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BAIL SLIP

That the Appellant/Accused namely Ramarasu S/o.Ammasai was released on bail as per order of this Court dated 05.02.2020 made in CRL.MP.No.13911/2019 in CRL.A.No.654/2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.A.NO.654 OF 2019

Ramarasu
S/o, Ammasai

... Appellant/
Accused

Versus

State by
The Inspector of Police,
Vellithiruppur Police Station,
Anthiyur Circle,
Erode District.
Crime No.65/17

... Respondent

PRAYER:

Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure, against the judgment of conviction passed by the IV Additional District and Sessions Judge, Erode District at Bhavani in Sessions Case No.86 of 2018 dated 30.07.2019.

For Appellant : Mr.C.Kulanthaivel
For Respondent : Mr.S.Sugendran
Government Advocate, (Criminal Side)

JUDGMENT

This Criminal Appeal has been filed against the judgment dated 30.07.2019 passed in Sessions Case No.86 of 2018 on the file of the IV Additional District and Sessions Judge, Erode



District at Bhavani.

2. The respondent police registered a case against the appellant in Crime No.65 of 2017, initially for the offence under sections 294(b) and 307 I.P.C., and during investigation, since the deceased died, which has been altered into section 294(b) and 302 I.P.C. After completing investigation, filed the charge sheet before the Judicial Magistrate No.II, Bhavani. The learned Judicial Magistrate taken the charge sheet on file in P.R.C.No.1 of 2018 and made over the same to the file of the Principal District and Sessions Judge, Erode, since the offence is exclusively triable by the Court of Sessions. The learned Principal District and Sessions Judge taken the case on file in S.C.No.86 of 2018 and made over the same to the IV Additional District and Sessions Judge, Erode for disposal. The learned IV Additional District and Sessions Judge taken the case on file and after completing the formalities, framed the charge against the appellant.

3. In order to substantiate the charges framed against the appellant, on the side of the prosecution, during the trial, as many as 16 witnesses were examined as P.Ws.1 to 16 and 23 documents were marked as Ex.P1 to Ex.P23. Besides, four material objects were exhibited.

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

5. On completion of trial, hearing the arguments advanced on either side, the trial court found the appellant guilty for the offence under section 304 II I.P.C and convicted and sentenced him to undergo Imprisonment for 5 years and to pay fine of Rs.5,000/- in default to undergo imprisonment for another six months and not found the appellant guilty for the offence under section 294(b) I.P.C and he is acquitted for the abovesaid charge under Section 235(1) Cr.P.C. Challenging the said judgment of conviction and sentence, the accused has filed the present appeal before this Court.

6. The learned counsel for the appellant would submit that the prosecution has not proved its case beyond all reasonable doubt. Though P.Ws.1 and 2 are said to have been the eye witnesses, they are only the relative and also interested witnesses and no other independent witnesses were examined. Further, he would submit that due to previous enmity, they foisted a false case against the appellant. Further, he would



submit that the place of occurrence cannot be identified as public place, because the witnesses have stated that the occurrence took place in front of the houses of the deceased as well as the accused. Hence, section 294(b) I.P.C would not attract. The trial court rightly appreciated the evidence and not found the appellant guilty for the offence under section 294 (b) I.P.C. However, from the same evidence, though he has not found guilty for the offence under section 294(b) I.P.C, convicted the appellant for the offence under section 304 part (II) I.P.C. He further submitted that while wife of the deceased and the mother of the accused are engaged in a wordy quarrel, the deceased came to the place of occurrence and tried to pacify them and attempted to prevent his wife from involving wordy quarrel. All of a sudden, the accused came to the occurrence place and attacked the deceased by using brick, and hit on his left cheek and left side of head, whereas, it is not a pre-planned one and no previous motive for the incident. It is happened only due to wordy quarrel and sudden provocation, that too without any intention or pre-motive to kill the deceased. P.W.16-the doctor, who conducted post-mortem of the deceased had noticed two injuries, where as, P.W.9-the doctor, who admitted the injured in the hospital, has noticed three injuries. P.W.9 in her evidence stated that she has noticed missing of two teeth, whereas, P.W.16 failed to notice these aspects. P.W.1 has stated that the accused gave only one blow on the face of the deceased., whereas P.W.2 has stated that the accused has given two blows on the back side of the head and another blow on his face. There are contradictions between the evidence of P.Ws.1 and 2 and also P.Ws.9 and 16. Therefore, it creates serious doubt about the place of occurrence and the manner of the injuries sustained by the deceased. The trial court failed to appreciate the entire evidence in toto. There are contradictions between the evidence of two doctors and also post-mortem report, wound certificate, A.I.R copy, injury mentioned in the A.I.R copy. The Trial Judge, failed to find out the discrepancies / contradictions, which creates doubt. The appellant has not used any deadly weapon. From the prosecution witness, it is found that he came to the place only after hearing about the quarrel between the two parties. Therefore, on sudden provocation, he took the brick and slapped the accused. Therefore, the appellant committed the offence neither under section 302 I.P.C nor under section 304 I.P.C. Though the Trial Judge failed to accept the case of the prosecution for the charged offence under section 302 I.P.C, however wrongly convicted the appellant for the offence punishable under section 304 II I.P.C, which warrants interference of this Court.

