

BAIL SLIP

The Appellant/Accused namely Mahendran S/o.Ammasi, was directed to be released on bail vide order dt.28.7.15 made in CrI.MP.1/15 in CrI.A.No.308/15.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.308 of 2015

Mahendran

Appellant

Vs

State represented by
Inspector of Police,
Pennagaram Police Station,
Dharmapuri Dt.
(Cr.No.454/2009)

Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the learned Principal Sessions Judge, Dharmapuri by judgment dated 05.03.2015 in S.C.No.12 of 2010 and acquit the appellant.

For Appellant : Mr.R.Thirunanam

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

JUDGEMENT

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

The appellant is A.1 in S.C.No.12 of 2010 on the file of the learned Principal Sessions Judge, Dharmapuri. A.2 was one Mrs.Sevvanthi @ Sevanthiammal. The trial Court framed charges under Sections 302 & 323 I.P.C., against both the accused. By judgment dated 05.03.2015, the trial Court acquitted A.2 from

both the charges however, convicted A.1/appellant for offence under Section 302 I.P.C., alone and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for three months. The trial Court acquitted A.1/appellant for the offence under Section 323 I.P.C. Challenging the above conviction and sentence the appellant/A.1 is before this Court with this Criminal Appeal.

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

The deceased in this case was one Mr.Arumugam. P.Ws.1, 2 & 3 are the wife, daughter-in-law and the son of the deceased. The appellant is the husband of A.2. They were all residing at Natesan Kattukottai Village. There was a long standing enmity between the family of the deceased and that of the accused, in respect of a pathway. It is alleged that on 18.08.2009, at 7.30 am, the deceased was plowing his land which was located 10 meters from his house. P.Ws.1, 2 & 3 were in their house. At that time, the goats belonging to the uncle of A.1 was trespassed into the said land and caused damage to the crop. P.W.1 went to the field and told the deceased to take the goats to their house, as a protest. P.W.2 also rushed to the place of occurrence. This resulted in a quarrel between the accused on one side and the deceased and P.W.1 on the other side. In the said quarrel, it is stated that, A.1 attacked the deceased on his left shoulder and left thigh with a firewood. A.2 attacked P.W.1 on her head with a bamboo stick. The deceased intervened and tried to rescue P.W.1. Immediately, A.1 attacked the deceased on his head repeatedly with firewood. A.2 kicked the deceased on his chest repeatedly. Thereafter, both the accused fled away from the scene of occurrence. P.W.3, the son of P.W.1 and the deceased, on hearing about the occurrence, came to the place of occurrence, took P.W.1 and the deceased to the hospital. Both of them were admitted at the Government hospital, Dharmapuri. Since, the condition of the deceased was serious, he was advised to be taken to Salem Government Medical College and Hospital. On his way, the deceased breathed his last.

3. On getting information from the Government hospital, Dharmapuri, P.W.6, the then Sub Inspector of Police, went to the hospital and recorded the statement of P.W.1. On returning to the Police Station, he registered a case in Crime No.454 of 2009 for offence under Sections 324 & 302 I.P.C., against both the accused. Ex.P.11 is the complaint and Ex.P.12 is the F.I.R. He forwarded both the documents to Court.

4. The investigation was taken over by P.W.8, the then Inspector of Police. He went 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 recovered the blood stained earth and the sample earth from the place of

occurrence. He examined P.Ws.1 to 3 and recorded their statements. He arrested both the accused on 19.08.2009 at 2.00 pm in the presence of P.W.5 and another witness. On such arrest, A.1 disclosed the place where he had hidden the firewood. In pursuance of the same, he took the Police and the witnesses to the place of hide out and produced the firewood (M.O.3). Similarly, on such arrest, A.2 disclosed the place where she had hidden the bamboo stick. In pursuance of the same, she took the Police and the witnesses to the place of hide out and produced the bamboo stick (M.O.4). Then he forwarded both the accused to Court for judicial remand. On going over to the hospital, he conducted inquest on the body of the deceased and forwarded the same for Post mortem.

5.P.W.4 - Dr.Rameshbabu, conducted autopsy on the body of the deceased on 19.08.2009 at 02.00 p.m. He found the following injuries:-

- " 1) A 'V' shaped lacerated wound in right side parietal region of scalp 6cmx3cm in length
- 2) A lacerated wound in left side occipital region of scalp 5 cm x length
- 3)An abrasion right side upper chest 4 x 3cm of an overlapping abrasion of 2 x 2 cm
- 4)An abrasion right side neck 2 x 1 cm."

Ex.P.3 is the Post Mortem Certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage due to the head injury.

