

Bail Slip

The Appellant herein/Accused viz., Rasathi W/O Asaithambi was released on bail by the order of this court dated 12/2/2013 made in Crl. M.P.No.1/12 in Crl A.507/12 on the file of this court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2016

CORAM:

THE HONOURABLE MR . JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

Criminal Appeal No.507 of 2012

Rasathi

... Appellant/Accused

-Vs-

State rep by
The Inspector of Police
Jayankondam Police Station
Ariyalur District
[Cr.No.47/2010]

... Respondent/Complainant

This Criminal Appeal has been preferred to call for the records and set aside the conviction and sentence imposed in S.C.No.27/2012 dated 29.06.2012 on the file of the Principal District & Sessions Judge, Ariyalur District.

For Appellant : Mr.P.Kumaresan
for Mr.K.Gandhi Kumar

For Respondent : Mr.M.Maharaja
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.27 of 2012 on the file of the learned Principal District and Sessions Judge, Ariyalur. He stood charged for offences under Sections 302 and 307 IPC. By judgment dated 29.06.2012, the trial Court convicted him under both the charges and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-,

in default to undergo rigorous imprisonment for one year for the offence under Section 302 IPC and to undergo rigorous imprisonment for seven years and to pay a fine of Rs.2,500/-, in default to undergo rigorous imprisonment for six months for the offence under Section 307 IPC. Challenging the said conviction and sentence, the accused/ appellant is before this Court with this appeal.

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

[a] The deceased in this case was one Mr.Rajendran. He was residing at Suriyamanal North street at Jayankondam in Ariyalur District. The accused is his sister. P.W.1 is the mother of the deceased and the accused. The deceased had a wife by name Kannagi and a daughter by name Thendral. P.W.1 was residing with her second son separately at a different place, but, in the same village.

[b] On 22.01.2010, the wife and daughter of the deceased had gone to Melmaruvathur temple and thus, the deceased alone was in his house. Before 11.00 p.m., on 22.01.2010, the accused had gone to the house of the deceased. The deceased informed the same to P.W.1 and wanted her to come over to his house. Accordingly, P.W.1 came to the house of the deceased. On reaching the house of the deceased, when P.W.1 asked the accused as to why she had come at that odd hour, she told her that she had come to a Doctor for treatment and since there was no bus facility thereafter, she had come to the house of the deceased to stay for overnight. The accused in turn asked P.W.1, as to why she had come all the way to the house of the deceased leaving behind the husband of P.W.1, who is an old man. The deceased told her that he only asked her to come. Thereafter, the accused did not have food at the house of the deceased. All the three of them stayed in the house.

[c] It is alleged that the accused had some suspicious character. Suspecting her fidelity, the deceased had reprimanded her on a few occasions. This was not to the liking of the accused. This is stated to be the motive for the occurrence.

[d] On 22.01.2010, after having food, P.W.1 and the deceased had gone asleep. The accused was sleeping on a mat by the side of P.W.1. The two children of the deceased had come and they were sleeping along with the deceased in a different portion of the house.

[e] Around 12.00 midnight, the accused went to the backyard of the house. P.W.1 followed her. Then, the accused returned and again started sleeping. By about 4.00 a.m., when P.W.1 was also sleeping, she heard some unusual noise indicating some foul play. Awakened by the said noise, when P.W.1 rushed to the

direction from where the noise came, she found the accused cutting the deceased repeatedly, where the deceased was lying asleep. When P.W.1 intercepted and attempted to prevent her from further cutting the deceased, the accused cut P.W.1 also on her head twice and on her hand once. Unable to bear the pain, P.W.1 raised alarm. P.W.4, the son of the deceased was sleeping. Awakened by the above incident and after having witnessed the same, he ran towards the main entrance and opened the door. P.Ws.2 and 3 who were the neighbours, on hearing the alarm raised by P.W.1, rushed to the house of the deceased. At that time, they found the accused fleeing away from the house of the deceased. Then, the deceased died on the spot. P.W.3 and others immediately took P.W.1 to the Government Hospital, Jayankondam.

[f] P.W.15, the Assistant Surgeon at the Government Hospital, Jayankondam examined P.W.1 on 22.01.2010 at 5.00 a.m. She told him that she was attacked by a known person with knife at about 4.00 a.m. on 22.01.2010 at her residence. P.W.15 found the following injuries on her:

- "1) 10 cm x 0.75 x muscle deep incised wound in the left side of the head.
- 2) 10 cm x 0.75 x muscle deep incised wound in the right side of the head [Fronto parietal region on both sides]
- 3) 10 cm x 1 cm x muscle deep incised wound in the left palm from the wrist to root of the middle finger. The depth at the root of middle finger is skin deep and 0.75 cm breadth.
- 4) 1 cm x 0.75 x 0.75 incised wound in the middle of the upper back.
- 5) 4 cm x 0.75 cm x skin deep incised wound in the left lower limb above the left ankle."

