



Bail Slip

Mathiyazhagan, S/o.Sockkan@Mohamed Yusuf, Appellant/Accused No.1, is released on Bail vide Court order dated, 26.03.2009 made in MP(MD) No.1 of 2009 in Crl.A(MD)No.35 of 2009.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment reserved on : 04.10.2019

Judgment delivered on : 03.01.2020

CORAM :

THE HON'BLE MR. JUSTICE B. PUGALENDHI

Crl.A. (MD) No.35 of 2009

Mathiyazhagan

... Appellant/Accused No.1

Vs.

The State rep. by the
Inspector of Police,
Devipattinam Police Station,
Ramanathapuram District.
Crime No.197 of 2007

... Respondent/Complainant

Prayer : Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure to call for the records relating to the judgment dated 16.12.2008 made in S.C.No.97 of 2008 on the file of the Additional District and Sessions Court (Fast Track Court), Ramanathapuram, and set aside the same and allow the above appeal.

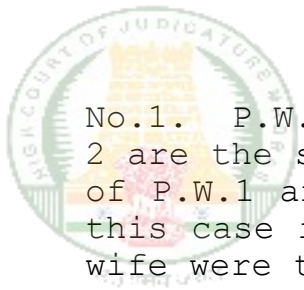
For Appellant : Mr. Sulthan Basha
for M/s.Ajmal Associates
For Respondent : Ms.S.Bharathi
Government Advocate (Crl. Side)

J U D G M E N T

This Criminal Appeal is filed by the accused No.1 in S.C.No.97 of 2008 on the file of the Additional District and Sessions Court (Fast Track Court), Ramanathapuram, wherein, the appellant was tried along with two others for the offences punishable under Sections 341 and 302 IPC. The accused Nos.2 and 3 were charged for the offences punishable under Sections 341, 323 and 302 r/w. 34 IPC. In conclusion of the trial, the trial Court, by its judgment dated 16.12.2008, found this appellant guilty of the offence under Section 304(ii) IPC, convicted and sentenced him to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for three months. The other accused Nos.2 and 3 were acquitted of the charges for the offences under Sections 341, 323 and 302 r/w. 34 IPC. As against the conviction and sentence imposed against this appellant, this appellant preferred the above Criminal Appeal.

2.The case of the prosecution in nutshell is as follows :

2.1.The accused Nos.1 and 2 and one Kumar (died before trial) are brothers. The accused No.3 is the brother-in-law of the accused



No.1. P.W.5 is the father of the accused Nos.1 and 2 and P.Ws.1 and 2 are the sisters of the accused Nos.1 and 2. P.W.3 is the husband of P.W.1 and he was running a cement dealer shop. The deceased in this case is Malar, the daughter of P.W.1 and P.W.3. P.W.5 and his wife were taken care by P.W.1 and P.W.3.

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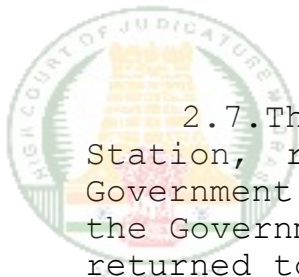
2.2.P.W.5 was having vacant land in Gandhi Nagar, Devipattinam, and he gave some pieces of land to the appellant as well as to P.W.1 and the accused No.2 and apart from that, he was having a vacant house site in the same place. The accused Nos.1 and 2 and the other deceased accused insisted that the vacant land must be settled in their favour, but, P.W.3 insisted for a share to P.W.5 also.

2.3.This dispute was taken to the Devipattinam Jamath and a panchayat was held in the Jamath on 04.11.2007. P.W.3 insisted that some property must be given to P.W.5 and his wife, but the accused Nos.1 and 2 objected to the same. The accused No.1/appellant shouted at P.W.3 for intervening in their panchayat and also intimidated him that if he comes out, his chest bone would be broken. The panchayat was held on 04.11.2007 at 08.00 a.m. in the Jamath and after returning from the panchayat, P.W.3 informed his wife P.W.1 and his sister-in-law P.W.2 regarding the quarrel that took place in the panchayat. The deceased, the daughter of P.Ws.1 and 3, advised her father to ignore the same and to open his shop and therefore, he went to his shop.

2.4.On 04.11.2007, around 10.00 a.m., P.Ws.1 and 2 were sitting in front of P.W.1's house and were discussing about the issue. At that time, all the accused came to P.W.1's house and questioned P.W.1 as to under what authority, P.W.3 is intervening in their property dispute. P.W.1, by replying that let it be decided in the panchayat, entered into her house, but, she was intercepted by the accused No.1/appellant, who assaulted her and by that time, the deceased intervened and advised her mother to go inside the house. This appellant/accused No.1 assaulted the deceased with a wooden slab (M.O.1) meant for centring purposes. The deceased fell down and became unconscious.

