

Bail Slip

That the Appellant/A1 Viz Periyasamy, S/o Kannan was directed to be released on Bail dated 07.03.2016 in Crl.MP.No.470 of 2016 in Crl.A.44/2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.08.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.44/2016

Periyasamy .. Appellant/A1
Vs

State by
The Inspector of Police,
Keezhkuppam Police Station,
Villupuram District. .. Respondent/Complainant
(Crime No.50/2013)

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Sessions Judge, Mahalir Neethimandram, Fast Track Mahalir Court, Villupuram, made in S.C.No.37 of 2014, dated 11.06.2015.

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.E.Raja,
Addl. Public Prosecutor

JUDGMENT

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

The appellant is the 1st accused in S.C.No.37 of 2014 on the file of the learned Sessions Judge, Fast Track Mahalir Court, Villupuram. The 2nd accused was one Mrs.Pappa. The 1st accused stood charged for offence under Section 302 of IPC and the 2nd accused stood charged for offences under Sections 294-b and 302 read with 109 of IPC. By judgment dated 11.06.2015, the trial court acquitted the

2nd accused. But convicted the 1st accused alone under Section 302 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for one year. Challenging the said conviction and sentence, the appellant/1st accused is before this Court with this Criminal Appeal.

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

(a) The deceased in this case was one Mrs.Karupayee. She was a resident of Karuthalangurichi Village in Villupuram District. P.W.1 Mrs.Selvi is her daughter. The deceased has got two sons. One of the sons was Mr.Pachaimuthu. The accused were also residing in the same village. The 1st accused has got a sister by name Elavarasi. Elavarasi had fallen in love with Pachaimuthu. After some time, it appears that there was some misunderstanding between Pachaimuthu and Elavarasi. It is stated that Elavarasi had told Pachaimuthu that she did not like him. Pachaimuthu went to the house of Elavarasi and questioned her. Then, he told her that he would not, thereafter, follow her and in the event of following her, she would be at liberty to beat him with chappal. This incident caused mental agony to Elavarasi. Elavarasi, therefore, consumed poison. She was taken to a hospital and admitted as inpatient. The 1st accused heard about the same. Probably, he was under the impression that Elavarasi, his sister, had consumed poison because of Pachaimuthu.

(b) Thereafter, on 01.03.2013, around 4.00 p.m., the 1st accused in the company of the 2nd accused had gone to the house of Pachaimuthu. Pachaimuthu was not available. His mother Karupayee was sitting in front of the house, doing some work. P.W.1 was also there. On reaching the house of the deceased, the 1st accused asked as to where her son Pachaimuthu had gone. The deceased answered that Pachaimuthu had gone out. Immediately, the 1st accused, who was hiding a stick on his back, attacked the deceased with the said stick on her head once. Then, the accused 1 and 2 ran away from the scene of occurrence. P.W.1 raised alarm. The neighbours also arrived at the scene of occurrence. They took the deceased to a private hospital at Nainarpalayam. Having examined her, the doctor advised them to take her to Kallakurichi Government Hospital. Accordingly, she was taken to Government Hospital, Kallakurichi. But the deceased died in the hospital.

Thereafter, P.W.1 went to Keezhkuppam Police Station and made a complaint on 01.03.2013 at 08.00 p.m.

(c) P.W.18, the then Sub-Inspector of Police, on receipt of the said complaint, registered a case in Crime No.50 of 2013 under Sections 294-b and 302 of IPC against both the accused. Ex.P.10 is the First Information Report. He forwarded both the documents to court which were received by the learned Judicial Magistrate at 11.30 p.m. on 01.03.2013.

(d) The case was taken up for investigation by P.W.19. He went to the place of occurrence, prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.8 and another witness. Then, he recovered blood stained earth and sample earth from the place of occurrence. On 02.03.2013 at 06.00 a.m., he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(e) P.W.15 Dr.Ravikumar conducted autopsy on the body of the deceased on 02.03.2013 at 01.00 p.m. He found the following injuries:

''External Injuries:

1. 10 x 2 x 1 c.m. laceration (horizontal) over the occipital scalp region, exposing the cracked occipital bones.
2. 2 x 5 c.m. laceration back of left elbow.
3. Abnormal mobility with crepitus proximal forearm.

Internal Examination :

Ribs : Intact.

Lungs : Right 450 gms. Left : 400 gms. C/s. pale.

Liver : C/s pale, 1200 gms.

Heart : Chambers empty. C/s.pale.

Kidneys : Each 75 gms. C/s.pale.

Spleen : 90 gms. C/s. pale.

Stomach : Mucosa pale, undigested food particles 10-15 gms.

