

Bail Slip

The appellant/Petitioner/Accused namely Andi @ Potti Andi S/o. Poochi was directed to be released on bail as per the order of this court dated 28.04.2015 in CrI.MP.NO.1/14 in CrI.A. No.230/2014 and released in condition imposed therein, as per order dated 7.8.2015 in CrI.M.P.No.1 of 2015 in CrI.A.No.230/2014 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.230 of 2014

Andi @ Potti Andi ..Appellant/Accused No.1

Vs

State rep. By
Inspector of Police,
Kariyakoil Police Station,
Cr.No.19 of 2012
Salem District.

..Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to call for the records in S.C.No.60 of 2013 on the file of the learned II Additional Sessions Judge, Salem and set aside the judgment dated 09.04.2014.

For Appellant : Mr.N.Manokaran

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

JUDGEMENT

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

The appellant is A.1 in S.C.No.60 of 2013 on the file of the learned II Additional Sessions Judge, Salem. There were two other accused by name Panchali and Sekar @ Chandrasekar and they were arrayed as A.2 and A.3 respectively. A.1 stood charged for offences under Sections 294(b), 341 and 302

I.P.C., and A.2 and A3 stood charged for offence under Section 302 r/w.109 IPC. By judgment dated 09.04.2014, the trial Court acquitted A.2 and A.3 from all the charges however, convicted A.1 for offences under Sections 341 and 302 I.P.C., and sentenced him to undergo Simple Imprisonment for one month for the offence under section 341 I.P.C., and to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo Rigorous Imprisonment for one month for the offence under Section 302 IPC. Challenging the said conviction and sentence, the appellant/A.1 is before this Court with this Criminal Appeal.

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

There was a long standing dispute between the family of the deceased and that of the accused in respect of a land. 10 years prior to 08.06.2012, it was alleged that A.1 entered into the house of the deceased and committed theft of Rs.40,000/-. In respect of the same, a Panchayat was held in the village, in which, A.1 was fined by the Villagers to pay a fine of Rs.800/-. It is further alleged that 5 years prior to the occurrence, a goat belonging to the deceased had trespassed into the lands of the accused. This also resulted in a quarrel, in which, the village panchayatdars imposed Rs.800/- as fine on the deceased. Thus, there was longstanding enmity between the two families. It is alleged that on 08.06.2012, at about 3.30 p.m., by the side of the said disputed land, the deceased was doing some work. At that time, it is alleged that all the three accused came there and quarreled with him. In fact, they objected the deceased doing the said work. It is also alleged that they abused the deceased by using filthy language. In the said quarrel, it is stated that A.1 pushed the deceased down and then kicked him on his chest and also on his neck. Deceased within a short while, died on the spot. He was aged about 71 years. Thereafter, all the three accused ran away from the scene of occurrence. The occurrence was witnessed by P.Ws.1 to 4. P.Ws. 1 and 2 are son and daughter-in-law respectively of the deceased. P.Ws.3 and 4 are independent witnesses. After the occurrence, P.W.1 went to Kariyakoil Police Station and made a complaint at 4.30 p.m., on 08.06.2012. P.W.9, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.19/2012 for the offences under Sections 294(b), 341, 302 & 302 r/w 109 I.P.C., against all the three accused. Ex.P.1 is the complaint and Ex.P.8 is the F.I.R. He forwarded both the documents to the Court, which were received by the learned Jurisdictional Magistrate at 10.45 a.m. on 09.06.2012.

3.P.W.11, the then Inspector of Police took up the case for investigation. He proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.5 and another witness. He arranged for a photographer to take photograph at the place of occurrence.

Then, he conducted inquest on the body of the deceased and forwarded the same for Post mortem.

4.P.W.7 - Dr.G.Panneerselvam, conducted autopsy on the body of the deceased on 09.06.2012 at 10.30 a.m. He found the following injuries.

" Dark Reddish brown abrasion over right forehead M-1x0.5, 0.75x0.5, 0.75x0.5 cms. No other external injuries seen on the body.

O/d Head - scalp - normal. Dura membrane - intact. Cranial vault-intact. Brain C/s congested. Base of skull-intact. O/d. Thorax- No ribs fracture. Heart-Normal in size. A greyish white patch seen over anterior surface of left ventricle M-3x2 cms. Lungs- Both on C/s- congested. O/d Neck - fracture and subluxation of C1, Cw cervical vertebra with surrounding soft tissue contused. Hyoid bone- intact. O/d. Abdomen - Stomach contains 350 gms of partly digested cooked rice particles with no specific odour c/s mucosa - congested liver, spleen and both kidneys - c/s-congested. Capsule- intact. Bladder- empty. Genitalia - no injuries made out. Pelvis - intact.

Multiple superficial incision made all over body. Viscera preserved and sent for chemical analysis. "

Ex.P.5 is the Post Mortem Certificate and Ex.P.6 is the Final Opinion regarding the cause of the death of the deceased. According to him, the deceased would have died due to cervical spine injury.

5.P.W.11, during the course of investigation, arrested all the three accused on 09.06.2012 at 8.00 a.m, at Karumandurai bus-stop and forwarded them to Court for judicial remand. He examined the Doctor and also collected the medical records and finally laid charge sheet against all the three accused.

6. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 11 witnesses were examined and 14 documents were exhibited, besides 2 Material Objects were marked. On the side of the accused, 3 documents were exhibited, viz., Ex.D1-Arrest card of A1, Ex.D2- Arrest card of A2, Ex.D3-Arrest card of A3.

