



BAIL SLIP

The Appellant / Accused viz., Prabakaran, S/o.Anandhan, was released on bail as per the order of this Court dated 02.12.2015 made in MP(MD)No.1 of 2015 in CRL A(MD)No.225 of 2015.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.225 of 2015

Prabakaran ... Appellants /Accused No.1

Vs.

State through the
Inspector of Police,
Thottiam Circle,
Kattuputhur Police Station,
Trichy District.
[Crime No.31 of 2014]

... Respondent/Complainant

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure, to call for the records relating to the judgment in S.C.No.80 of 2015 dated 19.08.2015 on the file of the I Additional District Judge (PCR), Tiruchirappalli, set aside the same and allow this criminal appeal.

For Appellant : Mr.M.Subash Babu
For Respondent : Mr.A.Robinson,
Government Advocate (Crl side)

JUDGMENT

This appeal is filed as against the conviction and sentence imposed on the appellant in S.C.No.80 of 2015 dated 19.08.2015 on the file of the learned Additional District Judge (PCR), Tiruchirappalli.

2.This appellant / first accused along with three other accused was tried before the First Additional District Judge, [PCR], Tiruchirappalli in S.C.No.80 of 2015 and the trial Court framed the following charges and by its judgment dated 19.08.2015 the trial Court found this appellant not guilty for the offence under Section 302 IPC, but found him guilty for the offence under Section 304(ii) IPC and the fourth accused was found guilty for the offence under Section 294(b) IPC. The charges framed against the accused and the findings of the trial Court are as follows:



Accused Rank	Charge under Section	Findings of the trial Court
First Accused	302 I.P.C.	Convicted under Section 304(II) I.P.C and sentenced to undergo rigorous imprisonment for eight years, with a fine of Rs.2,000/- in default, to undergo rigorous imprisonment for six months.
Second Accused	302 & 323 I.P.C.	Not found guilty under Sections 302 and 323 I.P.C.
Third Accused	302 r/w 34 I.P.C.	Not found guilty under Sections 302 and 323 I.P.C.
Fourth Accused	294 (b), 302 r/w 34, 323 r/w 34 I.P.C.	Convicted under Section 294 (b) I.P.C and sentenced to pay a sum of Rs.1,000/- in default to undergo three months simple imprisonment. Not found guilty under Sections 302 r/w 34 and 323 r/w 34 I.P.C.

As against the conviction and sentence imposed on the first accused / appellant, the present criminal appeal has been filed.

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

(i) The deceased Balan was running monthly Chit and the accused have taken two chits. The accused have paid the subscription for one chit, but the subscription due for the other chit was not paid by the accused, since the accused was constructing a house. On the date of occurrence on 20.12.2014, roof concrete for their new house was laid and a festival was also going on in their village.

(ii) On 20.12.2014 around 8.30pm the deceased Balan went to the house of the accused for collecting the due for the second chit, at that time, the fourth accused abused him with filthy words. Subsequently, there arose a wordy quarrel and on hearing this sound, PW1 son of the deceased and PW2 wife of PW1, went to the place of occurrence, where, PW1 son of the deceased questioned the fourth accused for abusing his father. At that time the first accused with a brick [MO1] attacked the deceased by abusing him and the second accused with stick [MO2] attacked the deceased. The third accused caught hold of the deceased and also instigated them and the fourth accused has pulled the shirt of the defacto complainant [PW1] and also restricted his movement. She also instigated the first and second accused to do away with the deceased Balan. But soon after the occurrence, the neighbours rushed to the spot and the accused fled away from the place of occurrence. PW1 and others took the deceased to his house, but he was found dead.

(iii) On the written complaint lodged by PW1 in Exp1, the

Sub Inspector of Police [PW21] registered the case in Crime No.31 of 2014 of Kattuputuhur Police Station for the offence under Sections 294(b), 342, 323 and 302 of Indian Penal Code [in short 'IPC'] on 20.02.2014 at about 9.30pm. The printed FIR is marked as Exp9. PW24 Periyasamy, the Inspector of Police, Thottiyam / the Investigation Officer [in short 'the IO'] went to the place of occurrence around 11.30pm on the same day and prepared an observation mahazar [Exp5], rough sketch [Exp10] in the presence of PW16 Gowri, Village Administrative Officer and Pitchai, Village Assistant. The IO also recovered a brick measuring 13 cm X 10 cm from the place of occurrence in the presence of the said witnesses and went to the house of the deceased around 1.00am on 21.02.2014, prepared observation mahazar and rough sketch Exp11 and Exp12 respectively from the house of the deceased and conducted the inquest in the presence of Panchayatars. The inquest report is marked as Exp13.

