

BAIL SLIP

The Substantive sentence of imprisonment imposed in the Petitioner/Accused namely Babu & Rajarajan were suspended in pursuance of the order of this court made in M.P.No.1 of 2015 in Crl.A.No.363 of 2014, dated 23.03.2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2016

CORAM

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

CRL.A.No.363 of 2014

1.Babu
2.Rajarajan

.... Appellants/accused 1 & 2

Vs

State by
The Inspector of Police,
M.1 Madhavaram Police Station

.... Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned IV Additional District and Sessions Judge, Ponneri, made in S.C.No.210 of 2012 dated 23.06.2014.

For Appellants : Mr.M.Nirmal Kumar

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

JUDGMENT

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

The appellants are the accused 1 and 2 in S.C.No.210 of 2012 on the file of the learned IV Additional District and Sessions Judge, Ponneri. The 1st accused stood charged for offence under Section 302 of IPC and the 2nd accused stood charged for offence under Section 302 read with 34 of IPC. By judgment dated 23.06.2014, the trial court convicted the accused

accordingly and sentenced them to undergo imprisonment for life and to pay a fine of Rs.1,000/- each, in default, to undergo rigorous imprisonment for 3 months. Challenging the said conviction and sentence, the appellants are before this Court with this Criminal Appeal.

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

(a) The accused 1 and 2 are cousins. The deceased in this case was one Venkateshwaralu. He was a neighbour of the 1st accused. The wife of the 1st accused used to borrow money from the deceased without the knowledge of the 1st accused. On learning the same, the 1st accused warned the deceased not to give any money to his wife without his knowledge. This resulted in a quarrel between the 1st accused and the deceased. On 19.12.2010 around 05.25 p.m., the accused 1 and 2 had gone to the house of the daughter of the deceased along with the wife and mother-in-law of the 1st accused. At the house of his daughter, the deceased remained with his son Purushothaman and other family members. All of them were sitting together and discussing about the above issue. When the talks were going on, suddenly, it is stated that the accused 1 and 2 pushed the deceased down, kicked him with hands and legs. The deceased fainted. He was taken to Madras Medical Mission Hospital where despite treatment, he died at 02.15 a.m. In this regard, a complaint was made by P.W.1, who is the son of the deceased, to the police.

(b) On receipt of the said complaint, P.W.13, the then Inspector of Police, Madavaram Police Station, registered a case in Crime No.760 of 2010 on 20.12.2010 and then, he 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.6 and another witness. He examined P.Ws.1 to 5 and recorded their statements. Then, he went to the Government Stanley Hospital and conducted inquest on the body of the deceased between 09.30 a.m. and 11.30 a.m. on 20.12.2010 and forwarded the body for postmortem.

(c) P.W.9 Dr.Muthu Narayanan conducted autopsy on the body of the deceased on 20.12.2010 at 01.55 a.m. He found the following injuries:

'Moderately nourished male body. No external injuries anywhere on the body with blood oozing from the nostrils and mouth.

1. Contusion of 8 x 4 c.m. seen on the right frontal region of the scalp. On reflection of the scalp, diffuse bruising 10 x 5-4 c.m. over the underlying scalp tissue.

2. On dissection of the chest, depressed fracture of the lower end of sternum.

3. Contusion of 16 x 7 c.m. over the left side rib regions with fracture of the 5th and 6th ribs along the parasternal line and their ends piercing the apex of heart and with the size of 2.5 x 1.5 c.m.

4. 750 ml of fluid and clotted blood was seen in the thoracic cavity.

Lungs : Normal size. c/s. pale. Larynx and trachea empty. Hyoid bone intact. Stomach : contained 450 ml of dark colour fluid with partially digested cooked rice particles. No definite smell. Liver, Spleen, Kidneys : Normal. C/s.pale. Bladder empty. Pelvis and Spinal column : intact. Brain : Normal size c/s.pale.

Ex.P.4 is the Postmortem Certificate. He gave opinion that the death was due to shock and hemorrhage due to chest injuries.

(d) P.W.13, during the course of investigation, arrested the accused at 01.00 p.m. on 20.12.2010 and then, he forwarded them to court for judicial remand. On completing the investigation, he laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed charges 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 14 witnesses were examined and 10 documents were also marked.

4. Out of the said witnesses, P.W.1 is the son of the deceased. He has stated that he accompanied the deceased to the house of his sister where during the discussion going on to sort out the issues, suddenly, the accused 1 and 2 pushed the deceased down and kicked him with hands and legs. P.W.2 is the son-in-law of the deceased in whose house the occurrence has taken place. He has also stated about the entire occurrence. P.W.3 is the daughter of the deceased in whose house the occurrence took place. She has also stated about the entire occurrence. P.W.4 is a neighbour of P.W.3. She has stated that there was a quarrel in which the deceased was attacked. He has not specifically stated as to how the occurrence has taken place. P.W.5 has also spoken about the entire occurrence. P.W.6 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. P.W.7 has spoken about the arrest of the accused. P.W.8 has stated that the deceased was brought to Apollo Hospital on 19.12.2010. He declared him dead. Ex.P.3 is the intimation given to the police. P.W.9 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.10 has stated

that he took the dead body of the deceased and handed over the same to Doctor for postmortem. P.W.11 has spoken that on 20.12.2010 at 09.20 p.m., he examined P.W.1 and he found the following injuries on him:

1. A nail mark near the left ear;
2. Tooth bite mark on the left elbow;
3. Nail marks on the left elbow; and
4. A contusion on the left cheek.

P.W.12 has stated that he treated P.W.1 at Government Stanley Hospital. P.W.13 has spoken about the investigation done and the final report filed by him.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not choose to examine any witness nor to mark any document on their 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 appellants are before this Court.

