



Bail Slip

Appellant/Accused namely Muniyandi@Poipuli aged about 51 years S/o.Paramasivam was directed to be released on bail as per order of this Court dated 13.02.2014, made in MP(MD)No.1 of 2014 in Crl.A.(MD)No.44 of 2014 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :13.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.44 of 2014

Muniyandi @ Poipuli

... Appellant / Accused

Vs.

State through,
The Inspector of Police,
Mamsapuram Police Station,
Virudhunagar District.
[Crime No.158 of 2008]

... Respondent/ Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the entire records connected to the judgment dated 09.10.2013 in S.C.No.106 of 2009 on the file of the learned Principal Sessions Judge, Virudhunagar at Srivilliputhur and set aside the conviction and sentence imposed against the appellant.

For Appellant : Mr.S.Ramesh Kumar for Mr.R.Alagumani
For Respondent: Mrs.S.Bharathi,
Government Advocate (crl side)

JUDGMENT

This Criminal Appeal is filed as against the conviction and sentence imposed upon the appellant by the learned Principal Sessions Judge, Virudhunagar at Srivilliputhur in SC.No.106 of 2009 dated 09.10.2013.

2.The appellant is the sole accused in SC.No.106 of 2009 and he was charged for the offence under Section 302 IPC and the trial Court in conclusion of the trial found the appellant guilty for the offence under Section 304(II) IPC, convicted and sentenced him to undergo ten years of rigorous imprisonment with a fine of Rs.5,000/- and in default of payment of fine amount, to undergo one year rigorous imprisonment. As against the conviction and



sentence, the appellant preferred this Criminal Appeal.

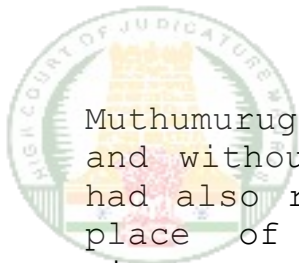
3(i). The case of the prosecution is that the appellant / accused and the deceased Solairaja are native of Naraiyankulam near Srivilliputhur and a festival was proposed to be conducted in the village in the year 2008. PW5 was the Head of the village as well as Head of the Festival Committee and they collected cess from villagers for celebrating the festival. The accused did not pay festival cess in the previous year.

3(ii). On 11.09.2008 at about 7.00pm, the deceased was chatting with PW4 at Naraiyankulam road junction. PW1 the Nattanmai had also joined them and the deceased instructed PW5 to be strict in collecting cess from the villagers, since, cess was not collected from some people on earlier occasion. The accused, who was passing through, heard the comments of the deceased, picked up quarrel with the deceased that it is not his duty and he is not responsible for collecting cess and consequently, there was a wordy altercation and scuffle between the accused and the deceased. The accused left the place by threatening the deceased that he would do away his life.

3(iii).After 15 minutes, when the deceased was standing with PW4 near a tea shop of PW6, the appellant / accused came with an Aruval attacked the deceased and caused a deep cut injury on the left calf of the deceased. PW4 had driven away the accused from causing further injury and took the deceased immediately to the Government Hospital at Srivilliputhur. PW7 is the Doctor at he Government Hospital at Srivilliputhur attended the deceased on 11.09.2008 at about 8.15 pm and noted down the injuries sustained by the deceased in accident register [Exp4]. He also gave the intimation to the respondent Police in Exp3. Based on the medical intimation PW13, the Head Constable visited the Government Hospital at Srivilliputhur and recorded the statements of the deceased at about 9.30 pm and registered the same in Crime No.158 of 2008 under Section 294(b), 324 and 506(II) IPC and the printed FIR is marked as Exp15.

3(iv).Considering the nature of injury the Doctor [PW7] referred the injured / deceased to the Rajaji Government Hospital, Madurai, where he was attended by one Dr.Saravanakumar and he recorded the injury in accident register [Exp6].

3(v).On knowing about the case registered in Exp15, Ramalakshmi [PW17], Sub Inspector of Police, Vaiyampatti Police Station, who was in additional charge of Mamsapuram Police Station, visited the place of occurrence at about 11.30 hours and prepared the observation mahazar [Exp10] and a rough sketch [Exp17] in the presence of PW11 one Perumalsamy and one



Muthumurugan. She also recovered the mud with bloodstain [MO2] and without bloodstain [MO3] from the place of occurrence. PW17 had also recovered two pair of chappals [MO.4 and MO.5] from the place of occurrence in Exp11. PW17 had also examined the witnesses, who were in present in the place of occurrence.

