

Bail Slip

The appellant herein namely Chellappan Accused in SC No.194 of 2008 on the file of the Additional District Sessions Court Cum Fast Track Court No.1, Erode was released on bail as per order of this court dated 07.07.2015 made in CrI.MP No.1 of 2015 in CrI.A.293 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2016

CORAM

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

Criminal Appeal No.293 of 2015

Chellappan Appellant/Accused

-Vs-

The State by Inspector of Police
Malayampalayam Police Station
Erode District.
Crime No.62/2008 Respondent/Complainant

This Criminal Appeal has been preferred to set aside the conviction and sentence imposed by judgment dated 16.04.2009 made in S.C.No.194 of 2008 on the file of the Additional District Sessions Court cum Fast Track Court No.1, Erode.

For Appellant : Mr.R.Nalliyappan

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 sole accused in S.C.No.194 of 2008 on the file of the learned Additional District and Sessions Judge cum Fast Track Court No.1, Erode. He stood charged for offences under Sections 449 and 302 IPC. By judgment dated 16.04.2009, the Trial Court convicted him under both the charges and

sentenced him to undergo rigorous imprisonment for 3 years for offence under Section 449 IPC and sentenced to undergo imprisonment for life for offence under Section 302 IPC (Fine not imposed by the Trial Court). 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:-

The deceased in this case was one Mr. Ramasamy. He had a son by name Mr. Krishnamurthy. The accused is the father-in-law of Krishnamurthy. The daughter of the accused by name Sumathi was married to Krishnamurthy. But the deceased had not allowed his son and the daughter of the accused to live in the ancestral house. The accused was enraged over the same. On 10.03.2008, around 11.00 p.m., the accused came to the house of the deceased in his motorcycle. Parking the motorcycle in front of the house of the deceased, he came into the house of the deceased. He spoke to the deceased in an attempt to persuade him to allow his daughter and son-in-law to reside in the ancestral house. But the deceased told him that he would not vacate the house and he would not allow his son and daughter-in-law to reside in the house. This resulted in a quarrel. At the end of the quarrel, it is stated that the accused took out a iron pipe lying there and attacked P.W.1, the wife of the deceased. The deceased intercepted. The accused entered into the house and also attacked the deceased repeatedly with the iron pipe. The deceased fell down sustaining injuries. The accused fled away from the scene of occurrence in the motorcycle. Within a short while, the deceased died on the spot. P.W.1, thereafter went to Malayampalayam Police Station at Erode District and made a complaint on 11.03.2008 at 6.00 a.m. P.W.15, the then Sub-Inspector of Police on receipt of the said complaint registered a case in Crime No.62 of 2008 under Sections 449 and 302 IPC against the accused. Ex.P15 is the FIR. He forwarded both the documents Ex.P1 - Complaint and Ex.P15 - FIR to the Court, which were received by the learned Magistrate at 9.30 a.m. on 11.03.2008.

3. P.W.16 took up the case for investigation. He went to the place of occurrence and prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.12 and another witness. He recovered blood stained earth and sample earth from the place of occurrence. Thereafter, he conducted inquest on the body of the deceased and forwarded the same for post-mortem.

4. P.W.7 - Dr. Sivakumar conducted autopsy on the body of the deceased on 11.03.2008 at 3.00 p.m. He found the following injuries:

1) Transversely placed contusion about 8 x 5 cms situated over the lateral and anterior aspect of the left elbow joint. D/D shows extensive infiltration of blood into the underlying subcutis and muscles which appeared dark red in colour. Supracondylar humus present. Fractured bone ends covered with 130 gms of dark red blood clots.

2) 12 cms x 5 cms size obliquely placed contusion directed downwards and medially situated over the lateral and anterior aspect of lower third of left leg about 18 cms below the knee joint. D/d extensive infiltration of blood into the underlying subcutis and leg muscles present. comminuted # lower third of tibia and fibula present with about 800 gms of dark red blood clot about the fractured bone ends.

3) Vertically placed laceration 2 cms x 1/2 cms x bone depth over the plantar aspect of left II toe. D/d # PPx and Mpx of Left II toe with # site covered with 10 gms of dark red blood clot Wound edgers were ecchymosed.

