

Bail Slip

The Appellant/Accused No.1 namely Ramalingam S/o. Ponna Padayachi was ordered to be released on bail by order of this court dated 06.07.2015 and made in MP No.1/2015 in CrI.A.179/2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2016

CORAM

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

Criminal Appeal No.179 of 2014

Ramalingam .. Appellant/A1

-vs-

State rep.by
Inspector of Police,
Karuveppilankurichi Police Station,
Cuddalore District.
(Crime No.76 of 2012). ..Respondent/Complainant

Appeal under Section 374 of the Code of Criminal Procedure, against the judgment of conviction passed in S.C.No.284 of 2012 dated 26.02.2014 on the file of the learned III Additional District and Sessions Judge, Cuddalore at Vriddhachalam.

For Appellant :: Mr.C.Ramkumar

For Respondent :: Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellant is the first accused in S.C.No.284 of 2012 on the file of the III Additional District and Sessions Judge, Cuddalore at Vriddhachalam. There were two other accused by name Asothai and Meenakshi. The first accused stood charged for offence under Section 302 IPC and the second and third accused stood charged for offence under Section 302 r/w 109 IPC. By judgment dated 26.02.2014, the Trial Court acquitted the accused 2 and 3 and however, convicted the appellant alone under Section

302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for two years. Challenging the same, he has come up with this appeal.

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

The deceased in this case was one Mr.Rayar. P.W.1 is the son of the deceased. The first accused is the elder brother of the deceased. A house site was purchased in the village in the name of the deceased. There was a dispute in respect of the same between the first accused and the deceased. This is stated to be the motive for the occurrence.

3.On 26.03.2012 at about 8.00 p.m., when the deceased was sitting on the pial of the house, the first accused came there and demanded him to give up the so-called rights that he was claiming over the said property. According to the first accused, though the said property was purchased in the name of the deceased, the sale consideration was paid only by the first accused. That has resulted in a quarrel. In the said quarrel, it is alleged that the first accused attacked the deceased with a wooden reaper on the head of the deceased and the deceased fell down and fainted. According to the case of the prosecution, the accused 2 and 3 instigated the first accused to attack the deceased. Then, all the three ran away from the scene of occurrence.

4.P.W.1 is the son of the deceased. He took the deceased immediately to the Vriddhachalam Government Hospital. In the hospital, no doctor was available. The Compounder dressed the injury and then P.W.1 and others took back the deceased to their house. On the next day, early in the morning, by 5'0 Clock, P.W.1 tried to wake up the deceased. There was no response. The deceased had already breathed his last. P.W.1 raised an alarm. Thereafter, P.W.1 went to Karuveppilankurichi Police Station at 2.00 p.m.on 27.03.2012 and made a complaint under Ex.P1. P.W.8, the then Special Inspector of Police, on receipt of the said complaint, registered a case in Crime No.76 of 2012 under Section 302 IPC. Ex.P6 is the First Information Report. He forwarded both the documents to the Court. P.W.10 took up the case for investigation. He proceeded to the place of occurrence at 08.45 p.m., on 27.03.2012. He prepared an observation mahazar and a rough sketch in the presence of P.W.4 and another witness. Then he conducted inquest over the body of the deceased between 5.00 p.m.and 06.30 p.m.and forwarded the body for post mortem.

5.P.W.7 conducted autopsy on the body of the deceased on 28.03.2012 at 11.30 a.m. He found the following injuries:

I. External Examination:

An oblique laceration of size 7 cm x 0.5 cm x 0.5 cm over the vertex region of the head.

II. On opening of the head:

Scalp contused in the under surface @ over the vertex - size 6 x 2 x 0.5 cm (b)Over the right occipital area-size 10 x 2 x 0.5 cm bones of the cranial vault and membranes contract. Brain: Substance haemorrhage seen over the left and right frontal and parietal region. This layer of sub-arachnoid haemorrhage seen all over the brain surface. Cnl.Section-congested. Base: fracture of right middle and posterior cranial fossa.

6.Ex.P4 is the Post Mortem Certificate. P.W.7 gave the opinion that the death of the deceased was due to head injury.

7.P.W.10, during the course of investigation, arrested the first accused at 12.30 p.m., on 28.03.2012, near Vriddhachalam Ramachandran Pettai Petrol Bunk in the presence of P.W.4 and another witness. Thereafter, he arrested the second accused at 1.00 p.m.in the same place. Then he forwarded the accused for judicial remand. On completing the investigation, he filed the charge sheet against the accused.

8.Based on the above materials, the Trial Court framed the charges. In order to prove the case, on the side of the prosecution, as many as 10 witnesses were examined, 10 documents and 1 material object were marked.

