

BAIL SLIP

The Appellant/Accused, namely Thangavel S/o.Masagoundar @ Ramasamy (A1), Govindan S/o Venkatachalam(A2) were directed to be released on bail as per order dated 01.07.2014 made in MP.NO.1/14 IN CrI.A.No.359 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.11.2020

Pronounced on : 19.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CrI.A.No.359 of 2014

1. Thangavel

2. Govindan

... Appellants /
Accused

VS.

State Represented by
Inspector of Police,
Veeraganur Police Station
Salem, Salem District.

... Respondent /
Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the conviction and sentence passed by the learned 1st Additional District and Sessions Judge, i/c. Sessions Judge, Mahila Court, Salem, in S.C.No.62 of 2013 dated 19.06.2014.

For Appellants : Mr.R.Karthikeyan

For Respondent : Mr.S.Karthikeyan

Additional Public Prosecutor

JUDGMENT

The appellants 1 and 2, herein are arrayed as Accused No.1 and 2 in S.C.No.62 of 2013 on the file of the learned 1st Additional District and Sessions Judge (i/c. Sessions Judge, Mahila Court), Salem. The trial Court framed the charges against the Accused No.1 for the offence under Sections 498-A and 306 of IPC. Similarly, charge has been framed against the Accused No.2 for the offence under Section 306 IPC. Both the accused denied the charges and opted for trial. Therefore, they were put on trial of the charges.

2. After full fledged trial, the learned 1st Additional District and Sessions Judge (i/c. Sessions Judge, Mahila Court), Salem, found the Accused No.1, guilty of the offence under Section 323 of IPC. Further, he found the Accused No.2, guilty of offence under Section 324 of IPC. Accordingly, the Accused No.1 was convicted and sentenced to undergo rigorous

imprisonment for 6 months and to pay a fine of Rs.1,000/-, in default to undergo a further period of 3 months simple imprisonment. Further, Accused No.2, is convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.2,000/- and in default to undergo a further period of 2 months simple imprisonment. On the other hand, with regard to the charges framed against the accused under Section 498-A and 306 of IPC, the trial Court came to the conclusion that the said offence have not been proved and thereby acquitted the accused for the said charges.

3. Challenging the conviction and sentence, both the accused are before this Court, with the present criminal appeal.

4. The case of the prosecution, in brief, is as follows:

(i) Accused No.1-Thangavel, is the husband of the deceased Palaniammal. PW1-Suganya and PW2-Manojkumar, are their daughter and son respectively. PW3-Sengottuvel, is the brother of the deceased Palaniammal. Due to the matrimonial dispute the Accused No.1 has separated himself five years prior to the occurrence and started to live with his mother. The deceased Palaniammal, along with PW1 and PW2 was living separately in the farm house. Accused No.1, used to visit the farm after completing his agricultural activities and used to go to his house at evening hours.

(ii) Prior to 20.04.2012, the Accused No.1 has sold the hay stack to Accused No.2 - Govindan and this was not informed to the deceased Palaniammal. On 20.04.2012, at about 8.00 hours, the deceased Palaniammal has taken some hay stack and that was witnessed by Accused No.2 - Govindan. He has immediately objected for the said act of Palaniammal and also scolded her, attacked her with the stick on her thigh and slapped on her face. This was witnessed by Accused No.1 and he has not questioned the act of the Accused No.2. Thereafter, at about 9.00 hours, the Accused No.1 was using the bucket, which belongs to the deceased Palaniammal, for which she has quarrelled with the Accused No.1. Thereafter, the Accused No.1 has abused her, scolded her and instigated her to commit suicide by uttering a word, 'if she is alive, she will continue to questioning him and if she died by consuming the poison, it would give peace of mind to him'. At about 10.00 hours, on the same day, the Accused No.1 has twisted the hands of Palaniammal and also punched on her back, due to which she has consumed the herbicide. That was witnessed by PW1. Immediately, PW1 has also snatched the bottle containing herbicide and she has also consumed the same. Thereafter, PW1 informed the same to Accused No.1 and PW3.

(iii) After getting information, the Accused No.1 immediately arranged an omni van and took both of them to Rajendran hospital at Veeraganur and after examining both of them, Dr. Rajendran has referred them to other hospital.

