



BAIL SLIP

Sivapandy, S/o.Dharmar, male, aged about 36 years (Sole Accused) was released on bail vide court order dated 26.06.2018 made in Crl MP(MD)2589 of 2018 in Crl A(MD)No.159 of 2018.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.01.2020

Delivered on : 18.09.2020

CORAM:

**THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

Crl. A. (MD)No.159 of 2018

Sivapandy ... Appellant/ Sole Accused
Vs.

State through the Inspector of Police,
C2 Subramaniyapuram (L&O) Police Station,
Madurai City,
(in Crime No.684 of 2014) ... Respondent/Respondent

Prayer : Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, praying to set aside the conviction and sentence passed u/s 302, 294(b), 341 I.P.C. vide the Judgment dated 14.02.2018, passed by the learned IV Additional District Judge, Madurai in S.C.No.55 of 2015.

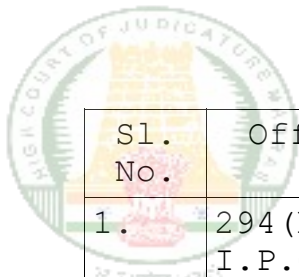
For Appellant	: Mr.T.K.Gopalan
For Respondent	: Mr.R.Anandharaj
	Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by **B.PUGALENDHI, J.**)

Appellant is the sole accused in S.C.No.55 of 2015 on the file of the learned IV Additional District and Sessions Judge, Madurai and he was tried for the commission of offences under Sections 294(b), 341 and 302 I.P.C. The trial Court by order dated 14.02.2018, found the appellant guilty for the offences under Sections 294(b), 341 and 302 I.P.C. and convicted and sentenced him as follows:

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Sl. No.	Offences	Sentence
1.	294(b) I.P.C.	Fine of Rs.1,000/- in default to undergo simple imprisonment for one month
2.	341 I.P.C.	Fine of Rs.500/- in default to undergo simple imprisonment for one month
3.	302 I.P.C.	Life Imprisonment and fine of Rs.5,000/- in default to undergo simple imprisonment for one month

As against the conviction and sentence imposed by the trial Court, the appellant has preferred this Criminal Appeal.

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

2.1.The deceased Bose Thevar was working in a private security agency and he was having a dispute regarding the pathway with his neighbour Dharmar and his son Sivapandi, the appellant herein. The appellant and his father claimed right over the pathway and blocked the pathway. Previously, on account of that, there was an earlier incident in which the appellant has assaulted the son of the deceased one Mahendran, P.W.7 herein. On the intervention of the elders of that area, the matter was amicable solved. But, however, the appellant used to quarrel with the deceased and his family members. 10 days prior to the occurrence, the accused passed urine in front of the house of the deceased, which was objected by the deceased saying that when womenfolks are available in his house, how he can behave in such a way, for which, the accused/appellant abused the deceased with filthy words and also criminally intimidated. The deceased has also assaulted the accused/appellant. The accused by threatening him to do away with his life, went to the house and in order to avoid any incident, P.W.1, wife of the deceased put the deceased in a room and locked the room and prevented any incident on that day. The accused after some time came with an aruval and was screening and searching for the deceased and on the advice of the neighbours an incident was avoided on that day. But, however, on that day itself, the accused warned the deceased's family that on one day he would murder him.

2.2.On 16.07.2014 at about 5.30 p.m. when the deceased was sitting along with his wife P.W.1 on his pial, the accused came to the house with an aruval and on seeing this P.W.1 insisted her husband, the deceased, to go inside the house, but the accused waylaid the deceased and attacked him on his neck. Even after he fell down, the accused has cut his throat. On seeing the incident P.Ws.3 and 4, the neighbours of the deceased rushed to the place of occurrence and on seeing them the accused rushed with Aruval. Thereafter, P.Ws.3 and 4 took the deceased in a motorcycle to a private hospital viz., Lakshmana Hospital and provided first aid and



thereafter he was taken to Madurai Government Rajaji Hospital and admitted in Ward No.99 on 16.07.2014, at about 7.42 p.m. The deceased without responding to the treatment died in the hospital at about 8.15 p.m.

2.3. On intimation from the Government Rajaji Hospital, P.W.17, the Special Sub-Inspector of Police, Subramaniapuram Police Station went to the Government Hospital at about 9.30 p.m. recorded the statement (Ex.P.1) from the wife of the deceased (P.W.1) and registered a case in Crime No.684 of 2014, under Sections 294(b), 341 and 302 I.P.C. and despatched the Printed F.I.R. [Ex.P.11] to the Court and the same was received by the concerned judicial Magistrate on 17.07.2014 at 2.30 a.m.

