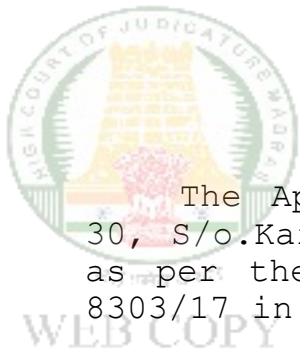




BAIL SLIP

The Appellant/Sole Accused namely Sivakumar @ Kari, Male/Aged 30, S/o.Karppanan @ Karuppasamy was directed to be released on bail as per the order of this Court dated 14.11.2017 in Crl.M.P.(MD). 8303/17 in Crl.A.(MD).No.360/2017 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
18.09.2019	23.09.2019

CORAM:

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

Crl.A. (MD)No.360 of 2017

Sivakumar @ Kari : Appellant / Accused

Vs.

State Represented by
The Inspector of Police
Palani Police Station,
Palani
(In Crime No.284/2011)

: Respondent / Complainant

COMMON PRAYER: Criminal Appeal is filed under Section 374 of the Code of Criminal Procedure, against the Judgment dated 17.04.2014 made in S.C.No.82 of 2012, on the file of the Additional District and Sessions Judge (Fast Track Court), Dindigul.

For Appella/nt : Mr.AR.Jeya Rhuthran
For Respondent : Mr.S.Chandrasekaran
Additional Public Prosecutor

JUDGMENT

The sole accused has filed the present Criminal Appeal aggrieved by the Judgment of the Additional District and Sessions Judge (Fast Track Court), Dindigul, dated 17.04.2014, made in S.C.No.82 of 2012, convicting the appellant for an offence under Section 302 of IPC and sentencing him to undergo life imprisonment and to pay a fine of Rs.1000/-, in default, to undergo six months simple imprisonment.



2. The case of the prosecution:-

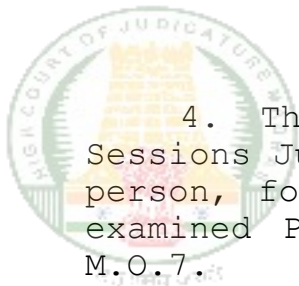
P.W.1 Selvi W/o.Duraisamy and P.W.2 Durai Ammal are sisters. P.W.1 is residing at Thottathusali, Andipatti Village, along with the uncle Velusamy Gounder, who is the deceased in this case. P.W.2 Durai Ammal's brother-in-law, one Ramakrishnan's marriage was to be held on 10.07.2011. On 08.07.2011 P.Ws.1 and 2 were engaged in inviting relatives and distributing invitations and when they reached near the house of one Mayilsamy, Andipatti Village, the appellant is alleged to have teased them. This was reported to the deceased. At about 9.00 p.m, on 08.07.2011, the deceased met the appellant and questioned him about the said teasing. Immediately, the appellant took a stick that was lying there and assaulted the deceased on his legs, when the deceased fell down, again the appellant attacked him with a broken glass bottle on his left side of the head and due to this injury, the deceased died on the spot. P.Ws. 1 and 2 and other witnesses, who followed the deceased, saw the incident and on seeing them, the appellant ran away from the place of occurrence.

3. Complaint and materials collected during investigation:

3.1. P.W.1 is said to have given a complaint (Ex.P1) to the Sub-Inspector of Police (P.W.12) on 08.07.2011, at 11.30 p.m., and an FIR came to be registered in Crime No.284 of 2011 (Ex.P13), for an offence under Section 302 of IPC. An express FIR was handed over to P.W.10 and he took it to the Court and it reached the Court at 6.15 a.m., on 09.07.2011.

3.2. The investigation was taken up by P.W.13 and he went to the scene of occurrence on 09.07.2011, at about 01.30 a.m., and prepared the Observation Mahazar (Ex.P7) and a rough sketch (Ex.P14) in the presence of P.W.8. He also collected the Material Objects and recorded it under Ex.P8. He proceeded to examine the witnesses and collect their statements under Section 161(3) of Cr.P.C. He conducted the inquest over the body of the deceased between 6.00 a.m., to 8.00 a.m., in the presence of the witnesses and prepared the inquest report (Ex.P15). He handed over the body with a requisition letter to the Head Constable to take the body for postmortem to the Government Hospital, Palani, and thereafter to hand it over to the relatives.

3.3. The Investigating Officer proceeded to arrest the accused person at about 2.00 p.m., and based on the confession made by him in the presence of P.W.6, M.O.1 was recovered and it was recorded in Ex.P.17. Thereafter, all the materials objects were sent to the Court under Form 95. The Investigation was thereafter handed over to P.W.14. The Investigating Officer collected the postmortem Certificate (Ex.P10) from P.W.11 and completed the investigation and laid a final report before the Judicial Magistrate Court, Palani.



4. The case was committed to the file of the Additional Sessions Judge, Dindigul and charges were framed against the accused person, for an offence under Section 302 of IPC. The prosecution examined P.W.1 to P.W.14 and marked Exs.P1 to P.21 and M.O.1 to M.O.7.

5. The trial Court questioned the accused person, under Section 313(1)(b) of Cr.P.C., by putting all the incriminating materials collected during the trial and the accused person denied the same as false.

6. The trial Court, on consideration of the facts and circumstances of the case and after analysing the oral and documentary evidence, came to the conclusion that the prosecution has proved the case beyond reasonable doubts and proceeded to convict and sentence the appellant.