Immediately, both the deceased and the PW1, were taken to the Dr.Ramadoss Hospital. After treatment, both the deceased and PW1, were again referred to Salem for better treatment. Accordingly, the deceased and PW1 were taken to Sri Palaniandi Memorial Hospital at Ammapet and both of them were admitted there. Two days after i.e., on 22.04.2012 at about 9.30 hours, the deceased Palaniammal died in the hospital.

(iv) The death intimation was sent to the Veeraganur Police Station and the death of Palaniammal was informed to Veeraganur Police Station through telephone. The said information was received by PW9-Kanjamalai on 22.04.2012 at about 10.00 hours, further the same has been intimated to PW12-Rajeswari, Sub Inspector of Police, Veeraganur Police Station. Inturn on receipt of the said intimation, PW12 rushed to Sri Palaniandi Memorial Hospital, Salem, enquired the PW1 and recorded her statement [Ex.P1] at 15.00 hours. After recording the statement from PW1, she has returned to the police station and registered the First Information Report [Ex.P13] at about 17.30 hours in Cr.No.48/2012 under Section 174 Cr.P.C. Thereafter, at about 18.00 hours she visited the scene of occurrence and at about 18.15 hours, prepared Observation Mahazar [Ex.P2] and Rough sketch [Ex.P14] in the presence of PW4-Madheswaran and witness Mani @ Palanisamy. PW12 has also seized M.O.1-Plastic can containing the "Paraquat" herbicide under the Seizure Mahazar [Ex.P3] in the presence of the above witnesses. Thereafter, PW12- has sent the dead body of the deceased to the Government Mohan Kumaramangalam Medical College Hospital, Salem.

(v) On 23.04.2012 at about 7.00 hours in the presence of Panchayatars, PW12 conducted the inquest at Salem Government Hospital and prepared inquest report [Ex.P15]. Subsequent to that she has altered the section of law from 174 Cr.P.C. to 306 IPC and submitted the alteration report [Ex.P16] to the jurisdictional Magistrate. Thereafter, she has handed over the case records to PW13, Natarajan, the Inspector of Police, incharge of Thammampatty Police Station for further investigation, in turn after receipt of the case records PW13, sent a requisition to the Doctor for conducting postmortem.

(vi) PW11-Dr.Panneerselvam attached with Government Mohan Kumaramangalam Medical College Hospital, Salem, after receiving the requisition [Ex.9], from the Inspector of Police through PW10-Paramasivam, Head Constable, conducted the autopsy. He has noted the following injuries on the dead body of deceased Palaniammal.

Injuries:

Contusions over right arm (10x6cm, 8x6cm, 5x4cm)

Contusions over left thigh (8x6cm, 6x4cm)

Contusion over back of chest (10x4cm)

Other findings:

<https://hcservices.ecourts.gov.in/hcservices/> O/D Head:- Scalp - Normal, dural

membranes and cranial vault - intact. Brain - C/s-congested, base of skull - intact.

O/D Thorax- No ribs fracture. Heart - Normal in size chambers contained right side - fluid blood and left side - empty - Myocardium - Normal. Coronaries - Patent. Lungs - both on. C/s Congested.

O/D Neck - All neck structures - intact. Hyoid Bone - intact.

O/D Abdomen : Stomach contains 150 ML of dark brown coloured fluid with no specific odour. C/S. Mucosa - congested Liver, spleen and both kidneys - C/S congested. Cpaule - intact. Bladder-empty. Genitalia - No injuries made out. Pelvis and Spinal Column - intact.

O/D neck : Neck structures - normal. Hyoid bone - intact.

(vii) The Doctor [PW11] after conducting autopsy, sent the viscera for chemical analysis and viscera report [Ex.P11], was received and it was found containing "paraquat" chemical substances. On the basis of Viscera Report, PW11 gave final opinion [Ex.P12] stating that the deceased would appear to have died of effect of paraquat poison. PW11 has issued postmortem certificate and the same was marked as Ex.P10.

