

Bail Slip

The appellant herein namely Rajendra Kohora, accused in S.C.No.169/08 on the file of the Additional District and Sessions Judge, IV Fast Track Court, Ponneri was directed to be released on bail as per order of this Court dated 22.11.2013 made in CRL.MO.1 of 2013 in CRL.A.600 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.07.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.A.No.600 of 2013

Rajendra Kohora ...Appellant/Accused

Vs

State represented by
Inspector of Police
Sathankadu Police Station
Chennai.

...Respondent/Complainant

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, (Fast Track Court No.IV), Ponneri, in S.C.No.169 of 2008 on 23.12.2010.

For Appellant : Mr.Ilayaraja Kandasamy
for

M/s.A.Nirmal Kumar

For Respondent : Mr.M.Maharaja,
Additional Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by V.BHARATHIDASAN, J.,]

The sole accused in S.C.No.169 of 2008 on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.IV), Ponneri, is the appellant herein. He stood charged for offences under Sections 341, 307 and 302 IPC. The trial Court convicted the accused under Section 302 IPC and sentenced him to undergo imprisonment for life and acquitted him under Section 341 IPC. The trial Court further observed that since the accused was convicted and sentenced under Section 302 IPC, no separate sentence was awarded under Section 307 IPC. Challenging the conviction and sentence, the appellant is before this Court with this appeal.

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

The deceased in this case, one Prabundhkumar Kohero, was a native of Orissa State and he was working as a contract labourer in Chennai. The accused and PW.1 were also from Orissa State. They were also working along with the deceased under the same Contractor. The deceased was doing some black magic and there was a dispute between the accused and the deceased over the same. On 29.09.2007, at about 9.30 a.m, the deceased, accused and PW.1 were working in a site. At that time, the accused attacked the deceased with an iron rod over his head. When PW.1 questioned the accused, he also attacked him on his head with the same iron rod and ran away. Immediately, PW.1 gave a complaint (Ex.P1) before the respondent police. PW.1 was also taken to hospital.

(ii) PW.16, Doctor, working in Stanley Government Hospital admitted PW.1 in the hospital and gave treatment and issued Accident Register (Ex.P8).

(iii) PW.18, Inspector of police, on receipt of the complaint from PW.1, registered a case in Crime No.540 of 2007 for offences under Sections 341, 307 and 302 IPC and prepared the First Information Report (Ex.P10) and then, proceeded to the scene of occurrence and prepared Observation Mahazar (Ex.P11) and also rough sketch (Ex.P12) and recovered blood stained soil (M.O.4) and sample soil (M.O.5) and recorded the statements of co-workers, worked along with the accused and the deceased, and arrested the accused at 3 p.m, and on such arrest, the accused voluntarily gave a confession and based on the disclosure statement, he recovered a blood stained iron rod (M.O.1) and sent him to judicial custody. He also conducted inquest on the dead body in the presence of panchayatdars and prepared an inquest report Ex.P14 and then, he sent the dead body for postmortem.

(iv) PW.13, Doctor working in Stanley Medical College Hospital, Chennai, conducted postmortem (autopsy) on the dead body and issued postmortem certificate (Ex.P4) and he was of the opinion that the deceased appear to have died of head injuries.

(v) PW.18 examined some more witnesses and recorded their statements. He also examined the Doctor, who conducted postmortem and recorded his statement. He also examined the Doctor who gave treatment to PW.1. After completing investigation, he filed charge sheet.

3. Based on the above materials, the trial Court framed charges as mentioned in paragraph-1 of the judgment. The

accused denied the same. In order to prove the same, the prosecution examined 18 witnesses and exhibited 14 documents and marked 6 material objects.