Ex.P11 is the Accident Register. He gave intimation to the police about the same. P.W.16, the Sub Inspector of Police attached to Jayankondam Police, on receiving the said intimation from the hospital, rushed to the Government Hospital, Jayankondam, recorded the statement of P.W.1 and on returning to the police station, she registered a case in Cr.No.47 of 2010 under Sections 307 and 302 IPC at 8.00 a.m. on 22.01.2010. Ex.P12 is the FIR. She forwarded the complaint [Ex.P1] and the FIR [Ex.P12] to the Court, which were received by the learned Judicial Magistrate at 12.05 p.m. on 22.01.2010. P.W.17 took up the case for investigation. He went to the place of occurrence on 22.01.2010 at 9.00 a.m. and prepared an Observation Mahazar

and a Rough Sketch in the presence of P.W.7 and another witness. He also recovered blood stained earth, sample earth and blood stained blanket from the place of occurrence under Exs.P2 and P3 - mahazars.

[g] During the course of investigation, on 22.01.2010, at 2.00 p.m., he arrested the accused in the presence of P.W.9 and another witness. On such arrest, she disclosed the place where she had hidden the aruval. In pursuance of the same, she took the police and the witnesses to the said place and produced M.O.1-Aruval. P.W.17 recovered the same under a mahazar. On returning to the police station, he forwarded the accused to the Court for remand and handed over the material objects also to the Court. After inquest, P.W.17 forwarded the body for post-mortem. P.W.13 conducted autopsy on the body of the deceased on 22.01.2010 at 4.00 p.m. He found the following injuries:

- "1 Incised wound over left cheek extending from the angle of mouth to upper end of left ear 16 x 2 cm x bone depth.
- 2 Incised wound over left shoulder 8 x 4 cm x muscle depth
- 3 Incised wound over left arm 8 x 3 cm x bone depth
- 4 Incised wound over left mandibular region 6 x 3 cm x bone depth
- 5 Incised wound just above injury 4 : 3 x 2 x 2 cm
- 6 Incised wound over upper part of left side of neck 3 x 3 x 2 cm
- 7 Incised wound just below Injury 6 : 4 x 3 cm on exposing blood vessels
- 8 Incised wound over nape of neck 10 x 3 x 3 cm
- 9 Incised wound over left parietal region of scalp 3 x 1 cm x bone depth."

He opined that the injury could have been caused by M.O.1-Aruval and he further opined that the death of the deceased was due to shock and haemorrhage due to the injuries.

[h] Ex.P7 is the Post-mortem Certificate. Ex.P9 is the Final Opinion given by him. P.W.17 collected the medical records and examined the Doctor. P.W.1 who was undergoing treatment at the Government Hospital at Jayankondam was shifted to the Thanjavur Medical College Hospital, where it was found that there was fracture of the third metacarpal bone in the left hand. Thus, according to P.W.14, the injury sustained by P.W.1

was grievous in nature. On completing the investigation, P.W.17 laid charge sheet against the accused.

3. 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 of the prosecution, on the side of the prosecution, as many as 17 witnesses were examined and 14 documents were exhibited, besides 5 Material Objects.

4. Out of the said witnesses, P.W.1, the mother of the deceased, P.W.4, the son of the deceased have spoken about the entire occurrence as eye witnesses. P.W.1 is an injured eye witness, who have spoken about the injuries sustained by her at the hands of the accused. She has also spoken about the complaint given by her to the police. P.Ws.2 and 3 who are neighbours, have stated that on hearing the alarm raised by P.W.1, they rushed to the house of the deceased and saw the accused fleeing away from the scene of occurrence. P.W.5, the father of the deceased has stated that he reached the place of occurrence on hearing about the same. P.W.6 is yet another neighbour, who has also stated that at the crucial time of occurrence, she found the accused fleeing away from the scene of occurrence. P.W.7 has spoken about the preparation of Observation Mahazar, Rough Sketch and recovery of material objects from the place of occurrence. P.W.8 has spoken about the arrest of the accused, the disclosure statement made by her and the consequential recovery of M.O.1-Aruval. P.W.9 has also stated the same facts. P.W.10 has stated that he took photographs of the deceased at the place of occurrence. P.W.11, the Scientific Assistant has stated that he visited the scene of occurrence and helped the police to recover the blood stained earth and sample earth from the scene of occurrence and send for chemical examination. P.W.12 has stated that on examining the internal organs of the deceased, he found that there was no poison. P.W.13 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.14 has stated that the injury sustained by P.W.1 was grievous in nature. P.W.15 has stated that he examined P.W.1 at the Government Hospital, Jayankondam at 5.00 a.m. on 22.01.2010 and he has spoken about the injuries sustained by her. P.W.16 has spoken about the registration of the case. P.W.17 has spoken about the investigation done and the final report submitted.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., she denied the same as false. However, she did not choose to examine any witness nor she did mark any document on her side. Her defence was a total denial.

