



Bail Slip

The Appellant/Sole Accused Rasu @ Subbiah S/o. Kamatchi was directed to be released on bail order of this Court, dated 08/08/2019 made in Crl MP(MD) .No.6632 of 2019 in Crl.A(MD) .No.109 of 2019.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.A. (MD)No.109 of 2019

Rasu @ Subbaiah

...Appellant / Sole Accused

Vs.

State rep. by
The Inspector of Police,
Devathanapatti Police Station,
Theni District.
(Crime No.299 of 2013)

... Respondent / complainant.

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment of conviction and sentence passed by the Additional District Court (Fast Track), Theni made in S.C.No.13 of 2015 dated 18.12.2018.

For Appellants : Mr.S.Vinayak
For Respondent : Mr.T.Senthilkumar,
Additional Public Prosecutor.

JUDGMENT

R.SUBRAMANIAN, J.

AND

N.SATHISH KUMAR, J.

This appeal has been filed by the appellant / sole accused as against the conviction and sentence, dated 18.12.2018, made in S.C.No.13 of 2015, by the learned Additional District Judge (Fast Track), Theni .

2. The appellant / sole accused stood convicted and sentenced to undergo imprisonment as detailed hereunder:

Conviction U/s.	Sentence	Fine amount
201 IPC	To undergo two years rigorous imprisonment	To pay a fine of Rs.2,000/-, in default, to undergo six months simple imprisonment.



302 IPC

To undergo life imprisonment

To pay a fine of Rs.5,000/-, in default, to undergo one year simple imprisonment.

(Both the sentences were directed to run concurrently.)

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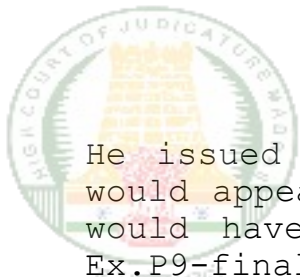
3. The brief facts of the prosecution is as follows:

The deceased Muthukrishnan is the father of P.W.1. The deceased was working under P.W.4 and there was a dispute between the accused and the deceased for sharing the water to their lands. Prior to the occurrence, both were involved in an altercation over the sharing of the water. On 18.11.2012, the deceased went to the land for diverting the water. He left the house at 7.00 a.m. in the morning. As he did not return till the next day, P.W.1 lodged a complaint-Ex.P1 before the respondent police. P.W.3 on the date of occurrence came to the field at about 11.00 p.m. and he saw the accused hitting the deceased on his head by spade. However, he did not inform the occurrence to any one. P.W.30, Inspector of Police after receiving Ex.P1, registered a case in Crime No.299 of 2013 for man missing under Ex.P.18 and took up the case for investigation and examined the witnesses and recorded statements. On 20.11.2013, after the dead body was found by P.W.1 and others, the case was altered to Section 302 IPC under Ex.P13-alteration report. Thereafter he went to the place of occurrence and prepared an Observation Mahazar-Ex.P.5 in the presence of P.W.20-VAO and also seized material objects under MO.1 to M.O.6 in the place of occurrence and has conducted inquest over the dead body in the presence of witnesses and prepared inquest report under Ex.P15 and sent the body for post-mortem with requisition for conducting autopsy over the dead body. P.W.26, the medical officer attached to the Madurai Medical College conducted autopsy and found the following injuries:

'1.Lacerated injuries of sizes 6cms x 6cms x bone depth, 8 cms x 6 cms x bone depth seen over the left side of the back of the head with the surrounding dark red coloured bruise through which brain matters were seen oozing out.

2. On dissection of scalp, skull and dura:- Comminuted fractures of sizes 10 cms x 5 cms x through and through, 6 cms x 8 cms x through and through seen over left side of the occipital bone with the surrounding bruise injuring the underlying brain, vessels and nerves. Comminuted fracture of size 12 cms x 6 cms x through and through seen over the anterior cranial fossa with the surrounding bruise injuring the overlying brain, vessels and nerves. Comminuted fracture of size 8 cms x 4 cms x through and through seen over the middle cranial fossa, with the surrounding bruise injuring the overlying brain, vessels and nerves.

Diffuse subarachnoid hemorrhage seen over both the cerebral hemispheres."



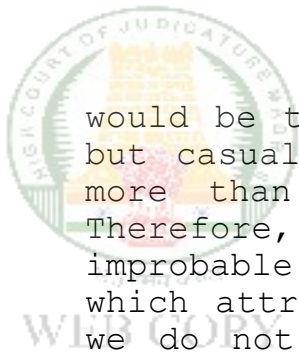
He issued Ex.P8 Post-mortem certificate opining that the deceased would appear to have died due to cranio cerebral injuries and death would have occurred 33 to 41 hours prior to autopsy and issued Ex.P9-final report. Thereafter the investigating officer proceeded with the investigation, arrested the accused and recorded his confession. The admissible portion of confession of the accused is marked as Ex.P.4. Pursuant to the same, he has seized all the material objects and forwarded the same to the Court and also sent the accused to judicial custody. After obtaining a report from the Forensic Department, he laid the final report.

