

Bail Slip

That the Appellant/Accused namely Arul @ Aruldass was directed to be released on bail as per order of this court dated: 09.02.2007 and made in CrI.M.P.1/2007 in CrI.A.No.144/2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.144 of 2007

1.Arul @ Aruldass
(CrI.A., as against 1st appellant abated
by order dated 15.4.2015)
2.Vasu ... Appellant/Accused No.2

vs.

The State of Tamil Nadu
rep. By the Inspector of Police
Kandikuppam Police Station
Cr.No.238/2003
Krishnagiri District. ...Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973 against the judgment passed in S.C.No.292/2004, dated 07.04.2005 on the file of First Additional Sessions Court, Dharmapuri District at Krishnagiri.

For 2nd appellant: Mr.N.Kannadasan for
Mr.T.R.Radhakrishnan

For respondent : Mr.P.Govindarajan,
Addl.Public Prosecutor

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JUDGMENT

The convictions and sentences dated 07.04.2005 passed in Sessions Case No.292 of 2004 by the First Additional District and Sessions Court, Krishnagiri are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that on 03.11.2003, at about 5 p.m., while the witnesses viz., Chinnaraj and Samugan have been travelling on a bicycle, whereas the deceased Kanagaraj has been travelling on a separate bicycle in front of Sentharapalli Government High School, both the accused have deterred them and indiscriminately attacked by using deadly weapons and due to their overtacts, the witnesses viz., Chinnaraj and Samugan have sustained injuries. The said Kanagaraj had sustained fatal injuries and subsequently passed away. After occurrence, one of the injured witnesses by name Chinnaraj has given a complaint and the same has been registered in Crime No.238/2003. The complaint given by him has been marked as Ex.P.1.

2. On receipt of Ex.P.1, the Investigating Officer viz., P.W.16 has taken up investigation, examined connected witnesses and also made arrangements to conduct autopsy and accordingly doctor Aswath Narayana (P.W.10) has conducted autopsy on the body of the deceased and found the following external and internal injuries:-

"External Injuries:- (1) Lacerated injury posterior outer scalp in the parietal occipital region - 5 cms x 14 cms x bone depth.

(2) Lacerated injury of 3 1/2 cms x 1 cms x 2 bone depth at Right Parietal region in the scalp.

(3) Lacerated injury post outer part to occipital region at the right side of the scalp 1 cms x 1/2 cms x 1.2 cms.

(4) Abrasion on outer right eye brow 4 cms x 2 cms.

(5) Contusion posterior external to right eye 2 cms x 1/2 cms.

(6) Diffuse injury on the right leg betwith knee joints both leg.

Internal Injuries:- Thorax- No fracture ribs.
Heart : Wt 200 gms. Lungs : Rt Lung 330 gms Lt lung 300 gms. Pale. Hyoid bone- Intact. Stomach- Empty. Liver 1200 gms Pale. Spleen-100 gms Pale. Kidney each 100 gms Pale. Skull:- No fracture skull. "

The Post Mortem certificate has been marked as Ex.P.14. After completing investigation, P.W.16 has laid a final report on the file of Judicial Magistrate, Krishnagiri and the same has been taken on file in P.R.C.No.82/2003.

3. The Judicial Magistrate, Krishnagiri, after considering the facts that the offences alleged to have been committed by both the accused are triable by sessions court, has committed the case to the court of sessions, Krishnagiri Division and

taken on file in Sessions Case No.292 of 2004 and subsequently made over to the trial court.

4. The trial court, after hearing arguments of both sides and upon perusing the relevant records has framed 1st charge against both the accused under Section 341 of the Indian Penal Code (hereinafter called as "IPC"); 2nd charge under Section 302 of the IPC and 3rd and 4th charges under Section 324 of the IPC and the same have been read over and explained to them and the accused have denied the charges and claimed to be tried.

5. On the side of the Prosecution, P.Ws.1 to 16 have been examined, Exhibits 1 to 24 have been marked and Material Objects 1 to 9 have been marked.

6. When the accused have been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

7. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence, has found both the accused guilty under Section 324 of the IPC and sentenced them to undergo 3 years rigorous imprisonment and also imposed a fine of Rs.1000/- with usual default clause. Both of them have also been found guilty under Section 304(2) of the IPC and sentenced them to undergo 7 years rigorous imprisonment and also imposed a fine of Rs.5,000/- with usual default clause. Against the convictions and sentences passed by the trial court, the present criminal appeal has been preferred at the instance of the 2nd accused as appellant.