4) 10 cms x 5 cms size obliquely placed contusion over the back of upper third of right forearm directed downwards and forwards situated 2 cms below the olecranon process. D/d extensive infiltration of blood into underlying subcutis and forearm muscles which appeared dark red in colour.

5) 12 cms x 5 cms size contusion longitudinally oriented over the right supra scapular and right scapular area of chest, 5 cms lateral posterior midline. D/d shows extensive infiltration of blood into subcutis and muscles which appeared dark red in colour; commuted # of the spine and body of right scapula, # middle third of right clavicle. 250 gms of dark red blood clot present - the fractured bones.

6) 6 cms x 5 cms contusion over the front of right side of chest present 8 cms below the midpoint of right clavicle and over the right side of 3rd, 4th and 5th ribs. D/d extensive infiltration of blood into the underlying subcutis and pectoral muscles which appeared dark red in colour.

anterior portion of right 3rd, 4th and 5th ribs present.

Ex.P3 is the post-mortem certificate. He gave opinion that the injuries found on the body of the deceased could have been caused by a weapon like M.O.1 - Iron Pipe. He further opined that the deceased had died due to shock and haemorrhage and due to the injuries.

5. P.W.16 arrested the accused on 12.08.2008 in the presence of the same witnesses. On such arrest, the accused made a voluntary confession, in which he disclosed the place where he had hidden the shirt and dhoti. In pursuance of the same, he took the Police and the witness to the place of hide out and produce the same, which were recovered under a Mahazar. Then he forwarded the accused to the Court for judicial remand as well as the material objects. At his request, the material objects were sent for chemical examination. The report revealed that there were blood stains on all the material objects including the iron pipe recovered from the accused. On completing the investigation, he laid charge sheet against the accused.

6. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined; 18 documents were exhibited and 13 Material Objects were marked.

7. Out of the said witnesses, P.W.1. - the wife of the deceased is the eye witness to the occurrence. She has spoken vividly about the entire occurrence. She has also sustained injury in the very same occurrence. She has spoken about the complaint made by her to Police. P.W.2 is the son of the deceased. He has stated about the refusal of the deceased to allow him and his wife to live in the ancestral house. He has further stated that he heard about the occurrence later. P.W.3 is a neighbour of the deceased. He has stated that around 11.00 p.m. on the day of occurrence, he heard the commotion in the house of the deceased. He has not seen the occurrence. P.W.4 is yet another neighbour of the deceased. He has stated that he found the accused fleeing away from the scene of occurrence with an iron pipe. P.W.5 has stated that he found the accused fleeing away from the scene of occurrence. P.W.6 is the daughter of the accused and the daughter-in-law of the deceased. She has stated about the fact that the deceased refused to allow her and her husband to reside in the ancestral house of the deceased. P.W.7 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.8 has spoken about the

chemical analysis conducted by her and her opinion regarding the cause of death. P.W.9 has stated that he handed over the material objects to the Forensic Lab as directed by the Court. P.W.10 has stated about the earlier complaint made by the accused against the deceased complaining that the deceased had refused to accommodate his daughter in the house. P.W.11 has spoken about the photographs taken at the place of occurrence as directed by P.W.16. P.W.12 has spoken about the preparation of Observation Mahazar and Rough Sketch and the recovery of material objects from the place of occurrence. He has also spoken about the arrest of the accused; the disclosure statement made by him and the consequential recovery of the iron pipe and blood stained clothes of the accused. P.W.13 has stated that he handed over the FIR and the complaint to the learned Magistrate at 9.30 a.m. on 11.03.2008. P.W.14 has stated that he handed over the dead body to the doctor as directed by P.W.16 for post-mortem. P.W.15 has spoken about the registration of the case and the complaint of P.W.1. P.W.16 has spoken about the investigation done and the final report filed.

8. 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 on his side nor marked any document in his favour.

9. Having considered all the above, the Trial Court convicted the appellant as detailed in the first paragraph of this judgment and that is how, the appellant is before this court with this appeal.

10. 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.

