

BAIL SLIP

That the Appellant/Accused namely Nishanth @ Thambu was directed to be released on bail as per order of this Court dt.21.4.16 in CrI.MP.No.3797/2016 in CrI.A.No.242/16

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.242 of 2016

Nishanth @ Thambu
Appellant/Accused

- Vs -

State by Inspector of Police,
B1, Town Central Police Station,
Uthagamandalam, The Nilgiris.
(Cr.No.671 of 2012) .. Respondent/Complainant

Prayer:- Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment passed by the learned District Sessions Judge, Udhagamandalam, The Nilgiris in S.C.No.50 of 2014 dated 17.03.2016.

For Appellant : Mr.R.Karthikeyan
for Mr.T.Shanmugam

For Respondent : Mr.E.Raja
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.50 of 2014 on the file of the learned District Sessions Judge, Udhagamandalam, The Nilgiris. He stood charged for offence under Section 302 I.P.C. By judgment dated 17.03.2016, the trial Court convicted him under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and pay a fine of Rs.2,000/- in default to undergo rigorous imprisonment for three months. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

2.1. The accused in this case, is a resident of Manjanakorai Burn Hill in Ooty. The deceased in this case also belongs to the same locality. On 01.07.2012, the accused and the deceased travelled in a mini bus from Ooty towards Manjanakorai Burn Hill. The bus came to a halt at Manjanakorai Burn Hill bus stop. The passengers from the bus tried to push each other to get down first. The accused, by mistake, dashed against the deceased while both were getting down from the bus through the same entrance. The deceased got down followed by the accused. The deceased shouted at the accused as to how dare he was to dash against him when he was getting down from the bus. He further shouted as to whether the accused was such a big rowdy. The accused replied that he was a big rowdy. The accused slapped the deceased on his right cheek. The deceased retaliated. When the fight was going on, suddenly it is alleged, the accused took out a small stone lying there and pelted the same on the deceased. It hit the head of the deceased. The accused also kicked the deceased on his testicles. The fellow passengers, separated them. The accused went to his house.

2.2. The deceased, after a short while, fainted. The people in that locality informed his wife (P.W.5). She rushed to the place of occurrence, took the deceased to the hospital in an Auto and admitted him as in-patient. At around 01.30 a.m. on the next day, the deceased died in the hospital. When the deceased was undergoing treatment at the Government Hospital, Ooty, on receiving intimation from the hospital, P.W.11 the then Sub Inspector of Police went to the hospital, since the deceased was unconscious, he could not record his statement. He went to the place of occurrence and recorded the statement of P.W.1 and on returning to the police station, he registered a case in Crime No.671 of 2012 under Section 324 I.P.C. against the accused. Ex.P.1 is the complaint and Ex.P9 is the F.I.R. He forwarded both the documents to Court, which were received by the learned Magistrate on 02.07.2012 at 10.15 a.m.

2.3. P.W.11, took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of P.W4 and another witness. He examined few witnesses from that locality. While so, on 02.07.2012 at 01.30 a.m. P.W.11 received intimation from the hospital that the deceased had died. Therefore, he altered the case into one under Section 302 I.P.C. and submitted an alteration report to the Court.

2.4. The investigation was thereafter taken over by P.W.14. He went to the hospital, conducted inquest on the body of the deceased and forwarded the same for postmortem. On the same day, at 02.00 p.m. he arrested the accused in the presence of witnesses. On such arrest, he gave a voluntary confession, in which he disclosed the place where he had hidden the stone. In pursuance of the same, he took the police and the witnesses to the place of hideout and produced M.O.1 stone. Then, he forwarded the accused to Court for judicial remand.

2.5. P.W.12, Dr.Rajkumar conducted autopsy on the body of the deceased on 02.07.2012 at 11.30 a.m. He found the following injuries:

"A sutured wound of 4 cm length present in the left parieto occipital region of scalp. No other external injuries.

Internal Examination: No free fluid in peritoneal cavity. Stomach filled with 100 ml of gastric juice. Intestine filled with faces and gas, liver, spleen and kidney congested. Bladder empty. No rib fracture. Lungs congested. Heart chambers contain blood clots. Hyoid bone intact. Skull bones intact 8 x 6 cm extradural clotted blood present over the left parietoccipital region of brain. No evidence of blood clotted blood present over the left parietoccipital region of Brain. No evidence of blood clot inside the brain. Meninges and spinal cord normal."

He gave opinion that the death of the deceased was due to the injury to vital organ - Brain (due to extradural haemaetoma).

2.6. P.W.14 collected the post mortem certificate and examined the doctor. The investigation was thereafter taken over by his successor P.W.15. On completing the investigation, he laid the chargesheet against the accused.

2.7. Based on the above materials, the trial Court framed a lone charge against the accused under Section 302 I.P.C., which the accused denied. In order to prove the case, on the side of the prosecution, as many as 15 witnesses were examined, 21 documents and 1 material object were marked.

