



Bail Slip

The Appellant/Accused namely Arivukumar @ Arivazhgan, S/o Chandrabose, was directed to be released on bail as per order of this Court dated 29.07.2019 and made in CrI.M.P.No.9172 of 2019 in CrI.A No.425 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

CORAM:

THE HON'BLE Mr. JUSTICE N.SESHASAYEE

CrI.A.No.425 of 2019

Arivukumar @ Arivazhgan ... Appellant/Accused

Versus

State represented by
The Inspector of Police,
V3, J.J.Nagar Police Station,
Chennai.

(Crime No.352 of 2016)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to set aside the order of conviction and sentence made in S.C.No.260 of 2016, dated 26.06.2019, on the file of the Hon'ble III Additional and Sessions Judge, Tiruvallur at Poonmallee and acquit the appellant.

For Appellant :Mr.A.E.Ravichandran

For Respondent :Mr.Leonard Arul Joseph Selvam
Government Advocate (CrI.Side)

JUDGEMENT

The sole accused who was charged for the offences under Section 341, 294(b) and 302 IPC has appealed to this Court against a judgement convicting him for offences under Section 304(2) IPC and also the sentence imposed on him to undergo 7 years R.I and a fine of Rs.5000/- and to undergo 6 months R.I.



if the appellant defaults in paying the fine amount. The appellant, however, was acquitted of charges under Section 341 and 294(b) IPC.

2.1 The case of the prosecution commences with a complaint preferred by P.W.1, the mother of the victim given at 08.00 a.m. on 30.05.2016. It narrates that on the previous day, i.e., on 29.05.2016 at about 15.00 hours when the family of the victim comprising his parents, elder sister and himself were preparing to go for some festival in their native place, the accused left the house informing his departure to his friends, and no sooner the parents and the sister of the victim heard an alarm from the victim, and they rushed to see what had happened. There they saw the accused pushing his victim, owing to which the victim fell on the ground. He is stated to have suffered a bleeding injury to the back of his head. He was taken to the nearby Raj Hospital, from where he was shifted to Rajiv Gandhi Government hospital at around 8.30 p.m. in the night, and on the following morning at about 2.45 a.m he died. P.W.1 also explains the delay in preferring the complaint in her very complaint. She would state that soon after the occurrence had taken place, D.W.1, the mother of the accused, had approached her and requested that a squabble between friends need not be made an issue, and hence she did not prefer a complaint. She also stated in her complaint that at the time when she admitted her son in the Rajiv Gandhi Government hospital, she had informed the doctors that her son had suffered injuries in a road accident and that she made a wrong statement essentially in deference to the request of the mother of the accused.

2.2 Receiving the complaint, P.W.12 registered Ext.P.8 FIR, and began his investigation. He visited the scene of occurrence (hereinafter SoC) and prepared Ext.P.2 Observation Mahazar and Ext.P.9 rough sketch. Then, he proceeded to the Rajiv Gandhi Government hospital and conducted inquest on the body of the victim and prepared his Ext.P.10 Inquest Report. He also arrested the accused and remanded him to judicial custody. He recorded the statements of various witnesses including the parents and sister of the victim besides, P.W.7 the doctor who issued Ext.P.3 Accident Register at Rajiv Gandhi Government hospital and D.W.10, the Doctor, who conducted autopsy on the body of the victim and provided Ext.P.6 Post Mortem report. On concluding his investigation, he laid the charges for offences under Section 341, 294(b) and 302 IPC.



3. The learned Magistrate then committed the case to Sessions, where the III Additional Sessions Judge, Tiruvallur framed charges as below:

Charges against the accused	Section(s)
Wrongful restraint	341 IPC
For uttering obscene words	294 (b)
Murder	302

4. During trial, the prosecution examined 12 witnesses, of whom the parents, and the sister of the victim were examined as P.W.1 to P.W.3. Of the remaining witnesses P.W.7 and P.W.10 are the doctors who have respectively issued Ext.P.3 Accident Register, and Ext.P.6 Post Mortem report. P.W.12 is the investigating officer himself. On appreciating the evidence before him, the learned Sessions Judge acquitted the accused of charges under Section 341 and 294(b) and convicted him for offences under Section 304(2) and sentenced him as above.

