

Bail Slip

That the Appellant herein/Accused Munivel @ Kutti, was directed to be released on bail as per the order of this court dated 15.04.2013 and made in MP.No.1 of 2013 in Criminal Appeal No.163 of 2011 and made herein.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.163 of 2011

Munivel @ Kutti ..Appellant/Accused

Vs

State by:
Inspector of Police,
G.7, Chetpet Police Station,
Chennai (Crime No.310/2008) ...Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment passed in S.C.No.375 of 2009 dated 01.03.2011 on the file of the learned VI Additional Sessions Judge (In the Court of Sessions at Chennai).

For Appellant : Mr.R.John Sathyan for
Mr.Settu

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.375 of 2009 on the file of the learned VI Additional Sessions Judge, Chennai. He stood charged for offence under Section 302 I.P.C. By judgment dated 01.03.2011, the trial Court convicted the accused for offence under Section 302 I.P.C., and sentenced him to undergo imprisonment for life and to pay a fine of Rs.50,000/- in default to undergo simple imprisonment for six months. Challenging the said conviction and sentence, the accused/appellant is before this Court with this Criminal Appeal.

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

The deceased in this case was one Mr.Ravi. P.W.1 is his brother. P.W.2 is the wife of P.W.1. They were all residing at Chetpet, Chennai. The accused was their neighbour. The accused and the deceased were working under P.W.4. Some time before the occurrence, P.W.4 had stopped engaging the accused for work. The accused had a suspicion that it was on the instigation of the deceased, P.W.4 stopped him from work. On account of the same, the accused used to quarrel with the deceased frequently. This is stated to be the motive.

3.On 26.05.2008, at about 11.30 am, the deceased along with P.Ws.1 & 2 were proceeding towards a hotel on the Chery Road. When they were nearing Atlas Company, the accused suddenly emerged there and attacked the deceased repeatedly with M.O.1, knife on his head. P.Ws.1 & 2 raised alarm. The accused ran away from the scene of occurrence.

4.Immediately, P.Ws.1 & 2 took the deceased to the Kilpauk Medical College & Hospital. P.W.5 - Dr.Mehajabeen, examined the deceased at 12.15 pm on 26.05.2008, at the Kilpauk Medical College & Hospital. The deceased was conscious. He told P.W.5 that near Harrington bridge, he was attacked by a known person with knife. P.W.5 found the following injuries on the deceased:-

- "(i)A stab injury measuring 8x1x1cm near the right ear.
- (ii)A cut injury measuring 4x1x1cm near the right eye brow
- (iii)A stab injury on the right upper arm
- (iv)A lacerated injury measuring 4x1x1 cm on the right forearm
- (v)A lacerated injury measuring near the left ear."

Ex.P.1 is the Accident Register. The deceased was admitted as inpatient. P.W.5 gave intimation to the Police also.

5.On receiving the said intimation from the hospital, P.W.12, the then Inspector of Police, Chetpet Police Station, proceeded to the hospital and recorded the statement of the deceased. On returning to the Police Station, at 3.00 pm on 26.05.2008, he registered a case in Crime No.310/2008 for offence under Sections 307 I.P.C., and later, it was altered into one under Section 302 I.P.C., against the accused. Ex.P.12 is the F.I.R., and Ex.P.1 is the complaint. He forwarded both the documents to Court which were received by the learned Judicial Magistrate at 9.30 pm on 26.05.2008.

6.Taking up the case for investigation at 6.00 pm on 26.05.2008, P.W.12 proceeded to the place of occurrence,

prepared an observation mahazar and a rough sketch in the presence of P.W.7 and another witness. Then he examined few witnesses at the place of occurrence. On the same day, at 4.00 pm, he made a request to the learned Judicial Magistrate to record dying declaration of the deceased. P.W.11, the then learned XIII Metropolitan Magistrate, Chennai, on receiving the said intimation, went to the hospital on 4.00 pm on 26.05.2008. After having ascertained that the deceased was in a fit state of mind to make dying declaration, she recorded the dying declaration of the deceased under Ex.P.10.

7. During the course of investigation, P.W.12 arrested the accused on 27.05.2008 at 8.00 am in the presence of P.W.8 and another witness. On such arrest, he gave a voluntary confession, in which, he disclosed the place where he had hidden the knife. In pursuance of the same, he took the Police and witness to the place of hide out and produced M.O.1 (knife). P.W.12 recovered the same under a mahazar. On returning to the Police Station, he forwarded the accused to Court for judicial remand.

8. The deceased was discharged from the hospital on 23.07.2008 at 12.30 pm. When the deceased was at his house, he vomited and also expressed fits. He was immediately taken to the Government General Hospital, Chennai. He died on 27.08.2008 at 5.00 pm. Immediately, P.W.1 went to the Chetpet Police Station and made a complaint regarding the same. On receipt of the same, P.W.12 registered a case in Crime No.413/2008 for offence under Section 174 Cr.P.C., on 27.05.2008 at 9.00 pm.

