

BAIL SLIP

The Appellant/Accused was directed to be released on bail in and by the Order of this Court Dated 12.10.2012 made in MP.NO.1/2012 in CRL.A.NO.567/2012 on the file of the High Court, Madras.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.03.2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN  
AND  
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.567 of 2012

Murugan

... Appellant/Accused-1

-Versus-

The State Rep. by  
Inspector of Police,  
V-3, J.J. Nagar Police Station,  
Chennai.  
[Crime No.29 of 2010]

... Respondent/Complainant

Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned III Additional Sessions Judge, Tiruvallur @ Poonamallee, Tiruvallur District made in S.C.NO.63 of 2010, Dated 26.07.2012.

For Appellant

: Mr.S.Kumaradevan

For Respondent

: Mr.M.Maharaja,APP

JUDGEMENT

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

The appellant is the sole accused in S.C.No.63 of 2010 on the file of the learned III Additional Sessions Judge, Tiruvallur at Poonamallee. He stood charged for offence under Section 302 of IPC. The trial court, by judgement dated 26.07.2012, convicted him under Section 302 of IPC and sentenced him to under go imprisonment for life and to pay a fine of Rs.1,000/- in default to suffer rigorous imprisonment for a further period of one year. Challenging the above said conviction and sentence, the sole accused is 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 Mr.Mohanraj. P.W.1 and P.W.2 are the wife and the daughter respectively of the deceased. They were residing at Door No.26, 12th Street, Padi Pudunagar, Chennai. The deceased was a loadman by profession. On 14.01.2010 at about 08.00 p.m., the deceased had gone to 8th Street of Padi Pudunagar. By about 08.30 p.m., someone told P.W.1 that there was a quarrel going on between the deceased and the accused. Immediately, P.Ws.1 and 2 along with P.Ws.3 and 4, who are neighbours, rushed to 8th street. When they reached the place of occurrence, they found that the quarrel was still in progress. In the said quarrel, it is stated that the accused attacked the deceased with a wooden log on his head and face. The deceased fell down. P.Ws.1 and 2 and others tried to intercept and to save the deceased. The accused immediately fled away from the scene of occurrence. The deceased fell down in a pool of blood. P.W.1 and others immediately took him to a private nursing home known as "Raj Nursing Home" situated near the place of occurrence. The Doctor in the said private nursing home on seeing the deceased told that there were serious injuries on his head and therefore, he should immediately be taken to the Rajiv Gandhi Government General Hospital at Chennai. Then, P.W.1 arranged for an ambulance and took the deceased to the Government General Hospital at Chennai and admitted him at 10.00 p.m.

3. P.W.14 Dr.Tamilselvan, attached to Rajiv Gandhi Government General Hospital, examined the deceased at 10.10 p.m. on 14.01.2010. At that time, the deceased was found unconscious. P.W.1 told the Doctor that the deceased was attacked by a known person with a wooden log. P.W.14 admitted the deceased as inpatient at 10.50 p.m. Ex.P.7 is the Accident Register.

4. P.W.15 Dr.Sathish Devakumar attached to the Rajiv Gandhi Government General Hospital, Chennai, gave treatment to the deceased. According to him, CT scan taken on the deceased revealed that there was a fracture on the skull. Despite intensive treatment, at 01.15 p.m. on 15.01.2010 the deceased succumbed to the injuries.

5. Meanwhile, on getting intimation from the hospital, P.W.17 rushed to the Rajiv Gandhi Government General Hospital, Chennai. Since the deceased was unconscious, he recorded the statement of P.W.1 and on returning to the police station, he registered a case in Crime No.21 of 2010 under Section 307 of IPC. Ex.P.1 is the complaint of P.W.1 and Ex.P.12 is the FIR. He forwarded both the complaint and the FIR to the court which were received by the learned Judicial Magistrate No.I, Poonamallee at 07.00 a.m. on 15.01.2010.

6. Taking up the case for investigation, P.W.17 proceeded to the place of occurrence. He prepared observation mahazar (Ex.P.2) and a rough sketch (Ex.P.3) at the place of

occurrence in the presence of P.W.6 and another witness. He also recovered some pieces of cement/brick plaster with blood stains (M.O.2) and some sample pieces of cement/brick plaster (M.O.3) from the place of occurrence under a mahazar (Ex.P.5) in the presence of the same witnesses. He also examined P.Ws.1 to 5 and few other witnesses and recorded their statements. On getting the death intimation at 01.00 p.m. on 15.01.2010 he altered the case into one under Section 302 of IPC. Ex.P.14 is the alteration report. Then, on the same day between 04.00 p.m. and 06.00 p.m. P.W.17 conducted inquest on the body of the deceased. Ex.P.15 is the inquest report. Then, he gave a request for postmortem.

