

Bail Slip

That the appellant herein/Accused Viz, Gnanasundari, was directed to be released on bail as per the order of this court dated 10.08.2015 and made in M.P.NO.1 of 2015 in CrI.Appeal.372 of 2015 as stated within.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.07.2016

CORAM:

THE HON 'BLE MR.JUSTICE S.NAGAMUTHU
AND
THE HON 'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.372 of 2015

Gnanasundar

.. Appellant/Accused

Vs

The State, by Inspector of Police,
Kodumudi Police Station,
Erode District
(Crime No.37 of 2014)

.. Respondent/complainant

Prayer:- Criminal Appeal filed under Section 374 of the Criminal Procedure Code, praying to set-aside the conviction imposed in the judgment, dated 12.06.2015, made in S.C.No.96 of 2014 on the file of the Principal Sessions Court, Erode, by allowing this Criminal Appeal.

For Appellant : Mr. I.C.Vasudevan

For Respondent : Mr. M.Maharaja,

Additional Public Prosecutor

J U D G E M E N T

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

The appellant is the sole accused in S.C.No.96 of 2014 on the file of the learned Principal Sessions Judge, Erode. He stood charged for the offence under Section 302 IPC. By judgment, dated 12.06.2015, the trial Court convicted him for the offence under Section 302 IPC, and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default, to undergo Rigorous Imprisonment for six months. 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 Subramani. The accused is the son of the deceased. The deceased was an agriculturist, by profession. The accused was his spent-thrift. He also started drinking liquors. This was objected to by the deceased. On account of the same, there were frequent quarrels between them. This is stated to be the motive for the occurrence.

3. On 11.02.2014, at about 06.30 am, the deceased was proceeding towards Vahaimarathan temple in the same village. The accused came there and told the deceased that he had arranged a person to purchase the paddy bags from the deceased. The deceased told him that he would sell the paddy bags, according to his wish, in which the deceased should not interfere. This infuriated the accused, which resulted in a quarrel. In the said quarrel, it is stated that the accused had took out a rice-pounder lying there and attacked the deceased on his head. The deceased fell down with blood injuries on his head. The accused ran away from the scene of occurrence with the rice-pounder. The occurrence was witnessed by P.Ws.1 to 4. P.Ws.1 to 4 brought the deceased to his house. Then, they arranged for 108 ambulance. When the ambulance was arrived at the house of the deceased, the deceased had already lost his breath. The paramedical staff, who came in the Ambulance, declared him dead. Thereafter, P.W.1 went to Kodumudi Police Station at 08.00 am on 11.02.2014 and made a complaint.

4. P.W.13, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.37 of 2014 under Section 302 IPC against the accused. Ex.P-16 is the First Information Report. He forwarded the complaint and the First Information Report to the Court, which were received by the learned Magistrate at 09.30 am on 11.02.2014.

5. P.W.16, the then Inspector of Police, took-up the case for investigation. He proceeded to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W.6. He arranged for a photographer to take photographs at the place of occurrence. He recovered a broken piece of rice pounder, blood stained earth and sample earth from the place of occurrence, under a mahazar, in the presence of the same witnesses. From the house of the deceased, where the body was laid, he recovered a shirt and a blanket from the body, which were stained with blood. Then, he conducted inquest on the body of the deceased between 11.00 am and 02.00 pm and forwarded the body for postmortem. P.W.11, Dr.Saravanakumar, conducted autopsy on the body of the deceased on 11.02.2014 at 03.00 pm. He found the following injuries:-

"External Injuries:

1. Lacerated injury of 4x3x2 cm over chin region +
2. Deep lacerated injury of 5x3x2 cm present over left side forehead running along medial aspect of left eyebrow to bridge of nose +
3. Bleeding through right ear +
4. Deep lacerated injury of 3x2x2 cm over left frontal region +
5. 3x2x2 cm lacerated injury over right occipital region +
6. 5x3x2 cm lacerated injury over right temporal region with crushing of lateral border of pinna on right ear.

Internal Examination:

On opening chest - Ribs - intact, no fracture, heart 250 grams pale, chamber empty, both lungs pale.

Hyoid bone - intact, stomach - filled with 150 ml of undigested food material, Liver - 1500 grams pale, spleen normal. Both kidney - normal, bladder empty.

On opening skull - above 50 ml of clotted blood over skull vault + brain - congested, subarachnoid hemorrhage + over left frontal region + Base of skull - fracture over anterior cranial fossa. Spinal cord - intact."

6. Ex.P-11 is the postmortem certificate. P.W.11, the Doctor, gave opinion that the death of the deceased was due to shock and hemorrhage caused on account of injuries found on the body of the deceased. He also opined that the death would have been caused on the deceased by a weapon like M.O.11.

7. On 11.02.2014, at 04.45 pm, near Vengamedu Bus stop, P.W.16 arrested the accused in the presence of P.W.9 and another witness. On such arrest, he gave a voluntary confession, in which he disclosed the place, where he had hidden the rice-pounder. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced the rice pounder (M.O.1). P.W.16 recovered the same under a mahazar. Then, he forwarded the accused to the Court for judicial remand and the material objects also to the Court. Then, at his request, the material objects were sent for chemical examination. On completing the investigation, he laid a charge sheet against the accused.

8. Based on the above materials, the trial Court framed a charge against the accused under Section 302 IPC. The accused denied the same as false. In order to prove the case of the prosecution, on the side of the prosecution, as many as 16

witnesses were examined and 20 documents were exhibited, besides marking 11 material objects.

