



BAIL SLIP

The Appellant/Accused No.1 Kombu Raj, Male, Aged about 63 years, S/o.Koodalinga Gounder, is released on bail order dated 27.11.2019 made in CRL MP(MD).No.9486 of 2019 in Crl.A(MD).No.188 of 2019.

The Appellants/Accused Nos 2&3 Petchi Raj, Male, Aged about 43 years, s/o.Kombu Raj & Ponnu Thai, Female, Aged about 63 years, W/O.Kombu Raj, are released on bail order dated 30.04.2019 made in CRL MP(MD).No.4143 of 2019 in Crl.A(MD).No.188 of 2019.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.03.2022

DELIVERED ON : 07.04.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

Crl.A. (MD)No.188 of 2019

1.Kombu Raj

2.Petchi Raj

3.Ponnuthai

... Appellants / Accused Nos.1 to 3

Vs.

The State Rep. by:
The Inspector of Police,
Thattaparai Police Station,
Thoothukudi District.
(Crime No.97/2016)

... Respondent / complainant

PRAYER: Criminal Appeal filed under Section 374 of Cr.P.C. against the judgment of conviction and sentence passed by the learned Additional District Sessions Judge, Thoothukudi, Thoothukudi District in S.C.No.172 of 2017 dated 05.04.2019.

For Appellants : Mr.R.Anand

For Respondent : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor.

**JUDGMENT**

R.SUBRAMANIAN, J.
AND
N.SATHISH KUMAR, J.

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Aggrieved over the conviction and sentence passed by the learned Additional District Sessions Judge, Thoothukudi, Thoothukudi District in S.C.No.172 of 2017 dated 05.04.2019, the present appeal came to be filed by the appellants.

2. The appellants/A-1, A-2 and A3 stood convicted and sentenced to undergo imprisonment as detailed hereunder:

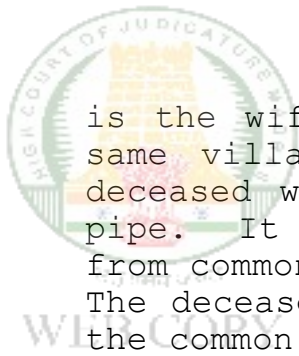
	Conviction U/s.	Sentence of imprisonment	Fine amount
A-1	294(b) IPC	To undergo three months imprisonment	Rs.1,000/- in default, to undergo three months simple imprisonment
	302 IPC	To undergo life imprisonment	Rs.1,000/- in default, to undergo six months simple imprisonment
	506(ii)	To undergo seven years imprisonment	Rs.1,000/- in default to undergo six months simple imprisonment
A-2 & A3	294(b)	To undergo three months imprisonment	Rs.1,000/- in default, to undergo three months simple imprisonment
	342 IPC	To undergo one year imprisonment	Rs.1,000/- in default, to undergo three months simple imprisonment
	506(ii)	To undergo seven years imprisonment	Rs.1,000/- in default to undergo six months simple imprisonment

(All the sentences were directed to run concurrently.)

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

The deceased is the husband of P.W.1. A2 is the son of A1. A3

<https://hcservices.ecourts.gov.in/hcservices/>



is the wife of A1. The deceased and accused are residing in the same village. There was a dispute between the accused and the deceased with regard to collecting of water from the common water pipe. It is the case of the prosecution that the drawing of water from common pipe is depending upon the payment of tax to the temple. The deceased objected the accused's family from drawing of water in the common pipe. When the matter stood thus, on 27.01.2016 at about 6.30 p.m, when the deceased was coming from South to North in front of A1's house, A1 had told the deceased that because of him they could not draw the water. A1's right leg was amputated and he was using aluminum crutches. When A1 questioned the deceased, A2 and A3 held the deceased making him immobile. A1 swang the crutches with his left hand across the face of the deceased causing a deep contusion on the right side of the head of the deceased. Immediately, the deceased fell down and become unconscious. P.W.1 informed P.W.2, who is the son of P.W.1 and P.W.1 with the help of P.W.6 and one Paramasivan took the deceased to the Government Hospital by engaging an ambulance. However, the deceased succumbed to injuries in the hospital. P.W.6 has also witnessed the occurrence. Thereafter, P.W.1 lodged a complaint-Ex.P1 with P.W.11. The sub inspector of police received the complaint at about 9.30 p.m. and registered a case in Crime No.97 of 2016 for the offence under Sections 294(b), 342, 302 and 506(ii) IPC under Ex.P.11-FIR and forwarded the copy to the Superior Officer and to the Court.

