

Bail Slip
Crl.A.353/2012

The Appellants/Accused 1&2, namely Murugan(A1), Ravi (A2) were directed to be released on bail as per order of this court dated 06.07.2012 made in MP No.1/2012 in Crl.A.No.353/2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.01.2016

CORAM

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.353 of 2012

1.Murugan
2.Ravi

...Appellants/Accused A1, A2

-versus-

State Rep. by
The Inspector of Police,
Gingee Police Station,
Villupuram District.
[Crime No.451 of 2008]

... Respondent/Complainant

Appeal filed under Section 374 of the Code of Criminal Procedure against the conviction and sentence passed by the Additional District and Sessions Judge, Fast Track Court No.I, Tindivanam, Villupuram District, in S.C.No.57 of 2010 dated 31.01.2012.

For Appellants : Mr.T.Munirathanam Naidu
For Respondent : Mr.V.M.R.Rajendran, APP

JUDGEMENT

[Judgement of the court was delivered by S.NAGAMUTHU.J,]

The appellants are the accused 1 and 2 respectively in S.C.No.57 of 2010 on the file of the learned Additional Sessions Judge, Fast Track Court No.I, Tindivanam, Villupuram District. They stood charged for offences under Sections 302 r/w 34 of IPC. By judgement dated 31.01.2012, the trial court convicted them under Sections 302 r/w 34 of IPC and sentenced them to undergo imprisonment for life. No fine was imposed. Challenging the said conviction and sentence, both the accused are now before this court with the present criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in this case was one Nagaraj. P.Ws.1, 2 and 4 are the wife, father and the mother respectively of the deceased. They were all residing at Melchithamur Village. The accused were residing in a neighbouring village by name Karanandhal. The alleged occurrence in this case was on 04.08.2008. A few days prior to the occurrence, A1 had informed P.W.3 Mr.Mohan to arrange for workers to work in his field. On 04.08.2008 at about 06.00 a.m. again, A1 called P.W.3 over phone and wanted him to come to Erikarai at Karanandhal Village to meet him in connection with the above work. P.W.3 in the company of the deceased Nagaraj went to Karanandhal village at 10.00 a.m. After the deal was over, P.W.3 and the deceased wanted A1 to pay some amount towards advance for getting workers. The accused told that he would come to Melchithamur village and give money. Therefore, P.W.3 and the deceased returned to the village. Thereafter, both the accused came to Melchithamur Village and A1 gave a sum of Rs.5,000/- as advance to Mrs.Kanniammal wife of Mohan (P.W.3) and at that time, the deceased intervened and demanded some amount to him also for having participated in the above deal. The accused were not willing to part away with any money to the deceased. This resulted in a quarrel. It is further alleged that at that time, A1 slapped the deceased on his left cheek and A2 pushed him down. As soon as falling down, the deceased became unconscious. This was witnessed by P.Ws.1 to 5. The accused went away from the place of occurrence. P.W.1 and others tried to revive the deceased by giving water. But, soon the deceased breathed his last on the spot.

3. P.W.1 thereafter proceeded to the police station and made a complaint to P.W.12 at 11.00 p.m. on 04.08.2008. P.W.12, the then Inspector of Police, Vanoor Police Station, on receiving the complaint from P.W.1, registered a case in Crime No. 451 of 2008 for the alleged offence under Section 302 of IPC. Ex.P.1 is the complaint and Ex.P.9 is the printed FIR. He forwarded both the complaint and the FIR to the court. On 05.08.2008, at 02.00 a.m., he visited the place of occurrence and prepared an observation mahazar (Ex.P.4) and a rough sketch (Ex.P.5) at the place of occurrence in the presence of P.W.6 and another witness. Then, he recovered some blood stained earth and sample earth from the place of occurrence under Ex.P.5 Mahazar in the presence of the same witnesses. Thereafter, between 06.00 and 08.00 a.m., he conducted inquest on the body of the deceased, during which, he examined P.Ws.1 to 4 and recorded their statements. Then, he forwarded the dead body for postmortem to the Gingee Government Hospital.

4. P.W.7 Dr. K.Ravichandran, conducted autopsy on the body of the deceased at 02.00 p.m. on 05.08.2008. He found the following injuries:-

"External Injuries:

(1) Diffuse contusion present over left cheek 5 x 8 cms.

(2) Contusion left eyebrow outer-side 3 x 2 cm

(3) External Genitalia NAD

Internal Examination:-

Head: Skull no fracture. Membrane intact, cerebral hemorrhages present. Blood clots over the right side cerebral, left side cerebral both cerebellum brain stem.

Neck: Hyoid bone preserved.

Chest: Rib case intact. Lungs pale, heart surface smooth pale chambers empty.

Stomach: surface smooth, chambers contain about 150 ml of reddish fluid present. Small intestines distended with gas. Liver spleen, kidney surface smooth chamber pale.

Urinary bladder empty. Portion of liver one kidney stomach with content. Small intestine with contents."