9. Out of the said witnesses, P.Ws.1 to 4 are the eye-witnesses to the occurrence. They have vividly spoken about the entire occurrence, more precisely, they have stated that it was this accused, who attacked the deceased with rice-pounder on his head, repeatedly. P.W.5 has stated that he heard about the occurrence and then came to the place of occurrence. P.W.6 has spoken about the preparation of the observation mahazar and the rough sketch and also the recovery the material objects from the place of occurrence and from the body of the deceased. P.Ws.7 and 8 have turned hostile and they have not supported the case of the prosecution in any manner. P.W.9, the Village Administrative Officer, has spoken about the arrest of the accused, the disclosure statement made by him and the consequential recovery of M.O.1-rice pounder. P.W.10 has spoken about the photographs taken by him at the place of occurrence, on the request of P.W.16. P.W.11 has spoken about the postmortem conducted by him and his final opinion regarding the cause of death. P.W.12 has spoken about the chemical analysis conducted on the material objects, which revealed that there were human blood stains on all the material objects, including the rice-pounder, recovered from the accused. P.W.13 has spoken about the registration of the case on the complaint of P.W.1. P.W.14 has spoken about the fact that he handed over the First Information Report to the learned Magistrate at 09.30 am on 11.02.2014. P.W.15 has spoken about the fact that he handed over the body to the Doctor for Postmortem. P.W.16 has spoken about the investigation done and the final report filed.

10. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor marked any document on his side. Having considered all the above, the trial Court found the accused guilty under Section 302 IPC and accordingly, sentenced them, as detailed in the first paragraph of this judgment. Aggrieved over the same, the appellant is before this Court with this Criminal Appeal.

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

12. The foremost contention of the learned counsel for the appellant is that, P.Ws.1 to 4 would not have witnessed the occurrence at all. He would further submit that they are interested witnesses and therefore, their evidence should be rejected at the threshold.

13. But, we find no force at all in the said argument of the learned counsel for the appellant. Simply the eye-witnesses happened to be the interested witnesses, on that

score their evidences cannot be rejected outright. Prudence requires that their evidence should be scrutinized meticulously. If we so meticulously scrutinize the evidences of P.Ws.1 to 4, we find absolutely nothing to doubt their credibility. Though P.Ws.1 to 4 have been cross-examined at length, nothing has been elicited to disbelieve their evidence. The eye-witnesses account of P.Ws.1 to 4 are also duly corroborated by the medical evidence. The prompt launching of the First Information Report, by P.W.1 without any delay and prompt discharge of the same to the hands of the learned Magistrate would also lend assurance to the case of the prosecution. The recovery of the rice-pounder, which contains human blood from the possession of the accused, on his disclosure statement, is yet another corroborative piece of evidence to corroborate P.Ws.1 to 4. Thus, from these evidences, in our considered view, the prosecution has proved the case beyond all reasonable doubts and it was this accused, who caused injuries on the head of the deceased, by attacking him with M.O.1-rice pounder. According to P.W.11, the death of the deceased was due to shock and hemorrhage caused on account of the injuries sustained by the deceased. Thus, the prosecution has proved that the death of the deceased was caused by this accused by inflicting injuries.

14. Having come to the said conclusion, now we have to examine as to what was the offence committed by the accused by his act.

15. After all, the accused is a young man, aged 21 years, at the time of occurrence and the son of the deceased. The occurrence was not a premeditated one. The accused was not already armed with any weapon. The meeting of the accused with the deceased at the place of occurrence was also by chance. The accused, in a casual manner, informed the deceased that he had arranged for a person to purchase paddy bags from the deceased. But the deceased told the accused that he would sell the paddy, according to his own wish. More probably, this would have developed into a quarrel. The accused would have been provoked by the words and deeds uttered by the deceased. The deceased, being an elderly man, should have shown with some patience, as, after all, the accused is his son. He did not maintain any patience and clam and instead, he had provoked the accused. It was only out of the said provocation, the accused had taken the rice-pounder, which was lying there, and attacked the deceased. Thus, in our considered view, though the act of the accused would squarely fall within the third limb of Section 300 IPC, the same would also fall within the first exception to Section 300 IPC. Therefore, the appellant is liable to be punished only for the offence under Section 304 (i) IPC.

16. Now turning to the quantum of punishment, the accused was an adolescent offender. He was only aged 21 at the time of occurrence. He had no bad antecedents. Though it is

stated that the accused used to take illicit liquors, there is no evidence for the same. After the occurrence also, the accused had not committed any other crime. There are lot of chance for reformation.

17. Having regard to the mitigating as well as the aggravating circumstances, we are of the view that the sentencing the accused to undergo Rigorous Imprisonment for five years and to pay a fine of Rs.1,000/-, would meet the ends of justice.

18. In the result, this Criminal Appeal is partly-allowed and the conviction and sentence under Section 302 IPC, imposed on the appellant, are set-aside and instead, he is 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. It is directed that the period of sentence already undergone by the appellant shall be given set off, as required under Section 428 Cr.P.C.,

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

srk

To

1. The Principal Sessions Court, Erode.
 2. The Judicial Magistrate, Kodumudi.
 3. -do- Thro' The Chief Judicial Magistrate, Erode District.
 4. The Inspector of Police, Kodmudi Police, Station Erode District (Crime No.37 of 2014)
 5. The Superintendent, Central Jail (with copies induplicate for communication to the Accused)
 6. The District Collector, Coimbatore.
 7. The Director General of Police, Mylapore, Chennai.
 8. The Public Prosecutor, High Court, Madras.
- + 1 cc to M/s. I.C. Vasudevan, Advocate Sr.37396

CrI.A.No.372 of 2015

UG(CO)
EU 26.7.16