7. The learned counsel for the appellant would further submit that the appellant hit the deceased with one brick, in



fact, M.O.No.1 is not a full one brick, it is only a piece of brick. It also creates doubt. The learned Trial Judge failed to appreciate all the aspects. The appellant has not committed the alleged offence. Therefore, under these circumstances, the judgment of the trial court is liable to be set aside and the appeal may be allowed.

8. The learned Government Advocate (Criminal Side) would submit that on 05.03.2017 at about 2.15 pm, there was a wordy quarrel between the wife of the deceased and the mother of the accused. At that time, the deceased came to the place of occurrence and tried to pacify his wife and asked to move from the place to stop the quarrel. At that time, the accused also came to the spot and he took the brick from nearby place and hit on the deceased left cheek and head. Due to that, the deceased sustained injury on his head, mouth and immediately he was taken to hospital. Initially case was registered against the appellant for the offence under section 294(b) and section 307 I.P.C. Subsequently, during the investigation, since the injured died, the case was altered into section 294(b) and 302 I.P.C and after investigation they laid a charge sheet. P.W.1. is the eye witness, who is the brother's son of the deceased and P.W.2 is the wife of the deceased. They saw the occurrence and P.W.1 took the injured to the hospital and admitted the deceased as inpatient. During the quarrel between P.W.2 and mother of the accused only, occurrence had happened. Therefore their presence is not doubtful. Therefore, the presence of P.Ws.1 and 2 proved by the prosecution that they are eye witnesses and they are not interested witnesses. Therefore, their evidence cannot be simply ignored. The accused cannot be acquitted on the sole ground that the eye witnesses are interested witnesses. Evidence of all the witnesses are cogent, consistent and no reason to discard the evidence of all the eye witnesses. Their evidence can be taken into consideration unless the defence established that the witnesses were not present at the time. In this case, admittedly P.W.1, present in the place of occurrence and saw the occurrence. P.W.2 is also one of the party involved in the quarrel at the time of occurrence. There is a dispute between the deceased and the accused regarding pathway, the appellant exceeds his limit and taken the brick and forcibly gave blows on the face of the deceased and also his mouth. Therefore, he sustained injuries, which are grievous in nature and which will lead to the death of the deceased. Though the appellant has not committed the offence under section 302 I.P.C, the trial court rightly convicted for the offence punishable under section 304 II I.P.C and there is no merit in the appeal the same is liable to be dismissed.

9. Heard the learned counsel for the appellant and the learned Government Advocate (Criminal Side) appearing for the



respondent.

10. The case of the prosecution is that on 05.03.2017, there was a wordy quarrel between the deceased wife and accused mother. At that time, the deceased came to the place and tried to pacify his wife and asked her to get away from the place. All of a sudden, the accused came to the scene of occurrence and scolded the deceased with filthy language and attacked the deceased using brick. Hence the complaint.

11. This Court is the Appellate Court and final Court of fact finding, it has to re-appreciate and revisit the entire evidence and give the independent finding.

