

BAIL SLIP

The Appellant/Accused namely Balakrishnan, aged 61 years, S/o.Kulandaivelu was directed to be released on Bail as per order of this Hon'ble Court dated 23.12.2014 in MP.No.2 of 2014 in CrI.A.No.122 of 2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 17.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.122 of 2014

Balakrishnan ... Appellant/Accused

vs.

The State, Rep. by
The Inspector of Police,
Thiruvankadu Police Station,
Nagapattinam District
(Crime No.237 of 2010) ... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 24.02.2014 passed by the learned
District and Sessions Judge, Nagapattinam, in S.C.No.96 of 2011.

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.M.Maharaja, Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by V.Bharathidasan, J.)

The appellant in this appeal is sole accused in Sessions Case No.96 of 2011, on the file of the learned District and Sessions Judge, Nagapattinam. He stood charged for an offence under Sections 294(b) and 302 of IPC. The Trial Court by judgement dated 24.02.2014 convicted the appellant/accused for the offence under Section 302 IPC and sentenced him to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for one year and acquitted the accused for the offence under Section 294(b) of IPC. Challenging

the above said conviction and sentence, the appellants/accused is before this Court with this appeal.

2. The case of the prosecution in brief is as follows:

(i) The deceased in this case one Anbazhagan, is the brother of the accused. There was a dispute between the accused and deceased regarding a house site, and due to the same, there was a previous enmity between them. On 25.10.2010 at about 7.00 a.m., one Chellammal, a cousin of the deceased and accused switched on a kitchen light and the deceased questioned her why she switch on the light in the morning. At the time, the accused came there and quarrelled with the deceased and during the quarrel, the accused attacked the deceased with iron rod and also pushed him down on a protruding tree root and suffered head injury. Immediately, he was taken in a ambulance to the Government Hospital, Sirkali, where, he was referred to Raja Annamalai Medical College Hospital, Chidhambaram from there he was shifted to JIPMER Hospital, Pondicherry.

(ii) On receipt of the intimation from the Hospital, P.W.8, the Sub Inspector of Police reached the Government Hospital, Sirkali, where, the Doctors informed him that the deceased was referred to Raja Annamalai Medical College Hospital, Chidhambaram and then he reached the said Hospital and obtained a statement Ex.P1 from the deceased. Based on the same, he registered a case in Crime No.237 of 2010 for the offence under Section 294(b), 304 and 307 of IPC and prepared FIR Ex.P9 and sent the same to the higher officials.

(iii) P.W.9, the Inspector of Police, working in the Thiruvankadu Police Station, on receipt of the FIR, commenced the investigation, visited the scene of occurrence and prepared Observation Mahazar Ex.P10, drew a Rough Sketch Ex.P11 and obtained statement from P.W.1, the daughter of the deceased. On 26.10.2010 at about 11.00 a.m., he arrested the accused in the presence of witnesses and on such arrest, the accused has given voluntary confession, based on the disclosure statement Ex.P12, he recovered M.O.1 Iron rod in the presence of witnesses and then remanded the accused for Judicial custody. On 27.10.2010, he went to the JIPMER Hospital and obtained statement from the deceased. Subsequently, on 01.11.2010, the deceased succumbed to injury and hence, he altered the FIR into Section 302 IPC, altered report Ex.P14 and sent the same to the Judicial Magistrate Court. He conducted inquest over the dead body in the presence of panchayatars and the Inquest Report is Ex.P15.

(iv) P.W.6, the Chief Doctor, working in the JIPMER Hospital, Pondicherry, conducted postmortem autopsy on the dead body of the deceased and found the following injuries.

Dead body of a male. No clothes were present on the body. Rigor Mortis was present throughout the body and well fixed. Postmortem staining was present over the back and posterior aspect of the both lower limbs. Scalp hair 12 cm black. Axillary hair 1.1 cm and Pubic hair 2 c.m. The tongue was behind the jaws. Teeth normal. Cornea Hazy. Conjunctive Pale. All natural orifices were normal. The cadaver was kept in the cold storage room prior to autopsy.

