



BAIL SLIP

Pandi, Male/aged 34/2014 years S/o.Ramasamy, Appellant/Accused No.1 was released on bail of this court order dated 24.02.2014 made in MP(MD)No.3 of 2014 in CrI A(MD)No.79 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :22.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CrI.A(MD)No.79 of 2014

Pandi ... Appellant / Accused No.1

Vs.

The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar District.
[Crime No.848 of 2010]

... Respondent/ Complainant

PRAYER: Appeal filed under Section 372 of the Code of Criminal Procedure, to admit this appeal on file and call for the records and set aside the judgment of the lower Court passed by the learned Additional District and Sessions Court (Fast Track Court), Virudhunagar in S.C.No.248 of 2011 dated 14.03.2012, by allowing this appeal.

For Appellant : Mr.Palanisamy
for Mr.S.I.A.K.Bagadur Sha
For Respondent : Mrs.S.Bharathi,
Government Advocate (CrI Side)

JUDGMENT

This appeal is filed by this appellant / accused No.1, challenging the judgment passed by the Additional District Judge (Fast Track Court), Virudhunagar, in S.C.No.248 of 2011, dated 14.03.2012.

2.The appellant is accused No.1 and he was tried along with his father Ramasamy [accused No.2] in S.C.No.248 of 2011 for the offence under Sections 294(b) and 302 IPC. In conclusion of the trial, the trial Court found the appellant guilty under Section 304(II) IPC and acquitted him from the charge under Sections 294(b) and 302 IPC and the second accused was found guilty for the offence under Section 304(II) r/w 34 IPC and was acquitted from the charges under Section 294(b) and 302 IPC.



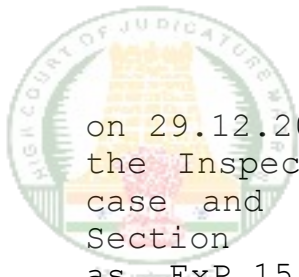
3.The conviction and the sentence imposed by the trial Court are as follows:

Accused	Section of Law	Sentence of imprisonment
A1	304(II) IPC	To undergo Rigorous Imprisonment for ten years
A2	304(II) IPC r/w 34 IPC	To undergo Rigorous Imprisonment for ten years

4.The accused No.2 also filed an appeal in Crl.A(MD)No.90 of 2013 and pending appeal, accused No.2, namely, Ramasamy died and therefore, the appeal was dismissed as abated by order dated 03.10.2019.

5.The brief facts of the case are that the first accused is the son of the second accused and the accused were residing adjacent to the deceased's house. PW.1 is the brother of the deceased. There was an enmity prevailed between the deceased and the accused that the first accused used to throw garbage in front of the deceased house. On 28.12.2010 at about 3.45 pm as usual, the accused threw some garbage in front of the deceased Mahalingam house and the same was questioned by the deceased. The accused picked up a quarrel with the deceased and has stated that he will do like so and there was a wordy quarrel between the deceased and the accused and during the course, the accused No.1 said to have pushed the deceased and the deceased fell down on the cement road and sustained injuries on his back head. Immediately, the brother of the deceased took him to the Government Hospital at Virudhunagar, where PW9 Dr.Aravinth Babu admitted the deceased in the hospital on 28.12.2010 at 4.10pm and the accident register issued by the Doctor [PW9] is marked as Exp.6. The victim was also not conscious and considering the nature of the injury and his condition, he referred the victim to the Government Rajaji Hospital, Madurai and in the meantime he gave medical intimation to the Virudhunagar East Police Station.

6.The Special Sub Inspector of Police, Narasingaraj, [PW14] on receipt of medical intimation, went to the Government Hospital at Virudhunagar at about 4.45pm and since, the deceased was in an unconscious state, he recorded the statement from his brother, Muniyandi [PW1] and returned to the Police Station around 5.30 pm and registered a case in Crime No.848 of 2010 for the offence under Sections 294(b), 323 and 506(II) IPC. The statement of PW1 is marked as Exp.1 and the printed First Information Report is marked as Exp.13 and thereafter, he proceeded to the place of occurrence and prepared the observation mahazar [Exp.2] and rough sketch [Exp.14] in the presence of witness PW7 and also recovered cement slabs with and without bloodstain MOs.3 and 4 respectively under a cover of mahazar Exp.3 in the presence of the witness PW7. The deceased was referred to the Madurai Rajaji Government Hospital, wherein, he died