6.Thereafter, the investigation was taken over by P.W.9, the then Inspector of Police. He examined the Doctor and also collected the medical records and finally laid charge sheet against both the accused.

7.Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against both the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 9 witnesses were examined and 18 documents were exhibited, besides 4 Material Objects were marked.

8.Out of the said witnesses, P.Ws.1 & 2 are the eye witnesses to the occurrence. P.Ws.1 & 2 are the wife & daughter-in-law respectively of the deceased. They have stated vividly about the entire occurrence. P.W.3 is the son of the deceased and P.W.1. He has stated that on hearing about the occurrence, he went to the field and took the deceased and P.W.1 to hospital. P.W.4 has spoken about the Post Mortem conducted by him and his final opinion regarding the cause of the death of the deceased. P.W.5, the then Village Administrative Officer has spoken about the

preparation of observation mahazar; rough sketch; recovery of blood stained earth; sample earth at the place of occurrence and he has also spoken about the arrest of both the accused and subsequent recoveries made on their disclosure statements. P.W.6 has spoken about the registration of F.I.R., on the complaint of P.W.1. P.W.7 - Dr.Varungandhi has spoken about the treatment given by him to the deceased at Government Hospital, Pennagaram. P.Ws.8 & 9 have spoken about the investigation done and the final report filed in this case.

9.When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witnesses on their side. Their defence was a total denial.

10.Having considered all the above materials, the trial Court convicted the appellant/A.1, as stated in the first paragraph of this judgment. Challenging the same, the appellant/A.1 is before this Court with this Criminal Appeal.

11.We have heard the learned counsel for the appellant/A.1 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12.This is a case where the prosecution relies on the eye witness account of P.Ws.1 & 2. They have stated about the quarrel between the deceased and P.W.1 on one side and the accused on the other side. They have also spoken about the enmity between two families. They have vividly stated that it was A.1/appellant who repeatedly attacked the deceased, on his head, with firewood. The trial Court has disbelieved their evidences in respect of the allegations that A.2 kicked the deceased on his chest repeatedly.

13.The learned counsel for the appellant would submit that the evidences of P.Ws.1 & 2 cannot be believed and they are highly interested witnesses since, they happened to be the wife and daughter-in-law of the deceased. We are not persuaded by the said argument. Simply because they happened to be the close relatives of the deceased, their evidences cannot be out right rejected.

14.As we have already pointed out, P.W.1 was also taken to the hospital since, she was attacked by the accused. Though, it is true that the trial Court has acquitted the appellant/A.1 in respect of the allegation that he attacked P.W.1, infact, it was on the ground that there was no external injury found on P.W.1. But from the evidence of P.Ws.1 & 2, it is crystal clear that they were very much present at the time of occurrence and only on their information, P.W.3 came to the place of occurrence and took the deceased and P.W.1 to the hospital.

15.The learned counsel for the appellant would further submit that P.W.1 has stated in her evidence that before going to the hospital, she went to Police station first and then made a complaint. The said earliest information has been suppressed. But, we do not find any force in the said argument. Because P.W.1 is after all an illiterate village woman, she cannot be expected to meticulously remember as to when the complaint was made. Due to fading memory, she would have stated that she went to the Police Station first and made a complaint and thereafter she went to the Hospital. On that score, we cannot reject the evidence of P.W.1.

16.The learned counsel for the appellant would further submit that there were no blood stains found on the firewood (M.O.3). This argument is also liable to be rejected because, P.W.1 has not stated that there were blood stains on the firewood (M.O.3). Without any delay, P.W.1 and the deceased were taken to the hospital. According to P.W.7, the deceased was brought to the hospital at 9.40 am along with P.W.1. Since, the condition of the deceased was serious, P.W.1 and the other relatives would not have thought of going to the Police Station immediately and to made a complaint. Therefore, there had occurred a delay in preferring the complaint. On that score, we cannot reject the evidences of P.Ws.1 & 2. In nutshell, we hold that the evidences of P.Ws.1 & 2 are believable and from their evidences, the prosecution has clearly established that it was the appellant/A.1 who caused the injuries on the head of the deceased with firewood (M.O.3), which ultimately resulted in death of the deceased.

