

Bail Slip

Velusamy, Appellant/Sole Accused was released on bail vide order of this Court dated 01.08.2018 made in CRL.MP(MD)No.5616 of 2018 in CRL.A(MD)No.322 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.12.2021

Delivered on : 23.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
and
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrL.A.(MD)No.322 of 2018

Velusamy, S/o.Duraisamy Nayakkar ... Appellant/Sole Accused

-vs-

State Rep. by
The Inspector of Police,
Thiruthangal Police Station,
Virudhunagar District.
(Crime No.334 / 2008)

... Respondent/Complainant

Prayer:- Appeal filed under Section 374 of Cr.P.C., to call for the records in S.C.No.143 of 2009, dated 10.07.2018, on the file of the Principal District and Sessions Court, Virudhunagar District, Srivilliputhur, set aside the judgment and acquit the appellant herein.

For Appellant : Mr.MA.Govthaman
for Mr.N.Mohideen Basha

For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor

JUDGMENT

[Judgment of the Court was made by Dr. G.JAYACHANDRAN, J.]

The appellant is the sole accused in S.C.No.143 of 2009, on the file of the Principal District and Sessions Court, Virudhunagar. Being aggrieved by the judgment of conviction for offence under Section 302 of I.P.C. and sentence to undergo life imprisonment, the present appeal is filed.



2.The prosecution case as unfurled through the witnesses:-

(i) The accused Velusamy and the deceased Ramasamy are residents of Sengamala Nachiyarpuram. The accused is a milk vendor. The deceased was working as a Watchman in the Saraswathi Fireworks Company at Nachiyarpuram. Leelavathi, the wife of the deceased used to let out sewage water in the Street. The accused, who has to reach his house crossing the deceased house, used to question her for letting out sewage in the Street. On 16.07.2008 at 11.00 a.m., a quarrel between them in connection with letting out sewage water ended in fist-fight, in which the deceased sustained minor head injury. Next day early morning, at 04.00 a.m. while the deceased was on duty at the main gate of Saraswathi Fireworks, Nachiyarpuram, the accused went there in his Bajaj M80 vehicle and attacked the deceased over his head and limbs with a stick. Jeyakumar, the son of the deceased, who was in nearby tea shop with his brother and one Velmurgan came to know about this from one Dhamodaran, rushed to the spot and rescued the deceased from further attack. In the fight, the accused also sustained injury. The accused left the place in his vehicle and got admitted in the Sivakasi Government Hospital at 06.00 am. The deceased along with his wife and two sons went to Thiruthangal Police Station gave the complaint and same was registered under Crime No.334 of 2008 for offences under Sections 341, 323 and 506(i) of I.P.C.

(ii) The deceased was taken to Sivakasi Government Hospital. The Doctor after examining him, suspecting that he might have sustained fracture referred him to Rajaji Government Hospital at Madurai. At Madurai Government Hospital, the deceased was treated as impatient, but died on 18.07.2008 at 08.50 p.m.

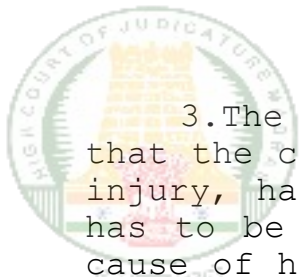
(iii) The case registered against the accused was therefore, altered to Section 302 of I.P.C. The alteration report was forwarded to the Court and investigation taken up.

(iv) On completion of investigation, after examination of witnesses and gathering evidence, final report filed before the Judicial Magistrate Court, Sivakasi, which was committed to the learned Principal District and Sessions Judge, Virudhunagar, being the case exclusively triable by the Court of Session.

(v) Upon the documents, the trial Court framed the following charge against the appellant:

On 17.07.2008 at 04.00 a.m., while the watchman of Saraswathi Fireworks, Thiruthangal, Ramasamy was standing near the main gate of the Company, the appellant herein with the intention to cause the death of one Ramasamy, attacked him with wooden stick on his head repeatedly. Also hit on his right elbow and right ankle. The injured was taken to the Government Hospital at Sivakasi and later to Madurai Rajaji Government Hospital. Ramasamy succumbed to the injuries on 18.07.2008 by 08.50 p.m. Thereby, the accused Velusamy committed offence punishable under Section 302 of I.P.C.

