

Bail Slip

The Appellant/Accused namely K.Siva was released on bail as per order of this court dated 22.03.2013 made in CrI.M.P.1 of 2013 in CrI.A.169 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 09.03.2016

CORAM:

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

CrI.A.No.189 of 2013

K.Siva ... Appellant

vs.

State, rep.by
The Inspector of Police L & O
J-6, Thiruvanmiyur Police Station,
Chennai ... Respondent

Criminal appeal preferred under Section 374(2)
Cr.P.C., against the judgement dated 18.02.2013 passed by the
Sessions Judge, IV Additional Court, Chennai, S.C.No.19 of
2011.

For Appellant : Mr.A.Veeramarthini

For Respondent : Mr.M.Maharaja, Addl.P.P.

JUDGMENT

(Judgement of the Court was delivered by S.Nagamuthu,J.)

The appellant is the sole accused in Sessions Case No.19 of 2011, on the file of the IV Additional Sessions Judge, Chennai. He stood charged for the offence under Section 302 of the Indian Penal Code. By judgement dated 18.02.2013, the trial Court convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5000/-, in default, to undergo simple imprisonment for six 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:

(a) The deceased in this case was one Mr.Kandhara. He

was a resident of West Avenue, Kamaraj Nagar, at Thiruvannamiyur. On 14.1.2010, the deceased was sitting casually on the platform near Hyundai Car Show Room, which was under construction. The accused was also a resident of that area. He came to that place by chance. On seeing the accused, the deceased requested him to give a 'beedi'. The accused refused to give 'beedi' and pushed the deceased. The deceased, in turn, pushed the accused. The accused lost his balance and fell down. Provoked by the said act of the deceased, it is alleged that the accused took out a knife and stabbed the deceased on the left side of his chest and on the hip and also near the left eye. The occurrence was witnessed by P.Ws.1 to 4, who are all residents of that locality. P.W.1 took the deceased in a tricycle to a nearby private hospital. The Doctor, after having examined the deceased, wanted P.W.1 to rush him to the Government Hospital. Therefore, P.W.1 took the deceased in an auto and brought him to the Royapettah Government Hospital. The Doctor, who examined him, declared him dead. The body was sent to the mortuary.

(b) Thereafter, immediately P.W.1 proceeded to Thiruvannamiyur Police station and made a complaint at 10.30 p.m. on 14.1.2010. P.W.7, the then Sub Inspector of Police registered a case on the said complaint, in Crime No.36 of 2010, under Section 302 of the Indian Penal Code. Ex.P1 is the complaint and Ex.P6 is the First Information Report. He forwarded both the documents to the Court, which were received by the jurisdictional Magistrate at 10.00 a.m. on 15.1.2010. P.W.10 took up the case for investigation. He proceeded to the place of occurrence, prepared an observation mahazar and a rough sketch at 11.15 p.m., in the presence of P.W.5 and another witness. He also recovered the blood stained earth and sample earth from the place of occurrence. On reaching the hospital, he conducted inquest on the body of the deceased. He also examined P.Ws.1 to 4 and few more witnesses. Then, he forwarded the dead body for postmortem. P.W.11 conducted autopsy on the body of the deceased on 15.1.2010 at 12.40 p.m.. He found the following injuries.

"1) Oblique cut injury 5X1X0.5 c.m over outer aspect of left orbit. Margins are clean angles are acute.

2) Cut injury 2.5 X 1X1 cm over left side of lower jaw 0.5 to 1.5 cm away from lip.

3) Cut injury 2X1X0.5 cm over left side of abdomen 3 cms away from mid line at the level 3 cms below umbilicus.

4) Oblique stab injury 2X1 cm X Cavity deep over outer aspect of left side of chest along Mid axillary line 17 cms away from the nipple directed obliquely down wards and

inwards.

All the above injury are fresh and ante mortem in nature and show bruising of the margins."

Ex.P11 is the postmortem certificate. The Doctor opined that the said injuries could have been caused by a weapon like knife and he further opined that the death was due to shock and haemorrhage due to the stab injuries.