Injuries:

Following recent injuries were present in the cadaver.

(a) A laceration measuring 9.1 x 2.7 cm bone deep was present in the left parietal.

(b) Contusion of right eye.

(c) An abrasion measuring 3.5 x 1.2 cm was present in the posterior aspect of the right shoulder.

(d) An abrasion measuring 4.7 cm x 1.2 cm was present in the middle of the back.

(e) An inverted T shaped tracheotomy measuring 6.1 x 3.1 cm was present on the anterior aspect of the neck.

Internal Examinations:

a) Scalp : Refer column No.8. Recent pericranial haemorrhage approximately 0.8 cm thickness was present in the calvarium.

b) Skull A comminuted fracture measuring 11.1 x 10 cm was present over the right side of the calvarium. Involving frontal, temporal, parietal bones.

c) Brain and meninges - The brain weighed 1430 gms and showed diffuse cerebral edema. Recent subdural haemorrhage was present over the right cerebral lobed. The right frontal, temporal, parietal and left temporal lobes were contused. Thorax - Normal.

He opined that the deceased would appear to have died due to shock and haemorrhage, due to the head injury. He has issued Postmortem Certificate Ex.P7. P.W.9 examined the post mortem Doctor and other witnesses and recorded their statements and after completion of investigation, he laid the charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 9 witnesses were examined and 15 documents exhibited and 1 material object were marked.

4. Out of the said witnesses examined, P.W.1 is the wife of the deceased and also eye witness to the occurrence. According to her, on 25.10.2010, one Chellammal, the cousin of the deceased switch on the kitchen light at about 7.00 a.m., the deceased questioned the same, the accused came there, and quarrelled with him and during the quarrel the accused attacked the deceased with iron rod and pushed him down, he fall down in broken tree root and suffered head injury. Immediately, the deceased was taken to the Government Hospital at Sirkali. P.W.2 known to the accused and deceased, he turned hostile. P.W.3 is the mahazar witness. P.W.4 turned hostile. P.W.5 also turned hostile. P.W.6, the Chief Doctor, working in the JIPMER Hospital, he conducted postmortem autopsy on the dead body of the deceased and issued Ex.P7 Postmortem Certificate. P.W.7, the Doctor, working in the Government Hospital at Sirkali, admitted and examined the deceased, at the time the deceased told him that two persons have attacked to him. He has given Accident Register Ex.P8. P.W.8, the Sub Inspector of Police, Thiruvankadu Police Station, obtained statement Ex.P1 from the deceased and registered a case in Crime No.237 of 2010 for an offence under Sections 294(b), 304 and 307 of IPC. P.W.9, the Inspector of Police, working in Thiruvankadu Police Station, conducted the investigation, examined the witnesses and recorded their statements, arrested the accused and recovered the material objects and after completion of investigation, he laid the charge sheet before the Judicial Magistrate Court.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused did not examined any witnesses and no document was marked on his side.

6. Having considered all the above, the Trial Court convicted the accused for the offences as stated in first paragraph of this judgment. Challenging the above conviction and sentence, the accused is before this Court.

7. We have heard Mr.R.Sankarasubbu, learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. P.W.1 is an eye witness to the occurrence and she is the wife of the deceased. According to her, on the date of occurrence at about 7.00 a.m., the accused attacked the deceased with iron rod and pushed him down and he fell down in a protruding tree root and suffered head injury. As per the post mortem report there is a skull fracture and cause of death is due to head injury. The medical evidence corroborate the prosecution case. P.W.1 is the wife of the deceased and at their residence the occurrence took place. Hence, the presence

of P.W.1, at the time occurrence is quite natural and it cannot be doubted. The medical evidence also proved that the deceased died of head injury. Hence, we are of the considered view that the prosecution has clearly proved that it was this accused, who caused the death of the deceased by pushing him down over the root of the tree and caused head injury.