4. P.W.14-the Investigating Officer, after receipt of the FIR went to the place of occurrence early morning at 1.30 a.m., prepared observation mahazar-Ex.P7 in the presence of P.W.7 and drew a rough sketch under Ex.P15. P.W.3 Medical Officer attached to the Government Hospital, Thoothukudi, admitted the deceased and noted 10 X 6 cm contusion on the right head and issued Ex.P2 and also given report to admit the deceased in emergency ward under EX.P3. P.W.4-Doctor working in the same hospital has sent death intimation to the police. P.W.14 in continuation of his investigation conducted inquest over the dead body and prepare inquest report under Ex.P16 and gave a requisition to conduct autopsy.

5. P.W.5 conducted autopsy and found the following injuries:

"On dissection of Scalp, Skull and Dura:

Right half of scalp contused. A crack fracture of length 10 cms seen in the right parietal and occipital bones. Sub dural haematoma of weight about 20 gms seen in the both sides parietal and occipital lobes. Sub arachnoid haemorrhage seen over the both parietal lobes, both occipital lobes and right frontal lobe."

and issued Ex.P6-postmortem certificate opining that the deceased would appear to have died of complications of blunt injury to the head. Death would have occurred 12-15 hrs prior to the autopsy.



6. P.W.14 in continuation of his investigation arrested the accused and recorded his confession. After examining the witnesses and after collecting all the material objects, P.W.14 finally laid the final report against the accused under Sections 294(b), 302, 506 (ii) and 342 IPC.

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7. The prosecution, in order to bring home the guilt of the accused examined as many as 14 witnesses as P.W.1 to P.W.14, marked 16 documents as Ex.P1 to Ex.P.16 and the material objects as M.O.1 to M.O.3.

8. The trial Court, after considering the oral and documentary evidence, has found the accused guilty and accordingly, convicted and sentenced the accused as stated supra. Aggrieved over the said conviction and sentence, the appellants have come up with this appeal.

9. The learned counsel appearing for the appellants submitted that P.W.1 and 6 would not have been eyewitness to the occurrence. The deceased is aged about 72 years and he died only due to fall on the cement surface. The evidence of P.W.1 and P.W.6 that A2 and A3 caught hold the deceased, at that time A1 allegedly used his left hand and caused injuries by using Aluminum crutches on the head of the deceased, is highly improbable. Admittedly, A1's right leg was amputated and he was using aluminum crutches for his movement. Therefore, A1 using his left hand and hitting the deceased is highly improbable. Though A2 and A3 allegedly caught hold the deceased, they have not suffered any injury on them. His further contention is that the presence of A2 and A3 in the place of occurrence as alleged by P.W.1 and P.W.6 is highly doubtful. They have been implicated falsely. Though they have crossed the police station while going to the hospital, they have not informed to the police immediately after the occurrence and therefore, the conduct of P.W.1 and P.W.2 makes their evidence doubtful. The prosecution has not explained the delay in lodging the FIR. In the AR copy, it is stated by the doctor that the deceased was attacked with stick, whereas the evidence of P.W.1 and P.W.6 stated that the accused attacked the deceased using his aluminum crutches. Hence, it is the contention that their evidence is not believable. In any event, it is his contention that convicting A2 and A3 for seven years for the offences under section 506(ii) IPC is without any evidence and there is no evidence to convict them for the offence under Section 342 IPC.

10. Further, it is his contention that P.W.1's evidence itself indicates that there was a quarrel between the accused and the deceased and the entire occurrence appears to have taken place in a sudden quarrel. Therefore, the charge under section 302 IPC would not be attracted and at the most, the offence would be attracted only under section 304(ii) IPC and hence, prays for allowing the appeal.

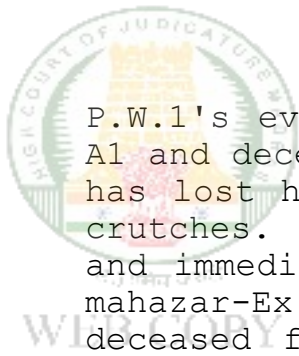


11. The learned Additional Public Prosecutor submitted that the evidence of P.W.1 and P.W.6, who are eyewitnesses, clearly show that the accused has caused head injury. The learned Additional Public Prosecutor fairly submitted that the caught holding theory projected by the prosecution as against A2 and A3 may be improper but the fact remains that causing of injuries on the deceased by A1 was clearly established by P.W.1 and P.W.6. P.W.2 also immediately came to the place of occurrence and took the injured to the hospital. P.W.3, Medical Officer's evidence also clearly proves the fact that the deceased was admitted in the hospital on 27.10.2016 at 8.05 p.m., and he has noted 10 x 6 cm contusion on the head of the deceased. The deceased succumbed to the injuries at 9.00 p.m. on the same day. Death intimation was also given by P.W.4. Postmortem report clearly shows that the nature of the injury sustained on the head. Hence, submitted, the learned Additional Public Prosecutor, that the prosecution has established the guilt beyond all reasonable doubt as against A1.

