

Bail Slip

The Appellant/Accused namely Raja Sekar was ordered to be released on bail by order of this Court dated 03.07.2012 and made in MP.NO.1 of 2012 in CrI A.No.759/11.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Criminal Appeal No.759 of 2011

Raja Sekar ... Appellant/sole Accused

-Vs-

State rep. by
Inspector of Police
Karumalai Kudal Police Station
(Crime No.124/2010)
Salem District.

... Respondent

This Criminal Appeal has been preferred against the judgment passed in S.C.No.81 of 2011, dated 08.11.2011 by the learned Additional Sessions Judge/Fast Track Court No.2, Salem, convicting him under Section 302 IPC and sentenced to undergo life imprisonment and also imposed fine of Rs.1,000/- in default to undergo rigorous imprisonment for one year and to set aside the same by acquitting him.

For Appellant : Mr.S.Doraisamy

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.81 of 2011 on the file of the learned Additional Sessions Judge, Fast Track Court No.2, Salem. He stood charged for offence under Section 302 IPC. By judgment dated 08.11.2011, the trial Court convicted him under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for one year. Challenging the said conviction and sentence, the accused/appellant is before this Court with this appeal.

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

[a] The deceased in this case was one Mr.Anandan. P.Ws.1 and 2 are the father and mother respectively of the deceased. P.W.3 is his sister and P.W.4 is his neighbour. The accused is the husband of P.W.3. Thus, the deceased was the brother-in-law of the accused. After the marriage, P.W.3 was residing with the accused in his village. The accused, in due course had developed drinking habit. This resulted in frequent quarrel between the accused and P.W.3. On a few occasions, therefore, P.W.3 returned to her parental home. The accused used to come, persuade her and take her back. Lastly, before the occurrence, P.W.3 had once again come to her parental home. The mother of the accused, one day before the occurrence had come to take P.W.3 back to her house. But, P.Ws.1 and 2 told her to go and bring the accused also, so that the difference of opinion could be sorted out between them and then P.W.3 could be sent back to the house of the accused. Accordingly, on 30.05.2010, the accused came to the house of P.Ws. 1 and 2 around 8.00 p.m. At that time, the accused was fully drunk. On considering that the accused was fully drunk, P.Ws.1 and 2 wanted him to go back and go come on the next day to persuade P.W.3 and to take her back into the matrimonial home. But, the accused insisted for taking P.W.3 with him. The deceased returned to his house at that time. He also told the accused to go back and to come on the next day. This infuriated the deceased. Immediately, he fisted the deceased on his chest and also kicked him on his chest and neck. The deceased fell down fainted. The accused ran away. Somebody informed the 108 ambulance service. The ambulance service came to the place of occurrence and one of para medical staffs after examining the deceased informed that the deceased was no more.

[b] Immediately thereafter, P.W.1 went to Karumalai Kudal Police Station and made a complaint under Ex.P1. P.W.9, the then Sub Inspector of Police attached to the said Police

Station, on receipt of Ex.P1, registered a case in Cr.No.124 of 2010 at 10.00 p.m. on 30.05.2010 under Section 302 IPC. Ex.P7 is the FIR. He forwarded the Complaint [Ex.P1] and the FIR [Ex.P7] to the Court, which were received by the learned Magistrate at 9.15 a.m. on 31.05.2010.

[c] P.W.10 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.5 and another witness. Then, he conducted inquest on the body of the deceased and forwarded the same for post-mortem.

[d] P.W.6 - Dr.Panneerselvam, conducted autopsy on the body of the deceased on 31.05.2010, at 3.15 p.m. He found the following injuries:

"Injuries: Contusion over tip of nose.
No other external injuries seen on the body."

Ex.P6 is the Post-mortem Certificate and Ex.P5 is the Viscera Report. He opined that the deceased would appear to have died of effect of asphyxia due to compression of the neck. P.W.10, during the course of investigation, arrested the accused at 5.00 p.m. on the same day in the presence of P.W.5 and another witness. Then, he forwarded the accused to the Court for judicial remand. He recovered the clothes found on the body and forwarded the same to the Court. At his request, the properties were sent for chemical examination. On completing the investigation, he laid the charge sheet against the accused.

3. Based on the above materials, the trial Court framed a lone charge u/s 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 10 witnesses were examined and 9 documents were exhibited, besides 2 Material Objects.

4. Out of the said witnesses, P.Ws.1 to 4 are the eye witnesses to the occurrence. They have vividly spoken about the same. P.W.5 has spoken about the Observation Mahazar and the Rough Sketch prepared at the place of occurrence. He also stated about the arrest of the accused. P.W.6 has spoken about the autopsy conducted by him and his Final Opinion regarding the cause for death. P.Ws.7 and 8 are the Police Constables who carried the dead body and the FIR to the Court respectively. P.W.9 has spoken about the registration of the case on the complaint of P.W.1. P.W.10 has spoken about the investigation done and his Final Report.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On the side of the defence, three documents were marked, namely Xerox copy of family card of P.W.1; Marriage invitation between

the accused and P.W.3; and HMOP Petition in HMOP No.107 of 2011 as Exs.D1 to D3 respectively. The defence of the accused was a total denial.