2.4. On receipt of the information regarding registration of the F.I.R., P.W.20 - Prem Arand, the Inspector of Police, Subramaniapuram Police Station, took up the investigation in Crime No.684 of 2014 and on 16.07.2014 at 11.30 p.m. he went to the place of occurrence and prepared Observation Mahazar (Ex.P.5) and Rough Sketch (Ex.P.14) in the presence of P.W.10 - Pavunraj and another. He also collected blood stained soil (M.O.2) and ordinary soil (M.O.3) under a cover of mahazar Ex.P.6. He also examined P.Ws.3, 4 and 10 and one Paulraj and recorded their statements.

2.5. On information, P.W.20 arrested the accused on 17.07.2014 at about 5.00 a.m. near Gothandaramar Temple at Madurai in the presence of one Thangapandi and Muthukalai (P.W.11) and recorded the confession statement voluntarily given by him. Pursuant to the admissible portion of the confession leading to recovery - Ex.P.7, P.W.20 recovered M.O.1 Aruval from the bush nearby the house of the accused under a cover of mahazar, Ex.P.8. Thereafter, he sent the accused for judicial custody.

2.6. Thereafter, P.W.20 went to Madurai Government Rajaji Hospital and conducted inquest from 8.00 a.m. to 10.00 a.m. in the presence of Panchayatars and the inquest report is marked as Ex.P.15. Thereafter, P.W.20 handed over the dead body to P.W.14, Grade I Police Constable for conducting postmortem.

2.7. The P.W.12 is the doctor who conducted the postmortem and he found the following ante mortem injuries:

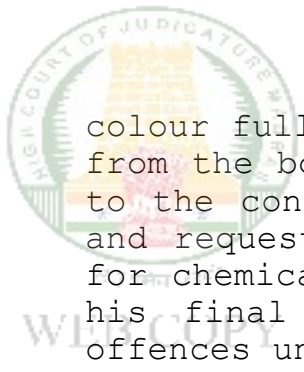
"1. An Oblique sutured out injury measuring 8cm x 1.5cm x muscle deep noted on left side of middle of neck.

On dissection: The wound found cutting the underlying muscles, vessels, (Jagular vessels) and nerves.

2. Transversely oblique incised wound measuring 5cm x 0.5cm x muscle deep noted on front of middle of neck."

The postmortem certificate is marked as Ex.P.9 and the doctor P.W.12 gave his final opinion that the deceased would appear to have died of shock and haemorrhage due to cut injury to neck.

2.8. The investigation Officer P.W.20 continued the investigation and examined P.Ws.3, 11, 1, 5, 13, 14, 17 and others and recorded their statements. He also recovered Blood stained white



colour full hand shirt, white colour dhoti and trouser (M.Os.4 to 6) from the body of the deceased through P.W.14 and forwarded the same to the concerned Judicial Magistrate in Form 95, marked as Ex.P.16 and requested the Judicial Magistrate to send the material objects for chemical analysis. After completing the investigation, he filed his final report as against the accused on 07.07.2016 for the offences under Sections 120(B), 341 and 302 I.P.C.

3. During the trial, 20 witnesses have been examined on the side of the prosecution and 16 documents were marked and 6 material objects were produced in support of the prosecution case. V.Chandran, Record Clerk, Government Rajaji Hospital, Madurai was examined as C.W.1 and Copy of Attendance Register of Doctors in Government Rajaji Hospital, Madurai for the month of July, 2014 and Case Records pertaining to deceased Bose Thevar, issued by Government Rajaji Hospital, Madurai were marked as Court side Exs.C1 and C2 respectively. When the incriminating materials were put to the accused under Section 313 CrPC, the accused denied the same. The accused has not examined any witness, however marked the summon dated 02.07.2015 served on List of Witnesses 1 to 4 as Ex.D.1 in support of his case.

4. The available evidence of the prosecution are as follows:

P.Ws.1 to 7 were examined as eye-witnesses to the occurrence and among these witnesses P.W.4 Ramesh, neighbour to the deceased was treated as hostile. However, P.W.8, who is also a neighbour and wife of P.W.4 supported the case of the prosecution and P.W.9 another neighbour has stated about the motive for the occurrence. P.W.10 was examined for the observation mahazar and recovery from the place of occurrence and P.W.11 was examined as a witness for the arrest, confession and recovery of M.O.1 from the accused. P.W.12 is the doctor, who conducted postmortem and issued the postmortem certificate Ex.P.9. P.W.13 is the constable, who took the F.I.R. to the concerned Court and P.W.14 is the Constable, who identified the dead body to the Doctor and recovered the clothes M.Os.3 to 6 from the deceased. P.W.15 Dr.Murugu Porselvi was wrongly mentioned in the list of witnesses as if she gave treatment to the deceased before his death. But it was later found that the treatment was provided by Dr.Vanitha. Therefore, Dr.Vanitha was examined as P.W.16 and through her the treatment details have been marked. The Special Sub-Inspector of Police, who recorded the statement from P.W.1 and registered the F.I.R. was examined as P.W.17 and the scientific experts were examined as P.Ws.18 and 19. The Investigation Officer was examined as P.W.20.

