



BAIL SLIP

The Appellant / Accused Nos.2 & 3 Mohamed Nasrudeen, S/o.Abdul Rahman and Mohamed ismail, S/o.Abdul Rahman, were directed to be released on bail of this court order dated 27/01/2016 and made in CRL MP(MD).7051 of 2016 in CRL A(MD).22/2016.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 29.06.2021

DELIVERED ON : 01.10.2021

CORAM

THE HONOURABLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.A.(MD)No.22 of 2016

1.Mohamed Nasrudeen

2.Mohamed Ismail : Appellants/Accused No.2 & 3

Vs.

State through the Inspector of Police,
Ganesh Nagar Police Station,
Pudukottai District.

(in Cr.No.251 of 2013) : Respondent

PRAYER: Criminal Appeal filed under Section 374 of Criminal Procedure Code, to call for the records and set aside the sentence and conviction imposed by the learned Additional District and Sessions and Special Court for E.C. And NDPS cases, Pudukottai, in S.C.No.96 of 2013, dated 31.12.2015 as against the Appellants.

For Appellants :Mr.S.M.A.Jinnah

For Respondent :Mr.T.Senthil Kumar
Government Advocate (Crl.side)

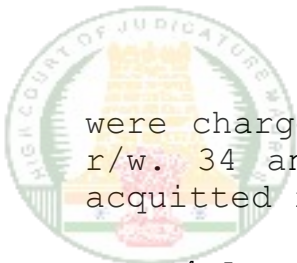
JUDGMENT

This Appeal had been filed by the Accused 2 and 3 against the sentence and conviction imposed by the learned Additional District and Sessions Judge, Special Court for E.C. and NDPS cases, Pudukottai, in S.C.No.96 of 2013, dated 31.12.2015 as against them.

2. Mr.S.M.A.Jinnah, learned Counsel for the Appellants furnished synopsis as well as written arguments.

3.As per the arguments of the learned Counsel for the Appellants, the Appellants are Accused 2 and 3. Accused 1 to 4

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were charged for the offences under Sections 341, 324, 506(ii), 302 r/w. 34 and 114 IPC. After due trial, the Accused 1 and 4 were acquitted from all the charges.

4.As per the case of the Prosecution, P.W-1 to P.W-18 were examined and documents Ex.P-1 to Ex.P-22 and M.O-1 to M.O-4 were marked. The learned Trial Judge had relied on the evidence of P.W-1 to P.W-3, P.W-6, P.W-15 and P.W-16 only to prove the charges against the Accused 2 and 3 were convicted and sentenced to undergo imprisonment and to pay fine. Therefore, the Accused 2 and 3 are the Appellants.

5.The learned Counsel for the Appellants invited the attention of this Court to the evidence of P.W-1-Durai, P.W-2-Karunanithi, P.W-3- Saravanan, P.W-6-Selvi.Pappu, P.W-15-Balan and P.W-16-Pichandi. There had been contradiction regarding the motive for the attack and the cause of the occurrence. There had been contradiction between the evidence of P.W-1, P.W-2, P.W-3 and P.W-15. Along with that, there had been contradiction with the examination-in-chief of P.W-1 and the Doctor's evidence regarding the injury. The point of attack by the learned Counsel for the Appellants is that P.W-1 is the person, who had lodged the complaint. He claims that he is an illiterate and President of the Vegetable Vendors' Association and drafted the complaint under Ex.P-1.

6.As per the defence of the Accused, the Accused had purchased a plot. They had obtained prior plan approval to proceed with the construction. The witnesses herein belong to the Vegetable Vendors Association in the place of occurrence, 4th East Street. When they attempted to put up construction by digging pit for laying foundation, the witnesses herein objected. As per the Accused, they had purchased the property and they are the owner of the property, whereas, the witnesses, who are all belonging to the Vegetable Vendors Association, objected in putting up the construction. The vegetable vendors are encroachers on the street. Therefore, they objected. Due to their objections, there had been wordy quarrel. On the date of the alleged occurrence, the witnesses herein are alleged to have entered into quarrel commencing with wordy quarrel and there had been skirmishes.

