

Bail Slip

The Petitioner herein/Accused, 1 and 2 Viz., Ramachandran (A1) and Krishnan (A2) are directed to be released on Bail as per order of this Court made in Crl.MP.NO.1/2015 in Crl.A. NO.271 of 2015, dated 18.06.2015.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21..06..2016

CORAM

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

Criminal Appeal No.271 of 2015

1.Ramachandran [A1]
2.Krishnan [A2] ... Appellants/A1 and A2

-Versus-

State Rep. by
The Inspector of Police,
B-11, Saibaba Colony Police Station,
Coimbatore City.
[Crime No.739 of 2011]

... Respondent/Complainant

Criminal Appeals filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence imposed on the appellants by the learned Principal Sessions Judge, Coimbatore, in S.C.No.214 of 2011 dated 26.02.2015.

For Appellants

: Mr.V.Kathirvelu,
Senior Counsel
for Mr.A.K.Manickam

For Respondent

: Mr.M.Maharaja, APP

JUDGEMENT

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

The appellants are Accused Nos.1 and 2 in S.C.No.214 of 2011 on the file of the learned Principal Sessions Judge, Coimbatore Division. There were two other accused by name (1) Ganesan and (2) Murugan, who were arrayed as A3 and A4 respectively. All the four accused stood charged for offences under Section 302

r/w 34 and 506(ii) of IPC. By judgement dated 26.02.2015, the trial court convicted A1 and A2 for offence under Section 304(i) of IPC instead of Section 302 r/w 34 of IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.10,000/- each in default to suffer rigorous imprisonment for two months and convicted A3 and A4 for offence under Section 323 of IPC and sentenced them to undergo rigorous imprisonment for six months and to pay a fine of Rs.2,000/- each in default to suffer simple imprisonment for one month. The trial court, however, acquitted A1 to A4 from the charge under Section 506 (ii) of IPC. Challenging the conviction and sentence, A1 and A2 have come up with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Santhosh @ Santhoshkumar. On 10.07.2011 at around 01.00 p.m. the deceased went to the TASMAC bar attached to the Shop No.1577 situated near Kannan Departmental Stores at Mettupalayam Road. P.Ws.1 and 2 had accompanied the deceased. They were taking liquor together by sitting across a table. These four accused had also come to the said bar for consuming liquor. They were sitting across a nearby table. While so, accidentally, the deceased had hit the brandy bottle kept on the table of the accused. It fell down and got broken. A2, pulled the shirt of the deceased and questioned him. In retaliation, the deceased attacked A2 with hands. The workers of the TASMAC bar separated them. The deceased and P.Ws.1 and 2 had gone out of the shop. The accused had also gone out. The deceased, P.W.1 and P.W.2 were proceeding towards north. When they were nearing a bakery known as "K.R.Bakery", these four accused came to the place of occurrence in two motorcycles. On reaching the place of occurrence, where the deceased was standing, they parked the motor cycles. A1 took a big stone and threw it on the face of the deceased. A2 took another stone and hit the deceased on his head and face. Then, A2 to A4 kicked the deceased with legs and also fisted him. The deceased fell down. All the four accused immediately fled away from the scene of occurrence in their motor cycles. P.Ws.1 and 2 rushed to the house of the deceased and informed his family members about the occurrence. The auto drivers who were present near the place of occurrence took the deceased to Coimbatore Government Medical College Hospital.

3. P.W.19, Dr.K.Raguramaiah, examined the deceased on 10.07.2011 at 02.00 p.m. at Coimbatore Government Medical College Hospital. At that time, the deceased was conscious. Mr.John who brought the deceased to the hospital told the doctor that the deceased had met with an accident and sustained injuries. But, one Mr.Nagaraj who had come with the deceased said that the deceased was attacked by three known persons with iron rod and stones. He admitted him as inpatient and gave an

intimation to the police. Ex.P.17 is the accident register. He noticed the following:-

- "(1) Both eyes were contused.
- (2) Blood was oozing out through the nostrils
- (3) A lacerated injury measuring 1 x 0.5 x 0.5 cm on the left side of the head.
- (4) A lacerated injury measuring 3 x 1 x 0.5 cm on the left side of the head.
- (5) A lacerated injury 1.5 x 0.5 x 0.5 on the back side of the head."