2.5.On receipt of this information, P.W.3 came with an omni van, took the deceased to the Government Hospital, Ramanathapuram.

2.6.Dr.Dhanalakshmi (P.W.8), Government Doctor at Ramanathapuram Government Hospital, admitted the deceased on 04.11.2007 at about 11.15 a.m. and issued the Accident Register (Ex.P3). She mentioned in the Accident Register (Ex.P3) that the patient (deceased) was assaulted by four known persons at her house at 10.30 a.m. with a stick on her head and the patient was unconscious. She also mentioned that the patient was brought by her parents.



2.7.The Sub-Inspector of Police (P.W.17), Devipattinam Police Station, received an intimation from the Outpost, Ramanathapuram Government Hospital, on 04.11.2007 at about 12.00 noon, proceeded to the Government Hospital and recorded the statement of P.W.1 (Ex.P1), returned to the Devipattinam Police Station and registered a case in Crime No.197 of 2007 as against this appellant and others for the offences punishable under Sections 341, 323 and 307 IPC. The printed F.I.R. is marked as Ex.P11. The printed F.I.R. was also referred to the concerned Judicial Magistrate and was received by the Judicial Magistrate's Court on 05.11.2007 at about 04.30 p.m.

3.On receipt of information about the case registered, Mr.Mahendran (P.W.18), Inspector of Police, Devipattinam Police Station, proceeded to the place of occurrence and prepared Observation Mahazar (Ex.P2) on 04.11.2007 at about 06.00 p.m. in the presence of P.W.4 and another, prepared Rough Sketch (Ex.P12), recorded the statement of the persons who were present at the place of occurrence and thereafter, arrested the accused No.1/appellant on 05.11.2007 at 07.00 a.m. at Gandhi Nagar Bus Stop. He also recorded the confession statement of the accused No.1/appellant, pursuant to which, he recovered the wooden slab (M.O.1) from a bush. In the meantime, the deceased was referred to Madurai Meenakshi Mission Hospital, and from there, was referred to Madurai Rajaji Government Hospital for further treatment and the deceased died in the Madurai Rajaji Government Hospital, on 09.11.2007. After the death intimation, he made a request to the concerned Judicial Magistrate to alter the offence into 302 IPC. The alteration report is marked as Ex.P15. He conducted an inquest in the presence of the panchayatars at Madurai Rajaji Government Hospital on 10.11.2007 from 09.30 a.m. to 11.30 a.m. and the inquest report is marked as Ex.P16. He also made a request for conducting post-mortem through constable, P.W.12.

4.Dr.Alaga Venkatasan (P.W.16), Government Doctor at Madurai Rajaji Government Hospital, conducted autopsy on 10.11.2007 from 10.45 a.m. and noted down a sutured lacerated injury of 5 x 1 cm x bone deep on the left fronto parietal region. He also noticed a contusion of 10 x 7 cm on the scalp on the left fronto parieto temporal region and a fracture of skull 6 cm in length on the left temporal bone. After collecting the biological report, Dr.Alaga Venkatasan (P.W.16) gave his final opinion that the deceased would appear to have died of cranio cerebral injuries.

5.The accused No.2 and the deceased accused surrendered before the Judicial Magistrate's Court on 13.11.2007 and the accused No.3 surrendered before the Judicial Magistrate's Court on 18.11.2007.

6.Mr.Raja (P.W.19), Inspector of Police (i/c), Devipattinam Police Station, took over the further investigation in Crime No.197 of 2007 from P.W.18 and examined P.Ws.11 and 12 and all the doctors

<https://hcrnrcs.courts.gov.in/cse/lrncs/> deceased at Government Hospital, Ramanathapuram,



Meenakshi Mission Hospital and filed a final report as against this appellant and others before the Judicial Magistrate Court No.I, Ramanathapuram, in P.R.C.No.17 of 2008.

7.The case was committed to the Court of Session and was tried in S.C.No.97 of 2008 on the file of the Additional District and Sessions Judge, Fast Track Court, Ramanathapuram, and during trial, 19 witnesses were examined and 16 documents were marked as exhibits on the side of the prosecution. The wooden log used by the accused No.1/appellant was also marked as M.O.1.No witness was examined, nor any document was marked on the side of the accused.

8.In conclusion of the trial, the trial Court found this appellant/accused No.1 guilty and convicted and sentenced as stated *supra*. The trial Court extended the benefit of doubt in favour of the other accused and acquitted them of the charges framed against them.

9.As against the conviction and sentence imposed by the trial Court, the accused No.1/appellant has preferred this Criminal Appeal.

