

BAIL SLIP

The Appellant/Accused namely Mani, S/o.Chinnasamy aged about 47 years was directed to be released on bail as per the Order of this Court dated 15.04.2013 made in Crl.M.P.No.1 of 2013 in Crl.A.268 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2016

CORAM :

THE HON'BLE MR.JUSTICE M.JAICHANDREN

and

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.268 of 2013

Mani

... Appellant/Accused

Vs.

State by

The Inspector of Police
Kadathur Police Station
(Crime No.290 of 2011)

... Respondent

Prayer : Criminal Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment of conviction and sentence made in S.C.No.77 of 2012 by the learned Principal Sessions Judge, Dharmapuri, dated 28.02.2013.

For Appellant : Mr.S.Doraisamy

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

(The judgment of the Court was made by S.NAGAMUTHU, J.)

The appellant is the sole accused in S.C. No.77 of 2012 on the file of the learned Principal Sessions Judge, Dharmapuri. He stood charged for the offence under Section 302 IPC. By judgment, dated 28.02.2013, the Trial Court convicted the accused under Section 302 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 three months. Challenging the said judgment of conviction and sentence, dated 28.02.2013, the accused is before this Court with this Criminal Appeal.

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

(i) The deceased in this case was one Arumugam. The deceased was a mason by profession. The accused was a construction contractor. On many occasions, the deceased was engaged by the accused for construction work. On account of the same, a sum of Rs.2,500/- was due from the accused to the deceased, as coolie. On several occasions, the deceased demanded the accused to pay the said amount. But, the accused was very evasive. Finally, on 01.09.2011, at about 7.30 p.m., the deceased along with P.Ws.1 and 2 had gone to the house of the accused and demanded payment of Rs.2,500/-. As the accused was evasive, this resulted in a sudden quarrel between the accused and the deceased. Enraged over the same, it is alleged that the accused took a stick lying there and attacked the deceased repeatedly on his head near the lower jaw, left cheek and other parts of the body. P.W.1-Bharathi is the daughter-in-law of the deceased. P.W.2-Madhammal is the sister of the deceased. They raised alarm. The accused ran away from the place of occurrence. The Villagers, on hearing the alarm raised, gathered there. Then, P.W.1 informed her husband (P.W.3-Ganesh) over phone. Immediately, P.W.3 rushed to the place of occurrence. By that time, the deceased succumbed to the injuries. Then, P.Ws.1 to 3 went to the Kadathur Police Station, where P.W.1 made a complaint.

(ii) P.W.11-P.Amudha, the then Sub-Inspector of Police, on receipt of the said complaint (Ex.P.1), registered a case in Crime No.290 of 2011 under Section 302 IPC against the accused. At 11.00 p.m., on 01.09.2011, she forwarded both the documents to Court, which were received by the learned Judicial Magistrate at 6.00 a.m. on 02.09.2011.

(iii) P.W.12-N.Gnanaprakasam, the then Inspector of Police, took up the case for investigation. He proceeded to the place of occurrence and prepared an Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.9) in the presence of P.W.4-Poorananathan and another witness. Then, he recovered the blood-stained earth (M.O.2) and sample earth (M.O.3) from the place of occurrence in the presence of same witnesses under a mahazar (Ex.P.3). He conducted inquest on the body of the deceased on 02.09.2011 between 8.15 to 11.00 a.m. Then he forwarded the dead body to the hospital for post-mortem.

(iv) P.W.8-Dr.Jebakkani of Government Medical College and Hospital, Dharmapuri, conducted autopsy on the body of the deceased on 02.09.2011 at 11.10 a.m. She found the following injuries on the body of the deceased:-

"External Injuries:-

(1) Laceration right lower jaw 8 x 3 cm x bone depth
left mandible fracture.

(2) Laceration left eye brow 3 x 1 cm x bone depth.

(3) Laceration (left) parietal region 5 x 1 cm x bone depth.

(4) Laceration (Left) upper lip 3 x 3 cm left maxilla fracture.

(5) Contusion (right) chest 5 x 5 cm.

Internal Examination:-

Hyoid bone - Intact.

Sternum - Intact.

Ribs (R) 4, 5 and 6 fracture

Lungs - Right, Left, Pale.

Heart - empty c/s. pale.

Thoracic cavity - 200 ml of clotted blood present.

Stomach - empty.

Liver - pale.

Spleen - pale.

Kidney - Right, Left, Pale.

Urinary Bladder empty.

External genitalia (N).

Head - Frontal bone fracture 5 cm depressed (2) fracture extending from frontal bone to occipital bone 22 cm.

Base of skull fracture (3) meninges torn 10 cm

(4) 200 ml of clotted blood present in cerebrum over occipital region frontal region."

Ex.P.7 is the Post-Mortem Certificate. The Doctor opined that the deceased would appear to have died due to shock and haemorrhage, due to the head injuries.