4. As a matter of fact, at about 01.45 p.m. on 10.07.2011, when P.W.26 was at the Office of the Assistant Commissioner of Police, Law and Order, Central Gandhipuram Range, one Mr.Gopalasamy, the Special Sub Inspector of Police, informed over phone that near ARC Junction, one person had been attacked by few others and the victim was lying unconscious with injuries. According to him, he instructed, the Special Sub Inspector of Police to rush to the place of occurrence and to make arrangements to forward the deceased to the hospital for treatment. P.W.26 also rushed to the hospital. In the meanwhile, the deceased had been brought to the hospital and admitted as inpatient. According to P.W.26, the deceased was then unconscious. He, therefore, went to the place of occurrence and then to the police station. By that time, P.W.1 was waiting for him at the police station. P.W.1 made complaint [Ex.P.1] at 02.45 p.m. on 10.07.2011. P.W.26, the Inspector of Police, on receipt of the said complaint, registered a case in crime No.739 of 2011 under Section 307 and 506(ii) of IPC against all the four accused. Ex.P.29 is the FIR. Then, he forwarded the complaint-Ex.P.1 and the FIR-Ex.P.19 to the court which were received by the learned jurisdictional Magistrate at 05.45 p.m. on the same day.

5. In the mean time, P.W.26 took up the case for investigation, visited the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.6 and another witness. Then, he recovered a big stone weighing about 5 kgs and yet another another stone weighing about 3 Kgs with blood stains, a full sleeve black colour shirt with white stripes stained with blood, blood stained earth and sample earth from the place of occurrence under a mahazar [Ex.P.4] in the presence of the same witnesses. He examined many other witnesses at the place of occurrence. The deceased continued to be unconscious. On the same day, he arrested all the four accused near Thayir Itteri Railway Gate at Rathinapuri. On such arrest, A1 and A2 gave independent voluntary confessions one after the other. In pursuance of the disclosure statement made by A2, a green colour TVS 50 motor cycle bearing Regn. No. TN 33 X 7323 was recovered. Similarly, pursuant to the disclosure

statement made by A1, blue colour Bajaj CD100 motor cycle bearing Regn. No.TN 38 AE 5881 was recovered. On returning to the police station, P.W.26 forwarded A1 and A2 to the court for judicial remand. He forwarded the material objects also to the court.

6. On 12.07.2011, the deceased, despite treatment, succumbed to the injuries at the hospital. P.W.24, Dr.Karthikeyan, who treated the deceased had finally declared the deceased dead at 03.45 p.m. on 12.07.2011 and passed on the information to the police. On receiving the death intimation form the hospital P.W.26 altered the case into one under Section 302 of IPC and forwarded an alteration report to the court. Then, he went to the hospital, conducted inquest on the body of the deceased and made arrangements to forward the body for post-mortem.

7. P.W.25, Dr.A.N.Senthil, conducted autopsy on the body of the deceased at 12.15 p.m. on 12.07.2011. He found the following injuries:-

"Ante mortem injuries:-

1. Bluish contusion 6 x 3 x 0.5 cm noted over the outer aspect of middle third of left thigh.
2. Bluish contusion 4 x 4 x 1 cm noted over front of right upper thigh.
3. Bluish contusion 3 x 1 x 0.5 cm noted over back of left side shoulder.
4. Bright red colour scratch abrasion 2 x 1 cm noted 3 cm below to left ear.
5. "V" shaped bright red graze abrasion 4 x 3 cm noted over right side neck, 4 cm below angle of right mandible.
6. Bright red colour abrasion 3 x 2.5 cm noted over 2 cm in front of left ear over zygomatic area.
7. Bright red colour abrasion 3 x 0.5 cm and 1 x 0.5 cm noted over superior part of left pinna, 4 x 2 cm noted 3 cm above to left ear in the left temporal region, 4 x 2.5 cm noted over right frontal prominence and 2 x 1 cm noted over anterior part of right frontal region and 0.5 x 0.5 cm noted over right maxillary prominence.
8. Transverse sutured laceration 2 cm in length noted over left temporal region. The anterior end is 7 cm above to left ear superior attachment and posterior end is 12 cm above to left mastoid tip.

9. Transverse sutured laceration 3 cm in length noted over left parieto temporal region 2 cm. The anterior end is 12 cm above to tip of left mastoid and posterior end is 10 cm above to tip of left mastoid.

10. Horizontal sutured laceration 1.5 cm in length noted over left occipital prominence.

11. Sub conjunctival hemorrhage noted over inferior aspect of cornea of left eye and temporal aspect of cornea right eye.

