

Bail Slip

The appellant i.e., Eggya in Crl. Appeal No.295 of 2012 (Accused in S.C.No.86 of 2009 on the file of the Special Judge, Principal Sessions Judge, Villupuram) was released on Bail Vide order of this Court, dated 03/08/2012 made in Crl.M.P.No.1 of 2012 in crl. Appeal No.295 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.295 of 2012

Eggya

... Appellant/Accused

Vs

State rep. By

The Inspector of Police,
Kallakurichi Police Station,
Villupuram

(Crime No.321/2008)

... Respondent/Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., against the Judgment of conviction and sentence imposed by the learned Special Judge (Principal Sessions Judge), Villupuram District in S.C.No.86 of 2009 dated 12.02.2010, convicting the appellant/accused under Section 302 I.P.C., r/w 3(2)(v) of SC/ST Atrocities Act and sentenced to life imprisonment.

For Appellant : Mr.L.Mahendran

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

JUDGEMENT

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

The appellant is the sole accused in S.C.No.86 of 2009 on the file of the learned Principal Sessions Judge, Special Court for Scheduled Caste and Scheduled Tribe Act Cases, Villupuram. He stood charged for offence under Section 302 I.P.C and Section 3(2)(v) of "The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, (hereinafter referred to as "the SC/ST Act"). By judgment dated 12.02.2010, the trial Court convicted the accused for offence under Section 302 I.P.C. read with Section 3(2)(v) of the SC/ST Act, and sentenced him to undergo imprisonment for life. Challenging the said conviction and sentence, the accused/appellant is before this Court with this Criminal Appeal.

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

(i) The deceased in this case was one Mr.Ramados. He was a resident of Karunapuram Colony in Kallakurichi. The accused also belongs to the same Village. The deceased had borrowed a sum of Rs.10,000/- from the accused. But the deceased did not repay the same. The accused demanded to repay, but the deceased was evading.

(ii) On 09.06.2008 at 12.30 p.m., the accused demanded the deceased to repay the loan amount forthwith. This resulted in a quarrel between the accused and the deceased. During the course of quarrel, it is stated that the accused took out a knife and stabbed the deceased on his abdomen. The deceased fell down in a pool of blood.

(iii) The alleged occurrence was witnessed by P.Ws.1 to 3. P.W.1 is the brother of the accused. He took the deceased immediately to the Government Hospital at Kallakurichi. But, at 01.00 p.m., on examining the deceased, the Doctor (P.W.7) declared him as dead.

(iv) P.W.1 immediately rushed to the Kallakurichi Police Station and made a complaint under Ex.P.1. P.W.8 was the then Sub Inspector of Police. He received the said complaint and registered a case in Crime No.321 of 2008 under Sections 294(b), 506(ii) IPC and Section 3(2)(v) of the SC/ST Act. Ex.P.10 is the FIR. Then, he forwarded both the documents to the Court and handed over the case diary to the Deputy Superintendent of Police for investigation.

(v) P.W.9 is the then Deputy Superintendent of Police, who took up the case for investigation. He proceeded to the place of occurrence and prepared an observation mahazar on 09.06.2008 in the presence of P.W.5 and another witness. He also prepared a rough sketch showing the place of occurrence (vide Ex.P.2-Observation Mahazar and Ex.P.11 - Rough Sketch). At the time of occurrence, M.O.1, the blood stained knife was found. He recovered the same along with blood stained earth and sample earth in the presence of the same witnesses. Then, on going to the hospital, he conducted inquest on the body of the deceased between 02.30 p.m. and 04.30 p.m. in the presence of the Panchayatdars and other witnesses. Ex.P.12 is the inquest report. He also examined P.Ws.1 to 4 and recorded their statements. Then, he forwarded the body for post-mortem.

(vi) P.W.7, Dr.S.Nehru, conducted autopsy on the body of the deceased on 09.06.2008 at 04.45 p.m. He found the following injuries on the body of the deceased :-

"External Injuries: A stab (wound) injury over the epigastric region, mid line, red in color. Length vertical 6 cm x Breadth 4 c.m. In the middle, tapering on either side to 2 cm, in the edges of the wound depth 12 cm running from below upwards, oblique, entering into chest and cutting xiphisternum vertically 4 cm in length. On dissection of the wound, it runs upwards penetrating the liver and heart".

Ex.P.9 is the Post mortem certificate. P.W.7 - Dr.Nehru opined that the deceased appeared to have died of shock and hemorrhage due to stab injury.

(vii) P.W.9 - the then Deputy Superintendent of Police, continued the investigation and obtained community certificate for the accused as well as the deceased. According to the community certificate, the deceased belonged to Scheduled Caste.

