

**Bail Slip**

The Appellants namely 1.Balamurugan, 2.Nagappan were released on bail as per order of this court dated 11/10/2018 made in Crl MP (MD)No.6532 of 2018 in Crl A(MD)No.373 of 2018.

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED :06.10.2021**

**CORAM:**

**THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN**

**and**

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

**Crl.A. (MD) .No.373 of 2018**

1.Balamurugan

2.Nagappan

... Appellants /Accused Nos.1 and 2

-vs-

State through  
the Inspector of Police,  
Nachiyarkovil Police Station,  
Thanjavur District  
in Crime No.157 of 2013.

... Respondent

**PRAYER** : Criminal Appeal is filed under Section 374 of Cr.P.C., against the conviction and sentence dated 17.07.2018 in S.C.No.158 of 2014, by the Additional District Sessions Court (Fast Track Court), Kumbakonam, Thanjavur District.

For Appellants : Mr.N.Ananthapadmanaban

For Respondent : Mr.A.Thiruvadikumar  
Additional Public Prosecutor

**J U D G M E N T**

**(Judgment of the Court was delivered by V.BHARATHIDASAN, J.)**

The appellants are the accused Nos.1 and 2 in S.C.No.158 of 2014, on the file of the Additional District Sessions Court (Fast Track Court), Kumbakonam, Thanjavur District and they stood charged and tried for the offence under Section 302 of I.P.C.

2. The trial Court, vide impugned judgment dated 17.07.2018, has convicted the appellants herein for the above said offence and imposed the sentences, thus:



| Accused        | Conviction         | Sentence                                                                                                              |
|----------------|--------------------|-----------------------------------------------------------------------------------------------------------------------|
| First Accused  | U/s. 302 of I.P.C. | To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months rigorous imprisonment. |
| Second Accused | U/s. 302 of I.P.C. | To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months rigorous imprisonment. |

3. The case of the prosecution in brief as follows:

The deceased one Pugalendhi is the son of P.Ws.1 and 2, A2 is the brother of P.W.1 and A1 is the son of A2. There was a civil dispute between them regarding a landed property. There were frequent quarrels between the families. On 02.06.2013, at about 8.30 p.m., while the deceased and P.Ws.1 and 2 were in the house, both the accused quarrelled with P.W.1 and both A1 and A2 pushed down P.Ws.1 and 2. At that time, the deceased came out of the house and questioned A1 and at that time, both the accused attacked the deceased with a wooden log on his head, and the deceased fell down. Immediately, P.Ws.7 and 11, took him in a motorcycle to the Government Hospital, Kumbakonam, on the way to hospital, he succumbed to the injuries. Hence, they returned back with the body of the deceased to his house. On the next day, at about 5.00 a.m., P.Ws.1 and 2 went to the respondent police station and filed a complaint (Ex.P1).

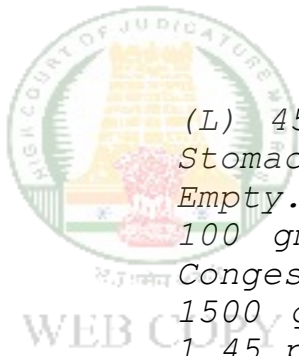
4. P.W.22, Inspector of Police, in the respondent police station, on receipt of the complaint, registered a F.I.R. in Crime No.157 of 2013, for the offence under Section 302 of I.P.C., and sent the F.I.R.(Ex.P10) to the concerned Judicial Magistrate Court and copies to the higher officials. Immediately, P.W.22 commenced the investigation and proceeded to the scene of occurrence and prepared Observation Mahazar (Ex.P.11) and Rough Sketch (Ex.P.12). At about 8.00 a.m., P.W.22, conducted inquest on the dead body of the deceased in the Government Hospital, Kumbakonam, in the presence of witnesses and prepared the Inquest Report/Ex.P13 and he sent the body for postmortem autopsy through P.W.21. On 03.06.2013, at about 1.00 p.m., he arrested both the accused. On such arrest, they voluntarily come forward to give confession statements and based on the admissible portion of the confessions, P.W.22 recovered two wooden logs, M.Os.1 and 2, then he sent the accused remanding to judicial custody.

5. In the mean time, P.W.14, Doctor, working in the Government Hospital, Kumbakonam, conducted postmortem autopsy on the dead body of the deceased and given a Postmortem Certificate - Ex.P4, and found the following injuries:

*"Body of a male lying on its back. Rigor mortis all four limbs. Eye closed. Tongue inside mouth.*

*External Injuries: Abrasion ® foot 4 x 4 cms. Neck -*

*intact. Ribs - Intect. Lungs - ® 450 gms.*



(L) 450 gms cut Section congested. Heart - wt 250 gms. Stomach 200 ML & Food particles present. Intestine - Empty. Liver - Wt 1500 gms C/s. Congested. Spleen - Wt 100 gms C/w. Congested. Kidney - Wt 100 gms Each C/s Congested. Scalp, Skull, membranes - Intact. Brain Wt 1500 gms. C/S/ congested. PM conluded on 03.06.2013 at 1.45 p.m. Death would appear to have occurred 14-18 hrs. prior to P.M."

