



WEB COPY

Bail Slip

P.Murugan, S/o.Perumal, aged about 35 years was released on bail vide the order of this Court, dated 09.01.2015 MP(MP).1 of 2014 in CRL A(MD)No.312 of 2014.

BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Dated : 18.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

CRL. A. (MD) No. 312 of 2014

P.Murugan .. Appellant / 1st Accused

- Vs -

State represented by
the Inspector of Police,
Alanganallur Police Station,
Madurai District.

.. Respondent / Complainant

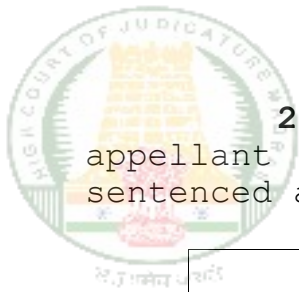
Prayer : Appeal filed u/s 374 (2) of the Code of Criminal Procedure, to call for the records pertain to the judgment in S.C.No.238 of 2012, on the file of the VI Additional District and Sessions Court, Madurai dated 12.11.2014 and set aside the same.

For Appellant : Mr.C.Vakeeswaran

For Respondent : Mr.K.Suyambulinga Bharathi
Governement Advocate (Criminal side)

JUDGMENT

This Criminal Appeal has been filed against the judgment made in S.C.No.238 of 2012, dated 12.11.2014, passed by the learned VI Additional District and Sessions Judge, Madurai, convicting the accused for the offences under Sections 304 (ii), 323 (2 counts), 352, 341 and 354 of I.P.C.



2. The appellant is Accused No.1 in this case. The appellant was found guilty by the trial Court, convicted and sentenced as follows:

Penal Provision	Punishment
Section 304 (ii) I.P.C	To undergo seven years rigorous imprisonment
Section 341 I.P.C.	To undergo one month simple imprisonment.
Section 352 I.P.C.	To undergo one month Rigorous Imprisonment
Section 354 I.P.C	To undergo one year Rigorous Imprisonment
Section 323 (2 counts)	To undergo one month Simple Imprisonment

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

On 30.07.2011, there was a dispute with regard to construction of drainage channel between one Thiraviam and deceased. The said Thiraviam had not been examined in this case. On 31.07.2011, E.B.Raman died in the colony. During the death ceremony of E.B.Raman, P.W.2, who was present at that time, was attacked by the appellant and the another accused. Hearing the same, the deceased and P.W.1 reached, rescued P.W.2 and they returned to their home. Thereafter, at about 08.15 p.m., both, appellant and another accused came to the house of the deceased, questioned about construction of drainage channel, picked up quarrel with P.W.1., at that time, deceased was hit by the appellant with stone on his chest and another accused pulled him down, the deceased sustained grievous injuries on his skull. P.W.1, who is the wife of the deceased, intervened and she was attacked by the accused. P.W.2 is the son and P.Ws.3 and 4 are the daughters of the deceased, they also intervened and they were attacked by the accused. The accused tore nighty of P.W.4, thereafter, the appellant and the other accused ran away from the scene of occurrence. P.W.1 to P.W.4, took the deceased to the hospital by bus and on the way to Police Station, the deceased fainted and became unconscious. Thereafter, the deceased was taken to the Hospital by P.W.1 to P.W.4 accompanied by P.W.5, a close relative. On reaching the hospital, the Doctor pronounced him "brought dead". Thereafter, his body was sent to mortuary. In the meanwhile, P.W.1 had gone to the Police Station accompanied by her children, lodged a complaint, there seems to be different versions about the same.

3.(2). P.W.1 is the wife of the deceased. P.W.2, P.W.3 and P.W.4 are the son and daughters of the deceased. P.W.5 is the another relative, who took the deceased to the Hospital. P.Ws.6, 7, 8 and 9 did not support the case of the prosecution. P.W.6 and



P.W.8 are the eye witnesses. P.W.10 is the Police Constable, who identified the body of the deceased in the Government Hospital. P.W.11 is the Head Constable registered the First Information Report. P.W.12 is the witness to the Recovery Mahazar. He has not supported the case of the prosecution. P.W.13, is the Village Administrative Officer, who signed as witness for the confession of the accused. P.W.14 is the Special Sub Inspector of Police, sent First Information Report to the Court and concerned higher officials. P.W.15 is the Doctor, conducted postmortem. P.W.16, is the Investigating Officer, conducted major portion of the investigation, examined L.W.1 to L.W.18. P.W.17 is the Investigating Officer, examined the Doctor, who conducted the postmortem. P.W.18 is the other Investigating Officer, who completed the investigation, filed charge sheet before the Trial Court. The trial Court convicted the accused No.1 and acquitted the Accused No.2. Aggrieved over the same, the present Appeal has been filed by Accused No.1. No Criminal Appeal against the acquittal of Accused No.2.

4. In order to prove the case of the prosecution, on the side of the prosecution as many as 18 witnesses were examined as PW.1 to PW.18 and 9 documents were marked as Ex.P.1 to Ex.P.9. and M.O.1-stone was marked. On the side of the accused, no witness was examined and one document was marked as Ex.D.1.