11. In this case, as we have already pointed out, the prosecution relies on the solitary eye witness account of P.W.1. She also happens to be an injured witness. The learned counsel for the appellant would submit that the evidence of P.W.1 cannot be believed and acted upon. We find no force in the said argument at all. Simply because she happened to be the wife of the deceased, her evidence cannot be outright rejected. The occurrence had taken place during night hours in the house of the deceased and P.W.1, being the wife of the deceased could have been in the house by all means. Thus, her presence at the place and time of occurrence cannot be doubted. Above all, she is an injured witness in the same occurrence. Therefore, her presence at the place and time of occurrence has been clearly established by the prosecution. She has further stated about the quarrel between the accused and the deceased and the fact

that the accused took out the iron pipe lying there and attacked the deceased indiscriminately. After the occurrence, the accused fled away from the scene of occurrence. He was seen fleeing away from the scene of occurrence by the neighbour of the deceased namely P.W.4. We do not find any reason to reject the evidence of P.W.1. Her evidence draws corroboration from the evidence of P.W.4 and from the medical evidence. Though P.W.1 has been subjected to healthy cross-examination, nothing has been elicited on records so as to doubt the veracity. Thus, from the evidence of P.W.1, in our considered view, the prosecution has clearly established that it was this accused, who caused number of injuries on the body of the deceased, which resulted in his death.

12. Having come to the said conclusion that the death of the deceased was caused only by the appellant, now we have to examine as to, "What was the offence that was committed by the accused by his act?" As spoken by P.W.1, the accused had come to the house of the deceased only to persuade him to allow the daughter of the accused and the son of the deceased to live in the ancestral house. P.W.1 and the deceased bluntly refused for the same. This resulted in the quarrel. It was only in the said quarrel, the accused took out an iron pipe and gave one blow on P.W.1 and then attacked the deceased. Thus, there is no evidence at all on record to infer that the accused would have had any intention to cause the death of the deceased. The act of the accused squarely falls within the third limb of Section 300 IPC. Since the accused had attacked the deceased with the iron pipe which was lying there, it is crystal clear that the occurrence was not a premeditated one. It was out of a sudden quarrel and in the heat of passion, the accused had lost his mental balance. Thus, his act would squarely fall within the fourth exception to Section 300 I.P.C. Therefore, the appellant is liable to be convicted for offence under Section 304(i) I.P.C.

13. Now, turning to the quantum of punishment, it is reported that the appellant is aged 67 years. The medical record has also been produced before this Court which shows that he is suffering from brain tumour. He was in jail from the date of conviction i.e., on 16.04.2009 till 07.07.2015. Thus he has spent more than 6 years in the prison. Considering the bad health of the appellant and all the other attending circumstances, besides the fact that the occurrence was not pre-mediated one, we are of the view that reducing the sentence of imprisonment to the period of sentence already undergone is sufficient punishment and that would meet the ends of justice.

14. In the result, the appeal is partly allowed and the conviction and sentence imposed on the appellant for the offence

under Section 302 IPC is set aside and instead, he is convicted for the offence under Section 304(i) IPC. It is directed that the period of sentence already undergone by him shall be treated as sufficient punishment for the said offence. The conviction and sentence imposed for the offence under Section 449 IPC is confirmed. We further direct that the sentence imposed herein for the offence under Section 304(i) and 449 IPC shall run concurrently. There shall be no need for him to undergo any further sentence and the period of sentence is reduced to the period of sentence already undergone by him.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Additional District Sessions Court cum
Fast Track Court No.1, Erode
- 2.The Principal Magistrate No.1, Erode.
3. The Judicial Magistrate No.1, Erode.
4. The Chief Judicial Magistrate, Erode.
5. The Judicial Magistrate, Kodumudi.
6. The Chief Judicial Magistrate, Kodumudi.
7. The District Collector,
Coimbatore District.
8. The Director General of Police,
Mylapore, Chennai.
9. The Inspector of Police
Malayampalayam Police Station
Erode District.

10.The Public Prosecutor
High Court, Chennai.

11.The Section Officer,
Criminal Section,
High Court, Madras.

12.The Superintendent,
Central Prison, Coimbatore.

1 cc to Mr.R.Nalliyappan, Advocate, sr.42289

Crl.A.No.293 of 2015

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kra 30.08.2016



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