



Crl.A.734 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 11.12.2023**

CORAM:

**The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

**Crl.A.No.734 of 2018**

Mariappam

...Appellant/ Accused

-Vs-

State. Inspector of Police  
Salem Town Police Station  
Salem District  
Crime No.164 of 2016

...Respondent / Complainant

**Prayer:-** Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, 1973 to call for the records made in S.C.No.411 of 2016 on the file of the learned III Additional Sessions Court, Salem by order dated 31.10.2018.

For Appellant : Mr.A.Padmanaban

For Respondent : Ms.G.V.Kasthuri  
Additional Public prosecutor



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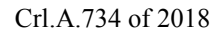
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## **JUDGMENT**

The Criminal Appeal has been filed to set aside the judgment of conviction passed by the learned III Additional Sessions Judge, Salem in S.C.No.411 of 2018 dated 31.10.2018.

2. The learned Counsel for the Appellant submitted that the Appellant has been charged for the offences under Section 294(b) and 304(ii) of I.P.C. Since the Accused denied the charges, the learned III Additional Sessions Judge, Salem ordered trial. During trial, the prosecution had examined P.W-1 to P.W-12 and marked Ex.P-1 to Ex.P-12. On appreciation of evidence, the learned III Additional Sessions Judge, Salem had convicted the Accused for offences under Section 294(b) and 304(ii) of I.P.C.

3. For the offences under Section 294(b) of I.P.C, the Accused was imposed with a fine of Rs.500/- in default to undergo simple imprisonment for a period of one month. For the offence under Section 304(ii) of I.P.C, the Accused was sentenced to undergo 10 years of rigorous imprisonment and to pay a fine of Rs.1000/-, in default to under 3 months simple



**4. Brief facts which are necessary for the disposal of this Criminal Appeal are as follows:-**

4.1. On 03.05.2016, by around 9.15 p.m. the Deceased had gone to TASMAC outlet near Anandha Bridge near Kamala Hospital for consuming alcohol. The Appellant, in this case, who was the acquaintance of the Deceased sought a share from the alcohol that was consumed by the Deceased. Since he refused to part with the share of the liquor, the Appellant/Accused in this case, had entered into quarrel with the Deceased thereby he is alleged to have pushed him to ground. After he fell down, the Accused was alleged to have hit the head of the Deceased on the cement slab of the platform causing head injuries to the Deceased.

4.2. The Deceased was taken home by his acquaintance. From home, the son of the deceased/P.W-1 and P.W-2 were alleged to have taken him to the Government Hospital, Salem. From the Government Hospital,



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Salem, P.W-1 had discharged his father, the injured person (since deceased) and brought him to Manipal Hospital, Salem. Since the fee charged by the Manipal Hospital is beyond the paying capacity of P.W-1, he again brought him back to the Government Hospital for treatment. Subsequently, the injured (since deceased) died on 07.05.2016. The case was registered, based on the complaint given by P.W-1/Son of the Deceased. At that time, the case was registered as Suspicious under Section 174 of Cr.P.C. Subsequently on investigation after about 53 days from the date of the alleged occurrence, P.W-4 was alleged to have given the statement to the Investigation Officer that he had seen the Deceased being hit by the Accused. Therefore after 53 days of the occurrence, the Investigation Officer had altered the offence under Section 294(b) and 304(ii) of I.P.C and arrested the Accused. The Accused was alleged to have given confession statement to the V.A.O. The V.A.O was examined as P.W-6.

5. The learned Counsel for the Appellant submitted that the entire judgment was raised, based on the evidence of P.W-4. After concluding the trial, based on the appreciation of evidence, the learned III Additional Sessions Judge, Salem had convicted the Accused for the offences under



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Section 294(b) and 304(ii) of I.P.C.