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3(vi).In the meantime, the injured Solairaj who was taking treatment at Rajaji Government Hospital, Madurai died on 12.09.2008 at about 1.30am. On receipt of the intimation, Inspector of Police [PW11] altered the offence to Section 302 IPC and PW17 took up the further investigation in this case and proceeded to the Hospital and conducted inquest on 12.09.2008 at about 11.00am and prepared the inquest report in Exp18. Thereafter, she handed over the body for postmortem to the Head Constable [PW16] and the Doctor PW9 conducted the autopsy on 12.09.2008 at about 3.30 pm. The Doctor[PW9] noted down the following antemartem injuries on the dead body.

"a.An incised wound transversely semi circular in shape of 26 cms X 1 Cm X fractured bone depth noted in the posterior aspect of left leg.

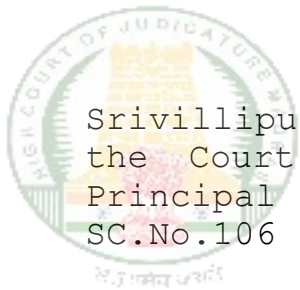
The inner end of the wound is 15 cms from the inner aspect of knee joint. The outer end of the wound is 16 cms from the outer aspect of the knee joint. The centre of the upper edge of the wound is 9 cms from the popliteal fossa. The direction of the wound is downwards and forward cutting the skin, subcutaneous fat, the calf muscles of the leg, major blood vessels and nerves cutting the posterior aspect of tibia and the outer fibula bone fully. The margins of the wound are regular.

b.A sutured lacerated wound of 2 cms X 0.5 cm X muscle deep over the left side of mastoid region with adjacent abrasion of 3 cms X 0.5cm.

c.Two adjacent abraisions over the left side of face in the maxillary eminence of size 2 cms X 0.5 cm and 3 cms X 0.5 cm."

3(vii).The Doctor PW9 gave his final opinion that the deceased appears to have died of shock and haemorrhage due to injury No.1 and the postmortem certificate issued by him is marked as Exp.7.

3(viii).The Inspector of Police [PW18] arrested the accused on 13.09.2008 at about 3.15 pm in the presence of PW12 and recovered the weapon MO1 from a heap of the sand behind the house of the accused, pursuant to the confession statement recorded from the accused. Thereafter, he also examined other witnesses and filed the final report before the Judicial Magistrate No.III,



Srivilliputhur in PRC No.12 of 2009 and the same was committed to the Court of Sessions and was taken up for hearing by the Principal Sessions Judge, Virudhunagar at Srivilliputhur in SC.No.106 of 2009.

4. During trial 18 witnesses were examined on the side of the prosecution, 20 exhibits were marked and 6 material objects were produced.

5. The incriminating materials were put to the accused under Section 313 CrPC and the accused has denied the same. Though the accused stated that there are witnesses to be examined on his side, no witness was examined. In conclusion of the trial, the trial Court found the accused / appellant guilty for the offence and convicted and sentenced him as stated supra.

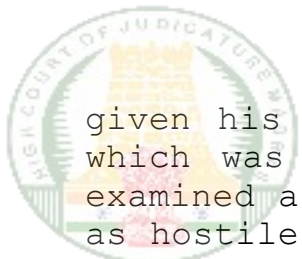
6. As against the conviction and the sentence imposed on the appellant, he has preferred the present appeal.

7. Heard Mr. Ramesh Kumar, learned Counsel representing Mr. R. Alagumani, Counsel on record for the appellant and Mrs. S. Bharathi, learned Government Advocate (Crl Side) and perused the materials placed on record.

8(i). The learned Counsel appearing for the appellant submitted that there is a delay in reporting the incident as well the FIR reaching the Court. As per the evidence of the Doctor PW.8 at Rajaji Government Hospital at Madurai, the deceased was attacked by two known persons with aruval and knife, whereas, the prosecution was initiated as against this appellant alone and the other accused was left out. He also pointed out the corrections made in ExP1 complaint with regard to the time of occurrence.

8(ii). The learned Counsel for the appellant has also drawn the attention of this Court to the injury sustained by the accused. The accused is also said to have sustained three bite injuries on the left and right shoulders and on his neck and none of the witnesses had stated about these bite injuries found on the deceased. Therefore, the non explanation of the accused injuries is fatal to the case of the prosecution and the benefit of doubt has to be extended to the accused.

