

Bail Slip Crl.A.458/2014
The Appellant/Sole Accused namely kaviarasan, S/o Kaliappan was directed to be released on bail in Crl.OP.1/2015 dt.06.07.2015 in Crl.A. 458/2014 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 20.07.2016

CORAM:

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

Crl.A.No.458 of 2014

Kaviarasan Appellant/Accused

vs.

The State,by
The Inspector of Police,
G-2, Padalam Police Station,
Kancheepuram District.
(Crime No.264 of 2011) Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 03.07.2014 passed by the learned Additional District Judge, Chengalpattu, in S.C.No.255 of 2011.

For Appellant : Mr.K.R.Rameshkumar
For Respondent : Mr.M.Maharaja, Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by V.Bharathidasan, J.)

The appellant in this appeal is the sole accused in Sessions Case No.255 of 2011, on the file of the learned Additional District Judge, Chengalpattu. He stood charged for offence punishable under Section 302 of IPC. After trial, the Trial Court, by judgement dated 03.07.2014, convicted the accused under Section 302 IPC and sentenced him to undergo life imprisonment and also imposed a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for six months. Challenging the above said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

(i) The deceased, in this case, one Ealumalai was the brother of the accused. P.W.1 is the wife of the deceased. Both of them working as coolie. On 07.05.2011, the cell phone belongs to the deceased was found missing and he suspecting the accused and questioned him. Hence, there was a wordy quarrel between them at about 9.30 p.m., and wordy quarrel lead into a fight between them, and during the fight, the accused stabbed the deceased with iron sheet in the chest of the deceased and ran away. P.W.1, the wife of the deceased was present in the scene of occurrence, she took the deceased to the Government Hospital, Madhuranthagam in 108 ambulance, where, he was declared dead. Then, she lodged a complaint (Ex.P1), before the respondent police. P.W.11, the Sub Inspector of Police, working in the respondent police station, on receipt of the complaint, registered a case in Crime No.264 of 2011 under Section 302 IPC, prepared FIR (Ex.P11) and sent the same to the higher officials.

(ii) P.W.13, the Inspector of Police, working in the Padalam Police Station, on receipt of the FIR, commenced the investigation, proceeded to the scene of occurrence, prepared an Observation Mahazar (Ex.P13), drew Rough Sketch (Ex.P14), in the presence of witnesses. He examined the witnesses and recorded their statements. Then, he proceeded to the Government Hospital, Maduranthagam, and conducted inquest over the dead body in the presence of panchayatdars, prepared inquest report (Ex.P15). He sent the memo to the Doctor for conducting Postmortem autopsy on the dead body. He arrested the accused at about 5.00 p.m., and on such arrest, he voluntarily given a confession and based on the disclosure statement (Ex.P16), he seized M.O.1 Iron sheet, under (Ex.P17) seizure mahazar, thereafter he sent the accused for judicial custody.

(iii) P.W.8, a Doctor, working in the Government Hospital, Madhuranthagam, conducted postmortem autopsy on the dead body of the deceased and found the following injuries.

"External Injuries:

1. Riger Mortis was present all over the body.
2. A stab injury measuring 3 x 1 x bone deep on the left ribs.
3. Blood was oozing out from the liver.
4. Froathing and foaming of saliva at the nose and mouth."

He is of the opinion that the deceased would appear to have died of shock and haemorrhage due to the injuries to the vital organs and issued postmortem certificate[Ex.P9].

(iv) P.W.13, continued the investigation, examined the postmortem Doctor and other witnesses, recorded their statements and after completion of investigation, he laid the charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 13 witnesses were examined and 18 documents exhibited and 1 material object was marked.

4. Out of the said witnesses examined, P.W.1, is the wife of the deceased and also an eye witness to the occurrence. According to her, on the date of occurrence, there was a wordy quarrel between the deceased and accused and at the end of the quarrel, the accused stabbed the deceased with iron sheet in his right side chest, immediately she took him to the Government Hospital, Madhuranthagam, where he was declared dead, then she lodged a complaint before the respondent police. P.Ws.2 to 6 turned hostile. P.W.7, a Doctor, working in the Government Hospital, Madhuranthagam, received the dead body of the deceased and declared him dead and also issued Accident Register. P.W.8, a Doctor, working in the Government Hospital, Madhuranthagam, conducted postmortem autopsy on the dead body of the deceased and issued postmortem certificate Ex.P9. P.W.9, the Assistant Director, working in the Forensic Laboratory, Chennai, received the blood stained material objects, examined the same and issued report. P.W.10, the Head Constable, working in the respondent police, identified the dead body of the deceased in the hospital for postmortem autopsy. P.W.11, the Sub Inspector of Police, attached to the respondent police, received a complaint and registered a case and sent the FIR to the higher officials. P.W.12, the Junior Scientific Officer, working in the Forensic Laboratory, Chennai, examined the material objects and issued a report. P.W.13, the Inspector of Police, attached to the respondent Police, on receipt of the FIR, commenced the investigation, examined the witnesses and recorded their statements, arrested the accused and recovered the materials objects and after completion of investigation, he filed the charge sheet against the accused.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused did not examine any witness and no document was marked on his side.

6. Having considered all the above materials, the Trial Court convicted and sentenced the accused for the offence as stated in first paragraph of this judgment. Challenging the above conviction and sentence, the accused is before this Court.

7. We have heard Mr.K.R.Rameshkumar, learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have

also perused the records carefully.