7.As per the claim of the Prosecution, the Accused herein are alleged to have attacked the members of the Vegetable Vendor's Association, who came and questioned them and objected to put up construction, with bricks, thereby, causing bleeding injury to one Vasudevan, who is reported to have died of injury. Therefore, the charge under Section 304(ii) IPC is framed, for which the Appellants had been convicted and sentenced to undergo Rigorous Imprisonment for three years and fine of Rs.5,000/- each in default to undergo six months Rigorous Imprisonment.



8. Another charge is that the Accused are alleged to have attacked one P.W-2 who had suffered injuries by hitting with brick by the Appellants herein on his head. P.W-2 had not been issued with any medical certificate from P.W-17-Dr.Sivakumar. As per the evidence of P.W-17, the so called P.W-2 had come to the hospital on his own and he absconded during the period of treatment. Therefore, they had not issued any certificate.

9. Regarding the death of one Vasudevan, P.W-12-Dr.Lavanya who conducted the postmortem under Ex.P-19, had in her evidence, stated that there was no external injury on the body of Vasudevan, who was aged around 50 years. On dissection, no internal injury was seen. No fracture was seen in bones and ribs. The internal organs were sent for forensic examination and final opinion of postmortem was reserved. After receipt of the forensic examination report regarding the viscera, she further stated that no poisonous substance was found in the internal organs. Therefore, the conclusion arrived at by P.W-12, who performed autopsy was, "may be due to cardiac arrest".

10. The learned Counsel for the Appellants submitted that the cause of death of Vasudevan opined by the Doctor, who performed autopsy, is cardiac arrest. Also, the learned Counsel for the Appellants invited the attention of this Court to the inquest report under Ex.P-15, wherein also the Investigation Officer had observed that there had been no external injury on the body of the injured Vasudevan. When that be the case, the charges framed against the Accused 2 and 3 that they had by their action, attacked Vasudevan with bricks and injured P.W-2, are not supported with any medical evidence. Not only that, the injured P.W-2 himself absconded from the hospital. Therefore, no medical opinion had been granted by P.W-7, Dr.Sivakumar. There had been contradiction among the examination in chief of P.W-1, de-facto complainant, P.W-2, P.W-3, P.W-6, P.W-15 and P.W-16.

11. To prove the defence of the Accused, the plan approval by the Municipality was marked in the course of examination, as Ex.D-1, to show that the approved plan was obtained before proceeding with the construction. The case of the witnesses, P.W-1, P.W-2, P.W-3 and P.W-6 are that the Accused herein had encroached on the Municipality place and put up construction, which was objected by the witnesses. Further, P.W-1, P.W-2, P.W-3 and P.W-6 had in their evidence stated that prior to the occurrence date, i.e., on 28.05.2013, there was a previous occurrence on 08.05.2013, wherein, a thatched hut shop of the deceased, Vasudevan, was set fire. Therefore, suspecting the involvement of the Accused, the P.W-1, P.W-2, P.W-3, P.W-6 and other office bearers of the Vegetable Vendors Association, lodged a complaint to the Police, wherein, it was settled by the Police by obtaining Rs.2,000/- from the Accused

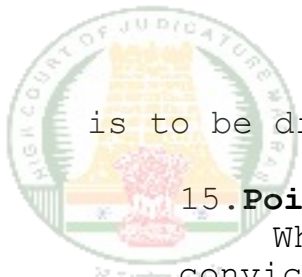


to the deceased Vasudevan. Therefore, the matter was settled in the Police station. This part of the evidence is not at all supported by the Prosecution, as P.W-16-Investigation Officer, had specifically denied that there was prior clash or registration of case as mentioned by P.W-1, P.W-2, P.W-3 and P.W-6. Therefore, the learned Counsel for the Appellants submitted that the case had been foisted falsely against the Accused by the Vegetable Vendors Association. The witnesses belong to the same Association, Vegetable Vendors Association.

