



## BAIL SLIP

The Petitioner/Accused/Viz. Raja, S/o.Selvaraj was released on bail as per the Order of this Court Dated.08.05.2019 in CrI.M.P.No.6383/2019 in CrI.A.No.254/2019 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

|               |   |            |
|---------------|---|------------|
| Reserved on   | : | 16.04.2021 |
| Pronounced on | : | 14.07.2021 |

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Appeal No.254 of 2019

RAJA  
S/o.Selvaraj

... Appellant

Vs.

State by the Inspector of Police  
Gudiyatham Town Police Station  
Vellore District  
(Crime No.31 of 2017)

... Respondent

Prayer : Criminal Appeal filed under Sections 374(2) of Criminal Procedure Code, to call for the entire records in connection with the S.C.No.36 of 2018 on the file of the learned Additional District and Sessions Judge (Fast Track Court), Vellore, Vellore District and set aside the Judgment dated 28.02.2019.

For Petitioner : Mr.E.Kannadasan

For Respondent : Ms.T.P.Savitha  
Government Advocate (CrI. Side)

## J U D G M E N T

This Criminal Appeal has been preferred against the Judgment dated 28.02.2019 passed in S.C.No.36 of 2018 by the learned Additional District and Sessions Judge (Fast Track Court), Vellore.

2. The respondent police initially registered the case in Crime No.31 of 2017 under Section 174(3) Cr.P.C., and after enquiry, section of offences were altered into Sections 294(b),



326 and 302 IPC and thereafter altered to Sections 325 and 302 IPC and registered the case as against the appellant. The respondent Police, after investigation, laid charge sheet against the appellant before the Judicial Magistrate, Gudiyatham. The learned Magistrate, had taken up the charge sheet on file in P.R.C.No.6 of 2018 and after completing the formalities since, the offences are triable exclusively by the Court of Session, had committed the case to the Principal District and Sessions Judge, Vellore. The learned Principal District and Sessions Judge, Vellore, after taking the case on file in S.C.No.36 of 2018, made over the case to the Additional District and Sessions Judge, FTC, Vellore for disposal. The learned Additional District and Sessions Judge, after completing the formalities, framed charges against the appellant for the offences punishable under Sections 302 and 325 IPC.

3. After framing charges, in order to prove the case of the prosecution during trial, on the side of the prosecution, as many as 13 witnesses were examined as P.W.1 to P.W.13 and 12 documents were marked as Exs.P.1 to P12. No material object was exhibited.

4. After completing the examination of prosecution witnesses, incriminating circumstances culled out from the evidence of the prosecution witnesses were put before the appellant by questioning under Section 313 Cr.P.C. The appellant denied the same as false and pleaded not guilty. On the side of the defence, no oral or documentary evidence was produced.

5. On completion of trial and hearing the arguments advanced on either side and considering the materials, the trial Court found the appellant not guilty for offence punishable under Section 302 IPC however, found guilty for the offence punishable under Section 304 (II) IPC and also for offence under Section 325 IPC and convicted and sentenced to undergo 5 years rigorous imprisonment and to pay a fine of Rs.2,000/- in default to undergo a further period of one year rigorous imprisonment for offence under Section 304(II) IPC and also sentenced to undergo 3 years rigorous imprisonment and to pay fine of Rs.2,000/- in default, to undergo a further period of one year rigorous imprisonment for offence under Section 325 IPC. Challenging the said conviction and sentence, the present appeal has been filed before this Court.

6. The learned counsel for the appellant would submit that there are material contradictions between the prosecution witnesses P.W.1 and P.W.12 regarding the place of occurrence, date of occurrence and the date of complaint. As per evidence of P.W.1, the occurrence is said to have taken place on 14.01.2017, whereas, P.W.12 deposed that the copy of the F.I.R.-Ex.P.8 was



sent to Tahsildhar, Taluk Office, Gudiyatham on 12.01.2017 and the endorsement seal is also found as 12.01.2017 which is prior to the incident and prior to the registration of F.I.R. which clearly shows that F.I.R. was created one for the purpose of prosecuting the appellant before the Court of law. Further, as per F.I.R., the occurrence is said to have taken place on 14.01.2017 and the F.I.R-Ex.P.8 was registered by P.W.11, the Sub Inspector of Police on 15.01.2017 and that the appellant was arrested on 17.02.2017. However, after lapse of one month, F.I.R. and the alteration report Ex.P12 were sent to the Court. There was no explanation for the delay in forwarding the F.I.R. and the alteration report to the Court. The unexplained delay is fatal to the case of the prosecution. There are material contradictions between the evidence of prosecution witnesses P.Ws.1, 2, 4, 5, 11 and 12 regarding the place of occurrence. They are contradicting themselves each other without corroborating each other. According to the evidence of P.W.1, the occurrence was said to have taken place in his house, whereas P.W.2 wife of P.W.1/mother of the deceased, had stated that the occurrence had taken place in the house of P.W.4. Srinivasan. P.W.4 in his evidence stated that the occurrence had taken place in his place at Bazar street. Further, all the witnesses are interested witnesses and they are all relatives and there is no independent witness in this case and the trial Judge convicted the appellant based on uncorroborated testimony of prosecution evidence. Therefore, warrants interference of this Court.