Intestine : Distended with gas. Bladder : Empty.

Skull : Membrane intact. Cracked left parieto occipital suture. Left lobe congested. Fluid blood 50 ml. dark red in colour.''

Ex.P.7 is the Postmortem Certificate. He opined that the death of the deceased was due to shock and hemorrhage due to the injuries found on the body of the deceased.

(f) P.W.19 during the course of investigation, arrested the accused in the presence of P.W.13 and another witness on 02.03.2013 at 10.30 a.m. On such arrest, the 1st accused gave a voluntary confession in which he disclosed the place where he had hidden a Stick. In pursuance of the same, he took the police and the witnesses to the place of hide out and produced the Stick. P.W.19 recovered the same under a Mahazar. On returning to the police station, he forwarded the accused to court and handed over the material object also to court. He recovered the clothes from the body of the deceased and forwarded the same also to court. Thereafter, on completing the investigation, P.W.20 laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed a lone charge as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 20 witnesses were examined and 25 documents and 6 material objects were also marked.

4. Out of the said witnesses, P.W.1 is the daughter of the deceased. She has spoken about the entire occurrence as an eye-witness. P.W.2 is a neighbour of the deceased. She has also spoken about the entire occurrence as an eye-witness. P.W.3 has stated that she saw the 1st accused attacking the deceased with a stick. P.W.4 is the son of the deceased. He has stated that he heard about the occurrence and rushed to his house and then, he took the deceased to the hospital. P.W.5 has stated that she witnessed the occurrence. P.W.6 is a neighbour. He has stated that on hearing the commotion, when he went to the house, he found the deceased lying with injuries. P.W.7 has stated that the 2nd accused scolded the 1st accused as to why he attacked the deceased instead of attacking Patchaimuthu. P.W.8 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.9 has spoken about the preparation of the Observation Mahazar and the Rough Sketch at the place of occurrence. P.W.10 has spoken only on hearsay information about the occurrence. P.W.11 has also spoken about the preparation of the Observation Mahazar and the Rough Sketch and the recovery of blood stained earth and sample earth at the place of occurrence. P.W.12 has stated that he heard about the occurrence.

5. P.W.13 the Village Administrative Officer has spoken about the arrest of both the accused on 02.03.2013 at 10.30 p.m., the confession of the 1st accused and the

consequential recovery of the stick out of his disclosure statement. P.W.14, the Village Assistant has also spoken about the same facts. P.W.15 Doctor has spoken about the postmortem conducted and his final opinion regarding cause of death. P.W.16 Head Constable has stated that he handed over the dead body of the deceased to doctor for postmortem. P.W.17 has stated that he handed over the hyoid bone of the deceased as handed over to him by the doctor to the Forensic Lab for examination. P.W.18 has spoken about the registration of the case on the complaint made by P.W.1. P.Ws.19 and 20 have spoken about the investigation done and the final report filed.

6. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not choose to examine any witness nor to mark any document on their side. Having considered all the above, the Trial Court acquitted the 2nd accused, however, convicted the 1st accused as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant is before this Court.

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

8. As we have already pointed out, P.Ws.1, 2, 3 and 5 are the eye-witnesses to the occurrence. They have vividly stated that the 1st accused along with the 2nd accused came to the house of the deceased where the 1st accused enquired the deceased as to where P.W.4 had gone. When she replied that P.W.4 had gone out, he immediately attacked her with the stick which he was already holding and hiding. Though these witnesses have been cross-examined at length, we do not find any material to doubt their credibility. There was no delay in preferring the complaint and also forwarding the same to the court. The medical evidence also duly corroborates these eye-witness account. From these evidences, in our considered view, the prosecution has clearly established that it was this accused who caused the injury on the body of the deceased. According to the medical opinion, the death of the deceased was due to the head injury. Thus, the prosecution has clearly established that the death of the deceased was due to homicidal violence.

9. Now the question is as to what was the offence that the appellant/1st accused had committed by the said act.

10. The learned Counsel for the appellant would submit that the offence committed by the 1st accused would squarely fall within the ambit of Section 325 of IPC. We do not find any force at all in this argument.

