

Bail Slip

The appellant i.e., Kuppusamy in CrI A.No.390 of 2014 (Accused in S.C.73 of 2012 on the file of 4th Additional District and Sessions Court, Erode District, Bhavani) was released on bail vide order of this Court, dated 01/09/2014, and made in M.P.No.1 of 2014 in CrI A No. 390 of 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.390 of 2014

Kuppusamy

... Appellant /Accused

Vs

State rep. By
Inspector of Police,
Ammapettai Police Station,
Erode District.
Cr.No.205 of 2011

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374 Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the judgment dated 05.09.2012 passed in S.C.No.73 of 2012 by the IV Additional District and Sessions Court, Erode District at Bhavani.

For Appellant : Mr.I.C.Vasudevan

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

JUDGEMENT

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

The appellant is the sole accused in S.C.No.73 of 2012 on

the file of the IV Additional Sessions Judge, Erode District at Bhavani. He stood charged for offence under Section 302 IPC. By judgment dated 05.09.2012, the trial Court convicted the appellant/accused for offence under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default to undergo Rigorous Imprisonment for one year. Challenging the said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

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

The accused was a resident of Kuduraikalmedu Village in Bhavani Taluk, Erode District. His son and daughter-in-law had already passed away leaving behind two daughters and a son. The accused was thus taking care of these grand children all these years. The deceased in this case, Mr.Murugesan was none other than the son-in-law of the accused. The deceased and his wife, viz, daughter of the accused were also living along with the accused. Thus, they were all living under a common roof. It is alleged that the deceased, on many occasions, found fault with the grand daughters of the accused and talked ill of them. This was not the liking of the accused, as it involved the modesty of the young girls. On 11.05.2011, on account of the above utterance made by the deceased, there was a wordy quarrel between the accused and the deceased and the quarrel went on for quite some time. In the said quarrel, the accused suddenly took out a knife and stabbed the deceased on his abdomen once. P.Ws.1, 5 and 6 and few others witnessed the occurrence. They raised alarm. The accused ran away from the scene of occurrence. The deceased died instantaneously.

3. P.W.1, the mother of the deceased, who witnessed the entire occurrence, rushed to Ammapettai Police Station and made a complaint at 1.00 a.m, on 12.05.2011. One Mr.Ravi, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.205 of 2011 for offence under Section 302 IPC. He forwarded the Complaint (Ex.P.1) and the First Information Report (Ex.P.9) to the Court, which were received by the learned Jurisdictional Magistrate at 3.00 a.m., on 12.05.2011.

4. The case was taken up for investigation by P.W.13, the then Inspector of Police. He proceeded to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.7 and another witness. The knife was also found lying there. P.W.13 recovered the knife; blood stained earth and the sample earth at the place of occurrence under a mahazar. He examined P.Ws.1 to 6 and recorded their statements. Then, he conducted inquest on the body of the deceased and forwarded the same for Post Mortem.

5. P.W.12 Dr.Dinakar conducted autopsy on the body of the deceased on 12.05.2011 at 1.00 p.m., and found the following injuries:-

" A liver lacerated wound. Over the upper abdominal waist from 5cmx2cm. Depth over 6 - 8 inches (suing a protunt probe). No other opinion."

Ex.P.8 is the Post mortem certificate. P.W.12 gave opinion that the death was due to shock and hemorrhage due to stab injury found on the abdomen. He further opined that the said injuries would have been caused by a weapon like M.O.1 (knife).

6. When the investigation was in progress, the accused went to the office of P.W.8, the then Village Administrative Officer of Kurichi "B" Village at 3.00 p.m on 12.05.2009. On such appearance, he wanted to give a confession. P.W.8 allowed him to confess and he reduced the same into writing. Ex.P.5 is the report of P.W.8. Then, he took the accused along with a Special Report and produced him before P.W.13. P.W.13 arrested the accused and from his possession recovered a blood stained shirt and a blood stained dhoti. Then, he forwarded the accused to Court for judicial remand and handed over the material objects also to the Court. On completing the investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed a lone charge against the accused for offence under Section 302 IPC. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 13 witnesses were examined and 14 documents were exhibited, besides 8 Material Objects were marked.