(iv) The IO also examined PW1, PW2, PW3, PW4, PW22, PW6, PW9, PW6, PW7, PW8, PW16 and others and recorded their statements. The IO made a request through the Head Constable [PW20] to the Government Hospital Musiri, for conducting autopsy. Dr.Sankar Ganesh, at Government Hospital, Musiri conducted the postmortem and noted down the following injuries in the postmortem certificate [Exp8] as follows:

"External Examination:-

1. 0.5cm abrasion in right forearm
2. 0.5cm abrasion in near lower lip

Internal Examination:-

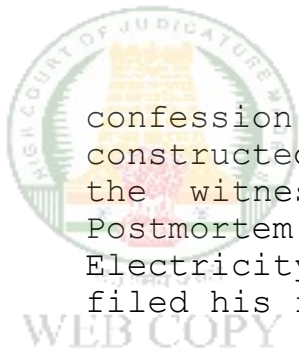
1. Skull - No fracture
2. Brain - Intracerebral (haemorrhage present)
3. Thorax - No rib fracture; Heart & Lungs - intact, c/s contains blood;
4. External genitalia - intact;
5. Hyoid bone - intact

Abdomen

1. Stomach - contains 100 ml of semi-solid food
2. Intestine - filled with gas
3. Livers - intact; s/c-congested
4. Kidneys - intact; s/c-congested
5. Spleen - Spleen injury present
6. Stomach, intestine, liver, kidney are preserved, but not sent to lab."

(v) The Doctor [PW19] gave his final opinion that the deceased would appear to have died due to the injury on the vital organs like brain and spleen, 12 to 18 hours prior to the autopsy.

(vi) The IO arrested the appellant/accused No.1 and accused No.2, near Thottiyam Bus stand, on 21.02.2014 at about 1.00pm and recorded the confession statement in the presence of VAO Muruganantham [PW17] and his Assistant Andi and pursuant to the



confession statement, the IO recovered a stick [MO2] from the newly constructed house of the accused and also recorded the statements of the witnesses, examined the Doctor, who treated PW1 and the Postmortem Doctor and the Junior Engineer of the Tamil Nadu Electricity Board [PW23] and after completing the investigation, he filed his final report as against this appellant and three others.

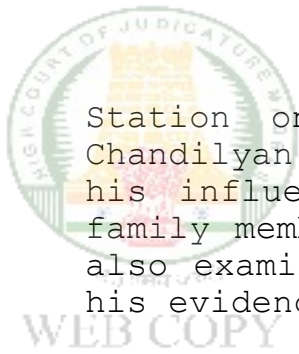
(vii) The learned Judicial Magistrate, Musiri had taken the final report in PRC No.4 of 2015 and committed the same to the Court of Sessions and the same was taken on file in S.C.No.80 of 2015 on the file of the I Additional District Judge [PCR].

(viii) During the trial on the side of the prosecution 24 witnesses were examined and 15 exhibits were marked besides, 2 martial objects were produced.

(ix) The available prosecution evidence are that PW1 and PW22 are son and daughter-in-law of the deceased, who are examined as eye witnesses and PW4, 5, 7,8, 9, 10, 11, 12, 13, 14 and 22 were also examined as eye witnesses. Among those eye witnesses, PW4, PW5, PW7, PW8, PW11, PW14 and PW22 did not support the case of the prosecution and therefore, they were treated as hostile; Dr.Karthikeyan [PW15] is the Doctor, who treated the complainant [PW1] and issued wound certificate [Exp2]; PW19 is the Doctor, who conducted the postmortem; VAO Gowri [PW16] was examined for the recovery of brick [MO1] from the place of occurrence; VAO, Muruganantham was examined as PW17 for the arrest and recovery of MO2 from this appellant / first accused; The Sub Inspector of Police [PW21] has registered the complaint Exp1 in Exp9; Mohandass, Junior Engineer, TNEB was examined as PW23; The investigation officer was examined as PW24;

4.The incriminating materials were put to the accused under Section 313 CrPC, but the accused denied the same. On the side of the accused, a written submission was also filed by the appellant / accused under Section 232 (2)CrPC.

