

Bail Slip

The Appellants herein namely 1. M. Rajendran(A1) 2. G. Mahendran (A2) Accused in ScNo 22/14 on the file of the Principle Districts Sessions Judge Tiruvarur were directed to be released on bail as per order of this court dated 02.03.2016 made in Crl MP No 1703/16 in Crl A No 386/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.A.No.386 of 2015

1. M.Rajendran
2. G.Mahendran

.. Appellants

Vs

State by
Inspector of Police
Valangaiman Police Station
Tiruvarur District.

... Respondent

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Principal District & Sessions Judge, Tiruvarur, in S.C.No.22 of 2014 on 06.03.2015.

For Appellants : Mr.S.Sathia Chandran

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

JUDGMENT

The accused A1 and A2 in S.C.No.22 of 2014 on the file of the learned Principal District & Sessions Judge, Tiruvarur, are the appellants herein. A1 stood charged for offence under Sections 294 (b) and 302 r/w. 34 IPC. A2 stood charged for an offence under Section 302 IPC. The trial Court convicted A1 under Sections 294 (b) and 302 r/w.34 IPC and sentenced him to pay a fine of Rs.250/- in default to undergo one week rigorous imprisonment for the offence under Section 294 (b) IPC and convicted and sentenced him to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months

rigorous imprisonment for the offence under Section 302 r/w.34 IPC. A2 was convicted under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months rigorous imprisonment. Challenging the above said conviction and sentence, both the appellants/accused have filed the present Appeal.

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

(i) The deceased in this case one Jayaraman is the brother of A1. A2 is the son-in-law of A1. Since A1's daughters were involved in illegal activities, the deceased asked A1 to warn them. On 23.06.2012 at about 8 p.m, the deceased, P.Ws.1 and 2 sons of the deceased, PW.3 son-in-law of the deceased, PW.4 wife of the deceased went for a function near to the house of A1. At that time, once again the deceased asked A1 to warn his daughters as they were bringing bad name to the family. Provoked over the same, A1 scolded the deceased and A2, who was standing near to A1, attacked the deceased with knife in the rib and caused serious injuries. Immediately, the deceased was taken to Kumbakonam Government Hospital in an Ambulance.

(ii) PW.9 - Doctor in Kumbakonam Government Hospital had given first aid to the deceased and referred him to Tanjore Medical College Hospital.

(iii) PW.14 - Special Sub Inspector of Police in the respondent police, on receipt of memo from Kumbakonam Government Hospital, proceeded to the hospital and since the deceased was not in a position to speak, he recorded the statement of his son - PW.1 and based on his statement, he registered a case in Crime No.108 of 2012, for the offence under Sections 294 (b), 324 and 307 IPC, and sent the First Information Report to the jurisdictional Judicial Magistrate and the higher officials.

(iv) PW.15 - Inspector of Police, on receipt of First Information Report, commenced the investigation, proceeded to the scene of occurrence and prepared Observation Mahazar (Ex.P2), and also a rough sketch (Ex.P15), recovered the blood stained shirt M.O.2 in the presence of witnesses and then, he went to Tanjore Medical College Hospital and recorded the statement of witnesses, then on 24.06.2012 at about 11.30 a.m, he arrested the accused. On such arrest, A2 voluntarily given a confession, based on the disclosure statement Ex.P16, he recovered the blood stained knife M.O.1, in the presence of PW.7. Subsequently on 27.07.2012 at about 2.30 a.m., the deceased succumbed to injuries. Hence, he altered the First Information Report into that for the offence under sections 294 (b), 324 and 307 IPC, and he conducted inquest on the dead body in the hospital in the presence of panchayatdars, the inquest report is Ex.P19, and sent a memo for conducting postmortem on the dead body.