10.Heard Mr.Sulthan Basha for M/s.Ajmal Associates, learned counsel for the appellant and Ms.S.Bharathi, learned Government Advocate (Crl. Side), for the respondent.

11.The learned counsel for the appellant submits that the place of occurrence as well as the time of occurrence has not been proved by the prosecution. According to P.W.1, her daughter, the deceased, sustained the injury in the street, but the sketch (Ex.P12) refers to the place of occurrence as inside the house of P.W.1. Similarly, when the deceased was admitted in the Government Hospital, Ramanathapuram, the time of occurrence is shown as 04.11.2007 at 10.30 a.m., whereas, in the Accident Register (Ex.P7), recorded at Meenakshi Mission Hospital, the time of occurrence is shown as 11.30 a.m. Though P.Ws.1 and 2 were examined as eye-witnesses in this case, P.W.2 turned hostile and the entire case of the prosecution rests only upon the evidence of P.W.1 and the evidence of P.W.1 is also not trustworthy and in this case, there is no independent witness. The deceased in this case died after five days from the date of occurrence and there was no attempt to record any dying declaration. The recovery witnesses as well as the witnesses for Panchayat, the Jamathars (P.Ws.6 and 7) did not support the case of the prosecution. Similarly, the arrest and recovery were also not established in this case, since, the Village Administrative Officer (P.W.9), a witness to the recovery, did not support the case of the prosecution and was treated as hostile. The Village Assistant (P.W.10) also turned hostile. The motive in this case is a double edged weapon. P.W.1, who intended to have a share in the property, has foisted this false case as against this appellant and others and

<https://hdservices.courts.gov.in/KCservices/> has rightly found the evidence of P.W.1 as not



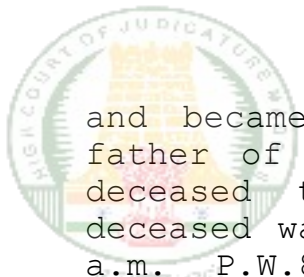
trustworthy and acquitted the other accused, but, found this appellant guilty of the offence under Section 304(ii) IPC.

12.Per contra, the learned Government Advocate (Crl. Side) submits that the prosecution had established their case through the witnesses P.Ws.1 to 19 and though the witnesses to recovery turned hostile, they have admitted their signature in the Recovery Mahazar. Similarly, the panchayatars (P.Ws.6 and 7) have also admitted the dispute pending with regard to the sharing of property and the Doctor (P.W.8) who provided First Aid to the deceased as well as the other Doctors have substantiated the case of the prosecution that the injury sustained by the deceased is possible through the weapon (M.O.1) recovered from the appellant/accused No.1 and therefore, according to the learned Government Advocate, there is no infirmity in the case of the prosecution, warranting an order of acquittal in favour of the appellant.

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

14.P.W.1 is the sister of this appellant and also of the accused No.2. The deceased in this case is none other than the daughter of P.W.1. P.W.5 is the father of P.W.1 as well as the accused Nos.1 and 2. P.W.5 admits in his evidence that there was a vacant site in his name and there was a dispute in sharing the vacant site. He also admits that he was taken care by P.W.1 and P.W.3. P.W.5 admits the panchayat held in the Jamath and the issue raised by his son-in-law P.W.3 for a share for them for having taken care of P.W.5 and his wife. However, he denied that he was not taken care by anyone else. Similarly, P.W.6, Vice President of Devipattinam Jamath, though treated as hostile, admits the panchayat held in their Jamath with regard to the property dispute between the accused and P.W.3, but they denied to intervene in their dispute. P.W.7, an independent witness, who participated in the panchayat, has also stated in similar lines. From this available evidence, the prosecution has established the motive between the accused and P.W.3 in sharing of the property of P.W.5.

15.On 04.11.2007, the panchayat was held in the Jamath at about 08.00 a.m. and during the panchayat, the accused No.1 intimidated P.W.3 that he would break his chest bone and after returning from the panchayat, the same was informed by P.W.3 to his wife P.W.1. From the advice of his daughter (deceased), P.W.3 went to his shop to open the shop. When P.Ws.1 and 2 were discussing about the incident that took place in the morning in the Jamath, the accused came to the house of P.W.1, questioned P.W.1, as to how P.W.3 can intervene in their property dispute, and assaulted P.W.1. At that time, the deceased daughter of P.W.1 intervened to pacify them, but the accused No.1/appellant gave a blow on the deceased with a wooden slab and caused an injury on the forehead of the deceased. This place at about 10.00 a.m. The deceased fell down