On dissection of Scalp, Skull and Dura: Sub scalp contusion with bluish colour 14 x 7 cm noted over right fronto parieto temporal region, 7 x 6 cm noted over left parietal region and 6 x 4 cm noted over left temporal region. Left temporalis muscle found contused with bluish colour transversely oblique depressed fracture 10 x 2 x 0.5 cm over left parieto temporal bone. A depressed vertically oblique crack fracture 5 cm in length extending downwards and another vertically oblique crack fracture 8 cm in length noted over left parieto temporal bone extending downwards from the posterior part of the above depressed fracture. Vertical oblique crack fracture 9 cm in length extending from the right subra orbital margin towards the right fronto parietal suture. Extra dural clot weighing about 15 grams noted over left temporal region and 10 grams noted over right frontal region. Diffuse sub dural and sub arachnoid hemorrhages noted over entire brain. Skull base fracture noted over both anterior cranial fossa on its anterior part and left middle cranial fossa on its posterior part. Crack fracture noted over greater wing of sphenoid on both sides and ethmoid bone on both sides. Crack fracture noted over lateral and superior wall of right orbital cavity.

Other Finding:-

- Pleural and Peritoneal cavities empty.

- Heart: all chambers contains about few cc of fluid blood. Coronaries patent.
- Hyoid bone intact.
- Stomach contains about 200 ml of dark brown colour fluid with unpleasant smell, mucosa pale.
- Small intestine contains about 10 ml of bile stained fluid with unpleasant smell, mucosa pale.
- Urinary Bladder: empty."

He preserved the visceral organs and send them for chemical analysis. Ex.P.27 is the post-mortem certificate. He gave opinion that the injuries found on the deceased could have been caused by stones like M.Os.1 and 2. He further opined that the deceased would appear to have died of head injuries and their complications. According to P.W.25, the doctor, the deceased was found drunk.

8. P.W.26, in the further course of investigation, examined the doctor who treated the deceased and the doctor who conducted autopsy and few other officials witnesses, collected the medical records and also the chemical analysis report and on completing the investigation, he laid charge sheet against all the four accused.

9. Based on the above materials, the trial court framed two charges as detailed in first paragraph of this judgement. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 26 witnesses were examined, 36 documents and 24 material objects were marked.

10. Out of the said witnesses P.W.1 to 5 are the eye witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.W.1 has further stated about the complaint made by him to the police upon which the present case was registered. P.W.6 has spoken about the preparation of the observation mahazar and the rough sketch by the police at the place of occurrence and the recovery of material objects from the place of occurrence. P.W.7 has spoken about the arrest of the accused and the confession statements made by A1 and A2 and the consequential recoveries of material objects. P.W.8 has stated that he took the deceased to the hospital along with the others from the place of occurrence. P.W.9 has not stated anything incriminating. She is the wife of the deceased. P.W.10 has stated about the earlier occurrence in the TASMAR Bar. He was a supplier in the said bar. He has not stated anything about the subsequent occurrence in which the deceased was attacked.

11. P.W.11 was the Sub Inspector of Police [Telecommunications], Police Control Room, Coimbatore. On 10.07.2011, according to him, one Mrs.Punithavalli, an Armed

Reserve Woman Police Constable came to the control room and informed that there was a fight between two groups near ARC Junction. According to him, he informed the same to the Inspector of Police over phone and then, he went to the place of occurrence. P.W.12 yet another Sub Inspector of Police has also stated about the same fact.

12. P.W.13, who was the woman Police Constable at the police control room, has stated that in the CCTV camera recordings she noticed that four persons had attacked another with stones and hands. After having witnessed the incident on computer set up at police control room, which was displaying the scenes through CCTV camera installed at the place of occurrence, she informed the same to her higher police officials. M.Os.1 and 2 are CDs containing the recordings of the alleged incident. P.W.14 has spoken about photographs taken at the place of occurrence as instructed by the Inspector of Police. P.W.15 was the then Assistant Engineer of Tamil Nadu Electricity Board, Rathinapuri. He has stated that there was no electricity failure at the time of alleged occurrence at the place of occurrence. P.W.16 has stated that he sold his motor cycle bearing Regn. No. TN 38 AE 5881 to A1 and that the said vehicle was in the possession of A1.