8. Out of the said witnesses, P.Ws.1 and 5, who are the eye-witnesses to the occurrence have vividly spoken about the entire occurrence. P.W.2, wife of the deceased and P.W.3, daughter of the deceased have spoken about the earlier occurrence, in which the deceased spoke ill of the grand children of the accused, which was not to the liking of the accused. P.W.4, the sister of the deceased has also spoken about the same facts. P.W.6 has stated that at the time of occurrence, when she was at her home, she heard the alarm raised and when she went to the house of the deceased, she found the deceased lying with injuries. P.W.7 has spoken about the recovery of the material objects from the place of occurrence and the preparation of the Observation Mahazar and Rough Sketch. P.W.8, the Village Administrative Officer has spoken about the extra judicial confession given by the accused to him. P.W.9 has spoken about the photographs taken at

the place of occurrence. P.W.10, the then Head constable who took the First Information Report from the police and handed over the same to the Jurisdictional Magistrate at 3.00 a.m., on 12.05.2011. P.W.11, the then Grade I Constable has stated that he took the dead body to the hospital and handed over the same to the Doctor for Post Mortem. P.W.12 has spoken about the Post-Mortem conducted by him and his final opinion regarding the cause of death. P.W.13 has spoken about the investigation done and the final report filed by him.

9. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witnesses nor did he mark any documents on his side. His defence was a total denial.

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

11. 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.

12. This is a case based on eye witness account of P.Ws. 1 and 5. The learned counsel for the appellant would submit that P.Ws. 1 and 5 would not have seen the occurrence at all. According to the learned counsel, there are certain contradictions between their evidences. We have carefully gone through the said evidences. Except certain minor discrepancies, in material particulars, their evidences are cogent and convincing and the same corroborate with each other. Thus, we do not find any reason to reject the evidence of P.Ws. 1 and 5. Their presence at the time of occurrence is quite natural and hence, the same cannot be doubted. Above all, after the occurrence, the accused had gone to the local Village Administrative Office, P.W.8 and made a voluntary confession, confessing his guilt. This confession by itself a substantive piece of evidence. There is no reason to reject the same.

13. The learned counsel for the appellant is not able to point out any circumstances warranting suspicion over the said extra judicial confession made by the accused to P.W.8. This extra judicial confession, in our considered view, duly corroborates the eye-witness account of P.Ws. 1 and 5. The medical evidence also duly corroborates the same. From these evidences, it is crystal clear that it was this accused, who caused the single stab injury on the stomach of the deceased. The medical evidence would go to prove that the death of the

deceased was due to the stab injury caused by the accused. Thus, the prosecution has clearly proved that it was this accused, who caused the death of the deceased by stabbing the deceased on his abdomen.

14. Now, the question is, "what was the offence that was committed by the accused by the said act?". From the evidence of P.Ws.1 and 5 and from the extra judicial confession made by the accused to P.W.8, it is crystal clear that the accused who was then aged 82 years was in his house and the deceased was also residing along with him. In few earlier occasions, the accused used ill words about the chastity of the grand daughter of the accused. On the date of occurrence also, on account of above utterances made by the deceased, there was a quarrel between the accused and the deceased. It was only at the end of the said quarrel, the accused caused a single stab on the abdomen of the deceased. In our considered view, the said act of the accused would squarely fall within the first exception under Section 300 I.P.C. From the evidences available, it is crystal clear that the accused has lost his self control on account of the provocative words spoken by the deceased. The said provocation was grave and also sudden. Driven by the said sudden and grave provocation, the accused had caused a single stab injury on the abdomen of the deceased. Thus the act of the accused would squarely fall within the first exception to Section 300 I.P.C. The accused, caused a single stab injury on the vital part of the deceased. Though he would not have any intention to cause the death of the deceased, certainly, he had the intention to cause a abdominal injury, which was sufficient in the ordinary course of nature, to cause the death of the deceased. The act of the accused squarely fall within the third limb of Section 300 I.P.C., and therefore, he is liable to be punished under Section 304(i) IPC.

15. Turning to the quantum of punishment, admittedly, at the time of occurrence, in the year 2011, the accused was 82 years old. Now, he is more than 86 years. The learned counsel for the appellant would submit that the accused has been immobilized and his health condition is deteriorating further due to his old age and due to other ailments.