12. We have given our anxious consideration to the submissions made by the learned counsel on either side and perused the materials.

13. P.W.1-wife of the deceased and P.W.6, who is the resident of the same village were examined as eyewitnesses. The evidence of P.W.1 and P.W.6 indicates that there was some dispute in respect of drawing water from common pipeline. P.W.1 has stated in her evidence that A1 abused the deceased in front of the accused's house and A2 and A3 caught hold the deceased and A1 with the aluminium crutches hit the deceased on the head. As a result, the deceased succumbed to injuries. P.W.6 also supported the version of P.W.1. There was no motive whatever suggested for false implication by P.W.6. P.W.1 has spoken that A2 and A3 caught hold the deceased and A1 by using his left hand caused head injuries. Her evidence with regard to A2 and A3 holding the deceased to facilitate A1 to cause injury is improbable, when A2 and A3 held the deceased in both sides, without even any injury on them, the deceased causing injury on the head of the deceased is not possible. Therefore, the evidence of P.W.1 in that regard is highly doubtful which has been fortified by the independent witnesses.

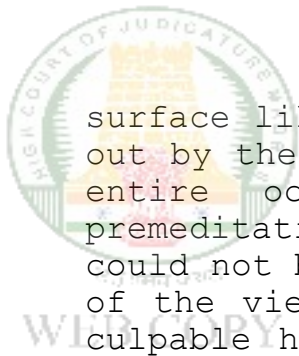
14. P.W.6 in his cross examination clearly admitted that at the time of quarrel between A1 and deceased, A2 and A3 were drawing water in the pipeline. Therefore, the evidence of P.W.1 against A2 and A3 is unreliable. At the same time, merely because, the evidence of P.W.1 is disbelieved in one aspect, we are unable to reject her entire evidence in toto, since the doctrine of falsus in uno falsus in omnibus is applicable to India. But the fact remains that she was also present in the village and therefore, her presence cannot be doubted. The occurrence took place in the evening.



P.W.1's evidence clearly indicates that there were quarrel between A1 and deceased for over 10 minutes. A1 is a handicapped person, he has lost his right leg and for his movement, he was using aluminum crutches. Due to sudden quarrel, he beat the deceased on the head and immediately, the deceased fell on the ground. The observation mahazar-Ex.P7 and evidence of P.W.6 clearly indicate that the deceased fell down on the cement road. The evidence of Medical Officer-P.W.3 indicates that the deceased was immediately taken to the hospital and a contusion was found measuring 10 x 6 cm on the right side head. Thereafter, the deceased succumbed to injuries at 9.00 p.m. FIR has been registered immediately and reached to the Court.

15. From the nature of the occurrence, it is clear that there was quarrel between deceased and A1. Therefore, merely because the evidence of P.W.1 is partly disbelieved, the alleged attack with M.O.1 stick cannot be doubted. Admittedly, A1 already lost his right leg, he was using aluminum crutches for his movement and he caused injury by using the the left side crutches with his left hand. The deceased is aged about 72 years and he fell on the cement road. The fall on cement surface would also have aggravated the injuries further. Postmortem Doctor's evidence indicates that right half of scalp contused and there was a crack fracture of length 10cms in the right parietal and occipital bones. The nature of the injury on the occipital bones clearly shows that there is a possibility of such injury by fall on the cement surface also which cannot be ruled out. The entire evidence shows that there was some petty dispute with regard to the drawing of water which resulted quarrel followed by single blow on the head of the deceased.

16. Further, the occurrence was a result of altercation between the deceased and the accused for 10 minutes and the injury is a result of sudden fight, without any premeditation, in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. Therefore, the act of the accused, causing head injury which aggravated due to fall on the cement road, certainly fall within the exception 4 of Section 300 IPC. The evidence of P.W.1 clearly shows that the altercation between A1 and deceased continued for 10 minutes. The evidence of P.W.2- son of the deceased also clearly indicates that P.W.1 informed him immediately and in his evidence, he never stated about the previous motive. Therefore, from the analysis of evidence of P.W.1 and P.W.6, it is clear that the occurrence took place in a sudden quarrel without any premeditation. A1 after causing injury with his left side crutches, immediately left the place and he has not taken any undue advantage or acted in a cruel or unusual manner. The deceased fell on the cement road, which resulted injury on the parietal area. If the left side head was attacked, the injuries would have been only on the parietal area, but the injury in the occipital area certainly would have been result of fall on the hard