4. The prosecution, in order to bring home the guilt of the accused examined as many as 23 witnesses as P.W.1 to P.W.31, marked 18 documents as Ex.P1 to P18 and 6 material objects as M.O.1 to M.O.6. After analyzing the oral and documentary evidence, the trial Court has found the accused guilty under Section 302 IPC. Assailing the same, the present appeal is filed.

5. The learned counsel appearing for the appellant would contend that except P.W.3's evidence there are no other witnesses. P.W.3's evidence also unbelievable and he has been included only in order to show that there was an eyewitness. His evidence is attached with artificiality and therefore, the same cannot be given credence. Except P.W.3's evidence, there is no other evidence to prove the complicity of the accused with the crime. Hence, seeks indulgence of the Court to extend the benefit of doubt to the accused.

6. This Court heard the submissions of learned Additional Public Prosecutor appearing for the respondent and also perused the entire materials.

7. The motive projected by the prosecution is that there was a dispute between the deceased and accused over sharing of the water in their respective field. Though P.W.4 and P.W.2 spoken about the previous altercation between the accused and the deceased over sharing of the water, there was no evidence available on record to show that such altercation in fact led to the serious motive to do away the accused. The prosecution has relied upon the evidence of P.W.3 stated to be eyewitness of the occurrence. The alleged occurrence took place at about 11.00 p.m. in the field, where the deceased went to divert the water. P.W.3 in his evidence has stated that while he was going to the field he saw the accused hitting the deceased on his head by spade. However, P.W.3 did not inform the same to any one even to Panchayatars or Villagers. He did not bother to inform the occurrence to the sons of the deceased also. His evidence also further indicates that he has informed the said occurrence only after the funeral was over at about 10.30 p.m. P.W.3 is not a stranger to both the accused and deceased. He also lives in the same village. If such an incident was witnessed and a known person was injured, the normal conduct of any human being



would be to rush to save the deceased or at least to raise alarm, but casually going to his house and not informing to any one for more than a day itself is against the normal human conduct. Therefore, the evidence of P.W.3 is highly unbelievable and improbable to base the conviction for the charge under Section 302 which attracts the capital punishment. Except the above evidence, we do not find any other incriminating materials as against the accused from all other evidence as well as the materials produced by the prosecution. Even in the seizure, there was no incriminating material found against the accused. No bloodstain was found in the spade said to have been seized from the accused.

8. In such view of the matter, we are of the view that it is highly unsafe to believe the evidence of P.W.3 to convict the accused for the offence under Section 302 IPC and further we also find serious contradictions in the Investigating Officer's evidence and also P.W.3's evidence as to the time at which he is informed the death or occurrence. While the Investigating Officer-P.W.30 would claim that he arrested the accused at 3.00 p.m. on 20.11.2013, P.W.3 has deposed that he informed the sons of the deceased regarding the attack by the accused only about 10.30 p.m. on 20.11.2013. This contradiction is so vital that it shakes the foundation of the prosecution case. Therefore, we are of the view that such evidence is highly unreliable and the same cannot be given any importance. Therefore, we are inclined to set aside the judgment of the Trial Court and acquit the appellant herein.

9. In the result, the Criminal Appeal stands allowed and the conviction and sentence imposed on the appellant/ sole accused, by Judgment dated 18.12.2018, made in S.C.No.13 of 2015, on the file of Additional District Court (Fast Track), Theni are set aside and the appellant / sole accused is acquitted. Fine amount, if any, paid by the appellant shall be refunded to him. Bail bond, if any, executed by him and the sureties shall stand terminated.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsm

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 Additional District Judge,
The Additional District Court (Fast Track), Theni.

2.The Judicial Magistrate, Periyakulam.

3.The Chief Judicial Magistrate, Theni.

4.The Superintendent,
Central Prison,
Madurai.

5.The Inspector of Police,
Devathanapatti Police Station,
Theni District.

6.The Director General of Police,
Mylapur,
Chennai.

7.The District Collector,
Theni District.

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

Copy to

The Record Keeper, Criminal Records,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.JOEL PAUL ANTONY, Advocate (SR-6427[F] dated
16/02/2022)

Crl.A. (MD)No.109 of 2019
15.02.2022

RK(25/02/2022) 5P 12C