

Bail Slip:- The Appellant/Accused namely Mohan S/o.Govindasamy was directed to be released on bail as per order dated 21.12.2015 and made in M.P.1/15 in Cr1.A.No.569/15 on the file of this court.

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2016

CORAM:

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

Criminal Appeal No.569 of 2015

Mohan ... Appellant/ Accused

- Vs -

The State rep. by
The Inspector of Police,
Mannargudi Town Police Station,
Mannargudi.
(Cr.No.6 of 2012) ... Respondent/ Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned Principal District and Sessions Judge, Tiruvarur in S.C.No.43 of 2012 dated 14.07.2015.

For Appellant : Mr.S.Kingston Jerold

For Respondent : Mr.E.Raja
Additional Public Prosecutor

J U D G M E N T

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

The appellant is the sole accused in S.C.No.43 of 2012 on the file of the learned Principal District and Sessions Judge, Tiruvarur. He stood charged for offences under Sections 294 (b) and 302 I.P.C. By judgment dated 14.07.2015, the trial Court convicted him under both the charges and sentenced him to undergo rigorous imprisonment for one month for the offence under Section 294(b) I.P.C. and to undergo imprisonment for life and pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for three months for the offence under Section 302 I.P.C. 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:

2.1. Mrs.Santhi (P.W.1) is a resident of Nethaji Nagar, Vadacheri road at Mannargudi. Her husband is Mr.Jayapaul, the deceased in this case was residing with her. The accused is their neighbour. On 31.12.2011 at around 07.30 p.m. P.W.1 and the deceased were in their house. They heard a commotion near their house and therefore they came out of the house. They found the accused manhandling one Vijay, who was a physically challenged boy. On seeing the same, in an attempt to rescue him, the deceased rushed towards them and questioned the accused as to why he was beating a physically challenged boy. Infuriated over the same, the accused suddenly took out a knife and stabbed the deceased on his left iliac region and left hand. This was witnessed by P.W.1. P.W.1 raised alarm. The deceased fell down with bleeding injuries. On hearing her alarm, P.W.3 yet another neighbour rushed out of his house and they took the deceased to the Government hospital at Mannargudi. He was admitted as in-patient. Since, he needed treatment at a higher medical institution, he was then referred to Thanjavur Medical College Hospital. While on treatment, the deceased succumbed to the injuries on 02.01.2012.

2.2. When the deceased was in hospital, on receiving intimation from the hospital, P.W.13 Special Sub Inspector of Police of Mannargudi Police Station 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.6 of 2012 against the accused under Sections 294(b), 324 and 506(ii) I.P.C. at 01.00 p.m on 01.01.2012. He forwarded both the documents to Court, which was received by the learned Magistrate at 10.30 a.m. on 02.01.2012.

2.3. P.W.14 the Sub Inspector of Police took up the case for investigation. She went to the place of occurrence and prepared an observation mahazar and a rough sketch in the presence of one Karthic and Malaimani. She examined P.Ws.1 and 2 and recorded their statement. On the same day at 05.30 p.m. she went to Thanjavur Government Medical College Hospital and recorded the statement of the deceased. She recovered the clothes of the deceased (M.Os.2 and 3). When the investigation was in progress, she received a message on 02.01.2012 that the deceased had died at 10.45 a.m. Therefore, she altered the case into one under Section 302 I.P.C. and handed over the case diary to the Inspector of Police for further investigation.

2.4. P.W.15 took up the case for investigation. He went to hospital, conducted inquest on the body of the deceased and forwarded the same for postmortem.

2.5. P.W.11 conducted autopsy on the body of the deceased on 02.01.2012 at 04.10 p.m. He found the following injuries:

<https://hcservices.ecourts.gov.in/hcservices/> "External Injuries: (1) Yellowish

fluid from nose and mouth (2) Surgical sutured wound of size (26x2cm) over the centre (midline) of abdomen. (3) Sutured wound of size (3x1cm) over left arm. (4) Abrasion over left thigh (5x6 cm). (5) Drainage tube over the left iliac region.

