

Bail Slip

That the Appellant/Accused namely K.Raja S/O.Karumalai, was directed to be released on Bail as per the order of this court dated 25/4/2013 & made in MP.1/2013 in CrI A 217/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

Criminal Appeal No. 217 of 2013

K. Raja

..Appellant

Vs.

State Inspector of Police,
Edappadi Police Station,
Salem District,
Cr.No. 421 of 2008

..Respondent

Prayer: Criminal Appeal as against the judgment dated 27.05.2009 passed in S.C. No. 22 of 2009 by the learned Additional Sessions Judge, (FTC No.1), Salem and to set aside the Judgment and conviction dated 27.5.2009 in S.C No.22/09 by the learned Additional District Judge, Fast Track Court-I, Salem.

For Appellant :: Mr.A.D. Jagadish Chandra

For Respondent :: Mr.M. Maharaja
Addl. 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. 22 of 2009 on the file of the learned Additional Sessions Judge, (FTC No.1), Salem. He stood charged for the offence under Section 302 I.P.C. By judgment dated 27.05.2009, the Trial Court convicted the appellant under Section 302 I.P.C. and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for 10 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:

(i) The deceased, in this case, was one Mrs.Palaniammal. The deceased was none else than the mother-in-law of the sister of the accused. The accused had borrowed a sum of Rs.35,000/- from the deceased and did not repay the same. Since the accused was evasive, there used to be frequent quarrels between them. This is said to be the motive for the accused.

(ii) It is alleged further that on 12.06.2008, at about 11a.m., the deceased was sitting in front of her house along with P.W.1 and other family members. At that time, the accused came there. On seeing him, the deceased demanded the accused to repay the sum of Rs.35,000/-, which was borrowed by him earlier. This infuriated the accused. He questioned the deceased as to why she was always pestering him to repay the loan amount and left for his house stating that he would finish her off. Thereafter, the deceased went to her neighbour's house (P.W.3) and was telling her about the conduct of the accused, when she asked for repayment of the borrowed amount. At that time, the accused, who came there, got enraged and questioned the propriety of the deceased in informing everyone about his failure to repay the loan amount and suddenly, attacked the deceased with a "soori" knife on her forehead, nose, left cheek and jaw. The occurrence was witnessed by P.W.s 1 to 3. The accused ran away from the scene of occurrence. Palaniammal died instantaneously. Immediately, P.W.1 went to Edappadi Police Station and gave a complaint at 2p.m. on 12.06.2008. Ex-P1 is the complaint.

(iii) P.W.12, the then Sub Inspector of Police, at Edappadi Police Station, on receipt of the said complaint, registered a case in Crime No. 421 of 2008 for an offence under Section 302 I.P.C. Ex-P13 is the First Information Report. He forwarded Exs-P1 and P13 to Court, which were received by the learned Judicial Magistrate No.II, Sankari, at 3.20p.m. On 12.06.2008.

(iv) P.W.13, the then Inspector of Police, Edappadi Police Station, on receipt of the FIR, took up investigation in the case. He proceeded to the place of occurrence and prepared an Observation Mahazar (Ex-P2) and a rough sketch (Ex-P14) in the presence of P.W.6 and another. In the presence of Panchayatdhars and witnesses, he conducted inquest on the body of the deceased. Ex-P16 is the inquest report. He recovered bloodstained earth (M.O.1) and sample earth (M.O.2) from the place of occurrence under Ex-P3 mahazar, in the presence of P.W.6 and another. Then, he sent the dead body to the Government Hospital, Edappadi, Salem, for postmortem.

(v) P.W.10, the Civil Assistant Surgeon, attached to Government Hospital, Edappadi, Salem, conducted autopsy on the

body of the deceased at 10.45 a.m. on 13.06.2008. He found the following injuries:

"Ext. Injuries:

- (i) A contusion 3 x 3 cm over left side of forehead
- (ii) A stab injury 2 x 2 cm into bone deep above the chin
- (iii) A stab injury 5 x 5 cm into bone deep below the chin
- (iv) A lacerated injury 5 x 3 cm in front left ear above the left jaw
- (v) Lacerated injury 5 x 2 cm bone deep below the nose and above the lip, left side
- (vi) A contusion present over right and left chest

Opening of Thorax:

- (i) Right side ribs 1 to 8th ribs found broken
 - (ii) Left side ribs 6 to 8th ribs found broken
- Lungs : Right side 450 gm wt. Rupture of middle lobe of right side. Left : 400 gms C/S: congested
- Liver: 1400 gms rupture of right side lobe. C/S congested
- Spleen: 150 gms c/s congested
- Stomach: Partially digested food particles seen, 100 gms wt.
- Uterus: Atrophy
- Kidney each 120 gms c/s normal
- Bladder : Empty; Hyoid bone in tact
- Opening of skull: Bones NAD Membrane intact
- Brain: 1200 gms c/s pale."

Ex-P12 is the postmortem certificate. He gave opinion that the injuries found on the deceased would have been caused by a weapon like "soori" knife. He also gave opinion that death was due to shock and haemorrhage due to injuries to vital organs.