9(i). Per contra, the learned Government Advocate appearing for the State would submit that the prosecution has established its case beyond reasonable doubt and the occurrence has taken place at about 7.15 pm and within one hour the deceased was taken to the hospital by PW4 and the Doctor [PW7] has noted down the manner of injury sustained by the deceased at the time of occurrence. The Doctor, who conducted the postmortem has also



given his opinion that the deceased died due to the injury No.1, which was caused by the accused. In this case, PW2 to PW6 were examined as eye witnesses and though PW3, PW5 and PW6 were treated as hostile, they have supported the case of the prosecution to the extent that there was an incident that took place between the accused and the deceased on the date of occurrence. The evidence of PW2 and PW4 clearly established the case of the prosecution.

9(ii).According to the learned Government Advocate, PW4 is the independent witness, who was present at the time of occurrence and he only took the deceased to the Government Hospital at Srivilliputhur and admitted him in the hospital at about 8.15 pm. PW4 has clearly stated about the incident that took place on the date of occurrence and the injuries inflicted by the accused on the deceased. Apart from the evidence of PW4, PW2 the sister of the deceased, who is also an eye witnesses to the occurrence, stated about the occurrence and thus the evidence of PW4 is corroborated by the evidence of PW2. Moreover, in this case, the complaint was lodged by the deceased himself and the deceased was admitted in the hospital on 11.09.2008 at about 8.15 pm and at that time he was conscious and he gave statements before Head Constable[PW13] and the same was recorded in ExP1 and apart from the complaint ExP1, 161(3) statement was also marked as ExP14 and therefore, the complaint ExP1 and ExP14 have to be treated as that of dying declaration and these materials are enough to establish the case of the prosecution. Apart from this, the learned Government Advocate has also relied upon the biological report, wherein, the presence of blood group B of the deceased in the cloths recovered from the deceased as well as in MO1 bill hook, which was recovered from the accused and therefore, according to the learned Government Advocate, the prosecution has established its case beyond any doubt.

10.Heard the learned Counsel on either side and also perused the materials placed on record.

11.The deceased in this case namely Solairaja as well as the accused are relatives of Naraiyankulam village. A committee headed by PW5 was formed to celebrate the village festival and the committee was collecting cess for the celebration. On the date of occurrence, while the accused was passing through, the deceased made a comment that some people in the villages are not giving cess for the village festival and it has to be strictly collected by PW5. Infuriated by those words uttered, the accused picked up the quarrel with the deceased and there was a scuffle between the accused and the deceased and pursuant to the wordy altercation, the accused is said to have caused injury on posterior side of left leg and caused serious injury and on account of that injury the said Solairaj died in the

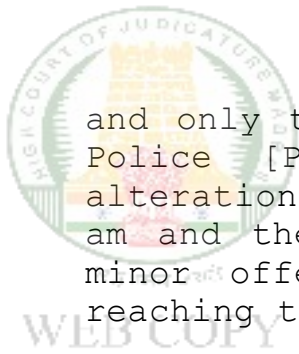


hospital on the next day. The victim / deceased was admitted in the hospital at Srivilliputhur immediately at about 8.15pm. Before the Doctor [PW7], it is stated that a known person caused the injury. Considering the nature of the injury he was referred to the Government Hospital at Madurai, where it is stated that two persons have caused injury with aruval and knife and it is also recorded in Exp5, Accident register recorded at Rajaji Government Hospital, Madurai. By referring Exp5 the learned Counsel for the appellant had raised the ground that the proceedings was initiated as against this appellant alone and there is no investigation with regard to the other persons.

12.No doubt the Doctor [PW8] has stated in his evidence that two persons assaulted the deceased as stated in Exp6. However, Exp6 was recorded by one Dr.Duraimurugan. But, the said Dr.Duraimuguran was not examined by the prosecution. Instead of Dr.Duraimurugan, Dr.Saravanakumar was examined as PW8. Moreover, a perusal of the documents Exp6 would disclose that the word two persons are inserted with ink pen at a later point of time. Similarly, the words knife and aruval have been inserted at a later point of time.