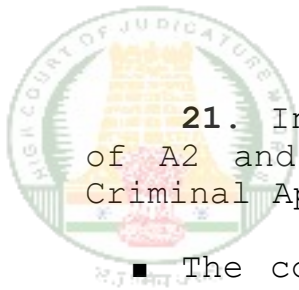
surface like cement road. This also cannot be ruled out as pointed out by the learned counsel for the appellants. As we find that the entire occurrence is a result of altercation and without premeditation, the intention of the accused to murder the deceased could not be gathered from the evidence of P.W.1. Therefore, we are of the view that the act of the accused would certainly amount to culpable homicide and not murder. The offender has not taken any undue advantage and he also lost his right leg, the person is handicapped, small altercation is normally triggers more anxiety and anger. That cannot be also ruled out. However, causing the head injury with M.O.1 aluminum crutches, the knowledge can be certainly attributed to the accused that such act is likely to cause death.

17. Accordingly, we are of the view that A1 could be convicted for the offence under Section 304(ii) IPC for the culpable homicide and not murder. Taking note of the injury, single blow caused on the head by crutches and the fact that A1, who is already handicapped, has not taken any undue advantage, has not acted in a cruel or unusual manner and the intention to kill is lacking, his act certainly falls within the ambit of Section 304(ii) IPC.

18. Taking into consideration of the entire gamut of evidence, nature of the quarrel and the petty dispute between them, we are of the view that the the first appellant/A1 is liable to be punished under Section 304(ii) IPC instead of under Section 302 IPC. As far as the offence under Sections 294(b) IPC is concerned, when the evidence of P.W.1 and P.W.6 have been carefully seen, both in unison stated that the accused abused the deceased with filthy language and therefore, the offence under section 294(b) IPC is proved by the prosecution. Therefore, the conviction and sentence imposed by the trial Court for the offence under Section 294(b) IPC against the first appellant/A1 is confirmed.

19. As far as 506(ii) IPC is concerned, we are not able to sustain the conviction for the offence under Section 506(ii) IPC as against A1. The evidence of P.W.1 and P.W.6 do not establish the charge under Section 506(ii) IPC to maintain conviction for the offence under 506(ii) IPC as against A1, but their evidence would show that A1 threatened the deceased. As the intimidation was not serious and were general abuse without threat being real danger to life, charge under Section 506(ii) IPC is not made out against A1. Accordingly, the conviction rendered by the trial Court for the offence under Section 506(ii) IPC as against A1 is set aside.

20. As far as A2 and A3 are concerned, as their presence at the time of occurrence itself has not been established and at that time, they were drawing water in the pipe, A2 and A3 are acquitted from all the charges.



21. In the result, this Criminal Appeal is allowed in respect of A2 and A3 is concerned and as far as A1 is concerned, this Criminal Appeal is partly allowed in the following terms:

- The conviction and sentence imposed by the Trial Court on the first appellant/A1 under Section 302 IPC is set aside and instead, the first appellant/A1 is convicted under Section 304 (ii) IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- [Rupees One Thousand only], in default, to undergo simple imprisonment for three months.
- The conviction and sentence imposed by the trial Court on the first appellant/A1 under Section 294(b) IPC is confirmed.
- The conviction and sentence imposed by the trial Court on the first appellant/A1 under Section 506(ii) IPC is set aside.
- The respondent police is directed to secure the first appellant/A1 viz., Kombu Raj, S/o.Koodalinga Gounder, No.4/161, Middle Street, Varadharajapuram, Umarikottai, Thoothukudi to custody, to undergo the remaining period of sentence. Both the sentences shall run concurrently. The period of sentence already undergone by the first appellant/A1 is ordered to be set off under Section 428 of the Code of Criminal Procedure. Bail bond executed by the first appellant, if any, shall stand cancelled.
- The conviction and sentence imposed by the trial Court on the appellants 2 and 3/A2 and A3 are set aside and the appellants 2 and 3/A2 and A3 are acquitted from all the charges. Fine amount, if any, paid by the appellants 2 and 3/A2 and A3 shall be refunded to them. Bail bond, if any, executed by them and the sureties shall stand terminated.

Sd/-

Assistant Registrar (CS-I)

// 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 Sessions Judge,
Thoothukudi, Thoothukudi District.

2.The Judicial Magistrate No.I,
Thoothukudi.

3.Do through
The Chief Judicial Magistrate, Thoothukudi.

4.The Inspector of Police,
Thattaparai Police Station,
Thoothukudi District.

5.The Inspector of Police,
Tirunelveli Taluk Police Station,
Tirunelveli District.

6.The Superintendent,
Central Prison, Palayamkottai.

7.The Superintendent,
Central Prison for Women,
Madurai.

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

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

Crl.A. (MD) No.188 of 2019
07.04.2022

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