



Bail Slip

The Criminal Revision Petitioner/Accused namely Easwaran, S/o.Ramasamy, male, was directed to be released on bail vide order of this Court dated 27.04.2015 passed in MP(MD)No.1/2015 in Crl.R.C(MD)No.188 of 2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of reservation	09.07.2019
Date of Judgment	18.10.2019

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.188 of 2015

Eswaran

: Revision Petitioner/
Appellant/1st Accused
Vs.

State represented by
The Revenue Divisional Officer,
Karur.

: Respondent/Respondent/
Complainant

Prayer: Criminal Revision has been filed under Sections 397 & 401 of Criminal Procedure Code, against the judgment passed by the Sessions Judge, Trichy, in Crl.A.No.143 of 2014, dated 23.03.2015, modifying the judgment, dated 31.07.2018 passed by the I Additional Assistant Sessions Judge, Trichy, in SC No.289 of 1996, dated 31.07.1998.

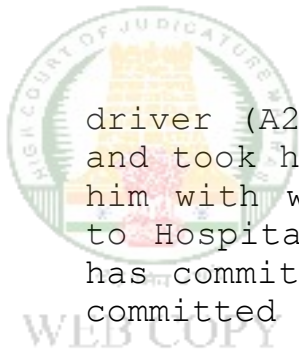
For Revision Petitioner : Mr.S.Anwar Sameem

For Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

J U D G M E N T

This Criminal Revision is directed against the judgment passed by the Sessions Judge, Trichy, in Crl.A.No.143 of 2014, dated 23.03.2015 modifying the judgment, dated 31.07.2018 passed by the I Additional Assistant Sessions Judge, Trichy, in SC No.289 of 1996, dated 31.07.1998.

2.The Revenue Divisional Officer, Karur has filed a complaint before the Judicial Magistrate No.II, Karur alleging that on the complaint given by one Palaniappan about the theft of his lorry, Karur Police registered a case in Crime No.1263 of 1995 and during investigation, the then Inspector of Police (A1) and

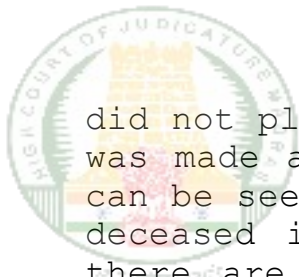


driver (A2) and others went to the house of the deceased Rajmohan and took him for enquiry to the police station, where A1 assaulted him with wooden log and then A1 and A2 took the injured Rajmohan to Hospital and on the way, the said Rajmohan died and hence, A1 has committed the offence under Section 304 Part II IPC and A2 has committed the offence under Section 304 Part (II) IPC r/w 34 IPC.

3.The learned Judicial Magistrate, Karur has committed the case for Sessions and the case was taken on file as SC No.289 of 1996 and made over to the I Additional Assistant Sessions Judge, Tiruchy for trial. After trial, the learned Sessions Judge found that the accused are not guilty of the offences and acquitted the accused from the charges levelled against them. Against the order of acquittal, appeal has been filed before this court in Crl.A.No.1071 of 1998 and this court remitted the case directing the lower court to pass orders afresh, after hearing the arguments of both sides and considering the entire evidence properly. The learned Judge, after proper appreciation of the materials available on record passed an order, convicting A1 for the offence under Section 304(II) IPC and sentenced him to undergo RI for 7 years and also directed the District Level Services Authority to decide as to the quantum of compensation that can be payable to the family of the deceased by A1 and acquitted A2 from the charge levelled against him. Hence, the petitioner/A1 is before this court.

4.Heard both sides and perused the materials available on record.

5.The main contention raised on the side of the revision petitioner/A1 is that PW1, who took the deceased Rajmohan to the hospital did not implicate in this case and in-fact, his testimony is to the effect that when he visited the police station to see his nephew on 23.05.1995, he did not find the revision petitioner in the station premises and PW1 has not stated that the deceased did not complain to him that he was beaten by A1 and thus, the evidence of PW1 is exculpatory in so far as the revision petitioner is concerned and PW2 does not seriously implicate the revision petitioner in her evidence and the medical evidence is to the effect that the deceased died due to neurogenic shock, but the nature of injuries does not and cannot lead to inference so as to implicate A1 and the final opinion of the medical expert was not marked and in the facts and circumstances of the case, the medical opinion cannot be conclusive and binding on the Court and DW1's evidence is highly probable and supports the cause of death and nature of injury and at the time of occurrence, A1 was only the Sub Inspector of Police and he was not the Investigating Officer and he merely complied with the order of his superior and brought the suspect to the station and left the station premises and A1

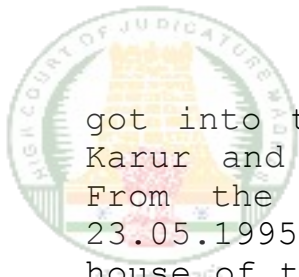


did not play any other role and no allegation of any ill-treatment was made as against A1 and on perusal of the entire evidence, it can be seen that A1 did not play any role, other than securing the deceased in his house and taking him to the police station and there are contradictions in the evidence of PW1 to PW3 and the oral evidence did not corroborate with the medical evidence and prays that the petitioner/A1 is entitled to acquittal.