(viii) On 09.06.2008, at 08.00 p.m, near AKT School, P.W.9 arrested the accused in the presence of P.W.5 and another witness. Then, he forwarded the accused to the jurisdictional Court for judicial remand. He made a request to the Court to forward the Material Objects for chemical examination. The report reveals that there was blood on the Material Objects including the knife (M.O.1). But, the grouping was inconclusive. On completing investigation, finally, he laid charge sheet against the accused.

(viii) Based on the above materials, the trial Court framed the charges against the accused under Section 302 IPC r/w Section 3(2) (v) of the SC/ST Act. The accused denied the same.

(ix) In order to prove the case of the prosecution, on the side of the prosecution, as many as 9 witnesses were examined and 17 documents were exhibited, besides 5 material objects.

(x) Out of the said witnesses, P.Ws.1 to 3 are the eye witnesses who have vividly spoken about the entire occurrence. P.W.4, wife of the accused has spoken about the motive. P.W.5 has spoken about the observation mahazaar and the recovered Material Objects such as blood stained earth, sample earth and knife from the place of occurrence. P.W.6 has spoken about the community certificate issued by him declaring that the deceased belonged to Scheduled Caste and the accused does not belong to Scheduled Caste. P.W.7 has spoken about the post mortem conducted. P.W.8 has spoken on the registration of the case and P.W.9 has spoken about the investigation done.

(xi) 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 of the witnesses on his side nor marked any documents.

(xii) Having considered all the above, the trial Court convicted the accused under Section 302 IPC r/w Section 3(2)(v) of the SC/ST Act and accordingly sentenced him to undergo life imprisonment. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

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

4. The learned counsel appearing for the appellant would submit that P.Ws.1 to 3 would not have seen the occurrence. Since they are interested witnesses, their evidence needs to be rejected. He would further submit that the FIR in this case is a concocted document upon which, no reliance could be made. He would further submit that the offence said to have been committed by the accused would not fall under Section 302 IPC.

5. The learned Additional Public Prosecutor would vehemently oppose the appeal. According to him, at the time of occurrence, the presence of P.Ws.1 to 3 cannot be doubted. According to the said witnesses, a single stab injury caused on the abdomen of the deceased, resulted in his death. He would further submit that the medical evidence is highly corroborative. He would further submit that the accused had caused the injury with an intention to cause the death of the deceased. Thus, according to him, the accused is liable for punishment under Section 302 IPC.

5. We have considered the above submissions.

6. The alleged occurrence in this case is said to have occurred at 12.30 p.m. on 09.06.2008. The FIR in this case was registered at 01.30 p.m. itself. The distance between the place of occurrence and the police station is hardly half a kilometer. It is the evidence of P.W.1 that he took the deceased to the hospital and the Doctor declared him dead and thereafter, he proceeded to the police station and gave a complaint. Thus, absolutely there is no delay in preferring the complaint in this case.

7. P.Ws.1 to 3 claim to be eye witnesses. Their presence cannot be doubted at all as their presence is quite natural. Further, they have clearly narrated the entire occurrence in a cogent manner. Absolutely nothing has been elicited during cross-examination so as to create doubt in their veracity. Further, the medical evidences also clearly corroborate the eye witness account. There is no other doubt worth considering in this case. From these evidences, we have no doubt that the prosecution has clearly established that it was this accused who caused the death of the deceased by stabbing him on his abdomen.

8. The next question is, "what is the offence that the accused had committed by his act?". The meeting of the accused and the deceased was by chance. Thus the occurrence was not a premeditated one. On seeing the deceased, the accused only demanded the loan amount. This resulted in a wordy quarrel between the two. Though the prosecution has not placed the details of the actual conversation between the accused and the deceased, going by the natural human conduct, more particularly the fact that it was not a premeditated occurrence, we presume that either by words or by act, the deceased would have provoked the accused. This conclusion is not out of any surmise but by way of presumption as provided under Section 114 of the Evidence Act. Based on the various facts and circumstances of the case culled out from the evidence of P.Ws.1 to 3, in our considered view, but for the said provocation, the accused would not have stabbed the deceased at all. Further, had it been the intention of the accused to cause the death of the deceased, he would have attacked him by all means, to ensure death of the deceased instantaneously. But, he did not repeat the attack. Cumulatively, all these facts would go to show that the accused had no intention to cause the death, but he had intention only to cause injury on the deceased, which was sufficient in the ordinary course of nature, to cause his death. Thus, the act of the accused would squarely fall within the third limb of Section 300 I.P.C. But, at the same time, as we have already pointed out, since the accused had lost his mental balance, due to grave and sudden provocation caused by the deceased, his act would

squarely fall within the first limb of Section 300 IPC. Thus, the act of the accused would not amount to murder and it would only amount to culpable homicide punishable under Section 304(i) I.P.C. The trial Court has convicted him under Section 302 IPC r/w Section 3(2)(5) of the SC/ST Act, but, in our considered view, as stated earlier, the accused is only liable to be punished under Section 304(i) IPC r/w Section 3(2)(5) of the SC/ST Act.