13.It is also to be noted as pointed by the learned Government Advocate, the victim was unconscious at the time of admitting him at Rajaji Government Hospital at Madurai. Considering the interpolation made in Exp6, it is not safe to accept the contention of the learned Counsel for the appellant that the offence was committed by two persons and one person was left in this case. The victim was admitted in the Government Hospital at Srivilliputhur on 11.09.2008 at about 8.15 pm, where he was conscious and the Doctor PW7 who had recorded the accident register Exp4 has stated specifically that the deceased has stated him that it was a known person, who caused injury on the date of occurrence.

14.The learned Counsel for the appellant has also raised a ground that there is a delay in registering the FIR as well as the FIR reaching the Court. The occurrence has taken place on 11.09.2008 at about 7.15 pm and within one hour the victim was taken to the Government Hospital at Srivilliputhur and on medical intimation, the Head Constable[PW13] attached to the respondent Police Station, went to the Government Hospital at Srivilliputhur and recorded the statement of the victim / deceased at about 9.30 pm and the case was registered at 11.00pm. No doubt, the printed FIR [Exp15] reached the Judicial Magistrate Court only on the next day on 12.09.2008 at about 10.00am. However, this FIR was originally registered for the offence under Sections 294(b), 324, 506(II) IPC and the investigation was handled by a Sub Inspector of Police [PW17]. The deceased died only on 12.09.2008 at 1.30am



and only thereafter, the offence was altered by the Inspector of Police [PW18] and the First Information Report along with alteration report reached the Judicial Magistrate Court at 10.00 am and therefore, when the earlier complaint was registered for minor offence this cannot be treated as a delay in the FIR reaching the Court.

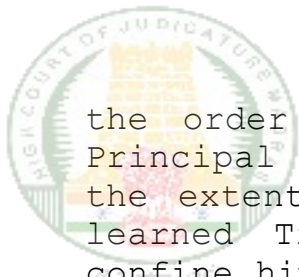
15.The learned Counsel appearing for the appellant has also pointed that the appellant has also sustained three bite injuries, but that was not mentioned. The appellant/accused in due course of the incident said to have sustained three bite injuries one on the shoulder and right leg and on the back of the neck. However, these injuries were not mentioned either in the complaint ExP1 or in the 161(3) CrPC statements of the witnesses as well as in the evidence of the prosecution of the witnesses. However, the learned Counsel for the appellant elicited the same through the arrest card, wherein the injuries are noted down by the Inspector of Police PW18. But, PW18 denied the presence of the injuries as he has not stated in this case that none of the witnesses have stated about the injury sustained by the accused. But this unexplained injury on the accused is a material defect on the side of the prosecution.

16.In ***Laksmi Singh and others etc., Vs State of Bihar***, reported in ***AIR 1976 SC 2263***, the Hon'ble Supreme Court has held that the unexplainable accused injury is fatal to the prosecution.

17.However, the injury sustained in this case is not that of serious injury. Moreover, the eye witnesses in this case namely, PW2 and PW4 have categorically stated that the presence of the accused as well as the deceased in the place of occurrence and the nature of injury caused on the accused are not serious in nature.

18.Apart from the evidence of PW4 and PW2 the other eye witnesses PW3, PW5 and PW6 though have been treated as hostile witnesses, stated the presence of the accused as well as the deceased and the scuffle took place between the accused and the deceased on the date of occurrence. Considering the injury and the manner of occurrence, the trial Court instead of convicting the appellant under Section 302 IPC, rightly convicted him under Section 304(II) IPC. Considering the nature of the injury sustained by the accused as well as the injury has not been explained by the prosecution witnesses, some benefit can be extended to the accused and therefore, the sentence of imprisonment imposed under Section 304(II) IPC is modified from 10 years to 4 years.

<https://hcservices.ecourts.gov.in/hcservices> 19.In the result, the Criminal Appeal is partly allowed and



the order dated 09.10.2013 passed in SC.No.106 of 2009 by the Principal Sessions Judge, Virudhunagar District, is modified to the extent indicated above. Since the appellant is on bail, the learned Trial Judge is directed to secure the appellant and confine him, in accordance with law.

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Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

dsk

To

- 1)The Principal Sessions Judge,
Virudhunagar District at Srivilliputhur
- 2)The Judicial Magistrate No.II, Srivilliputhur
- 3)The Superintendent, Central Prison, Madurai
- 4)The Inspector of Police,
Mamsapuram Police Station,
Virudhunagar District.
- 5)The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 6)The Section Officer, -2 copies
Criminal Section, (Records)
Madurai Bench of Madras High Court,
Madurai.

Crl.A(MD)No.44 of 2014

13.11.2019

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