on 29.12.2010 around 6.30 am and on receipt of the death intimation, the Inspector of Police [PW15] took further investigation in this case and filed an alteration report converting the charge under Section 302 IPC on 29.12.2010 and the alteration report is marked as Exp.15. Thereafter, he proceeded to the Government Rajaji Hospital at Madurai and conducted inquest in the presence of panchayatadars on 29.12.2010 from 11.00am to 12.30pm. The inquest report is marked as Exp.16. Then he sent the body for postmortem through head constable PW.13.

7.PW.10 is Dr.Purushothaman and he conducted autopsy on 29.12.2010 at 1.15pm and noted down the antemortem injuries, which are an abrasion 3 cms X 2 cms over the left thigh and on dissection of scalp, subcalpal contusion measuring 12 cms X 10 cms on the left temporal-parietal region and after the chemical examination report, he gave his final opinion that the deceased appears to have died of raino cerebral injuries.

8.The Inspector of Police [PW15] visited the place of occurrence and also arrested the accused in a bus stop at Alampatti Cross Road in the presence of Chandrasekaran, Village Administrative Officer [PW8] and recorded the confession statement from accused No.1 and 2 separately and recovered a Seemai Karuvel Stick measuring three feet height [MO1] under a cover of mahazar Exp.5 in the presence of witness PW8. Thereafter, further investigation was taken over by the Inspector of Police [PW16] on 28.12.2010 and he obtained chemical analysis report and recorded the statements from the witnesses and also verified the statements examined by the previous Investigating Officer and filed a final report after concluding his investigation on 25.08.2011, before the learned Judicial Magistrate No.II, Virudhunagar and the same was taken on file in PRC No.15 of 2011 and committed to the Court of Session and the same was taken on file in SC.No.248 of 2011 by the Additional District Court (Fast Track Court), Virudhunagar.

9.During the course of trial 16 witnesses were examined and 17 documents were filed as exhibits before the trial Court on the side of the prosecution and 4 material objects were also produced.

10.The available prosecution evidence are as follows:

10.1.PW1 is the de facto complainant in this case also brother of the deceased, he speaks about the quarrel between the deceased and the accused and also admitting his brother in the hospital and lodging of complaint Exp.1.

10.2.PW2 is the wife of the deceased and also she speaks about the occurrence as an eye witness.

10.3.PW3 is the grand son of the deceased, who was also examined as an eye witness.



10.4.PW4 son of the deceased, who was residing in the adjacent house and he was also examined as an eye witness and he also speaks about the occurrence.

10.5.PW5 is a neighbour, who is residing in the same street and he was also examined as an eye witness.

10.6.PW6 is another son of the deceased who was residing in another place and he was also examined as witness.

10.7.PW7 is examined for the purpose of the observation mahazar and rough sketch prepared in the place of occurrence.

10.8.PW8 is the Village Administrative Officer, who stood as witness for the arrest and recovery.

10.9.PW9 is the Doctor at Government Hospital at Virudhunagar, who provided first aid to the deceased on 28.12.2010 at 4.10 pm and also prepared accident register [Exp.6]

10.10.PW10 is the Doctor at Rajaji Government Hospital, Madurai, who conducted postmortem on 29.12.2010.

10.11.PW14 is the Special Sub Inspector of Police, who recorded the statement of PW1 in Exp.1 and registered the case in Exp13.

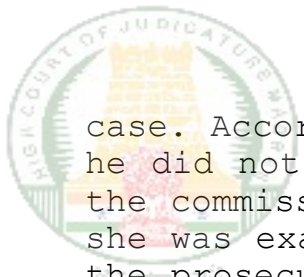
10.12.PW15 is the Investigating Officer, who conducted preliminary investigation and PW16 is the Inspector of Police, who conducted further investigation and filed final report in this case.

11.The incriminating materials from the evidence of the prosecution witnesses were put to the accused, under Section 313 CrPC and the accused denied the same and he also stated that there are witnesses in support of his case, but, he did not examine any one. In conclusion of the trial, the trial Court found the appellant guilty, convicted and sentenced him as stated supra.

