



BAIL SLIP

Prabu, aged about 31 years, S/o. Valathi, and Malaichamy aged about 45 years, S/o. Chindan @ Kannatti, Accused Nos. 1 & 2, was released on bail vide court order dated 29.11.2016 made in CRL.MP (MD).No. 11004 of 2016 in Crl.A(MD).No. 429 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A(MD)No.429 of 2016

1.Prabu

2.Malaichamy

... Appellants/ Accused Nos.1 and 2

Vs.

State represented by,
The Inspector of Police,
Palamedu Police Station,
Madurai District.
Crime No.144 of 2011

...Respondent/Complainant

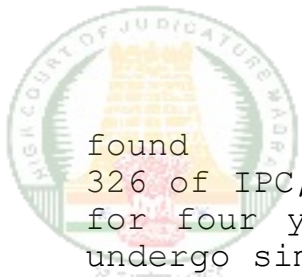
PRAYER: The Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, to call for the records and set aside the order of conviction and sentence passed in S.C.No.400 of 2014 dated 04.11.2016 on the file of the learned 1st Additional District and Sessions Judge, Madurai and allow this appeal and acquit the appellants/accused from the charge levelled against them.

For appellants	: Mr.AK.Azagarsami Legal Aid Counsel
For Respondent	: Mr.M.Muthumanikkam Counsel for Government of Tamil Nadu (crl.side)

JUDGMENT

The present appeal is directed against the conviction and sentence, dated 04.11.2016, made in S.C.No.400 of 2014, on the file of the learned I Additional District and Sessions Judge, Madurai.

2. Among the four accused, the appellants are arrayed as accused Nos.1 and 2 in the above referred case. The trial Court framed the charges as against the appellants herein for the offence under Section 302 r/w 34 of IPC. Further, as against A3 and A4 framed a charge under Section 355 of IPC has been framed. After full-fledged trial, the learned I Additional District and Sessions Judge, Madurai, came to the conclusion that the appellants were



found guilty for the offence under Section 326 of IPC, convicted and sentenced to undergo Rigorous Imprisonment for four years and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for six months. In respect to the other charges against the appellants and in respect to the charges framed against the accused Nos.3 and 4, the trial Court acquitted the accused from the charges. Challenging the said conviction and sentence, the appellants are before this Court, by way of filing the present Criminal Appeal.

3. The relevant facts of the case, which gave rise to the filing of this appeal are necessary to be recapitulated for the disposal of this appeal:-

(i) PW1-Pappa @ Muthammal is the wife of deceased Potti. The sister of the first accused is her daughter in law. Prior to the occurrence, the first accused and his family members lodged a complaint against the family members of P.W1 alleging that they made harassment to her sister. Due to the same, the accused and the deceased are having family dispute. During the relevant point of time, one day around 7.00 p.m., when P.W1 was with her husband in Kottangipatti, the first accused Prabhu came along with iron rod and attacked the deceased on his hands, hip and thighs. In the said transaction, the second accused Malaisamy with the aid of stick assaulted the deceased on his left and right shoulder. The third accused Anandhi also attacked the deceased by using the coconut wooden log on the left hip and the fourth accused Meena has also attacked the deceased with the aid of broomstick. In the said transactions, the third accused assaulted P.W.1 on her left thigh and the fourth accused by using the same broomstick assaulted P.W.1 on the right hand palm. The said incident was witnessed by Perumal, Selvendran, Chinnaiah and Pandiammal.

(ii) After the said occurrence, the deceased and P.W1 went to the police station and lodged the complaint under Ex.P1. On receipt of the said complaint, P.W9-Sundaravadivel on 02.10.2011, around 13 hours registered a case against the accused in Crime No.144 of 2011 under Sections 323, 324, 355 and 506(ii) of I.P.C. The printed FIR was marked as Ex.P4. Further, after receipt of the complaint from the deceased, he issued the medical memo and advised the deceased to go to hospital.

(iii) In turn, the deceased has taking treatment in the Rajaji Government Medical College Hospital, Madurai, wherein, P.W10-Dr.Saravanan, examined the deceased and found that a lacerated injuries on the left elbow and he has pain in the left leg and back. After noting down the said injury, he admitted the deceased in the hospital as in-patient. In this regard, he issued the Accident Register Copy under Ex.P6.



