

Bail Slip

The Appellant/Accused Namely Vellankani was released on bail as per order of this Court dated 21.06.2018 and made in Crl.MP(MD) 10148 of 2017 in Crl.A.(MD)No.450 of 2017 on the file of this Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

AND

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.A.(MD)No.450 of 2017

Vellankani (M/45),
S/o Meiyappan,
Lourd Nagar,
Keelavasal,
Thanjavur District.

... Appellant/ Sole Accused

Vs.

State Represented by
The Inspector of Police
Cantonment Police Station
Trichy District,
(Crime No.576/2014)

... Respondent/ Respondent

PRAYER: Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure to set aside the Judgment and Conviction of the Appellant by the learned Sessions Judge, Trichirappali Division, Trichirappali S.C.No.71 of 2015, dated 17.10.2016, and acquit the appellant.

For Appellant : Mr.A.Arun Prasad

For Respondent : Mr.M.Chandrasekaran,
Additional Public Prosecutor

J U D G M E N T

S.VAIDYANATHAN. J

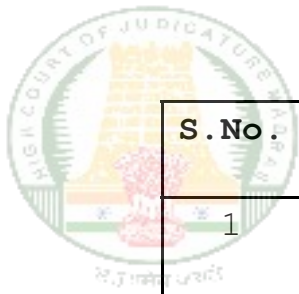
and

N.ANAND VENKATESH. J

This Criminal Appeal has been filed against the judgment of the learned Principal Sessions Judge, Trichirappalli made in S.C.No.71 of 2015, dated 17.10.2016.

2. The appellant was convicted and sentenced by the trial Court as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>



S.No.	Offense for which convicted	Imprisonment	Fine
1	294(b) of I.P.C.	Three months Rigorous Imprisonment	—
2	324 of I.P.C.	Three years Rigorous Imprisonment	—
3	302 of I.P.C.	Life Imprisonment	Rs.2000/- in default, to undergo Rigorous Imprisonment for a further period of three years

Case of the Prosecution in brief:

3. The appellant, Saravanan @ Kannan (A-2), deceased and P.W.1 were eking their livelihood by begging. On 10.07.2014, at about 11:00 p.m. they were dividing the collection amount among themselves near Anjaneyar Temple at Kallukuzhi and at that time, there was some dispute among them in dividing the amount. The deceased has questioned the accused persons and there was a wordy quarrel and the accused persons are said to have abused the deceased and P.W.1 in filthy language. The appellant is said to have attacked the deceased with a brick stone pasted with cement mortar on her cheek and A-2 is said to have attacked the deceased with a stone on the back side of her head. When P.W.1 tried to intervene, he is said to have been attacked using hands by the accused persons and therefore, he went away from the scene of occurrence. After the accused persons left the scene of crime, P.W.1 came back and saw the deceased lying in an unconscious state. P.W.1 stayed along with the deceased till about 5:30 a.m. on 11.07.2017 and found her dead. Thus, the appellant and A-2 are said to have caused the death of the deceased by attacking her in the manner described herein above.

Complaint and materials collected during the course of the investigation:

4. P.W.1 went to the Cantonment Police Station and gave a complaint (Ex.P.1) to the Sub Inspector of Police (P.W.15) at about 6:00 a.m. When the complaint was taken on file, an F.I.R (Ex.P.18) came to be registered in Crime No.576 of 2014 for offense under Sections 294(b), 326 & 302 of I.P.C. An express F.I.R was handed over to the Head Constable (P.W.8) and he reached with the express F.I.R to the Judicial Magistrate Court No.II, Tiruchirappalli at about 12:00 noon.



4.1. The investigation was taken up by the Inspector of Police (P.W.16) and he came to the scene of occurrence at about 7:00 a.m. on 11.07.2014. In the presence of witness (P.W.4), he prepared the observation mahazar (Ex.P.2) and also the rough sketch (Ex.P.19). He also recovered the material objects from the scene of crime (M.O.6 & M.O.7) and this was sent to the Court under Form 95. The Investigation Officer proceeded to conduct the inquest over the dead body of the deceased in the presence of the panchayatars and he prepared the inquest report (Ex.P.21). He had sent P.W.1 to the government hospital for taking treatment and P.W.1 is said to have been treated by P.W.10 and the AR Doctor was examined as P.W.12 and the Accident Register was marked as Ex.P.11.