7. The learned counsel for the appellant submitted that P.W.1 and P.W.2 were examined by the prosecution, as eyewitnesses. The deceased is the uncle of those two witnesses. They have stated that they went about 20 feet behind the deceased and the deceased questioned the accused regarding the teasing P.W.2. At that time, the accused had attacked with a stick in the leg of the deceased and thereafter, with a broken bottle near the left ear. Learned counsel submitted that P.W.1 and P.W.2 categorically admitted that they could have prevented the incident from taking place and both of them did not take any steps to take the deceased to the hospital. Rather P.W.1 proceeded to the Police Station to give a complaint. This conduct, according to the learned counsel for the appellant, is very unnatural.

8. The learned counsel for the appellant further submitted that P.W.7, who is the husband of P.W.2, was examined as a confession and recovery witness. He clearly states that his signature was taken in a blank paper. Therefore, the recovery itself is doubtful. The learned counsel further submitted that the motive that has been attributed by the prosecution is very flimsy and there was absolutely no premeditation for the accused to commit the said crime.

9. The learned counsel for the appellant brought to the notice of this Court the evidence of P.W.11, who was the Doctor, who conducted the postmortem and also the postmortem Certificate marked as Ex.P10. By pointing out the same, the learned counsel submitted that Doctor had clearly opined that the death was caused only due to the fifth injury, which was an injury that was caused at the occipital region of the brain. This injury has not been accounted by the eyewitnesses. Therefore the learned counsel submitted that the presence of the eyewitnesses and the place of occurrence is highly doubtful and therefore, the case of the prosecution must



10. The learned Additional Public Prosecutor appearing on behalf of the respondent Police submitted that the incident has been clearly explained by P.W.1 and P.W.2 and there is no reason to disbelieve their evidence. The learned counsel further submitted that M.O.1 was recovered pursuant to the confession of the accused and the postmortem Doctor clearly says that the injuries found in the body of the deceased is capable of being inflicted with M.O.1. Learned counsel further submitted that there was absolutely no delay in the registration of FIR and the investigation conducted by the Investigating Officer and the evidence given by the witnesses clearly establishes the case of the prosecution beyond reasonable doubts.

11. This Court has carefully considered the submissions made on either side and assessed the oral and documentary evidence and also the materials placed on record.

12. The reading of the evidence of P.W.1 and P.W.2 shows that if really they were present at the scene of occurrence, they would have prevented the occurrence. It is not known as to why they did not prevent it. It is also not known as to how P.W.1 and P.W.2 came to the conclusion that the deceased had died. The conduct of P.W.1 and P.W.2 is highly doubtful. The natural conduct would be to only take the deceased to the hospital, since he was not attacked indiscriminately or he has not suffered any grave injuries. However, no attempt was taken to take the deceased to the hospital.

13. Both these witnesses speak about only two overtacts. The first overtact was the attack with a stick on the leg of the deceased and the second overtact is the attack over the left ear with M.O.1. The Postmortem Report reveals the following injuries:-

"1) Cut injury 4 x 4 cm exposing the bone left temporal region.

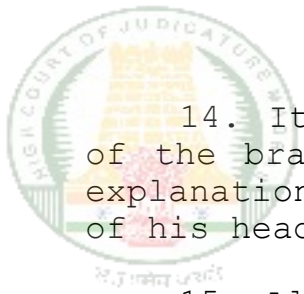
2) Abrasion 2 x 2 cm right knee

3) Abrasion of 3 x 3cm right side forehead with clotted blood (NC)

4) Abrasion 2 x 1cm above right eyebrow left (NC) of chest 5 cm over left parietal and Occipital region of Brain. Stomach contains about 500 ml of semisolid food taken hyoid intact. Heart chambers empty. All internal organ congested pale.

Internal Organs sent for chemical Analysis.

Death would have occurred 15 to 16 hours prior to autopsy cause. Cause of death reserved pending chemical analysis report."



14. It is clear that the fifth injury on the occipital region of the brain was the cause of the death. There is absolutely no explanation as to how the deceased sustained an injury on the back of his head.

15. All the above clearly demonstrates the fact that P.W.1 and P.W.2 could not have been present in the scene of occurrence. The motive that has been attributed by the prosecution is very flimsy and it is not known as to how the deceased met the accused in the middle of the road. The presence of the stick (M.O.2) and the glass bottle (M.O.1) in the scene of occurrence itself is doubtful and the case, as projected by the prosecution, does not inspire the confidence of this Court and there are too many gaps in the case of the prosecution.

16. In the considered view of this Court, the prosecution has not proved the case beyond reasonable doubts and the Court below was not right in convicting the appellant for an offence under Section 302 of IPC.

17. In the result, the Judgment of the Court below made in S.C.No.82 of 2012, dated 17.04.2014, is hereby set aside and the appellant is acquitted from the charge under Section 302 of IPC. Accordingly, this Criminal Appeal is allowed. The bail bond, if any, executed by him, shall stand terminated and the fine amount shall be refunded.

18. Mr.AR.Jeya Rhuthran, who was appointed as amicus curiae to represent the appellant made effective submission and helped this Court to arrive at a conclusion and this Court wishes to record its appreciation to the learned amicus curiae.

Sd/-
Assistant Registrar(AD-I)

/TRUE COPY/

Sub Assistant Registrar

MPK

To

1. The Additional District and Sessions Judge
(Fast Track Court),
Dindigul.

2.The Inspector of Police
Palani Police Station,
Palani



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

4.The Judicial Magistrate, Palani.

5.Through the Chief Judicial Magistrate,
Dindigul.

6.The Superintendent,
Central Prison, Madurai.

Judgment made in
Crl.A. (MD) No.360 of 2017
23.09.2019

JM/11.10.2019/6P/7C