(c) During the course of investigation, P.W.10 arrested the accused on 15.1.2010 at 1.00 p.m. near Velankanni Madha Koil at Thiruvannamiyur, in the presence of P.W.6 and another witness. On such arrest, he made a disclosure statement about the place where he had hidden the knife. In pursuance of the same, he took P.W.10 and P.W.6 to the place of hide-out and produced M.O.1, the knife. P.W.10 recovered the same under a mahazar. Then, P.W.10 recovered the blood stained half sleeve shirt worn by the accused at that time, under a mahazar. On returning to the police station, he forwarded the accused to the Court for judicial remand and handed over the material objects also to the Court. Then, the investigation was taken up by P.W.12, the successor of P.W.10. At his request, the material objects were sent for chemical examination by the Court. The report revealed that there were human blood on the material objects, except the knife. On completing the investigation, he laid a charge-sheet.

3. Based on the above materials, the trial Court framed a lone charge against the accused under Section 302 of the Indian Penal Code. The accused denied the same. In order to prove the case, on the side of the prosecution as many as 12 witnesses were examined, 11 documents and 3 materials objects were marked. Out of the said witnesses, P.Ws.1 to 4 are the eyewitnesses to the occurrence. They have spoken about the entire occurrence in a vivid fashion. P.W.1 has further stated about the complaint made by him to the police. P.W.5 has spoken about the observation mahazar prepared, the rough sketch and the recovery of blood stained earth and sample earth, from the place of occurrence. P.W.6 has spoken about the arrest of the accused, the disclosure statement made by him and the consequential recovery of M.O.1, the knife, at his instance. P.W.7 has spoken about the registration of the case on the complaint of P.W.1. P.W.8 has spoken about the chemical analysis conducted by him. He has stated that there was no blood stain on the knife, but there were blood stains on the other material objects. P.W.9 was the doctor, who examined the deceased at 8.45 p.m., at the Royapettah Government Hospital, on being produced by P.W.1. He has stated that on examination, he found the deceased dead and therefore, he forwarded the body to the mortuary. P.W.11 has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.Ws.10 and 12 have

spoken about the investigation done and the final report filed.

4. When the above incriminating materials were put to the accused, he denied the same as false. However, he did not choose to examine any one on his side nor mark any document. His defence was a total denial.

5. Having considered all the above, the trial Court convicted the accused under Section 302 of the Indian Penal Code, as detailed in first paragraph of this judgement and that is how the accused is before this Court.

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

7. The learned counsel for the appellant would submit that P.Ws.1 to 4 would not have been present at the scene of occurrence at all. She would submit that their presence at the place of occurrence by chance cannot be believed. But, we do not find any force at all in the said argument. It has been narrated by P.Ws.1 to 4 that the deceased was sitting in a casual manner on the platform, near the Hyundai Car Show Room, which was under construction. P.Ws.1 to 4 are the residents of that area. They were also there at the place of occurrence at that time. There was nothing unnatural on their part in being present at the scene of occurrence, at the crucial time. Therefore, we believe the presence of P.Ws.1 to 4 at the place of occurrence. Further, in their evidence, they have vividly narrated the entire occurrence, which inspires the confidence of this Court. Though these witnesses have been cross-examined at length, nothing has been elicited from them, so as to disbelieve their presence and their veracity. From the evidences of P.Ws.1 to 4, the prosecution, in our considered view, has clearly established that it was this accused, who caused the death of the deceased by stabbing him thrice. The evidence of P.W.11, the Doctor, who conducted autopsy, would go to prove that the death was due to the injuries caused and as we have already pointed out, the prosecution has proved that the injuries were caused only by the accused.

8. Having come to the above conclusion, now we have to examine as to what was the offence that the accused had committed by the above act? As we have already narrated, it is in the evidence of P.Ws.1 to 4 that the deceased, by chance, on seeing the accused, wanted only 'beedi' from the accused. The accused pushed him, thereby declining to give 'beedi'. The deceased in turn pushed the accused down and the accused lost balance and fell down. This resulted in a quarrel. In that fight, the accused had lost his balance. In

the heat of passion, he had taken out the knife and stabbed the deceased. This act of the accused would squarely fall within the fourth exception to Section 300 of the Indian Penal Code. Though the act of the accused would squarely fall within the third limb of Section 300 of the Indian Penal Code, since it falls under the fourth exception to Section 300 of the Indian Penal Code, the appellant is liable to be punished only under Section 304(1) of the Indian Penal Code and not under Section 302 of the Indian Penal Code.