(viii) In this regard, the doctors attached with Sri Palaniandi Mudaliar Memorial Hospital issued the Accident Intimation Register copy dated 22.04.2012 under exhibit P4. Further, they issued a death certificate to deceased Palaniammal under exhibit P5. More than that, the very same doctors issued Accident Register copy in respect to the treatment given to the PW1 under Exhibit P6. Further, the discharge certificate in respect to PW1 was marked under Exhibit P7.

(ix) PW13 has conducted further investigation in this case, and on 23.4.2012 at 16.45 hours, has arrested the Accused No.1 and produced before the concerned Judicial Magistrate and detained under the judicial custody. On 24.4.2012, he enquired the witnesses Athayee, Rajendran and recorded their statements. Thereafter, he went to Attur and recorded the statement of Dr.Ramadoss. On the same day, he has gone to Salem Government Hospital and recorded the statement of PW9-Dr.Vasantha Mallika, PW9-Kanjamalai and PW10-Paramasivam, Head Constable and recorded their statements. On 22.5.2012 he enquired PW7-Dr.Shenbagavadivu and recorded her statement. On the same day he has also enquired PW11-Dr.Panneerselvam and recorded his statement. On 28.5.2012, he completed the investigation and came to the positive conclusion that the accused committed an offence under sections 498-A and 306 IPC and filed a final report, accordingly.

5. Based on the above materials, the trial Court framed the charges under Sections 498-A and 306 IPC. Both the accused denied the charges and opted for trial. Therefore, the accused were put on trial.

6. During the trial, on the side of the prosecution, in order to prove their cases, 13 witnesses have been examined as PW1 to PW13. Further, 17 documents were marked as Ex.P1 to Ex.P17, besides one Material Object [M.O.1].

7. Out of the said witnesses, PW1-Suganya, is the daughter of the deceased. She has spoken about the earlier wordy altercation happened between the Accused No.2 and the deceased. She has further stated about the separation of her parents and also about the attack made by the Accused Nos.1 and 2, on the day of occurrence. She has further narrated the consumption of herbicide by her mother as well as herself and also about the information given to the Accused No.1 and PW3 in respect to the consumption of herbicide.

8. PW2- Manoj Kumar, is the brother of PW1. He has spoken about the dispute having by the deceased with the Accused No.1. However, though he was cited as an eye witness to the occurrence, he did not give any evidence in support of the prosecution, in respect to the occurrence and therefore, he was treated as hostile witness.

9. PW3-Sengottuvel is the brother to the deceased Palaniammal. He has spoken about the dispute having by the deceased with the Accused No.1 and about the information received in respect to the consumption of herbicide by the deceased Palaniammal as well as by PW1-Suganya. He has also stated about the attestation made by him in the complaint given by the PW1.

10. PW4-Matheswaran, is the resident of Karupan Garden. He has spoken about the preparation of Observation Mahazar, Rough Sketch and about the seizure of Material Object No.1.

11. PW5-Dr.Ramadoss, PW6-Dr.Vinoth Kumar and PW7-Dr.Senbagavadivu, have stated about the first aid given to the deceased and to PW1. PW8-Dr.Vasanthamalligai, attached with Salem Government Hospital has spoken about the receiving of dead body of Palaniammal for Post Mortem.

12. PW9-Kanjamalai, the then Special Sub Inspector of Police, Veeraganur Police Station, has stated about the alteration of Section of Law from 174 Cr.P.C. to 306 IPC. PW10-Paramasivam, Head Constable, attached with Attur Prohibition Enforcement Wing has spoken about the handing over of the dead body of Palaniammal for Postmortem.

13. PW11-Dr.G.Panneerselvam, attached with Salem Government Medical College Hospital, has spoken about the

injuries sustained by the deceased and also about the details in respect of the post mortem conducted over the dead body of Palaniammal.

14. PW12-Tmt.P.A.Rajeswari, the then Sub Inspector of Police, Veeraganur police station has stated about the receiving of the statement from PW1 and about the registration of the FIR under Section 174 Cr.P.C. PW13-Mr.Natarajan, the then Inspector of Police, Thammampatti Police Station has stated about the receiving of FIR from PW12, examination of witnesses, alteration of section of law and about the filing of the final report.

15. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., both the accused denied the same as false. However, in order to prove their case, they neither produced any witness on their side, nor marked any documents.