(v) P.W.12-Mr.N.Gnanaprakasam, the then Inspector of Police, in the course of investigation, arrested the accused on 02.09.2011, at 1.30 p.m., near Malai Veerappan Temple in the presence of P.W.5-Sathiyamoorthy, the Village Administrative Officer, and another witness. On such arrest, the accused made a voluntary confession, in which, he disclosed the place where he had hidden the Wooden Log. In pursuance to the same, he took P.W.5 and P.W.12 to the said place and produced M.O.1 (Wooden Log) and also a dhoti and a shirt stained with blood. P.W.12 recovered the dhoti (M.O.6) and the shirt (M.O.7) under a Mahazar (Ex.P.4) in the presence of the same witnesses. 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, he recovered the clothes, which were found on the dead body of the deceased. At his request, the Material Objects were sent for Chemical Analysis Report. The report revealed that there were blood-stains on the Material Objects, except the Wooden Log (M.O.1). On completing the investigation, he laid the chargesheet against the accused.

(vi) Based on the above materials, the Trial Court framed the charge under Section 302 IPC against the sole accused. The accused denied the same. During the trial, in order to prove the case of the prosecution, on the side of the prosecution

as many as 12 witnesses were examined and 15 documents and 11 material objects were exhibited. 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.3, husband of P.W.1, on receiving the telephonic message from P.W.1, rushed to the place of occurrence and then, he took P.W.1 to the Kadathur Police Station and made a complaint. P.W.4 has spoken about the preparation of Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.9) and also recovery of Material Objects from the place of occurrence. P.W.5 has spoken about the arrest of the accused, the disclosure statement made by him, and the consequential recovery of M.O.1-Wooden Log and dhoti and shirt with blood-stains. P.W.6 has not stated anything incriminating against the accused and he has spoken only about the hearsay information. P.W.7 has spoken about the fact that a sum of Rs.2,500/- was due as coolie from the accused to the deceased. P.W.8-Dr.Jebakkani has spoken about the post-mortem conducted by her and her final opinion regarding the cause of death. P.W.9-Rajamani, the then Head Constable, has stated that he carried the First Information Report from the Police Station and handed over the same to the learned Judicial Magistrate, Pappireddipatty, at 6.00 a.m. on 02.09.2011. P.W.11, the then Sub-Inspector of Police, has spoken about the registration of the case on the complaint of P.W.1. P.W.12, the Inspector of Police, has spoken about the investigation done by him and the filing of the final report.

(vii) When the accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, he denied them as false. But, he has not chosen to examine any witness nor to mark any document. His defence was a total denial. Having considered all the above, the Trial Court convicted the appellant/accused for the offence under Section 302 IPC. That is how, the appellant/accused is now before this Court with this appeal.

3. We have heard Mr.S.Doraisamy, learned counsel appearing for the appellant and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

4. There is no controversy before this Court that the deceased was a Mason by profession and the accused was a construction contractor. It is in evidence of P.W.1 as well as P.W.7 that the deceased was engaged on many occasions by the accused for contract work. On account of the same, a sum of Rs.2,500/- was due from the accused to the deceased. It is in evidence of P.Ws. 1 and 2, that accompanied by them, the deceased went to the house of the accused only to demand the payment of the said amount. At that time, it was stated that,

there ensued a quarrel. At the end of the quarrel, it is alleged that the accused attacked the deceased.

5. The learned counsel for the appellant would submit that the presence of P.Ws.1 and 2 is doubtful, as they would not have accompanied the deceased to the place of occurrence. We find no force in the said argument at all. The evidence of P.Ws. 1 and 2 is so cogent and convincing and they have clearly stated that they accompanied the deceased to the house of the accused only to demand the payment of the money. We do not find any reason to doubt the presence of these witnesses at the place of occurrence and also the veracity of the testimony of these witnesses. The evidence of P.Ws.1 and 2 is duly corroborated by the medical evidence also.

6. Immediately, after the occurrence, P.W.1 had informed P.W.3, her husband, over phone about the occurrence. P.W.3 rushed to the place of occurrence. Then, P.W.3 took P.W.1 to the Kadathur Police Station, where P.W.1 made a complaint. Thus, there is no delay either in lodging the complaint or forwarding the same to the Court also. The launching of the First Information Report immediately after the occurrence to some extent vouch for the truthfulness of the allegations contained in the complaint.

7. The learned counsel for the appellant would submit that there is some discrepancy, as to who lodged the complaint and the time taken for giving the complaint at the Police Station, as it is found in the evidence of P.Ws.1 to 3. In our considered opinion, the minor contradictions are quite natural. On these discrepancies, we cannot disbelieve the evidence of P.Ws. 1 and 2. Thus, we hold that the eye witness account of P.Ws. 1 and 2 is duly corroborated by the medical evidence and other circumstances. The prosecution has established its case beyond reasonable doubt that it was this accused, who attacked the deceased with wooden log on his head and other parts of the body, which resulted in his death.