4. Out of the witnesses examined, PW.1 is an injured eye witness. He is from Orissa. He was working along with the deceased and accused, as a contract labourer. According to him, there was a quarrel between the accused and the deceased over the black magic done by the deceased and due to the same, the accused attacked the deceased with an iron rod on his head and when he questioned him, the accused attacked him also and ran away. PW.2 is working as an Operator in Metro Water. He is only a hearsay witness. PW.3 to PW.6 have turned hostile. PW.7 is a witness to recovery of M.O.1, iron rod. PW.8 has turned hostile. PW.9 is also a co-worker and he is also a hearsay witness. He has stated that he along with PW.1, went to the police station to give Ex.P1 complaint. PW.10 is the Site Engineer, working in the occurrence site. According to him, after hearing the noise, he rushed to the scene of occurrence and found the deceased with head injuries and also found PW.1 with head injuries. He has further stated that he immediately caught hold the accused and handed over the accused to the respondent police. PW.11 is a hearsay witness. PW.12 has turned hostile. PW.13 is the Doctor, who conducted postmortem (autopsy) on the dead body and issued Ex.P4 postmortem certificate. PW.14 was the then Head Clerk of the Judicial Magistrate Court and sent the material objects for examination. PW.15, Head Constable, has identified the body for postmortem and received the shirt (M.O.2) and pant (M.O.3) of the deceased after postmortem (autopsy) and handed over the same to the Inspector. PW.16 is the Doctor who initially treated PW.1 and gave Accident Register, Ex.P8. PW.17 is the Doctor who had subsequently gave treatment to PW.1. PW.18, Investigating Officer, has stated that he conducted investigation, recovered material objects, arrested the accused and filed the charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., the accused denied the same. However, he did not examine any witnesses nor marked any documents.

6. Considering the above materials, the trial Court convicted the accused and sentenced him as mentioned in paragraph-1 of the judgment. As against the conviction and sentence, the present appeal has been filed by the accused before this Court.

7. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the respondent and perused the records carefully.

8. PW.1 is an injured eye witness in this case. PW.1, the accused and the deceased were all from Orissa State and were working as contract labourers in Chennai. Evidence of PW.1 is that the deceased was intelligent in black magic and therefore the accused was under the impression that due to the same, he was suffering; hence, there was a quarrel between the accused and the deceased; on the date of occurrence, all of them were working in the site; at that time, due to quarrel, the accused attacked the deceased with an iron rod; when he questioned him, the accused attacked him also on his head and caused injury; due to the injury, the deceased died instantaneously; after giving complaint (Ex.P1) to the respondent police, he was taken to the hospital, where he was admitted and treated. PW.9, another co-worker from Orissa, has seen the accused and PW.1, with head injury and he, along with other employees, had chased the accused and caught him hold and produced him before the police. PW.10 is the site engineer. In his evidence, he has stated that after hearing the noise, he came to the scene and saw both the deceased and PW.1 with injuries; on seeing him, the accused was trying to run away and he, along with other co-workers, chased and caught him and handed over him to the police. PW.16 is the Doctor who admitted PW.1 and gave treatment to him. It is his evidence that he found injuries on the head of PW.1. PW.13, postmortem Doctor has opined that the deceased was died due to head injuries. PW.1, being an injured witness and also a co-worker, his presence in the scene of occurrence is natural. Apart from that, PW.9 and PW.10 have stated that they saw the accused immediately after the occurrence and they chased and caught him and handed over to the police. The medical evidence also corroborates the case of the prosecution. In the above circumstances, it is crystal clear that it is this accused who attacked the deceased with an iron rod on his head and caused his death. Hence, we are of the considered view that the prosecution has clearly established that this accused only caused the death of the deceased.

9. The next question arises is what was the offence that the accused had committed by the said act.

10. According to PW.1, there was a quarrel between the accused and the deceased over exercising black magic. On the date of occurrence, when both the accused and the deceased were working, again there arose a quarrel and during the quarrel, out of sudden provocation, the accused having lost his mental balance, has given a single blow to the deceased by the weapon

available in the scene of occurrence, which resulted in the death of the deceased. Even though the accused had no intention to cause the death of the deceased, but definitely he had an intention to cause such bodily injury which is sufficient in the ordinary course of nature to cause his death. Hence, the act of the accused would fall under the 3rd limb of Section 300 IPC and also the 1st exception to Section 300 IPC. Hence, he is liable to be punished under Section 304 (1) IPC.

