

BAIL SLIP

The Appellant/Accused namely Sundaravadivel, aged 37 years, S/o.Rangarajan Padayachi directed to be released on Bail as per order of this Court dt.1.10.2015 in MP.1/15 in CrI.A.No.168/15 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 10.06.2016

CORAM:

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

CrI.A.No.168 of 2015

Sundaravadivel Appellant/Sole accused

vs.

State,by

The Inspector of Police,
Annamalai Nagar Police Station,
Cuddalore District.

Crime No.9 of 2012

... Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgement dated 17.03.2014 passed by the learned District Magistrate Sessions Court, Cuddalore, in S.C.No.202 of 2012.

For Appellant : Mr.S.N.Arunkumar

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.202 of 2012, on the file of the learned Additional Judge, Mahila Court, Cuddalore. He stood charged for offence under Sections 294(b), 324, 307 and 302 IPC. The Trial Court, after trial, by judgement dated 17.03.2014, convicted the appellant/accused under Sections 302 and 324 IPC, and sentenced him to undergo life imprisonment and also imposed a fine of Rs.1000/-, in default, to undergo two years rigorous imprisonment under Section 302 IPC, and sentenced him to undergo rigorous imprisonment for three years under Section 324 IPC and acquitted him from the charge under Section 294(b) and 324 IPC. 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 Susila, was the mother of P.W.1 and P.W.5. The accused is the son-in-law of the deceased, married to her daughter Vishalatchi-P.W.5. Both the accused and P.W.5 were residing separately. There were frequent wordy quarrels between P.W.5 and accused. On 04.01.2012 at about 11.30 p.m., P.W.5 called the deceased over phone and informed her that the accused is quarrelling with her and requested the deceased to come to her house to settle the dispute. On receipt of the above message, the deceased, P.W.1, P.W.2 and P.W.3, went to the house of the accused and questioned him. At that time, the accused attacked the deceased with an aruval, P.W.1 prevented him, but the accused attacked P.W.1 with an iron rod on his forehead and also attacked P.W.2 with an iron rod. Immediately, the deceased and P.Ws.1 and 2 were taken to the Government Hospital, Chidhambaram.

(ii) P.W.7, Doctor, working in the Government Hospital, Chidhambaram, received the dead body of the deceased and gave accident register[Ex.P7]. He admitted P.Ws.1 and 2 as inpatient, and issued accident registers [Ex.P8 and Ex.P9]. P.W.10, Sub Inspector of Police, working in Annamalai Nagar Police Station, on receipt of the telephone message from the Government Hospital, went to the Hospital at about 2.30.a.m., obtained a statement from P.W.1 (Ex.P1) and based on the above statement, he registered a case in Crime No.9 of 2012 for the offence under Section 294(b), 324, 307 and 302 of IPC, prepared First Information Report [Ex.P12], sent the same to the Judicial Magistrate Court and copies of the same to the higher officials.

(iii) On receipt of the First Information Report, P.W.11, Inspector of Police, commenced investigation, visited the scene of occurrence at about 6.00 a.m., prepared observation mahazar, [Ex.P2], drew a rough sketch [Ex.P13] and recovered bloodstained knife [M.O.1], Blood stained earth [M.O.3] and sample earth [M.O.4] under seizure mahazar, [Ex.P2], in the presence of witnesses and recorded statements from witnesses. Then, he visited the Government Hospital, Chidhambaram, conducted inquest over the dead body in the presence of panchayatdars and prepared inquest report,[Ex.P14]. Then, he sent the dead body for post mortem, through a Head Constable, namely, Prabhu.

(iv) In the meantime, the accused appeared before P.W.6-Village Administrative Officer, Kothenkudi Thoppu Village and gave an extra-judicial confession. P.W.6 recorded the statement,[Ex.P4], and produced the accused before P.W.11-Inspector of Police. P.W.11 arrested the accused. On such

arrest, the accused gave a voluntary confession statement, based on the disclosure statement, P.W.11 recovered a Pipe [M.O.2] under Ex.P6 seizure mahazar and sent the accused to judicial custody.

(v) In the meantime, P.W.8, Assistant Surgeon, working in the Government Hospital, Chidhambaram, conducted postmortem on the dead body and found the following injuries.

