

BAIL SLIP

The Appellant / Sole Accused namely Chidambaram aged 50 years, S/o Natarajan, was directed to be release on bail as per the order of this Court dated 18/8/2014 in MP(MD)No.1/2014 in CrI.A(MD) No.235 of 2014 on the file of this Court.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**CrI.A.(MD)No.235 of 2014**

Chidambaram

.. Appellant/ sole accused
Vs.

State,
rep. by the Inspector of Police,
Vallathirakottai Police Station,
Pudukkottai District,
Alangudi P.S.,
Cr.No.135/2012

.. Respondent/complainant

PRAYER: Petition filed under Section 374(2) of Criminal Procedure Code, to set aside the judgment and conviction dated 18.07.2014 by the District Sessions Judge, Mahila Court, Pudukkottai in S.C.No.59 of 2013 and acquit the appellant.

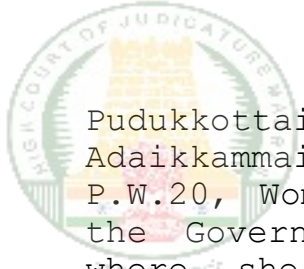
For Appellant : Mr.D.Ramesh Kumar

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), 325 and 302 of I.P.C. The trial Court, by its judgment dated 18.07.2014, found the appellant not guilty for the offence under Section 302 IPC acquitted him for the offence under Section 302 IPC, found the appellant guilty for the offences under Sections 294(b) and 325 IPC sentenced him to undergo 3 months RI and to pay a fine of Rs.500/- in default to undergo two weeks SI for the offence under Section 294(b) IPC and sentenced him to undergo 3 years RI and to pay a fine of Rs.5,000/- in default to undergo six months SI for the offence under Section 325 IPC. Against the said conviction and sentence, this present appeal has been filed.

2.The prosecution, in this case, has examined P.Ws.1 to 21 and marked Exs.P1 to 13 and produced M.O.1.

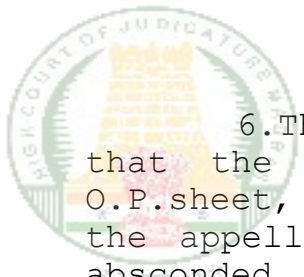
3.The case of the prosecution is that one Karuppiah, son of the deceased and one Lakshmipriya, daughter of the brother of the accused were in love each other, and they eloped from the village and there were enmity. Due to the said enmity, on 26.05.2012 at about 08.00 a.m., when the deceased was standing near her house, the appellant abused her and attacked with a stick on her left forehead and right forearm. She was taken to Government Hospital,



Pudukkottai for treatment. P.W.13 doctor, examined the injured Adaikkammai, issued Wound Certificate Ex.P4. On the same day, P.W.20, Women Sub Inspector of Police received an intimation from the Government Hospital, Pudukkottai, rushed to the hospital, where, she recorded the statement of the injured/Adaikkammai Ex.P9 and on 29.05.2012 registered a case in crime No.135 of 2012 for the offences under Sections 294(b), 323 and 506(i) IPC; the FIR is Ex.P10. Thereafter, on 28.05.2012, the injured left the hospital without any information, taken native treatment. On 29.05.2012, she fainted and she was again admitted in the Government Hospital, Pudukkottai and on 30.05.2012, later she was declared dead.

4. In the meantime, P.W.20 visited the scene of occurrence, prepared observation mahazer Ex.P11, rough sketch Ex.P12, examined the witnesses to the occurrence. Thereafter, arrested the accused. On 30.05.2012 at about 20.45 hours she received death intimation of Adaikkammai. P.W.20 Sub Inspector of Police handed over investigation to the Inspector. P.W.21, Inspector of Police, took up investigation, altered the offences into 302 of IPC. He conducted inquest and sent the body for postmortem. P.W.16, Special Sub Inspector of Police received the Express report Ex.P7, handed over to the Court. P.W.12 Special Sub Inspector of Police produced the body for postmortem. P.W.17 postmortem Doctor conducted postmortem, issued postmortem certificate Ex.P8. On 01.06.2012, P.W.21 took the appellant into custody, recorded his confession statement, recovered M.O.1 under recovery mahazer Ex.P2 and thereafter, the appellant was sent back to judicial custody. P.W.21 examined the doctors, witnesses and after completion of investigation, filed the charge sheet.