7. P.W.16 Dr.A.M.Premalatha Gandhi conducted autopsy on the body of the deceased at 10.30 a.m. on 16.01.2010. She found the following injuries on the body of the deceased:-

"Antemortem injuries:-

(1) Reddish brown abrasion seen in the following areas:

- 8 x 1 x 1.5 on the right parieto temporal region of scalp.
- 5 x 4 cm over right cheek - 1.5 x 1 cm over right side of face
- 1 x 0.5 cm over right side forehead
- 3.5 x 2 cm over tip of nose
- 5 x 2 cm back of head
- 4 x 2 cm centre of forehead
- 4 x 3 cm left side of face
- 4 x 0.5 cm below left eyewitness
- 4 x 1 cm over front of right shoulder
- 1.5 x 1 cm front of upper part of left chest

(2) Sutured wound 3.5 cm long below the right eye brow. O/D margins irregular and muscle deep.

(3) Sutured wound 1.5 cm long above left hip outer aspect. O/D margins are irregular and underlying tissues are contused.

(4) Oblique sutured wound 1.5 cm long below the right eyebrow middle 1/3rd . O/D margins are irregular and underlying tissues are contused.

(5) O/D Head: Bluish black contusion seen in the following areas of scalp.

- 8 x 6 x 0.5 cm both frontal region
- 14 x 6 x 0.5 cm both parietal and occipital region
- 7 x 5 x 0.5 cm left temporal region of scalp

Diffuse sub dural heamorrhage seen all over the brain surface. Thin film of SAH

seen over 60 cerebral hemisphere. Brain C/S NAD.

O/D Thorax: Ribs intact. Hear C/S chambers contain fluid. Valves intact. Coronaries normal.

Lungs: C/S congested. Hyoid intact.

O/D Abdomen: Stomach empty. Mucosa NAD. Liver, Kidney, spleen: Normal size. C/S congested.

Hyoid, pelvis, spinal column - intact."

Ex.P.10 is the postmortem certificate. She opined that the death was due to shock and hemorrhage due to multiple injuries on the head.

8. In the course of investigation, on 15.01.2010, the Sub Inspector of Police arrested the accused and brought him to the police station and produced before P.W.17. On such production, the accused gave a voluntary confession in the presence of P.W.10 and another witness in which he disclosed the place where he had hidden the wooden log. In pursuance of the same, he took P.W.17 and the witnesses to the place of hideout and produced the wooden log (M.O.1). On returning to the police station, P.W.17 forwarded the accused to the court for judicial remand and forwarded the materials objects also to the court with a request for chemical examination. The chemical analysis report revealed that there were blood stains found on all the material objects except on M.O.3. On completing the investigation, P.W.17 laid the charge sheet against the accused.

9. Based on the above materials, the trial court framed a lone charge under Section 302 of IPC. The accused denied the same. In order to prove the same, on the side of the prosecution, as many as 17 witnesses were examined, 15 documents and 4 materials objects were marked.

10. Out of the said witnesses, P.Ws.1 to 5 are the eye witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.Ws.1 and 2 have further spoken about the fact that they took the deceased to the government hospital and admitted him as inpatient. P.W.1 has also spoken about the complaint made by her upon which the case was registered.

11. P.W.6 and P.W.7 have spoken about the preparation of the observation mahazar and rough sketch at the place of occurrence and the recovery of material objects, namely, M.O.2 pieces of blood stained cement/brick plaster and M.O.3-pieces of sample cement/brick plaster[without blood stains] from the place of occurrence under the mahazar by the investigating officer. P.Ws.8 and 9 are also the eye witnesses to the occurrence. They have also vividly spoken about the entire

occurrence. P.W.10 has spoken about the confession made by the accused and the consequential recovery of M.O.1-Wooden log under the mahazar on the disclosure statement made by the accused to P.W.17. P.W.12 has spoken about the photographs taken by him at the place of occurrence as requested by the investigating officer. P.W.13, the then Gr.I Police Constable of J.J. Nagar Police Station, has spoken about the fact that he identified the body of the deceased for postmortem.

12. P.W.14-Doctor attached to Rajiv Gandhi Government General Hospital, Chennai, has spoken about the admission of the deceased in the hospital on 14.01.2010 at 10.10 p.m. for treatment as inpatient. P.W.15-the Doctor attached to the said hospital has spoken about the further treatment given to the deceased and the death of the deceased at 01.15 p.m. on 15.01.2010.

13. P.W.15-the Doctor has spoken about the autopsy conducted on the body of the deceased and her final opinion regarding the cause of death. P.W.17 has spoken about the registration of the case, the entire investigation done by him and the filing of final report against the accused.

14. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, he denied the same. However, he did not choose to examine any witness on his side nor did he mark any document. His defence was a total denial.

15. Having considered all the above, the trial court convicted the accused under section 302 of IPC and accordingly punished him as detailed in the first paragraph of this judgement. That is how, the accused is now before this court with this criminal appeal.

16. We have heard the learned counsel for the appellant/accused and the learned Additional Public Prosecutor appearing for the respondent/State and also perused the records carefully.

17. The learned counsel for the appellant/accused would submit that P.Ws.1 to 5, 8 and 9 would not have seen the occurrence at all inasmuch as they were residing in 12th Street, Padi Pudunagar, Chennai, whereas, the occurrence had taken place in 8th street at Padi Pudunagar. According to the learned counsel, the presence of these witnesses at the crucial point of time is highly doubtful. He would further submit that none of these witnesses had previous acquaintance with the accused and, therefore, in the absence of prior test identification parade, the identification made by the witnesses, for the first time in the court, cannot be believed. He would further submit that there are material contradictions between these witnesses which make their evidences doubtful. At any rate, according to the learned

counsel the prosecution has miserably failed to prove the case beyond all reasonable doubts and therefore, the accused are entitled for acquittal.

18. The learned Additional Public Prosecutor would vehemently oppose this criminal appeal. According to him, of course, it is true that these eye witnesses were chance witnesses, but, their presence has been duly explained. He would further submit that there are no reasons to reject the evidences of these witnesses. He would also submit that from the fact that P.W.1, who had taken the deceased to the Rajiv Gandhi Government General Hospital and admitted him in the hospital as inpatient at the earliest point of time, had told the Doctor that the deceased was attacked by a known person with a wooden log at 8th street, Padi Pudunagar and the same would go to show that P.W.1's evidence is not an after thought one. Thus, according to the learned Additional Public Prosecutor, the prosecution has proved the case beyond all reasonable doubts.

19. We have considered the above submissions carefully.

20. Of course, P.Ws.1 and 2 are the wife and the daughter respectively of the deceased. They were residing in 12th Street at Padipudunagar whereas the occurrence had taken place in 8th street at Padi Pudunagar. They claimed to have been present at the scene of occurrence by chance. It is the settled law that when a witness claimed to have been present at the place of occurrence by chance, the said witness should explain to the satisfaction of the court as to how at that crucial point of time, he was present at the place of occurrence. In the instant case, P.Ws.1 and 2 have duly explained away the same. They have stated that somebody told them that there was quarrel going on between the deceased and the accused in 8th Street at Padi Pudunagar, Chennai. Quite naturally, on receiving the information, P.W.1 and 2 had gone there and the quarrel was still in progress and at the end of the quarrel they had seen the accused beating the deceased with a wooden log on his head and face. Thus, in our considered view, the presence of P.Ws.1 and 2 has been clearly established and there can be no doubt at all about their presence at the scene of occurrence.

21. P.W.3 is a co-worker of P.W.1. He was residing in 7th Block at Mugappair. He has stated that he went to the house of P.W.2 and at about 08.00 p.m. when he was in the house of P.W.2, someone told about the quarrel which promoted P.Ws.1 and 2 to rush. He has further stated that he also followed them. That is how, according to him, he was present at the scene of occurrence. This explanation is acceptable to this court. There are no reasons found to reject the same. P.W.4 is also a resident of Padi Pudungar. He has stated that at 08.30 p.m. when he was in 8th Street at Padi Pudunagar, he witnessed the entire occurrence. P.W.5 has also stated that he

witnessed the entire occurrence as he was present at the place of occurrence. The presence of these witnesses, in our considered view, cannot be doubted at all.

22. Then comes the evidences of P.Ws.8 and 9 who are also eyewitnesses to the occurrence. P.W.8 is the relative of the deceased. He has stated that on the crucial day, he came to the house of the deceased to meet him. Since the deceased was not there, he started to return. At that time, some body told P.W.1 about the occurrence. When P.W.1 rushed, he has stated that he also followed her. P.W.9 is the brother of the deceased. He has stated that at 08.00 p.m. on the day of occurrence the deceased left for a shop. He has further stated that he also heard about the occurrence and along with P.W.1 he rushed to the place of occurrence and witnessed the entire occurrence. Thus, the presence of P.Ws.8 and 9 has also been clearly established by the prosecution. We do not find any reason to reject the testimonies of these witnesses wherein they have stated that it was this accused who attacked the deceased with wooden log on his head and face and cause head injury.