5.In the said written statement, the appellant has stated that he is working as a mason and admitted the chits subscribed by them with the deceased and they were also paying the chit due of Rs.2,500/- every month without any fail, but in the month of February 2014, he was not able to pay the chit amount, since they were constructing the new house. The roof concrete was also laid on that day, ie., on 20.02.2014, around 8.30pm, the deceased came to his house for collecting the chit due and since they have not paid that amount, the deceased had raised the voice and abused them. However, the accused have pleaded to give sometime and on seeing their conduct, the neighbours have intervened and pacified the deceased and PW1. At that time, the deceased and PW1 fell on the heap of stone found near the place of occurrence and sustained the injuries. On the same day Police have taken his parents and he along with his second accused appeared before the Thottiyam Police



Station on the same night. Since the deceased's relative one Chandilyan is working as a Writer in Thottiyam Police Station, on his influence, the case has been foisted as against him and his family members with an intention to take revenge on his family. He also examined his neighbour one Yoganathan as DW1 and he also gave his evidence in the similar line.

6.In conclusion of the trial, with the available evidence the trial Court found this appellant guilty, convicted and sentenced for the offence under Section 304(ii) IPC and acquitted the other accused as stated as supra.

7.Aggrieved over the same, the appellant/first accused preferred the present appeal.

8.Heard Mr.Subash Babu, learned Counsel for the appellant and Mr.A.Robinson, learned Government Advocate [Crl Side].

9.Mr.Subash Babu, learned Counsel for the appellant submitted that as per the prosecution case and the evidence of the eye witnesses, the occurrence has taken place on 20.02.2014 at about 8.30pm. They have also witnessed the occurrence in the source of the street light. But according to the Junior Engineer of Tamil Nadu Electricity Board [PW23] there was no power supply in the village between 8.20pm and 9.10pm. Therefore, admittedly, there was no power supply at the time of occurrence and the possibility of the witnesses witnessing the occurrence is highly doubtful. They have also subscribed for two chits with the deceased. The accused and the deceased were in good terms and there was no dispute between them prior to the occurrence. The presence of PW2 is not stated by PW1 in his complaint, whereas, PW2 wife of PW1 has also been added as eye witness. In this case, both PW1 and PW3 alone were present in the place of occurrence. Whereas, the prosecution has examined several persons as eye witnesses and some of their evidences are also contradictory to each other. Among the 14 persons examined, PWs 4, 5, 7, 8, 11, 14 and 22 turned hostile and PW6 also has stated that she did not witness who assaulted the deceased, but she was not treated as hostile witness.

10.The learned Counsel submitted that according to the prosecution witness there was a village festival in the occurrence village and one day prior to the occurrence the temple Kumbabisekam was conducted and in this connection, Police personnel were deployed to the village. There were continuous functions on the date of occurrence also and the Police were very much available in the occurrence village and immediate to the occurrence, they have also visited the place of occurrence and also taken the accused to the Police station along with them. Therefore, the arrest and recovery as shown by the prosecution that the accused was arrested on the next day at about 1.00pm near Thottiyam bus stand cannot be



the confession statement of this appellant/first accused. But this overt act of using the stick was attributed only as against the second accused, who has been acquitted of the charges by the trial Court itself.

11.The learned Counsel also submitted that the brick [MO1] was recovered from the place of occurrence and none of the witnesses has identified the brick MO1. The recovery witness PW16, VAO in her cross examination stated that she signed the mahazar in the Police Station on the next day, whereas, the brick was recovered on the same day from the place of occurrence.

12.According to the learned Counsel for the appellant, the prosecution has failed to prove the recovery of the stick [MO2], since the stick [MO2] is said to be recovered from the Kitchen of his house, pursuant to this appellant's confession statement in the presence of VAO PW17. But the VAO PW17 did not depose the place of recovery in his evidence. Though the confession statement and recovery mahazar in respect of MO2 stick were recorded on 21.02.2014, the same was despatched to the Court only on 24.02.2014 with a delay of three days.

13.The learned Counsel further submitted that according to the prosecution's case, the occurrence had taken place on 20.02.2014 at 8.30pm and the IO went to the place of occurrence at 11.00pm, but PW3, PW6, PW9, PW10, PW12 and PW13 in their cross examination deposed that within five minutes from the occurrence, the Police came and recorded the statements from the witnesses.