4.2. The Investigation Officer, thereafter, had handed over the dead body to the Head Constable(P.W.7) with a requisition for conducting the postmortem and to hand over the body to the relatives after the completion of the postmortem. The postmortem was conducted by P.W.14 and he had given the postmortem certificate (Ex.P.13). The postmortem Doctor gave a final opinion (Ex.P.14) to the effect that the deceased died due to multiple injuries.

4.3. The Investigating Officer arrested the accused persons on 11.07.2014 at about 2:00 p.m. and they are said to have voluntarily confessed in the presence of the witness (P.W.5). Based on the confession, the stones that were used at the time of attack were recovered (M.O.1 & M.O.2). The accused persons were thereafter produced before the concerned Court and they were remanded to judicial custody.

4.4. The Investigating Officer recorded the statements of the witnesses under Section 161(3) of Cr.P.C. and he collected the biology report (Ex.P.8), serology report (Ex.P.9), chemical report (Ex.P.10), postmortem certificate (Ex.P.13), final opinion (Ex.P.14), viscera report (Ex.P.15) and serology report (Ex.P.17).

4.5. On completion of the investigation, the final report was laid before the learned Judicial Magistrate - II, Trichirappalli for offenses under Sections 294(b), 324 and 302 (IPC).

5. The case was committed to the file of the learned Principal Sessions Judge, Tiruchirappalli and the same was taken on file in S.C.No.71 of 2015. The trial Court framed charges against both the accused persons for offenses under Sections 294(b), 324 and 302 of I.P.C. The prosecution examined P.W.1 to P.W.16 and marked Ex.P.1 to Ex.P.25 and M.O.1 to M.O.8.



6. It was brought to the notice of this court that A-2 was absconding and therefore, the case was split up and the appellant alone was tried before the Court below.

7. The trial Court questioned the appellant under Section 313 (1) (b) of Cr.P.C. by putting all the incriminating materials to him collected during the course of the trial and the appellant denied the same as false.

8. The trial Court on considering the facts and circumstances of the case and after analyzing the oral and documentary evidence came to a conclusion that, the prosecution has proved the case beyond reasonable doubt against the appellant and proceeded to convict and sentence the appellant in the manner indicated supra.

Submissions:

9. Mr.A.Arun Prasad, learned counsel for the appellant made the following submissions:

- P.W.1 claimed himself to be the husband of the deceased. The incident is said to have taken place at 11:00 p.m. on 10.07.2014 and P.W.1 was lying near the deceased till the next day morning till 5:30 a.m., without taking any efforts to take the deceased to the hospital and the said conduct of P.W.1 is very unnatural.
- P.W.2 and P.W.3, who were examined on the side of the prosecution, could not have seen the occurrence and they have been planted by the prosecution only to corroborate the evidence of P.W.1.
- Both in the complaint as well as in the evidence of P.W.1, only two overtacts have been attributed. A-1 had attacked with a stone on the cheek of the deceased and A-2 has attacked the deceased with a stone on the back of her head. P.W.1 is said to have been attacked with hands by A-1 and A-2. However, this version as found in the complaint and the evidence of P.W.1 gets completely falsified, when the same is compared with the injuries as found in the postmortem certificate. The injuries as found in the postmortem certificate completely improbablise the evidence of P.W.1.
- The presence of P.W.2 and P.W.3 has not been spoken by P.W.1 and that is also one more factor to show that P.W.2 and P.W.3 were not available in the scene of occurrence.
- The F.I.R itself came to be registered by P.W.15 only at about 6:00 a.m. on 11.07.2014 and the same reached the Court through P.W.8 only at 12:00 noon and there is



absolutely no explanation for this delay.

- The reading of the evidence of P.W.1 along with the evidence of postmortem doctor and the postmortem, certificate clearly probabalises the case of the defense that, the deceased died due to a completely different incident and this is very clear from the injury nos.5 & 6 found in the postmortem certificate, which shows that there were bite marks both in the lower lip as well as on the tongue of the deceased.
- The prosecution has not proved the case beyond reasonable doubts and therefore, the appellant has to be acquitted from all the charges.

10. Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing on behalf of the State made the following submissions:

- The incident has been clearly described by P.W.1 to P.W.3, who were the eye witnesses to this case. P.W.1 to P.W.3 were all involved in the profession of begging at the same place and there is nothing to discredit or disbelieve their evidence.
- A combined reading of P.W.1 and P.W.2 clearly correlates the injuries found in the postmortem certificate.
- The postmortem doctor has categorically stated that, if the deceased has been strangulated in the neck, it is possible for the deceased to have bitten her lip and also the tongue and therefore, the expert has given his opinion with regard to injury nos.5 & 6 found in the postmortem report.
- The deceased, accused persons and P.W.1 are persons who are engaged in the profession of begging and they belong to the downtrodden sect in the Society. Therefore, they cannot be expected to react in the same way an educated person reacts to the given situation. Therefore, there is nothing unnatural in P.W.1 staying with the deceased till the next morning and thereafter, having found that the deceased is dead, proceeded to give a complaint to the police station at about 6:00 a.m.
- The serology report clearly shows the presence of blood in the material objects (O Group), which coincided with the blood group of the deceased.
- The arrest and recovery has been clearly proved by examining the Village Administrative Officer (P.W.5).



- The trial Court has considered the entire evidence placed before it and found that the prosecution has proved the case beyond reasonable doubts and there is absolutely no ground to interfere with the same and this Criminal Appeal is liable to be dismissed.

Discussion:

11. This Court has clearly considered the submissions on either side and also assessed the oral and documentary evidence. In this case, the evidence of P.W.1 assumes significance. This witness claims himself to be the husband of the deceased (even though the relationship is legally questionable). A combined reading of the complaint (Ex.P.1) given by him and his evidence shows that, he along with the deceased and the accused persons are involved in the profession of begging near a temple. On 10.07.2014, there was some misunderstanding regarding the sharing of the collection amount among them. The accused persons are said to have abused the deceased and P.W.1 in filthy language. Thereafter, the appellant is said to have attacked the deceased with brick stone (M.O.1) on the cheek of the deceased and A-2 is said to have assaulted the deceased with another stone on the back side of her head. Both the accused persons also attacked P.W.1 with hands and caused simple injuries. This is the only overtact that has been attributed by P.W.1 in both the complaint as well as his evidence.

12. The learned counsel for the appellant attacked the evidence of P.W.1 on two grounds:

(i) The first ground that has been raised is regarding the subsequent conduct of P.W.1 after the incident. The incident is said to have taken place at 11:00 p.m. and P.W.1 was lying near the deceased till 5:30 a.m. next day and thereafter, found her dead and he gave a complaint at 6:00 a.m. This conduct, according to the learned counsel for the appellant is completely unnatural and it is a relevant fact that has to be taken into consideration by this Court.

(ii) The second ground of attack is with regard to complete discrepancy in the overtact attributed by P.W.1. and the injury, as spoken by the postmortem doctor and mentioned in the postmortem certificate. The medical evidence in this case, according to the learned counsel for the appellant, improbabilises the case of the prosecution and makes the evidence of P.W.1 questionable.

13. This Court will now consider the first ground that has



been raised by the learned counsel for the appellant.

13.1. As regards Section 8 of the Indian Evidence Act, makes the following factors relevant to decide the fact in issue. They are:-

- (a) Motive;
- (b) Preparation and
- (c) Previous or subsequent conduct.

For the purpose of this case, the conduct assumes significance. It must be borne-in-mind that the conduct in order to be relevant, must be referable to the fact in issue or relevant facts. The conduct of the party subsequent to the occurrence is relevant, if it is influenced by the fact in issue. At this juncture, it is also relevant to take note of Section 114 of the Indian Evidence Act, 1872. This provision specifically states that the Court may presume existence of certain facts which it thinks, likely to have happened, regard being had to the human conduct, in relation to the facts of the particular case.

13.2. It is clear from the above that, the conduct of the parties becomes a relevant factor, if it has an influence on the fact in issue. In the present case, P.W.1 claims himself to be husband of the deceased. The deceased is attacked with stones at about 11:00 p.m. on 10.07.2014. Even according to P.W.1, the accused persons went away from the scene of occurrence after the incident and P.W.1 saw the deceased unconscious, immediately after the occurrence. P.W.1 stayed with the deceased till 5:30 a.m. next morning without taking any steps and he claims to have found out that the deceased was dead. Thereafter, he goes and gives a complaint to P.W.15 at 6:00 a.m. This conduct on the part of P.W.1 sounds very unnatural. This is not a natural conduct that is expected of a husband immediately after the incident. It is unbelievable that P.W.1 will not even take steps to give first aid treatment to his wife and he has not deposed anything to that effect even in the evidence, more particularly, since he is not sure whether the deceased is alive or dead.

