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BAIL SLIP

The Appellant/Accused namely Mohan @ Kullan s/o.Kollapuri was ordered to be released on bail by order of this Court dt.1.12.2015 and made in MP.No.1/2015 in CrI.A.No.50/2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2016

CORAM:

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

Criminal Appeal No.50 of 2015

Mohan @ Kullan

.. Appellant / Accused

Vs

State, by the Inspector of Police,
T-6 Avadi Police Station, Chennai
(Crime No.1377 of 2012)

.. Respondent / complainant

Prayer:- Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, praying to set-aside the conviction and sentence imposed on the appellant, in the judgment, dated 22.08.2014, made in S.C.No.128 of 2013, on the file of the III Additional Sessions Judge, Tiruvallur at Poonamallee, by allowing this Criminal Appeal.

For Appellant : Mr. N.Manoharan, for,
Mr. G.Dhamodaran
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.128 of 2013 on the file of the learned III Additional District and Sessions Judge, Tiruvallur at Poonamalle. He stood charged for the offences under Sections 341 and 302 IPC. By judgment, dated 22.08.2014, the trial Court convicted him, on both the charges, and sentenced him to undergo simple imprisonment for one month for the offence under Section 341 IPC and also sentenced to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, to undergo Rigorous Imprisonment for two months for the offence under Section 302 IPC. 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. He was residing at Bavaniamman Temple Fifth Cross, Avadi, Chennai. P.W.1 is his wife. The accused is one of the brothers of P.W.1. P.W.1 has got yet another brother, by name, Anand. P.W.1's father had partitioned the joint family properties and allotted sixty cents of land to the share of Mr. Anand. Since Mr. Anand was mentally ill, he was taken care of by P.W.1 and the deceased. The title deeds relating to the above said sixty cents of land belonging to Mr. Anand were in the possession of the deceased and P.W.1. The accused made a claim for the said property, as Mr. Anand were after all his brother. He demanded the deceased and P.W.1 to return the title deeds relating to the said property and handover the said property to his possession. The deceased refused. This resulted in frequent quarrels between the accused and the deceased and this is stated to be the motive for the occurrence to cause the death of the deceased.

3. On 12.08.2012, at about 05.00 pm, the deceased was proceeding to his daughter's house. When he was nearing the Bhavaniamman First Cross Street, Avadi, near a compound wall of the house of one Mr. Kesavan, the accused intercepted him and stabbed him indiscriminately. When the quarrel between the accused and the deceased was going on, P.W.3, who witnessed the said quarrel, informed the same to P.W.1. Therefore, P.W.1 along with her son (P.W.2) went to the place of occurrence. The quarrel was still going on. In that quarrel, the accused stabbed the deceased with a knife. This was witnessed by P.Ws.1 to 3. The deceased fell down in a pool of blood. The accused ran away from the scene of occurrence. P.W.1 and others put the deceased in an auto with a view to take him to the nearby hospital. Within few yards, he lost his breath. Therefore, P.Ws.1 to 3 brought the dead body of the deceased to his house. Then P.W.1 went to Avadi Police Station and made a complaint at 06.15 pm on 12.08.2012. Ex.P-8 is the First Information Report.

4. P.W.12, the then Sub-Inspector of Police, registered a case and forwarded both the documents to the Court. The further investigation was taken over by P.W.15. P.W.15 went to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of P.W.6 and another witness. He recovered blood stained earth and sample earth from the place of occurrence. Then, he examined P.Ws.1 to 3 and few more witnesses and recorded their statements. Then, he proceeded to the house of the deceased, conducted inquest on the body of the deceased and forwarded the same for postmortem. P.W.13, Dr. Selvakumar, conducted autopsy on the dead body of the deceased on 13.08.2012 at 12.55 pm. He found the following injuries:-

"Injuries:

1. Oblique stab wound on the front of middle of left side of chest measuring 2.2 cm x 0.5 x cavity deep. The outer end lies 5 cm below the left nipple and the inner end lies 9 cm away from the mid line. The inner end is acute and the outer end



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is blunt. On Dissection: The stab wound enters the thoracic cavity through stab wound in the 6th inter costal space in the mid clavicular line. The left thoracic cavity contains 480 ml of fluid blood and 180 gms of clotted blood, pericardial sac shows a cut near the apex of the heart. Apex of the heart shows a stab injury measuring 1x0.5xchamber deep. The depth of the stab injury 6 cm. The direction of the stab wound downwards upwards and outwards.