13. P.W.17 is the Traffic Police Constable attached to R.S.Puram Police Station. According to him, he received information at 01.30 p.m. on 10.07.2011 about the occurrence from the police control room. He immediately rushed to the place of occurrence as instructed by the higher police officer where he found the deceased lying in a pool of blood with injuries and he was unconscious. At that time, he found four persons leaving the place of occurrence in two motor cycles. According to him, within a short while, the Sub Inspector of Police and the other police officials had come to the place of occurrence. Then, they took the deceased to the hospital. P.W.18, has stated that he handed over the dead body to the Doctor and identified the same for post-mortem. P.W.19 has spoken about the treatment given to the deceased at 02.00 p.m. on 10.07.2011. He has further stated about the injuries found on the body of the deceased.

14. P.W.20 has stated that the motor cycle bearing registration No. TN 33 X 7323 stood in the name of one Mr.M.Murugan, Son of Murugesan of Kumarapalayam Village. P.W.21 has spoken about the chemical analysis conducted on the material objects forwarded by the court. P.W.22 has also stated about the same. P.W.23 has stated that he was working as Technical Inspector at Telecommunication Wing of the police department. According to him on 10.07.2011, he copied the recordings relating to the occurrence from the computer which had recorded the incident through CCTV camera installed at the place of

occurrence. He gave appropriate certificate as required under Section 65-B of the Evidence Act. M.O.24 is the master compact disc [The trial court had displayed the said CD in the absence of the accused and the witnesses and from the footages, the trial court found that these four accused had attacked the deceased]. P.W.24, the doctor, has spoken about the treatment given to the deceased and the cause of death. P.W.25 has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of death. P.W.26 has spoken about the entire investigation done by him and the filing of charge sheet against the accused.

15. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. they denied the same as false. However, they did not choose to examine any witness nor did they mark any document on their side. Their defence was a total denial.

16. Having considered all the above, the trial court convicted A1 and A2, the appellants herein and also A3 and A4 as detailed in the first paragraph of this judgement. Challenging the above said conviction and sentences, A1 and A2 alone have come up with this criminal appeal.

17. We have heard the learned counsel appearing for the appellants/A1 and A2 and the learned Additional Public Prosecutor appearing for the respondent/State and we have also perused the records carefully.

18. A perusal of the judgement of the trial court would go to show that it had not made any reliance on M.O.24 master compact disc for want of appropriate certificate as required under Section 65-B of the Evidence Act. The trial court has rightly placed reliance on the judgement of the Hon'ble Supreme Court in Anvar.P v. P.K.Bahseer and others, 2014 (10) SCC 473 wherein the Hon'ble Supreme Court has declared that an electronic record which does not carry a certificate as required under Section 65-B of the Evidence Act to admit as a primary evidence. In this conclusion arrived at by the trial court, we do not find any infirmity.

19. The trial court has relied on the evidence of P.Ws.1 to 5 to hold that these appellants/A1 and A2 had attacked the deceased with stones which resulted in the death. The learned counsel for the appellants would submit that P.Ws. 1 to 5 would not have seen the occurrence at all. We find it difficult to accept the said contention for more than one reason. First of all, all these witnesses had no grudge against the accused. They are independent eye-witnesses to the occurrence. Therefore, we need not begin our appreciation of evidences of these witnesses with suspicion. P.W.1, 2 and the deceased had gone to the bar

for taking liquor where the first occurrence took place. This has been spoken by the supplier in the bar also. After the said occurrence, when the deceased was proceeding along with P.Ws.1 and 2, the second occurrence had taken place, that is, all the accused had come there in two motor cycles and on reaching the deceased, A1 and A2 hit the deceased with stones and the others attacked him with hands and legs. The trial court has found that these witnesses are believable. The learned counsel for the appellants is not in a position to point out any infirmity so that this court could take a different view. Though these witnesses have been cross examined, at length, nothing has been elicited to doubt their credibility.

20. The learned counsel for the appellants would next submit that there was an inordinate delay in FIR reaching the hands of the learned jurisdictional Magistrate. According to P.W.26 the case was registered at 02.45 p.m. on 10.07.2011 and the same had reached the hands of the learned Magistrate at 05.45 p.m. on the same day. The distance between the police station and the court is not known. At any rate, the time gap between the time of registration of FIR and the time taken for the same reaching the learned Magistrate is hardly three hours. This, in our considered view, is no delay at all so as to create any doubt in the case of the prosecution. The medical evidence also duly corroborates the eye witness account.