5. In conclusion of the trial, the learned Trial Judge, by judgment dated 14.02.2018 found the accused guilty of the offences under Sections 294(b), 341 and 302 I.P.C. and sentenced him as stated in paragraph No.1. As against the conviction and sentence, the present appeal is filed.



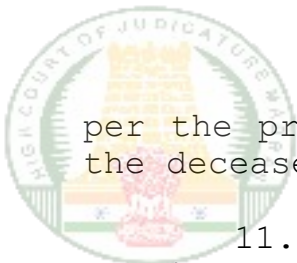
6.Mr.T.K.Gopalan, the learned counsel appearing for the appellant/ accused submitted that the Special Sub-Inspector of Police, who registered the F.I.R. on medical intimation admits in his evidence that it was mentioned in the medical intimation that the occurrence was committed by unknown person, but the same was not placed before the Court and further the deceased was taken to a private hospital viz., Lakshmana Hospital and the doctor, who provided treatment to the deceased at Lakshmana Hospital was not examined and the medical records from the said hospital were not collected and produced before the Court by the investigation agency and therefore, the prosecution has suppressed the initial documents in this case.

7.The learned counsel by relying upon the medical jurisprudence strongly contended that the case of the prosecution cannot be trusted for the reason that as per medical jurisprudence, if jocular vein is cut then there could be no possibility for the deceased to live for some time. Hence, the case of the prosecution that though the occurrence took place at 5.30 p.m., the deceased was taken to Government Rajajaji Hospital at 7.42 a.m. and died only at 8.15 p.m., cannot be true.

8.The learned counsel for the appellant by referring to the Observation Mahazar, Rough Sketch and the evidence of P.W.1 pointed out the contradiction on the side of the prosecution with regard to the place of occurrence and has raised a doubt as to whether the occurrence has taken place on the pial of the deceased's house as claimed by the prosecution or in the middle of the street as projected by the investigation officer.

9.The learned counsel for the appellant has also pointed out that though the witnesses P.Ws.1, 3, 4 have said to have sustained blood stains on their cloth, their blood stained cloths were not recovered, which throws doubt on their presence in the place of occurrence. He also stated that P.W.1 is a street vendor and therefore, her presence at the time of occurrence is highly doubtful. With regard to P.W.2, the learned counsel for the appellant would submit that the presence of P.W.2 at the time of occurrence has not been mentioned in Ex.P1, complaint as well as in the statement under Section 161(3) Cr.P.C. recorded on 17.07.2014. P.Ws.3 to 6 have also not spoken to the presence of P.W.2 in the place of occurrence and therefore, the evidence of P.W.2 cannot be relied upon. Similarly, P.W.5 son of the deceased was also added as an eyewitness to fill up the lacuna, since he has not taken the deceased to the hospital.

10.The learned counsel has also pointed out the contradictions among the witnesses. The weapon M.O.1 was said to be recovered from a bush nearby the house of the accused. However, as



per the prosecution witnesses, there was no bush near the house of the deceased as per the prosecution witnesses.

11.Per contra, the learned Additional Public Prosecutor submitted that this is a case of eyewitnesses and P.Ws.1 to 7 were examined as eyewitnesses. Though P.W.4 was treated as hostile, P.W.4 to some extent supported the case of the prosecution that there was an enmity between the deceased and the accused and after the occurrence he along with P.W.3 took the deceased to the hospital and therefore, according to the learned Additional Public Prosecutor, the presence of P.W.3 has been reiterated by P.Ws.1 and 4. P.W.8, the wife of P.W.4 has supported the case of the prosecution and has also narrated about the motive for the occurrence and also about the occurrence. The victim deceased was immediately taken to the hospital and therefore, there is no delay in reporting the incident and therefore, there is no reason to interfere with the well considered judgment of the trial Court.