12. In the course of examination of P.W-1 to P.W-3, P.W-6 and P.W-13, it had been obtained that in the same place, the other fish vendors are also available and there were houses and shops. But, those independent witnesses had not been produced by the Prosecution. Therefore, the finding of the guilty recorded by the learned Trial Judge against the Appellants/Accused herein is erroneous and has to be set aside. The appeal is to be allowed and the Accused 2 and 3 are to be acquitted from the charges under Sections 341, 324, 506(ii) and 302 r/w. 114 IPC.

13. Mr. T. Senthil Kumar, learned Government Advocate (Crl.side) objected to the arguments of the learned Counsel for the Appellants and submitted that P.W-1 to P.W-3, P.W-6 and P.W-13 had supported the case of the Prosecution. Further, he invited the attention of the Court to the evidence of P.W-17-Ramesh, Auto rickshaw driver, who had carried the injured Vasudevan and injured P.W-2 to the hospital. He had in his evidence clearly stated that Vasudevan was found lying unconscious in the place of market and the commotion, he had voluntarily took them to the hospital. Therefore, the charges had been proved cogently. Also, the discussion in the judgment in paragraph Nos. 21 to 26 by the learned Trial Judge.

14. Mr. T. Senthil Kumar, learned Government Advocate (Crl.side), submitted that the Trial Judge had appreciated the evidence as per the provisions of Indian Evidence Act and the case does not warrant any interference. Further, even in the same set of evidence, if the Appellate Judge comes to a different opinion, the Appellate Judge shall not interfere with the findings of the Trial Judge, if it is on proper appreciation of evidence. The Appellate Judge can interfere with the findings of the learned trial Judge, only when the judgment of the learned trial Judge is perverse. Therefore, in this case, on going through the discussion by the learned Trial Judge in paragraph Nos. 21 to 26, it is found that he had properly appreciated the evidence available before the Court as per the provisions of Indian Evidence Act and nothing is found perverse. When that be the case, the Appellate Court shall not disturb the findings. Also, the benefit of demeanor of witness is available only to the Trial Judge and not to the Appellate Judge. In such circumstances, the Appellate Judge shall not disturb the findings of the learned Trial Judge and therefore, the appeal lacks merits and



is to be dismissed.

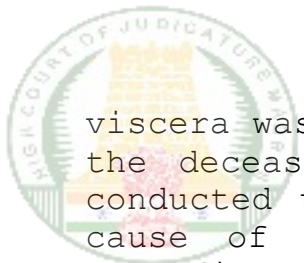
15. Point for Consideration

Whether the judgment of the learned Trial Judge convicting the Accused - 2 & 3 is perverse warranting interference by this Court, High Court as Appellate Court?

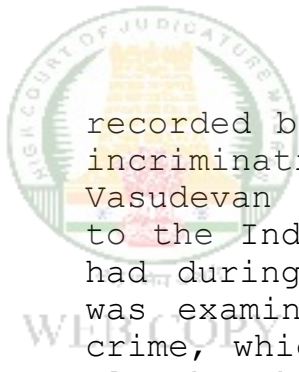
16. Heard Mr.S.M.A.Jinnah, learned Counsel for the Appellant/Accused 2 and 3 and Mr.T.Senthil Kumar, learned Government Advocate (Crl. Side) for the Prosecution.

17. The arguments put forth by the learned Counsel for the Appellants/Accused, Mr.S.M.A.Jinnah, is found reasonable and acceptable on perusal of the evidence of all the Prosecution Witnesses viz., P.W-1 to P.W-18.