16. In our considered view, no purpose will be served by keeping this old man in jail who is also immobilized. It is informed by the learned counsel for the appellant that already the accused had undergone two years of imprisonment. In our considered view, the same can be treated as sufficient punishment. After all the occurrence was not a premeditated one; it was out of a sudden quarrel. The accused was provoked by the words spoken by the deceased about his grand daughters character upon whom he was showering love and affection and thus, driven by sudden provocation and having lost his mental

faculty, the accused had acted which resulted in the death of the deceased. He has to take care of his grand children also. Having regard to the totality of all these circumstances, we are of the view that reducing the sentence of imprisonment to the period of sentence already undergone with a fine of Rs.1,000/- would meet the ends of justice.

17.In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant for offence under Section 302 I.P.C., is set aside and instead, he is convicted for offence under Section 304(i) I.P.C., and the period of sentence is reduced to the period of sentence already undergone by him besides a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

- 1.The IV Additional District and Sessions Judge, Erode District, Bhavani.
- 2.-Do- Thro The Principal Sessions Judge, Erode District. Bhavani.
- 3.The Inspector of Police, Ammapettai Police Station, Erode District.
- 4.The Judicial Magistrate, Bhavani.
- 5.The Chief Judicial Magistrate, Erode.
- 6.The Superintendent, Central Prison, Coimbatore.
- 7.The District Collector, Erode.

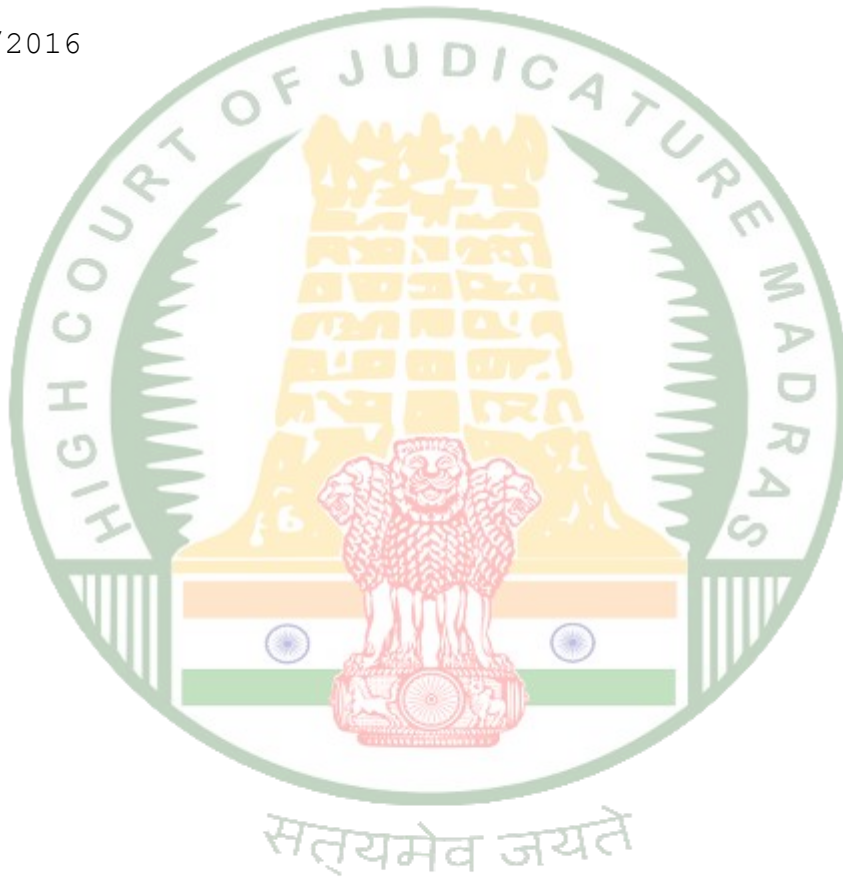
8.The Director General of Police,
Chennai-4.

9.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.I.C.Vasudevan, Advocate Sr.30800

Crl.A.No.390 of 2014

gj[col]
srg 04/07/2016



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