P.W.14 was of the opinion that the deceased appears to have died of neurogenic shock.

6. P.W.22, Inspector of Police in the respondent police station, continued the investigation and recorded the statements of other witnesses and on completion of investigation, he has filed a final report.

7. Based on the above materials, the trial Court framed the charges against the accused as mentioned above. However, the appellants/accused have denied the same. The prosecution, in order to sustain their case, examined 22 witnesses, marked 16 documents and also produced 2 material objects.

8. Out of the witnesses examined, P.W.1, is the father of the deceased and he is an eyewitness to the occurrence. According to him, on the date of occurrence ie., on 02.06.2013, at about 8.30 p.m., both the accused quarrelled with them and the same was questioned by the deceased and they have attacked him with wooden logs. P.W.2 is the mother of the deceased and she is also an eyewitness to the occurrence.

9. P.W.3 is the sister of the deceased and she is also an eyewitness to the occurrence. According to her, both the accused Nos.1 and 2 attacked the deceased with the wooden logs on the head. P.Ws.4 to 18, except P.W.14, are the neighbours and related to the deceased, turned hostile.

10. P.W.14 is the Doctor, who conducted postmortem autopsy on the dead body of the deceased, and he was opined that the deceased died of neurogenic shock and he also stated that there is no external injury, except a small abrasion in the right foot of the deceased. The visceral report also shows that the deceased is a drunkard and a habitual alcoholic and huge amount of alcohol found in the visceral part of the deceased.

11. P.W.19 is the Special Sub Inspector of police, who handed over the F.I.R., to the Judicial Magistrate Court. P.W.20 is the Scientific Officer working in the forensic lab. He examined visceral part of the deceased and given a Viscera Report - Ex.P.9.

12. P.W.21 is the Head Constable, who identified the body for



postmortem. P.W.22 is the Inspector of Police, who conducted investigation, arrested the accused, recorded the statement of the witnesses and filed the final report.

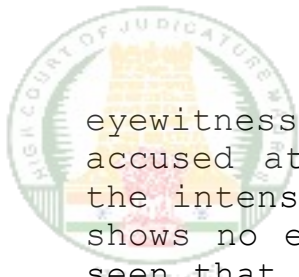
13. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., both the accused denied the same as false and they have not examined any witnesses and not marked any documents.

14. Considering all those materials, the trial Court convicted all the accused and sentenced them as stated Supra. Now, challenging the conviction and sentence, both the accused are before this Court with this criminal appeal.

15. Mr.N.Ananthapadmanaban, learned counsel appearing for the appellants submitted that, both the accused and the deceased are closely related and admittedly, there is a civil dispute pending between them. On the date of occurrence, there was a quarrel between the parties. As per the evidence of P.W.1, A1 and A2 pushed down both the P.Ws.1 and 2 and attacked the deceased with wooden logs in the head and caused his death. But the medical evidence is not corroborating the evidence of P.Ws.1 to 3. P.W.14, the Doctor found no external injury on the deceased, except a small abrasion on the right foot. He was of the opinion that the deceased would appear to have died of neurogenic shock and nothing to do with the alleged injury sustained by the accused. That apart, Ex.P9 - Forensic Report, regarding the visceral part of the deceased states that huge amount of alcohol is found in the stomach, intestine, liver and kidney, and the deceased is a drunkard and the evidence of other hostile witnesses shows that during the quarrel, he fell down. From that medical evidence, it is clear that the occurrence is not taken place as stated by the eyewitnesses.

16. The learned counsel for the appellants would further submit that, even assuming that the accused have pushed down the deceased, without any intension to cause the death of the deceased, it will only attract lesser offence and it is not a case of 302 of I.P.C. He further submitted that all the three witnesses are the father, mother and sister of the deceased, they are all interested witnesses and they have not came up with the truth. Hence, their evidence is not reliable and untrustworthy and it cannot be considered for convicting the accused.

17. Mr.S.Ravi, learned Additional Public Prosecutor appearing for the State submitted that, there are three eyewitnesses to the occurrence. Since the occurrence took place in the house of the deceased, the presence of the eyewitnesses is natural and it cannot be doubted. It is the consistent evidence of all the



eyewitnesses that after pushing down P.Ws.1 and 2, both the accused attacked the deceased with wooden logs on his head with the intension to cause his death. Even though the medical evidence shows no external injury, from the postmortem report, it could be seen that brain was congested and there was a injury in the brain. That apart, according to P.W.14, the Doctor, who conducted postmortem autopsy on the dead body of the deceased, neurogenic shock will occur due to some spinal cord injury and while the deceased was pushed down by the accused, he said to have sustained injury in the spinal cord, it may also a cause to the death of the deceased. According to the learned Additional Public Prosecutor, all the eyewitnesses consistently stated that only these accused have attacked the deceased with wooden logs and caused his death. The trial Court also considering those evidence in proper perspective, convicted the accused for the offence under Section 302 of I.P.C. and there is no reason to interfere with the same.