7. The learned Government Advocate (Crl. Side) would submit that on 14.01.2017 at about 5.30 p.m., there was a quarrel between the appellant and the deceased. Later, on the same day at about 8.30 p.m., the appellant went to the house of P.W.4 and called the deceased from outside and when he was coming out, the appellant caught hold of the deceased and dashed his head against the wall and kicked on his chest and abdomen due to which he sustained injuries. Thereafter, the deceased had complained chest pain. Therefore, he was taken to hospital where he was declared as brought dead. The doctor who conducted Autopsy, had opined that due to the internal injury and bleeding in the Brain as well as in the Intestine, the deceased died. From the evidence of prosecution witnesses, the trial Court found that the appellant is the one who caused the injuries to the deceased due to which, the deceased died. However, the trial Court found that there was no pre-planning or pre-meditation and no weapon was used and during a sudden quarrel the appellant has caused the injuries to the deceased without any intention to cause death. Thereby, the trial Court found the appellant not guilty of offence punishable under Section 302 IPC and found guilty for offence punishable under Section 304 (II). Further, the trial Court found that the appellant had also caused



grievous injuries on P.W.4. Thereby, the trial Court also found the appellant guilty for offence under Section 322 which is punishable under Section 325 IPC and convicted the appellant accordingly. Therefore, there is no reason to interfere with the appeal and there is no merit in the appeal and the appeal is liable to be dismissed.

8. Heard both sides and perused the materials on record.

9. The case of the prosecution is that on 14.01.2017 at 5.30 p.m., at Thazhaiyatham Pachaiyamman Koil Steet, near Muthukumaran's house, the witnesses Muthukumaran, Boopathy and others were playing Thayam and the deceased Sugumar was alleged to had been watching the same by standing nearby his vehicle. At that time, a quarrel arose between the deceased and appellant as there was no way for the movement of vehicles during which, the appellant has assaulted the deceased with hands. Thereafter, on the same day at about 8.30 p.m., the appellant went to the house of the deceased and asked for the deceased. Since, it was informed that the deceased had gone to his cousin brother Srinivasan's house, the appellant went to Srinivasan's house and asked the deceased to come out of the house. When the deceased came out, the appellant caught hold of the deceased and dashed his head against a wall and kicked on his chest and abdomen. At that time, the said Srinivasan P.W.4 interfered to pacify them. But the appellant assaulted P.W.4 Srinivasan also on his face with his head resulting in P.W.4 lost two of his teeth. Thereafter, at about 11 p.m., the deceased informed his parents that he got chest pain and immediately he was taken to Palar Hospital and thereafter, he was taken to Government Hospital, Gudiyatham, where he was reported as brought dead. Hence, the father of the deceased P.W.1 preferred a complaint to the respondent police and the respondent police initially registered the case in Crime No.31 of 2017 under Section 174(3) Cr.P.C. Subsequently, after inquest, they found that the deceased died due to the attack made by the appellant. Therefore, the case was altered into Sections 294(b), 326 and 302 IPC and subsequently, altered to Sections 325 and 302 IPC. After investigation, the respondent police filed the charge sheet before the learned Judicial Magistrate, Gudiyatham. Since, the offences are exclusively triable to the Court of Session, the learned Magistrate committed the case to the Principal District and Sessions Judge, Vellore. The learned Principal District and Sessions Judge, Vellore, after taking the case on file in S.C.No.36 of 2018, had made over to the Additional District and Sessions Judge, FTC, Vellore, for disposal. The learned Sessions Judge, conducted the trial and after completing the trial, found the appellant not guilty for offence punishable under Section 302 IPC however, found guilty for offence



punishable under Sections 304(II) and 325 IPC and convicted and imposed sentence as stated above.

10. Since in this case, this Court as the appellate Court is the final Court of fact finding, it has to re-appreciate the evidence independently and to give its findings. Accordingly, this Court perused the entire materials and Judgment of the trial Court.

