

Bail Slip

The appellant/Accused namely Aruldoss S/o. Rajendran, was directed to be released on bail vide order dated 18.03.2015 made in MP.No.1 of 2015 in Crl.A.No.271/14.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.06.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.271/2014

Aruldoss ...Appellant/sole accused

Vs

State by
The Inspector of Police,
Manalmedu Police Station,
Nagapattinam District. ...Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned District and Sessions Judge, Nagapattinam, made in S.C.No.136 of 2011 dated 12.03.2014.

For Appellant : Mrs.Greetha Senthil Kumar
For Respondent : Mr.M.Maharaja,
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the sole accused in S.C.No.136 of 2011 on the file of the learned District and Sessions Judge, Nagapattinam. He stood charged for offence under Section 302 of IPC. By judgment dated 12.03.2014, the trial court convicted him under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for one year. Challenging the said conviction and sentence, the appellant/sole accused is before this Court with this Criminal Appeal.

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

(a) The deceased Mr.Sarangapani was a driver in the State Transport Corporation Bus plying between Mayiladuthurai and Panthanallur Village. One Mrs.Thavamani used to travel in the said bus as a passenger frequently. In that process, the accused developed illicit intimacy with her. She was residing at Kadalankudi Village which is situated in between Mayiladuthurai and Panthanallur Village. The accused was then running a petty shop near the bus stop at Kadalankudi. The deceased used to give some materials to the accused with a request him to hand over the same to Mrs.Thavamani. Thavamani had borrowed a sum of Rs.1,00,000/- from the deceased for sending her husband abroad. Since her husband had gone abroad, she developed an illicit intimacy with the deceased further. In due course of time, she developed illicit intimacy with the accused also. On coming to know about the same, the deceased warned the accused not to have any such illicit intimacy with Thavamani. The accused was enraged over the same. This is stated to be the motive for the occurrence.

(b) P.W.1 is the son of the deceased. On 03.12.2010 at 05.00 p.m., the deceased accompanied by P.W.1, went to Kadalankudi Village to the house of Thavamani. On meeting Thavamani, he demanded the repayment of the above said Rs.1,00,000/- which she had parted from him. This was noticed by the accused. He came to the spot, developed a quarrel with the deceased. In the said quarrel, it is alleged that the accused took out a rasp (muk;) and stabbed the deceased on his abdomen. The accused, then, ran away from the place of occurrence. The small intestine protruded due to the said stab injury caused on the abdomen. The occurrence was witnessed by P.W.2 also.

(c) Then, P.W.1 took the deceased with the help of P.W.2 and others in a Taxi to the Government Hospital at Mayiladuthurai and admitted him as inpatient at 07.20 p.m. Since after sometime, his condition was deteriorating, he was advised to be taken to Tanjore Medical College Hospital. Accordingly, he was taken and admitted to Tanjore Medical College Hospital. On 04.12.2010 around 10.00 a.m., the deceased died in the hospital succumbing to the said injury.

(d) While the deceased was in the hospital, on receiving intimation, P.W.6, the then Special Sub-Inspector of Police, went to the Tanjore Medical College Hospital and recorded the statement of P.W.1 and on returning to the police station, he registered a case at 09.00 a.m. on 04.12.2010 against the accused under Section 307 of IPC. Ex.P6 is the First Information Report. He forwarded both the documents to court.

(d) The case was taken up for investigation by P.W.12 on 04.12.2010. He proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.4 and another witness. Since there was heavy rain, there was no blood stain found at the place of occurrence as everything was washed off. Then, he examined P.Ws.1 and 2 and few more witnesses. On 10.05 a.m. on 04.12.2010, P.W.12 received intimation from the hospital that the deceased had died. Therefore, he altered the case into one under Section 302 of IPC and submitted an Alteration Report to the court. Thereafter, on going over to Tanjore Medical College Hospital, he conducted inquest on the dead body of the deceased and forwarded the same for postmortem.

(e) P.W.11 Doctor Rajkumar conducted autopsy on the dead body of the deceased on 05.12.2010 at 10.30 a.m. He found the following injuries:

'External Injuries:

a. About 45 c.m. of small bowel which appear gangrenous seen outside the body protruding through an opening oblique stab wound in right iliac crush extend upto left kidney.

Internal Injuries:

1. Two perforations seen in jejunum about 20 c.m. apart; the first about 5 x 2c.m. - 30 c.m. distal to gastro duodenal flexure and the next about 4 x 2 c.m. both with contusion surrounding it.
2. Hemoperitoneum - about 2 litres seen with massive clots especially in left hypochondrial region.
3. In left kidney - 1 laceration - 5 x 3 x 2 c.m. near hilum seen.
4. A mesenteric tear about 15 cm distal to duodena jejunal junction seen - 5 x 3 c.m. in size.
5. Adhesions between umbilicus and peritoneum and intestine seen suggestive of previous surgery.
6. Cross Section - pale.

Extremities : Cyanosed

Level of diaphragm : Intact

Peritoneal cavity : 2 litre of hemorrhage fluid with clots seen.

Pericardium : Intact

Heart : Normal in size. All the four chambers filled with fluid blood.

Valves : Normal

Coronary Vessels : Patent

Lungs : cross section congested

Larynx : Intact

Hyoid Bone : Intact

Stomach	:	Blackish partially digested food materials present. Mucosa congested.
Liver	:	C/s congested
Spleen	:	C/s congested
Kidneys	:	Left Kidney - as noted above Right Kidney -c/s congested
Small Intestine	:	As noted above
Pelvis	:	Intact
Head	:	Intact
Membranes	:	c/s edematous
Brain	:	Pale
Spinal Column	:	Intact"

Ex.P.8 is the Postmortem Certificate. He gave opinion that the death of the deceased was due to the stab injury to abdomen.