13.3. Coming to the second ground with regard to the wide discrepancies that were found between the ocular evidence and medical evidence, it will be relevant to extract the injuries as found in the postmortem certificate. The same is extracted hereunder:

"Following ante mortem injuries present:

1. Obliquely Vertical, reddish brown abrasion 10.5 x 1- 0.5 cm, on inner aspect and front of upper part of left leg;

2. Irregular, reddish brown abrasions 0.2 x 0.2 cm and 0.3 x 0.2 cm, with underlying dark red contusion 8 x 7



- x 1 cm, on left cheek;
3. Dark red contusion 19 x 15 x 2 cm, on front of left shoulder and adjoining upper part of left side of chest;
 4. Lacerated injury 2 x 1 x 1 cm, on inner aspect of right angle of mouth;
 5. Teeth Bite lacerated injuries, two in number, measuring each, 1 x 0.4 x 0.3 cm, on inner aspect of right side of lower lip;
 6. Teeth Bite lacerated injuries 2.2 x 1 cm x tongue thickness, 1.5 x 1 cm x tongue thickness and 1 x 0.4 cm x tongue thickness, on anterior part of tongue;
 7. Irregular, complete fractures of left side 1st and 2nd ribs with surrounding dark red extravasation of blood;
 8. On dissection of neck, multiple, tiny, dark red contusions on front of neck muscles; Irregular, complete fracture of left side of hyoid bone with surrounding extravasation of blood;
 9. On dissection of head, diffuse, dark red contusion on left temporo occipital region of scalp; Diffuse, dark red contusion on left temporalis muscle; Oblique, fissured fracture on left temporo occipital region of vault; Dark red, extradural hematoma 15 gm, on the underlying dura mater; Dura mater: Intact; Thin, dark red subdural and subarachnoid hemorrhages on occipital regions and both cerebellar hemispheres of the brain;

No other external or internal or soft tissues or bony ante-mortem injuries anywhere on the body;

Heart:

Viscera preserved and sent to forensic lab for chemical analysis;"

13.4. The reference to these injuries becomes very important since many of the injuries that were found in the body of the deceased were not accounted for and it is not in line with the evidence of P.W.1. who has spoken about the overtact of the accused persons. It is true that the witnesses need not state in graphic details about the number of injuries and it need not exactly tally with the injuries found in the postmortem report. However, this comes with a caveat. If the discrepancy is too wide and completely in mismatch with the ocular evidence, the same assumes a lot of significance.

13.5. This Court had an occasion to deal with a similar issue in Criminal Appeal No.403 of 2017, dated 20.09.2019, in the case of **Samuthravel and one another vs. The State, Rep. by the Inspector of Police**. (by the same Bench). The relevant paragraphs

are extracted hereunder:-

<https://hcservices.courts.gov.in/hcservices>



"19. At this stage, it will be relevant to take note of the following judgments of the Hon'ble Supreme Court in this regard.

- In **Khambam Raja Reddy and another vs. Public Prosecutor, High Court of Andhra Pradesh**, reported in **2007 (1) SCC (Cri) 431**, wherein, the Hon'ble Supreme Court has held in paragraph No.19 as follows:

" 19. The present case is an example of contradiction between the ocular evidence and the medical evidence, where the medical evidence is not borne out by the ocular evidence. In such a situation it was suggested on behalf of the appellants on the authority of a decision of this Court in the case of *State of M.P. vs. Dharkole alias Govind Singh and Ors.*, reported in (2004) 13 SCC 308, where the medical evidence was at variance with the ocular evidence, the testimony of the eye-witness should be decided independently and if found trustworthy, the same could not be discarded merely because it is at variance with medical opinion. While there can be no difference of opinion with the principle explained in the aforesaid decision, the application thereof will depend on whether the story as made out by the prosecution is trustworthy and can be related to the injuries suffered by the victim in the manner as sought to be projected. If the ocular testimony is such that it is not possible to relate the injuries with the circumstances in which they were said to have been inflicted, the court has the discretion not to accept the ocular evidence. The principle enunciated in *Dharkole's case (supra)* may be applied in an appropriate case, but each case has to be determined having regard to its own set of facts."

- In **State of Uttar Pradesh vs. Dinesh**, reported in **2009 (3) SCC (Cri) 1484**, wherein, the Hon'ble Supreme Court has held in paragraph No.14 as follows:

" 14. Apart from that the medical evidence clearly rules out the manner of infliction of injuries as deposed. Though ocular testimony of witnesses had greater evidentiary value vis-à-vis medical evidence, but when medical evidence totally improbabilises the ocular testimony, that becomes a relevant factor in the process of evaluation of evidence. In the instant case the medical evidence totally improbabilises the version regarding the manner of assault by both the accused persons as noted above."

