



BAIL SLIP

Arun, S/o. Sambath, Sole Accused M/A 21 years was released on bail by the order of this Court dated 23.12.2009, made in MP(MD) No.1/2009 in CRL A.431 of 2009.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 11.12.2019

Date of Pronounced : 09.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**Crl.A. (MD)No.431 of 2009**

Arun .. Appellant/ sole accused

Vs.

The State represented by,
The Inspector of Police,
Melur Circle,
Melavalavu Police Station,
Madurai District.
Crime No.110 of 2008

.. Respondent/complainant

PRAYER: Petition filed under Section 374(2) of Criminal Procedure Code, against the judgment and conviction rendered by the Additional Sessions Judge (Fast Track Court No.II) Madurai in S.C.No.162 of 2009 dated 25.11.2009.

For Appellant	: Mr.R.Anand
For Respondent	: Mr.K.Suyambulinga Bharathi, G.A., (Crl. Side)

JUDGMENT

The appellant is the single accused in this appeal. He was charged for the offences under Sections 341, 294(B) and 302 of I.P.C. The trial Court, by its judgment dated 25.11.2009, though found the appellant not guilty for the offences under Sections 341, 294(b) and 302 IPC, found the accused guilty for the offence under Section 304 (II) IPC and sentenced him to undergo 4 years RI and to pay a fine of Rs.10,000/- in default to undergo 6 months SI for the offence under Section 304(ii) IPC and out of the fine amount, a sum of Rs.8,000/- ordered to be handed over to P.W.6, the mother of the deceased as compensation. Against the said conviction and sentence, this present appeal has been filed.



2.The brief facts of the case of prosecution are as follows:

(i) P.W.1 is the maternal uncle of the deceased Anandan. P.W.5 Periyakaruppan is having a shop in Melavalavu Manthai Chavadi. On 14.11.2008 at about 10.00 a.m., when P.W.1 and the deceased Anandan were at Melavalavu Mandai Chavadi in A.Vallalapatti, the appellant came along with his brother viz., the juvenile accused Sarathkumar, ridiculed P.W.5; on hearing this, P.W.5 came to the deceased Anandan and asked who ridiculed him, for which, the deceased Anandan replied that the appellant and his brother ridiculed him. Immediately, the appellant Arun and juvenile accused Sarathkumar restrained the deceased and quarrelled by saying that how could he tell their name and the appellant took a wooden log near the shop, beat on back side head of the deceased Anandan and caused injuries and juvenile accused attacked him on the right side forehead and chest and caused injuries. When P.W.1 raised noise, the appellant and Sarathkumar ran away from the scene of occurrence.

(ii) Thereafter, P.W.1 took the injured Anandan and went to the Government Hospital Melur in an Auto at 11.45 a.m. On 14.11.2008 at about 11.45 a.m., P.W.11, Doctor treated the injured, who was unconscious and on examination, he found injuries over left forehead and he referred the injured to Government Rajaji Hospital, Madurai for further treatment and issued Ex.P7 Accident Register. At about 12.50 p.m., P.W.12 Doctor at Government Rajaji Hospital, Madurai examined the injured and admitted him in Ward No.101 and issued Ex.P8 Accident Register.

(iii) On 14.11.2008 at 1.00 p.m., P.W.10, Head Constable of Melavalavu Police Station received intimation from Government Rajaji Hospital, Madurai, went to Government Rajaji Hospital and as the injured was not in a position to speak, he obtained Ex.P1 complaint statement from P.W.1 and registered a case in crime No.110 of 2008 for the offences under Sections 341, 323, 294(b) and 506(ii) IPC. FIR is Ex.P6.

(iv) P.W.15, Sub Inspector of Police, took up the investigation, proceeded to the scene of occurrence, prepared Ex.P2 observation mahazer and Ex.P.10 rough sketch, recovered M.O.1 wooden log under Ex.P3 athatchi and examined the witnesses, recorded their statements. He arrested the juvenile accused and sent him to judicial custody. In the meantime, on 18.11.2008 at about 1.00 a.m., the injured Anandan died. P.W.13 examined the body and sent the same to mortuary for postmortem. P.W.15, Sub Inspector of Police, after receipt of death intimation, altered the section into 302 of IPC and sent the entire file to the Inspector of Police, Melur circle for further investigation. Ex.P12 is the alteration report.