6.PW2 is the wife of the deceased. PW2 deposed that on 23.05.1995 by around 4.00 to 4.15 am, the Inspector of Police in uniform and others police personnel in the mufti dress came to her house and asked her husband and when her husband came out, A1 beat her husband Rajmohan and then he caught hold of the hair of her and pushed her aside and due to it, she sustained injury in her upper lip and A1 and A2 caught hold of her husband sideways and moved him towards the van and the accompanying persons pushed her husband and beating him repeatedly again and again and then they went to the van and then, she went to the house of PW1 and informed the matter, then PW1 immediately rushed to the police station and after 10 minutes, an Auto came to her house and the driver of the said Auto informed her that her husband Rajmohan was admitted in the Karur Government Hospital in a serious condition, upon which she rushed to the said hospital in the same Auto and she found her husband lying dead and one month prior to the occurrence, A1 and A2 called her husband for an enquiry in respect of theft of a lorry, then her husband was left off and this occurrence was witnessed by Rajalingam, Selvam, Palaniyandi and others belonging to her locality and when her husband was in good condition, but due to the assault by A1 and accompanying police personnel, her husband died.

7.PW3 is cited as eyewitness. PW3 deposed that on 23.05.1995 by around 5.00 am, his neighbour Anjalai came to his house and informed him that the police came to their house and beat Rajmohan and carried along with him and then he immediately started to fetch on him and found that Rajmohan was carried away by A1 and 6 to 7 persons and when Rajmohan attempted to say something to him, the police bet him and dumped him in the van and the van started at once and afterwards, he heard that Rajmohan died.

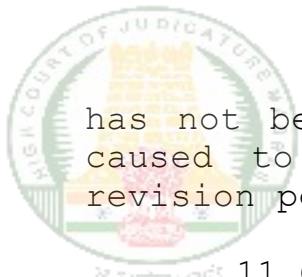
8.PW5 is the Van Driver, in which A1 and other policemen came to the house of the deceased Rajmohan and took Rajmohan to the police station. PW5 deposed that prior to two years, he took 7 to 8 policemen in his Van and proceeded to Veeramalaipalayam village and after reaching the said village, he stopped the Van in the main road itself and parked the same therein and after around 10 minutes, the police brought a person to the Van and they started back to Karur and enroute in Puliur, one Muniyan/A2 also



got into the vehicle and they all came to the Police Station at Karur and he was paid Rs.300/- for the Van and left the place. From the evidence of PW2, PW3 and PW5, it reveals that on 23.05.1995 early morning, A1 with other policemen came to the house of the deceased and took the deceased for enquiry. The above fact was not denied on the side of the accused.

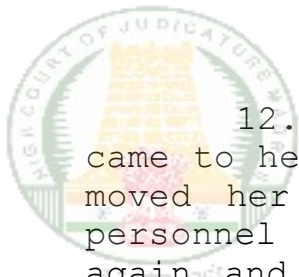
9.PW1 is the neighbourhood of PW2. PW1 gave Ex.P1 complaint to the police in respect of the occurrence. PW1 in his complaint and evidence stated that on 23.05.1995 at 6.30 am, while he was in his house, Anjammal and Dhanam came to his house and informed that police came to their house and beat Rajmohan and took him with them and then he started to Karur Police Station around 6.00 to 6.35 am and when he reached the police station, he found Rajmohan was lying in the Police Station and he patted him and awoke him and Rajmohan requested him to get coffee for him and then he fetched coffee for him and the police were making attempt to help Rajmohan to stand, but he was trembling and one Shanmugam came to the Police Station and both he and the said Shanmugam took the Rajmohan in the Auto, but while proceeding to hospital, Rajmohan died and then they proceeded to the Government Hospital, Karur and after examination, the Doctor declared him as dead and then, he came to the Police Station and gave Ex.P1 complaint.