(vi) The accused denied the charge and claimed to be tried. Therefore, to prove the charge, the prosecution examined 17 witnesses, marked 19 exhibits and 2 material objects. The accused

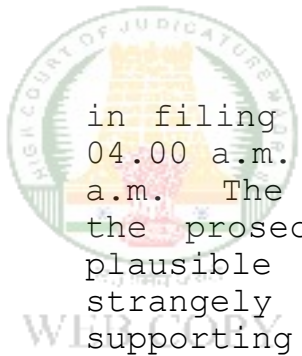


3.The trial Court after appreciating the evidence, concluded that the complaint signed by the injured, who later died due to the injury, has implicated the accused. The statement of the deceased has to be treated as dying declaration, since it speaks about the cause of his death. This statement is corroborated by P.W.1, who is witness to the occurrence. Though P.W.1 is son of the deceased, his presence at the time of occurrence is explained and reliable. The Accident Register Ex.P.5 for the accused, who got admitted alleging that he got injury in the fight strengthen the case of the prosecution that the accused as aggressor and attacked the deceased brutally with stick with intention to cause death and caused injuries, which are sufficient to cause death. Hence, sentenced the accused to undergo life imprisonment with fine of Rs.10,000/-, in default, to undergo one year simple imprisonment.

4.The judgment of the trial Court is challenged by the accused on the ground that the trial Court erred in holding the accused guilty, overlooking the improbability of P.W.1 and his brother Janakiraman (not examined) being present in the tea shop near the scene of crime at the early morning 03.45 a.m., which is a place far away from their place of living. Further, the trial Court also failed to note that tea shop owner not examined as witness and neither in the observation mahazar Ex.P.3 nor in the rough sketch Ex.P.15, the existence of tea shop nearby the scene of crime is mentioned. Though P.W.1 and P.W.4 admits that their clothes got stained while lifting the injured, the Police has not produced their blood stained clothes to show they were really present at the scene of crime. Hence, the learned counsel for the appellant submitted that P.W.1 is unreliable and interested witness. The complaint Ex.P.1 though alleged to have been signed by the deceased, it is admittedly written by P.W.1 and it is doubtful whether the signature of the deceased found in Ex.P.1 is genuine or not, therefore, the content in Ex.P.1 cannot be given the credential of dying declaration.

5.The learned counsel for the appellant, referring the evidence of P.W.8, the Doctor at Sivakasi Hospital, submitted that from Ex.P.5 and the deposition of P.W.8, it is evident that the accused went to hospital with medical memo issued by the Thiruthangal Police and same is noted in Ex.P.5 (Accident Register of the accused). Whereas, though the prosecution case is that the deceased came to the Police Station and gave the written complaint Ex.P.1 duly signed by him and then left to Hospital, Ex.P.6 (the Accident Register issued to the deceased) is silent about any medical memo issued by the Police. This falsifies the case of the prosecution in entirety and in particular Ex.P.1 alleged to have given by the deceased.

6.The learned counsel for the appellant further contended that, the contradictions between the deposition of P.W.1 (the son) and P.W.4 (the wife) regarding motive, renders the prosecution case unreliable. The prosecution failed to explain the delay



in filing the complaint, when the alleged occurrence took place at 04.00 a.m. and after 2 ½ hours delay, the F.I.R. registered at 06.30 a.m. The injuries on the accused ought to have been explained by the prosecution. Though the prosecution has not come with any plausible explanation for the injuries found on the accused, strangely the trial Court has given its own reasoning, which lack supporting evidence.

7.Per contra, the learned Additional Public Prosecutor submitted that the complaint Ex.P.1 is reliable and trustworthy for multiple reasons. It is contemporaneous document, duly signed by the deceased, corroborates with the nature of injuries sustained by him and as noted in Accident Register [Ex.P.6] and later, in the postmortem report [Ex.P.16]. Therefore, Ex.P.1, the statement of the person regarding the injuries, which is cause for his death, subsequently, is admissible in evidence and squarely falls within the definition of Section 32(1) of the Evidence Act. The statement so made, is reduced into writing and duly signed by the injured person. The lodging of the complaint and receipt of it is spoken by P.W.1 and P.W.14. Therefore, no doubt need be entertained about the genuineness of Ex.P.1. There is no delay in registering the F.I.R. or forwarding it to the learned Judicial Magistrate as pleaded by the appellant's counsel. In the complaint, Ex.P.1 it is stated that after the injuries sustained, the de-facto complainant was provided assistance and aid. Thereafter, his family members took an auto and went to the Police Station before going to the hospital. This is self-explanatory for the delay in giving the complaint.