(v) P.W.16, Inspector of Police took up the investigation, went to Government Rajaji Hospital, conducted inquest prepared Ex.P13 inquest report, proceeded to the scene of occurrence, examined the witnesses. P.W.10 is the police constable, who produced the body for postmortem. P.W.11, postmortem doctor conducted postmortem issued postmortem certificate Ex.P9. Thereafter, on coming to know that the appellant /accused had surrendered himself, he was taken to police custody, formal arrest done, recorded the confession statement and recovered M.O.1 wooden log under Ex.P5 athatchi. Thereafter, examined the witnesses, doctors and after obtaining postmortem certificate, forensic report, he filed the charge sheet in this case.

3. Before the trial Court, on behalf of the prosecution P.Ws.1 to 16 were examined and Exs.P.1 to P.15 were marked, produced M.O.1. On completion of the examination of the witnesses on the side of the prosecution, the accused was questioned under section 313 Cr.P.C., as to the incriminating circumstances found in the evidence of the prosecution witnesses and he denied them as false. On behalf of the defence, no witness was examined and no document was produced.

4. Considering the evidence available on record, the learned Additional Sessions Judge, Fast Track Court No.2, Madurai found the accused guilty for the offence under Section 304(ii) of I.P.C and convicted him as stated above. Challenging the judgment of conviction and sentence, the appellant/accused has preferred this appeal.

5. The learned counsel appearing for the appellant would submit that the appellant in this appeal is A1. A2 is his brother, being a juvenile, his case has been split up. The overt act is only attributed to A2. Since he is a juvenile, the prosecution implicated him in this case. P.W.1 is the uncle of the deceased. The alleged eye witness viz., P.Ws.1 to 4 admit that they do not belong to the area, where the occurrence had taken place. None of the witnesses, who are residing near the scene of occurrence, have been examined as witnesses. The complaint Ex.P coming into existence is highly doubtful. The Head Constable, who received the complaint had not been examined as witness.

6. He further submits that though the complaint was written by P.W.4 Rafeek Raja, he did not mention about Ex.P1 in his evidence. Ex.P1 complaint was not shown to him. P.W.1 as well as P.W.4 state that the Head Constable, who came to the hospital, enquired and thereafter, received the written complaint and in the complaint, as per P.W.1, P.W.4 and P.W.2 signed as witnesses, however, in Ex.P1, there is no reference to the same.

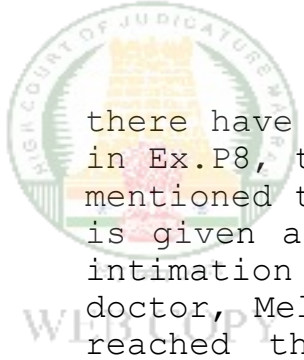


7. Further, he submitted that the occurrence has taken place on 14.11.2008 and the complaint had reached the Court only on 18.11.2008 with a delay of 4 days and no reason has been given. Hence, it was suggested that after getting the death intimation of Anandan, the respondent had obtained signature in blank paper from P.W.1 and had written down a complaint as per their desire against the appellant. This is fortified by showing the serial number assigned by the learned Judicial Magistrate, Melur. In Ex.P1, the seal is dated 18.11.2008 and the running serial number has been assigned as 1445. Ex.P12 is the section alteration report, which is also dated 18.11.2008 and the serial number is assigned as 1438. Thus, the death intimation reaches the Court earlier and the complaint reaches later.

8. The categorical evidence of P.Ws.3 and 4 is that when there was a scuffle between the deceased and accused, they intervened and thereafter, A1 and A2 ran away from the scene of occurrence and they have not caused injuries sustained by the deceased. P.Ws.2,3 and 4 have categorically state that when the fight was going on between the appellant, the deceased and the brother of the appellant, all the three persons were having sticks and fighting. P.W.1's version is completely different, wherein, he stated that the appellant had assaulted the deceased on the back occipital region and the juvenile had attacked him on the right parietal region and on the chest. P.Ws.2 to 4 are not aware when P.W.1 had reached the scene of occurrence.