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

7. As we have already narrated, P.Ws.1 to 4 are the eye-witnesses to the occurrence. According to their evidence, there was no motive for the accused to do away with the deceased. They were in cordial terms. The only issue was that the deceased used to lend money to the wife of the 1st accused without the knowledge of the 1st accused. It is, only to resolve the same, the accused 1 and 2 along with the wife and brother-in-law of the 1st accused had gone to the house of P.W.3, namely, the daughter of the deceased where the deceased had come. It is in evidence that when the talks were going on very smoothly, at one point of time, due to some exchange of words, there arose a quarrel in which it is stated that the accused 1 and 2 kicked the deceased. From these evidences, it is crystal clear that it was these two accused who kicked the deceased with hands and legs and as a result of the same, the deceased died.

8. The medical opinion of P.W.9 is that the death of the deceased was due to shock and hemorrhage due to chest injuries. In our considered view, the act of the accused in kicking the deceased which resulted in the death of the deceased shall not fall within anyone of the limbs of Section 300 of IPC. Undoubtedly, there was neither any intention to cause the death nor any intention on the part of the accused to cause bodily injury as is likely to cause the death. Thus, the act of the

accused would fall neither under the first limb or under the 2nd limb of Section 299 of IPC. Similarly, the act of the accused would not fall under the 3rd limb of Section 300 of IPC also, because, the accused can not be attributed with knowledge that by mere kicking with legs and hands, a man would die. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in Jani Gulab Shaikh vs. The State of Maharashtra in 1969 (2) UJ 598 SC wherein in an identical situation, the Hon'ble Supreme Court has held that the act of the deceased would not fall under anyone of the limbs of Section 299 of IPC and the same is therefore, an offence punishable under Section 323 of IPC. Here in this case, the act of the accused in causing fracture of the bones would amount to voluntarily causing grievous hurt punishable under Section 325 of IPC. Thus, we conclude that the accused are liable to be punished for offence under Section 325 read with 34 of IPC alone.

9. Turning to the quantum of punishment, it is stated that the accused have already spent more than a year in prison. In our considered view, the same shall be sufficient punishment for them.

10. In the result, the appeal is partly allowed and the conviction and sentence imposed on the appellants/accused 1 and 2 under Sections 302 of IPC and 302 read with 34 of IPC respectively are set aside and instead, they are convicted under Section 325 read with 34 of IPC and the substantial sentence of imprisonment imposed by the trial court on the appellants is reduced to the period of sentence already undergone by them and they are set at liberty. No fine amount is imposed.

Sd/-
Assistant Registrar(CS VII)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Tiruvotriyur.
2. The Chief Judicial Magistrate,
Tiruvallur.

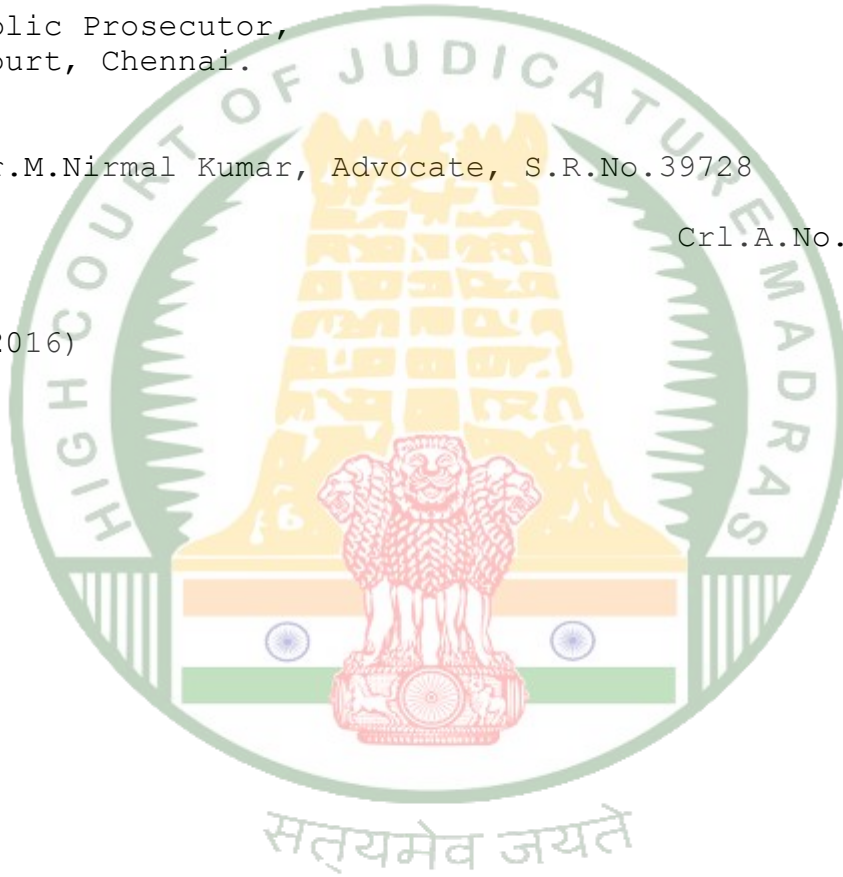
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3. The Superintendent,
Central Prison,
Puzhal, Chennai.
4. The Inspector of Police,
M.1 Madhavaram Police Station,
Chennai.
5. The IV Additional District and Sessions Judge,
Ponneri.
6. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.M.Nirmal Kumar, Advocate, S.R.No.39728

Crl.A.No.363 of 2014

SVI (CO)
CA(23/08/2016)



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