

BAIL SLIP

The 2nd Appellant/2nd Accused namely Siva S/o.Sivaji, was directed to be released on bail as per Order of this Court dated 15.10.2015 made in M.P.No.1 of 2015 in Crl.A.No.644 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2016

CORAM:

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

Criminal Appeal No.644 of 2015

1.Sivaji

2.Siva

... Appellants

Vs

State represented by  
The Inspector of Police,  
Kuthalam Police Station,  
Nagapattinam District  
(Crime No.456 of 2012)

...  
Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment in S.C.No.20 of 2013 on the file of the learned District & Sessions Judge, Nagapattinam dated 16.09.2014.

For Appellants : Mr.R.Sankarasubbu

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

JUDGEMENT

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

The appellants are A.1 & A.2 in S.C.No.20 of 2013, on the file of the learned District & Sessions Judge, Nagapattinam. A.1 stood charged for offences under Sections 294(b) & 302 I.P.C. A.2 stood charged for offences under Sections 294(b) & 302 r/w 34 I.P.C. By judgment dated 16.09.2015, the trial Court convicted and sentenced A.1 to undergo simple

imprisonment for two months and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one week for offence under Section 294(b) I.P.C., and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for two years, for the offence under Section 302 I.P.C. The trial Court convicted and sentenced A.2 to undergo simple imprisonment for two months and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one week for offence under Section 294(b) I.P.C., and though a charge under Section 302 r/w 34 I.P.C., has been framed against A.2, the trial Court convicted A.2 for offence under Section 324 I.P.C., and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for three months. The trial Court has ordered the above sentences to run concurrently. Challenging the said conviction and sentence, the appellants/A.1 & A.2 are 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.Shajahan. A.1 & A.2 are the father and son respectively. They are the neighbours of the deceased. On 01.11.2012, around 6.30 pm, the deceased was on the terrace of his house and he was hitting the electric wire from the street post to his house since, there was some snag in it. The accused in the terrace of their house questioned the deceased. The deceased told that he was hitting the wire leading to his house only. But, the accused mistook that the deceased was hitting the wire leading to their house. This resulted in a quarrel between the accused and the deceased. Both the accused scolded the deceased in obscene language. The deceased came down from the terrace. The accused also came down. At the end of the quarrel, A.1 stabbed the deceased on his abdomen, with a knife repeatedly. In the said occurrence, A.2 is stated to have hit the deceased with a brick on his head. The deceased sustained multiple injuries on the body. Immediately he was taken to the hospital and admitted as inpatient. On 09.11.2012 at 6.30 pm, he died in the hospital succumbing to the injuries.

3.When the deceased was undergoing treatment, at Thanjavur Medical College and Hospital, the then Special Sub Inspector of Police (P.W.6), went to the hospital and recoded the statement of the deceased and on returning to the Police Station at 10.00 am on 02.11.2012, he registered a case in Crime No.456/2012 for offences under Sections 294(b), 324 & 307 I.P.C. Ex.P.1 is the complaint and Ex.P.7 is the F.I.R. He forwarded both the documents to Court which were received by the learned Judicial Magistrate at 6.45 pm on 02.11.2012.

4. P.W.9, the then Inspector of Police took up the case

for investigation. He proceeded to the place of occurrence at 11.00 am on 02.11.2012 and prepared an observation mahazar and a rough sketch in the presence of P.W.4 and another witness. On going over to the hospital, he examined the deceased, P.W.2 and recorded their statements. Ex.P.12 is the said statement of the deceased. On the same day at 3.30 pm, he arrested both the accused at Thiruvadudurai railway gate, in the presence of P.W.3 and another witness. On such arrest, A.1 gave a voluntary confession, in which, he disclosed the place where he had hidden a knife and a brick. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the knife (M.O.1) and the brick (M.O.2). P.W.9 recovered the same under a mahazar. Since, he went on leave, the case was investigated by P.W.8. On 09.11.2012, the deceased died in the hospital. Therefore, P.W.8 altered the case into one under Sections 294(b), 324 & 302 I.P.C., and also conducted inquest on the body of the deceased on the same day and forwarded the same for post mortem.

5.P.W.7 - Dr.Rajkumar, conducted autopsy on the body of the deceased and found the following injuries:-

"External Injuries:-

- 1.Brown colour fluid in both nostrils and mouth.
- 2.Sutured surgical wound two in number, one of length 22 cm vertically in the mid abdomen and, one third of length 21 cm parallel to right costal margin.
- 3.Stab wound each of size 3x2x4 cm over the right axilla
- 4.Stab wound 3x2x5 cm over the right subcostal region
- 5.Stab wound 4x2x6 cm above the previous wound."

Ex.P.8 is the post mortem certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage due to the said injuries.

6.The investigation was again taken over by P.W.9 on 12.11.2012. On completing investigation, he laid charge sheet against the accused on 04.01.2013.

7.Based on the above materials, the trial Court framed the charges against the accused as detailed in the first paragraph of this judgment. The accused/appellants 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 14 documents were exhibited, besides 2 Material Objects.