5. The learned counsel for the appellant/accused submitted that the learned Sessions Judge has missed few critical aspects in the case of the prosecution which brings to light the material contradictions in this case and listed:

- (a) P.W.1's initial submission is that her son had suffered a road accident and maintained this line of her version till about 09.00 p.m. on the night of the date of occurrence as could be seen from Ext.P.3 AR copy. The story of accused pushing the victim comes only on the following morning. The incongruency here is far too glaring, that the explanation she offers to cover it up in her complaint statement is too inadequate.
- (b) According to P.W.1 and P.W.3, they heard an alarm at 03.00 p.m. in the afternoon on the date of occurrence, and they rushed to see the same from the first floor of the building where they are residing through the cement-grill. However, in Ext.P.2 Observation Magazar, the Investigator did not even indicate any such grill to enable P.W.1 and P.W.3 to witness the occurrence.
- (c) The occurrence had taken place in broad day light in a street, and it is surprising that it was not witnessed by anybody other than P.W.1 to P.W.3.
- (d) Accordingly to P.W.2, by the time they arrived to the SoC his son, the victim was already removed to nearby Raj Hospital by his friend. In deed, he makes a categorical statement that his son went in a motor cycle along with



(e) Raj Hospital is at a walkable distance from the SoC and is also opposite to the JJ Police Station. However, no complaint was made to the Police Station immediately.

(g) P.W.1 and P.W.2 were categorical that the victim was taken to Raj Hospital at the first instance, where he was given treatment for close to 5 hours, but the Investigator who merely needed to cross the road to collect the statement from the Raj Hospital, has chosen not to do so. No Accident Register or statement of any of the physician at Raj hospital was recorded.

(i) Both P.W.1 and P.W.2 admit that the victim earlier obtained treatment for a certain disease, and the investigator has not focused on it correctly. P.W.2 in fact was more candid than his wife P.W.1 on this point, when he says that the victim did have issues of bleeding from the nose. Here, P.W.10, who conducted autopsy has testified that the victim has died of bleeding due to the head injury.

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6. The learned Government Advocate (Crl.Side) submitted that the prosecution in deed has been able to establish the guilt of the appellant beyond reasonable doubt. P.W.1 to P.W.3 are eye-witnesses, who have actually seen the victim being pushed by the appellant, and speak to the injury, his initial admission in Raj Hospital, and also the treatment attempted to be given at Rajiv Gandhi Government hospital. So far as the delay in preferring Ext.P.1 complaint goes, P.W.1 does explain the same. After all it is the admitted fact that even by the defence that the accused is a young man from the neighbourhood, and according to P.W.1, the mother of the appellant had requested the former not to make the occurrence an issue. The initial courtesy to preserve relationship with the neighbours was given up only when the complainant realized the seriousness of the injury, argued the counsel.

7. After weighing the rival submissions, this Court is puzzled to find certain fundamental flaws which according to it creates a deep dent in the quality of the prosecution case:

- The first of the most glaring contradictions is about the number of injuries on the body of the victim. According to Ext.P.3, Accident Register issued by P.W.7, the doctor attached to the Rajiv Gandhi Government hospital, there was only one external injury on the body of the victim, and this is noted as a bleeding injury on the back of the victim's head, and within about 5 hours, the victim died. However, when P.W.10, conducted autopsy, he finds as many as 8 injuries and they are listed as below.

"1. Irregular dark red abrasions: a) 1 x 0.5 cm on the right 2nd toe; b) 1 x 0.5 cm on the right 3rd toe; c) 1 x 0.5 cm on the right 4th toe; d) 2 x 0.5 cm on the back of middle third of left forearm; e) 4 x 3 cm on the left occipital region of the scalp; f) 1 x 1 cm on the left temporal region of the scalp; 1 x 0.5 cm (2 in no.) on the left parietal region of scalp.

2. Diffuse dark red contusion around upper and lower eyelids of left eye.

3. Dark red contusion 5 x 3 cm x muscle deep on the right shoulder.

4. Dark red contusion 7 x 5 cm x muscle deep on the lower half of right side of chest.

5. Dark red contusion 3 x 2 cm x muscle deep on the inner aspect of middle third right thigh.

6. Dark red contusion 10 x 2 cm x muscle deep



Necessarily, this Court has to hold that the prosecution has failed to establish the guilt of the appellant beyond all reasonable doubts.

9. In the result, this Court sets aside the judgement of the learned III Additional Sessions Court, Tiruvallur at Poonamallee, convicting and sentencing the appellant Vide its judgement in S.C.No.260 of 2016 on 26.06.2019.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

tsg

To

1. The III Additional Sessions Judge,
Tiruvallur at Poonamalle.
2. -Do- The Principal Sessions Judge,
Tiruvallur.
3. The Judicial Magistrate,
Ambattur.
4. -Do- Thro The Chief Judicial Magistrate,
Tiruvallur.
5. The Inspector of Police,
V3, J.J. Nagar Police Station,
Chennai.
6. The Superintendent,
Central Prison, Puzhal,
Chennai.
7. The Public Prosecutor,
High Court,
Madras.



Copy to

The Section officer,
Criminal Section,
High Court, Madras.

+1cc to M/s.A.E.Ravichadran, Advocate Sr.10948

Crl.A.No.425 of 2019

bp[co]
srg 17/05/2022