A malnourished female body lies on back eyes closed. mouth closed. arms hysicle, tongue inside mouth. Teeth - intact.

External Injuries:

Lacerated injury behind Rt ear measuring 6 x 2 x 3 cm bleeding. Lacerated injury over forehead 3 x 2 cm bleeding. Lacerated injury over the right temporal region anegscalp 5 x 2 x 3 cm bleeding. Lacerated injury over vertex injury region scalp 9 x 2 x 3 cm bleeding.

Internal injuries:

(I) Thorax - ribs intact ; lungs pale; Heart Pale contain 10 ml fluid blood; (II) Abdomen - Stomach 100 mls of semi digested food particles present; Liver-pale; Kidneys-Pale; Spleen-pale intestine empty; Uterus Normal in size. (III) Pelvis intact (IV) Heel sneck - Skull intact. Subperiosteal haematoma near vertex region of skull 5 x 6 cm in size; membrane. Extensive bleeding near the vertex and left parietals left temporal injury. cortex present. (Intracranial huge) No viscera preserved.

He opined that the deceased appeared to have died of severe haemorrhage and shock, due to injuries sustained in the vital organ (Head injuries). He issued Postmortem certificate, [Ex.P10].

(v) Then, P.W.11, on 16.01.2012, examined the Doctor, who conducted postmortem and recorded his statement. On 24.01.2012, he produced P.Ws.1,2,3 and 5 before the learned Judicial Magistrate, Parankipettai, for recording their statements under Section 164 Cr.P.C. Subsequently, P.W.11 examined the Doctor, who gave treatment to witnesses, namely, P.Ws.1 and 2 and after completion of investigation, he filed 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 11 witnesses were examined and 14 documents and 4 material objects were marked.

4. Out of the above witnesses examined, P.W.1 is son of the deceased and also an injured eye witness. According to him, on 04.01.2012 at about 11.30 p.m., P.W.5 called him over

phone and informed that the accused was quarrelling with her and asked him to settle the dispute. P.W.1, along with the deceased, P.Ws.2 and 3, went to the house of the accused and questioned him, at that time, the accused attacked the deceased with knife and also attacked P.Ws.1 and 2 with iron rod and caused injuries. He has also given the complaint to the respondent police. P.W.2, who is another injured eye witness turned hostile. P.W.3, yet another eye witness, who accompanied the deceased and P.Ws.1 and 2, went to the house of the accused. He has spoken about the occurrence, in line with the evidence of P.W.1. P.W.4 is the mahazar witness and also a witness to recovery of M.O.1 knife, M.O.2 Pipe, M.O.3 blood stained earth and M.O.4 sample earth. P.W.5, wife of the accused and daughter of the deceased, turned hostile. P.W.6 is the Village Administrative Officer of C.Kothenkudi Thoppu Village, before whom, the accused has given extra-judicial confession. It is his evidence that he recorded the statement of accused under Ex.P4 and handed over the accused to P.W.11. He is also a witness to the recovery of iron rod under Ex.P6 seizure mahazar. P.W.7 is the Doctor, working in the Government Hospital, Chidhambaram. It is his evidence that he received the dead body of the deceased, admitted P.Ws.1 and 2 in the hospital and gave accident register, [Exs.P8 and P9]. P.W.8 is the Assistant Surgeon, working in the Government Hospital, Chidhambaram. His evidence is to the effect that he conducted postmortem on the dead body of the deceased, gave post mortem certificate, [Ex.P10] and he opined that the deceased would appear to have died of shock and haemorrhage and due to the injuries to the vital part(head). P.W.9 is the learned Judicial Magistrate No.II, Chidhambaram, who recorded the statements of witnesses, namely, P.Ws.1,2,3 and 5 under Section 164 Cr.P.C. P.W.10, Sub Inspector of Police has stated that on receipt of the message from Government Hospital, visiting the Hospital and recording the statement of P.W.1 under Ex.P1 and registering the complaint. P.W.11, Inspector of police has spoken about the investigation done by him. According to him, he examined the witnesses and recorded their statements and after completion of investigation, filed charge sheet.

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, the Trial Court found the accused guilty and convicted him and imposed punishment as stated in first paragraph of this judgement. Challenging the above said conviction and sentence, the accused is before this Court.