9. The learned counsel appearing for the appellant further submitted that P.W.1 was not near the scene of occurrence, he was elsewhere and on coming to know about his sister's son lying unconscious, he came to the scene of occurrence and hence, he is not an eye witness. Further, the scene of occurrence had taken place in the open area of the village. Ex.P10, Rough Sketch, Ex.P2 observation mahazer are contra and otherwise. P.W.5 is the other witness, who said to have seen the occurrence. He is the root cause for the occurrence. He does not speak about where the occurrence had taken place. Except the fact that A1 and his brother attacked the deceased and thereafter, the deceased was taken to the hospital by P.W.1, P.W.5 does not speak about the presence of P.Ws.2 to 4.

10. He further submits that immediately after the attack, the deceased was taken in an auto of P.W.9 to the Meenakshi Mission Hospital in the village at about 10.00 a.m., from there, he was taken to Melur Government Hospital within 20 minutes and thereafter, he was referred to Government Rajaji Hospital, Madurai and they reached at 12.30 p.m. Thereafter, he was referred to the ward for further treatment, through this period, the deceased was unconscious. Perusal of Ex.P7, A.R.Copy of Melur Government Hospital, it is seen that the deceased was brought by P.W.1 and



there have been insertions in Ex.P7 with regard to M.O.1. Likewise, in Ex.P8, the A.R.Copy of Government Rajaji Hospital, Madurai, it is mentioned that P.W.2 had taken him to hospital at 12.50 p.m., Ex.P7 is given at 11.45 a.m. and Ex.P8 is given at 12.50 p.m. But, the intimation about the assault has been given to the police by duty doctor, Melur at about 1.30 p.m. Thereafter, the respondent police reached the Government Rajaji Hospital, Madurai, received the complaint and registered the case at about 4.00 p.m. Four days thereafter viz., on 18.11.2008, the injured Anandan succumbed to injuries.

11.He further submits that the evidence between P.W.1 and P.Ws.2 to 4 are totally contra with regard to the overt act as against the appellant. The place of occurrence itself is highly doubtful. Though some of the witnesses stated that the occurrence had taken place near Nagammal temple and some witness stated that the occurrence had taken place in front of P.W.5's shop, the place of occurrence, as per Exs.P7 and P8, differs. P.W.11 admits about the insertions made in A.R.copy Ex.P7.

12.The learned counsel appearing for the appellant further submitted that in this case, M.O.1 wooden logs two numbers have been marked. According to the witnesses, one wooden log was dropped in the scene of occurrence and the other was carried out by the appellant. Since M.O.1 wooden log has not been properly identified, the recovery in this case is highly doubtful. P.W.1 is not an eye witness to the occurrence. Since, he is being the uncle of the deceased, he had been shown as an eye witness. The evidence between P.W.1 and P.Ws.2 to 4 are contra to each other. P.Ws.2 to 4 are students of American College, in the college, they have picked up some fight and they were in search by the police and the said students were identified by the appellant and hence, they had motive to implicate the appellant.

13.He further submits that P.W.5 is the person against whom, the appellant and his brother are said to have passed some scandal remarks, since P.W.5 attempted to impersonate and vote in the local body election for which there was a quarrel. The deceased was working as a parotta master in the shop of P.W.2's son. There was a dispute between the deceased and P.W.5 and his son, a fight had been broken between them and during the fight, the deceased was assaulted by P.W.5 and his son and the deceased had fallen on the stake of stones, sustained injuries, for which, the appellant had been falsely implicated. It has been suggested that P.W.5 and his son were absconding immediately after the occurrence from the village. P.W.5 being a political worker had contact with the respondent through his relationship, he had implicated the appellant in this case.



14. Further, the learned counsel appearing for the appellant submits that the investigating Officer in this case admits that the entire documents had reached the Court belatedly, even the FIR and complaint reached the Court after 4 days viz., after the receipt of death intimation of the deceased. It has been suggested that the deceased Anandan earlier fallen in a open well and sustained skull injuries, developed nerves problems, due to which, he used to have attack of Epilepsy and hence, the injuries sustained by him were due to the fall in the well and not due to the attack by the appellant. The appellant had surrendered before the Judicial Magistrate No.3, Dindigul on 25.11.2008, thereafter, he was taken custody on 29.11.2008. The appellant had filed objection for police custody, which is marked Ex.D1, wherein, he had categorically stated that he has got nothing to disclose, leading to recovery and M.O.1 has been implanted as though it was used by the appellant. Thus, he prayed for acquittal of the appellant.