5. The contention of the appellant is that P.W.1 is the mother of the deceased. She was unable to depose due to her old age and no statement was recorded from her. P.Ws.2 to 4 and 8 are the neighbours and eye witnesses to the occurrence. On 25.05.2012, the appellant's family had a function and feast in the Ayyanar temple of the village and at about 07.30 p.m, the appellant's brother's daughter viz., Lakshmipriya was missing. Thereafter, it was found that one Karuppaiah, the son of the deceased had taken her in his motorbike and both of them were eloped and got married. According to the prosecution, due to the said motive, on 26.05.2012, the appellant went to the house of the deceased questioned her for the act of her son. The deceased feigned ignorance about the incident. The appellant got infuriated took a stick and hit her on the right forehead and right forearm. Thereafter he fled away. P.W.2, who was the person nearby has taken the injured to hospital and admitted in the Government Hospital, Pudukkottai. On 28.05.2012, the injured left the hospital on her own without informing the doctors and thereafter, on 29.05.2012, she was again admitted in the hospital by P.W.5 K.Chidambaram. Finally, on 30.05.2012 at about 08.45 p.m., she was declared dead.



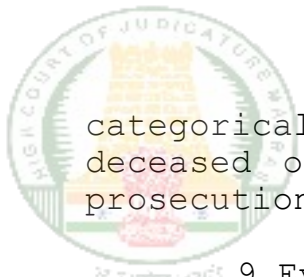
6.The learned counsel appearing for the appellant submitted that the injured was conscious as could be seen from Ex.P5 O.P.sheet, where, she had not made any mention or reference about the appellant assaulting her. Further, the injured on her own, absconded from the hospital discontinuing her treatment. Ex.P4, wound certificate shows two injuries viz., 1cm x 1cm x 1 cm forehead injury and a fracture lower end of radius and there is no other external injuries. Subsequently, when she admitted on 29.05.2012, she was unconscious and Ex.P5 shows that she was brought to the hospital by one K.Chidambaram, who is none other than P.W.5. There is no mention with regard to the injuries sustained subsequent to she leaving the hospital. P.W.5 states that he had visited the hospital at a later point of time, not mentioning about any incident and his evidence is in the nature of hearsay. From Ex.P5, it is seen that condition of the injured has been informed to her relative one Eswari and her acknowledgement is found in Ex.P5. One Valli, who is another relative to whom the death intimation was conveyed and her acknowledgement is found in Ex.P6. Both Eswari as well as Valli had not been examined in this case.

7.He further submitted that though there is mention in Ex.P4 as A.R.No.4721895, the said AR copy has not been produced, which is a very vital document. Had it been produced, the real happenings would have been mentioned. Further, Ex.P4 was issued by P.W.13 only on 22.01.2013. From Ex.P8, postmortem certificate, the following injuries are found:

Old abrasion (L) forehead, Bleeding from nose & mouth. Internal Examination reveals dislocated ® wrist joint and scalp haematoma occipital region & sub dural haematoma seen in occipital, parieto occipital region. Both sides & frontal region with signs of separation of occipito parietal suture line.

From the postmortem certificate, the injuries corresponding to Ex.P4 are two injuries found in the postmortem certificate, i.e., injury sustained in the right wrist and old abrasion in the forehead. With regard to the injuries on the parieto occipital region, there is no explanation.

8.As per the postmortem certificate, the death could have occurred due to the injuries sustained in the occipital region and parieto occipital region. Admittedly, Except P.Ws.2 to 4 and 8, none of the witnesses have stated about the appellant attacked with M.O.1 on the occipital region. Hence, these injuries does not correspond to the overt act attributed to the appellant. The lower Court considering these aspects had acquitted the appellant for the charge of 302 IPC, however, convicted him for the offence under Sections 294(b) and 325 IPC, since the witnesses have not come with the true facts and the motive for implicating the appellant is that the deceased son eloping with the daughter of the appellant's brother. Except P.W.8, all the eye witnesses are all related to the deceased and hence, the appellant was falsely implicated the appellant. P.W.8, who is the brother of the appellant, has



categorically stated in his evidence about the attack on the deceased on her right wrist and pushing her down and hence, the prosecution has not come with the true facts.