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6. It is the submission of the learned Counsel for the Appellant that if, what had been stated by P.W-4/the neighbour was true, what prevented him from intervening, when there was clash between the Accused and the Deceased or in the alternative, to take the victim to the Hospital. He had not done so. Also, even after 53 days from the date of the occurrence, he remained silent. Therefore, the conduct of P.W-4 was suspicious. The learned III Additional Sessions Judge, Salem had failed to appreciate those facts and convicted the Accused based on the evidence of P.W-4 alone.

7. The learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W-1 who had given the complaint and the earliest document in this case, the admissions register. The Deceased was alleged to have fallen from the cycle after consuming liquor, that was the accident, registered as the earliest document. Whereas, it was subsequently altered as offences under Section 294(b) and 304(ii) of I.P.C., based on the statement of P.W-4.

8. It is the submission of the learned Counsel for the Appellant that



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the evidence of P.W-4 was unbelievable and cannot be trusted. Ex.P-8 was the earliest document, which mentions that the Deceased had fallen from the cycle on the ground of consuming Alcohol. The said suggestion was put to the witnesses by the learned Counsel for the defence. The Investigation officer/P.W-12 in this case had not explained the reason for the delay of 53 days by the P.W-4 and ignored the statement.

9. The learned Counsel for the Appellant invited the attention of this Court to the evidence of P.W-1 to P.W-4. Particularly, in the cross examination of the witnesses and also the evidence of Doctors, P.W-5, P.W-10 and P.W-11 and the evidence of P.W-12/Investigation Officer in the cross examination. When there were materials available in the cross examination, regarding the possibility of the Deceased suffered injuries after falling from the cycle, due to the influence of Alcohol. The learned Judge had ignored those facts and relied on the evidence of P.W-4.

10. It is the submission of the learned Counsel for the Appellant that evidence of P.W-4 was not trust worthy. If, what had been stated by him was to be believed, he should have either intervened or taken the injured Srinivasan to the Hospital. He had not taken the injured to the Hospital or



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to his residence. He was the neighbour of the Deceased and acquaintance of the deceased. Therefore it was the submission of the learned Counsel for the Appellant that the learned III Additional Sessions Judge, Salem convicting the Accused, based on the evidence of P.W-4 who claims to be an eye witness was unacceptable and perverse.

11. The learned Counsel for the Appellant further invited the attention of this Court to the reported decision, wherein the similar situation, the Hon'ble Supreme Court had rejected the evidence relied by the trial Court stating that there was delay of the said witnesses who happened to be living in the vicinity of the place of the residence of the deceased and who was acquaintance with the deceased, who had not reported the matter at the earliest opportunity to the Investigation officer. It is the submission of the learned Counsel for the Appellant that in the reported ruling, those are the facts where the witnesses remained silent for a period of 10 days. But in this case, the witness P.W-4 remained silent for more than 53 days. Therefore on the strength of the reported ruling, the learned Counsel for the Appellant seeks to set aside the judgment of conviction recorded by the learned III Additional Sessions Judge, Salem in S.C.No.411 of 2016 dated 30.10.2018.



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**WEB COPY** 12. The learned Additional Public Prosecutor by way of reply submitted that through P.W-1 to P.W-12 and Ex.P-1 to Ex.P-12, the prosecution was able to establish the case before the trial Court. The learned Additional Public Prosecutor invited the attention of this Court to the evidence of P.W-1 himself had raised the suspicion regarding the injuries suffered by the deceased. The person who fell off from the cycle when he had consumed liquor may not have such injuries. Therefore enquired about it. Only on enquiry, he came to know about the alleged occurrence and it was available in the evidence of P.W-1 and P.W-2.

13. The learned Additional Public Prosecutor invited the attention of this Court to the suggestion put by the learned Counsel for the defence to the Doctors who were examined as P.W-5, P.W-10 and P.W-11. They had denied the suggestion that falling from the cycle with the influence of the alcohol will not cause this much of injury. Therefore the judgment of conviction recorded by the learned III Additional Sessions Judge, Salem is not perverse and it is a well reasoned order does not warrant any interference by this Court. The learned Additional Public Prosecutor submits that the Appeal lacks merit and is to be dismissed.