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

13.The deceased and the appellant are neighbours and admittedly they had a dispute with regard to the pathway and there were previous instances of quarrel between the appellant and the deceased prior to the occurrence. 10 days prior to the occurrence, the accused urinated in front of the deceased house, on account of which, there was yet another incident, where the deceased assaulted the accused and on that day the appellant has attempted to attack the deceased with Aruval and that was prevented by P.W.1 by locking the deceased in his house. On 16.07.2014, at about 5.30 p.m., when the deceased was sitting on his pial, the accused came to the house of the deceased and attacked the deceased on his neck out of previous motive. Two injuries were caused to the deceased and both are vital injuries. The neighbours P.Ws.3 and 4 on seeing this incident rushed to the occurrence place and took the deceased in a motorcycle to a private hospital and thereafter, the deceased was taken to Government Rajaji Hospital, Madurai on 16.07.2014 at 7.42 p.m. The deceased by not responding to the treatment died in the hospital at about 8.15 p.m. Thereafter, on intimation from the Government Hospital, the Special Sub-Inspector of Police, P.W.17 went to the Government Hospital and recorded the statement from P.W.1 and registered the case and set the law in motion.

14.Though the learned counsel appearing for the appellant raised a ground that the initial documents of the treatment details provided to the deceased at the private hospital viz., Lakshmana Hospital have been suppressed, it cannot be a ground to disbelieve the case of the prosecution when the deceased was admitted in the hospital within two hours from the time of occurrence and the medical records filed including the accident register were placed before the Court as Ex.P.10 and Ex.C2. The exhibit C2, discloses that while the deceased was admitted in the Government Hospital it

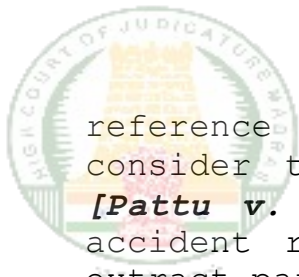


was mentioned that he was assaulted by a known person using sickle at his home at Paikara in Madurai on 16.07.2014 at 5.30 p.m. Though some first aid was provided to the deceased at Lakshmana Hospital, a private hospital, we cannot expect any document from the Lakshmana Hospital without ascertaining whether it is a hospital capable of attending medico-legal cases. When the deceased was taken to the Government Hospital immediately, this Court cannot presume that there would be some other initial documents available in the Lakshmana Hospital, which would disprove the document of the Government Rajaji Hospital, which were marked as Ex.P.10 and Ex.C.2.

15.The learned counsel appearing for the appellant by relying upon the medical jurisprudence strongly contended that the deceased could not have survived till 8.15 p.m. if the jocular vessel was cut. When the available documents in Ex.C2 and P.10 clearly show the treatment details provided to the deceased at Government Rajaji Hospital from 7.42 p.m. to 8.15 p.m., the prosecution cannot take any advantage by projecting that he survived till 8.15 p.m. When the doctor who provided treatment to the deceased at the Government Hospital have categorically stated about the treatment provided in the hospital by supporting the medical history of the deceased, this Court finds no reason to disbelieve the evidence of P.W.15, the doctor.

16.The learned counsel appearing for the appellant has raised yet another point by raising a doubt regarding the place of occurrence as to whether it is on a pial or on the street. As per the observation mahazar Ex.P.5 and rough sketch Ex.P.14, the occurrence is shown to have taken place in the middle of the road. However, according to the evidence of P.W.1, the occurrence has taken place in front of his house when the deceased was sitting on the pial. The reference in the sketch Ex.P.14 did not make much difference of the evidence of P.W.1. The place of occurrence is shown as just front of the deceased's house. It is the case of the prosecution that when the deceased was sitting on the pial, the accused came there, waylaid and attacked, when the deceased attempted to escape from attack. Therefore, if the dead body is found in front of the deceased's house and the blood stained earth and the ordinary earth have been recovered from the place of occurrence that would itself prove the prosecution case that the occurrence took place on 16.07.2014 at about 5.30 p.m.

17.It is true that P.W.17 has stated in his cross-examination that in the medical intimation it was referred the occurrence was committed by unknown persons. P.W.17 was examined in chief on 13.07.2017 and was not cross-examined on that day. He was recalled and cross-examined on 18.07.2017 and on that day P.W.17 has stated that in the medical memo it is mentioned that Bose Thevar was murdered by unknown person. The medical memo is not placed before this Court. The Special Sub-Inspector of Police is expected to give evidence based on the available records. There is no requirement for



reference about the accused in the medical memo. it is relevant to consider the judgement of this Court in **(2009) 1 MLJ (Crl) 133 [Pattu v. State]**, wherein the legal position with regard to the accident register has been succinctly stated. It is relevant to extract paragraph No.21:

"21.The doctor is not at all concerned as to who has committed the offence, as his primary effort is to save life. See Pattipatti Venkaiah v. State of A.P. AIR 1985 SC 1715 : (1985) 4 SCC 80 : (1986) MLJ (Crl) 23, paragraph 17. Further, the doctor can also ignore any statements made by persons who brought the injured for treatment either to the occurrence or as to the name of the assailants, whether known or unknown. See Basheer v. State 1993 Crl.L.J.2173."