21. But, the learned counsel for the appellants would submit that at the earliest point of time, the doctor was told that the deceased had sustained injury in an accident. In this regard, P.W.19 has stated that one John told him that the deceased had met with a road accident, whereas, one Nagarajan told him that three persons had attacked the deceased with iron pipes and stones. P.W.5 is Mr.Nagarajan. But, Mr.John has not been examined before the trial court. The statement made by Mr.John to the doctor is his former statement. This could be used to contradict him provided he has been examined as witnesses. In the absence of examination of Mr.John but, his statement made to the doctor cannot be treated as substantive evidence. P.W.5 was contradicted by his earlier statement made to the doctor. He has not offered any explanation as to why he told the doctor that only three persons attacked the deceased. Of course, this is a vital contradiction. But, on this score, we cannot reject the very convincing evidences of the other eye witnesses. Perhaps, P.W.5 would have been in a perplexed mood at that time and so he would have stated so to the Doctor. Thus, we do not find any force at all in the argument of the learned counsel for the appellants that the earliest statement about the occurrence to the doctor would create a doubt in the case of the prosecution.

22. From these evidences, we find, as rightly held by the trial court, it has been clearly established that it was these appellants, who attacked the deceased and caused his death. The trial court has elaborately dealt with the nature of the offence and has come to the conclusion that the act of the accused would squarely fall within the ambit of Section 304(i) of IPC. We are fully in agreement with the said conclusion arrived at by the trial court. These appellants had no motive against the deceased. It was all in the TASMAR bar on account of the fact that the deceased had broken a liquor bottle which the accused held on the table. When A2 questioned the same, the deceased gave him a slap. Thus, this occurrence itself was an unexpected one. Outside the shop, because A2 had already been attacked, A1 and A2 along with A3 and A4 would have questioned the deceased as to why he attacked A2. This resulted in a quarrel again. The accused were not armed with any weapon. The stones were lying there. It was in the quarrel and in the heat of passion, they had hit the deceased with stones. Unfortunately, the deceased succumbed to the injuries after few days despite treatment. Thus, the act of A1 and A2 would fall under the third limb and fourth exception to Section 300 of IPC and so they are liable to be convicted and sentenced under Section 304(i) of IPC. The trial court was right in doing so.

23. Now, turning to the quantum of sentence, the punishment imposed on A1 and A2 by the trial court is highly disproportionate to the gravity of the offence as well as the mitigating circumstances. The trial court in para 25 of the judgement has stated that the accused belonged to economically weaker section. The occurrence was on account of the loss caused to the liquor bottle. The accused were not armed with weapons. They have got their respective family to take care of and they have got no bad antecedents. The trial court has not made any discussion regarding the mitigating circumstances as well as the aggravating circumstances before deciding the quantum of sentence. The trial court has inflicted sentence of imprisonment for life without assigning any reason and without analysing the above vital facts which need to be examined. Having regard to these mitigating and aggravating circumstances, in our considered view, sentencing the appellants/A1 and A2 to rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- each would meet the ends of justice. Thus, the trial court judgement needs interference at the hands of this court to the extent indicated above.

24. In the result, this criminal appeal is partly allowed. The conviction of the appellants/A1 and A2 for offence under 304 (i) of IPC is confirmed and the sentence imposed on the appellants/A1 and A2 thereunder by the trial court is set aside and instead, they are sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- each in default

to suffer rigorous imprisonment for a further period of four weeks. If fine amount as directed by the trial court has already been paid, after adjusting the fine amount now imposed by this judgement, the balance amount shall be refunded to the appellants. It is directed that the period of detention already undergone by the appellants/A1 and A2 shall be given set off under Section 428 of Cr.P.C. Since it is reported that the appellants/A1 and A2 are on bail, the learned Principal Sessions Judge, Coimbatore, shall take steps to secure the presence of A1 and A2 so as to commit them to prison to serve the remaining portion of sentence imposed by this judgement.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmk

To

- 1.The Principal Sessions Judge,
Sessions Division of Coimbatore,
Coimbatore District.
 - 2.The Inspector of Police, B-11,
Saibaba Colony Police Station,
Coimbatore City.
 - 3.The Public Prosecutor,
High Court, Chennai.
 4. The Judicial Magistrate NO.VII, Coimbatore.
 5. The Chief Judicial Magistrate, Coimbatore.
 6. The Superintendent, Central Prison, Coimbatore.
 7. The District Collector, Coimbatore.
 8. The Director General of Police, Mylapore, Chennai.
 9. The Section Officer, Criminal Section, High Court, Madras.
- + 1 cc to Mr.A.K. Manickam, Advocate SR.34642

Cr1.A.No.271 of 2015

PUR(CO)

Eu 12.08.16