12. The trial court framed the charges as stated above. In order to substantiate the charges, totally on the side of the prosecution totally 16 witnesses were examined and 23 documents were marked and 4 materials objects were also exhibited. Out of 16 witnesses, P.W.1 is the eye witness. P.W.2 is also the eye witness, who is the wife of the deceased. P.W.3 is the neighbour, though he is not the eye witness, soon after the occurrence, he heard about the occurrence and went to the place of occurrence, saw the injured, who sustained injury. P.W.4 is also one of the neighbour, who helped P.W.1 to take the injured to the hospital. P.W.9 is the doctor, who attended the injured at the time of admission in the hospital and made entry in the Accident Register. P.W.16 is the doctor one who conducted autopsy. From the evidence of P.W.1 and P.W.2, it is clear that, prior to the occurrence, the wife of the deceased and the mother of the appellant engaged in a wordy quarrel and at the time, the deceased came to the place of occurrence and tried to pacify his wife and asked her to move away from that place, subsequently, the appellant came to the spot and attacked the deceased by using brick on his head and mouth, therefore, the deceased sustained injuries. From the evidence of doctor P.W.9, Accident Register Ex.P9 it is clear that the deceased sustained injuries on his mouth and head. The blood stained cloths were sent to forensic lab. Forensic report clearly shows that the blood group of the deceased and the blood group of the blood stain are same. It strengthen the case of the prosecution. Therefore, in this case, from the reading of the evidence of P.Ws.1,2,9 and 16 and Ex.P.9, Ex.P16, though there are discrepancies regarding the number of injuries however, that is not fatal to the case of the prosecution. These are only a minor contradictions. However, the fact remains that, at the time of occurrence, the appellant came to the spot and attacked the deceased using bricks. Due to that, the deceased, sustained injuries and immediately he was taken to hospital. During the treatment, he subsequently died. Hence, the section 307 I.P.C is altered into 302 I.P.C.



13. Considering the facts and circumstances of the case and also the evidence, the trial court found the appellant guilty for the offence punishable under section 304 I.P.C., not found the appellant guilty for the offence under section 294(b) I.P.C. Though the learned counsel for the appellant would submit that there are contradictions between the evidence of two doctors, that are not material contradictions. The discrepancies in the number of injuries may not be the sole ground to discard the entire evidence of the prosecution. Evidence of P.Ws.3 and 4 are also corroborated the evidence of P.Ws.1 and 2. P.Ws.3 and 4 are the witnesses, who came to the spot soon after the occurrence and seen that the deceased sustained injuries and P.W.4 helped P.W.1 to take the injured to the hospital.

14. The injuries sustained by the deceased have been proved from the evidence of P.Ws.9 and 16. P.W.16-doctor who conducted postmortem has stated in his evidence that the she has noticed two injuries. The first one is sutured injury of 8 cm on left side of forehead and another sutured injury 1.50 x 0.50 cm on the inner upper lip of the deceased. P.W.1 clearly stated that the appellant attacked the deceased with brick on his face and head. P.W.2 also clearly stated that the appellant gave two blows on the back side of the head and another one on his face.

15. The evidence of P.W.1 clearly shows that, the appellant and deceased were present in the place of occurrence. The appellant took the brick and attacked the deceased on his head. Due to that, the deceased sustained injuries. Therefore, during the quarrel, one would have noticed one blow and another would have noticed two blows. The brick was also recovered by the prosecution and marked as M.O.1. On a combined reading of the entire oral and documentary evidence, the trial court rightly acquitted the appellant for the offence under Section 294(b) I.P.C, since the witnesses have not spoken about the filthy language used by the appellant. All of a sudden, the appellant took the brick without any pre-motive and attacked the deceased with a brick. Due to which, the deceased sustained injuries. Therefore, he was convicted for the offence punishable under section 304 part (II)I.P.C. since the appellant attacked the vital part of the deceased in a forced manner and even the doctor who conducted post-mortem on the deceased has stated that there are two sutured injuries which are grievous in nature and he also opined that the head injury has resulted in death of the deceased.

16. Therefore, on a combined reading of the evidence of eye witnesses, P.Ws.1,2 and the witnesses P.Ws.3 and 4 who were present at the scene of occurrence, Medical evidence-P.W.9 and P.W.16, this Court is a appellate court, the court of fact



finding, appreciated the entire evidence and found that the appellant is the one who has committed the offence punishable under section 304 part (II) I.P.C.

17. The trial court rightly appreciated the entire evidence and, though acquitted the appellant for the charged offence punishable under section 294(b) IPC, had convicted and sentenced the accused for the offence punishable under section 304 part (II) I.P.C.

18. This court does not find any perversity or any reason to interfere with the judgment of the trial court. There is no merit in the appeal and the appeal is liable to be dismissed. Accordingly the Criminal appeal is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.II,
Bhavani.
2. Do thro-The Chief Judicial Magistrate,
Erode.
3. The IV Additional District and Sessions Judge,
Erode District at Bhavani.
4. Do thro-The Principal Sessions Judge,
Erode.
5. The Superintendent,
Central Prison,
Coimbatore.
6. The Inspector of Police,
Vellithiruppur Police Station,
Anthiyur Circle,
Erode District.



7. The Public Prosecutor,
High Court,
Madras.

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Copy To

The Section Officer,
Criminal Section, (Records)
High Court,
Madras.

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.47815

CRL.A.No.654 of 2019

MG (CO)
PBS/07/01/2022