(f) In the course of investigation, on 05.12.2010, P.W.12 arrested the accused in the presence of P.W.3 and another witness. On such arrest, he voluntarily gave a confession in which he disclosed the place where he had hidden the rasp. In pursuance of the same, he took the police and witnesses to the place of hide out and produced the rasp M.O.I (muk;). He also produced a blood stained shirt and a blood stained lungi. P.W.12 recovered the same under a mahazar in the presence of the same witnesses. On returning to the police station, he forwarded the accused to court for judicial remand and handed over the material objects also to court. Then, he made a requisition to the court to forward the material objects for chemical examination. The report revealed that there were blood stains found on the rasp (muk;), lungi and dhoti.

(g) P.W.13 took up the case for further investigation and on completing the investigation, he laid charge sheet against the accused for the offence under Section 302 of IPC.

3. Based on the above materials, the Trial Court framed a lone charge as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined and 19 documents and 4 material objects were also marked.

4. Out of the said witnesses, P.Ws.1 and 2 are the eye-witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.W.3 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. He has also spoken about the arrest of the accused and the recovery of the M.Os.1, 3 and 4 on his disclosure statement. P.W.4 has not stated anything incriminating against the accused. P.W.5 Dr.Sankar has stated that he examined the

deceased at Government Hospital, Mayiladuthurai at 07.20 p.m. on 03.12.2010. He found a stab injury on the abdomen through which the small intestine was protruded. He has further stated that after treatment, he forwarded him to Tanjore Medical College Hospital. P.W.6 has spoken about the registration of the case on the complaint of P.W.1. P.W.7 the Head Constable has stated that he took the First Information Report to the court and handed over the same at 05.30 p.m. on 04.12.2010. P.W.8 has stated that he took the dead body of the deceased to the Government Hospital and handed over the same to the Doctor for postmortem. P.W.9 is the second wife of the deceased. She has spoken about the motive. P.W.10 is the sister's husband of the deceased. He has also spoken about the motive. P.W.11 has spoken about the postmortem conducted and his final opinion regarding cause of death. P.Ws.12 and 13 have spoken about the investigation done and the final report filed.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., he denied the same as false. His defence was a total denial. However, he did not choose to examine any witness nor mark any document on his side. Having considered all the above, the Trial Court convicted the accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

6. We have heard the learned Counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

7. In this case, the prosecution mainly relies on the evidence of P.Ws.1 and 2. They have vividly spoken about the motive. These two witnesses have spoken about the entire occurrence. They have stated that it was this accused, who stabbed the deceased with rasp (muk;), on the abdomen of the deceased. The deceased was immediately taken only by P.W.1 to the Government Hospital, Mayiladuthurai.

8. We have gone through the evidences of P.Ws.1 and 2. We do not find anything even to suspect their presence at the place of occurrence and their veracity. Though they have been cross-examined at length, nothing has been elicited to create a slightest doubt in their evidence. Thus, from the evidence of P.Ws.1 and 2, in our considered view, the prosecution has clearly established that it was this accused who stabbed the deceased on the abdomen with rasp (muk;). Then, in the medical evidence, it has been clearly stated that the death of the deceased was due to stab injury. Thus, we hold that the death of the deceased was only caused by the accused.

9. Now the question is as to what was the offence that the accused had committed by the said act.

10. From the evidences available, it is crystal clear that there was a quarrel between the accused and the deceased, because, the accused objected the deceased demanding money coercively from Thavamani. In the said quarrel, the accused took the rasp (muk;) which was lying there and made a single stab on the abdomen of the deceased. He did not make any more attack to cause another injury. Thus, the act of the accused, in our considered view, would not fall under the limbs 1 to 3 of Section 300 of IPC. At the most, he can be attributed with knowledge that causing of injury on the abdomen would be imminently dangerous to cause the death. Thus, the act of the accused would fall within the 4th limb of Section 300 of IPC. But, since the occurrence has taken place out of provocation, which in our considered view, was grave and sudden, it would squarely fall within the first exception to Section 300 of IPC. Therefore, he is liable to be punished under Section 304-II of IPC.

11. Now turning to the quantum of punishment, the accused is a young man, aged about 20 years and he has got no bad antecedents. The occurrence was not premeditated as it was out of sudden quarrel. He has got lot of chances for reformation. Having regard to these mitigating and aggravating circumstances, we are of the considered view that sentencing the accused to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for 8 weeks would meet the ends of justice.

12. In the result, the Criminal Appeal is partly allowed in the following terms:

a. The conviction and sentence imposed on the appellant by the trial court for the offence under Section 302 of IPC are set aside and instead he is convicted for the offence under Section 304-II of IPC and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for 8 weeks; and

b. The trial court is directed to secure the accused to undergo the remaining portion of the sentence.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Manalmedu Police Station,
Nagapattinam District.
 2. The District and Sessions Judge,
Nagapattinam.
 3. The Public Prosecutor,
High Court, Chennai.
 4. The Judicial Magistrate No.I, Mayiladuthurai.
 5. The Judicial Magistrate No.I, Nagapattinam.
 6. The Chief Judicial Magistrate Nagapattinam.
 7. The Superintendent Central Prison, Trichy.
 8. The District Collector, Nagapattinam District.
 9. The Director General at Police, Mylapore, Chennai-4.
- + 1 cc to M/s. Greetha Senthilkumar, Advocate Sr.36632

RSI (CO)
Eu 27.7.16

CrI.A.No.271/2014



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