Internal Injuries: (1) On opening the scalp skin/skull cap: Brain intact. (2) on opening the abdomen: Sutured wound over the sigmoid colon about 15 cm above from the rectum. (3) Mesenteric teal present which was sutured about 8 cm. (4) Hemorrhagic blood clot (about 1500ml) present over the pelvic cavity. Extremities:NAD; Pericardium: Intact; Heart: Intact; Lungs:Normal; Hyoid bone : Intact; Stomach : about 500 ml of yellow coloured fluid c/s mucosa congested; Liver : c/s pale; Spleen : c/s pale; Kidneys : c/s both kidneys pale; Small intestine : empty; Pelvis : Intact; Bones, Membranes : Intact; Brain : c/s edematous; Spinal column : Intact."

Ex.P8 is the postmortem certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage due to the injuries. He further gave opinion that the injuries could have been caused by a weapon like M.O.1 (Knife).

2.6. On the same day at 07.30 p.m. he arrested the accused in the presence of P.Ws.5 and 6. On such arrest, he made a voluntary confession, in which, he disclosed the place where he had hidden a knife. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced M.O.1 knife. P.W.15 recovered the same. Then, he forwarded the accused to the Court for judicial remand and handed over the material objects also to the Court.

2.7. The investigation was thereafter taken over by P.W.16. He examined many more witnesses including the doctors and collected the medical records. On completing the investigation, he laid the chargesheet against the accused.

2.8. Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 16 witnesses were examined, 17 documents and 3 material objects were marked.

2.9. Out of the said witnesses, P.W.1 the wife of the deceased has spoken about the entire occurrence. P.W.2 is the son of the deceased. He has stated that he was also at the house at the time of occurrence and witnessed the occurrence. P.W.3 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.4 has spoken about the

preparation of the observation mahazar and the rough sketch at the place of occurrence. P.Ws.5 and 6 have turned hostile and they have not supported the case of the prosecution in any manner.

2.10. P.W.7 an employee of TNEB has stated that on 31.12.2011 at 07.30 p.m. there was supply of electricity at the occurrence place and there was no failure. P.W.8 Dr.Radhakrishnan has stated that he examined the deceased at 12.47 p.m. at the Thanjavur Government Medical College Hospital and admitted him as in-patient. P.W.9 has stated that on 01.01.2012 at 12.47 p.m. the deceased was admitted at the Thanjavur Government Medical College Hospital but he died at 10.45 a.m. on 02.01.2012.

2.11. P.W.10 Dr.Thasleem Shreen has stated that when she was on duty on 31.12.2011 at 08.30 p.m. the deceased was brought to the Government hospital at Mannargudi for treatment. At that time, the deceased was conscious and told that on 31.12.2011 at 07.30 p.m. he was stabbed by a known person near his house. She found a cut injury measuring 4 cms in length on the left shoulder and another cut injury measuring 3 cms in length on the left iliac region.

2.12. P.W.11 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.12 has stated that he handed over the dead body of the deceased to the doctor for postmortem as directed by the investigating officer. 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 initial investigation done until the demise of the deceased. P.Ws.15 and 16 have spoken about the final investigating done and final report filed.

3. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. On his side one Dr.Mahalakshmi was examined as D.W.1. She has stated that on 03.01.2012 the accused was brought to the hospital for treatment. He told that on 31.12.2011 at 08.00 p.m. he was attacked by a known person with wooden log and iron pipe. He underwent treatment till 12.01.2012. She did not notice any visible injury on him. But he complained of pain and unconsciousness for sometime. Ex.D1 is the discharge summary.

4. Having considered all the above, the trial Court convicted him as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

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

6. During the pendency of this appeal, the accused filed CrI.M.P.No.8290 of 2016 under Section 391 Cr.P.C. requesting the Court to receive additional evidence by recalling P.Ws.10, 13, 15 and 16, to prove that there was a counter case registered in Crime No.7 of 2012 in respect of the same occurrence and also to prove the accident register pertaining to the treatment given to the accused on the same day at the Government Hospital at Mannargudi. After due notice to the prosecution and after hearing them, the said petition was allowed. Accordingly, P.W.16 was recalled and he was further cross examined by the accused. During further cross examination, he has admitted that in connection with the same occurrence, on the complaint of the accused a case in Crime No.7 of 2012 was registered for offences under Sections 494 (b), 323 & 506(ii) I.P.C. The said F.I.R was registered on the basis of the statement given by the accused while he was undergoing treatment in the Thanjavur Government Medical College Hospital. Accident register has also been marked as additional evidence.