16. Having considered the above, the learned 1st Additional District and Sessions Judge (i/c. Sessions Judge, Mahila Court), Salem, found the Accused No.1 guilty of causing hurt and found the Accused No.2, that he has voluntarily caused the hurt by using the dangerous weapon. Accordingly, both the accused were convicted under Section 323 and 324 of IPC, respectively and sentenced, as indicated in the 2nd paragraph of the judgment. Aggrieved by the conviction and sentence, both the accused have come up with the present appeal.

17. I have heard the learned counsel for the appellants / accused and the learned Additional Government Pleader for the respondent/State and also perused the records carefully.

18. Admittedly, the witnesses examined on the side of the prosecution as eye witnesses are related to the deceased Palaniammal. On the other hand, they are also related to the Accused No.1. Moreover, since the alleged occurrence has happened in a field in which the PW1 alone is present, the case should not be thrown away only for the reason that the witnesses examined on the side of the prosecution are related to the deceased.

19. However, though the charge has been framed for offence under Section 498-A and 306 IPC, the learned trial Judge has categorically held that those offences have not been proved against the accused. As already observed, Accused No.1 was convicted for the offence under Section 323 and the Accused No.2, was convicted for the offence under Section 324. Therefore, in the appeal, it is necessary to find out whether at the time of alleged occurrence, both the accused voluntarily caused simple hurt to the deceased, especially whether the Accused No.2, by using the deadly weapons, caused the said simple injury to the deceased. In respect to the

same, in order to support the averments, found in Ex.P1, complaint, PW1, deposed evidence before the trial Court. To corroborate the said evidence, the Doctor, who conducted the postmortem, has stated in his evidence in respect to the external injury found on the dead body of the deceased Palaniammal. According to him, the deceased sustained

injuries on her right upper arm, left thigh and the back of chest. All the injuries are contusion in nature.

20. Now, on considering the nature of injury sustained by the deceased with the evidence given by the PW1, who is the author of the complaint, she has stated that during the time of occurrence, the 2nd appellant herein/Accused No.2, by using the stick, assaulted the deceased on her, left leg and cheek. Similarly, the 1st appellant herein/Accused No.1, by using his hand made a punch on the back side of the deceased. Though, the said evidence is corresponding to the injuries sustained by the deceased, in the complaint given before the police, she has not stated anything about the weapon used by the 2nd appellant / Accused No.2.

21. In this regard, the learned counsel for the appellants would submit that due to the said contradiction, it cannot be held that during the time of occurrence, the 2nd accused herein attacked the deceased by using a stick.

22. Now, on considering the said submission with the relevant records, it is true, during the time of occurrence, the investigation officer herein, had not recovered the stick, which was used by the 2nd appellant/ Accused No.2, at the time of occurrence. Therefore, without seeing the stick, this Court cannot come to the conclusion that only by using the dangerous weapon, the 2nd accused / Appellant No.2, attacked the deceased and caused a simple injury. Therefore, it seems that during the relevant point of time, both the accused herein assaulted the accused with the help of their hands. In otherwise, in respect to the assault made by the accused the evidence given by PW1, is in order, particularly in support of the complaint given before the police. More than that, the evidence given by the PW1, is corresponding to the injury sustained by the deceased.

23. In respect to the investigation, conducted by the investigation officer, the learned counsel appearing for the appellants did not indicate any infirmity that the investigation conducted in this case is not in the way, contemplated under the Code of Criminal Procedure.

24. It is an isolated incident occurred due to the quarrel between the 1st appellant/ Accused No.1 and the deceased. Therefore, I am of the firm opinion that both the accused herein committed the offence under Section 323 IPC and therefore, this Court is of the considered view that to the

extent indicated above, i.e., in respect to the offence committed by the 2nd appellant/ Accused No.2, under Section 324 IPC, the judgment of conviction recorded by the trial Court, requires interference at the hands of this Court and accordingly, this Court came to the conclusion that the Accused No.2 also found guilty for the offence under Section 323 IPC.

25. Next coming to the quantum of sentence, the learned counsel for the appellants submitted that both the appellants have already served the sentence for few months and thereafter, let out on bail and therefore, he prayed for lenient view in the matter of sentence.