It is also relevant to extract paragraph 19 of the decision of this Court in **(2007) 1 MLJ (Crl) 319 [Annamalai v. State]**:

"19. The Madras Medical Code (Vol.I) Section 10 paragraph-622 gives guidelines or instructions to the doctor as to how the columns in wound certificate are to be filled up. Para-622 (vi) reads:

"Medical officer should ascertain and incorporate in the certificate only the alleged cause as to the manner in which the injuries were inflicted, the weapon used and the time."

The Medical Officer should ascertain the cause of the injury, weapon used, time, etc. thereby showing no power is vested upon the Medical Officer, to ascertain from the injured or the person accompanied the injured, who is the cause for the assault, whether it is known or unknown even. The doctor is concerned, to ascertain and incorporate in the certificate, how the injuries were inflicted and what is the weapon used, including the time, so as to find out, at later point of time, whether the injury would have been caused by the weapon produced on behalf of the prosecution said to have been used by the assailants on the basis of the recovery, if any. In this view, if the doctor had incorporated about the statement made by the person who brought the deceased, that can be ignored, which appears to be the dictum of the Apex Court also in Basheer v. State 1993 (Crl.L.J. 2173)."

18.The occurrence took place on 16.07.2014 and the evidence was recorded after 3 years. While so, P.W.17, when he was cross-examined after recalled made a vague statement as if in the medical memo it is mentioned that the deceased Bose Thevar was murdered by unknown persons. The fact remains that P.Ws.3 and 4 have taken the deceased immediately to a private hospital viz., Lakshmana Hospital and thereafter, taken the deceased to the Government Rajaji Hospital, Madurai at about 7.42 p.m. The presence of P.Ws.3 and 4 in the place of occurrence is very much available in the complaint,



which was registered on 16.07.2014 at 10.45 p.m. There is no delay in reporting the incident to the Police Station and the F.I.R. reaching the Court. The F.I.R. also reached the concerned Judicial Magistrate at about 2.30 a.m. on 17.07.2014. This is a case of seven eye witnesses. The occurrence has taken place at about 5.30 p.m. in front of the deceased's house. The deceased's wife, daughter, sons and the other neighbours are the eyewitnesses to the occurrence and they have also appeared to be natural witnesses of this case. The defence has not shattered the evidence of eyewitnesses. In fact the name of P.W.2 and the other witnesses P.Ws.5 to 7 were not mentioned as eyewitnesses in the complaint Ex.P.1. As repeatedly held by the Hon'ble Apex Court the F.I.R. is not an encyclopedia, where minor details have to be incorporated. P.W.1 as well as other witnesses have stated clearly about the occurrence, motive for the occurrence and the subsequent treatment provided to the deceased. The accused was also arrested on 17.07.2014 at 5.00 p.m. and the weapon M.O.1 was also recovered pursuant to his confession. The biological report and forensic report established that the blood group is of the deceased were found on the M.O.1 - Aruval, M.O.2 - soil recovered from the place of occurrence, M.O.4 - white colour full hand shirt, M.O.5 - white colour dhoti and M.O.6 - trouser recovered from the deceased. The prosecution has established the case beyond any reasonable doubt and the defence has not demolished the prosecution theory and there is no reason for this Court to interfere with the order of the trial Court.

19. In the result, Criminal Appeal is dismissed confirming the judgment dated 14.02.2018, made in S.C.No.55 of 2015 by the IV Additional District and Sessions Judge, Madurai convicting and sentencing the appellant/accused for the offences under Sections 294 (b), 341 and 302 I.P.C. The bail bonds executed by the accused shall stand cancelled. The period of imprisonment already undergone by the appellant/accused shall be given set off. The respondent is directed to take steps to procure the accused for undergoing the remaining period of sentence.

Sd/-

Assistant Registrar (CO)

// True Copy //

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Sub Assistant Registrar(CS)

sj

To

1. The IV Additional District and Sessions Judge,
Madurai.

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



2.The Judicial Magistrate No.4,
Madurai.

3.The Inspector of Police,
C2 Subramaniyapuram (L&O) Police Station,
Madurai City,

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

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

judgment in
Cr1. A. (MD)No.159 of 2018
18.09.2020

VB (25.09.2020) 10P 7C