2. Oblique stab wound seen over front of lower aspect of left side of chest measuring 1.7cm x 0.5 x cavity deep. The upper end lies 8 cm below the left nipple and the lower end lies 11 cm from the left of mid line. The inner is acute and the outer end blunt. On Dissection: The stab wound enters the thoracic cavity through a stab wound in the 7th intercostals space in the mid clavicular line. - The underlying left lung tissue shows a stab wound measuring 1x0.5x0.5 cm; Left lung found partially collapsed.
3. Oblique stab wound seen on front of lower part of left side of chest measuring 1.6 cm x 0.4 cm x cavity deep. The outer end lies 9 cm below the left nipple and the inner end lies 11 cm to the left of mid line. The inner end is acute and the outer end is blunt. On Dissection: The stab wound enters the thoracic cavity through a stab wound in the 8th intercostals space. The underlying lung tissue shows a stab injury measuring 0.5x0.5x0.5 cm.
4. Oblique incised wound seen on the lower part of front of left side of chest measuring 1.2x0.3xsin deep. The outer end lies 11 cm below the left nipple and the inner end lies 12 cm to the left of mid line. The wound is not communicating with the thoracic cavity.
5. Oblique incised wound measuring 1.8 cm x 0.5 cm x muscle deep seen over outer aspect of lower part of back of left side of chest. The upper end lies 16 cm below the posterior axillary line and the inner end lies 20 cm above the left anterior superior iliac apine. Tailing seen on the inner end to a length of 6 cm the wound is not communicating with the thoracic cavity.
6. Oblique stab wound measuring 1.8 cm x 0.3 cm x 2.5 cm seen over back of outer aspect of upper part of left side of chest. The upper end lies 4 cm from the posterior axillary line. Tailing seen in lower end to a length of 4 cm. On dissection: The stab wound enters the muscle plane below the site of injury to a depth of 2 cm. The wound is not communicating with the thoracic cavity.
7. Oblique incised wound measuring 1.4x0.5xmuscle deep seen on back of middle 1/3 of left arm.



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8. Incised wound seen over front of middle of right side of chest measuring 1.8x0.5xskin deep. The upper end lies 14 cm below the super sternal notch and the lower end lies 9cm above the xiphi sternum on the left side.

On Dissection of Head: Scale, Bone : Intact,
Brain : Normal in size, c/s pale, Base of the skull-intact.

On dissection of Neck: Larynx : Normal.

Hyoid Bone : Intact, cricoid and thyroid : Intact

On dissection of thorax : Ribs : Intact.

Heart : Normal in size, chambers:empty; valves:

NAD coronaries : Patent great vessels : NAD.

Right lung : Normal in size, C/s:Pale.

Left lung : Refer injury column.

On dissection of abdomen : Stomach 200 gms of partly digested food particles no specific smell perceived. Mucosae - Normal. Intestines : Distended with gas, Liver : Normal in size, C/s pale. Spleen : Normal in size c/s pale. Both kidneys : Normal in size c/s pale. Bladder : empty. Pelvis and spinal column: Intact, Genitalia : NAD."

5. Ex.P-9 is the postmortem certificate. P.W.13, the Doctor, gave opinion that the death of the deceased was due to shock and hemorrhage caused on account of the stab injuries found on the body of the deceased.

6. P.W.15, during the course of investigation, arrested the accused, on 13.08.2012, at 08.00 am in the presence of P.W.7 and another witness. On such arrest, he gave a voluntary confession in which he had disclosed the place where he had hidden a TVS-50 motor cycle and a blood stained shirt and a blood stained pant. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced the said properties. He also produced the blood stained knife. P.W.15 recovered the same also under a mahazar. On returning to the Police Station, he forwarded the accused to the Court and forwarded the material objects also to the Court. At his request, the material objects were sent for chemical examination. The report revealed that there were human blood on all the material objects including the knife of 'B' group. On completing the investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed charges against the accused, as detailed in the first paragraph of this judgment. 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 15 witnesses were examined and 18 documents were exhibited, besides marking 9 material objects.

8. Out of the said witnesses, P.Ws.1 to 3 are the eye-witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.W.1 has spoken about the complaint made by



him. P.W.4 has stated that he came to the place of occurrence on hearing the commotion and he has not stated anything incriminating against the accused. P.W.5, the son of the deceased, has also stated that he went to the place of occurrence on hearing about the same and he has also not stated anything incriminating against the accused. P.W.6 has spoken about the preparation of the observation mahazar and the rough sketch and the recovery of material objects from the place of occurrence. P.W.7 has spoken about the arrest of the accused and the consequential recovery of M.O.1-Knife, M.O.5-Shirt and M.O.6-pant. P.W.8 has spoken about the motive. P.W.9 has spoken about the fact that he handed over the dead body of the deceased to the Doctor for Postmortem. P.W.10, the scientific assistant, has spoken about the chemical examination conducted on the material objects. P.W.11 has stated that he handed over the material objects to P.W.10 for examination. P.W.12 has spoken about the registration of the case on the complaint of P.W.1. P.W.13 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.14 has stated that he recorded the statements of P.Ws.1 to 4 under Section 164 Cr.P.C., P.W.15 has spoken about the investigation done and the final report filed.