11. Perused the entire records. In order to prove the charge against the appellant, on the side of the prosecution totally 13 witnesses were examined in which, P.W.4 is the injured witness and he is the Cousin brother of the deceased, P.W.1 is the father of the deceased who lodged the complaint before the respondent, PW.2 is the mother of the deceased and P.W.5 is the sister-in-law of the deceased/wife of P.W.4 and 12 documents were marked.

12. P.W.1 is the complainant. He has spoken about the incident and given complaint to the respondent. He has deposed that on 14.01.2017 at about 5.30 p.m. he was informed that there was some quarrel between the deceased and the appellant. Immediately, P.W.1 went to the spot and brought back the deceased. Thereafter, at about 8.30 p.m, the appellant came and asked about the deceased. But the deceased had gone to the house of P.W.4. Thereafter, the appellant went to the house of P.W.4 and asked the deceased to come out. When the deceased came out, all of a sudden, the appellant caught hold of the deceased and dashed the head of the deceased against a wall and also kicked on his abdomen and chest with legs. When P.W.4 came out and interfered to pacify them at that time, the appellant attacked him due to which, he lost 2 of his teeth. Thereafter, the appellant left that place and P.W.1 brought the deceased back to his home. After sometime, the deceased complained of chest pain to his parents. Immediately, they took him to the hospital and the doctor who examined him reported as dead. Thereafter, P.W.1 lodged a complaint before the respondent police.

13. P.W.4, the injured victim has categorically stated that when the deceased was in his house, the appellant had come to his house and by standing outside of his house, called the deceased and when the deceased went outside, all of a sudden, unexpectedly the appellant caught hold of the deceased and dashed his head against a wall and also kicked on his abdomen and chest with legs. Hence, P.W.4 Srinivasan interfered to pacify them but the appellant hit P.W.4 on his face with his head due to which, P.W.4 lost two of his teeth. Thereafter, when he was taking treatment at the Government Hospital, the deceased was brought in an Ambulance subsequently, he came to know that the deceased died. P.W.4 has further deposed that at the time of

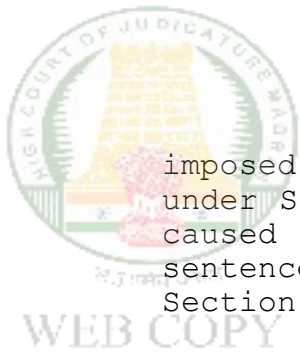


occurrence, the father P.W.1, mother P.W.2, brother of the deceased and also P.W.5 wife of P.W.4 were present.

14. The contention of the learned Counsel for the appellant is that there was no explanation for the delay in forwarding the F.I.R. and the alteration report to the Court. Perusal of record shows that initially the case was registered under Section 174(3) Cr.P.C., subsequently, after enquiry through Revenue Divisional Officer, they found that the deceased died due to the attack made by the appellant and subsequently, the case was altered. Therefore, delay in sending the FIR is not fatal to the case of the prosecution. As such, the delay is explained. Though, F.I.R. was sent to the Court belatedly, it is not proved that after due deliberation and discussion they created the F.I.R. and after which only they sent it belatedly. Mere lapse on the part of the prosecution should not lead unmerited acquittal, subject to rider that in such a situation, evidence on record should be clinching, so that lapses on prosecution can be condoned. But in this case there is no deliberation and discussion for filing the complaint.

15. P.W.1 to P.W.5 categorically stated that on the date of occurrence, at about 8.30 p.m. the appellant came to the house of the P.W.4 and caught hold of the deceased and dashed his head against a wall and also kicked on his chest and abdomen. P.W.8, Doctor has clearly stated that there was bleeding on the Brain and Intestine and due to the internal injury, the deceased died. From the evidence of P.W.8 Doctor and the post-mortem report, the trial Court found that the deceased died due to the internal injury sustained by him and from the evidence P.W.1 to P.W.5, the trial Court found that the injury was caused by the appellant. However, Since, there was no premeditation or pre-planning, the trial Court found the appellant guilty for offence punishable under Section 304 (II) IPC. Further, from the evidence of P.W.1 to P.W.5 and the wound certificate Ex.P4, the trial Court also found that the appellant had caused grievous injuries on P.W.4 and thereby, the trial Court found the appellant guilty for offence punishable under Section 325 IPC also.

16. P.W.1 to P.W.5 categorically stated that the appellant went to the house of the deceased and caused the injury to the deceased. Though, there was no prior enmity or pre-meditation and though no weapon was used by the appellant to attack the deceased, the place chosen by the appellant to attack is a vital part of the body due to which, the deceased sustained internal injuries and bleeding and subsequently, he died. However, the trial Court leniently considered the offence punishable under Section 304(II) IPC and acquitted for the charge of offence punishable under Section 302 IPC and only



imposed sentence of 5 years imprisonment for offence punishable under Section 304(II) IPC. Further, since the appellant had also caused grievous injuries on P.W.4, the trial Court also imposed sentence of 3 years imprisonment for offence punishable under Section 325 IPC. Therefore, there is no merit in this appeal.

