:**

**THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR**

**Crl.A(MD)No.223 of 2014**

Thangaraj

... Appellant / Accused  
Vs.

The Inspector of Police,  
Chatrapatti Police Station,  
Dindigul,  
(Crime No.272 of 2007)

... Respondent / Complainant

**PRAYER:** Petition is filed under Section 374(2) of Criminal Procedure Code, against the Conviction and Sentence passed by the Principal Sessions Judge, Dindigul in S.C.No.192 of 2010, dated 10.03.2014.

For Appellant : Mr.S.M.A.Jinnah

For Respondent : Mr.K.Suyambulinga Bharathi  
Govt.Advocate (crl.side)

**O R D E R**

This Criminal Appeal is filed by the appellant / sole accused, against the Judgment and Conviction passed by the Principal Sessions Judge, Dindigul in S.C.No.192 of 2010, dated 10.03.2014, convicting the appellant for an offence under Section 304(ii) of IPC., and sentenced him to under go five years rigorous imprisonment.

**2. The facts of the case are briefly stated hereunder:-**

On 04.12.2007, at about 4.00 p.m., when the appellant / accused went to the resident of his father-in-law, to call upon his wife, viz., Dhanalakshmi, to bring her back to matrimonial home, she refused to come with the accused / husband. At that time, the father-in-law of the accused viz., Mayilsamy Gounder shouted and warned him, refused to send his daughter Dhanalakshmi with the accused, accused got provoked due to the said conduct of the deceased, the accused attacked the deceased with wooden log on his head, the deceased fell down, sustained severe head injury. Immediately, he was taken to the Government Hospital, Dindigul,

where, he died on account of head injury.

3. In order to prove the case of the prosecution, on the side of the prosecution as many as 14 witnesses were examined as P.Ws.1 to 14 and 14 documents were marked as Exs.P1 to P14 and M.Os.1 to 6 were marked. On the side of the appellant, no witness was examined nor any document was marked.

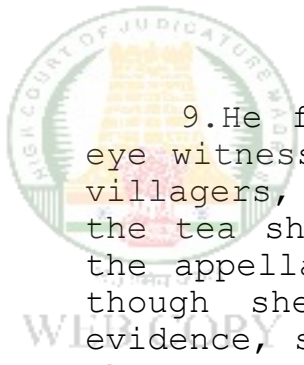
4. When the appellant was questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against him, he denied the same.

5. The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the accused as aforesaid and challenging the legality of the said conviction and sentence, the present appeal has been filed by the appellant.

6. Mr.S.M.A.Jinnah, the learned counsel appearing for the appellant would submit that the Court below ought to have considered that P.Ws.1, 3 and 4 are chance witnesses. The deceased sustained two injuries, one head injury, another on his face, but the evidences of P.Ws.1, 3 and 4, the eye-witnesses to the occurrence state that the accused hit the deceased only one time by a wooden log, the ocular evidence is dimensionally opposite to medical evidence, which goes to show that P.Ws.1, 3 and 4 could not have seen the occurrence, the statement of the witnesses are contrary to each other. P.W.2 is none other than the wife of accused, daughter of the deceased, P.W.2 has not supported the prosecution case. He would submit that the evidence of P.Ws.1, 3 and 4 are contrary to each other and not corroborated. Further, there is delay in registering the FIR, which cast doubt on the prosecution case, the trial Court convicted the accused, without proper appreciation of evidence and prayed for acquittal.

7. Mr.K.Suymbulinga Bharathi, the learned Government Advocate (crl.side) appearing for the State would submit that the deceased is the father-in-law of the accused. The accused married Dhanalakshmi, daughter of deceased. After marriage, the torture and cruelty of the accused on his wife has become unbearable, she left the matrimonial home and was living near her parents' house.

8. Arguing further, the learned Government Advocate (crl.side) would submit that on 04.12.2007, at about 4.00 p.m., when the appellant / accused went to the resident of his father-in-law, to call upon his wife, to return back to her matrimonial home, she refused. At that time, the father-in-law of the accused shouted and warned him, refused to send his daughter with the accused, accused got infuriated due to the conduct of the deceased, attacked the deceased with wooden log on his head, the deceased fell down, sustained severe head injury, immediately, he was taken to the hospital, where he died.



9.He further submitted that in this case, P.Ws.1,3 and 4 are eye witnesses. P.W.1 is the tea shop owner. P.Ws.3 and 4 are the villagers, who had been present in the scene of occurrence viz., in the tea shop. They have categorically stated about the attack by the appellant on the deceased. P.W.2 is th wife of the deceased, though she was treated hostile, in the first portion of her evidence, she stated about her presence along with the deceased near the scene of occurrence and her husband being attacked by a person, she does not identify him, however, she has clearly spoken about the assault.

10. Further, the learned Government Advocate (crl.side) would submit that from the evidence of P.W1 / Vasu, Ex.P7 / complaint of Velu @ Rajavelu and M.O.3 / wooden log and Serologist Report corroborate with the evidence of P.Ws. 2 and 3. He also submit that though Velu @ Rajavelu not examined as witness, since he died, his statement Ex.P7, can be utilized for corroborative evidence.

11. This Court has carefully considered the submissions made on either side and the entire oral and documentary evidence.

12. The deceased is the father-in-law of the accused. P.W.1 is having a Tea Shop, which is nearby the residence of deceased. On the day of occurrence, the accused attacked the deceased with wooden log, which is evident from the witness of P.W.4. At the time of occurrence, P.W.3 and 4 were taking tea, in the tea shop, they are neighbours. It is true, that three witnesses neither related to the deceased nor the accused and they are independent witnesses. From the statement of eyewitness P.W.1, it is clear that after the occurrence, the deceased was immediately sent to a private hospital, thereafter to the Government Hospital, but there is no Hospital record produced. P.W.4 in his cross-examination clearly admits that there was only one injury on the head of the deceased. But, P.W.9 and P.W.10 in their evidence categorically stated that there are two injuries found on the deceased, one on the head and another one is on his face.

13.Further, the witnesses are villagers and they are natural. There are some discrepancies in their evidence, which go to show that they were present in the scene of occurrence. From Ex.P6, postmortem certificate, it is seen that the deceased died due to shock and hemorrhage due to the head injury. P.Ws.1, 3 and 4 have stated about only one attack by the appellant and M.O.3 was a wooden log, which was available in the scene of occurrence.

14.In view of the same, the conviction and sentence imposed on the accused for the offence under Section 304(ii) IPC., is set aside and the accused is found guilty for the offence under Section 325 I.P.C. and the appellant is sentenced to the period of imprisonment already undergone by him and also to pay a fine of Rs.10,000/-,   
<https://hcservices.ecourts.gov.in/hcservices/>   
 and a period of three weeks from the date of receipt of a copy of



this order. Failure to remit the fine amount, the original Judgment to be restored.

15. With the above modifications, this criminal appeal stands partly allowed.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

Arul / Mpk

**To**

1. The Principal Sessions Judge, Dindigul
2. -DO- The Judicial Magistrate No. I, Dindigul.
3. The Chief Judicial Magistrate, Dindigul.
4. The Superintendent of Central Prison, Madurai.
5. The Inspector of Police,  
Chatrapatti Police Station, Dindigul,
6. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

Copy to:

The Record Clerk,  
Criminal Section, (2 copies)  
Madurai Bench of Madras High Court,  
Madurai.

**CrI.A(MD) No. 223 of 2014**

**20.12.2019**

**SMA/10/02/2020/4P/9C**