15. The learned Government Advocate (criminal side) submitted that in this case, P.Ws.1 to 5 are eye witnesses in this case. P.W.1 clearly stated about the attack by the appellant on the deceased. The ocular evidence is in conformity with the medical evidence as could be seen from the evidence of doctors and postmortem certificate. On receipt of the intimation from the Melur Government Hospital, the Head Constable of the Melavalavu Police Station reached there, received intimation and by that time, the deceased was referred to Government Rajaji Hospital, Madurai for further treatment, since the deceased has sustained head injury. Thereafter, the Head Constable had reached the Government Rajaji Hospital, Madurai, found the deceased in unconscious state and hence, recorded the statement of P.W.1 and came to the police station, registered the case at 4.00 p.m., on the same day, visited the scene of occurrence, prepared observation mahazer, recovered one of the material objects and examined P.Ws.1 to 4, who were present in the hospital and on the death of Anandan, the case was altered into 302 IPC, CD was handed over to P.W.16, the Inspector of Police, who had visited the scene of occurrence, juvenile accused was arrested and produced before the Court.

16. He further submit that the appellant surrendered before the Judicial Magistrate No.3, Dindigul and thereafter, he was taken police custody. Another M.O.1 used by him was seized, after getting report from the medical reports and forensic report, charge sheet came to be filed. Though the charge sheet was filed under Section 302 IPC, the lower Court, during the trial, on the evidence of material produced had found the appellant guilty for the offence under Section 304(ii) IPC and sentenced him to 4 years RI, which is only a minimum punishment, which need not be interfered with.



17. The learned Government Advocate (criminal side) further submitted that P.Ws. 7, 8, 11 and 12 have categorically stated that the deceased was in unconscious state and that is the reason, P.W. 1 lodged the complaint. The presence of P.W. 1 along with deceased could be seen from Ex.P7 A.R. Copy issued by Melur Government Hospital. P.Ws. 1 to 4 together taken the injured to the hospital, which has been spoken to by P.W. 9 Auto driver. From Melur Government Hospital, the deceased was taken in an ambulance. There, the name of P.W. 4 has been entered in Ex.P8, A.R. Copy. Thus, the fact that P.Ws. 1 to 4 taken the injured Anandan to the nearby village hospital and thereafter, Melur Government Hospital and finally, Government Rajaji Hospital, Madurai has been proved.

18. He would further submit that the evidence of P.Ws. 1 to 4 are not contra. In material aspect, the evidence of both the witnesses are in conformity except for the version that P.Ws. 2 to 4 state that the deceased and both the accused were with sticks in their hands and they were fighting. The factum that the deceased informed the name of the appellant's father to P.W. 5, they were fighting and they were separated and later, the deceased was assaulted by the appellant has been clearly spoken to by these witnesses. Further, immediately after the occurrence, these witnesses had accompanied the deceased to the hospital and four days thereafter, the injured Anandan passed away. P.Ws. 1 to 4 have been examined during inquest in the hospital. P.W. 5 is the witness, who speaks about the motive for the deceased to be attacked by the appellant and his brother. Further, P.Ws. 1 to 5 and the appellant are known to each other and there is no dispute with regard to the identity and the occurrence had been taken place in a broad day light. The medical evidence is in conformity to the ocular evidence and the lower Court, on a proper analysis of the evidence of the witnesses and documents, had rightly convicted the appellant under Section 304(ii) IPC, which need not be interfered with.

19. Heard the learned counsel appearing for the appellant and the learned Government Advocate (criminal side) appearing for the State and perused the materials available on record.

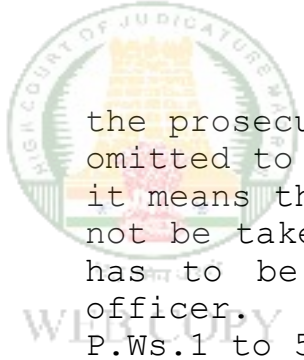
20. Considering the rival submission and perusal of the materials, this Court finds that P.W. 1 is the eye witness to the occurrence is confirmed by the fact that in the detailed cross examination, the topography of the scene of occurrence has been confirmed. P.W. 1 clearly explained about the topography of the place, where, the occurrence had taken place, assault carried out by the appellant on the occipital region of the deceased. The doctors' evidence are in conformity to the same. Further, P.W. 1 had accompanied the injured Anandan to the village hospital and thereafter, to Melur Government Hospital as could be seen from Ex.P7, A.R. Copy, from there, the injured was taken to Government



Rajaji Hospital, Madurai and in the A.R.Copy, the name of P.W.4 is found. Presence of P.Ws.1 to 5 in the scene of occurrence confirmed by the fact that topography of the place have been elaborately put to them in cross examination and their evidence are natural.