9. P.W.12 conducted inquest on the body of the deceased and forwarded the same for post mortem. P.W.10 - Dr.S.Balasubramanian, conducted autopsy on the body of the deceased on 26.07.2008 at 12.30 pm. He found the following injuries on the deceased:-

“1. Linear wound scar 6 cm in length on right occipital region.

2. Curved wound scar 8 cm in length on the right temporal region of scalp above the right ear.

3. Linear wound scar 8 cm in length over left temporal region of scalp.

4. Vertical surgically sutured wound 9 cm in length with 8 intact black sutures over left occipital region of scalp extending on to back of left side of neck. On removal of sutures the marks are regular and clean cut.”

10.Ex.P.6 is the post mortem certificate. P.W.10 gave opinion that the death of the deceased was due to the effects of the head injuries. On completing investigation, P.W.12 laid charge sheet against the accused.

11.Based on the above materials, the trial Court framed a lone charge against the accused. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 12 witnesses were examined; 20 documents were exhibited and 1 Material Object was marked. On the side of the accused no witness was examined however, six documents were marked as Exs.D.1 to D.6. Ex.D.1 is the written endorsement of the learned XIV Metropolitan Magistrate; Ex.D.2 is the F.I.R Copy in Crime No.309/2008; Ex.D.3 is the F.I.R Copy in Crime No.411/2008; Ex.D.4 is the F.I.R Copy in Crime No.412/2008; Ex.D.5 is the F.I.R Copy in Crime No.413/2008 and Ex.D.6 is the F.I.R Copy in Crime No.414/2008.

12.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.

13.Having considered all the above, the trial Court found the accused guilty under the said charge and accordingly, sentenced him to undergo life imprisonment. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

14.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.

15.This is a case based on eye witness account. P.Ws.1 & 2 are the eye witnesses to the occurrence. They have also spoken about the motive. P.W.4 is the employer of the deceased as well as the accused. He has stated that he stopped the accused from work on account of his misbehaviour. It is in evidence that the accused had suspicion that he was stopped from work by P.W.4 only at the instigation of the deceased. In our considered view, this motive has been clearly established by the prosecution.

16.Now, turning to the eye witness account of P.Ws.1 & 2, in a vivid fashion, they have stated that the accused suddenly emerged and attacked the deceased with knife. The eye witness account of P.Ws.1 & 2 is duly corroborated by the medical evidence also.

17.The learned counsel for the appellant would submit that at the earliest point of time, to the Doctor, the deceased has told that he was attacked by a known person, near Harrington road whereas, according to the prosecution, the

occurrence place is something different. This, in our considered view, is only a minor contradiction. It is not as though, the Harrington Road is far off from the place of occurrence. Therefore, this argument is rejected.

18.The learned counsel for the appellant would further submit that P.Ws.1 & 2 are closely related to the deceased and hence, they are interested witnesses. On that score, we cannot reject the evidence of P.Ws.1 & 2. Prudence requires close scrutiny of the evidences of P.Ws.1 & 2. Applying the said test of close scrutiny, we find that the evidences of P.Ws.1 & 2 are very cogent and convincing. Thus, from the evidences of P.Ws.1 & 2, we hold that the prosecution has clearly established that it was this accused who caused injuries on the deceased. After the occurrence, the deceased was taken to the Kilpauk Medical College & Hospital. P.W.5 - Dr.Mehajabeen examined him and found as many as 5 injuries. Out of which, injury Nos.1 and 2 alone were on the head and the injury Nos.3 & 4 were on the hands. The deceased was treated in the said hospital for some time and thereafter, he was shifted to Government General Hospital, Chennai. P.W.9 - Dr.Shyamala has stated that after the treatment was over, the deceased was discharged from the hospital in a good condition on 07.06.2008. But, unfortunately, the treatment records have not been produced in evidence. The prosecution relies only on the evidence of P.W.9 - Dr.Shyamala, to prove that the deceased was discharged on 07.06.2008.

19.The presumption is that the deceased was discharged as he was fully cured. P.W.9 has opined that the injuries on the deceased were grievous in nature. Ex.P.5 is the Wound Certificate issued by P.W.9. After 07.06.2008, there is no evidence that the deceased had any complaint on account of the injuries sustained at the hands of the accused. It is in evidence that on 23.07.2008, the deceased while at home, vomited and he suffered fits also and therefore, he was again taken to the Government General Hospital, Chennai and admitted there. But unfortunately, the medical records pertaining to the nature of treatment given to the deceased have not been produced. The prosecution has not collected any such medical records pertaining to the treatment given to the deceased between 26.05.2008 and 07.06.2008.