11. In our considered view, the act of the appellant would squarely fall within the 4th limb of Section 300 of IPC. It cannot be said that the accused would not have had the knowledge that attacking the deceased with stick on her head would be imminently dangerous to the life of the deceased. At the same time, the occurrence was proceeded by a quarrel. There was no motive between the 1st accused and the deceased. The 1st accused had come to the place of occurrence only to question P.W.4. Since he was not available, he enquired the deceased where P.W.4 had gone. Before that, because of P.W.4's quarrel with his sister, the sister of the accused had consumed poison. This incident would have made the 1st accused to lose his mental balance. He had come to the house of the deceased only to attack P.W.4. He would have never intended to cause any injury on the deceased. It was because of the utterance made by the deceased, the 1st accused, who had already lost his mental balance, had been further provoked and out of the said provocation, he has caused a single blow on the head of the deceased. This act of the 1st accused would squarely fall within the first exception to Section 300 of IPC. Therefore, he is liable to be punished under Section 304-II of IPC.

12. Now turning to the quantum of punishment, at the time of occurrence, the 1st accused was hardly 19 years old. There are lot of chances for his reformation. He had no bad antecedents. The occurrence was not a pre-meditated one. The accused had lost his mental balance because his sister had consumed poison in an attempt to commit suicide on account of the failure of love affair with P.W.4. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing the accused to undergo rigorous imprisonment for 4 years and to pay a fine of Rs.1,000/- would meet the ends of justice.

13. In the result, the appeal is partly allowed. The conviction and sentence imposed on the appellant for the offence under Section 302 of IPC are set aside and instead, he is convicted under Section 304-II of IPC and sentenced to undergo rigorous imprisonment for 4 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 4 weeks. It is directed that the period of sentence already undergone by the appellant/1st accused shall be set off under Section 428 of Cr.P.C. The trial court is directed to secure the 1st accused/appellant to undergo the remaining period of sentence.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate,
Kallakurichi.
- 2.The Chief Judicial Magistrate,
Villupuram.
- 3.The Sessions Judge,
Mahalir Neethimandram,
Fast Track Mahalir Court,
Villupuram District.
- 4.The Superintendent,
Central Prison, Salem.
- 5.The Collector,
Villupuram.
- 6.The Director General of Police,
Chennai.

7.The Inspector of Police,
Keezhkuppam Police Station,
Villupuram District.

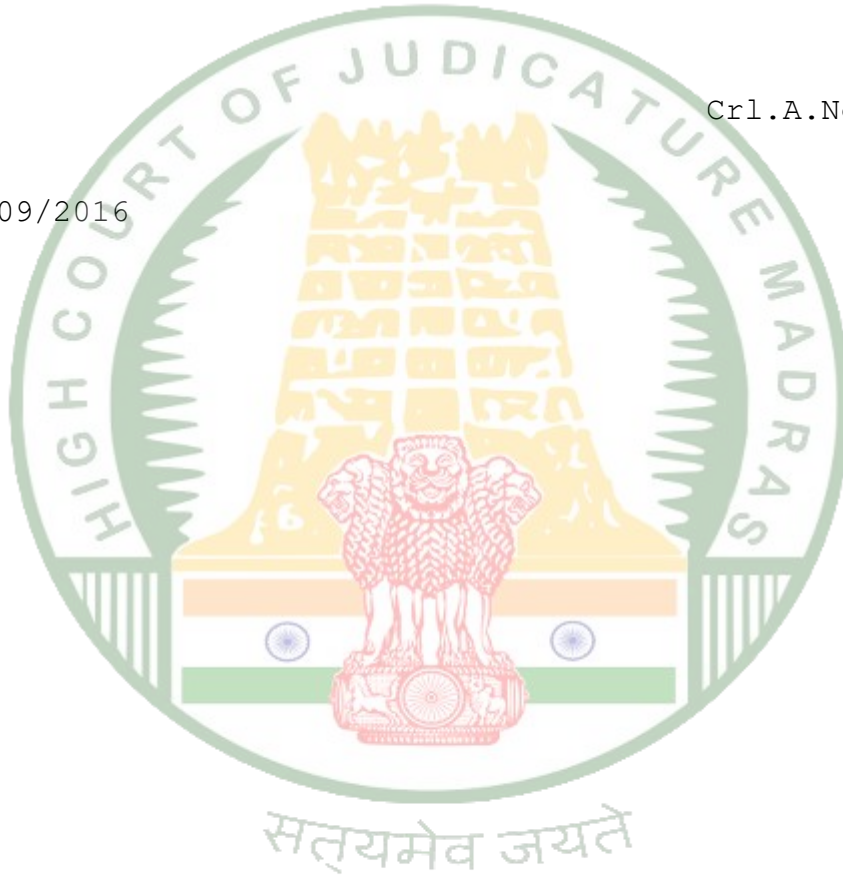
8.The Public Prosecutor,
High Court, Chennai.

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

+1cc to Mr.R.Sankarasubbu, Advocate Sr.44239

Cr1.A.No.44/2016

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srg 12/09/2016



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