2.8. Out of the said witnesses P.W.1 has stated that just by the side of the bus stop, where the occurrence had taken place, he was running a petty shop. He has stated that as soon as the accused and the deceased had got down from the bus, there was wordy duel between them and then they attacked each other. The deceased sustained injury on his head. He has further stated that the accused pelted a stone at the deceased and it hit him on his head. He has further spoken about the complaint made. P.W.2, the conductor of the bus, he has stated that when the bus was nearing Burn Hill bus stop, there was a quarrel between the accused and the deceased. He has further stated that after the bus came to a halt at the bus stop and after the accused and the deceased got down from the bus, they continued to quarrel. He has further stated that thereafter the bus went on and therefore he was not aware of as to what happened thereafter.

2.9. P.W.3 was running a shop at the bus stop. He has stated that he witnessed the fight going on between the accused and the deceased at the bus stop, where the accused pelted a stone, which hit the head of the deceased. P.W.4 has spoken about the observation mahazar and a rough sketch prepared by the police.

P.W.5, the wife of the deceased has stated that she was informed about the occurrence by the people in that locality and then she took the deceased to the hospital. P.Ws.6 and 7 have turned hostile and they did not support the case of the prosecution in any manner.

2.10. P.W.8 has stated that he gave certificate in respect of the rain in Ooty on the said date. P.W.9 the constable has stated that he handed over the dead body to the doctor for postmortem. P.W.10 Dr.Angappan has stated that on 01.07.2012, the deceased was brought to the Government hospital at Ooty for treatment. The deceased was conscious. He told that he was hit with a stone by a known person. He found a single injury on the head measuring 4x5x5 cms. He admitted him in the hospital.

2.11. P.W.11 has spoken about the registration of the case and the initial investigation done by him. P.W.12 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.13 has stated that he examined the visceral organs of the deceased, which revealed that there was no poison or alcohol. P.Ws.14 and 15 have spoken about the investigation done and the final report filed.

3. 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 witness nor mark any document on his side. Having considered all the above, the trial Court convicted the accused as detailed in the first paragraph of this judgment and that is how, he is before this Court with this appeal.

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

5. In this case, P.W.2, the conductor of the bus in question has stated that the deceased and the accused travelled in the same bus and when the bus was about to come to a halt at Burn Hill bus stop, there was a quarrel between the accused and the deceased. Then, after they got down from the bus, they continued the quarrel and the bus went off. This witness is an independent witness and there is no reason to reject his evidence. P.Ws.1 and 3 have got their shops near the bus stand. They have stated that as soon as the accused and the deceased got down from the bus, they quarreled with each other. Then, in the said quarrel, they started attacking each other with hands. This scuffle went on for some time. It was only at the end of the scuffle, it is alleged that the accused took out a stone and pelted the same at the deceased, which hit the head of the deceased. These two witnesses again are independent witnesses. Though they have been cross examined by the accused, nothing has been elicited to disbelieve them. From the evidences of these two witnesses, it has been clearly established that there was a wordy quarrel, followed by a scuffle and exchange of blows and finally the accused pelted a stone which hit the head of the

deceased.

6. Now the next question is whether the death was caused by the accused or not ? P.Ws.1 and 3 have stated that the stone pelted by the accused hit the head of the deceased and resulted in an injury. P.W.10, Dr.Angappan has stated that on 01.07.2012 at 2.30 p.m. when he examined the deceased, he found an external lacerated injury measuring 4x5x5 cms on the head. P.W.10 sutured the said wound. P.W.12, the doctor who conducted autopsy found that there was a sutured wound of 4 cm length on the left parietooccipital region of the head and there was no other injury on the body of the deceased. The internal examination conducted by him revealed that there was no evidence of any fracture of the skull. He found only extradural clotted blood over the left parietooccipital region. According to the doctor, this was the cause for the death.

7. The learned counsel for the appellant would submit that in the absence of any fracture to the skull, the extradural hemorrhage would not have occurred. Thus, according to him, the extradural hemorrhage, which was the cause for the death was not on account of the pelting of the stone by the accused. P.W.12, the doctor was not elaborate on this issue. He has not stated as to whether there was any nexus, link or connection between the external injury which was caused by the accused and the extradural clot of blood found over the left parietooccipital region. But from the location of the external injury, which was on the left parietooccipital region and the internal extradural hemorrhage located in the left parietooccipital region, it can be reasonably inferred that the said extradural hemorrhage was due to and on account of the impact of the stone hit which resulted in the external injury. But P.W.12 has further stated that the internal extradural hemorrhage could have been caused when the deceased had fallen from the bus. Thus, though it is possible to infer that the internal extradural hemorrhage was the consequence of the external injury caused by the accused, the other possibility that the said extradural hemorrhage could have been due to a fall from the bus is also equally possible. In the case of this nature, it is absolutely necessary for the prosecution to prove that the cause of death was as a result of the act of the accused.