6. Having considered all the above, the trial Court convicted the accused under both the charges. Aggrieved over

the same, the accused/appellant is before this Court with this appeal.

7. 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.

8. The relationship between the parties is not disputed in this case. P.W.1 has stated that when she was at her house, the deceased called her over phone and wanted her to come immediately, since the accused had come to his house. P.Ws.1 and 4 the mother and the son of the deceased respectively have stated that they were sleeping in the house. P.Ws.1 and 4 who are the eye witnesses to the occurrence have stated that they found the accused cutting the deceased repeatedly. When P.W.1 intercepted, she was also repeatedly cut by the accused. The injury sustained by P.W.1 is grievous in nature. P.Ws.1 and 4 have got no axe to grind against the accused. Their presence cannot be disputed. It cannot be even imagined that P.Ws.1 and 4 would have falsely implicated the accused, leaving out the real culprit, if any. Apart from that, P.Ws.2, 3 and 6 on hearing the alarm raised by P.W.1, had rushed towards the house of accused and have found the accused fleeing away from the scene of occurrence. Thus, according to these witnesses, it has been clearly established that it was this accused who cut the deceased as well as P.W.1 and caused injuries on P.W.1.

9. The learned counsel for the appellant would submit that though P.W.3 took P.W.1 to the hospital, P.W.1 did not tell anything about the occurrence to P.W.3. In our considered view, there is nothing unnatural on the part of P.W.1 in not saying anything to P.W.3, because, P.W.3 was then rushing P.W.1 in his motorcycle to the hospital to save her and P.W.1 was under severe pain, as she had sustained even a grievous injury. Therefore, this argument of the learned counsel is rejected.

[a] The learned counsel would next contend that P.W.1 has stated that she snatched the weapon from the accused and handed over the same to P.W.2 and therefore, the recovery of the weapon [M.O.1] on the disclosure statement made by the accused cannot be true. Of course, there is some force in the said argument. But, on that score, the evidence of P.Ws.1 and 4 cannot be rejected. Out of over enthusiasm, the Investigating Officer would have created a story of confession and recovery of M.O.1 on the alleged disclosure statement made by the accused. In view of the evidence of P.W.1, we are inclined to reject the case of the prosecution, that on the disclosure statement made by the accused, M.O.1 was recovered.

[b] The learned counsel would next contend that P.W.1 has stated that she went to the hospital by an auto, whereas, P.W.3

says that he took her in a motorcycle. This contradiction, in our considered view, is not so vital so as to discard the evidence of P.Ws.1, 4 and 6.

[c] The learned counsel would further submit that at the earliest point of time, P.W.1 had told the Doctor that the weapon used was knife, whereas, M.O.1 is an aruval. In our considered view, there can be no much difference between these two weapons. In some areas in the State of Tamil Nadu, this particular type of weapon is known as Aruval and also known as knife. Therefore, this also does not favour the accused in any manner.

10. From the foregoing discussion, we hold that this it was this accused who had caused the death of the deceased and also caused injuries to P.W.1 and the same has been proved beyond reasonable doubts.

11. Now, the question is, "what is the offence committed by the accused by the said act?" The accused had gone to the house of the deceased in a friendly manner as a relative. She stayed there over night as though there was going to happen nothing untoward. From the way in which she had behaved, in the light of the motive, it is crystal clear that she had come to the house of the deceased only with a plan to commit the murder of the deceased. The weapon used, the number of injuries caused and the parts of the body chosen by her to cut would all go to show that she had definite intention to cause the death of the deceased and thus, her act would attract the first limb of Section 300 IPC. Therefore, for having caused the death of the deceased, she is liable to be punished for the offence under Section 302 IPC.