14.The learned Counsel also submitted the as per the inquest report [Exp13] the deceased was wearing white shirt at the time of occurrence. The case of the prosecution is that appellant is said to have assaulted the deceased with a brick on his chest, if it so, then there might be some stains in the shirt and the shirt would have been damaged. But, the prosecution neither recovered the shirt nor marked the same. That apart, the IO has also admitted that at the time of occurrence, the deceased was wearing white shirt and the same was not recovered.

15.According to the learned Counsel, the Medical evidence was not tallied with the ocular evidence of the prosecution. The very case of the prosecution is that the appellant attacked the deceased with a brick on the chest of the deceased, but in the postmortem certificate [Exp8], no injury on the chest has been noted. The learned Counsel, therefore, prayed for allowing this appeal.

16.Per contra, the learned Government Advocate [Criminal Side] submitted that the prosecution has examined 14 person as eye witnesses to the occurrence and even though some of the witnesses have turned hostile, others have stated about the occurrence and PW1 and PW2 have stated about the occurrence in a



clear manner and therefore, the trial Court found this appellant convicted and sentenced as above.

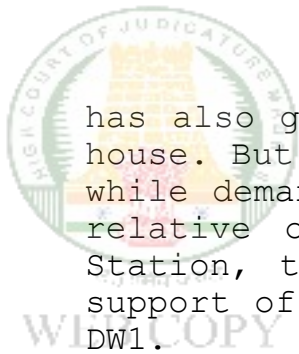
17.The ocular evidence of PW10 is also corroborated by PW1 as an injured eye witness in this case and the injuries suffered at the time of occurrence are also elicited through wound certificate ExP2. The occurrence has taken place at 8.30pm and the complaint was lodged within an hour on the same day and at about 11.30pm the FIR also reached the concerned Court. Therefore there is no delay in reporting this incident. The eye witnesses have also deposed about the manner of occurrence and the evidence of the Doctor established that the death was due to homicide.

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

19.It is not in dispute that the occurrence in this case has taken place at about 8.30pm on 20.02.2014. The deceased went to the accused house for collecting chit due from the accused. According to the prosecution, the accused have subscribed two chits with the deceased Balan. Of the two chits, Accused No.3/ Anand has paid the subscription for one chit. But did not pay the due for the other chit, since they were constructing a new house and on the date of occurrence, they have also laid roof concrete. When the deceased asked for the due for the chit, the fourth accused is said to have abused him. Consequently, there was a wordy quarrel and on hearing the noise, with the source of street light, PW1 went to the place of occurrence and questioned them as to how the accused can abuse his father without paying chit due.

20.At that time the accused attacked him with brick and stick and in the course of that incident the deceased succumbed to injury and the PW1 has also sustained simple injury. On the complaint of PW1 son of the deceased, the case came to be registered at about 9.30pm on 20.02.2014 and the investigation commenced immediately after the occurrence and the accused was also arrested on the next day near Thottiyam Bus stand at about 1.00pm. The brick [MO1] said to be used by the first accused to attack the deceased was recovered from the place of occurrence in the presence of VAO PW16. The other material object MO2 stick said to be used by the second accused, was recovered pursuant to the confession of the first accused, from the house of the accused in the presence of PW17 VAO.

21.The case of the accused is that on 20.02.2014 at about 8.30pm, the deceased came to the accused house for collecting the chit due, since they did not pay the due, he abused them and he did not accept the request of the accused to give some time for paying the chit due and created problem. Admittedly, at that time there was no power supply. On hearing the noise, the villagers attempted to pacify the deceased and the accused. The deceased as well PW1 fell on the ground and a stone found in the place of occurrence. The deceased



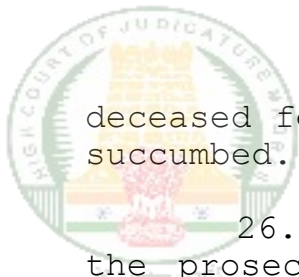
has also gone to his house and only after sometime, he died in his house. But however, with motive that the occurrence has taken place, while demanding chit due from the accused, PW1 with the help of his relative one Chandilyan working as a writer at Thottiyam Police Station, this case has been foisted against the entire family. In support of this defence version, one Yoganthan was also examined as DW1.