9. Even Ex.P1, the complaint itself is highly doubtful and except the signature of the deceased, the other contents have been filled up and that is the reason, the complaint, FIR and all the other documents reached the Court belatedly, only after getting the information about the death of the deceased. Though the complaint is said to have been received on 26.05.2012 and in the complaint, there is mention about CSR No.76 of 2012, thereafter, on 29.05.2012, it came to be registered for the offences under Sections 294(b), 323 and 506(i) IPC in crime No.135 of 2012 and the same had been despatched to the Court only on 30.05.2012 at about 0.35 pm and hence, there is inordinate delay and no explanation was forthcoming. Thus, he prayed for allowing the appeal.

10. Mr.K.Suyambulinga Bharathi, learned Government Advocate (criminal side) submitted that in this case, P.Ws.2 to 4 and 8 are the eye witnesses, who had clearly stated about the attack made by the appellant on the deceased and thereafter, the deceased had been taken to the hospital where she got admitted in the Government Hospital, Pudukkottai, which has been spoken to by P.W.13 and Ex.P.4 wound certificate. The deceased being a rustic villager had left the hospital without informing any one and taken native treatment, which is seen from the postmortem certificate, Ex.P8. Thereafter, she fainted and become had been unconscious, again, she was brought to the Government Hospital on 29.05.2012 and later, she passed away on 30.05.2012 and the reason for the death is only due to the attack of the appellant as could be seen from the postmortem certificate as the death would be occurred due to the multiple injuries to vital organs. Accordingly, he prayed for dismissal of the appeal.

11. Considering the rival submission and perusal of the materials, it is seen that the deceased had been attacked by the appellant on 26.05.2012, taking a stick nearby in the place of occurrence and that too on the left frontal region and on the right wrist, which correspond to the wound certificate, Ex.P4. P.W.2 and , P.W.3 and P.W.8 are the eye witnesses. Their evidence are contrary to each other. P.Ws.4 and 5 evidence are in the nature of hearsay. None of the witnesses state about presence of the other witnesses in scene of occurrence, Their presence are highly doubtful. The deceased died on 30.05.2012 and as per the postmortem certificate, Ex.P8, the cause of death is due to the injuries found on the parieto occipital region, for which, this appellant would not be the reason. What had happened in between 28.05.2012 and 29.05.2012 is not known. From Ex.P8, postmortem, it is seen that the deceased had taken native treatment to her right wrist and what further treatment she was administered also was not known. From the postmortem certificate Ex.P8, the reason given is that the death could have occurred due to multiple injuries to the vital organs. Further P.W.16 postmortem Doctor admits that the fatal injury could



be due to fall from a moving Motor Bike.

12. Further, it is submitted that the deceased son and the appellant's brother's daughter, who had eloped, who are the root cause of this case, have come back to the village and they are accepted by both the families living happily with two children. It is also represented that the appellant thereafter has not come to adverse notice. This Court, considering these facts and subsequent developments, this Court confirms the conviction passed by the learned District Sessions Judge, Mahila Court, Pudukkottai dated 18.07.2014 in S.C.No.59 of 2013. However, to meet the ends of justice, the sentence alone is modified and the appellant is sentenced to imprisonment to the period already undergone by the appellant for the offences under Sections 294(B) and 325 IPC. The fine amount imposed by the trial Court is confirmed.

13. The Criminal Appeal stands partly allowed accordingly.

Sd/-

Assistant Registrar (Crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1. The District Sessions Judge,
Mahila Court, Pudukkottai.

2. The Inspector of Police,
Vallathirakottai Police Station,
Pudukkottai District,

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

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

+1 CC to M/s.D.RAMESHKUMAR, Advocate (SR-104774[F] dated 13/12/2019

Crl.A. (MD) No.235 of 2014

12.12.2019

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