(v) PW.12 Assistant Civil Surgeon working in Tanjore Government Medical College Hospital conducted autopsy on the

dead body and found the following injuries:-

“EXTERNAL INJURIES:

1. A surgically sutured wound of length 32 cm in midline of the abdomen laparotomy
 2. A surgically sutured wound of length 18 cm along left costal margin.
 3. A sutured stab wound 4 cm x 4 x 8 cm below the left costal margin.
 4. Intercostal drainage tube hold present in 2nd left intercostals space
 5. Drainage tube hole in left lumbar region.
- Ileostomy done present.

INTERNAL INJURIES:

7. On opening the scalp skin : Intact.
8. On opening the skull cap : Intact.
9. On opening the abdomen:
 - 1) Stomach - perforation present in fundus of stomach communicating to left pleural cavity, which was sutured by surgical method.
 - 2) Primary suturing done in transverse colon left side.
 - 3) Perforation 2 x 1 x cm over right dome of diaphragm which was fluid with pus.

Pericardium : Intact.

Heart : Contains fluid blood in all the chambers.

Lungs : Pus present in upper lobe of left lung. Inner laceration 2 x 2 x 1 cm over left lower lobe.

Hyoid bone : Intact.

Stomach : As noted above.

Liver : C/s pale.
Spleen : C/s pale.
Kidneys : C/s pale.
Small intestine : Empty.
Pelvis : Intact
Membranes : Normal
Brain : C/s. Oedematous
Spinal column : Intact. "

Ex.P12 is the postmortem report, and PW.12 Doctor was of the opinion that the deceased appeared to have died due to effects and complications of the stab injury involving stomach, colon and lung. Then PW.15 recorded the statement of Doctors at the Government Hospital, Kumbakonam and postmortem Doctor PW.12, after completion of investigation, he filed a charge sheet.

3. Based on the above materials, the trial Court has framed charges as stated in paragraph-1 of the judgment. The accused denied the same as false. In order to prove its case, the prosecution examined 15 witnesses and marked 20 documents and 3 material objects.

4. Out of the above witnesses examined, PW.1 is the son of deceased. According to him, on the date of occurrence at about 8 p.m, he along with the deceased, brother PW.2, brother-in-law PW.3 and mother PW.4 went near to the house of A1 to attend a function at that time, the deceased asked A1 to warn his daughters since they were bringing bad name to the family. Being provoked over by the same, A1 scolded the deceased, and A2, who is the son-in-law of the deceased stood nearby A1, attacked the deceased with the knife in his rip causing serious injuries. Immediately, they took him to the Government Hospital, Kumbakonam, from there he was referred to Tanjore Medical College Hospital. Subsequently, on 27.07.2012, he succumbed to injuries. PW.2 another eye witness to the occurrence is another son of the deceased. PW.3 is the son-in-law of the deceased and he is also an eye witness to the occurrence. PW.4 is the wife of the deceased and she had also seen the occurrence. It is the consistent evidence of all the eye witnesses that the deceased asked A1 to warn his daughters as they had involved in illegal activities. Hence, A1 scolded the deceased and A2 attacked him with the knife. PW.5 is a neighbour. PW.6 is the Mahazar witness attested Ex.P2 and also

recovery of M.O.2. PW.7 is a witness to the arrest and recovery of M.O.1 knife and attested Exs.P4 and P5. PW.8 is the junior Engineer working in Tamil Nadu Electricity Board, Valangaiman. According to him, on the date of occurrence, there was no power cut in the village. PW.9 is the Doctor, who had given first aid to the deceased at Kumbakonam Government Hospital and referred him to Tanjore Medical College Hospital and issued Accident Register Ex.P7. PW.10 is the Doctor working in Tanjore Medical College Hospital, who had admitted the deceased in the hospital. PW.11 is the Assistant Director in the Forensic Lab, Thiruvavarur. She had examined the material objects and given a report Ex.P10. PW.12 is the Doctor who had conducted autopsy on the dead body and had given postmortem certificate Ex.P12. PW.13 is the Head Constable. He submitted altered First Information Report before the Judicial Magistrate. PW.14 - Special Sub-Inspector of Police recorded the statement of PW.1 at Kumbakonam Government Hospital and registered the First Information Report. PW.15 - Inspector of Police conducted the inquest and recorded the statement of witnesses, arrested the accused and after completion of investigation, he filed a charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. They did not examine any witnesses nor marked any documents.