8. The deceased is the brother of the accused. P.W.1 is the wife of the deceased and she also an eye witness to the occurrence. According to her, on 07.05.2011, the cell phone of the deceased was found missing and suspecting the accused, the deceased questioned and quarrelled with him. On 08.05.2011, at about 9.30 pm., again there was a quarrel between the accused and deceased and during the end of the quarrel, the accused took the iron sheet and attacked the deceased in his chest and ran away. Immediately, she took him to the Government Hospital, Madhuranthagam, where he was declared dead, thereafter, she lodged a complaint before the respondent police. The occurrence took place near the house of the deceased and the presence of the P.W.1, in the scene of occurrence is natural. She has categorically deposed that there was a quarrel between the accused and deceased and during the quarrel, the accused given a single stab with iron sheet. The medical evidence also corroborate the evidence of P.W.1. Hence, we have no reason to disbelieve the evidence of P.W.1. Even though, other witnesses turned hostile, the evidence of P.W.1 is being trustworthy, and believe his evidence, we are of the considered view that the prosecution has clearly established that the accused has attacked the deceased with iron sheet and caused his death.

9. Now, the question is what was the offence that was committed by the accused by the said Act. As per the evidence of P.W.1, at the time of occurrence there was a quarrel between the accused and deceased and at the end of the quarrel, being provoked by the accused and the provocation was so sudden grave, the accused lost his mental balance, and out of the sudden provocation, the accused gave a single injury on the deceased with iron sheet available in the scene of occurrence. Certainly, he has intention to cause injury on the vital part of the deceased, which is sufficient in the ordinary course of nature to cause the death of the deceased. Thus, in our considered view, the act of the accused would squarely fall within the first exception to Section 300 of IPC and fall within the 3rd limb of Section 300 IPC., and therefore, the accused is liable to be punished under Section 304(i) IPC.

10. So far as the quantum of punishment is concerned, it is not a premeditated murder. The occurrence took place out of sudden quarrel and provocation, the accused having lost his mental faculty attacked the deceased, which resulted in the sudden death of the deceased. The accused is a poor man and coolie. Taking into consideration of the mitigating as well as the aggravating circumstances, we are of the considered view that sentencing the accused to undergo rigorous imprisonment for

6 years and to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for four weeks would meet the ends of justice.

11. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant in S.C.No.255 of 2011 dated 03.07.2014 on the file of the learned Additional District Judge, Chengalpattu for an offence under Section 302 IPC is set aside and instead, he is convicted under Section 304 part-I IPC and sentenced him to undergo rigorous imprisonment for 6 years and to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for four weeks. It is directed that the period of detention already undergone by the appellant/accused shall be set off as required under Section 428 Cr.P.C. If the appellant/accused is not in custody, the trial Court is directed to take appropriate steps to secure him and commit him to prison so as to serve the sentence imposed on him.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rrg

To

1.The Additional District Judge,
Chengalpatti.

2 Thro The Principal District Judge,
Chengalpet

3 The Judicial Magistrate No.I, Chengalpattu

4 The Chief Judicial Magistrate, Chengalpattu

5 the Superintendent
Central Prison, Puzhal, Chennai

6 The District Collector
Chengalpattu

7 The Director General of Police
Mylapore, Chennai

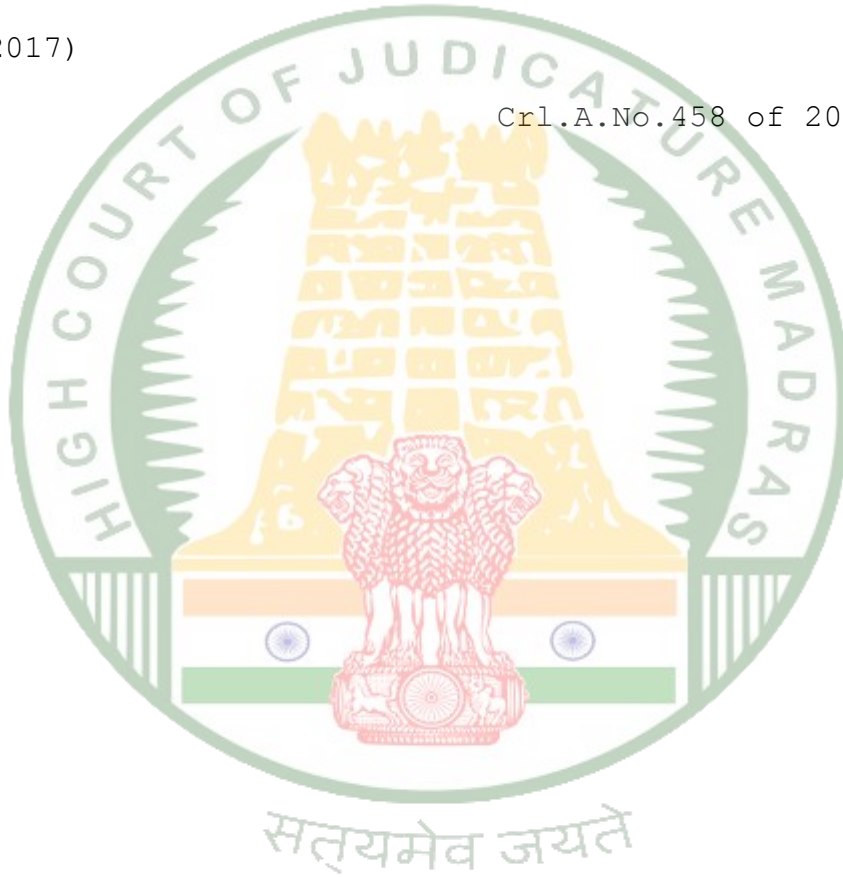
8.The Inspector of Police,
G-2, Padalam Police Station,
Kancheepuram District.

9.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.K. Ramesh Kumar, Advocate, S.R.No.41169

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