

Bail Slip

The Appellant/Sole Accused Viz., namely Udayakumar S/O Govindan was directed to release on bail, made in M.P.No.1/15 in Crl.A.204/2015, dated 7.10.2015 etc this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 12-07-2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CRL.APPEAL No.204 of 2015

Udayakumar ... Appellant/Sole Accused

-vs-

State, rep.by
Inspector of Police,
Deevattipatti Police Station,
Salem District. ... Respondent /Complainant

Criminal Appeal filed U/S.374(2) of the Cr.P.C. Preferred against the appeal the judgment, dated 11.03.2015, made in S.C.No.376 of 2012 on the file of Principal Sessions Court, Salem.

For appellant : Mr.A.K.Kumaraswamy,
for Mr.P.Jagadeesan.

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

JUDGMENT

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

The appellant is the sole accused in S.C.No.376 of 2012 on the file of Principal Sessions Court, Salem. He stood charged for the offences under Sections 294-B, 307 and 302 IPC. By judgment, dated 11.03.2015, the trial Court convicted him for the offences under Sections 307 and 302 IPC and sentenced him to undergo imprisonment for life and pay fine of Rs.1,000/-; in

default, to undergo rigorous imprisonment for one year for the offence under Section 302 IPC; and to undergo rigorous imprisonment for ten years and pay fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for one year for the offence under Section 307 IPC. The trial Court acquitted him from the charge under Section 294-B IPC. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

2.1. P.W.1 is a resident of Umpilikampatty village in Salem district. The accused is his neighbour. Both the families were close to each other. While so, the accused developed a suspicion that his wife had illicit intimacy with P.W.1. On account of the same, there were frequent quarrels between them. This is stated to be the motive for the occurrence.

2.2. On 28.09.2011, around 07.00 a.m., when P.W.1 was passing through the house of the accused on the road, the accused, on noticing P.W.1, scolded him in filthy language. Then, the accused took out a firewood and attacked the son of P.W.1, by name, Naveenkumar (hereinafter referred to as "the deceased") with the firewood on his head. Again, the accused attacked the younger son of P.W.1, by name, Kaviyarasan also on his head with the same firewood. Then, the accused fled away from the scene of occurrence. The occurrence was not actually witnessed by P.W.1. It was witnessed by P.W.3. On hearing about the occurrence, P.W.1 went to the place of occurrence and found both the deceased and P.W.2 with injuries. Then, he took both of them to the hospital. P.W.7, Dr.Ganesan, examined the deceased on 28.09.2011 at 08.35 a.m. at Manipal Hospital. The deceased was conscious. He told the doctor that he was attacked by a known person with a firewood. The doctor found a single lacerated injury on the head of the deceased, measuring 5 x 5 cm. The doctor admitted him as in-patient and then discharged him on the next day itself. Ex.P-6 is the Accident Register. While the deceased was in hospital, P.W.7 gave intimation to the police. On receiving the intimation from the hospital, P.W.9, the then S.I.of Police, went to Manipal Hospital. Since the deceased was not in a position to speak, P.W.9 recorded the statement of P.W.1 and on returning to the police station, registered a case in Crime No.540 of 2011 for the offences under Sections 294-B, 324 and 307 IPC. Ex.P-1 is the complaint and Ex.P-7 is the F.I.R. She forwarded both the documents to the Court, which were received by the learned Judicial Magistrate at 09.55 p.m. on 28.09.2011.

2.3. P.W.13 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. He arrested the accused at 08.00 p.m. on the same day, in the presence of the witnesses. Then, he forwarded the accused to the Court for judicial remand. The deceased, who was discharged from Manipal Hospital, was again admitted for further treatment at the Government Hospital, Salem. P.W.10, Dr.Selvaraj, admitted the deceased at 07.45 p.m., on 29.09.2011. Ex.P-8 is the Accident Register. The deceased, despite treatment, died on 06.10.2011. On receiving the death intimation, P.W.13 altered the case into one under Section 302 IPC. Then, he conducted inquest on the body of the deceased and forwarded the same to the doctor, for post-mortem.