and became unconscious. On receipt of information, P.W.3, the father of the deceased, arranged an omni van for hire, took the deceased to the Government Hospital, Ramanathapuram, and the deceased was admitted in the hospital on 04.11.2007 at about 11.15 a.m. P.W.8, the Doctor who admitted the deceased in the Government Hospital, noted down in the Accident Register (Ex.P3) that the patient (deceased) sustained an injury on the forehead and also recorded that the injury was caused at the patient's residence on 04.11.2007 at about 10.30 a.m. On the intimation from the Government Hospital, the Sub-Inspector of Police (P.W.17), Devipattinam Police Station, went to the Government Hospital, Ramanathapuram, and recorded the statement of P.W.1 (Ex.P1) and registered a case in Crime No.197 of 2007 on 04.11.2007 at about 04.00 p.m.

16. There is no delay in reporting the incident. Even in the Accident Register (Ex.P3), it is noted that the deceased sustained the injury on 04.11.2007 at 10.30 a.m. in her house and by four known persons. The dispute with regard to sharing of property is also sufficiently established by the prosecution through P.Ws.1 to 3 and P.Ws.6 and 7. The panchayat held on 04.11.2007 in the Jamath is also established. P.W.2, sister of P.W.1 and accused Nos.1 and 2, also admits the panchayat that took place on the date of occurrence; the wordy quarrel that took place on the date of occurrence; the intimidation made by the accused No.1/appellant in the panchayat; her presence in the house of P.W.1 at 10.00 a.m. and the arrival of this appellant/accused No.1 to the place of occurrence. However, she did not refer that, it was this appellant/accused No.1, who assaulted the deceased. Therefore, P.W.2 was also treated as hostile. But, her evidence corroborates the evidence of P.W.1 and P.W.3 with regard to the motive between the accused and P.W.3 in sharing of the property of P.W.5 and the panchayat held before the Jamath and the presence of the accused in the place of P.W.1's house at about 10.00 a.m.

17. This appellant was arrested by the Inspector of Police (P.W.18) on 05.11.2007 at about 07.00 a.m. near Gandhi Nagar Bus Stop and the wooden log (M.O.1) was recovered pursuant to his confession, in the presence of the Village Administrative Officer (P.W.9) and his Assistant (P.W.10). But, P.W.9 as well as P.W.10 did not support the case of the prosecution and were treated as hostile. However, they accept their signature in the Recovery Mahazar and they have not stated that the Investigation Officer had forcibly obtained their signature from them.

18. This appellant and P.W.1 are close relatives. P.W.2 is also the sister of the appellant. P.W.5 is the father of the appellant. Even the blood relatives have deposed before the Court about the earlier motive between the accused No.1 and P.W.3 with regard to the sharing of the vacant site and the panchayat held on the date of the subsequent incident, wherein, the deceased



sustained injury. The deceased was taken to the hospital immediate to the occurrence and the complaint was also lodged without any loss of time and therefore, the prosecution has established the occurrence beyond any reasonable doubt. However, the appellant/accused No.1 was not having any motive as against the deceased, but, when he attempted to assault P.W.1, the deceased intervened and sustained injury. No doubt, the other accused, who accompanied the accused No.1/appellant, were rightly acquitted by the trial Court, since, there was no specific overt act as against the other accused and this appellant was also rightly convicted of the offence under Section 304(ii) IPC, though he was charged for the offence under Section 302 IPC.

19. There is no error on the findings of the trial Court and the prosecution has also sufficiently established the guilt of the appellant/accused No.1. Therefore, this Court is not inclined to interfere with the findings of the trial Court. However, considering the circumstances under which the occurrence had taken place and the submissions of the learned counsel for the appellant that the appellant is the only bread winner of his family and is having sons and daughters depending on him, this Court is inclined to modify the sentence from 5 years rigorous imprisonment to 4 years rigorous imprisonment.

20. In fine, the conviction of the appellant/accused No.1 for the offence under Section 304(ii) IPC in S.C.No.97 of 2008 is confirmed, but the substantive sentence of rigorous imprisonment for 5 years is reduced to 4 years.

21. Accordingly, this Criminal Appeal is partly allowed. The trial Court is directed to secure the appellant/accused No.1 and commit him to prison for undergoing the sentence imposed on him.

22. Registry is directed to send back the original records to the trial Court, forthwith.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

- 1.The Principal Sessions Judge,
Ramanathapuram.
- 2.The Additional District and Sessions Judge,
Fast Track Court,
Ramanathapuram.
- 3.The Inspector of Police,
Devipattinam Police Station,
Ramanathapuram District.
- 4.The Superintendent,
Central Prison,
Madurai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

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

Judgment in
Crl.A. (MD) No.35 of 2009
03.01.2020

KM (29.07.2020) 8P 8C