18. The arguments put forth by Mr.T.Senthil Kumar, learned Government Advocate (Crl. Side) that the findings arrived at by the learned Trial Judge is based on valid reasons and on proper appreciation of the evidence cannot be accepted on the ground that P.W-17-Auto-Rikshaw driver had in his evidence deposed that on seeing the scuffles and that Vasudevan fell down unconscious. On seeing this, he went to the place and took the said Vasudevan in the Auto-Rikshaw along with P.W-2 to the Government Head Quarters Hospital, Pudukottai. On examination of unconscious Vasudevan, the Doctor declared him brought dead. P.W-2 who is alleged to have been injured by the attack by bricks by the Accused 1 to 3 and had suffered injury, was not proved with medical evidence. The Doctor, who had examined P.W-2 and the deceased Vasudevan, had deposed as a witness P.W-7. He has in his evidence that the accident register issued by him, which is marked as Ex-P-8 had mentioned that the said Karunanithi came to the hospital on his own and on enquiry by the Doctor, the different Doctor informed the Doctor that no persons attacked him. The said Doctor had not recorded any injuries on his body. Also, in the same accident register, it is mentioned that the persons, who had been admitted in the hospital, had absconded. Therefore, they had not issued any medical certificate regarding his injuries. When the evidence available before the Court is such that the Court cannot convict the Accused, because there is no injury available before the Court. The injury suffered by the eye witness available before the Court. On postmortem of deceased Vasudevan, there was no internal injury. Before further proceedings with the postmortem, the Doctor had recorded the physical appearance on the body of the deceased Vasudevan. It is stated that no visible injury was detected. In the postmortem certificate under Ex.P-15, after conducting autopsy, he had observed the internal organs of the deceased Vasudevan and had stated that all the internal organs were not normal in appearance. The viscera of the deceased Vasudevan was collected safely and sent for chemical examination to the Regional Forensic Laboratory, Trichy. In the Tamil Nadu Forensic Laboratory,



viscera was examined and no poisonous substance found in the body of the deceased Vasudevan. When that be the case, the Doctor, who conducted the autopsy had reserved the final opinion regarding the cause of death. After receipt of chemical examination report regarding poisonous substance were found or not by the Chemical Examiner's Laboratory. After receipt of the final report regarding viscera that no poisonous substance was found, the only possible cause of death as per the Doctor, who conducted postmortem is that the deceased might have died due to heart attack. The age of the deceased on the date of his death is around 50 years. When there are skirmishes and push and pull between the two groups, the one group, who are road side vendors of vegetable and on the other, the Accused party, who had attempted to put up construction in the property that they purchased. Having obtained approved permission to proceed with construction and approved plan regarding construction, which was objected to by the vendors, who are encroaching pavements adjoining the said way, the family of the Accused had purchased the property vide Ex.P-21 and attempted to put up construction. The objection by the vendors of Pudukottai Town cannot at all be accepted. There had been push and pull between two groups, in which, the deceased Vasudevan fell unconscious. Therefore, he was taken by P.W-17-Auto-Rickshaw driver to the Government Hospital, Pudukottai, where, he was declared brought dead. When the reasons are not known, it is common knowledge available to the general people as well as the Doctor. Therefore, the cause of death as mentioned in the postmortem is heart attack. When there is no visible injury on the body of the deceased Vasudevan, when the ribs and limbs of deceased Vasudevan had not suffered any fracture, the finding of the learned Trial Judge that action of the Accused 2 and 3, the Appellants herein, had caused the death of Vasudevan attracting offences under Section 304(ii) IPC cannot at all be accepted as reasonable in the eyes of the law and in the light of Indian Evidence Act. Not only that, the P.W-18-Investigation Officer, had conducted inquest over the body of the deceased Vasudevan in the presence of Panchayatdars. In inquest is available under Ex.P-19, wherein, it has been observed that there was no visible injury on any part of the body. When there is no visible injury as per postmortem report and as per the inquest report, the cause of death is not known. The Accused and the complainants had indulged in skirmishes and push and pull, in which, Vasudevan had lost balance and fell down. While falling down, he may have suffered heart attack. At the time of death, he was aged around 50 years, therefore, those, who have crossed 40, there are reports that many of them who had crossed forty, suffer heart problems, because, of our present day tension and life style. Therefore, the only presumption that the Court can draw regarding the death of deceased Vasudevan is that he had suffered heart attack. When there is no visible injury suffered by the victim of crime the only presumption available is in favour of Accused 2 and Accused 3 that can arrive. Therefore, the findings of the guilt