9. 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 Sections 341 and 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.

10. 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.

11. In this case, as we have already pointed out, the prosecution relies on three eye-witnesses, namely, P.Ws.1 to 3. They have vividly spoken about the entire occurrence. They have also spoken about the motive.

12. The learned counsel for the appellant would submit that P.Ws.1 to 3 would not have been present at the place of occurrence at all and therefore, their evidence should be rejected at the threshold.

13. We find no force at all in the said argument of the learned counsel for the appellant. It is in the evidence of P.W.1 that, P.W.3, who found the accused quarreling with the deceased, informed P.W.1 and thereafter, P.Ws.1 and 2 rushed to the place of occurrence. At the place of occurrence, according to them, they witnessed the accused stabbing the deceased. They attempted to take him to the hospital, but, within a short time, the deceased died. The body was brought back to the house of the deceased. Though these three witnesses have been cross-examined at length, we



do not find anything on record to doubt their credibility. Their evidence is duly corroborated by medical evidence also. The prompt launching of the First Information Report, in this case, by P.W.1, without any delay and prompt discharge of the same to the hands of the learned Magistrate would also add strength to the case of the prosecution. From these evidences, we are of the view that the prosecution has proved beyond all reasonable doubt, that, it was this accused, who caused the death of the deceased by stabbing with knife.

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. The accused is none other than the brother-in-law of the deceased. The deceased had kept the title deeds relating to a property, which was allotted to the share of Mr. Anand (another brother-in-law of the deceased). On account of the same, there was frequent quarrels with the accused and the deceased. After-all, they were close relatives. On the day of occurrence, from the evidence of P.Ws.1 to 3 it can be seen that there was a quarrel going on. P.W.3 had seen the accused quarreling with the deceased. On his information, P.Ws.1 and 2 had rushed to the place of occurrence. Until then, the quarrel was going on. After the arrival of P.Ws.1 and 2, at the end of the quarrel, the accused had stabbed the deceased with the knife. From these facts, it is inferable that the accused had been provoked by the words and deeds of the deceased. Having lost his mental balance, on account of the said provocation, which in our considered view, was grave and sudden, the accused had stabbed the deceased, which resulted in his death. 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. For having committed the offence of wrongful restraint, the accused is liable to be punished for the offence under Section 341 IPC also.

16. Now turning to the quantum of punishment, the accused is a middle aged man of 36 years. He has got a big family to take care of. The occurrence was also not a premeditated one and the occurrence was on account of a sudden quarrel. The accused had no bad antecedents. After the occurrence also, the accused had not committed any other crime. There are lot of chance for reformation.

17. Having regard to the above mitigating as well as the aggravating circumstances, we are of the view that the sentencing the accused to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.5,000/-, for the offence under Section 304 (i) IPC, would meet the ends of justice. The conviction and sentence imposed for the offence under Section 341 IPC deserves to be confirmed.



18. In the result, this Criminal Appeal is partly-allowed and the conviction and sentence imposed on the appellant for the offence under Section 341 IPC is confirmed and the conviction and sentence imposed on the appellant for the offence under Section 302 IPC, are set-aside and instead, he is convicted for the offence under Section 304 (i) IPC, and sentenced to undergo Rigorous Imprisonment for ten years and to pay a fine of Rs.5,000/-, in default, to undergo Rigorous Imprisonment for six weeks. It is directed that the period of sentences shall run concurrently and the period of sentence already undergone by the appellant shall be given set-off, as required under Section 428 Cr.P.C.,

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. III Additional District and Sessions Court, Tiruvellore

2.The Judicial Magistrate No.II,
Poonamallee.

3.do thro'the Chief Judicial Magistrate,
Thiruvallur.

4.The Inspector of Police,
T6 Avadi Police Station, Chennai.

5. The Public Prosecutor, High Court, Madras.

6.The Superintendent,
Central Prison, Puzhal, Chennai.

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

8.The District Collector,
Chennai.

Copy to:
The section Officer,
Criminal Section, High Court, Madras.

+2 cc's to Mr.G.Dhamodaran, advocate, sr.36028

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krd 3/8

Cr1.A.No.50 of 2015