22. In this case 14 persons were examined as eye witnesses and among these witnesses PW 4, 5, 6, 7, 8, 11, 14 and 22 have turned hostile. Most of these witnesses are close relatives to the deceased, PW1 and PW2. Though there are different versions among the prosecution witnesses, all the witnesses have uniformly stated that the occurrence has taken place on 20.02.2014 at 8.30pm. The prosecution has also examined Mohandass the Junior Engineer of the Tamil Nadu Electricity Board as PW23, who would say that there was no power supply in the occurrence village from 8.20pm to 9.10pm on 20.02.2014.

23. In this case the deceased sustained 1) abrasion in right forearm and 2) 0.5cm abrasion in near lower lip and the Doctor PW19 has opined that the deceased died due to the injury on the vital organs like brain and spleen. In this case, the prosecution has added the entire family members as accused. The trial Court has also extended the benefit of doubt to the second, third and fourth accused and acquitted them of the charges under Section 302 IPC.

24. The first accused / appellant is before this Court. As per the prosecution case itself, the occurrence has taken place at 8.30pm and admittedly, at that time there was no power supply in the village. As per the observation mahazar [Exp3] and rough sketch [Exp10] the occurrence has taken place in front of the accused house. Adjacent to his house, the deceased was also constructing new house. In opposite to the accused house one Chandrasekaran's house is noted and the witnesses have admitted that Chandrasekaran was also constructing house at the relevant point of time. It is also admitted by the witnesses that on the date of occurrence the accused has laid concrete roof for his new house. Despite the same, the investigation officer, in his observation mahazar as well as in his rough sketch Exp10 has conveniently did not mention the details about the materials for construction like stones, bricks, sand, iron rods or gravel, which would have definitely been available near the place of occurrence. As such, this Court is of the view that the investigation was not conducted in a fair manner.

25. Under such circumstances, it is not safe to conclude that it is the first accused, who took the brick and attacked the deceased. It is also could not be fixed whether the first accused has taken the brick [MO1] from the place of occurrence at the time of the occurrence and attacked the deceased, whether any other



deceased fell down on the heap of the stone, sustained injuries and succumbed.

26.The brick [MO1] is 13 cm X 10 cm. According to the case of the prosecution the first accused attacked the deceased with the brick. But the brick was recovered from the place of occurrence. A brick with force when used to attack any person, may break into pieces, but there is no such case in this case.

27.According to the eye witnesses PW1 and PW2 and other witnesses, the Police were very much available in the occurrence village for bandobust. Pursuant to the village temple festival and they have also reached the place of occurrence immediate to the occurrence and they have also taken the accused along with them. But, contrary to the same, the accused is shown as arrested at Thottiyam bus stand in the presence of VAO PW17 on 21.02.2014 at about 1.00pm and pursuant to his confession statement stick [MO2] was recovered.

28.Even in this case there is a contradiction with regard to recovery of the stick [MO2] that according to the PW1, it was recovered from the newly constructed house, but as per the confession of the first accused, he has concealed the stick [MO2] in the kitchen of his house.

29.That apart, the prosecution's case is the deceased was attacked with brick on the chest, but according to the Doctor PW19, there was no external injury on the chest.

30.In view of the available circumstances and the available evidence, this Court is of the view that the prosecution has not proved the case beyond reasonable doubt that it is the first accused/ this appellant, who attack the deceased and due to the said attacked the deceased succumbed.

31.In the light of the above discussion,

- the appeal is allowed;
- the conviction and sentence imposed on the appellant / first accused in S.C.No.80 of 2015 dated 19.08.2015 on the file of the learned I Additional District Judge (PCR), Tiruchirappali, are set aside;
- the appellant is acquitted of the charge framed against him and the fine amount, if any paid by him, shall be refunded.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



dsk

To

1. I Additional District Judge (PCR),
Tiruchirappali.

2. The Inspector of Police,
Thottiam Circle,
Kattuputhur Police Station,
Trichy District.

Copy to

1. The Record Keeper (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

2. The Superintendent,
Central Prison, Trichy.

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

+1 CC to M/s.M. SUBASH BABU, Advocate (SR-14552[F] dated 20/08/2020
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Crl.A(MD)No.225 of 2015
19.08.2020

PM(CO)

TR(21.10.2020) 10P 8C