(iv) After registration of the case, P.W.9 himself took up the same for investigation. On the same day around 14 hours, he visited the scene of occurrence and in the presence of P.W4-Alagar and one Pitchai, he prepared an observation mahazar under Ex.P2. He drawn the rough sketch and the same has been marked as Ex.P5.

(v) In continuation of investigation, in the presence of same witnesses, P.W9 recovered the rod, broomstick, gowa stick, wooden log (M.O1 to M.O4) under the cover of mahazar Ex.P3. He examined the witnesses and recorded their statements. On 02.10.2011, he arrested the accused Nos.1 and 2 and sent them to the remand. In the meantime, on 24.10.2011, he received the intimation from the Hospital as the injured died. After receipt of the said intimation, he handed over the case records to P.W12-Ramesh the then Inspector of Police, Palamedu Police Station, for investigation.

(vi) On receipt of the case records, P.W.12 altered the section of law from 323, 324, 355 and 506(ii) of I.P.C to 323, 355 and 302 of I.P.C. The alteration report prepared by P.W12 was marked as Ex.P9. He visited the hospital and after made enquiry, he prepared an inquest report under Ex.P10. He sent the requisition under Ex.P7 for conducting autopsy over the dead body of the deceased. On receipt of the said requisition, P.W11-Dr.Natarajan conducted the postmortem and found the following injuries:-

- 1.Left knee found swollen
on dissection: Contains 50 ml of fluid blood with clots with surrounding bruising noted.
 - 2.Right knee found swollen
On dissection: contains 50ml of fluid blood with clots with surrounding bruising noted.
 - 3.Left thigh deformed.
 - 4.Tracheostomy wound noted on front of middle of neck
 - 5.Bilateral intercostals drainage wound noted on outer aspect of chest.
 - 6.Abrasion 5 cm x 3 cm noted on left elbow.
On dissection of chest:
Fracture ribs from 5-8 on left side in its mid axillary line with surrounding bruising noted.
On dissection of scalp, skull & dura:
Contusion scalp 6 cm x 4cm on left occipital region.
Diffused subdural hemorrhage and subarachnoid hemorrhage noted over both cerebral hemispheres. Cerebro spinal fluid increased in volume and blood stained.
- Other findings:
Peritoneal Cavity-empty; Pleural cavities-empty;
Pericardium-contains 15ml of straw colour fluid; Heart-right side fluid blood, left side empty; coronaries-patent; Lungs-cut section congested; larynx&trachea-normal; Hyoid bone-



intact; Stomach contains 200 ml of brown colour fluid, nil specific smell, mucosa-normal; Liver, Spleen & Kidneys-cut section congested ; Small intestine- contains 20 ml of bile stained fluid, nil specific smell, mucosa-normal; Bladder-empty; Brain-described.

After completing the process of postmortem in respect to the cause of death, he gave opinion as the deceased would appear to have died of multiple injury. The postmortem certificate issued by P.W11 was marked as Ex.P8.

(vii) In continuation of investigation, P.W12 examined the witnesses and recorded their statements. Thereafter, he had handed over the case records to P.W13-Shanmugasundaram the then Inspector of Police, Palamedu Police Station, for further investigation. On receipt of the case records from P.W12, he examined the Doctor, who conducted postmortem and recorded their statements. He forwarded the material objects, which were collected during the time of investigation to the Court. After concluding the investigation, he came to the positive conclusion that all the accused in this case are all liable to be convicted under Section 302 of IPC and filed the final report accordingly.

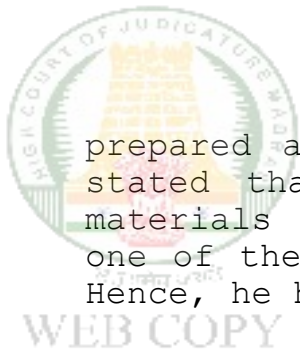
4. Based on the materials available on record, the trial Court framed the charges against the appellants under Section 302 r/w 34 of IPC and against the other accused (now acquitted) under Section 355 of IPC. All the accused denied the charges and opted for trial. Therefore, the accused was put on trial.

5. During the course of trial proceedings, in order to prove their case, on the side of the prosecution, 13 witnesses were examined as PW1 to PW13 and 11 documents were exhibited as Ex.P1 to Ex.P11, besides four material objects (M.O.1 to M.O.4).