7. The main contention of the learned counsel for the appellant is that truth is not before this Court because the prosecution has failed to explain the injuries sustained by the accused and has failed to prove that through investigation was done in the case in Crime No.7 of 2012.

8. We have considered the above submissions meticulously. As stated by the Doctor there was no external injuries found on the accused. However, he complained only of pain. At any rate, on completing the investigation the case in Crime No.7 of 2012 has not been closed. Instead, on completing the investigation, chargesheet has been laid in the case. That means even according to the prosecution, there is truth in the allegations made by the accused that he was attacked in the same occurrence. Thus, it is inferable that in the same occurrence, on the side of the accused he sustained injuries and on the side of the prosecution, the deceased sustained injuries.

9. It is the contention of the learned counsel for the appellant that P.Ws.1 and 2, the so called eye witnesses, have not explained the injuries sustained by the accused. We find no force at all in this argument because as spoken by the doctor (D.W.1) there was no visible injuries found on the accused at all. Therefore, there is no question of explaining any injury. P.Ws.1 and 2 cannot speak about the bodily pain which the accused experienced. Therefore, this argument is rejected. From the fact that final report has been filed, finding some truth in the allegation made by the accused, it can be inferred that there was a quarrel between the accused and the deceased. It is also in evidence that there was no motive for the accused to cause the death of the deceased. As spoken by P.Ws.1 and 2 the deceased intervened only to rescue the physically challenged boy, who was beaten by the accused,

in that spur of the moment, the accused had taken the knife and stabbed the deceased. As argued by the learned counsel, the deceased was the aggressor and he had attacked the accused with wooden log. At the most, this Court can only hold that the accused had exercised his right of private defence. But, going by the nature of injuries caused by the accused and going by the nature of injuries (bodily) sustained by the accused, we have every reason to hold that the accused had exceeded his right of private defence. We do not find any reason to reject the evidences of P.Ws.1 and 2 who have vividly spoken about the occurrence. We hold that this accused alone caused injuries on the deceased, which resulted in the death of the deceased. But in causing of the said injury, the accused had exercised his right of private defence, as he was attacked by the deceased with wooden log. At the same time, we further hold that the accused had exceeded his right of private defence and therefore, in our considered view the act of the accused squarely would fall under the third limb of Section 300 I.P.C. and second exception to Section 300 I.P.C. Therefore, he is liable to be punished only for offence under Section 304(i) I.P.C.

10. Now turning to the quantum of punishment, as we have already pointed out, the occurrence was not a pre-mediated one. The accused is aged 40 years. He has got a big family to take care of. He is a very poor man. He has got no bad antecedents. Having regard to all these mitigating and aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for six years and pay a fine of Rs.1000/- in default to undergo rigorous imprisonment for four weeks would meet the ends of justice.

11. In the result, the criminal appeal is partly allowed in the following terms:

(i) The conviction and sentence imposed on the appellant by the learned Principal District and Sessions Judge, Tiruvarur in S.C.No.43 of 2012 dated 14.07.2015 under Sections 294(b) and 302 IPC is set aside and instead, he is convicted under Section 304 (i) IPC and he is sentenced to undergo rigorous imprisonment for six years and to pay a fine of Rs.1,000/- and in default to undergo rigorous imprisonment for four weeks.

(ii) It is directed that the period of detention already undergone by the accused shall be set off under Section 428 Cr.P.C.

(iii) Bail bond, if any, executed by the appellant shall stand cancelled. The Trial Court shall take steps to secure the

accused and commit him to prison so as to
undergo the remaining period of sentence.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

Jbm/kk

To

1. The Principal District and Sessions Judge,
Tiruvarur.
2. The Judicial Magistrate 1
Mannargudi
3. do thro the Chief Judicial Magistrate
Tiruvarur
4. The Inspector of Police,
Mannargudi Town Police Station,
Mannargudi.
5. The Superintendnet
Central Prison, Trichy
6. The District Collector
Tiruvarur
7. The Director General of Police
Mylapore, Chennai-4
8. The Public Prosecutor,
Madras High Court.

Copy to

The Section Officer
CrI. Section,
High Court, Madras

1 cc to Mr.S.Kingston Jerold, Advocate, Sr. 46301

CrI.A.No.569 of 2015

RSY (CO)

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