2.4. P.W.12, Dr.Gokularamanan, conducted autopsy on the body of the deceased on 07.10.2011 at 10.45 a.m. He found the following injuries :

"External examination : 1) A dark brown abrasion seen on the left side of parieto occipital region M, 12 cm x 4 cm.

Internal examination : On Dissection of Head - Scalp contusion seen on the right parieto tempero occipital region M, 17 cm x 10 cm x 0.5 cm with right temperatis muscle contused.

Cavical Vault : Linear fissure fracture seen on right tempero occipital region M, 14 cms. Durawater - Intact.

Brain : Diffuse sub-dural and sub-anachinoid Haemouluge seen all over the central Hemespheres.

Base : Linear fissure fracture extending from right side of middle cavical fossa to right side of posterior cavical fossa M, 11 cms."

Ex.P-11 is the Post-mortem Certificate. The doctor gave opinion that the death of the deceased was due to effects of head injuries. He further opined that the said injuries were caused by a firewood.

2.5. P.W.2 did not go for treatment immediately. He went to the Government Hospital, Salem, only on 01.10.2011 at 04.00 p.m. P.W.6 examined him and found a sutured lacerated wound measuring 7 cm on the head and an abrasion on the left knee.

2.6. P.W.13 examined the doctors and collected the medical records. On completing the investigation, he laid chargesheet against the accused.

3. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment and the accused denied the same. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined and 16 documents were marked. No material objects were marked. Out of the said witnesses, P.W.1 has spoken about the motive for the occurrence. He has further stated that he took the deceased to the hospital. He has also spoken about the complaint made by him to the police. P.W.2 is the injured witness. He has stated about the entire occurrence. P.W.3 is an eye witness to the occurrence, but, in cross-examination, she has stated she did not witness the occurrence at all. P.W.4 has stated that he took the deceased along with P.W.1 to the hospital. P.W.5 has spoken about the preparation of observation mahazar and rough sketch at the place of occurrence. P.W.6 has spoken about the treatment given to P.W.2 on 01.10.2011. P.W.7 has spoken about the treatment given to the deceased at Manipal Hospital on the date of occurrence. P.W.10 has spoken about the subsequent treatment given to the deceased at the Salem Government Hospital and the death of the deceased. P.W.8 has stated that he recorded the statement of P.W.1 and handed over the same to P.W.9. P.W.9 has stated that she registered a case on the complaint of P.W.1. P.W.12 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.13 has spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any witness or to mark any document on his side. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment. That is how, he is before this Court with this appeal.

5. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the State and also perused the materials carefully.

6. In this case, as we have already pointed out, P.Ws.2 and 3 have been examined as eye witnesses to speak about the entire occurrence. P.W.2 is an injured eye witness. P.W.3, though has stated about the entire occurrence in chief-examination, during cross-examination, has stated that she did not witness the occurrence, but she only heard about the same. She was treated as hostile. Therefore, the evidence of P.W.3 is not of any use to the case of the prosecution. Thus, the prosecution has to rely only on the evidence of P.W.2.

7. The learned counsel for the appellant would point out that P.W.2 did not immediately go to the hospital on the date of occurrence and instead, he went to the hospital only on