8.At this juncture, it is to be noted that, the prosecution has not explained the delay for forwarding the F.I.R. to the Judicial Magistrate Court and it has reached the Court only on 18.07.2008 as per the endorsement made by the learned Judicial Magistrate and also admitted by P.W.17, the Investigation Officer, who laid the final report.

9.The learned Additional Public Prosecutor further submitted that the accused conduct soon after the occurrence need to be taken adverse note. He after causing deadly injuries on the deceased, got admitted in the hospital, but knowing that Ramasamy died on 18.07.2008 at 08.50 p.m., he absconded from the hospital at 09.30 p.m., within 40 minutes. He was later arrested on 21.07.2008 along with his Bajaj M80 vehicle in the presence of P.W.9, by the Inspector of Police, Thiruthangal Police Station. Therefore, it is evident that the injuries alleged to have sustained by the accused not serious in nature and he got admitted in the hospital only to create alibi.

10.Heard the counsels and the documents perused.

11.The investigation in this case commenced on the receipt of the complaint Ex.P.1. It is signed by the deceased. It contains the



These injuries are cause for the death of the informant, namely, Ramasamy. Within 38 hours from the incident and within 35 hours of the information reduced into writing, the informant had died. The following injuries noted in the Postmortem report Ex.P.16:

(1) An oblique sutured lacerated wound over the left parietal region, 1 cm lateral to the midline 7 cms above the left ear lobe measuring 5 cms x 1 cm x bone depth with surrounding bluish contusion of 7 cms x 3.5 cms.

(2) An antero posterior sutured lacerated wound in the mid parietal area extending to the mid occipital area 6 cms x 1 cm x bone depth with surrounding bluish contusion of 8 cms x 3.5 cms, the posterior end 2 cms above the occipital protruberance.

(3) An oblique sutured lacerated wound in the right occipital area 1 cm lateral to the midline measuring 4 cms x 1 cm x bone depth with surrounding bluish contusion of 6 cms x 3 cms.

(4) A sutured lacerated wound in the outer aspect of lower end of right upper arm, 4 cms above the elbow joint measuring 4 cms x 1.5 cms x bone depth. On dissection, the underlying lower end of right humerus bone is found to be fractured with surrounding bluish bruise of the muscles.

(5) Right ankle joint deformed. On dissection, fracture dislocation of the right tibia and fibula with surrounding bluish bruising of the muscles.

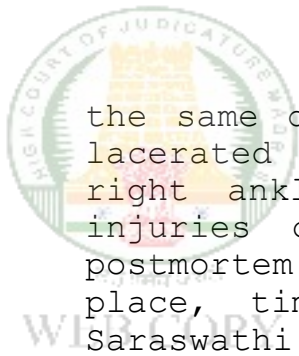
(6) Abrasion in the front of right side abdomen measuring 2 cms x 1 cm with dark brown scab noted.

(7) Abrasion front of right hip measuring 1.5 cms x 1 cm with dark brown scab noted.''

The postmortem Doctor P.W.16, in his report, has opined that, ''the deceased would appear to have died of Carnio Cerebral Injuries''.

12.As submitted by the learned Additional Public Prosecutor, from the documentary evidence and the oral evidence in support of content of Ex.P.1, the evidentiary value of Ex.P.1 is to be treated par with dying declaration in the light of Section 32(1) of the Evidence Act, subject to other evidence, which may indicate embellishment or overstatement by the injured.

13.In the instant case, the occurrence on 17.07.2008 near the main gate of Saraswathi Fireworks can without any doubt taken as proved, in view of Ex.P.5 and Ex.P.6. These two documents are Accident Registers maintained in the hospital. The Accident Register pertaining to the accused recorded on 17.07.2008 at 06.00 a.m. 4 lacerated injuries on four sides of his head noted by P.W.8, the Doctor, who examined him and same recorded in Ex.P.5. Likewise, in Ex.P.6, the Accident Register pertaining to the deceased recorded on



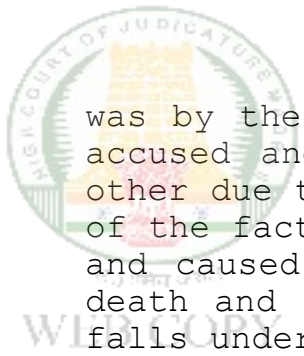
the same day at 07.30 a.m. 3 lacerated injuries on the head, one lacerated injury above right elbow and a lacerated injury near right ankle suspected to be a fracture noted by P.W.8. These injuries corresponds to the ante-mortem injuries found in the postmortem certificate Ex.P.16. In both the Accident Registers, the place, time and the weapon used are same viz., the gate of Saraswathi Fireworks at 04.00 a.m., by known person assaulted with stick.