10.The learned Additional Public Prosecutor appearing for the respondent/State argued that the deceased Rajmohan was allegedly involved in the theft of lorry of one Palaniyappan and to enquire regarding the theft of the lorry, A1 and other policemen came to the house of the deceased and took him to the Police Station and PW1 and PW2 categorically deposed that the police personnel came to her house and asked about the deceased and took Rajmohan and A1 bet the deceased and took the deceased to the police station and further, PW6 also stated that the police personnel took Rajmohan only in his auto and PW8 and PW9, who are the police personnel accompanied with A1 have categorically stated that for the purpose of enquiry in respect of a theft case, they went to the house of the deceased and took him to the police station and then they went to their home and in the evening, they came to their duty and heard that the deceased was died. From the evidence of PW8 and PW9, it reveals that Rajmohan was kept in the police station and as per section 108 of the Evidence Act, when any fact is established within the knowledge of any person, the burden of proving that fact is upon him and in this case, there are sufficient evidence and witnesses available to prove that the deceased was taken to the police station by A1 and kept in the police station and subsequently, he was taken to the hospital and on the way to the hospital, the deceased died and further, the medical records also prove that there is a chance for the death of the deceased due to the injuries sustained in the chest and if A1



has not beaten the deceased, he has to explain how the injuries caused to the deceased and the burden of proof lies on the revision petitioner/A1 herein and he is not entitled to acquittal.

11. On the other hand, the learned counsel appearing for the petitioner/A1 submitted that there was no evidence to show that A1 is responsible for causing injuries to the deceased and even the facts as is there any beating to the deceased in the police station and who were the police personnel on duty at the police station, at the time whether A1 was in the police Station is not proved by the prosecution and consequently in the absence of evidence against A1 as to his presence of participation at the time of injuries caused to the deceased Rajmohan, it is not possible to find A1 is found guilty for causing injuries to Rajmohan and further, there is no specific evidence to show that the deceased Rajmohan all along beaten during transit and the only evidence available is that A1 brought Rajmohan to the police station for interrogation as per the orders of the Inspector of Police and it was the responsibility of the Station House Officer to release the deceased after interrogation, which was not done, for which the Head Constable or Constable are not responsible and in the absence of positive evidence against them, cannot be held responsible and further, as per the medical jurisprudence, if a death has occurred due to neurogenic shock, it should happen instantly and it was admitted by the Doctor during his cross examination and further, it would seen that the distance between the deceased village and Karur Police Station, as deposed by PW5 in his cross examination was 20 km and when the death might ensure instantly, PW1 could not see Rajmohan alive in the police station by 6.00 am and from the evidence of prosecution witnesses, it reveals that Rajmohan was taken away from his house at about 5.00 am and as per the evidence of PW5, the driver of the Auto, the police party stayed only for 10 minutes and they reached the police station by 6.00 am and PW7 saw Rajmohan at 6.45 am and he died between 7.00 am to 7.15 am and from the evidence of PW8, it reveals that none of the police personnel accompanied for the operation mission were not available in the police station after 6.00 am till the death of the deceased Rajmohan by 7.00 to 7.15 am on the fateful day and hence, the evidence stating that the deceased was in the custody of A1 is baseless and as a matter of fact, Rajmohan was in the police station from 6.00 am to 7.05 am and what has happened during the time in the police station, A1 was available is not the case of the prosecution and the investigation done by PW11 is great irregularity in a biased manner selective and perfunctory leaving the other persons involved and A1 brought Rajmohan to the station and left the station premises and A1 did not play any role and prays that A1 is entitled to acquittal.



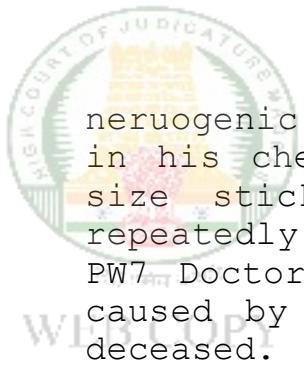
12.PW2 during her evidence stated that the police personnel came to her house and A1 beat her husband and the police personnel moved her husband towards the Van and the accompanying police personnel pushed her husband, while beating repeatedly again and again and PW3 stated during his evidence that he saw that the police came to the house of Rajmohan and beat Rajmohan and carried him along with them and when Rajmohan attempted to say something to him, the police beat him and dragged him and dumped him in the Van.

13.The Doctor, who conducted the post-mortem on the body of the deceased was examined as PW7. PW7 found the following injuries on the body of the deceased viz., (i) a contusion 4x 3 cms over the right chest portion and on dissection of the said portion, it was found that blood had gushed out from beneath the injury and (ii) a contusion 3 x 3 cms over the left chest portion and on dissection of the said portion, it was found that blood had gushed out from beneath the injury. PW7 opined that the deceased would have died due to neurogenic shock and the neurogenic shock was due to the injuries sustained by the deceased in her chest and the death would have occurred prior to 10 to 14 hours prior to the conduct of the post-mortem and the attack with thick stick could cause injuries and the person would have died due to the injuries sustained by the deceased.