20.According to P.W.1, the deceased died at 5.00 pm on 25.07.2008. P.W.10 who conducted autopsy on the body of the deceased found as many as four external injuries. The injury Nos.1 to 3 were only scars of the old injuries which were caused by the accused. The injury No.4 was a surgical wound measuring 9 cm at length and 8 sutures on the left side of the head. According to the Doctor, the death was due to the effects of the head injury. Since, the injury Nos.1 to 3 had completely been cured, what remained were only scars. There can be no doubt that the injuries 1 to 3 would not have been a cause for the death of the deceased.

21.As per the evidence of P.W.10, the death of the deceased was caused only due to the injury No.4, which was a surgical wound. But, absolutely, there is no evidence as to whether the surgical wound was caused when the deceased was taking treatment in the Government General Hospital, Chennai before his discharge on 07.06.2008 or during the period when he was undergoing treatment.

22.If it is the case that this surgical wound which was the cause for the death of the deceased had been caused before 07.06.2008, it may be concluded that the death was caused by the effects of the injuries caused by the accused. For any reason, if the injury No.4 had been caused while he was undergoing treatment, between 23.07.2008 and 25.07.2008 then, the cause for the said surgery should be proved by means of acceptable evidence. But, unfortunately, the prosecution has suppressed the medical records pertaining to the treatment between 26.05.2008 and 07.06.2008 to prove as to what was the complaint of the deceased when he was brought to the hospital on 23.07.2008 and whether subsequent to his discharge he had suffered injury on the head which was the cause for the surgical wound No.4 on the body of the deceased. Unless, it is proved by the prosecution that the injury No.4 which was a surgical wound was caused to cure the injuries caused by the accused, it cannot be said that the accused has caused the death of the deceased. It also cannot be safely concluded that the injury No.4 was necessitated on account of the injuries caused by the accused on the body of the deceased. In the absence of any positive evidence that the surgical wound was caused only to cure the injuries on the effects of the injuries caused by the accused, it cannot be held that the accused had caused the death of the deceased. If once, it is found that the prosecution has failed to prove that the death of the deceased was caused due to the injuries caused by the accused then, there is no question of convicting the accused for offence under Section 302 I.P.C., or under Section 304 I.P.C. At the most, the accused can be convicted for the offence of voluntarily causing hurt on the deceased.

23.The learned Additional Public Prosecutor appearing for the State would place reliance on the dying declaration recorded by P.W.11 and also the statement recorded by P.W.12 from the deceased. The question now is whether these two statements would fall within the limb of Section 32(1) of the Indian Evidence Act, as dying declarations. The essential requisite to make a statement of the deceased as dying declaration is that the said statement should relate either to the cause of death or as to the circumstance of the transaction which resulted in his death. Here, in this case, the cause of death of the deceased was injury No.4. There is no evidence that injury No.4 was caused by the accused. There is no evidence at all that injury No.4 was caused surgically to cure the injuries caused by the accused. Thus, the statement of the deceased made to the Judicial Magistrate as

well as to the Inspector of Police do not satisfy the requirements of Section 32(1) of the Indian Evidence Act and therefore, they are not dying declarations. Thus, these two statements are not admissible in evidence and therefore, they are rejected.

24.As we have already concluded, the prosecution has succeeded in proving that the accused voluntarily caused hurt on the deceased. Though, P.W.9 has stated that the injuries were grievous in nature, absolutely, there is no material to substantiate the same. Neither the medical records pertaining to the treatment given to the deceased while he was in hospital for the first time and for the second time nor any x-ray or any other document has been produced to prove that the injuries sustained by the deceased at the hands of the accused were grievous. Thus, in our considered view, the prosecution has proved that the accused has voluntarily caused simple hurt on the deceased, punishable for the offence under Section 324 I.P.C.

25.Now, turning to the quantum of punishment, it is reported that the accused has already suffered two years of imprisonment. He is an young boy having lot of chances for reformation. Having regard to the aggravating as well as the mitigating circumstances, we are of the view that reducing the sentence of imprisonment to the period of sentence already undergone with a fine of Rs.3,000/- would meet the ends of justice.

26.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 324 I.P.C., and the period of sentence is reduced to the period of sentence already undergone by him besides fine of Rs.3,000/- in default to undergo rigorous imprisonment for four weeks.

सत्यमेव जयते

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The VI Additional Sessions Judge,
Chennai.

2. -do- Thro The Principal Sessions, Judge, Chennai.

3. The XIV Metropolitan Magistrate, Egmore, Chennai.

4. -do- Thro The Chief Metropolitan Magistrate, Egmore,
Chennai.

5. The Inspector of Police, G7 Chelpet Police Station,
Chennai (Crime No.310/2008)

6. The Superintendent, Central Prison, Puzhal, Chennai.

7. The District Collector, Chennai.

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

9.The Public Prosecutor, High Court, Madras.

+ 3 ccs to Mr.P. Settu, Advocate SR.105.

Cr1.A.No.163 of 2011

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