12. So far as the injury caused on P.W.1 is concerned, in our considered view, the accused would not have intended to cause the death of P.W.1. Had it been her intention, she would have repeated the attack and as she had finished the life of the deceased, she would have finished the life of P.W.1 also. The very fact that she did not do so would go to show, that she had no intention to kill P.W.1, but, she caused injury, because P.W.1 intercepted when the accused was cutting the deceased. Thus, for having voluntarily caused grievous hurt on P.W.1, she is liable for punishment only under Section 326 IPC. Therefore, the conviction and sentence imposed on the appellant under Section 307 IPC is liable to be set aside and instead, she is liable to be convicted under Section 326 IPC.

13. Now turning to the quantum of punishment, so far as the offence under Section 302 IPC is concerned, the trial Court has imposed only minimum punishment, which does not require any interference at the hands of this Court. So far as the offence

under Section 326 IPC is concerned, having regard to the fact that she is a woman; her age; her antecedents and also having regard to the mitigating as well as aggravating circumstances, we are of the view that sentencing her to undergo rigorous imprisonment for three years and to pay a fine of Rs.2,500/- for the offence under Section 326 IPC would meet the ends of justice.

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

- The conviction and sentence imposed on the appellant by the trial Court for the offence under Section 302 IPC is hereby confirmed.
- The conviction and sentence imposed on the appellant for the offence under Section 307 IPC is set aside and instead, she is convicted under Section 326 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.2,500/-, in default to undergo rigorous imprisonment for four weeks.
- It is directed that these sentences shall run concurrently.

Sd/-

Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

To

1.Principal District & Sessions Judge,
Ariyalur District . सत्यमेव जयते

2.The Judicial Magistrate,
Jayamkondam.

3.-Do-Thro The Chief Judicial Magistrate,
Perambalur.

4.The Superintendent,
Central Prison(Women),
Tiruchirappalli.

5.The District Collector,
Ariyalur District.

6.The Director General of Police,
Mylapore, Chennai-5.

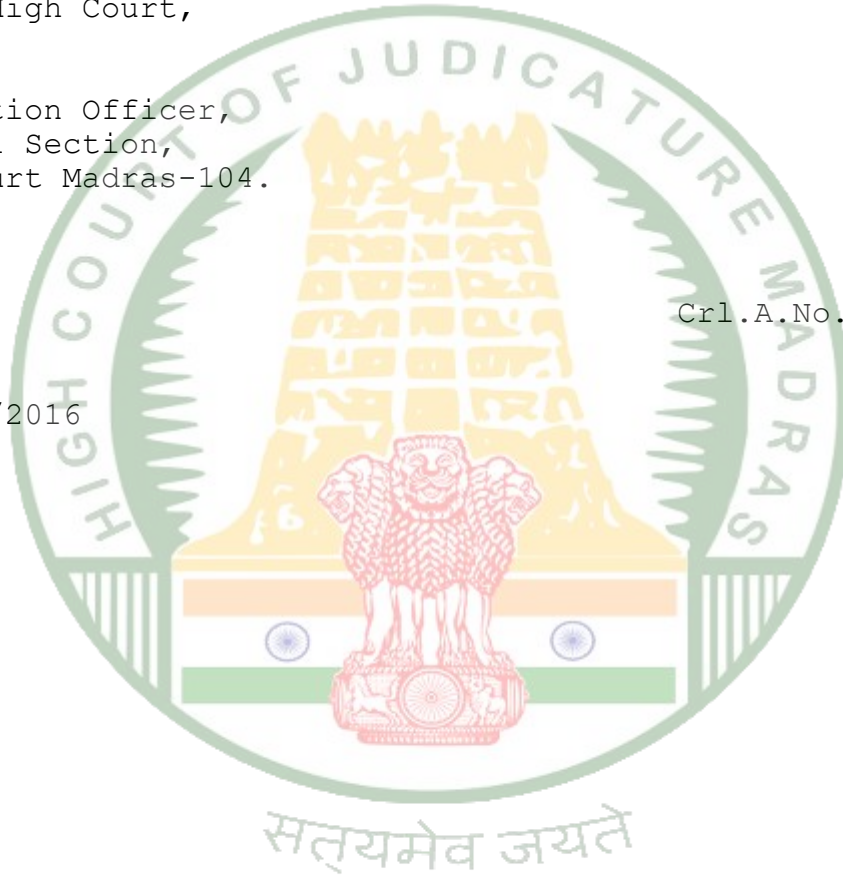
7.The Inspector of Police
Jayankondam Police Station
Ariyalur District.

8.The Public Prosecutor,
Madras High Court,
Chennai.

9.The Section Officer,
Criminal Section,
High Court Madras-104.

Crl.A.No.507 of 2012

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