

BAIL SLIP

That the Appellants herein/Accused 1 & 2 Viz; Thanigachalam & Lenin was directed to be released on bail as per the orders of this Court dated 21/09/2012 and 9/10/2012 made in Crl.MP.Nos.1 & 2 of 2012 in Crl.Appl No.620 of 2012 and made herein.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2016

CORAM:

THE HONOURABLE MR . JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE DR. JUSTICE P.DEVADASS

Criminal Appeal No.620 of 2012

1.Thanigachalam

2.Lenin

... Appellants/Accused 1 & 2

-Vs-

State rep by
The Inspector of Police
Kadambuliur Police Station
Crime No.156 of 2012
Cuddalore District.

... Respondent/Complainant

This Criminal Appeal has been preferred to set aside the conviction and sentence imposed upon the appellants by the learned Principal Sessions Judge, Cuddalore in S.C.No.99 of 2012 by a judgment dated 06.09.2012.

For Appellants : Mr.A.M.Rahamath Ali

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

J U D G M E N T

(Judgment of the Court was delivered by S.NAGAMUTHU, J.)

The appellants are the accused 1 and 2 in S.C.No. 99 of 2012 on the file of the learned Sessions Judge, Cuddalore Division, Cuddalore. Both the accused stood charged for offences under Sections 294(b) and 302 r/w 34 IPC. By judgment dated 06.09.2012, the trial Court convicted the first accused for offences under Sections 294(b) and 324 IPC and sentenced to undergo simple imprisonment for three months for offence under Section 294(b) IPC and to undergo three months simple imprisonment for the offence under Section 324 IPC. So far as the second accused is concerned, he was convicted under Sections 294(b) and 302 IPC and sentenced to undergo three months simple imprisonment for offence under Section 294(b) IPC and to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for 15 days for offence under Section 302 IPC. Challenging the said conviction and sentence, the accused/appellants are before this Court with this appeal.

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

The deceased in this case was one Mr. Veerapandian. The accused are father and son respectively. The deceased as well as the accused belong to the same village. According to the case of the prosecution, the first accused had borrowed a sum of Rs.5,000/- from the deceased and the same remained not repaid. On 18.03.2012, at about 9.00 p.m., the deceased, P.Ws.1 and 2 and a few others attended a function at the house of one Mr. Amirthalingam at Maligampattu Colony, North Street, Panruti. After the function was over, when they were returning, the deceased found these two accused standing. On seeing them, the deceased demanded from the first accused, repayment of Rs.5,000/- which was due from him. This resulted in a quarrel between them. At the end of the quarrel, it is alleged that the second accused took out an iron rod, which was lying there and attacked the deceased on his head once. Then, the first accused took out a stick and attacked the deceased on his back. The deceased fell down unconscious. Immediately thereafter, P.Ws.1 and 2 took him to the Government Hospital at Panruti. P.W.4, Dr. Kalaiyarasi, examined the deceased at 9.35 p.m. on 18.03.2012. She found the following injuries:

- "1. Deep abrasion of 5cm exposing left toe
2. Deep abrasion of 6cm exposing left great toe
3. 5 x 1 cm laceration over occipital region exposing bone."

Ex.P6 is the Accident Register. Since the condition of the deceased was bad, P.W.4 referred him to the Government Hospital at Cuddalore. Accordingly, he was taken to the Government Hospital, Cuddalore. P.W.5, Dr Prema, examined him on

18.03.2012 at 10.20 p.m. At that time, the deceased was unconscious. The X-ray taken on the head of the deceased revealed fracture of the skull. Since his condition was bad, she referred him for treatment to JIPMER Hospital at Puducherry. Accordingly, he was taken to the JIPMER Hospital, Puducherry and admitted at 11.50 a.m. on 18.03.2012. P.W.6-Dr. Sudhirkumar treated him. Despite the treatment given, he died on 21.03.2012 at 11.50 a.m.

3. In the meanwhile, on intimation from the hospital authorities, P.W.8, the then Sub Inspector of Police of Kadampuliyur Police Station rushed to the JIPMER Hospital at Puducherry and recorded the statement of P.W.1 on 19.03.2012. Since the deceased was in an unconscious state, P.W.8 could not record any statement from him. On returning to the police station, he registered a case in Cr.No.156 of 2012 at 1.00 p.m. under Sections 294(b), 323, 324 and 307 IPC against both the accused. Ex.P1 is the complaint and Ex.P12 is the FIR. He forwarded both the documents to Court and handed over the investigation to P.W.9., the Inspector of Police, Kadampuliyur Police Station.