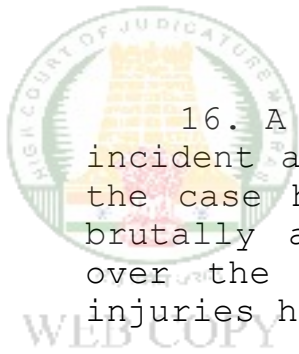


20. It is clear from the above judgments that the ocular testimony of the witnesses has a greater evidentiary value than the medical evidence. However, if the variance/contradiction between the ocular evidence and the medical evidence, is too wide and it improbabilises the ocular testimony, the same becomes a very relevant factor in the process of evaluation of evidence. In the facts of the present case, the medical evidence is not borne out by the ocular evidence and it is at variance with the ocular evidence and it is not possible to relate the injuries as spoken to by P.W.1 to P.W.4. The non-explanation of many injuries found in the body of the deceased, improbabilises the version of the prosecution regarding the incident."

13.6. From the above judgment, it is clear that if the variance/ contradictions between the ocular evidence and the medical evidence is too wide and it improbabilises the ocular testimony, the same becomes a very relevant factor in the process of evaluation of evidence.

14. Coming to the evidence of P.W.2 and P.W.3 who are relied upon by the prosecution as eyewitnesses, it is seen that, they were staying at some distance from the scene of occurrence. It is true that the prosecution has examined P.W.6 in order to prove the availability of light in the scene of occurrence. However, what requires attention is whether P.W.2 and P.W.3 were actually present in the scene of occurrence. P.W.1 in his evidence does not state about the presence of P.W.2 and P.W.3 in the scene of occurrence. That apart, these persons have given an exaggerated version about the incident which is more than what was stated by P.W.1 in his evidence. Both these witnesses have stated that they watched the incident and thereafter, went back and slept. This conduct of P.W.2 and P.W.3 is also highly unnatural. If at all they were there in the scene of occurrence, it would have been spoken by P.W.1. Atleast after the incident, these two witnesses would have gone and checked the status of the deceased after she was attacked, more particularly, since they know the deceased well and all of them are involved in the profession of begging at the same spot near the temple. Therefore, the very presence of P.W.2 and P.W.3 in the scene of occurrence is highly doubtful.

15. There was delay at every stage in this case. The F.I.R. was registered only at 6:00 am. on 11.07.2014 and it reached the Court only at 12:00 noon. P.W.8 who had taken the express F.I.R. to the Court specifically states that, the Court is situated just half a kilometer from the Police Station and it can be reached within 15 minutes.



16. A cumulative reading of the entire evidence shows that the incident as projected by the prosecution is false. The genesis of the case has been concealed and the deceased seems to have been brutally attacked, going by the injuries numbering 9, seen all over the body. The injuries are quite serious and those injuries have not been

explained by the prosecution in this case. The appellant who was also a beggar has been planted in this case and the respondent police found it easy to complete the investigation by showing the appellant and another accused person, who is also a beggar, as accused in this case.

17. In the considered view of this Court, the prosecution has miserably failed to prove the case against the appellant beyond reasonable doubts. The so-called eyewitnesses are all totally unbelievable and their conduct after the alleged incident is unnatural. It will not be safe to sustain the conviction with such defective evidence that has been placed before this Court.

Conclusion:

18. In view of the above discussion, this Court has no hesitation to interfere with the judgment passed by the Court below. In the result, the judgment of the Principal Sessions Judge, Trichirappalli made in S.C.No.71 of 2015, dated 17.10.2016, is hereby set aside and the appellant is acquitted from all the charges. Bail bond executed by the appellant shall stand terminated and fine amount, if any, paid by the appellant shall be refunded to him.

19. In the result, this Criminal Appeal is allowed accordingly.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

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To

1.The Sessions Judge,
Trichirappalli Division, Tricy.



2.The Judicial Magistrate No.I
Trichy

3.The Superintendent of Police, Trichy District

4.The Superintendent, Central Prison
Trichy

5.The Inspector of Police
Cantonment Police Station
Trichy District.

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

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

Judgment made in
Crl.A. (MD)No.450 of 2017

Dated:
16.10.2019

KM/ (31.10.2019) 12P 9C