



CRL.A(MD).No.454 of 2017

Bail Slip

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The Appellant/Sole Accused Aruljothi Valavan, S/o.Thirugnanam was directed to be released on bail of this Court order dated 14-11-2017 and made in CRL.MP(MD)No.10346, 10347 of 2017 in CRL.A(MD)No.454 of 2017.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12.12.2023

CORAM

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.454 of 2017

Aruljothi Valavan

.. Appellant / Accused No.1

Vs.

State,

Rep. by Inspector of Police,

Alangudi Police Station,

Pudukottai District.

(Crime No.183/2015)

.. Respondent/ Complainant

PRAYER: Appeal filed under Section 374(2) of the Criminal Procedure Code, to set aside the judgment and conviction dated 10.11.2017, by the learned Additional District and Session Judge/ Presiding Officer -Special Court for EC Act and NPDS Act, Cases, Pudukkottai in S.C.No.100 of 2015 and acquit the appellant.

For Appellant : Mr.M.Suri

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

JUDGMENT

This criminal appeal is filed against the judgment passed by the learned Additional District and Sessions Judge/ Presiding Officer- Special Court for EC Act and NDPS Act Cases, Pudukkottai, in S.C.No.100 of 2015, dated 10.11.2017, wherein

<https://www.mhca.gov.in/judicial> the appellant was convicted for an offence under Section 304(ii) of IPC and



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sentenced to undergo three years of rigorous imprisonment and to pay a sum of Rs.

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1,01,000/- as compensation to P.W.2.

2. The case of the prosecution runs thus:

According to the prosecution, the appellant is the neighbour of P.W.1. He put up a construction in his land without measuring the properties. In this regard, some dispute arose between the parties prior to the occurrence date ie., 07.05.2015. On the date of occurrence, at about 12.15.pm., the deceased obstructed the appellant from proceeding with the construction in the appellant's land without measuring the property. Hence, the appellant abused the deceased and there was a scuffle between the parties. In the result, A1, namely, the appellant picked up a wooden log and assaulted the deceased on his head. A2 also is said to have caused injuries to P.W.2. Then, both were taken to Pudukkottai, Government Hospital. Thereafter, the deceased was shifted to Thanjavur hospital and P.W.1 took treatment in Government Hospital, Pudukkottai. On receipt of information from the Government Hospital, Pudukkottai, the respondent police met P.W.1 in the Pudukkottai Hospital and recorded the statement and received the complaint under Ex.P1, based on which, a case was registered by PW 24. P.W.24 informed the same to P.W.25. After the receipt of the information, P.W.25 conducted the investigation by conducting inquest and also examined the witnesses and carried out other formalities.



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Thereafter, P.W.25 arrested the accused and he recovered the material objects.

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3. After examining the witnesses by recording their statements and collecting various reports including the postmortem certificate, a final report was filed under Sections 294(b) and 302 IPC before the Judicial Magistrate, Alangudi and the same was taken on file by the learned Judicial Magistrate in P.R.C.No.15 of 2015.

4. After furnishing copies of records to the appellant under Section 207 of the Code of Criminal Procedure, the learned Judicial Magistrate, Alangudi, committed the case to the Court of Sessions. The Additional District and Sessions Judge, Special Court for EC & NDPS Act cases, Pudukkottai, took up the case in S.C.No.100 of 2015 and framed necessary charges and questioned the appellant under Section 235(2) Cr.P.C and he pleaded not guilty and denied the charges and his involvement in the offence and stood for trial.

5. The learned trial Judge conducted the trial by examining 26 witnesses on the side of the prosecution, marked Exhibits P.1 to P.24 and seven material objects and questioned the appellant under Section 313 of the Code of Criminal Procedure, for which the appellant simply denied and neither examined any witness nor marked any document on his side.