8. Here, in this case, the prosecution has not proved beyond any doubt that the extradural hemorrhage was as a result of the stone pelted by the accused. Therefore, it cannot be conclusively held that the death of the deceased was caused by the accused, though, we have already concluded that the external injury on the head of the deceased was caused by the accused by pelting a stone.

9. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in Jani Gulab Shaikh Vs. The State of Maharashtra reported in 1970 SCC (Cr.) 532, wherein, while dealing with identical facts, the Hon'ble Supreme Court in paragraphs 6 to 9 has held as follows:

<https://hcservices.ecourts.gov.in/hcservices/> 6. The question that arises is whether the

accused is guilty under Section 304, part II, Section 325 or Section 323, I. P. C, In our opinion the High Court erred in holding that Section 304, part II, applied, The High Court observed :

"We are of the opinion that the accused must be deemed to know that as a result of such forcible push death could have been the likely result. The accused must be deemed to know that the deceased was likely to fall on the cement concrete road and that the force which he was actually using was likely to result in fatal injuries to the deceased. Therefore, though the accused did not intend to cause the death of the deceased and did not intend to cause him injuries sufficient in the ordinary course of nature to cause his death and did not intend to cause him injuries which were likely to cause death, at any rate, he must be posted with the knowledge that death was likely to result in the circumstances in which the injuries were caused by him to the deceased."

We are unable to agree with High Court that the accused must be posted with the knowledge that death was likely to result in the circumstances the injuries were caused by him to the deceased. It is very rarely that if a man is pushed and he falls on the road the occipital bone gets fractured. Here it is perhaps due to the drunken condition of the deceased that while falling he could not avoid his skull falling on the road At any rate, in our opinion it is difficult to impute knowledge to the accused that death was likely to result by the push he is alleged to have given.

7. If he is not guilty under Section 304, part II, he cannot be convicted under Section 325, because no grievous injury has been inflicted by the accused. There is no evidence to show that injury no. (iii) in column 19 was grievous.

8. The learned counsel for the appellant also tried to show that the accused was justified in pushing him and giving him blows. We are unable to agree with him on this matter. The accused could very well have gone away and ignored the deceased who was obviously not behaving normally.

9. In our view the accused is guilty under Section 323, I. P. C. In the result the appeal is partly allowed the conviction entered and sentence given by the High Court altered and the accused convicted under Section 323, I. P. C., instead of Section 304 part II. We understand that he was

already undergone imprisonment for about 4 1/2 months. We do not think it is necessary that he should be sent back to jail. Accordingly we award him sentence already undergone. The bail bond executed by him shall stand cancelled."

As held by the Hon'ble Supreme Court in the above judgment, as we have already concluded that in the instant case the death was not caused by the accused, he could be punished only for an offence under Section 323 I.P.C for having caused a hurt on the head of the deceased.

10. Now turning to the quantum of punishment, in our considered view, the maximum punishment provided under Section 323 I.P.C. is imprisonment for one year or fine or both. The learned counsel for the appellant submitted that the accused was in jail for about two months both before and after the conviction and that may be treated as sufficient punishment. He further submitted that the accused is prepared to pay compensation to the dependents of the deceased. Having regard to these submissions and also the fact that the occurrence had taken place on the spur of moment without any pre-meditation, we are of the view that the period of sentence already undergone by the accused shall be treated as sufficient punishment besides the accused shall be liable to pay a sum of Rs.50,000/- as compensation to the dependents of the deceased.

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

(i) The conviction and sentence imposed on the appellant under Section 302 I.P.C. is set aside and instead he is convicted under Section 323 I.P.C. and the period of sentence already undergone by him is treated as sufficient punishment for the same besides, the accused shall pay a sum of Rs.50,000/- (Rupees fifty thousand only) as compensation under Section 357 of Cr.P.C. to the dependents of the deceased. The said amount shall be deposited by the accused to the trial Court, within a period of three months from today and thereafter, the trial Court shall disburse the amount to the dependents of the deceased in proportion after holding summary enquiry to ascertain as to who are all the dependents.

(ii) The fine amount, if any paid, shall be adjusted towards the compensation amount.

(iii) The bail bond, if any executed, by the appellant / accused, shall stand discharged.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Judicial Magistrate
Connoor, The Nilgiris.

2.do thro'The Chief Judicial magistrate,
Nilgiris.

3.The District Sessions Judge,
Udhagamandalam, The Nilgiris.

4.The Superintendent,
Central Prison, Coimbatore.

5.The Inspector of Police,
B1, Town Central Police Station,
Uthagamandalam, The Nilgiris.

6.The Public Prosecutor,
Madras High Court.

7.The District Collector,
The Nilgiris.

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

+1 cc to Mr.T.Shanmugam, advocate,sr.44090.

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