5. When the appellant was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same.

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

Submissions

7. The learned counsel appearing on behalf of the appellants made the following submissions:

7.(1). The learned counsel appearing for the appellant would submit that there are two accused in this case. The Trial Court acquitted accused No.2 in this case. The gravamen of charge against the appellant is for the offence under Section 302 I.P.C., who is said to have hit the deceased with stone on his chest and the other accused pulled him down, due to which, deceased sustained injuries on his skull bone. The Postmortem Doctor gave an opinion that the deceased had died due to cranio cerebral injuries. The Postmortem Certificate-Ex.P.6 and the evidence of P.W.15, is in conformity that the deceased died due to injuries sustained on the skull, the trial Court acquitted the second accused, on the other hand, convicted the appellant / first accused for the offence under Section 304 (ii) I.P.C and imposed a sentence to undergo seven years



Rigorous Imprisonment. The injuries sustained on the chest of the deceased at the most would come under Section 323 I.P.C. Further, for attacking P.W.2 and P.W.3, the appellant has been convicted for the offence under Section 323 I.P.C., these witnesses contradict to each other, they had not taken any treatment for the injuries sustained, no medical records produced. P.W.1 would state that she was given medical memo. P.W.2 and P.W.3 would state that no medical memo issued to them. For the offence under Section 354 I.P.C., the nighty of P.W.4, which is said to have been torn by the appellant is not produced. The offence under Section 352 would not arise, since the appellant had already been convicted for the offence under Section 304 (ii) I.P.C. He would further submit that the appellant was in custody for a period of 101 days.

7.(2). P.W.1 admits that P.W.3 and P.W.4-her daughters, know to read and write, though they accompanied P.W.1 to Police Station, they had not written the complaint-Ex.P.1, no reason is given. It is seen that one V.Ramachandran, is said to be the eye witness, signed in Ex.P.1 as witness, he is none other than father of P.W.5. The version of P.W.1 to P.W.4 is that P.W.5 and his father Ramachandran present in the scene of occurrence, but P.W.5 denies the same. The said Ramachandran has not been examined in this case.

7.(3). The version of P.W.5 is highly artificial for the reason that P.W.3 asserts that P.W.5 was available in the Village during the occurrence, P.W.5 states that he was not in the Village and he was at Alanganallur and there, he joined P.W.1 to P.W.4 when the deceased was taken to Hospital.

7.(4). Further, there seems to be some prohibitory relationship between P.W.4 and P.W.5. Admitted by P.W.2, P.W.3 and P.W.4, this prohibitory relationship was questioned by the appellant, due to which, the appellant has been implicated in the above case. P.W.4 and P.W.5 are brother and sister and they have prohibitory relationship, Villagers were against it. Hence, none of the villagers supported the case of the prosecution.

7.(5). P.W.15-the Postmortem Doctor in his evidence as well as in the postmortem report opined that the death was caused due to the injuries sustained on the skull by the deceased. As per the case of the prosecution, the appellant is not the reason for the injuries sustained on the skull by the deceased. The evidence of the witnesses are contradict to each other the genesis of the case itself is highly doubtful. The accident register is suppressed, which was marked by the defence as Ex.D.1 through Investigating Officer. From which, it is seen that the deceased was brought to the Hospital by P.W.5. In which, it is recorded "patient pushed by another person and fell down, patient brought dead, sent to mortuary" and there is no mention that the appellant hit the



deceased with stone. The causality Medical Doctor has not been examined as witness. The fall of the deceased overt act was attributed to accused No.2, who was acquitted by the Trial Court. No Appeal has been preferred against the acquittal.

7.(6). Further, he would submit that the non examination of Thiraviam, Ramachandran and the Doctor examined deceased, issued Ex.D.1, are fatal to the case of the prosecution. The motive attributed is that the dispute with regard to the construction of drainage channel in front of the house of Thiraviam and there is no evidence to show that the Said Thiraviam is anywhere related or known to accused nos.1 and 2.

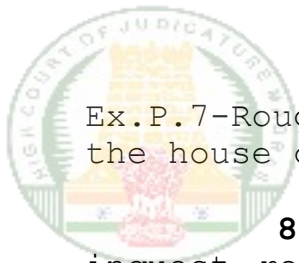
7.(7). He would further submit that the nighty, which is said to have been torn by the appellant has not been seized. Hence, the learned counsel prays this Court to allow this Criminal Appeal.

8. The learned Government Advocate (Criminal side) appearing on behalf of the respondent Police made the following submissions:

8.(1). Per contra, the learned Government Advocate (Criminal side) appearing for the respondent submits that there is a clear motive in this case by the appellant against the deceased, which is spoken to by P.W.1 to P.W.4. The occurrence had taken place in front of the house of the deceased, which has been witnessed by P.Ws.1 to 4. Already, there is dispute between Thiriviam and the deceased. Hence, non examination of Thiraviam would not be fatal to the case of the prosecution.