8. Having come to the said conclusion, now, we have to examine, what was the offence the accused had committed by causing the death of the deceased. Admittedly, there was no motive for the accused to commit the murder of the deceased. The deceased had gone to the house of the accused in the normal course, only to demand the money due from the accused. The accused, probably, did not have money and therefore, he was evasive. This infuriated the deceased. This resulted in a quarrel. At that time, the accused was not armed with weapon. It was only in the quarrel, the accused took the wooden log lying there and attacked the deceased without having taken any undue advantage. In our considered view, the narration of the facts would go to prove that the act of the accused would squarely fall within Exception 4 to Section 300 IPC. As we

have already pointed out, the accused would not have intended to cause the death of the deceased and therefore, the act of the accused would not squarely fall under the first limb of Section 300 IPC. Similarly, the accused would not have intended to cause any bodily injury on the deceased, which is sufficient in the ordinary course of nature to cause death, so as to bring his act under the third limb of 300 IPC. Thus, we firmly hold that by the said act, the accused can be attributed with the knowledge that it was so imminently dangerous and it is likely to cause the death of the deceased. Thus, the act of the deceased would squarely fall within the fourth limb of Section 300 IPC. Since, we have already concluded that the act of the accused would squarely fall under Exception 4 to Section 300 IPC, the accused is liable to be punished for the offence under Section 304 (ii) IPC.

9. Turning to the quantum of punishment, the accused is an old man, he has got no bad antecedents and the occurrence was not a pre-meditated one. It was out of a sudden quarrel, in a heat of passion, the occurrence had taken place. The accused was not armed with any weapon. The accused has not shown any deviance from law after this occurrence. Having regard to the mitigating as well as aggravating circumstances, we are of the view that sentencing the appellant/accused to undergo rigorous imprisonment for five years for the offence under Section 304 (ii) IPC 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,

- i. this Appeal is partly allowed and the conviction of the appellant/accused for the offence under Section 302 IPC is set aside, instead, he is convicted for the offence under Section 304(ii) IPC, and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for four weeks.
- ii. Since, the appellant/accused is on bail, the Sessions Court is directed to take steps to secure his custody to undergo the remaining period of sentence.
- iii. The period of imprisonment already undergone by the appellant/accused shall be given set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The District Munsif - Cum -
Judicial Magistrate,
Pappireddipatti.

2.The Chief Judicial Magistrate,
Dharmapuri.
(For Information)

3.The Superintendent,
Central Prison,
Vellore.

4.The Principal Sessions Judge,
Dharmapuri.

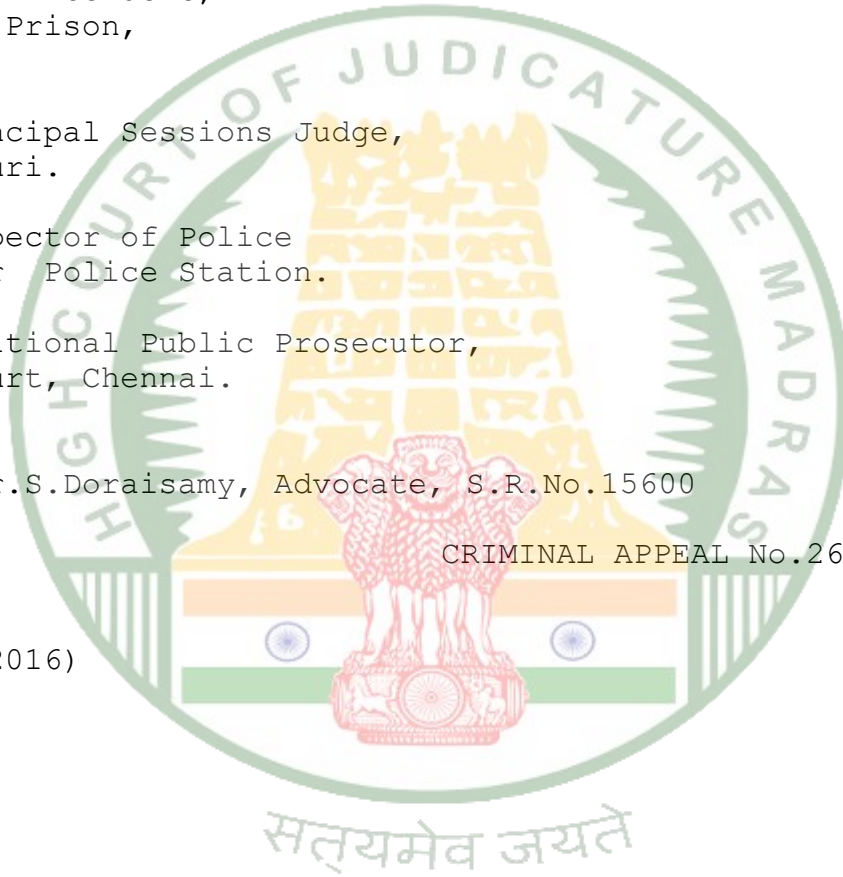
5.The Inspector of Police
Kadathur Police Station.

6.The Additional Public Prosecutor,
High Court, Chennai.

+1cc to Mr.S.Doraisamy, Advocate, S.R.No.15600

CRIMINAL APPEAL No.268 of 2013

SAI (CO)
CA(07/04/2016)



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