18. We have considered the rival submissions and perused the materials available on record.

19. P.Ws.1 to 3 are the eyewitnesses to the occurrence and they are the father, mother and sister of the deceased. It is the consistent evidence of all the three eyewitnesses that both the accused attacked the deceased with wooden logs on the head, with the intension to cause his death. But the medical evidence is not corroborating the evidence of eyewitnesses. From the perusal of the Postmortem Report - Ex.P4, it could be seen that there is only a minor abrasion in the right foot, apart from that, there is no external injuries found especially in the head.

20. As rightly contended by the learned counsel appearing for the appellants, Ex.P9, Viscera Report find the following features;

*"1.Stomach*

*Detected 748 (Seven hundred and forty eight) milligrams of ethyl alcohol but not other poison.*

*2.Intestine*

*Detected 690 (Six hundred and ninety) milligrams of ethyl alcohol but not other poison.*

*3.Liver*

*Detected 863 (Eight hundred and sixty three) milligrams of ethyl alcohol but not other poison.*

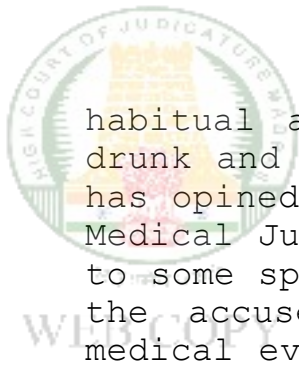
*4.Kidney*

*Detected 805 (Eight hundred and five) milligrams of ethyl alcohol but not other poison.*

*5.Preservative*

*Did not detect ethyl alcohol or other poison".*

21. From that, it could be seen that the deceased is a



habitual alcoholic and at the time of occurrence, he was fully drunk and in a intoxicated mood. Apart from that, P.W.14, Doctor, has opined that the cause of death is a neurogenic shock. From the Medical Jurisprudence, the neurogenic shock is normally occurs due to some spinal cord injury, but there is no evidence to show that, the accused attacked the deceased from his back. From those medical evidence, it could be seen that the deceased not died of any head injury as alleged by the prosecution. P.W.4, who is related to the deceased, in her evidence, she has clearly stated that while coming out of the house, the accused fell down, though she was treated as hostile, to that extent we can consider her testimony. While the accused questioned under Section 313 of Cr.P.C., both of them have stated that while they were coming out of the house, the deceased was in a drunken mood and fell down and died.

22. Considering all these cumulative circumstances, it could be seen that, in a wordy quarrel, both the accused said to have pushed down both the P.Ws.1 and 2 and the deceased, while falling down, the deceased might have sustained some injuries in the spinal cord, which leads to the Neurogenic shock, ultimately killed the deceased. Hence, the act of the accused will not fall either under Section 299 of I.P.C., or under Section 300 of I.P.C., but they are punishable only under Section 323 of I.P.C. In such circumstances, we are of the considered view that the appellants are liable to be punished for the offence under Section 323 of I.P.C.

23. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellants / accused Nos.1 and 2, by the Additional District and Sessions Judge (Fast Track Court), Kumbakonam, Thanjavur District in S.C.No.No.158 of 2014, dated 17.07.2018, under Section 302 of I.P.C., is set aside, instead the appellants/Accused Nos.1 and 2 are convicted under Section 323 of I.P.C., So far as the sentence is concerned, it is stated that both the accused were in jail for more than one year, the accused are sentenced for the period of imprisonment already undergone by them. The fine amount, if any, paid by the appellants/accused Nos.1 and 2 shall be refunded to them.

Sd/-

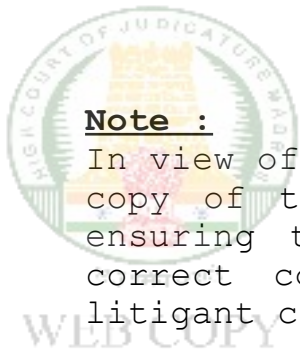
Assistant Registrar (CS-III)

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Sub Assistant Registrar (CS)

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**Note :**

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Principal District Judge, Thanjavur District.
2. The Additional District Sessions Court (Fast Track Court),  
Kumbakonam,  
Thanjavur District.
3. The District Collector,  
Thanjavur District.
4. The Superintendent,  
Central Prison, Trichy.
5. The Superintendent of Police,  
Thanjavur.
6. The Inspector of Police,  
Nachiyarkovil Police Station,  
Thanjavur District.
7. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

Copy to

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

**Cr1.A. (MD) .No.373 of 2018**  
**06.10.2021**

RK/SKN(26/11/2021) 7P 10C