6. Considering the above materials, the trial Court convicted the accused and sentenced them as stated in paragraph-1 of the judgment. Challenging the same, the appellants are before this Court with this appeal.

7. The learned counsel for the appellants would submit that all the eye witnesses are closely related to the deceased and they are interested witnesses, and in the absence of any corroboration from any independent witness, their evidence cannot be believed and there was no common intention between A1 and A2 to commit murder, and the occurrence took place only out of sudden provocation without any premeditation and the prosecution did not prove the case beyond any reasonable doubt and therefore, the appellants are entitled for acquittal.

8. Per contra, the learned Additional Public Prosecutor would submit that there are four eye witnesses to the occurrence and even though they are related, their evidences are consistent and their presence in the scene of occurrence is also natural and their evidence cannot be brushed aside. Apart from that, both the accused have common intention to murder the deceased and in furtherance of the same, A2 attacked the deceased with knife and caused his death and therefore, he prayed for dismissal of the appeal.

9. We have considered the rival submissions and perused the records carefully.

10. There are four eye witnesses to the occurrence. P.Ws.1 and 2 are sons, PW.3 is son-in-law and PW.4 is wife of the deceased. According to them, on the date of occurrence, all the above witnesses along with the deceased had gone for a function near to the house of A1 and in front of the house of A1, the deceased, who is the brother of A1, asked him to warn his daughters since they were bringing bad name to the family and asked him to advice them. Being provoked over by the same, A1 scolded the deceased, immediately, A2, who is the son-in-law of A1, standing nearby attacked the deceased with the knife on his rib. Even though all of them are closely related to the deceased, their presence in the scene of occurrence is natural as they were all went to attend a function near to the house of A1 and their evidences are cogent and consistent. The medical evidence also corroborates the evidences of eye witnesses. From these evidences, the prosecution has clearly established that it is only the A2 attacked the deceased with knife, which resulted in the death of the deceased.

11. The next question arises is whether A1 has any common intention with A2 to commit murder.

12. According to the eye witnesses, the occurrence took place in front of A1's house. P.Ws.1 to 4 and the deceased went there to participate in a function near to the house of A1. A1 and A2 were standing in their house. At that time, the deceased uttered some provocative words regarding the daughters of A1. Hence, A1 scolded the deceased. When the conversation was going on, without the knowledge of A1, A2 took out the knife and stabbed the deceased. Absolutely, there is no evidence to show that there was pre-meeting of mind between A1 and A2 to murder the deceased. A1 had no common intention with A2. Therefore, A1 cannot be convicted with the aid of Section 34 IPC. Therefore, A1 is entitled for acquittal.

13. So far as A2 is concerned, we have to consider what was the offence that was committed by A2 by the said Act.

14. A2 is the son-in-law of A1. At the time of occurrence, the deceased uttered some provocative words about the daughters of A1. Being the son-in-law, A2 lost his mental balance due to the provocative words used by the deceased, immediately, he stabbed the deceased once and caused the injury. It is not a premeditated murder and the occurrence took place in front of the house of A1, and A2 has no intention to cause death of the deceased. The deceased was conscious and he was undergoing treatment for 33 days after the occurrence and the

death was only due to secondary complications. There is no evidence to show that the injury caused by A2 was sufficient to cause the death of the deceased and the death was due to secondary complications. Hence, only the knowledge as required under 4th limb of Section 300 IPC could be attributed and his act would fall within first exception to Section 300 IPC. Hence, A2 is liable to be punished for an offence under Section 304(ii) IPC.

15. Now, as far as the quantum of sentence is concerned, A2 has no bad antecedents and it is not a premeditated murder and the occurrence took place by sudden provocation, due to the provocative words uttered by the deceased. Hence, considering the mitigative as well as aggravating circumstances, sentencing him to undergo rigorous imprisonment for six years and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for four weeks would meet the ends of justice.