8. The consistent case put forth on the side of the prosecution is that on 03.11.2003, at about 5 pm., in front of Sentharapalli Government High School, while the witnesses viz., Chinnaraj and Samugan have travelled on a bicycle together, whereas, the deceased Kanagaraj has travelled on a separate bicycle, both the accused have unlawfully detained them and by using deadly weapons, indiscriminately attacked them and thereby, caused injuries and due to injuries sustained by the said Kanagaraj, he has passed away.

9. For the purpose of proving the case of the prosecution, the defacto complainant, by name Chinnaraj has been examined as P.W.1. The other injured witness by name Samugan has been

examined as P.W.3. Both of them have consistently stated the factum of occurrence, details of attacks and also weapons used by the accused in the place of occurrence. The doctor, who conducted autopsy on the body of the deceased has been examined as P.W.10 and he clearly opined that the deceased would have sustained injuries as spoken by the prosecution. Therefore, from the evidence given by P.Ws.1 and 3, coupled with evidence given by P.W.9, who has marked Ex.P.14-Post Mortem Certificate, the court can very well come to a conclusion that the occurrence has taken place as spoken by the prosecution and in the place of occurrence, both the accused have attacked deceased by using deadly weapons and due to their overtacts, death has occurred.

10. The learned counsel appearing for the appellant/2nd accused has made an inert attempt to the effect that with regard to weapon alleged to have been used by the 2nd accused, in between evidence of P.Ws.1 and 3, some discrepancy is in existence and therefore, the presence of the 2nd accused has not at all been established on the side of the prosecution and the trial court, without considering such kind of discrepancy with regard to weapon alleged to have been used by the 2nd accused has erroneously found him guilty under Sections 324 and 304(2) of the IPC and therefore, the convictions and sentences passed by the trial court are liable to be interfered with.

11. The learned Additional Public Prosecutor, has meticulously contended that in the instant case, P.Ws.1 and 3 are injured witnesses and their specific evidence is that in the place of occurrence, both the accused have attacked them and also, indiscriminately attacked the deceased Kanagaraj by using deadly weapons and since P.Ws.1 and 3 are injured witnesses, their evidences cannot be discarded nor rejected. The trial court, after considering the overwhelming evidence available against them has rightly found both of them guilty under Sections 324 and 304(2) of the IPC and therefore, the convictions and sentences passed by the trial court need not be interfered with.

12. It is an admitted fact that P.Ws.1 and 3 are injured witnesses and in fact, they have spoken about the factum of attacks made on their persons as well as on the person of the deceased, by both the accused. Even if there is any slight discrepancy with regard to weapon alleged to have been used by the 2nd accused in between the evidence of P.Ws.1 and 3, the same cannot be a basis for rejecting the case of the prosecution and the same is nothing but nugae and further as rightly pointed out by the learned Additional Public Prosecutor, more credence can be given to the testimonies given by injured witnesses. Therefore, viewing from any angle, the convictions and sentences passed by the trial court cannot be impinged on the basis of the arguments put forth on the side of the appellant/2nd accused.

13. The learned counsel appearing for the appellant/2nd accused, as a residual contention has contended that the appellant/2nd accused has attained the age of 37 years and also having 2 children and the trial court has imposed 7 years rigorous imprisonment under Section 304(2) of the IPC and therefore, some leniency may be shown in awarding sentence under the said section.

14. Considering the age of the 2nd accused/appellant and also considering that the entire occurrence has taken at the spur of the moment, this court is of the view to modify quantum of sentence imposed by the trial court against the 2nd accused/appellant under Section 304(2) of the IPC as stated infra and to that extent, this Criminal Appeal is liable to be allowed in part.

In fine, this Criminal Appeal is allowed in part. The conviction and sentence passed by the trial court against the appellant/2nd accused under Section 324 of the IPC are confirmed. The conviction passed by the trial court under Section 304(2) of the IPC is confirmed. However, quantum of sentence imposed under the said section is modified as follows:-

"The appellant/2nd accused is sentenced to undergo 5 years rigorous imprisonment instead of 7 years under Section 304(2) of the IPC. In other aspects, the judgment of the trial court is confirmed. If the second accused is not in duress, the trial court is directed to take appropriate steps so as to imprison him to serve out the remaining period of sentence."

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1.The First Additional Sessions Judge,
Dharmapuri District at Krishnagiri.

2.-Do-Thro'The Principal Sessions Judge,
Dharmapuri District at Krishnagiri.

3.The Inspector of Police,
Kandikuppam Police Station, Krishnagiri District.

4.The Superintendant Central Prison, Vellore.

5.The Judicial Magistrate, Krishnagiri.

6.The Public Prosecutor, High Court, Madras.

+1 cc to Mr.Radhakrishnan, Advocate, sr.59780

Crl.A.No.144 of 2007

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