(vi) P.W.13, during the course of investigation, arrested the accused on 14.06.2008 at 10a.m., near Moolapalayam Bus Stop, on Edappadi-Kalvadagam Road, in the presence of P.W.7 and another witness. On such arrest, the accused gave a voluntary confession statement wherein he disclosed the place where he had hidden the "soori" knife. In pursuance of the same, he took the Police and the witnesses to the place of hideout and produced the "soori" knife (M.O.3) from a bush. Then, he sent the accused to judicial remand and forwarded the material objects to the Court. At his request, the material objects were sent for chemical examination. Exs-P8, P9 and P10 are the Chemical Analysis Reports. The reports revealed that there were human bloodstains on the material objects, which were recovered from the place of occurrence, from the body of the deceased and

also on M.O.3 "soori" knife. On completing the investigation, he laid charge sheet against the accused on 24.07.2008 under Section 302 I.P.C.

(vii) Based on the above materials, the Trial Court framed a lone charge under Section 302 I.P.C. against the accused. The accused denied the same as false.

(viii) In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined, 16 documents and 7 material objects were marked. Out of the said witnesses, P.W.s 1 to 3 are eye-witnesses, who narrated the entire occurrence, in a vivid fashion. P.W.1 has also spoken about the complaint given by him to the Police. P.W.4 has turned hostile and he has not supported the case of the prosecution, in any manner. P.W.5 has spoken only on hearsay information and her evidence is not helpful to the prosecution, in any manner. P.W.6 has spoken about the preparation of Observation Mahazar and rough sketch and recovery of material objects from the place of occurrence. P.W.7, Village Administrative Officer, Edappadi, has spoken about the arrest of the accused and the consequential recovery of M.O.3 - "soori" knife, on his disclosure statement. P.W.8 has spoken about the photographs taken at the place of occurrence, on the request made by P.W.13. P.W.9, the then the Head Clerk of the Court of Judicial Magistrate No.2, Sankari, has spoken about the fact that he forwarded the material objects for chemical examination, as per the orders of the learned Magistrate. P.W.10 has spoken about the postmortem conducted by him on the body of the deceased and his final opinion regarding the cause of death. P.W.11 is the Head Constable, Edappadi Police Station, who has spoken about carrying the dead body to Government Hospital, Edappadi, Salem, for postmortem. P.W.12 has spoken about the registration of the case on the complaint Ex-P1, given by P.W.1. P.W.13 has spoken about the investigation done and the filing of final report against the accused.

(ix) When the above incriminating materials were put to the accused, he denied the same as false. On his side, the accused examined one Mr. Anandan as D.W.1. D.W.1 is a close relative of the accused and the deceased. D.W.1 has stated that on 12.06.2008, when he was at Veerakkaranor Temple, he heard that the deceased was no more. When he went to the place of occurrence, he found the dead body of the deceased. He told one Mahendran, Councillor, to inform the Police about the occurrence and then, went to Chettipatti and brought P.W.s 1 and 2 to the place of occurrence. Thus, according to him, P.W.s 1 and 2 were not eye-witnesses to the occurrence.

(x) Having considered all the above, the Trial Court chose to reject the evidence of D.W.1 and convicted the accused for the offence under Section 302 I.P.C. That is how the

appellant/accused is before this Court with this appeal.

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

4. As we have already pointed out, P.W.s 1 to 3 are eye-witnesses to the occurrence. Of course, P.W.s 1 and 2 are closely related to the deceased. Similarly, they are closely related to the accused also. P.W.3 is a neighbour, in front of whose house, the occurrence had taken place.

5. The learned counsel for the appellant would submit that the evidence of these three witnesses should be rejected because they are highly interested in the case of the prosecution, that too, in the light of the evidence of D.W.1. We have gone through the evidence of D.W.1. Though D.W.1 claims to be a practising advocate, we find it difficult to accept his evidence. Had it been true, that P.W.s 1 and 2 were only brought by him to the place of occurrence and P.W.s 1 and 2 did not witness the occurrence, then, certainly, he would have informed the same to P.W.13 during investigation. But, he did not make any such statement to P.W.13. When D.W.1 had a very vital information regarding the case, the silence of D.W.1, until he was examined in Court as a defence witness, would only go to show that he had gone into the box to depose with a view to save the accused, from and out of the clutches of law, as he is a close relative of the accused.

6. Though P.W.s 1 to 3 have been cross-examined extensively, we do not find any material in their evidence so as to doubt their credibility. Their presence, at the place of occurrence, is quite natural, and we do not find any reason to discredit their evidence. They have, vividly and in a very convincing manner, described about the entire occurrence. Simply because P.W.s 1 and 2 are closely related to the deceased and further that P.W.s 1 to 3 are highly interested witnesses, their evidence cannot be rejected outright. Prudence requires only close scrutiny. In our considered view, even applying the test of close scrutiny, we find that P.W.s 1 to 3 are believable and this Court can place implicit reliance on their evidence. The evidence of P.W.s 1 to 3 is duly corroborated by medical evidence also. Besides, there was no delay in preferring the complaint as well and the First Information Report had also reached the hands of the learned Magistrate, without any further delay. Thus, by the evidence of P.W.s 1 to 3, the prosecution has clearly proved that it was this accused, who caused the death of the deceased, by stabbing her repeatedly, with a "soori" knife. The recovery of M.O.3 - "soori" knife, on the disclosure statement made by the accused, on which there was human blood, would further strengthen the case of the prosecution.