14.From the medical records, particularly, Ex.P.5 and Ex.P.6, it is proved beyond any pale of doubt that both the accused and the deceased have exchanged blows with stick on 17.07.2008 at 04.00 a.m. near the main gate of Saraswathi Fireworks. The deceased being the watchman of Saraswathi Fireworks, his presence at the gate is acceptable, whereas why the accused came there at the early hours of the day, is left unexplained on the side of the defence. Likewise, even in the complaint Ex.P.1, the deceased has disclosed the fact that the accused also sustained injuries on his head while fighting, while so, the accused has not explained who and how the injuries caused. From the judgement of the trial Court, we find that the complaint given by the accused against the deceased in respect of the injuries sustained by him on the date of occurrence was closed as abated in view of the death of the Ramasamy, against whom the complaint was lodged.

15.The learned counsel for the appellant submitted in the course of his arguments that, the appellant being milk vendor by profession, used to go around the place to deliver milk, knowing his routine, the deceased accosted him and attacked. As self-defence, the accused retaliated. This argument now submitted does not find place anywhere as suggestion to appropriate witnesses or in the Section 313 of Cr.P.C. proceedings. Nonetheless, Court has to take the attendant circumstances put forth by the prosecution through their witnesses to arrive at right and just decision.

16.For the said purpose, it is pertinent to note that out of 4 prosecution witnesses (P.W.1 to P.W.4), who are supposed to speak about the occurrence, P.W.2 (Velmurugan) and P.W.3 (Dhamodaran) turned hostile. P.W.4 Leelavathi, the wife of the deceased had reached the scene of crime only after her son came home and informed about the incident and took her to Saraswathi Fireworks. Therefore, the evidence of the sole eyewitness P.W.1 and Ex.P.1 written by P.W.1 on the dictate of the deceased alone available as direct evidence for the overt act of the appellant/accused.

17.Hence, on cumulative re-assessment of evidence in the light of the grounds of appeal and the oral and written submissions made on behalf of the appellant/accused, this Court is of the view that, the prosecution able to prove its case beyond doubt that the appellant / accused has committed offence of culpable homicide not



was by the accused is not proved. The evidence discloses that both accused and deceased were armed with stick and had attacked each other due to sudden quarrel and fit of anger. Therefore, taking note of the fact that the seat of attack being the vital part of the body and caused with knowledge such bodily injuries is likely to cause death and in fact, caused death, this Court holds that the offence falls under the first exception to Section 300 of I.P.C.

18.For the commission of the said offence, the appellant is liable to be punished under first part of Section 304 of I.P.C. Considering the present age of the accused, the sentence of life imprisonment under Section 302 IPC as imposed by the trial Court is set aside and same is modified to sentence of rigorous imprisonment for a term of five years under Section 304 Part (I) of I.P.C. with fine of Rs.10,000/-, in default, to undergo one year simple imprisonment. The period of imprisonment already undergone shall be set off under Section 428 of Cr.P.C.

19.The case records indicates, the appellant presently on bail after his petition of suspension of sentence allowed by this Court pending disposal of the appeal. In such case, the appellant is directed to surrender before the trial Court for committal to prison within four weeks from today, failing which, the trial Court shall cause warrant of arrest and commit the appellant/accused to the concerned Central Prison to undergo the remaining period of sentence.

20.The order of the trial Court regarding the Material Objects stands confirmed.

21.In the result, the Criminal Appeal preferred by the accused is partly allowed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

To

1.The Principal District and Sessions Judge,
Virudhunagar District, Srivilliputhur.

2.The Judicial Magistrate, Sivakasi.

3.The Chief Judicial Magistrate,
Virudhunagar District at Srivilliputhur.



4.The Superintendent,
Central Prison,
Madurai.

5.The Inspector of Police,
Thiruthangal Police Station,
Virudhunagar District.

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

Copy to:-

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

+1 CC to M/s.N.MOHIDEEN BASHA, Advocate (SR-40515[F] dated
28/12/2021)

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23.12.2021

MGJ(05.01.2022) 8P 10C