[a] P.W.9 took up the case for investigation and proceeded to the place of occurrence at 2.00 p.m. on 19.03.2012. At the place of occurrence, he prepared an Observation Mahazar and a Rough Sketch in the presence of P.W.3 and another witness. He examined P.Ws.1 and 2 and a few more witnesses and recorded their statements. On 21.03.2012, at 2.15 p.m. he received intimation from the JIPMER Hospital, Puducherry that the deceased succumbed to the injuries. Therefore, he altered the case into one under Section 294(b), 323, 324 and 302 IPC. Ex.P15 is the Alteration Report. He forwarded the same to the Court immediately. On 22.03.2012, he rushed to the hospital and conducted inquest on the body of the deceased, during which occasion, he examined P.Ws.1 and 2 and a few more witnesses. Then, he forwarded the body for post-mortem. P.W.7-Dr.Ambika Prasath Patra conducted autopsy on the body of the deceased on 22.03.2012 at 11.15 a.m. She found the following injuries:

"External Injuries:

1.A linear stitched laceration wound (7cm x 2 cm x scalp deep) bearing 5 surgical black sutures found over left parietal prominence. The scalp around the wound swollen, oedematous.

2.A linear scratch abrasion (8cm x 1cm) found over left shoulder blade.

3.An oval contusion of diameter 10cm found on the interscapular area over the back.

4.Grased abrasion found over toes of both side feet. Both side big toes are missing

with a recent surgical amputation would over their roots."

Ex.P11 is the Post-mortem Certificate. She opined that the death was due to shock and haemorrhage due to the head injury. She further opined that the said injuries could have been caused by a weapon like M.O.1, iron rod. Continuing with the investigation, P.W.9 arrested both the accused on 23.03.2012 near Keezhiruppu Panchayat Office in the presence of P.W.3 and another witness.

4. On such arrest, the first accused gave a voluntary statement in which he disclosed the place where he had hidden the iron rod. Similarly, the second accused gave a voluntary statement in which he disclosed the place where he had hidden the stick. In pursuance of these confessions, from the place of hide out, these two weapons were recovered under the Mahazars as produced by the respective accused. On returning to the police station, he forwarded the accused to the Court for remand to judicial custody and handed over the Material Objects also to the Court. He examined the doctors and collected medical records. On completing investigation, he laid charge sheet against the accused on 31.03.2012.

5. Based on the above materials, the trial Court framed appropriate charges. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 9 witnesses were examined and 19 documents were exhibited, besides 2 Material Objects.

6. Out of the said witnesses, P.Ws.1 and 2 are the eye witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.W.1 also has stated about the complaint made by him. P.W.3 has spoken about the Observation Mahazar prepared at the place of occurrence, the arrest of the accused and also about the recovery of Material Objects, viz., M.Os.1 and 2 at the instance of these two accused in pursuance of their disclosure statements. P.Ws.4 to 6 have spoken about the injuries found on the deceased and the treatment given to him. P.W.7 has spoken about the post-mortem conducted by her and her final opinion regarding the cause of death. P.W.8 has spoken about the registration of the case and P.W.9 has spoken about the investigation and the report filed by him.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor they did mark any documents in their favour. Their defence was a total denial.

8. Having considered all the above, the trial Court convicted these two accused as detailed in the first paragraph of this judgment. Aggrieved over the same, the accused/appellants are before this Court with this appeal.

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

10. The foremost contention of the learned counsel for the appellants is that there was enormous delay in preferring the complaint as well as in forwarding the same to the Court, which creates doubt in the case of the prosecution. The learned counsel would further submit that so far as the first accused is concerned, the medical evidence does not corroborate the eye witness account. He would further submit that P.Ws.1 and 2 would not have seen the occurrence at all and they have been planted. The learned counsel would further submit that in the very same occurrence, the first accused also sustained injuries, but no explanation whatsoever has been offered by the prosecution witnesses. Thus, according to the learned counsel, the appellants are entitled to acquittal.

11. The learned Additional Public Prosecutor would stoutly oppose this appeal and according to him, though there was some delay in preferring the complaint and also forwarding the same, the same has been duly explained by the prosecution and thus, it does not create any doubt in the case of the prosecution. The learned Additional Public Prosecutor would further submit that P.Ws.1 and 2 have very cogently stated about the entire occurrence and there is no reason to reject their evidence and further, the medical evidence also corroborates their evidence. He further submitted that recovery of M.Os.1 and 2 on the disclosure statement made by the accused, would further add strength to the case of the prosecution at any rate. The learned Public Prosecutor submitted

that the prosecution has proved the case beyond reasonable doubt and hence, the appeal is liable to be dismissed.