6. The learned Additional District and Sessions Judge, Pudukkottai, after analyzing the oral and documentary evidence adduced on both sides, held that the



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prosecution had established the guilt of the appellant beyond all reasonable doubt and convicted the appellant for the offence under Section 304(ii) IPC and sentenced him to undergo three years of rigorous imprisonment and to pay a fine of Rs. 1,01,000/- and out of the said amount, the appellant was directed to pay a sum of Rs.1,00,000/- to P.W.2/the wife of the deceased as compensation, in default, to undergo Simple Imprisonment for six months. The learned Additional District and Sessions Judge, Pudukkottai, convicted the second accused for the offence under Section 323 of IPC and granted benefit under the Probation of Offenders Act. Challenging the same, present appeal is filed by the appellant.

7. Mr.M.Suri, learned counsel appearing for the appellant submitted that as per the available evidence, there is no explanation on the part of the prosecution to explain the delay of 8 hours in registering the case. Further, there was no explanation on the side of the prosecution for the delay of 4 hours the FIR reaching the learned Judicial Magistrate. He would further submit that there is a suppression of earlier complaint. According to the prosecution, three versions are available, but, there was no explanation as to which version is correct. Further, the suppression of the earlier complaint clearly revealed the false implication of the appellant. Considering the motive between the parties, the said suppression is material. Further, he would state that because of the delay there is a deliberation on the part



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of the prosecution to array the appellant as an accused in this case. The said fact is clearly revealed from the AR copy marked on the side of the prosecution under Ex.P15, in which, the time of the occurrence is stated as 12.15 p.m., before which the deceased was admitted in the hospital at 12.10 hours in Alangudi Government Hospital stating that he was assaulted by two persons at 11.40 am. In the said circumstances, the alleged occurrence as reported by the prosecution is not correct. He would further submit that the assault was made according to Ex.P15 is by four persons. Hence, there is some discrepancy relating to the evidence deposited before the Court which is contrary to the document Ex.P15 and this has to be looked into, to disbelieve the evidence of the injured witnesses. The prosecution has not proved the AR copy relating to the admission of the deceased at Pudukkottai Government Hospital. It is the admitted case that at first the deceased was taken to the Government Hospital, Pudukkottai for initial treatment and the information was also given to the police officials. In the said circumstances, the AR copy is material one. The suppression of the said document along with the contents of Ex.P15 creates a doubt over the prosecution case. The learned counsel further submitted that even assuming that the appellant is involved in the occurrence as per Section 313 of Cr.P.C., proceeding, the real question is who is the aggressor and this has not been considered by the learned trial Judge. In the said circumstances, even assuming that



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the injuries are on the head of the deceased, the said injuries are not sufficient to convict the appellant for the offence under Section 304(ii) of IPC. Further, he would submit that the arrest and recovery made as alleged by the prosecution is not correct. Ex.P.15 is attested by P.W.8 and P.W.9 and they turned hostile and hence, the arrest and recovery was not proved. In the said circumstances, he prays for acquittal.

8. The learned Additional Public Prosecutor submitted that the delay of ½ an hour stated in Ex.P15 and other medical documents, is not at all material to disbelieve the evidence of injured witnesses. The injured witness clearly deposed about the incident and there is no reason to disbelieve the version. More particularly, the appellant admitted the occurrence in the questioning under Section 313 of Cr.P.C., and also filed detailed statement stating that P.W.1's party were the aggressors. In the said circumstances, when the occurrence is admitted by the appellant there is no question to consider the minor discrepancies relating to the time. He would further submit that there is no suppression of the earlier complaint of the prosecution witnesses, as the witnesses have not deposed any written information was submitted at the out station police or other police. From the evidence of prosecution witnesses, it is found that no written complaint was given to any police officials. Therefore, the written complaint was given only after the



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information was received by the concerned jurisdictional police officials. In the said circumstances, there is no suppression of the earlier complaint. He would further state that even though P.W.8 and P.W.9 turned hostile, the appellant admitted the occurrence and his stand is concerned he is not aggressor. The non submission of the AR copy from the Government Hospital, Pudukkottai, is not relevant, when P.W.1 stated that P.W.24 reached the Hospital upon receipt of information from the Government Hospital and in all aspects the prosecution clearly proved the case. The learned trial Judge has also considered the entire facts and circumstances, including the receipt of the injury and also the weapon and the manner of the incident that took place and correctly convicted the appellant for the offence under Section 304 (ii) of IPC and awarded minimum sentence of three years. Therefore, he seeks for dismissal of this appeal.