9.Out of the said witnesses, P.W.1 and P.W.6 had spoken about the entire occurrence. P.Ws.2 to 5 have turned hostile and they did not support the case of the prosecution. P.W.7 has spoken about the post mortem conducted and the final opinion. P.W.8 has spoken about the registration of the case. P.W.10 had spoken about the investigation done and the final report. P.W.9 had spoken about the fact that he had handed over the dead body to the doctor for post mortem.

10.When the above incriminating materials were put before the accused under Section 313 Cr.PC, they denied the same as false. However, they did not examine any witness or marked any document.

11.Having considered the materials, the Trial Court convicted the appellant under Section 302 IPC, as stated supra.

12.We have heard the learned counsel for the appellant, learned Additional Public Prosecutor for the respondent and also perused the records carefully.

13.The prosecution in this case, mainly relies on the eye witness account of P.Ws.1 and 6.

14.The learned counsel for the appellant would submit that P.Ws.1 and 6 are the son and daughter-in-law respectively of the deceased and therefore, their evidence should be rejected. We find no force in the said argument. Though P.Ws.1 and 6 are closely related to the deceased, on that score, their evidence cannot be rejected. However, prudence requires that their evidence should be seriously scrutinised. Here, in this case, the occurrence had taken place just in front of the house of the deceased. Therefore, the presence of P.Ws.1 and 6 in the house cannot be doubted. Further, there arose a quarrel which resulted in the occurrence. Though these two witnesses have been extensively cross examined by the accused, nothing has been brought on record to disbelieve their evidence. They have further stated that after the occurrence was over, the deceased was taken to the hospital, but since there was no Doctor available, the Compounder of the hospital dressed the injury.

15.The learned counsel for the appellant would submit that neither P.W.1 nor P.W.6 had chosen to give a complaint on time and the delay in making the complaint creates doubt in the case of the prosecution.

16.We are not persuaded by the said argument. We cannot ignore the close relationship between the accused and the deceased. There was no strong motive also. After the Compounder dressed the injury they had brought the deceased to the house and they did not chose to go to the Police Station because of the close relationship. They would not have anticipated that the injury was so serious that would result in the death of the deceased. But unfortunately, on the next day at about 5.00 a.m., the deceased breathed his last and succumbed to the injury. Thereafter only P.W.1 had gone to the Police Station with complaint and based on the same, the case came to be registered. From these facts witnessed, we are of the view that the delay has been explained. Thus we find no reason to reject the evidence of P.Ws.1 and 6. From these evidences, it is clear that it was the first accused who caused a single injury on the head of the deceased. The medical evidence has proved that the death was due to head injury. Thus, the prosecution has proved that the death of the deceased was caused only by the first accused.

17.The next question that arises is, "what is the offence that was committed by the accused?". Admittedly, there was no motive between the deceased and the accused. Admittedly the property was purchased in the name of the deceased. The first accused was claiming that the consideration was paid by him and therefore, the deceased should give up the so-called claim over the property. The first accused made such claim at the time of

occurrence, which resulted in the quarrel. The first accused was not already armed with any weapon. It was only at the end of the quarrel the deceased had taken a reaper and gave a single blow. There was also a fight. From these facts, it is clear that the act of the first accused squarely falls within the fourth exception to Section 300 IPC. The said act of the first accused, in our considered view, falls only within the fourth limit of Section 300 IPC. Therefore, he is liable to be punished for offence under Section 304 Part-II IPC. The first accused is an old man having a family to take care of. Having regard to these mitigating and aggravating circumstances, we are of the view that sentencing him rigorous imprisonment for five years and to pay a fine of Rs.10,000/- would meet the ends of justice.

18. In the result, the Criminal Appeal is partly allowed. The conviction and sentence imposed on the appellant / first accused under Section 302 IPC are set aside and instead, he is convicted under Section 304 Part-II IPC and sentenced to undergo rigorous imprisonment for five years, and to pay a fine of Rs.10,000/- in default, to undergo rigorous imprisonment for four weeks. It is ordered that the entire fine amount of Rs.10,000/- shall be paid to P.W.1 as compensation. It is directed that the period of detention already undergone shall be given set off under Section 428 Cr.PC.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

KM

To

1. The Judicial Magistrate No.II,
Viridhachalam.
2. Do-Thro The Chief Judicial Magistrate,
Cuddalore.
3. The Inspector of Police,
Karuveppilankurichi Police Station,
Cuddalore District.
4. The Superintendent,
Central Prison,
Cuddalore.

5.The III Additional District and
Sessions Judge, Cuddalore.

6.The Public Prosecutor,
Madras High Court,
Chennai-600 104.

Copy to:
The Section Officer,
Criminal Section, High Court,
Madras 104.

Crl.A.No.179 of 2014

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kra 12.07.2016



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