6. Having considered all the above, the trial Court convicted the accused for the lone offence u/s 302 IPC. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

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

8. The learned counsel for the appellant would submit that the evidence of P.Ws.1 to 3 cannot be believed at all. He would also submit that the medical evidence does not corroborate the eye witness account. The learned counsel would further submit that there was inordinate delay in forwarding the FIR to the Court, which creates doubt in the case of the prosecution. He would also submit that P.Ws.1 to 4 are inimical towards the accused and therefore, their evidence should be rejected. For these reasons, according to the learned counsel for the appellant, the appellant is entitled to acquittal.

9. The learned Additional Public Prosecutor would however, oppose this appeal vehemently. According to him, the occurrence had taken place in the house of the deceased. P.Ws.1 to 3, who are the family members of the deceased, would have been certainly present at the time of occurrence. Thus, the presence of P.Ws.1 to 3 cannot be disbelieved. He would further submit that P.W.4 is the neighbour and therefore, his presence also cannot be disbelieved. He would further submit that in their evidence, they have stated that the accused kicked the deceased on his neck and chest and also fisted on his chest. The Doctor's opinion clearly corroborates the said eye witness account, he contended. Thus, according to him, the finding of the trial Court that it was this accused who had caused the death of the deceased cannot be interfered with.

10. We have considered the above submissions.

11. As rightly pointed out by the learned Additional Public Prosecutor, the presence of P.Ws.1 to 3 as well as P.W.4 at the time of occurrence cannot be disbelieved at all, for their presence was quite natural. After all, P.Ws.1 and 2 are the parents and P.W.3 is the sister of the deceased. Therefore, their presence is quite natural and there are no reasons to disbelieve them at all. Similarly, P.W.4 is the neighbour, who had come to the place of occurrence on hearing the alarm raised. He had also seen the entire occurrence. Thus, we do not find any reason to reject the evidence of P.Ws.1 to 4. All these

four witnesses have clearly and vividly and in a convincing manner have stated that this accused in the quarrel, fisted and kicked the deceased on his chest and neck. The medical evidence states that the death was due to sudden compression of the neck. The compression would have been due to the kicking made by the accused on the neck of the deceased. Thus, the medical evidence duly corroborates the eye witness account.

12. The learned counsel for the appellant would submit that there was inordinate delay in forwarding the FIR to the Court. Of course, there was some delay, but that delay would not in any manner go to falsify the case of the prosecution by doubting the same. Thus, we do not find any reason to reject the evidence of P.Ws.1 to 4. We find that it was this accused who has caused the death of the deceased.

13. Having come to the said conclusion, now we have to examine as to "what was the offence that was committed by the accused by the said act". Admittedly, there was no enmity between the accused and the deceased. On the previous day, the mother of the accused alone had come to the house of the deceased to take back P.W.3 to her house. P.Ws.1 and 2 told her to come with the accused to persuade P.W.3 and to take her back into the matrimonial home. It was only on the said request, the accused had come to the house of the deceased at 8.00 p.m. on the day of occurrence. On arrival, he only requested P.Ws.1 and 2 to send P.W.3 with him. But, P.Ws.1 and 2 did not agree to send P.W.3 back, because the accused was then fully drunk. This resulted in a quarrel. At that time, the deceased was not even there. He came to the place of occurrence. Only at that time, there was a quarrel between him and the accused also. It was only in the said quarrel, the accused had kicked the deceased. We are of the view that the accused would not have intended to cause any injury, which is likely to cause the death. Similarly by mere kicking on the chest or by fisting on the neck, one cannot be attributed with the knowledge that the said act is likely to result in the death of the recipient of the blow. In our view, the act of the accused would not fall under any of the limbs of Section 299 IPC. Thus, the act of the accused in causing the death is not a culpable homicide as defined in Section 299 IPC. At the same time, for having voluntarily caused grievous hurt on the deceased, as the injuries caused on the deceased would squarely fall within the scope of Sub Section 8 of Section 320 IPC, he is liable to be punished.

14. In this regard, we may also refer to the judgment of the Hon'ble Supreme Court in Jani Gulab Shaikh v. The State of Maharashtra [1970 SCC (cr1.) 532] wherein, in an identical situation, the Hon'ble Supreme Court has held, that the act of the accused would not fall under any of the limbs of Section 299 IPC. In such view of the matter, the appellant is liable to be

punished only under Section 325 IPC.

15. Now, turning to the quantum of punishment, we are informed that the accused had undergone sentence for more than three months. Going by the circumstances under which the occurrence had taken place and the aggravating as well as the mitigating circumstances, we are of the view that reducing the sentence to the period already undergone would meet the ends of justice, besides fine of Rs.1,000/-.

In the result, the appeal is partly allowed. The conviction and sentence imposed on the appellant for the offence u/s 302 IPC are set aside and instead, he is convicted u/s 325 IPC and the period of sentence of imprisonment is reduced to the period of sentence already undergone by him, besides fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gms

To

1. Inspector of Police
Karumalai Kudal Police Station
Salem District.

2. Additional Sessions Judge/Fast Track Court No.2,
Salem .

3. The Public Prosecutor
High Court, Chennai.

4. The Judicial Magistrate-II
Mettur

5. The Chief Judicial Magistrate Salem

6. The Principal District Judge Salem

7. The Superintendent of Police Salem

8.The Superintendent
Central Prison, Salem

9.The District Collector Salem

copy to: The Section Officer
Criminal Section High Court,
madras-104

Crl.A.No.759 of 2011

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