



Bail Slip

The Appellant/Accused namely Rajesh, S/o. Nandagopal was directed to be released on bail vide order dated 23.04.2015 made in Crl.M.P.No.1 of 2015 in Crl.A.NO.74 of 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

Criminal Appeal No.74 of 2015

Rajesh

..Appellant

Vs

State:Rep. By
The Inspector of Police,
Manali New Town Police Station,
Tiruvallur District
Crime No.58 of 2007

..Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the judgment passed by the learned Mahalir Judge (Mahalir Fast Track Court), Tiruvallur, in S.C.No.68 of 2012 dated 16.09.2014.

For Appellant : Mr.V.Parthiban

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

JUDGEMENT

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

The appellant is A.1 in S.C.No.68 of 2012 on the file of the learned Mahalir Judge (Mahalir Fast Track Court), Tiruvallur. There were three other accused in this case. The trial court framed four charges against the accused as detailed below:-



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Sl.No	Accused	Section of law
1	A.1	341, 323 & 302 I.P.C.
2	A.2	341, 323 & 302 r/w 34 I.P.C.
3	A.3	341, 323 & 302 r/w 34 I.P.C.
4	A.4	341, 323 & 302 r/w 34 I.P.C.

By judgment dated 16.09.2014, the trial Court convicted A.1 for offences under sections 341 & 302 I.P.C., and sentenced him to undergo rigorous imprisonment for two weeks for offence under Section 341 I.P.C., and to undergo imprisonment for life and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for one year for the offence under Section 302 I.P.C. The trial Court found A.2 to A.4 guilty for offence under Section 341 I.P.C., and sentenced them to undergo simple imprisonment for two weeks. The trial Court acquitted the accused from the other charges. Challenging the said conviction and sentence, the appellant/A.1 is 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 Mrs.Muniammal. P.Ws.1 & 2 are the son-in-law and daughter respectively of the deceased. On 01.03.2007, in the same village, one Ms.Asha passed away. P.W.1 had gone to the house of said Ms.Asha to share the condolence. A.1 - Rajesh, was already there. There was a quarrel between A.1 & P.W.1 at the house of the deceased Ms.Asha. The elders intervened and they separated them. The funeral took place on 02.03.2007 at 2.00 pm. After the funeral was over, P.Ws.1 & 2 were returning to their house. At that time, all the four accused came there and started manhandling P.W.2; P.W.1 intervened and all the four accused attacked him also with hands. The deceased who was at a distance rushed to the said place and intervened. A.1 suddenly took a stone and hit the same against the head of the deceased. The deceased fell down and fainted. All the four accused fled away from the scene of occurrence. The occurrence was thus witnessed by P.Ws.1 & 2. P.W.1 took the deceased to Government Stanley Hospital at 6.00 pm on 02.03.2007. P.W.10 - Dr.M.M.Shankar, examined the deceased and at that time, the deceased was conscious. There was bleeding through her nose. He admitted the deceased as inpatient and treated her. Despite treatment, the deceased succumbed to the injuries on 04.03.2007 at 1.00 am.

3. When the deceased was undergoing treatment in the hospital, P.W.1 went to Manali Pudu Nagar Police Station and made a complaint at 8.00 am on 03.03.2007 against all the four accused. P.W.8, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No.58/2007 for offence under Section 324 I.P.C., against all the four accused. Ex.P.1 is the complaint and Ex.P.8 is the F.I.R. He



forwarded both the documents to Court which were received by the learned Judicial Magistrate on 03.03.2007 at 4.20 pm.

4.P.W.8, 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.4 and another witness. On the same day, he arrested all the four accused. On such arrest, A.1 gave a voluntary confession, in which, he disclosed the place where he had hidden the stone (M.O.1). In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the stone (M.O.1). Then he forwarded A.1/appellant to Court for judicial remand and examined many more witnesses and recorded their statements. After the demise of the deceased, he altered the case into one under Section 302 I.P.C. Ex.P.13 is the Alteration Report. He forwarded the alteration report to Court. Thereafter, investigation was taken over by P.W.11, the then Inspector of Police. P.W.11, on going over to the hospital, conducted inquest on the body of the deceased and forwarded the same for post mortem.

5.P.W.6 - Dr.V.Sathyamurthy conducted autopsy on the body of the deceased on 04.03.2007 at 12.50 pm and found the following injuries:-

"NO EXTERNAL INJURIES

On dissection of scalp; Extensive contusion on right side parieto temporal region of scalp tissue a vertical fissure fracture 6 cm long on right temporal bone

On further dissection diffuse sub-dural and sub-arachnoid haemorrhage on left temporal and left parietal lobe of brain (ontracouep injury)

On further dissection A fissure fracture 5 cm long in right middle cranial fossa

Heart: Normal in size, chambers contain fluid blood

Lungs: Normal in size, cut section congested

Hyoid bone:intact

Stomach:Contains 30 ml of straw coloured fluid with no specific odour.

Liver:kidneys, spleen : Normal in size, cut section congested

Bladder: Empty

Uterus : Normal in size cut section empty

Pelvis & Spinal coloumn: intact"

Ex.P.5 is the post mortem certificate. He gave opinion that the death of the deceased was due to head injury.