7. Out of the said witnesses, P.Ws.1 to 4, who are the eye-witnesses to the occurrence have vividly spoken about the entire occurrence. They have stated that A.1 pushed the deceased down and kicked him on his chest and neck. P.W.5 has spoken about the preparation of the Observation Mahazar and Rough Sketch at the place of occurrence. P.W.6, the Scientific Assistant has spoken about the Chemical analysis conducted on the hyoid bone of the deceased. According to him, there was no fracture noticed on the hyoid bone. P.W.7 has spoken about the Post Mortem conducted and his final opinion regarding the cause of death. P.W.8 has stated that he examined the deceased and declared him as dead. P.W.9 has spoken about the registration of the case on the complaint of P.W.1. P.W.10 has spoken about the fact that he took the dead body and handed over the same to the Doctor for Post Mortem. P.W.11 has spoken about the investigation done and final report filed by him.

8. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witnesses on their side. Their defence was a total denial.

9. Having considered all the above materials, the trial Court convicted the appellant/A.1 as stated in the first paragraph of this judgment. Challenging the same, the appellant/A.1 is before this Court with this Criminal Appeal.

10. We have heard the learned counsel for the appellant/A.1 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

11. The learned counsel for the appellant/A.1 would submit that the presence of P.Ws.1 to 4 at the place of occurrence cannot be believed and thus, their evidences should be rejected. But, we do not find any force at all in the said argument. The occurrence place was by the side of the disputed land, where the presence of P.Ws.1 to 4 was also quite natural. They have vividly spoken about the entire occurrence and therefore, we do not find any reason to reject their evidences. Of course, there is a delay in handing over the F.I.R., to the Jurisdictional Magistrate. But, on that score alone the entire case of the prosecution cannot be rejected. Thus, from the eye witness account of P.Ws.1 to 4, we hold that it was this accused/A.1, who pushed the deceased down and kicked him on his chest and neck.

12. Now turning to the medical evidence, P.W.7 has stated that during Post Mortem, he noticed fracture and subluxation of cervical vertebra No.1 and cervical vertebra no.2 with surrounding soft tissues contused. The hyoid bone was intact. The Doctor has opined that the death of the deceased was caused due to the effects of the cervical spine injury.

Since, the above spine injury was caused by this accused/A.1 by kicking the deceased on his chest and neck, it has to be held that the death of the deceased was caused only by this accused/A.1.

13. Now, the question is, "what was the offence that was committed by the accused by the said act?". Undoubtedly, the cause of death of the deceased by the accused is a homicide. But, the act of the accused/A.1 would not fall either under the first limb or the second limb of Section 299 IPC, as he would not have intended to either to cause death or to cause cervical injury to the deceased. However, it cannot be said that the act of the accused/A.1 would not fall within the third limb of Section 300 IPC. Going by the social status, age and possible life experience of the accused/A.1, we can safely hold that the accused/A.1 could be attributed with so much of knowledge that by his act he was likely to cause the death of the deceased. Thus, the act of the accused would fall squarely within the third limb of section 299 IPC.

14. The learned Additional Public Prosecutor appearing for the State would submit that eventually, the act of the accused/A.1 would fall within the fourth limb of Section 300 IPC. But, we do not find any force in the said argument. In order to make out a case to fall under the fourth limb of section 300 IPC, it is absolutely necessary to prove that the accused had the knowledge that his act was imminently dangerous to cause death. Here in this case, it is not the evidence of the Doctor that the cervical wound which was found on the body of the deceased was imminently dangerous to cause death. Further, the accused/A.1 would not have intended to cause that particular injury at that point of time, on the cervix. Therefore, much degree of knowledge as it is required under the fourth limb of Section 300 I.P.C., cannot be attributed to the accused/A.1. Thus, the act of the accused would not amount to murder and instead, it is only a culpable homicide falling within the third limb of Section 299 I.P.C. Therefore, he is liable to be punished for offence under Section 304(ii) IPC.

15. Now, turning to the quantum of punishment, there are certain mitigating circumstances. The deceased was aged 71 years and the accused is aged 56 years. He has to take care of his family. The occurrence was not a premeditated one. It was only in a quarrel, when the accused/A.1 questioned the deceased not to do some work on the land, which was under dispute. The quarrel itself was a sudden and unexpected one. The accused/A.1 did not use any weapon at all. As a matter of fact, when the accused/A.1 came to the place of occurrence, he was not armed with any weapon. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused/A.1 to undergo Rigorous Imprisonment for 3 years with fine of Rs.1000/- would meet

the ends of justice. At the same time, the conviction and sentence imposed by the trial Court on the appellant/A.1 for offence under Section 341 I.P.C., would not require any interference at the hands of this Court.

16. In the result, the Criminal Appeal is allowed in part in the following terms:-

(i) The conviction and sentence imposed on the appellant/A.1 by the trial Court for offence under Section 341 I.P.C., is confirmed

(ii) The conviction and sentence imposed on the appellant/A.1 for offence under Section 302 I.P.C., is set aside and instead, he is convicted for offence under Section 304(ii) I.P.C., and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for two weeks and

(iii) The above sentences shall run concurrently. The period of sentence already undergone by the appellant is directed to be set off under Section 428 Cr.P.C.

Sd/-

Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The II Additional Sessions Judge, Salem.
2. The Judicial Magistrate No.1, Attur.
3. The Chief Judicial Magistrate Salem.
4. The State by the Inspector Police, Kariyakoil Police Station, Salem District
5. The Public Prosecutor, High Court, Madras.
6. The District Collector, Salem District.
7. The Director General of Police, Chennai.

+ 1 cc to Mr.N. Mnokaran, Advocate Sr.30465

Cr1.A.No.230 of 2014

SR(CO)

Eu 28.6.16