Ex.P.3 is the postmortem certificate. He opined that the deceased would appear to have died of shock and hemorrhage due to injury to brain and brain stem.

5. During the course of investigation, P.W.12 arrested both the accused on 05.08.2008 at 02.00 p.m. in the presence of P.W.6 and another witness and brought them to the police station and then, he forwarded both the accused to the court for judicial remand. P.W.12 forwarded the material objects also to the court with a request to send the same for chemical examination. The chemical analyst's report revealed that there were blood stains on the stone and the alleged blood stained earth recovered from the place of occurrence. On completing the investigation, P.W.12 laid the final report against both the accused before the Judicial Magistrate, Gingee.

6. Based on the above materials, the trial court framed charges under Section 302 r/w 34 of IPC against the accused. The accused denied the same. In order to prove the same, on the side of the prosecution, as many as 12 witnesses were examined, 15 documents and 7 materials objects were marked.

7. Out of the said witnesses, P.Ws.1 to 5 are the eye-witnesses. They have spoken vividly about the entire occurrence. P.W.6 has spoken about the arrest of the accused. P.W.8 has spoken about the preparation of the observation mahazar, rough sketch at the place of occurrence and the recovery of a stone, blood stained earth and the sample earth from the place of occurrence. P.Ws.9 and 10 are the police

constables. P.W.9 has spoken about the handing over of the complaint and the FIR at the court while P.W.10 has spoken about the taking of the body to the Government Hospital at Gingee and handing over the same for postmortem. P.W.7 has spoken about the autopsy conducted by him on the body of the deceased and his final opinion regarding the cause of death. P.W.11 the Head Clerk of the Magisterial court has spoken about the fact that he forwarded the material objects for chemical analysis on the orders of the learned Magistrate. He has also spoken about the report of the chemical analyst. P.W.12 has spoken about the registration of the FIR, the entire investigation done and the final report filed by him.

8. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, they denied the same as false and on their side one Mr.Ravi and Mr.Thirunavukarasu were examined as D.Ws1 and 2 respectively, but, however, they did not choose to mark any document. Their defence was a total denial. According to them, the deceased was fully drunk and he slipped down on the floor, sustained injury and died. They have denied that they attacked the deceased.

9. Having considered all the above, the trial court convicted both the accused under sections 302 r/w 34 of IPC and accordingly punished them as detailed in the first paragraph of this judgement. That is how, both the accused are now before this court with this criminal appeal.

10. We have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

11. The learned counsel for the appellants would submit that there is enormous delay in preferring the complaint and the same has not been explained away by the prosecution. According to the learned counsel, the same creates a strong doubt in the case of the prosecution. He would further submit that the medical evidence does not corroborate the eye witnesses account. At any rate, according to the learned counsel, the offence allegedly committed by the accused would not fall under Section 302 of IPC at all.

12. Per contra, the learned Additional Public Prosecutor would submit that, of course, there is a delay in preferring the complaint, but, the same has been properly explained away by P.W.1. He would further submit that the Doctor has given a categorical opinion that the death was due to shock and hemorrhage due to head injury and that there is an evidence to the fact that the head injury was caused by A2, he contended. Thus, according to the learned Additional Public Prosecutor, the conviction and sentence imposed on the appellants by the trial court, does not at all require any interference at the

hands of this court.

13. We have considered the above submissions carefully.

14. Though it is stated that there is a delay in the FIR, we do not find any such delay at all. The alleged occurrence had taken place at 07.00 p.m. and the case was registered at 11.00 p.m. The distance between the place of occurrence and the police station is 16 kms. Thus, we find no delay at all so as to have any doubt regarding the origin of the FIR. Therefore, the contention of the learned counsel for the appellants that the case of the prosecution is doubtful, on account of the above delay, is only liable to be rejected.

15. The occurrence had taken place just in front of the house of P.W.1. The presence of P.Ws.1 to 5 cannot be doubted at all. They are natural witnesses to the occurrence. They had no axe to grind against the accused. In categorical terms, they have stated that A1 slapped the deceased on his cheek and A2 pushed him down. Thus, we do not find any reason to reject the eye witness account of P.Ws.1 to 5. But, now turning to the medical evidence, the Doctor has opined that the death was due to head injury. The head injury, according to the Doctor, would have been caused by a fall on the ground. It is in evidence that A2 pushed the accused down and as a result, the head dashed against the floor. Thus, it has been clearly established that the injury found on the deceased was caused by A2 by pushing him down. From the categorical opinion of the Doctor, it is crystal clear that the death was due to the said injury.

16. Though D.W.1 and D.W.2 have stated that at a different place the deceased had fallen while he was stepping down and sustained injury, we find it difficult to accept their evidence. Had it been true that the occurrence had taken place in such a manner, nothing would have prevented them from informing the police during investigation. They have disclosed the same only at the time of trial, that too, as defence witnesses. Therefore, we reject their oral evidences.