8.(2). He would further submit that in this case, there had been three incidents. One is during the funeral ceremony of E.B.Raman, where a fight between the relatives of E.B.Raman. Second incident is P.W.2 was attacked by the accused. P.W.1 and the deceased rushed, separated, took P.W.2 to their house. Third incident is at 08.15 p.m., the appellant and other accused had gone to the house of the deceased, picked up quarrel, hit the deceased with stone, pulled him down and left at the scene of occurrence. When the deceased was taken to the Hospital by P.W.1 to P.W.4, near the Alanganallur Bus-stand, P.W.5 joined them, on the way to the Police Station, the deceased fainted. Thereafter, he was taken to the hospital, where, he was pronounced "brought dead". Thereafter, P.W.1 to P.W.4 gone to the Police Station, lodged a complaint. All these witnesses have clearly spoken about the overt act of the accused. The trial Court believed these witnesses, perused the materials and rightly convicted the accused.

8.(3). He would further submit that due to the attack of accused, the deceased sustained injuries and succumbed, the scene of occurrence is in front of the house of the deceased, as seen from



Ex.P.7-Rough Sketch, M.O.1-stone had been recovered just opposite to the house of the deceased, proved through seizure mahazer-Ex.P.2

8.(4). Further contended that from the complaint-Ex.P.1 and inquest report-Ex.P.9, the injuries inflicted and sustained by the deceased, are clearly recorded and corroborated with each other. In this case, motive has been proved and the injuries sustained by the deceased are proved by the eye witnesses and the by the evidence of Doctor, who confirmed that the death was not an accidental death, it was homicidal.

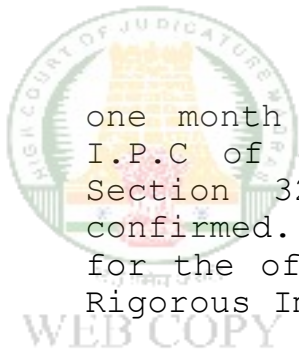
8.(5). The presence of P.W.1 to P.W.4 in the scene of occurrence are quite natural. They have clearly spoken about the appellant and the other accused attacking the deceased and thereby, causing the death of the deceased. The lower Court, on proper analysis of the evidence of the witnesses and materials, rightly convicted the appellant under Sections 304 (ii), 323 (2 counts), 352, 341 and 354 IPC, which need not be interfered with.

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

Discussion:-

10. Considering the rival submissions and on perusal of the materials, the categorical case of the prosecution that the appellant had taken stone-M.O.1, hit the deceased on his chest once. Thereafter, it was the other accused, who pulled him down, namely Accused No.2. Due to which, the deceased had a fall, sustained skull injury and thereafter, he died. From the evidence of Doctor, P.W.15 and the Postmortem report-Ex.P.6, it is seen that the deceased died due to cranio cerebral injuries. The reason for the death was due to hemorrhage found in the skull. This appellant is not the cause and reason for these injuries. Further the evidence of P.W.1 to P.W.4 are contrary to each other on material aspects, their evidence does not inspire confidence to be acted upon. P.W.5 version is also unbelievable. Other than the family members, no other independent witnesses from the Village have spoken about the attack by the appellant, despite the occurrence taken place in public view. Further there is no charge of common intention. In view of the above, this Court finds that the prosecution has not proved its case beyond reasonable doubt to sustain conviction under Section 304 (ii) I.P.C., hence, in such view of the matter, this Court is inclined to interfere with the findings of the Trial Court.

10.(1). In view of the discussions as above, the conviction of the appellant for the offence under Section 304 (ii) I.P.C., and sentence of imprisonment of seven years by the trial court deserves to be set aside and instead the appellant is liable to be punished only for the offence under Section 323 (2 counts) I.P.C. The conviction and sentence for the offence under Section 341 I.P.C of



one month Simple Imprisonment, for the offence under Section 352 I.P.C of one month Rigorous Imprisonment, for the offence under Section 323 (2 counts) of one month Simple Imprisonment are confirmed. All the sentences to run concurrently. The conviction for the offence under Section 354 I.P.C. is modified from one year Rigorous Imprisonment to one month Rigorous Imprisonment.

10.(2). Coming to the question of sentence, the appellant had been in prison for three months and 12 days. In the circumstances of the Case and the ends of justice would be squarely met with by sentencing the appellant to the period already undergone.

Conclusion

11. In the result, the conviction for the offences under Sections 304 (ii) and 354 I.P.C., are set aside and modified instead the appellant is found guilty for the offence under Section 323 (2 counts) I.P.C. convicted and sentenced to imprisonment to the period already undergone for the offence under Section 354 I.P.C., the sentence is modified and sentencing him to undergone one month Rigorous Imprisonment, as regards conviction and sentence by the trial Court is confirmed.

12. Subject to the above modifications, the Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar(CS)

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/ /2020

Sub Assistant Registrar(CS)

tsg

To

- 1) The VI Additional District and Sessions Judge, Madurai
- 2) The Inspector of Police,
Alanganallur Police Station,
Madurai District.
- 3) The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



4) The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.C.VAKEESWARAN, Advocate(SR-105642[F] dated 18/12/2019)

JUDGMENT IN
CRL. A. (MD) NO. 312 of 2014
Dated
18.12.2019

al (CO)
TR(27.01.2020) 8P 7C