01.10.2011 at 04.00 p.m, for which there is no explanation. But, the evidence of P.W.6 would go to show that P.W.2 had come with sutured wound on his head and another abrasion on his left knee. Therefore, it is inferable that since the injury was not so serious, P.W.2 would have gone to a local doctor to have the injury sutured. On that score, we cannot disbelieve the evidence of P.W.2. The fact that he sustained injury in the very same occurrence has been mentioned in Ex.P-1 itself. Therefore, we find no reason to reject the evidence of P.W.2. P.W.2 has vividly spoken about the entire occurrence, wherein he has stated that the accused took out a firewood and gave a single blow on the head of the deceased and another blow on his head. The medical evidence duly corroborates the same. The deceased was taken to Manipal Hospital, where P.W.7 had treated him. He was told that the deceased was attacked by a known person with a firewood. The doctor found a lacerated injury on the head. On the next day, the deceased was discharged from the hospital and was taken to Government Hospital, Salem. P.W.10, the doctor, treated him. The doctor, who conducted autopsy, had found that there was a fracture in the skull and a corresponding injury to brain. It was because of the said head injury, the deceased died. The said head injury was caused by the accused. Thus, the prosecution has proved beyond any doubt that it was this accused, who caused the death of the deceased. Similarly, the prosecution has proved that it was this accused who caused a single lacerated injury on the head of P.W.2, which is simple in nature. 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 above acts.

8. As we have pointed out, the deceased in this case was hardly aged eight years. P.W.2 was aged about eleven years. Thus, they were young boys against whom the accused would not have had any enmity. The enmity was among P.W.1, the father of the deceased, P.W.2, and the accused. The accused would not have had any grudge against the deceased and P.W.2 to attack them. From the narration of facts, it is clear that in the quarrel between the accused and P.W.1, provoked by the said event, the accused had taken a firewood lying there and gave a single blow each on the children of P.W.1. The occurrence was not premeditated. It was in quarrel and in the heat of passion, the accused had taken the firewood and caused injuries on P.W.2 and the deceased. The said act of the accused in causing the death of the deceased, in our considered view, would fall within the fourth exception to Section 300 IPC. Since his act would fall within the fourth limb of Section 300 IPC, the accused is liable to be punished under Section 304-II IPC, for having caused the death of the deceased.

9. So far as the injury caused on P.W.2 is concerned, the accused would not have intended to cause the death of P.W.2. Had death been caused to P.W.2 by the injury caused by the accused, the act of the accused would have fallen within the fourth limb of Section 300 IPC and within the fourth exception to Section 300 IPC. Thus, the attempt made by the accused on P.W.2 was only a culpable homicide, which is punishable under Section 308 IPC. Thus, for having made such an attempt to commit the culpable homicide of P.W.2, the accused is liable to be punished under Section 308 IPC.

10. Turning to the quantum of punishment, the accused is a young man. He has got lot of chances of reformation. The occurrence was not premeditated, as it was only out of a sudden quarrel. The accused has no bad antecedents. The accused was not already armed with weapons. Having considered all the above mitigating and aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for seven years and pay fine of Rs.1,000/- for the offence under Section 304-II IPC and to undergo rigorous imprisonment for one year and pay fine of Rs.500/- for the offence under Section 308 IPC would meet the ends of justice.

11. In the result, this Criminal Appeal is partly allowed. The conviction and sentence imposed on the accused/appellant by the trial Court for the offences under Sections 302 and 307 IPC are set aside and, instead, he is convicted for the offences under Sections 304-II and 308 IPC and he is sentenced to undergo rigorous imprisonment for seven years and pay fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for four weeks for the offence under Section 304-II IPC and to undergo rigorous imprisonment for one year and pay fine of Rs.500/-, in default, to undergo rigorous imprisonment for two weeks, for the offence under Section 308 IPC. It is directed that these sentences shall run concurrently and the period of sentence already undergone by the accused/appellant shall be given set off, as required under Section 428 Cr.P.C. The trial Court is directed to take steps to secure custody of the appellant to commit him in prison to undergo the remaining period of sentence.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Sessions Court,
Salem.

2.The Inspector of Police,
Deevattipatti Police Station,
Salem District.

3.The District Munsif-cum- Judicial Magistrate,
Omalur, Salem.

4.The Superintendent,
Central Prison,
Coimbatore.

5.The Commissioner of Police,
Salem.

6.The Director General of Police,
Mylapore, Chennai.

7.The Superintendent,
Central Prison,
Salem.

8.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Jagadeesan, Advocate sr.38893

CRL.A.No.204 OF 2015

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srg 11/08/2016

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