17. Now, the immediate next question is as to what is the offence that the accused have committed by their act.

18. In order to bring the guilt of the accused under Section 302 r/w 34 of IPC, essentially, it should be proved that the accused have caused homicide as defined in Section 299 of IPC. In this case, it is crystal clear that the accused would not have intended to cause the death of the deceased at all. It is in evidence that the accused and the deceased were friendly and at the time of occurrence on account of the demand made by the deceased for money there was a wordy

quarrel in which the deceased was pushed down by A2. Similarly, the accused would not have intended to cause any injury at all to the deceased so as to bring the act of the accused within the second limb of Section 299 of IPC. Lastly, from the facts narrated hereinabove it cannot be concluded that second accused had knowledge that his act would result in the death of the deceased as defined in the third limb of Section 299 of IPC. Thus, the act of the accused would not fall within any of the limbs of section 299 of IPC and therefore, the said act of the accused would not amount to culpable homicide. Therefore, it is not possible to convict the accused either under Section 304 of IPC or under Section 302 of IPC. By their act of slapping and pushing the deceased down, they can at the most be convicted only under Section 325 r/w 34 of IPC. In this regard we may refer to the judgement of the Hon'ble Supreme Court in Jani Gulab Shaikh vs. State of Maharashtra [1970 SC Cases (Crl.) 532] wherein the Hon'ble Supreme Court in an identical situation has held that the act of the accused would not amount to homicide. In such view of the matter, we hold that the accused are liable to be punished only for offence under Section 325 r/w 34 of IPC.

19. Now, turning to the sentence, going by the aggravating as well as mitigating circumstances, we deem it just to treat the sentence already undergone by the appellants/accused as sufficient for the said offence.

20. In the result, the criminal appeal is partly allowed; the conviction and sentence imposed on the appellants/accused by the trial court for offence under Section 302 r/w 34 of IPC is hereby set aside and instead they are convicted under Section 325 r/w 34 of IPC and the sentence is reduced to the period of sentence already undergone by them in this case. The Bail Bonds executed by the appellants/accused shall stand cancelled.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Addl. District and Sessions Judge, FTC-
1, Tindivanam, Villupuram
District.

2.The Principal Sessions judge,
Villupuram

3.The Superintendent,
Central Prison,
Cuddalore.

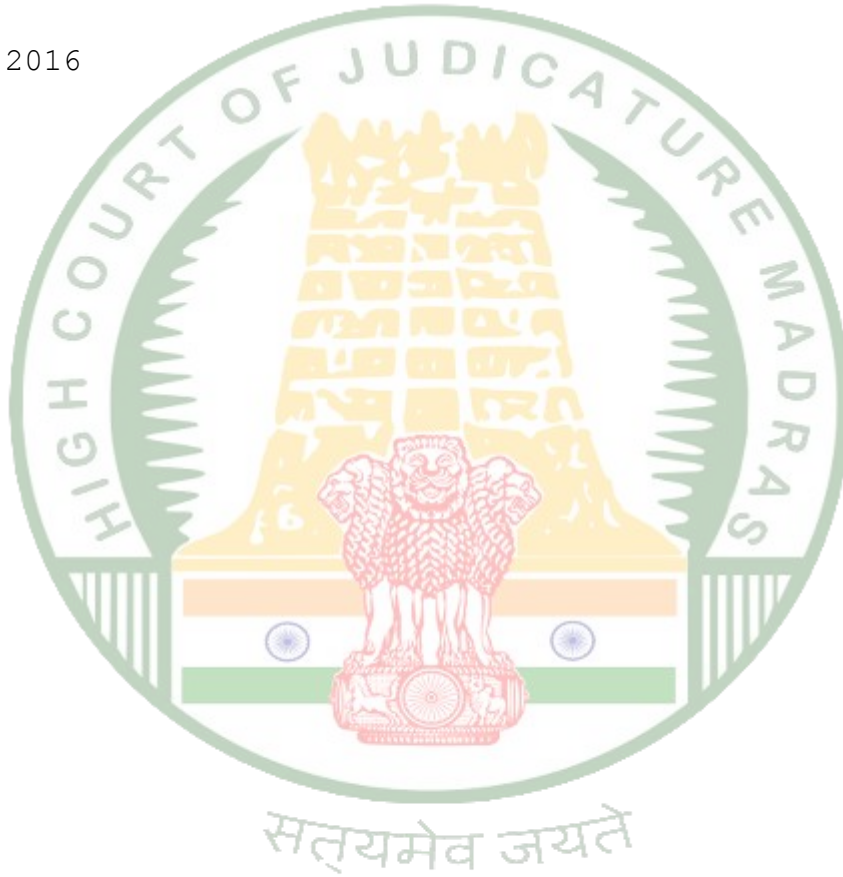
4The Inspector of Police, Gingee P.S., Villupuram District.

5.The Public Prosecutor, High Court, Madras

+2 ccs to Mr.T.Munirathnam Naidu, Advocate, sr.5442.

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