7. Now, the question is, as to what was the offence, that the accused had committed, by the said act. The learned counsel for the appellant would submit that there was a quarrel and in that quarrel, the accused had inflicted injuries on the deceased, which would bring his act within the fourth exception to Section 300 I.P.C. But, we do not find any merit at all, in this argument. It is not, as though the deceased had provoked the accused, either by words or by deeds. She demanded only repayment of the sum of Rs.35,000/-, which the accused had borrowed from her. As the accused left for his house, threatening to finish her off, she went to the house of P.W.3 and was talking to her about the conduct of the accused. The accused, who went to his house, came back and on seeing the deceased, talking about him to P.W.3, stabbed her repeatedly. It is pertinent to note that the accused was also armed with a weapon and it is not, as though, he took out a weapon, which was found lying there and caused injuries, in the midst of a quarrel. We find that none of the requirements of exception 4 to Section 300 I.P.C. are available in this case, so as to bring the act of the accused under the said exception. Thus, we hold that the act of the accused would squarely fall within the third limb of Section 300 I.P.C. and therefore, he is liable to be punished only under Section 302 I.P.C. In our considered view, the Trial Court was right in convicting the accused for the said offence.

8. So far as the quantum of punishment is concerned, the Trial Court had imposed only minimum punishment and it does not require any interference at the hands of this Court. Therefore, we do not find any merit in this appeal.

9. In the result, the appeal fails and the same is accordingly dismissed. The conviction and sentence imposed on the appellant by the Trial Court is confirmed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

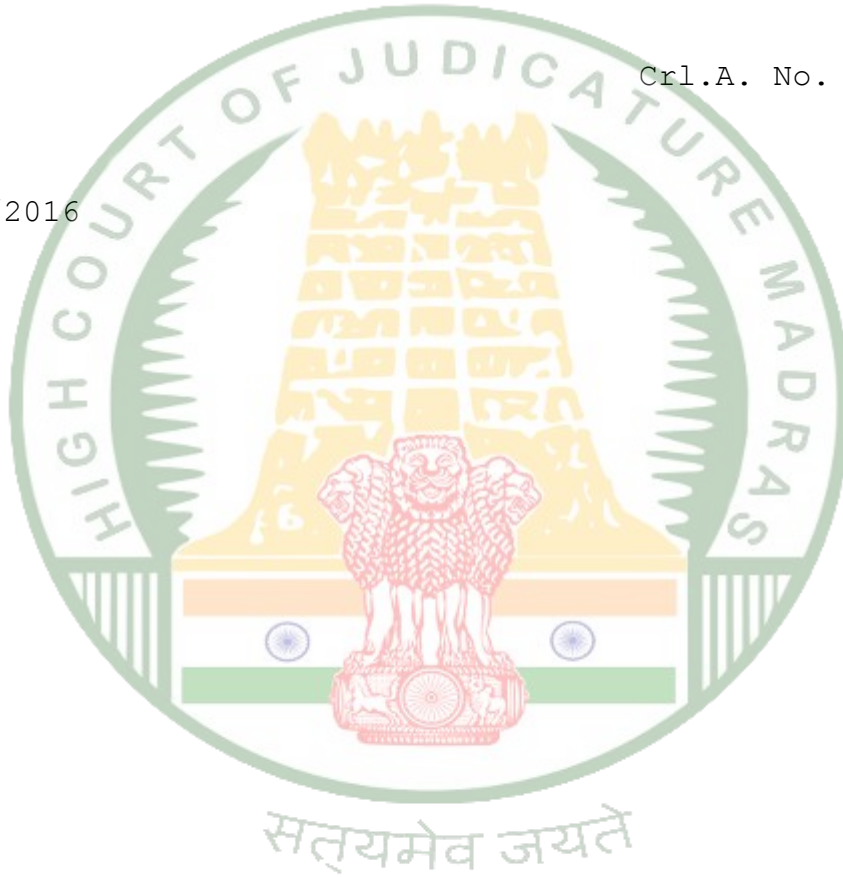
To

1. The Judicial Magistrate No.2,
Salem.
2. The Chief Judicial Magistrate,
Salem (for Information)

3. The Inspector of Police,
Edappadi Police Station,
Salem District.
4. The Superintendent of Central Prison,
Salem.
5. The Additional Sessions Court,
(FTC NO.1), Salem.
6. The Public Prosecutor,
High Court, Madras.

Crl.A. No. 217 of 2013

svi[col]
srg 26/04/2016



WEB COPY