8.Out of the said witnesses, P.Ws.1 & 2 claimed to be the eye witness to the occurrence. According to them, the deceased

was on the terrace of his house and he was hitting the electric wire from the post to his house, as there was some snag in it. The accused felt that the deceased was hitting the wire leading to their house. This resulted in a quarrel. When the deceased came down from the terrace, it is alleged that A.1 stabbed him with knife (M.O.1). A.2 attacked him with brick (M.O.2). P.W.1 has also spoken about the complaint made to the Police. P.W.3 has spoken about the preparation of observation mahazar and rough sketch at the place of occurrence. P.Ws.4 & 5 have turned hostile and they have not supported the case in any manner. P.W.6 has spoken about the registration of the case on the complaint of P.W.1. P.W.7 has spoken about the post mortem conducted and his final opinion regarding the cause of death. P.W.8 has spoken about the alteration of F.I.R., after the death of the deceased. P.W.9 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., they denied the same as false however, they did not chose to examine any witness nor did they mark any documents on their side.

10. Having considered all the above materials, the trial Court convicted the appellants/accused as stated in the first paragraph of this judgment. Challenging the same, the appellants/accused are before this Court with this Criminal Appeal.

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

12. As we have already stated, the prosecution relies on the eye witness account of P.Ws.1 & 2. We find no reason to reject the evidence of these two witnesses. Their presence at the place of occurrence cannot be doubted. They have vividly stated that it was A.1 who stabbed the deceased, at the end of the quarrel, with a knife. The same is duly corroborated by the medical evidence. Though, these two witnesses have been cross examined at length, nothing has been elicited so as to discredit them so far as their evidence against A.1 is concerned.

13. So far as A.2 is concerned, we find it difficult to believe the evidences of P.Ws.1 & 2. P.Ws.1 & 2 have stated that A.2 hit the deceased with a brick (M.O.2) on his head. But, there was no corresponding injury found on the head of the deceased at all. In our considered view, due to animosity, P.Ws.1 & 2 have implicated A.2 also in this crime. Therefore, we cannot convict A.2 solely on the basis of the evidences of P.Ws.1 & 2 and accordingly, A.2 is entitled for

acquittal.

14.The learned counsel for the appellants would submit that since, P.Ws.1 & 2 are partly believable, their evidences should be fully rejected as against A.1 also. But, we are not persuaded by the said argument. The principle "Falsus in uno falsus in omnibus", is not applicable to the Indian Criminal Jurisprudence. It is the settled law of this Country that when the truth and falsehood are mixed up in the evidence of a witness, if the Court is able to separate the truth from the falsehood, there can be no legal impediment to act upon the said truth spoken to by the said witnesses.

15.We are able to succeed in the said exercise. We hold that the evidences of P.Ws.1 & 2 to the extent that they have spoken about A.1 could be believed whereas, their evidences as against A.2 cannot be believed. Thus, we hold that the prosecution has succeeded in establishing that it was A.1 who stabbed the deceased and caused his death.

16.Having come to the said conclusion, now, we have to examine "What was the offence that was committed by A.1 ?". Admittedly, there was no enmity between the parties. The deceased had gone to the terrace of his house for the purpose of hitting the wire only to rectify some snag on it. The accused mistook as though the deceased was disturbing the wire leading to their house. This resulted in a quarrel. It is in evidence that there was exchange of abusive language by both parties. It was only at the end of the quarrel, A.1 took the knife and stabbed the deceased on his abdomen and caused his death. From these facts, we are able to presume that A.1 had lost his mental balance and driven by the provocation which was also sudden and grave, he had caused the death of the deceased. Thus, in our considered view, the act of A.1 would squarely fall within the ambit of fourth limb of Section 300 I.P.C., and first exception to Section 300 I.P.C. Therefore, A.1/first appellant is liable to be punished for offence under Section 304(ii) I.P.C.

17.Now, turning to the quantum of punishment, A.1 is aged about 53 years and he had no bad antecedents. There was no strong motive. The occurrence was not a premeditated one and it was out of sudden provocation. He has not involved in any other crime subsequent to the arrest. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing A.1 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 in the following terms:-

(i)The conviction and sentence imposed on A.1/first

appellant for offence under Section 302 IPC is set aside and instead, he is convicted for offence under Section 304(ii) IPC 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;

(ii)The conviction and sentence imposed on A.1/first appellant for offence under Section 294(b) I.P.C., is confirmed;

(iii)The sentences imposed on A.1/first appellant shall run concurrently and the period of detention already undergone by the A.1/first appellant shall be set off as required under Section 428 Cr.P.C;

(iv)The conviction and sentence imposed on A.2 for offences under Sections 294(b) & 324 I.P.C., are set aside and he is acquitted from all the charges. The fine amount, if any paid, shall be refunded to him. The bail bond, if any, executed by A.2/second appellant, shall stand discharged.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The Principal District & Sessions Judge,  
Nagapattinam.
2. The Chief Judicial Magistrate,  
Nagapattinam.
3. The District Collector,  
Nagapattinam.
4. The Director General of Police,  
Mylapore, Chennai 04.
5. The Juvenile Magistrate No.I,  
Myladuthurai.
6. The Inspector of Police,  
Kuthalam Police Station,  
Nagapattinam District.
7. The Superintendent,  
Central Prison, Trichirapalli.

8. The District Collector,  
Trichy District,  
Trichy.

9. The Public Prosecutor,  
High Court, Madras.

Copy To

The Section Officer,  
(Records) Criminal Section,  
High Court, Madras.

AD(CO)  
CA(09/08/2016)

Crl.A.No.644 of 2015



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