12. We have considered the above submissions.

13. The alleged occurrence in this case was at 9.00 p.m. on 18.03.2012. Immediately thereafter, the deceased was taken to the Government Hospital, Panruti, from there, he was taken to Government Hospital, Cuddalore and from there, he was taken to the JIPMER Hospital at Puducherry. P.Ws.1 and 2 would have been therefore worried about the health of the deceased. Therefore, there would not have been any occasion for them to go to the police station and prefer the complaint. On the next

day, at about 8.00 a.m., intimation was received by P.W.8, the Sub Inspector of Police from the hospital authorities and therefore, he had gone all the way from Kadampuliur Police Station to JIPMER Hospital, obtained complaint from P.W.1, returned to the police station and registered a case at 1.00 p.m. In our considered view, there is no delay at all. Assuming that there is delay, the same has been duly explained by the prosecution. Similarly, it is seen from the records that the FIR has reached the Magistrate only at 10.30 a.m. on 20.03.2012. Of course, there is some delay, but since, in this case, the FIR registered was ordinary FIR and not an express FIR, it was sent in the regular course and therefore, it has reached the Magistrate at 10.30 a.m. on the next day. Thus, in our considered view, on the ground of delay, the accused cannot succeed in this appeal at all.

14. Now, turning to the eye witness account, P.Ws.1 and 2 have very cogently stated about the entire case. Their presence cannot be doubted. So far as the overt acts of the second accused is concerned, the medical evidence duly corroborates the eye witness account. Though P.Ws.1 and 2 have been cross examined at length, we do not find any material elicited during cross examination so as to disbelieve them. Thus, we hold that so far as the second accused is concerned, the prosecution has clearly established that it was this accused who caused injuries on the deceased.

15. So far as the argument that the accused had sustained injury in the very same occurrence is concerned, it deserves only to be rejected as there was no injury at all noticed by the doctor. There was only tenderness.

16. So far as the first accused is concerned, in our considered view, the medical evidence does not the corroborate eye witness account at all. Though it is stated that he attacked the deceased with a stick, there are no corresponding injuries found on the deceased. Therefore, we are of the view, that so far as the

first accused is concerned, the prosecution has not proved the case beyond reasonable doubt. Therefore, the first accused is entitled to acquittal.

17. Now turning back to the second accused, we have already concluded that it was this accused who attacked the deceased on the head with an iron rod causing injury. According to the medical opinion, the death was due to the head injury. Thus, the prosecution has proved beyond reasonable doubt, that the death of the deceased was caused only by the second accused.

18. The immediately next question is, "what is the offence that the second accused had committed by the above act". The narration of facts by P.Ws.1 and 2 would go to show, that there was no motive for this accused at all. The deceased and the accused were all friendly. At that time, the presence of these two accused at the place of occurrence was also by chance. The deceased, on seeing the accused demanded repayment of Rs.5,000/-. This resulted in a wordy quarrel. It is in evidence that the quarrel went on for some time and at the end of the quarrel, it is stated that the second accused took an iron rod which was lying there and gave a single blow on the head of the deceased. The injuries sustained on the head, according to medical opinion, is sufficient to cause the death of the deceased in the ordinary course of nature.

19. In our considered view, the second accused would not have intended to cause the death of the deceased and therefore, his act would not fall in the first limb of Section 300 IPC. At the same time, he had intended to cause injury on the head, which is sufficient in the ordinary course of nature to cause death and this act would fall in the third limb of Section 300 IPC. At the same time, in our considered view, his act would fall within the fourth exemption to Section 300 IPC.

20. As we have already narrated, there is enormous evidence to show that there was a wordy quarrel between the parties. The occurrence was not a pre-meditated one. The second accused was not already armed with any weapon. At the end of the sudden quarrel, in the heat of passion, the second accused had taken the iron rod lying there and gave a single blow on the head. Thus in our considered view, the act of the second accused would squarely fall within the fourth exemption to Section 300 IPC and therefore, the second accused is liable to be punished only under Section 304(i) IPC.

21. Now, turning to the quantum of punishment, at the the time of occurrence, the second accused was aged 24 years and he is yet to be married. He has got no bad antecedents. After the occurrence also, it is not reported that he was involved in any other crime. Further, there are lot of chances for reformation. So far as the aggravating circumstances are concerned, there was no pre-meditation and there was no strong motive for the second accused to cause the death of the deceased. Having regard to these aggravating as well as mitigating circumstances, we hold that sentencing the second accused to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- would meet the ends of justice.

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

(1) The conviction and sentence imposed on the first appellant is set aside and he is acquitted of all charges. Fine amount, if any paid, shall be refunded to him.

(2) The conviction and sentence imposed on the second accused under Section 294(b) IPC is confirmed and the conviction and sentence imposed on him under Section 302 IPC is set aside and instead, he is convicted under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks. It is directed that the sentence imposed on the second accused shall run concurrently.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

gms
To

1.The Inspector of Police
Kadambuliur Police Station
Crime No.156 of 2012
Cuddalore District.

2. Principal Sessions Judge, Cuddalore.

3.The Public Prosecutor
High Court, Chennai.

4.The Judicial Magistrate NO.2
Panruti

5.-do-Thro The Chief Judicial Magistrate
Cuddalore

6. The Superintendent Central Prison,
Cuddalore

7. The Director General of Police
Mylapore Chennai-4

+1 cc to M/s.A.M.Rahamath Ali, Advocate sr.8890

Cr1.A.No.620 of 2012

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