6.(i) Out of the above said witnesses, PW1-Pappa @ Muthammal the wife of deceased gave evidence in respect to the occurrence. According to her, previous to the occurrence, both her family and the family members of the accused are having family dispute. While at time of occurrence, the first accused with the aid of iron rod attacked the deceased on his hands, hip and thighs. Similarly, the other accused by using the wooden log, broomstick, gowa stick attacked the deceased and caused injury on various parts of his body. According to her, P.Ws 2, 3 and 5 are the witnesses, who seen the occurrence.

(ii) PW2-Pandiammal gave similar evidence, like a evidence given by P.W.1. P.W3- who is the alleged eyewitness, did not give evidence in support of the case of the prosecution. Hence, he was treated as hostile witness.

(iii) PW4-Alagar deposed before the trial Court as PW12 had



prepared an observation mahazar in his presence, further, he has stated that PW12 has drawn the rough sketch and recovered the materials from the occurrence place. P.W5-Selvendran, who is also one of the eyewitness did not support the case of the prosecution. Hence, he has also been treated as a hostile witness.

(iv) P.W6-Ayyavu is the son of the deceased, gave evidence in respect to the occurrence as stated by P.W1. P.W7-Murugan is the Head Constable gave evidence as after altering the section of law as 323, 355 and 302 of I.P.C, he handed over the alteration report to the learned Judicial Magistrate, Usilampatti.

(v) P.W.8-Chellam, the then Special Sub-Inspector, Pallamedu Police Station, claims that he received the requisition from the Inspector of Police and handed over the same to the Medical Officer for conducting postmortem and he identified the dead body and after postmortem, handed over the body to its relatives.

(vi) P.W9-Sundaravadivel, the then Sub-Inspector of Police, Pallamedu Police Station, deposed about the receipt of complaint and about the registration of the case.

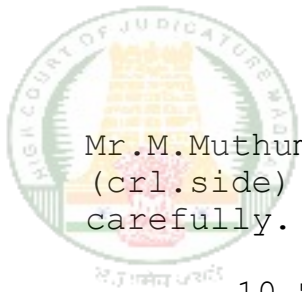
(vii) P.W10-Dr.Saravanan, who treated the accused in initial days gave evidence in respect to the injury sustained by the injured and about the issuance of A.R copy. P.W11-Dr.Natarajan attached Rajaji Medical College Hosptial, Madurai, speaks about the details of autopsy conducted over the dead body of the deceased.

(viii) P.W12-Ramesh and P.W13-Shanmugasundaram are police officers speaks about the receipt of intimation in respect to the death of the deceased, examination of witnesses and about the filling of final report.

7.When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., all the accused denied the same as false. However, they did not choose to examine any witness nor mark any document on their side.

8.Having considered all the material and on considering the arguments advanced on either side, the learned I Additional District and Sessions Judge, Madurai, came to the conclusion that the first and second accused found guilty under Section 326 of I.P.C, convicted and sentenced as stated in paragraph No.2 of this judgment. In respect to the other accused, the learned trial Judge acquitted them from the said charges. Aggrieved by the said conviction and sentence, the appellants/accused Nos.1 and 2 is before this Court with this appeal.

9. I have heard Mr.AK.Azagarsami, learned legal aid counsel appearing for the appellants/accused Nos.1 and 2 and



Mr.M.Muthumanikkam, learned Counsel for Government of Tamil Nadu (crl.side) appearing for the State and also perused the records carefully.

10.The learned counsel appearing for the appellants would contend that though the witnesses, who are all examined on the side of the prosecution as eyewitnesses, have narrated the occurrence in the chief examination, during their cross examination they have given evidence as they did not see the occurrence as alleged by the prosecution. According to him, the trial Court, without appreciating the same in a perspective manner, convicted the accused, which is erroneous in law.

11.Per contra, the learned Government Advocate (crl.side) appearing for the State would contend that the evidence given by the prosecution witnesses are all in support of the case of the prosecution and also the said evidences given by the eye witnesses are corroborated through the medical evidence and therefore, interference of this Court in the finding arrived at by the trial Court does not require.

12.I have considered the rival submissions made by the learned counsels appearing on either side.

13.Now on going through the relevant records, it seems that as per the case of the prosecution, P.W1 to P.W3, P.W.5 and P.W6 are all eyewitness to the occurrence. In the said circumstance, on going through the evidence of P.W1, though she has narrated the occurrence in support of the prosecution in her chief examination, during the time of her cross examination, she gave evidence as only after hearing the cue and cry of her husband, she went to the occurrence place, wherein, she found that her husband was lying in pool of blood. In otherwise, she has not stated about the presence of the accused in the occurrence place. Therefore, the said evidence given by P.W1 is quite clear that she has not seen the occurrence.