26. Considering the submissions made by the learned counsel for the appellants and the mitigating circumstances, this Court is of the view that sentencing the appellants to a period of three months, besides fine of Rs.1,000/- for offence under Section 323 IPC, would meet the ends of justice.

27. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed upon the appellants/ Accused Nos.1 and 2 for the offence under Sections 323 and 324 of IPC, respectively, by the 1st Additional District and Sessions Judge, (i/c. Sessions Judge, Mahila Court), Salem, is modified as follows:

"(i) Both the accused are found guilty for the offence under Section 323 of IPC and sentenced to undergo 3 months rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo further one month of simple imprisonment.

(ii) Since the appellants/accused are on bail, the trial Court shall take steps to secure the appellants/Accused Nos.1 and 2 to commit them in prison to serve out the remaining period of sentence. The period of sentence already undergone by the appellants/accused No.1 and 2, shall be set off under Section 428 of the Code of Criminal Procedure.

(iii) The fine amount, if any, already paid by the appellants/accused, has to be adjusted, for the sentence now provided."

Sd/-

Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

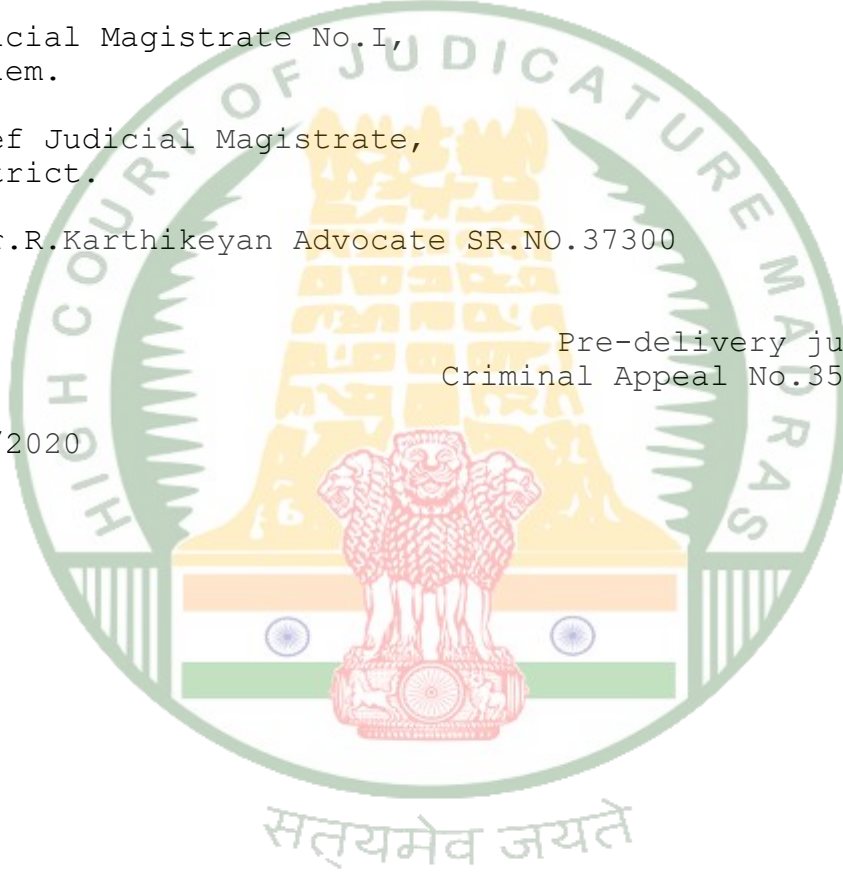
To

1. The 1st Additional District and Sessions Judge
(i/c. Sessions Judge, Mahila Court),
Salem
2. The Inspector of Police,
Veeraganur Police Station
Salem, Salem District.
3. The Public Prosecutor,
High Court, Madras.
- 4 The Judicial Magistrate No.I,
Attur, Salem.
- 5 The Chief Judicial Magistrate,
Salem District.

+1cc to Mr.R.Karthikeyan Advocate SR.NO.37300

Pre-delivery judgment in
Criminal Appeal No.359 of 2014

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SDR 14/12/2020



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