recorded by the learned Trial Judge in the absence of any evidence incriminating the A2 and A3 for the cause of death of deceased Vasudevan cannot at all be accepted. It is treated as perverse in to the Indian Evidence Act. The learned Counsel for the Appellant had during his arguments mentioned that the Municipality Engineer was examined as P.W-16 by the Prosecution regarding the scene of crime, which is alleged to site for pavement of vendors. The draft plan by the Municipality in favour of the Accused 1 to 3 was marked through said Municipality Engineer, P.W-16. The appreciation of plan of the Accused herein. When that be the case, when the Municipality has granted permission to construct building. The conduct of the witness, challenging the lawful owner, who had been granted permission to put up construction as per law by the Municipal Authorities, the action of the deceased, Vasudevan and the Prosecution witness herein, who were all vegetable vendors involved in selling of vegetables from the pavement adjoining the site of the Accused, which he had purchased in which, Municipality had granted approval for construction of shops under Ex.D-1. The learned Counsel for the Appellant had stated that all the witnesses, P.W-1 to P.W-6, P.W-9 and P.W-15 belonging to the Pudukottai Town Pavement Vegetable Vendors Association. Therefore, all the witnesses had spoken about the skirmishes. No independent witnesses had been examined by the Investigation Officer. Next to the property of the Accused, there are shops and houses. No witnesses from the shops had been examined in favour of the Prosecution. By all probabilities, the witnesses herein, are treated as aggressors. Since one of the members of the aggressors party suffered death, the witnesses had initiated criminal action against the Accused. That is the only presumption available to the Court. This presumption is available under Section 114 of Indian Evidence Act, in the facts and circumstances of the case as gathered from the records of this case.

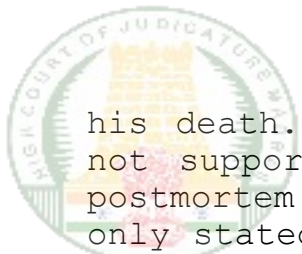
19.P.W-1 and P.W-2 alone had spoken about skirmishes between the Accused before the learned trial Judge. The Prosecution witness P.W-2- Karunanithi is the person who is alleged to have suffered injuries in the hands of the Accused. On admission in the Hospital, he had absconded without informing the Doctor. Therefore the Doctor who had seen the witness in the Hospital in the casualty ward, P.W-7-Dr.Sivakumar had in his evidence stated that P.W-2 had left the Hospital without informing the Hospital. Therefore they had not issued any medical certificate concerning his injuries. P.W-10-Son of the deceased, was not in the place of occurrence. His evidence is hearsay. From his evidence, Accused herein had attacked his father with brick and one of them pulled his father by his leg when he fell down. Therefore his father suffered giddiness and fell down. When he was taken to Hospital, he was declared brought dead. P.W-11 is Dr.Saravanan who had analysed the Hyoid Bone was not damaged and has issued Ex.P-14-Hyoid Bone Report. P.W-12-Dr.Lavanya had conducted autopsy on the body of the deceased. She had in her evidence deposed that on external appearance no visible injuries



were found on the body of the deceased. On dissection of the internal organs like Pancreas, Liver, Kidneys, Bladder were found normal. There was no fracture to the bone or damage to the Lungs and Heart. Therefore, she had arrived at a finding that the cause of the death might have been heart-attack. She had issued Postmortem Certificate under Ex.P-15 wherein the cause of death mentioned as, "possibly due to heart-attack".