7. We have heard Mr.S.N.Arunkumar, 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 learned counsel appearing for the appellant would submit that all the eye witnesses are interested witnesses and two eye witnesses have turned hostile. He further submits that recovery of material objects has also not been properly proved by the prosecution. He further submitted that the act of the accused would fall within the fourth limb of Section 300 IPC and when Exception (i) to Section 300 IPC is attracted, the said act is only a culpable homicide, not amounting to murder, which is punishable under Section 304(i) IPC. Hence, he prays for lesser punishment.

9. The learned Additional Public Prosecutor appearing for the State would submit that in this case there are three injured witnesses. Even though they are related to the deceased, there is no reason to disbelieve their evidence. He further submitted that the prosecution has clearly proved the guilt of the accused and he prays for dismissal of this appeal.

10. We have considered the rival submissions.

11. P.Ws.1 and 2 are injured witnesses. P.Ws.3 and 5 are eye witnesses to the occurrence. Even though, P.Ws.2 and 5 turned hostile, P.Ws.1 and 3 have categorically stated that the accused attacked the deceased with knife and also attacked P.Ws.1 and 2 with iron rod and caused injuries. In one voice, it is their consistent testimony that all of them went to the house of the accused, in response to the call made by P.W.5. Hence the presence of eye witnesses cannot be doubted. P.W.11, the postmortem Doctor, has also given opinion that the deceased died of severe haemorrhage and shock due to the injuries in vital organ (Head injuries). Hence, the medical evidence would go to prove that the death of the deceased was due to the injuries caused by the accused. Thus, the prosecution has clearly proved that it was this accused, who caused the death of the deceased.

12. Now, the question is, "what was the offence that was committed by the accused by the said act?". In their evidence, P.Ws.1 and 3 have clearly stated that there was a quarrel between the accused and P.W.5 in the house of the accused. P.Ws.1 to 3 along with the deceased went to the house of the accused and questioned him. At that time, there was a quarrel and out of sudden provocation, the accused has caused injuries on the deceased and P.Ws.1 and 2. When the occurrence took place in the house of the accused, the deceased and other witnesses have gone to the house of the accused and there was a quarrel between them. It would go to show that the accused would not have had any intention to cause the death of the deceased, but he had the intention to cause injury, which was sufficient in the ordinary course of

nature, to cause the death of the deceased. In the above said circumstances, the act of the accused would squarely fall within the third limb of Section 300 IPC., and 1st exception to Section 300 IPC and therefore, he is liable to be punished under Section 304(i) IPC.

13. In respect of quantum of punishment, the accused has no bad antecedent and it was not a premeditated murder, the occurrence has take place in the house of the accused and when the deceased and other injured witnesses questioned the accused there was a quarrel between them. Having regard to all the above, we are of the considered view that sentencing the accused to undergo rigorous imprisonment for 7(seven) years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for four weeks would meet the ends of justice. The conviction and sentence imposed under Section 324 IPC is confirmed.

14. In the result, the Criminal Appeal is partly allowed.

(i) The conviction and sentence imposed on the Appellant for the offence under Section 324 of IPC is confirmed.

(ii) The conviction and sentence imposed on the appellant under Section 302 IPC is set aside and instead, he is convicted under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for 7 (seven) years and to pay a fine of Rs.1000/- (Rupees one thousand only), in default, to undergo rigorous imprisonment for four weeks. The sentences are ordered to run concurrently. The period of sentence already undergone by the accused in connection with this case shall be given set off under Section 428 Cr.P.C.

Sd/-
Asst.Registrar (CO)

/true copy/

सत्यमेव जयते

Sub Asst. Registrar

To

- 1.The District Magalir Sessions Court,
Mahila Court,
Cuddalore.
- 2.The Inspector of Police,
Annamalai Nagar Police Station,
Chidambaram.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Judicial magistrate I, Chidambaram.
- 5.The Chief Judicial Magistrate, Cuddalore.

6.The District Magalir Sessions Judge,
Cuddalore.

7.The Superintendent, Central Prison, Cuddalore.

8.The District Collector, Cuddalore.

9.The District Inspector General of Police,
Mylapore, Chennai.

10.The Sessions Officer,
Criminal Section, High Court, Madras.

nmi (co)
krd 28/12

Cr1.A.No.168 of 2015



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