17. This Court while dealing the case independently, carefully gone through the evidence of the prosecution witnesses. The evidence of P.W.4 who is an injured witness, is cogent and consistent. P.W.1 and P.W.2, the parents of the deceased also stated that initially the appellant had come to the house of PW.1 and P.W.2 and asked about the deceased and since, it was stated that the deceased had gone to the house of P.W.4, the appellant left the place by giving life threat to the deceased. Therefore, P.W.1 and P.W.2 followed the appellant and went to the house of P.W.4 where they had seen the appellant attacking the deceased by dashing his head on the wall and also kicking on his stomach and chest. They had also seen the appellant hitting P.W.4. On reading of the evidence of P.W.1 and P.W.2, it is clear that the same are corroborated with the evidence of P.W.4.

18. The learned Counsel for the appellant stated that there are material contradictions. But the contradictions pointed out by the learned appellant Counsel are only minor contradictions which will not go to the root of the case of the prosecution. On reading of evidence of P.W.1 to P.W.5 and P.W.8 the doctor who conducted the postmortem and also Ex.P3 the Postmortem report, it is clear that the appellant is the one who caused the injuries to the deceased due to which, the deceased sustained internal head injuries and bleeding in the Brain and Intestine and died. Though, there was no pre-planning or pre-meditation, the appellant has forcefully dashed the deceased's head against the wall and also kicked on his chest and abdomen due to which, he sustained injuries and died. However, the trial Court leniently considered the offence punishable under Section 304(II) IPC and not under Section 302 IPC. Neither the victim, nor the State has filed any appeal against the acquittal of the appellant for the offence punishable under Section 302 IPC. Therefore, this Court not going into question of whether the appellant has committed offence punishable under Section 302 IPC or 304 IPC.

19. P.W.4 is an injured witness. The wound certificate Ex.P4 also proved the same. The evidence of P.W.4 is cogent, consistent and it is trust worthy. Therefore, there is no reason to discard the evidence of P.W.4. P.Ws.1, 2 and 5 corroborated the evidence of P.W.4 who is also an eyewitness to the occurrence. Based on the evidence of P.W.4, this Court also finds that the prosecution has proved its case beyond all



reasonable doubt and there is no merit in the appeal. The trial Court however considering the facts and circumstances, convicted the appellant only for offences punishable under Sections 304 (II) and 325 IPC which does not call for any interference.

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20. Though, P.Ws.1, 2,4 and 5 are relative witnesses, their evidence corroborated the evidence of P.W.4 and also corroborated with the medical evidence. It is a settled proposition of law that though there is no witness to the occurrence, the evidence of interested witness is found to have credit worthy, conviction would be passed on uncorroborated testimony. If the evidence of sole witness is cogent, credible and trust worthy, conviction is permissible. In this case, P.W.4 is injured witness and there is no reason to discard the evidence of P.W.4.

21. Therefore, in this circumstances this Court independently comes to the conclusion that the appellant is the one who caused the injury to the deceased and P.W.4 and due to the injuries, the deceased died and P.W.4 sustained injury grievous in nature.

22. On a perusal of evidence of prosecution witnesses P.W.1 to P.W.5 and medical evidence and also the postmortem report, this Court comes to the conclusion that the prosecution has proved its case beyond all reasonable doubt and there is no merit in the appeal. The appeal is liable to be dismissed.

23. Accordingly, the Criminal Appeal stands dismissed confirming the judgment passed in S.C.No.36 of 2018 on the file of the learned Additional District and Sessions Judge (Fast Track Court), Vellore, Vellore District dated 28.02.2019. Trial Court is directed to secure the appellant/accused to undergo remaining period of imprisonment, if any.

Sd/-  
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge (Fast Track Court),  
Vellore.

2. The Judicial Magistrate, Gudiyatham

3. The Chief Judicial Magistrate, Vellore (for Information)

4. The Inspector of Police  
Gudiyatham Town Police Station  
Vellore District

5. The Public Prosecutor Officer, High Court, Madras

6. The Superintendent Central Prison, Vellore

7. The Section Officer, Criminal Section, High Court, Madras.

+1CC to Mr.S.Thiruvengkadam, Advocate, Sr.No.33222

Pre-Delivery Judgment in  
Criminal Appeal No.254 of 2019

GSM (CO)  
K.RK. (02.08.2021)