14.Consequently, on going through the evidence given by P.W2, in her chief examination, she also gave evidence as during the relevant point of time, all the accused had attacked the deceased. On the other hand, in her cross examination, she has stated that while at the time when she reached the occurrence place, there was a crowd found in the occurrence place, in which around 200 members were assembled. It was the further evidence that only on enquiry made she came to know that the injured was brought to the hospital. Accordingly, the said evidence given by P.W2 in her cross examination also reveals the fact that she has not seen the occurrence.

15.P.W3- Perumal has also not given evidence in support of



prosecution and therefore, he was treated as a hostile witness. The evidence given by P.W5-Selvendran, who is the one another eyewitness has also stated as he has not seen the occurrence. In the said circumstance, the only available evidence in respect to the occurrence is that the evidence given by P.W6. He is the son of the deceased and he has stated about the family dispute having by his family with the family of the accused and he has also given evidence as during the relevant point of time, all the accused by using the various weapons attacked the deceased, but at the same time in his cross examination, he has specifically stated that after hearing the occurrence, he went to the occurrence place, wherein, his father was found with some injury. In otherwise, in respect to the presence of accused in the occurrence place, he did not say anything in support of the case of the prosecution.

16. Therefore, in the light of the above observations, I am of the considered view that the witnesses examined on the side of the prosecution as eyewitness to the occurrence are all not an eyewitness to the occurrence. Therefore, the attempt made by the prosecution to prove the occurrence by way of examining the eyewitnesses are all ended in vein. Though the Doctor, who conducted the postmortem and the Inspector of Police, who conducted the investigation gave evidence in support of the case of the prosecution, being the reason that they are not occurrence witnesses, it cannot be held that the prosecution has proved his case through the evidence given by the said Officers. More than that, P.W12, who conduct the investigation gave evidence in his cross examination as he did not recover the case records pertaining to the treatment given to the accused. Further, he has admitted in his cross examination as in respect to the injury sustained by P.W1, he has not investigated the case. More than that, he gave specific evidence as in respect to the previous enmity having by the accused with the deceased, he had not investigated the case and the same would go to show that the investigation in this case has also not been proceeded in accordance with law, particularly, in respect to the intention having by the accused with regard to the murder of the deceased.

17. As a general rule in criminal cases, the prosecution discharge their evidential burden by adducing sufficient evidence to raise a prima facie case as against the accused. If no evidence is called for the defence the tribunal of fact must decide whether the prosecution has succeeded in discharging its legal burden by proving its case beyond a reasonable doubt. In otherwise, discharge of the evidential burden by the defence is not a pre-requisite to an acquittal. The accused is entitled to be acquitted " if at the end of and on the whole of the case, there is a reasonable doubt created by the evidence given either by the prosecution or by the accused. Ultimately, it is an essential principle of our criminal law that a criminal charge has to be established by the prosecution beyond



reasonable doubt.

18. Here it is the case, as already observed, number of witnesses cited as eyewitness gave contradictory evidence in respect to the alleged occurrence. The evidence given by them in a chief examination are all entirely found against the evidence given in their cross examination. Therefore, it is not said to have accepted the evidence given by experts and the officers who investigated the case. Therefore, I am of the considered opinion that the prosecution has not proved their case beyond reasonable doubt.

19. In fine, this Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/accused Nos.1 and 2, by the I Additional District and Sessions Judge, Madurai, in S.C.No.400 of 2014, dated 04.11.2016, is set aside and the appellants/accused Nos.1 and 2 are acquitted from all the charges. The fine amount, if any, paid by them, shall be refunded to them. Bail bond, if any, executed by the appellants shall stand cancelled.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To

1. The I Additional District and Sessions Judge, Madurai,
2. The Inspector of Police,
Palamedu Police Station,
Madurai District.
3. The District Collector, Madurai.
4. The Superintendent Central Prison, Madurai
5. The Director General of Police,
Mylapore, Chennai
6. The Section Officer, (2C)
Criminal Section Records,
Madurai Bench of Madras High Court,
Madurai.



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

CrI.A(MD) No.429 of 2016
21.09.2021

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