11. Now turning to the quantum of sentence. The accused is a poor young man, hailing from Orissa, and it is not a premeditated murder and out of sudden provocation, the accused lost his mental balance and attacked the deceased by giving a single blow with an iron rod available in the scene of occurrence. He has no bad antecedents. Taking into consideration the mitigating and aggravating circumstances, sentencing him to undergo seven years rigorous imprisonment would be sufficient and it would meet the ends of justice.

12. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant/accused under Section 302 IPC are set aside and instead, he is convicted under Section 304 (1) IPC and sentenced to undergo rigorous imprisonment for seven years. The period of sentence already undergone by the appellant/accused shall be given set off under Section 428 Cr.P.C. The trial Court is directed to secure the accused and commit him to jail to undergo the remaining period of the sentence, if he is on bail.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
(Fast Track Court No.IV), Ponneri.
2. The Metropolitan Magistrate No.V,
Egmore, Chennai-8.

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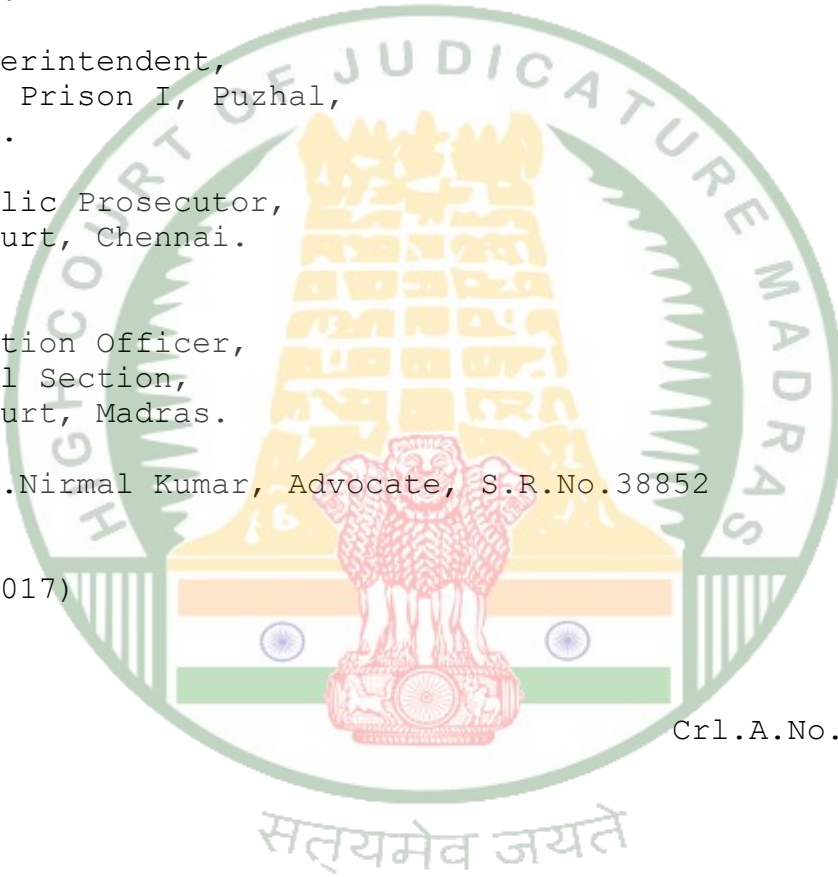
3. The Chief Metropolitan Magistrate,
Egmore, Chennai.
4. The district Collector,
Tiruvallur District.
5. The Director General of Police,
Mylapore, Chennai-4.
6. The Inspector of Police
Sathankadu Police Station
Chennai.
7. The Superintendent,
Central Prison I, Puzhal,
Chennai.
8. The Public Prosecutor,
High Court, Chennai.

Copy to:

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

+1cc to Mr.Nirmal Kumar, Advocate, S.R.No.38852

KGK(CO)
RS(27/02/2017)



Judgment in
Crl.A.No.600 of 2013

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