17.Having come to the said conclusion, now we have to examine the question as to, "What was the offence that was committed by the accused by the said act ?". It is in evidence that the deceased was engaged in agricultural work in the land. The goats belonging to the uncle of the appellant/A.1 trespassed into the said land and caused damage to the crops. This was questioned by P.W.1. This resulted in a quarrel between P.W.1 and the deceased on one side and A.1 & A.2 on other side. In that quarrel, it is alleged that A.1 attacked P.W.1. The deceased tried to intervene. In that process, it is stated that A.1 attacked the deceased with the firewood (M.O.3) which was lying there. Thus, 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 appellant/A.1 attacked the deceased and he would have neither intention to cause the death of the deceased nor to cause any injury. He could not be attributed by the knowledge that any injury caused with firewood on the head would cause imminent danger to cause the death of the deceased. Thus, his act would fall with the fourth exception to Section 300 I.P.C. Therefore, the appellant/A.1 is liable to be convicted for offence under Section 304(ii) I.P.C.

18.Now, turning to the quantum of punishment, the appellant/A.1 is a poor agriculturist, he has got big family to take care of. The occurrence was not a premeditated one. As a matter of fact, when the accused/A.1 came to the place of occurrence, he was not armed with any weapon. The occurrence took place in the heat of passion and out of quarrel. The quarrel itself was a sudden and unexpected one. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused/A.1 to undergo Rigorous Imprisonment for 5 years with fine of Rs.1000/- would meet the ends of justice.

19.In the result, the Criminal Appeal is allowed in part and the conviction and sentence imposed on the appellant/A.1 for offence under Section 302 I.P.C., is set aside and instead, he is convicted for offence under Section 304(ii) I.P.C., and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks and the period of sentence already undergone by the appellant is directed to be set off under Section 428 Cr.P.C.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

1. The Principal Sessions Judge,
Dharmapuri.

2.The Public Prosecutor,
High Court, Madras.

3.The Chief Judicial Magistrate,
Pennagaram, Dharmapuri.

4.The Inspector of Police,
Pennagaram Police Station,
dharmapuri.

5.The Superintendent,
Central Prison, Vellore.

6.The Judicial Magistrate,
Penngaram,
Dharmapuri.

7.The district Collector,
Dharmapuri.

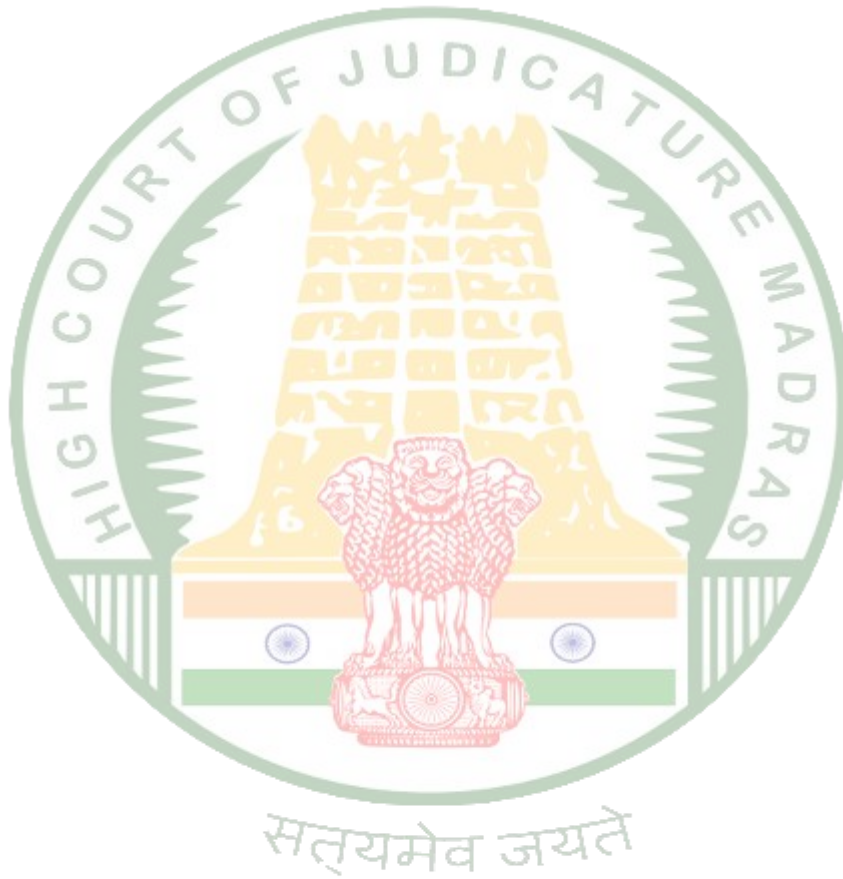
8.The Director General of Police,
Mylapore, Chennai.

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

+1 cc to Mr.R.Thirugnanam, advocate,sr.36431.

rsi(co)
krd 5/8

Cr1.A.No.308 of 2015



WEB COPY