23. Now, turning to the argument of the learned counsel that the appellant/accused was not previously known to the eye witnesses and therefore, the identification made by them, for the first time in court, cannot be believed, it is true that P.Ws.1 and 2 have stated that the accused was not previously known to them. But, they had enough time to notice the physical features of the accused. It is not as if the witnesses were able to see the accused only for a moment. They had enough time to see the accused and to notice the physical features. Therefore, the identification made by P.Ws.1 and 2, for the first time in court, can be accepted. So far as P.W.3 is concerned, he has admitted that the accused was known to him. It is his evidence that he knew the accused already. Similarly, P.W.5 has also stated that he knew the accused already. Thus, at least P.Ws.4 and 5 knew the accused already and the said fact has not been disputed by the accused. Similarly, P.W.8 and P.W.9 have also stated that they knew the accused already. From these evidences, in our considered view, the prosecution has proved the identity of the accused and therefore, even in the absence of any test identification parade, the identification made by them in court could be believed.

24. Immediately after the occurrence, P.W.1 had taken the deceased to the hospital at 10.10 p.m. on 14.01.2010 where P.W.1 had told the Doctor that the deceased was attacked by a known person at 8th Street, Padi Pudunagar. But, at the earliest opportunity, P.W.1 had told that the deceased was attacked at 8th street, Padi Pudu Nagar, by a known person with the wooden log. This earliest statement of P.W.1 duly corroborates her present version given by way of oath. From this evidence, we are of the view that the prosecution has

proved its case beyond all reasonable doubts that it was this accused who caused the injuries on the head of the deceased which resulted in the death of the deceased.

25. Having come to the said conclusion, now, we have to examine as to what was the offence the accused had committed by the said act. It is in evidence that when P.Ws.1 and 2 were in the house someone informed them that there was quarrel going on between the deceased and someone in 8th street, Padi Pudunagar. Thereafter, they went to the place of occurrence and at that time also they found the quarrel in progress. But, the time taken for one to come from 8th street to 12th street to inform P.W.1 and then P.W.1 to come to 8th street from 12th street, Padi Pudunagar would have been considerable. For the whole of the time, the quarrel was going on. The cause for the quarrel was not stated by any of these witnesses clearly. But, it is inferable that the quarrel was a long drawn one and only at the end of quarrel the accused had taken a wooden log and attacked the deceased. Had it been the intention of the accused to do away with the deceased, he would not have engaged in quarrel for such a long time and instead, he would have finished his task immediately and fled away from the scene of occurrence. Further, there was no previous motive at all for the accused to cause the death of the deceased. It is not as though the accused was already armed with wooden log. The totality of these circumstances would give a reasonable inference that out of the said quarrel the accused who had lost his mental balance in the heat of passion had taken the wooden log lying there and attacked the deceased. This act of the accused would in our considered view, certainly fall within the fourth exception to Section 300 of IPC. Since the act of the accused would fall within the third limb of Section 300 of IPC and it also falls within the fourth exception to Section 300 of IPC, he is liable to be convicted under Section 304 (i) of IPC.

26. Now, turning to the quantum of punishment, the accused is aged around 30 years and he has got children. He has got no bad antecedents and he has got lot of chances for reformation. Having regard to these mitigating as well as the aggravating circumstances, we are of the considered view that sentencing him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- would meet the ends of justice.

27. In the result, the criminal appeal is partly allowed. The conviction and sentence imposed on the appellant/accused by the trial court for the offence under Section 302 of IPC is set aside and instead, he is convicted under Section 304(i) of IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- in default to undergo rigorous imprisonment for eight weeks. If the appellant/accused had already paid the fine amount, the same shall be adjusted towards the fine amount now imposed. It

is reported that the accused is on bail and, therefore, the learned III Additional Sessions Judge, Tiruvallur @ Poonamalle, shall take steps to secure the appellant/accused and commit him to prison to serve the remaining portion of sentence. It is further directed that the period of detention already undergone by the appellant/accused shall be set off under Section 428 of Cr.P.C.

kmk

Sd/-  
Asst.Registrar

/true copy/

Sub Asst. Registrar

TO

- 1.The III Additional District Sessions Judge,  
Poonamallee, Tiruvallur District, Thiruvallur District.
  - 2.The Inspector of Police, V3, J.J.Nagar  
Police Station, Chennai.
  - 3.The Public Prosecutor, High Court, Madras.
  4. The Judicial Magistrate, Ambattur.
  5. -do- thro' The Chief Judicial Magistrate, Tiruvallur  
(For Information)
  6. The Superintendent, Central Prison, Puzhal, Chennai.
  7. The Section Officer, Criminal Section, High Court, Mds.
- + 1 cc to Mr.S.Kumaradevan, Advocate Sr 17101

KR/12/4/16

Criminal Appeal No.567 of 2012

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