12.Aggrieved over the same, the appellant has filed this present appeal.

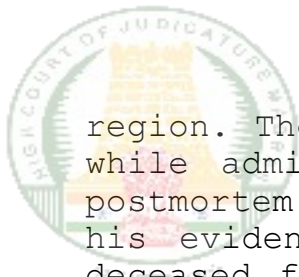
13.Heard Mr.Palanisamy, learned Counsel appearing for the appellant and Mrs.S.Bharathi, learned Government Advocate (Crl Side), appearing for the State.

14.The learned Counsel for the appellant would submit that the deceased and the prosecution witnesses are the close relatives to PW1 and all the witnesses are not real eye witnesses and they are created witnesses for the purpose of this case. The evidence of the prosecution witnesses as eye witnesses cannot be relied upon in this



case. According to PW1, he specifically, stated in his evidence that he did not witness the occurrence and he reached the place after the commission of offence. PW2 is the wife of the deceased. Though she was examined as an eye witness, she did not support the case of the prosecution. She was also working as Washerwoman and used to go to wash cloths. PW3 is the grand son of the deceased who was also examined as an eye witness that he was present at the place of occurrence and he came to his grandfather's house for the purpose of preparing for examination. But he did not accompany the deceased to the hospital and therefore, he could not be present at the time of occurrence. PW4 is the son of the accused, he was residing at the adjacent street and he was sleeping in his house at the time of occurrence and he was not directly aware of the occurrence. He also did not accompany the deceased to the hospital. PW5 is a neighbour of the deceased and he was also examined as an eye witness and according to him, the daughter-in-law of Mahalingam, one Lakshmi alias Mahalakshmi has pacified the deceased and the accused at the time of occurrence, but the presence of the Lakshmi alias Mahalakshmi was not referred to by other accused in this case and that her presence at the place of occurrence has also not been stated in the complaint in ExP1. It is also not the case of the prosecution that the daughter-in-law of the deceased Lakshmi alias Mahalakshmi was present at the place of occurrence and therefore, the evidence of the eye witness produced by the prosecution are not reliable witness and there are contradictions in their evidence and therefore, it is not safe to rely upon the evidence of the eye witnesses. He also pointed out that in the Accident Register[ExP.6], the Doctor [PW9], who admitted the deceased has specifically mentioned that there was breath smell of alcohol noticed at the time of admitting the deceased in the hospital. The drinking habit of the deceased has also been stated by PW1, PW2 and PW4 and the postmortem Doctor [PW10] has also noticed the presence of 100 ml brownish liquid with pungent odour at the time of postmortem and therefore, the deceased, who was under the influence of liquor fell down on the slab, sustained injury and died. Further the prosecution has projected the case as if, it is the appellant, who has pushed the deceased on the cement slab and due to which, the deceased succumbed to injury. Though the First Information Report was registered on 28.12.2010, it reached the Court only on 29.12.2010 at 11.00am and there is a delay in the FIR reaching the Court and this delay has not been properly explained by the prosecution.

15.Per contra, the learned Government Advocate (Crl Side) appearing for the State would submit that the prosecution case is established through the eye witnesses PW2, PW3, PW5 and PW4. The postmortem certificate also discloses that the deceased died due to raino cerebral injuries and the Doctor, who conducted the postmortem has noted down the antemortem injuries that an abrasion 3 cms X 2 cms over the left thigh and on dissection of scalp, subcalpal contusion measuring 12 cms X 10 cms on the left temporal - parietal

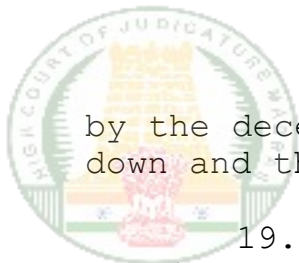


region. Though Doctor [PW9] in accident register has mentioned that while admitting the deceased he noted the smell of alcohol, the postmortem Doctor [PW10] has denied the presence of alcohol during his evidence and therefore, the version of the defence that the deceased fell down under the influence of alcohol and died is not substantiated by any of the evidence and this theory cannot be accepted. She also relied upon the judgment of the Hon'ble Supreme Court, in **Chaudhari Ramjibhai Narsangbhai Vs. State of Gujarat**, reported in **AIR 2004 SC 313**, wherein the Hon'ble Supreme Court has held that the reliability of the witnesses cannot be discarded on the theory of relative of the deceased. Even if they are relatives, if the evidences are trustworthy and reliable, then the Court can consider their evidence and can sustain conviction.