9. This Court considered the rival submissions made on behalf of the appellant as well as the learned Additional Public Prosecutor and perused the materials available on record.

10. The specific question which arise in this appeal is *whether the prosecution proved the case against the appellant beyond reasonable doubt on the basis of the evidence of the prosecution witnesses, exhibits and material objects?*

11. From the prosecution evidence and also the explanation given by the



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appellant, it is clear that there is a dispute relating to the measurement of the land between the appellant and the deceased family. The deceased insisted the appellant to conduct survey and proceed with the construction. However, even as per the version of P.W.1, on the date of the occurrence, the appellant without conducting survey continued the construction. Therefore, the deceased first restrained the appellant from making constructions and a wordy quarrel ensued and in the result, sudden fight erupted. In the said sudden fight, the appellant has taken the wooden log and assaulted the deceased. In the result, he sustained injuries and died.

12. From the above narration of the event, it is clear that the appellant did not intend to cause injuries to him, which is likely to cause death and also he is not posted with knowledge that is likely to result. In the said circumstances, the injuries were caused by them to the deceased. Hence the conviction and sentence imposed by the Court below for the offence under Section 304 (ii) of IPC is not maintainable. In the considered opinion of this Court, the conviction can be recorded only for the offence under Section 325 of IPC. The appellant gave a single blow without any intention and without any knowledge. The deceased himself, invited the trouble. In the said sudden fight, which emanated from the act of the deceased, he took a stick, which was available on the floor and gave a single blow, causing injury which is measured around 2 X 1 X 0.5cm., i.e., the fracture of the frontal bone. In the said



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circumstances, in the considered opinion of this Court, this Court is inclined to
convict the appellant for the offence under Section 325 of IPC.

13. In result, the submission of the learned counsel for the appellant that the act of the appellant does not come under the sweep of Section 304 (ii) of IPC., is accepted.

14. In the result,

- i) This Criminal Appeal is partly allowed.
- ii) The conviction under Section 304(ii) IPC passed by the learned Additional District and Sessions Judge/Presiding Officer, Special Court for EC & NDPS Act Cases, Pudukkottai, dated 10.11.2017, in S.C.No.100 of 2015, is hereby modified into Section 325 of IPC.
- iii) Accordingly, the sentence of three years rigorous imprisonment passed by the Court below is modified as to the period of sentence already undergone by the accused/appellant.
- iv) Further the appellant is directed to pay a sum of Rs. 1,00,000/- to the wife of the deceased, namely, (*)P.W.2.

Sd/-

Assistant Registrar(CS-I)

(*)Amended vide court order dated 20.11.2024

Sd/-

Assistant Registrar(CS III)

// True Copy //

22/11/2024

Sub Assistant Registrar
(CS-I/II/III/IV)

shn

To be substituted already despatched order on 07.08.2024

<https://www.mca21.gov.in/>



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To COPY

1. The Additional District and Sessions Judge/Presiding Officer,
Special Court for EC & NDPS Act cases, Pudukottai.
2. Inspector of Police,
Alangudi Police Station,
Pudukottai District.
3. 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.(2 Copies).

+1 CC to M/s.M.SURI, Advocate (SR-55977[F] dated 12/12/2023)

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12.12.2023

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SI(18.07.2024) 10P/ 7C

Madurai Bench of Madras High Court is issuing certified copies in this format from
17/07/2023.

BV (22/11/2024) 10P/ 7C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.