14.In this case, PW8 and PW9 are the policemen, who accompanied with A1. PW8 and PW9 categorically stated that due to enquiry in respect of a theft case, they came to the house of the deceased and took him to the station and then they went to their home and in the evening, they came to their duty and heard that the deceased was died. To prove that after PW8 and PW9 left the deceased in the station and thereafter went to their home, no document was produced on the side of the petitioner/A1 and hence, after left the deceased in the police station, A1 left station was not proved on the side of the petitioner/A1.

15.Further, the learned counsel for the petitioner/A1 argued that the deceased suffered by Epilepsy and during the time, the police personnel who were in the police station gave 2 keys to the deceased and he pumped his chest by himself and only due to it, the deceased died. No contra evidence was let in on the side of the petitioner/A1 stating that prior to the occurrence, the deceased was suffering from Epilepsy. While cross examining PW1 to PW3, it was not suggested that prior to the occurrence, the deceased had the disease of Epilepsy and for that, the deceased took treatment. Further, no question was put to PW7 whether the deceased had disease of Epilepsy.

16. PW7 categorically deposed that the deceased died due to

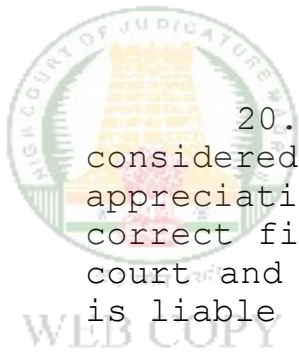


neruogenic shock and due to the injuries sustained by the deceased in his chest and the above injuries may be caused due to thick size stick. PW2, PW3 and PW5 stated that the petitioner/A1 repeatedly beaten the deceased again and again by wring lathi. PW7 Doctor stated the injuries sustained by the deceased may be caused by thick stick. PW7 found injuries on the chest of the deceased. Hence, the evidence of PW2, PW3 and PW5 corroborated with the evidence of PW7 (Doctor). Hence, the argument put forth on the side of the petitioner/A1 stating that due to Epilepsy suffered by the deceased, the police personnel pumped the chest of the deceased and due to it, the deceased died is not at all acceptable.

17.In this case to prove that the deceased was taken by the police in respect of a theft of a lorry, the owner of the above lorry was examined as PW4. PW4 deposed that he purchased the lorry and on 03.05.1995, he had parked the lorry in front of his house and the same was missing on the next day and he preferred a complaint to the police and had expressed his suspicion over one Veluchamy, Babu and Rajmohan and in fact, he was using the lorry owned by Rajmohan, who owed his money and there was difference of opinion in between him and Rajmohan and on 05.05.1995, the missing lorry was traced out and it has been parked in the police station at Veda sandhur and he had suspected Rajmohan for such act and has also told the police that he was informed by his employee Arumugham seeing Rajmohan driving the said lorry on 17.05.1995. Hence, from the evidence of PW4, it reveals that he gave a complaint against the deceased Rajmohan and others in respect of missing of his vehicle.

18.In this case, there is sufficient evidence and witness available to prove that the deceased was taken to police station by A1 and kept in the police station and subsequently he was taken to the hospital and on the way to the hospital, the deceased died and further the medical records also prove that there is a chance of deceased died due to the injuries sustained by him in the chest and further A1 has not explained how the injuries caused to the deceased, since he has not beaten the deceased.

19.Further, to prove that the deceased was suffering from Epilepsy, when the deceased was kept in the police station, the Sweeper of the Police Station was examined as DW1. DW1 deposed that while he was working in the police station, the deceased was suffering from Epilepsy. But no document was filed on the side of the petitioner/accused at the time occurrence, he was on duty. Further, DW1 in order to safeguard the petitioner/A1, he gave evidence that the PW1 was suffering from Epilepsy, which is not acceptable one.



20.For all the reasons stated above, this court is of the considered view that the first appellate court, after proper appreciation of the materials available on record, had given a correct findings, which does not required any interference by this court and accordingly, the judgment of the first appellate court is liable to be confirmed and accordingly, it is confirmed.

21.In the result, the criminal revision fails and the same is **dismissed**.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

ER

To,

1.The Sessions Judge,
Trichy.

2.The I Additional Assistant Sessions Judge,
Trichy.

3.The Superintendent of Police
Trichy District

4.The Revenue Divisional Officer, Karur

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

copy to

1.The Judicial Magistrate No.I, Trichy

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

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-93740[F] dated
22/10/2019)

Judgment made in
Crl.R.C (MD) No.188 of 2015
18.10.2019

KM/(13.12.2019) 8P 10C