16.Evidence of PW1 to PW5 clearly establish the presence of the accused in the place of occurrence and the quarrel took place between them and consequent to the quarrel, the victim was also pushed down by accused No.1 and assaulted by accused No.2. Consequent to that the victim died in this case and therefore, the prosecution has established its case beyond reasonable doubt and the trial Court has considered all the evidence and held that there is a death as homicidal one, rightly convicted and imposed sentence on the accused.

17.This Court has paid its anxious consideration to the rival submissions and also perused the available records.

18.The deceased in this case was admitted by PW1 in the Government Hospital, Virudhunagar, on 28.12.2010 at 4.10pm. The Doctor [PW9], who admitted the deceased at Virudhunagar Government Hospital, recorded the accident register [Exp.6]. The Doctor [PW9] has noted that the deceased was assaulted by two known persons with weapons and knife on 28.12.2010, around 3.45pm at his house. He also noted the breath smell of alcohol when he admitted the deceased in the hospital. The deceased was referred to Rajaji Government Hospital, Madurai, for further treatment, but he died on the next day around 6.30am. The Doctor [PW10] at Rajaji Government Hospital, Madurai conducted postmortem and noted down 100ml brown colour liquid with pungent odour in the stomach and 20ml of stained fluid with pungent odour in the small intestines. The defence has taken a theory that the deceased was a drunkard and on the date of occurrence under the influence of liquor, he fell down on the cement slab, sustained injury and died due to that injury. However, the prosecution has foisted this case, as if, the accused pushed him down on the date of occurrence and on account of which, the occurrence has taken place. The case of the prosecution is that the deceased and the accused are neighbours and the accused used to put garbage near the house of the deceased and that was questioned by the deceased and on the date of occurrence also the accused put the garbage near the house of the accused and when that was objected to



by the deceased, the accused picked up a quarrel and also pushed him down and the deceased fell down and sustained injuries.

19. In support of the prosecution case, the prosecution has examined PW1 to PW5 as eye witnesses. PW1 is the brother of the deceased, who took the deceased to the hospital on 28.12.2010 and admitted him in the Government Hospital at Virudhunagar. He was residing two furlong away from the house of the deceased. He was examined as an eye witness and he also stated in his chief examination that he witnessed the occurrence, but during his cross examination, he admitted that he came to the place of occurrence only after hearing the incident and reached the place of occurrence 10 minutes after the occurrence and at that time his brother was sitting on the pier and he enquired his brother's wife PW2 and through PW2 he came to know about the occurrence and also admitted that he did not witness the occurrence. So far as PW2 is concerned, she is wife of the deceased and she was also examined as an eye witness. According to her, she is working as Washerwoman and she also used to go to wash clothes in the morning and her husband also used to go to iron the cloths near Kamarajar Statute adjacent to Municipality and on the date of occurrence, her husband was sleeping on the pier after taking meals, she is said to have accompanied PW1 to the hospital, however, according to her no bloodstain was found on her clothes. But, there was no undigested food particles on the stomach. PW3 the grandson of the deceased, was studying B.Tech at Srividhya College at a different place and he was also residing near the place and on the date of occurrence, he was present in the place of occurrence and for the purpose of studying, he came to his grand parents house and that he is said to have witnessed the occurrence, but, he did not accompany the deceased to the hospital. The conduct of PW3, being a B.Tech student and also the grandson of the deceased, though he was present at the place of occurrence, he said to have not accompanied the deceased to the hospital, raises doubt, as to whether he was present at the place of occurrence or not?

20. PW4 is the son of the deceased. Admittedly, he is residing several furlong away from his father's house and on the date of occurrence, he was sleeping in his house and on knowing about this incident, he came to the place of occurrence and he has also not witnessed the occurrence and at the time of occurrence he was sleeping in his house.