20.As per the evidence of P.W-1, P.W-2 and P.W-10, it is found that they were not in the place of occurrence, it can only be considered that there were push and pull between two groups, the association of vegetable vendors of Pudukkottai Town had objected to the construction put up by the Accused who had purchased the property and obtained the sanction from the Pudukkottai Municipality for putting up construction. When that be the case, P.W-16 who is the Town Planning Officer of Pudukkottai Municipality, had stated that the Accused were issued plan approval under Ex.D-1 for construction in favour of the Accused. When there had been push and pull and wordy quarrel, P.W-2 alleged to have been assaulted by the Accused, but he had not undergone treatment. He was examined by the Dr.Sivakumar and issued Wound Certificate under Ex.P-8 but the nature of the injuries had not been mentioned. From P.W-2 evidence, the Accused 2 and 3 hit the deceased on the chest with brick, but there was no injuries on the chest of the deceased. From P.W-12-Doctor who conducted Postmortem, there was no injury on the Heart or on the Lungs and no fractures suffered on the ribs. When that be the case, the case of the Prosecution that Vasudevan died due to the action of the Accused 2 and 3/Appellants herein cannot at all be considered a reasoned judgment. The learned trial Judge had arrived at a conclusion based on the evidence of P.W-2 whose evidence is not at all corroborated by the other witnesses or with the medical evidence. Under those circumstances, the conviction recorded by the learned trial Judge, convicting the Accused 2 and 3 for the offence under Section 304 (ii) of IPC cannot at all be accepted.

21.Heart-attack may occur to any one who is weak due to general health condition like Diabetes or any other causes. In circumstances, the person who is shouting who is generally weak and getting emotional is likely to suffer heart-attack. Here, from the evidence there had been skirmishes between the two groups, the group of vegetable vendors and the Accused herein who are also vegetable vendors of Pudukkottai, who had purchased the property and put up construction in the vacant site that had been used by the vegetable vendors of Pudukkottai Town. The said site adjoining the house of the Accused. They had admitted to put up a shop in the acquired property. After acquiring property, obtaining sanction to put up construction from the Municipal Authorities. The vegetable vendors had objected to the construction. Therefore there had been clashes. When the clashes occurred may be the deceased would have been pushed back or pulled back by the Accused. That cannot be the reason for



his death. Therefore, the evidence of P.W-2 is rejected as it is not supported with any other evidence. The Doctor who conducted postmortem is unable to give out the reason for the death. She had only stated "may be due to heart-attack". Therefore, for the death of Vasudevan, a member of the Pudukottai Town Vegetable Vendors' Association who died and for the death, P.W-2 had pointed the accusing finger on the Accused/Appellants herein which a Court analysing the evidence as per the Indian Evidence Act will not accept.

22. Therefore, the finding of guilt recorded by the learned trial Judge, District Judge, Special Court under Essential Commodities Act and NDPS Act, Pudukkottai, regarding the conviction for the offence under Section 304 (ii) of IPC is found perverse. Therefore, the appeal preferred by the Appellants herein/Accused 2 and 3 is to be allowed.

In the result, the appeal is allowed and finding of guilt recorded by the learned Additional District and Sessions Judge, Special Court for E.C. and NDPS Act Cases, Pudukkottai, in S.C.No.96 of 2013 and the conviction and sentence imposed under Section 304 (ii) of IPC are set aside. The bail bond executed by the Appellants, if any, shall stand discharged. Fine amount, if any paid, shall be refunded to the Appellants.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS)

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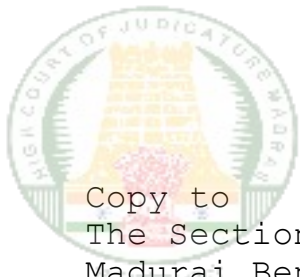
1.The Additional District and Sessions and Special Court
for E.C. And NDPS cases, Pudukottai.

2. The Judicial Magistrate, Pudukottai.

3. The Chief Judicial Magistrate, Pudukottai.

4.The Inspector of Police,
Ganesh Nagar Police Station,
Pudukottai District.

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



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

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Judgment made in
CRL.A. (MD) No. 22 of 2016
01.10.2021

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TR(03.03.2022) 10P 8C