21.The evidence of P.Ws.2 to 5 is that they knew the appellant as well as the deceased and there was a fight between the appellant and the deceased, they had intervened and separated them and they moved away, suddenly, the appellant along with his juvenile brother came and attacked the deceased. Since the appellant and his juvenile brother and the deceased Anandan were armed with sticks, they were unable to go near them. After the attack, the appellant and his juvenile brother ran away from the scene of occurrence. P.Ws.2 to 4 along with P.W.1 taken the deceased to the hospital in an auto of P.W.9 and the presence of each other has been spoken to by these witnesses. P.W.5 is the witness, who speaks about the motive. P.W.7 is the witness for observation mahazer and recovery of one of the wooden logs. P.W.8 is the witness for arrest and confession and recovery of another wooden log. P.W.10 is the Head Constable attached to Melavalvu Police Station, who on receipt of intimation from the hospital, reached there, by the time, he reached the hospital, the injured was shifted to the Government Hospital, Melur and thereafter, he went there and recorded the statement from P.W.1 since the injured Anandan was in unconscious state. Thereafter, he came to the police station, registered FIR for the offence under Sections 294(b), 323, 506(i) IPC and FIR is Ex.P6. Thereafter, he placed it before P.W.15, Sub Inspector of Police, who conducted preliminary investigation and on receipt of death intimation of the injured Anandan, the case was placed before P.W.16, who conducted the further investigation and filed the charge sheet.

22.In this case, though P.Ws.2 to 4 have been treated hostile, they have been treated hostile only in part, as regard to the attack by the appellant and his minor brother on the deceased, that all the three were armed with sticks. Their evidence are in conformity to the evidence of P.W.1 and there is nothing to doubt their evidence. Their evidence are in conformity with the medical evidence. Though there has been some delay in forwarding the complaint and FIR to the Court, this Court is of the view that since the case initially registered for the offence under Sections 341, 323, 294(b) and 506(i) IPC, which are not in serious in nature, the delay would have occurred. On perusal of Ex.P12, it is seen that the alteration report has been received at 08.00 a.m., on 18.11.2008 at the residence of the Judicial Magistrate and the complaint has been received on 18.11.2018 at 11.00 a.m. Therefore it is clear that on receipt of the death intimation, the offence has been altered and the documents have been forwarded to the Court thereafter then and there. The Apex Court has held that any omission on the part of the investigating officer cannot go against



the prosecution case. If the investigating officer has deliberately omitted to do what he ought to have done in the interest of justice, it means that such acts or omissions of investigating officer should not be taken in favour of the accused. The case of the prosecution has to be examined *de hors* such omissions of the investigating officer. There is no material discrepancies in the evidence of P.Ws.1 to 5 coupled with the medical evidence and recovery.

23.The trial Court, after analysing all the oral and documentary evidence, by a well reasons judgment, found the appellant for the offence under Section 304(ii) IPC and sentenced him to undergo 4 years RI and hence, this Court find no infirmity or necessity to interfere with the finding of the trial Court.

24.In view of the same, this criminal appeal is dismissed and the conviction and sentence passed by the by the Additional Sessions Judge (Fast Track Court No.II) Madurai in S.C.No.162 of 2009 dated 25.11.2009 are hereby confirmed. The trial Court is directed to secure the appellant and commit him to undergo the remaining period of sentence.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The Additional Sessions Judge, (Fast Track Court No.II), Madurai.
2. The Principal Sessions Judge, Madurai.
3. The Judicial Magistrate, Melur,
4. The Chief Judicial Magistrate, Madurai.
5. The Superintendent, Central Prison, Madurai.

6.The Inspector of Police, Melur Circle,
Melavalavu Police Station, Madurai District.

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

copy to

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

+1 CC to M/s.R.ANAND, Advocate (SR-1249[F] dated 09/01/2020)

Cr1.A. (MD) No.431 of 2009
09.01.2020

SGS (CO)

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