9. Now, the question is, "what was the offence that was committed by the accused for the said act? According to the prosecution, the accused only pushed the deceased down and he fall down on the root of the tree and suffered head injury. Hence, the accused neither had an intention to cause death of the deceased or knowledge that he is likely by such act cause death of the deceased. Hence, the said act of the accused neither fall under Section 299 IPC or under Section 300 IPC. Hence, we are of the considered view that the act of the accused voluntarily causing hurt to the deceased squarely fall under Section 323 of IPC.

10. Turning to the quantum of punishment, having regard to the totality of all these circumstances, we are of the considered view that reducing the sentence of imprisonment to the period of sentence already undergone with a fine of Rs.10,000/- would meet the ends of justice.

11. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant for an offence under Section 302 IPC., is hereby set aside and instead, the appellant is convicted for an offence under Section 323 IPC., and the period of sentence is reduced to the period of sentence already undergone by him besides a fine of Rs.10,000/- in default to undergo rigorous imprisonment for four weeks.

Sd/-
ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

To

1.The Judicial Magistrate,
Nagapattinam.

2.The Chief Judicial Magistrate,
Nagapattinam(for information)

3.The Public Prosecutor,
High Court,
Madras.

4.The Inspector of Police,
Thiruvankadu Police Station,
Nagapattinam District

5.The Superintendent,
Central Prison, Cuddalore.

6.The District and Sessions Judge,
Nagapattinam.

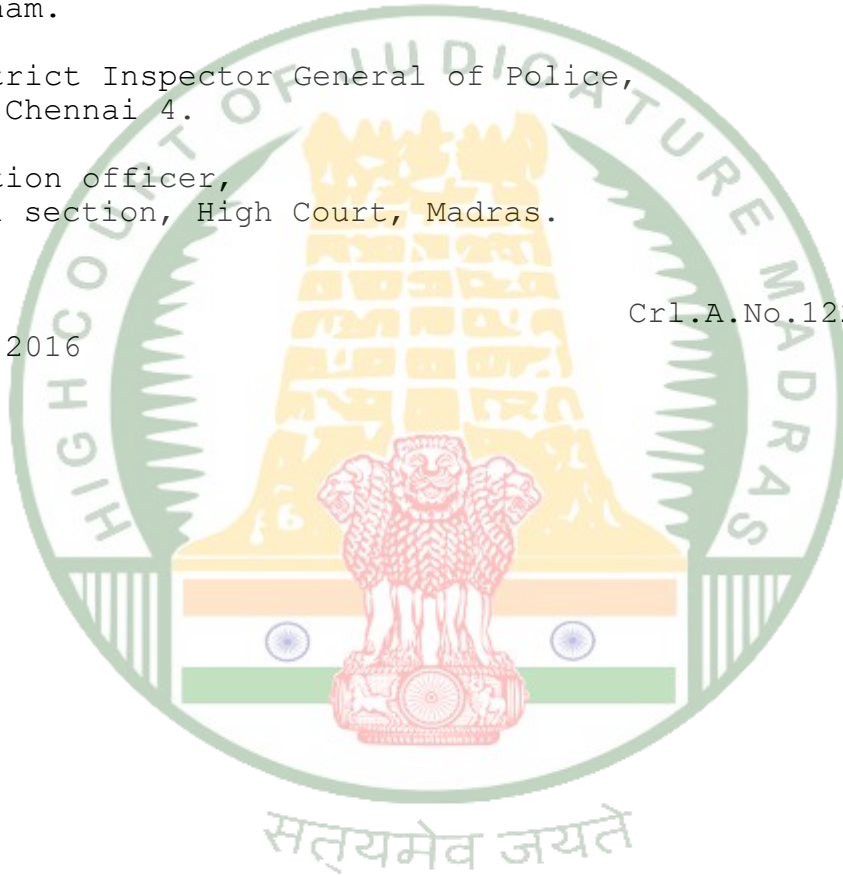
7.The District Collector,
Nagapattinam.

8.The District Inspector General of Police,
Mylapore, Chennai 4.

9.The Section officer,
Criminal section, High Court, Madras.

MMP 28.12.2016

Crl.A.No.122 of 2014



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