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**Point for Consideration:**

*Whether the judgment of conviction recorded by the learned III Additional Sessions Judge, Salem in S.C.No.411 of 2016 dated 30.10.2018 is to be set aside as perverse.*

14. Heard the learned Counsel for the Appellant, Thiru.Padmanaban and the learned Additional Public Prosecutor, Mrs, G.V.Kasthuri. Perused the evidence of P.W-1 to P.W-12, Ex.P-1 to Ex.P-12 and the judgment of the learned III Additional Sessions Judge, Salem in S.C.No.411 of 2016 dated 30.10.2018.

15. In the light of the submissions made by the learned Counsel for the Appellant, the earliest document was Ex.P-8 which was the admission document registered, wherein it was stated that the injured, suffered injuries after falling from the cycle. Also in the evidence of P.W-1, it was found that, further having admitted the injured in Hospital, the P.W-1/Son of the injured wanted to have a better treatment for his father in a private Hospital. So, he discharged his Father/Injured from the Government Hospital and took him to a private Hospital in Salem, where the fee towards his father's treatment was not affordable to him and it was beyond his



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paying capacity. Therefore the Injured was again brought back to the Government Hospital, Salem. It is to be noted that the injuries suffered by the Deceased was in the head and he had already lost his consciousness. At that stage, the first one hour of treatment for the injuries is treated as golden hour by the Doctors to give better treatment. By the time the Injured was taken to the private Hospital and returned back, that golden hour was lost in transporting the grievously injured and unconscious man. Subsequently the injured died.

16. It is to be noted that P.W-4 was an acquaintance with the family of the Deceased. As a normal human conduct, he should have intervened or at least sought help of the passers or prevented the attack by the Accused. But he had not done so. At least after the scuffle, he should have taken the Injured, either to his residence or to the Hospital or should have reported the matter to the Police. But he had not done so. He had remained silent for almost 53 days, which was found to be unbelievable and unacceptable from the perspective of a normal human conduct particularly, when P.W-4 was acquaintance of family and also colleague of the Deceased. Therefore his behaviour as a witness is found not acceptable and therefore his evidence is to be rejected as not trustworthy. As rightly highlighted by the learned



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Counsel for the Appellant, the evidence of P.W-4 was not trust worthy.

Also, it is to be noted that the precious time/golden hour was lost in taking the Deceased to the Hospital while he was under the influence of alcohol, having suffered injury on his head shifted from Government Hospital to private Hospital and once again brought back to Government Hospital. The Investigation Officer having proceeded with the investigation on the strength of the statement of P.W-4 had altered the offence under Section 294(b) and 304(ii) of I.P.C. The evidence available before the learned III Additional Sessions Judge, Salem was not against the Accused except P.W-4. In the light of those circumstances, naturally the learned Sessions Judge ought to have acquitted the Accused.

17. In very many cases, the Hon'ble Supreme Court laid guidelines for the trial Judges that if there is possibility of acquittal, naturally the Accused is entitled to acquittal. Here even though, the records are otherwise, the learned Judge had convicted the Accused. It is found perverse. Therefore the same is set aside. The judgment of conviction recorded by the learned III Additional Sessions Judge, Salem in S.C.No.411 of 2016 dated 30.10.2018 is found perverse and set aside.



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**18. Point for consideration is answered in favour of the Appellant and against the prosecution. In the result, the Appeal is allowed.** The Appellant/Accused is acquitted.

The Bail bond if any executed by the Accused is to be cancelled, The fine imposed on the Accused is to be refunded.

**11.12.2023**

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Index : Yes/No

Speaking/Non-speaking order

To

1. The III Additional Sessions Judge,  
Salem
2. State. Inspector of Police  
Salem Town Police Station  
Salem District.
3. Section Officer, VR Records  
High Court of Madras, Chennai 600 104.
4. The Public Prosecutor  
Madras High Court, Chennai 600 104.

**SATHI KUMAR SUKUMARA KURUP, J.,**



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