16. In the result, the Criminal Appeal is partly allowed. The conviction and sentence imposed on the first appellant/first accused under Sections 294(b) and 302 r/w.34 IPC are set aside and A1 is acquitted and fine amount already paid, if any by A1, shall be refunded to him and the bail bond executed by him shall stand terminated. The conviction and sentence imposed on the second appellant/second accused under Sections 302 IPC are set aside and instead, A2 is convicted under Section 304(ii) IPC and sentenced to undergo rigorous imprisonment for six years with a fine of Rs.1,000/- in default to undergo rigorous imprisonment for a period of four weeks. The period of sentence already undergone by the second appellant/ second accused shall be set off under Section 428 Cr.P.C. The trial Court is directed to secure the accused to undergo the remaining period of the sentence.

Sd/
सतसमीप नयते
Assistant registrar (CO)

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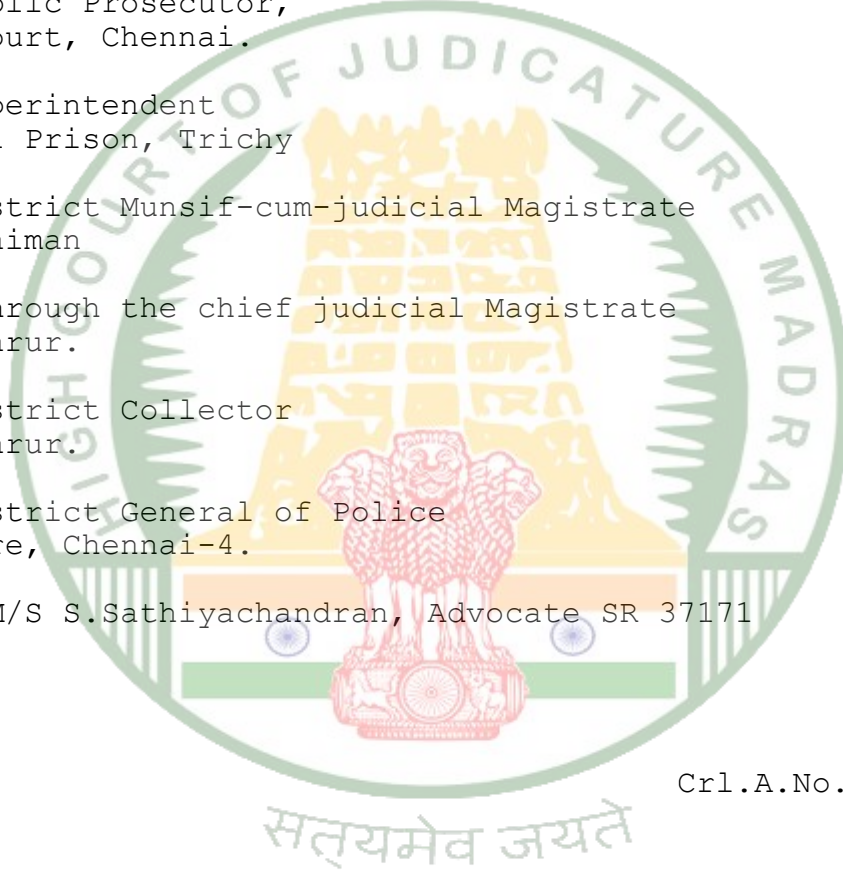
sub assistant registrar

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To

1. The Principal District & Sessions Judge,
Tiruvarur.
 2. The Inspector of Police
Valangaiman Police Station
Tiruvarur District.
 3. The Chief Judicial Magistrate
Tiruvarur
 4. The Public Prosecutor,
High court, Chennai.
 5. The Superintendent
Central Prison, Trichy
 6. The District Munsif-cum-judicial Magistrate
Valangaiman
 7. -do- through the chief judicial Magistrate
Thiruvarur.
 8. The district Collector
Thiruvarur.
 9. The District General of Police
Mylapore, Chennai-4.
- +1 CC to M/S S.Sathiyachandran, Advocate SR 37171



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