6.P.W.11, examined the Doctor and also collected the medical records. On completing the investigation, he laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 11 witnesses were examined and 22 documents were exhibited, besides 1 Material Object was marked.

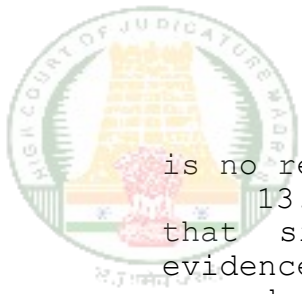
8. Out of the said witnesses, P.Ws.1 & 2 are the eye witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.W.1 has spoken about the complaint made by him also. P.W.3 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.4 has spoken about the preparation of observation mahazar and the rough sketch at the place of occurrence. P.W.5, who is the relative of the deceased has turned hostile and he has not supported the case of the prosecution in any manner. P.W.6 has spoken about the Post Mortem conducted and his final opinion regarding the cause of the death of the deceased. P.W.7 has spoken about the arrest of A.1 and the subsequent recovery of M.O.1, stone, on the confession made by A.1. P.W.8 has spoken about the registration of case on the basis of the complaint of P.W.1. P.W.9 has spoken about the statements of P.Ws.1 to 3 recorded by her under Section 164 Cr.P.C. P.W.10 has spoken about the treatment given by him to the deceased at Government Stanley Hospital, Chennai. P.W.11 has spoken about the investigation done and the final report filed in this case.

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 choose to examine any witnesses on their side. Their defence was a total denial.

10. Having considered all the above materials, the trial Court convicted the appellant/A.1 as stated in the first paragraph of this judgment. Challenging the same, the appellant/A.1 is before this Court with this Criminal Appeal.

11. We have heard the learned counsel for the appellant/A.1 and the learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

12. In this case, as we have already pointed out, P.Ws.1 & 2 are the eye witnesses to the occurrence and they have vividly spoken about the entire occurrence. They have stated that in a quarrel that ensued, all the four accused attacked P.Ws.1 & 2 and when the deceased intervened, A.1 took out a stone and threw the same on the head of the deceased. There



is no reason to reject the eye witness account of P.Ws.1 & 2.

13.The learned counsel for the appellant would submit that since, P.Ws.1 & 2 are interested witnesses, their evidences should be rejected. In our considered view, on the ground that they are interested witnesses and closely related to the deceased, their evidences cannot be out right rejected. Prudence requires only close scrutiny.

14.If we closely scrutinize the evidences of P.Ws.1 & 2, we do not find any reason to doubt their credibility. Their presence at the time of occurrence has been duly explained by them. It was only P.W.1 who had taken the deceased immediately to hospital.

15.The learned counsel for the appellant is not able to point out any material on record so as to doubt the credibility of the evidences of P.Ws.1 and 2. In our considered view, the evidences of P.Ws.1 and 2 inspire the fullest confidence of this Court and the same has been fully corroborated by the medical evidence.

16.From all these evidence, we have no doubt that the prosecution has clearly established that it was this accused who threw the stone (M.O.1) on the head of the deceased and caused her death.

17.Having come to the said conclusion now, we have to examine as to "What was the offence that was committed by the accused by the said act ?". As we have already pointed out, it is in evidence that there was no premeditation and the occurrence was out of a sudden quarrel. The arrival of the deceased to the place of occurrence was also incidental. It was only in that quarrel, A.1/appellant took out a stone lying there and threw the same on the deceased and unfortunately, it had hit the head of the deceased. Therefore, the act of the accused would fall squarely within the third limb of Section 299 I.P.C. Therefore, much degree of knowledge as it is required under the fourth limb of Section 300 I.P.C., cannot be attributed to the accused/A.1. Thus, the act of A.1/appellant would not amount to murder and instead, it is only a culpable homicide falling within the third limb of Section 299 I.P.C. Therefore, he is liable to be punished for offence under Section 304(ii) IPC.

18.Now, turning to the quantum of punishment, A.1/appellant is a middle aged man, he has got no bad antecedents. He has got a family to take care off. After the occurrence also, it is not reported that he is involved in any other crime. Further, there are lot of chances for reformation. So far as the aggravating circumstances are concerned, there was no pre-meditation for the accused to cause the death of the deceased. Having regard to these mitigating as well as aggravating circumstances, we are of the



view that 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.

19. In the result, this appeal is partly allowed and the conviction and sentence imposed on the appellant for the offence u/s 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. The conviction and sentence imposed on the appellant/A.1 for offence under Section 341 I.P.C., shall stand confirmed. It is directed that the period of detention already undergone shall be set off as required under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jbm

To

1. The Mahila Judge,
Mahila Fast Track Court, Tiruvallur.

2.The Public Prosecutor,
High Court, Madras.

3. The Judicial Magistrate NO.II, Ponneri.

4. The Chief Judicial Magistrate, Tiruvallur.

5. The Inspector of Police Manali New Town Police Station,
Thiruvallur District.

6. The Superintendent Central Prison, Puzhal, Chennai.

7. The District Collector, Tiruvallur District.

8. The Director General of Police, Mylapore, Chennai-4.

+ 1 cc to M/s. C.c. Chellappan, Advocate Sr.37398

CrI.A.No.74 of 2015

RSI (CO)
Eu 28.7.16