9. Now, turning to the quantum of punishment, at the time of occurrence, the accused was hardly 38 years old. He is married and he has got a big family to take care of. He had no bad antecedents. After the occurrence also, it is not reported that he was involved in any other crime. Further, there are lot of chances for reformation. Having regard to these mitigating circumstances along with the aggravating circumstances, more particularly the fact that the occurrence was out of grave and sudden provocation and not out of any pre-meditation, we hold that sentencing the accused to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/- would meet the ends of justice. We are also of the view that the said amount of Rs.10,000/- shall be paid to P.W.4, the wife of the deceased, towards compensation.

10. In the result, the criminal appeal is allowed in part and the conviction and sentence imposed on the appellant/accused under Section 302 I.P.C. r/w Section 3(2)(5) of the SC/ST Act are set aside and instead, the appellant is convicted for offence under Section 304(i) I.P.C., r/w Section 3(2)(5) of the SC/ST Act and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for four weeks. It is directed that the said fine amount shall be paid to P.W.4 - wife of the deceased as compensation within a period of three weeks from today.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Special Judge (Principal Sessions Judge),
Villupuram Distict.

2.The Judicial Magistrate,
Kallakurichi.

3.-Do-Thro the Chief Judicial Magistrate,
villupuram.

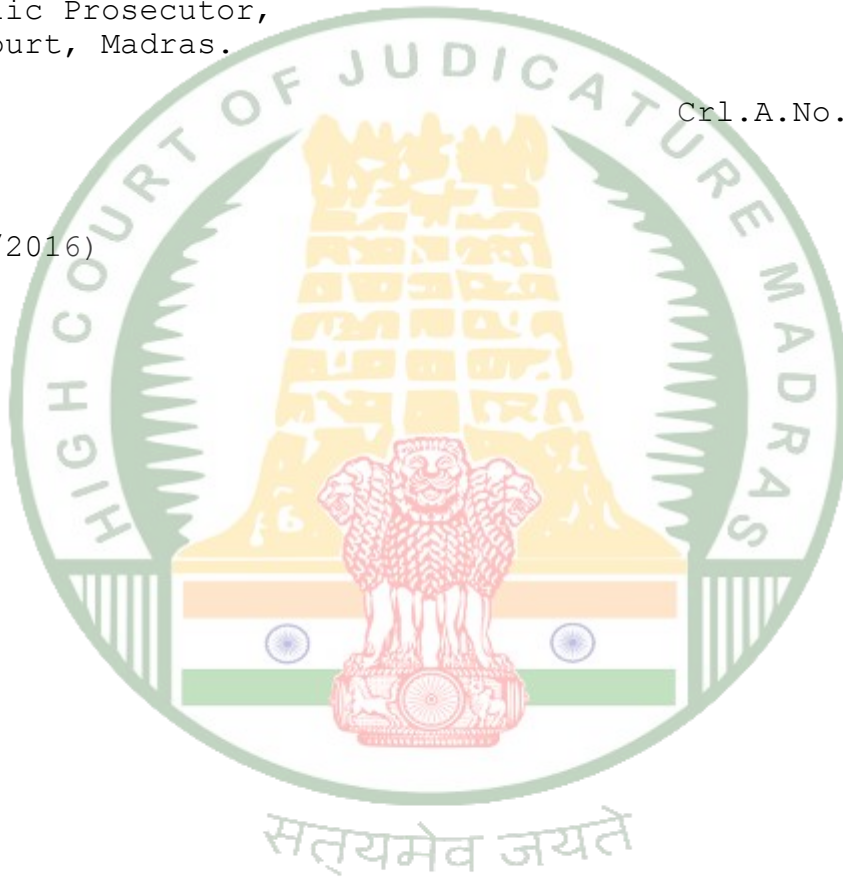
4.The Superintendent,
Central Prison,
Cuddalore.

5.The Inspector of Police,
Kallakurichi Police Station,
Villupuram.

6.The Public Prosecutor,
High Court, Madras.

Cr1.A.No.295 of 2012

gj (CO)
srg(19/02/2016)



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