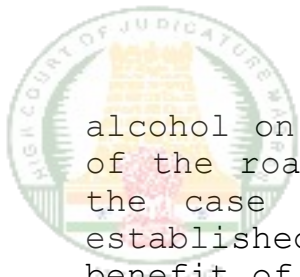
21. PW5 is the neighbour and also a relative of the deceased and he was also examined as an eye witness in this case. During the course of examination, he stated that there was a quarrel between the accused and the deceased and at that time the daughter-in-law of the deceased namely, Lakshmi alias Mahalakshmi has pacified the deceased and the accused. But the said Lakshmi alias Mahalakshmi was not examined by the prosecution in this case and it is not the case of the other witnesses that the daughter-in-law of the deceased



Lakshmi alias Mahalakshmi was present at the place of occurrence on the date of occurrence. The evidence of PW5 in this regard is contrary to the evidence of other witnesses and therefore, the evidence of PW5 cannot be relied.

22. Now coming to the case of the prosecution that there was a quarrel between the deceased and accused on account of the accused throwing garbage in front of the house of the deceased. However, in the observation mahazar or in the rough sketch, there is no reference about the garbage thrown by the accused. Moreover, the sketch and the observation mahazar show a pit in the middle of the road, which was dug by the Municipality for laying underground drainage and the place of occurrence is shown in the middle of the road near the drainage. The place of occurrence is also shown away from the house of the deceased.

23. PW1 the brother of the deceased, PW2 wife of the deceased, PW3 the grand son of the deceased, have uniformly stated that the deceased was in the habit of drinking liquor. Though PW1 to PW3 have stated that on the date of occurrence, the deceased has not consumed any liquor, the evidence of the Doctor [PW9], who admitted the deceased at the Government Hospital at Virudhunagar on 28.12.2010, shows that he noticed the breath smell of alcohol, while admitting the deceased in the hospital. It is also mentioned in the accident register [Exp6]. The Doctor, who conducted the autopsy in this case has noted 100 ml of brown colour fluid with pungent odour in the stomach and 20 ml of stained fluid in the small intestines. During his evidence, he also admitted that this liquid found on the deceased was on account of alcohol. Therefore, the defence theory that the deceased was under the influence of alcohol is found in this case. The observation mahazar and the rough sketch and the evidence of witnesses would show that only in the opposite house of the deceased there was a pit dug for laying underground drainage and the occurrence was also shown near the drainage. Though the place of occurrence is surrounded by many houses in Exp.14, none of the residents residing near the place of occurrence has been examined by the prosecution. PW5 is the neighbour of the accused as well as the deceased and he is also a close relative of the deceased, in his evidence has stated that there was a quarrel between the accused and the deceased on the date of occurrence and this quarrel was pacified by the daughter-in-law of the deceased, Lakshmi alias Mahalakshmi, but there is no reference about the said Lakshmi alias Mahalakshmi in the evidence of other witnesses and she was not cited as witnesses in this case. PW2 wife of the deceased, who was examined in this case has not stated anything about the presence of her daughter-in-law at the place of occurrence on the date of occurrence. Since the evidence has not been corroborated by any other witness, it may not be safe to rely upon his evidence to convict the accused. The available evidence as well as the available circumstances show that the deceased was under the influence of



alcohol on the date of occurrence and there was a pit in the middle of the road, opposite to the house of the accused, which probalises the case of the defence and moreover, the prosecution has not established its case beyond reasonable doubt and therefore, the benefit of doubt is extended to the accused.

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24. In the result, the appeal is allowed and the conviction and sentence imposed by the learned Additional District and Sessions Court (Fast Track Court), Virudhunagar in S.C.No.248 of 2011 on 14.03.2012 is set aside, the appellant is acquitted from the charges framed and the bail bonds executed by the appellant if any shall stand cancelled and the fine amount if any paid by the appellant shall be refunded.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1) The Additional District and Sessions Court
(Fast Track Court),
Virudhunagar

2) The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar District.

Copy to

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

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

+1 CC to Mr.S.I.A.K. BAGADOR SHA, Advocate (SR-100836[F] dated 25/11/2019)

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22.11.2019

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