9. Now turning to the quantum of punishment, the accused is a poor man. He has got a family to take care of. The occurrence was not pre-meditated. It was out of a sudden quarrel, in the heat of passion, the accused had caused the injuries on the deceased. He has got no bad antecedents. After the occurrence also, he has not done any deviation from law. Having regard to all the above mitigating as well as aggravating circumstances, we are of the view that convicting the appellant under Section 304(1) of the Indian Penal Code and sentencing him to undergo Rigorous Imprisonment for seven years, and to pay a fine of Rs.1000/-, in default, to undergo Rigorous Imprisonment for four weeks, would meet the ends of justice.

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

(i) The conviction and sentence imposed on the appellant under Section 302 of the Indian Penal Code is set aside and instead he is convicted under section 304 (1) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1000/-, in default, to undergo Rigorous Imprisonment for four weeks.

(iii) It is directed that the period of sentence already undergone by the accused shall be given set off under Section 428 of the Cr.P.C.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Metropolitan Magistrate,
No.IX, Saidapet, Chennai.

2. The Chief Metropolitan Magistrate,
Egmore, Chennai (for information)

3. The Sessions Judge, IV Additional Court, Chennai

4. The Superintendent, Central Prison,
Puzhal, Chennai.

5. The District Collector,
Chennai.

6. The Director General of Police,
Mylapore, Madras.

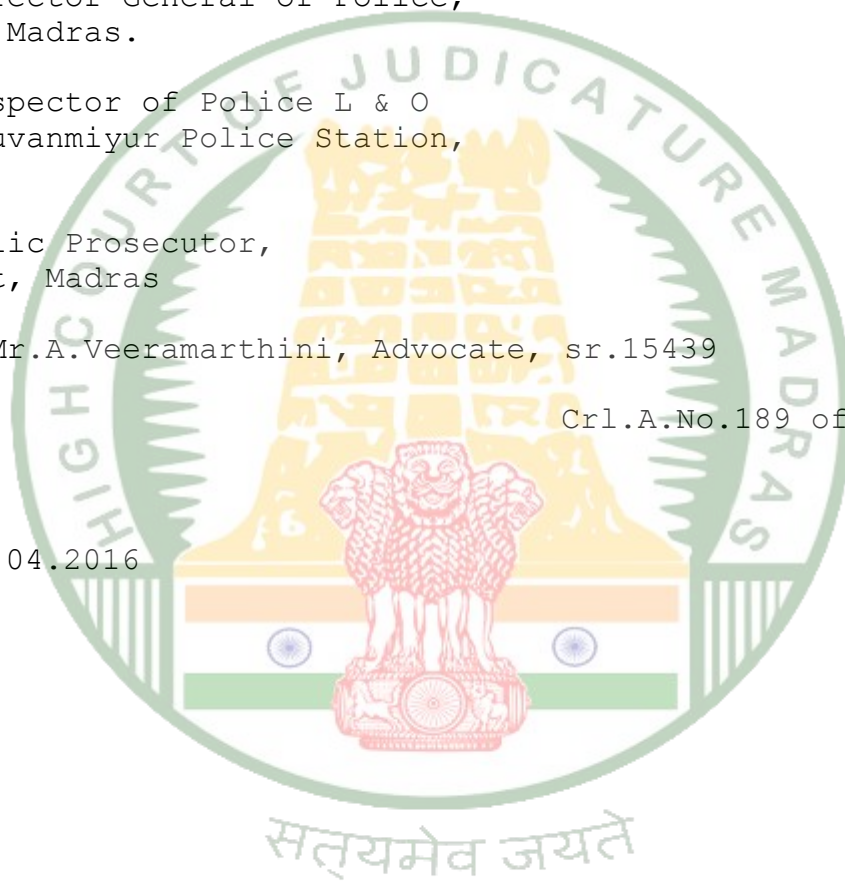
7. The Inspector of Police L & O
J-6, Thiruvannamiyur Police Station,
Chennai

8. The Public Prosecutor,
High Court, Madras

+1 cc to Mr.A.Veeramarthini, Advocate, sr.15439

Cr1.A.No.189 of 2013

vsn co
kra 13.04.2016



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