

BAIL SLIP

The Appellant/Accused Viz., Anbu @ Anbazhagan, aged 42 years S/o.Paulsamy Thevar in CrI.A.No.289 of 2013 was directed to be released on bail as per Order of this Court dated 19.04.2013 made in M.P.No.1 of 2013 in CrI.A.No.289 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 04.04.2016

CORAM:

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

CrI.A.No.289 of 2013

Anbu @ Anbazhagan ... Appellant

Vs.

The State of Tamil Nadu,
rep.by The Inspector of Police
Muthupettai Police Station,
Tiruvarur ... Respondent

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 03.04.2013 passed by the District
Judge, Tiruvarur, S.C.No.36 of 2011.

For Appellant : Mr.V.Raja Mohan,
Legal aid counsel

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

JUDGMENT

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

The appellant is the sole accused in Sessions Case No.36 of 2011, on the file of the Sessions Judge, Tiruvarur. He stood charged for the offence under Section 302 of the Indian Penal Code. By judgement dated 03.04.2013, 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. Muruganandham. He was a resident of Parakkalakottai Village, Thiruvarur District. P.W.1 is his co-brother and he was residing at Mangalore Village in Thiruvarur District. The accused also belongs to Mangalore Village. The deceased used to visit the house of P.W.1 frequently, out of the close relationship. The accused, being a neighbour of P.W.1, had developed close contact with the deceased. Two years prior to the occurrence, the deceased and the accused had gone together to Pattukottai. While in Pattukottai, there arose a quarrel between them, in which, they attacked each other. Thereafter, they travelled together in a bus to Parakkalakottai Village. On reaching Parakkalakottai, the deceased took the accused and confined him as a punishment for the earlier occurrence. P.W.1 heard about the same. He went to Parakkalakottai Village, persuaded the deceased to leave the accused and accordingly, the accused was let off. The accused then came to Mangalore Village. This is stated to be the motive for the occurrence.

(b) On 29.12.2010, the deceased had come to the house of P.W.1. From morning to evening he was at the house of P.W.1 and at 5.30 p.m., the deceased started to go to his village, along with his wife and at that time, the accused came to the house of P.W.1 and invited the deceased to go for an outing. Leaving his wife, at the house of P.W.1, the deceased left with the accused.

(c) At about 8.30 p.m., when the deceased was near a school at Mangalore Village, the accused came there, developed quarrel and shouted at him that he was going to take revenge on the deceased for having illegally detained him, in the village of the deceased, two years before. The accused stabbed the deceased once on his head. The deceased fell down. The accused ran away from the scene of occurrence. The occurrence was witnessed by P.Ws.2 and 4, who were sitting near the school. P.W.1 and P.W.3 heard the distress call raised by the deceased and ran to the place of occurrence. When they were nearing the place of occurrence, they found the accused fleeing away from the scene of occurrence. On reaching the place of occurrence, they had seen the deceased lying with injuries. Immediately, P.W.1 and others took the deceased in an auto to the Government Hospital, at Muthupettai. Since there was no doctor available in the Government Hospital, they took him to a private hospital, run by one Dr. Murugesan. Dr. Murugesan refused to treat the deceased. Therefore, they took the deceased in an ambulance, to Pattukottai Government Hospital. There also, the Doctor refused to treat the deceased, as his condition was so bad. Therefore, P.W.1 and others rushed the deceased to a private Hospital known as 'Rohini Hospital' at Thanjavur. The doctor in the said hospital, after examining the deceased, advised

them to take the deceased to the Thanjavur Medical College and Hospital. Accordingly, at last, at about 11.30 p.m., the deceased was admitted at the Government Hospital, Thanjavur Medical College and Hospital as in-patient. Despite treatment given, at 8.00 a.m., on the next day, the deceased died.

(d) Thereafter, P.W.1 returned to Muthupettai and made a complaint to the Muthupettai Police Station at 1.00 p.m. on 30.12.2010. P.W.15, the then Inspector of Police, on receipt of the said complaint, under Ex.P1, registered a case in Crime No.697 of 2010, under Section 302 of the Indian Penal Code. Ex.P.17 is the First Information Report. He forwarded Ex.P1 and Ex.P17 to the Court, which were received by the learned Judicial Magistrate, at 4.00 p.m., on 30.12.2010. Then, P.W.15 took up the case for investigation. He proceeded to the place of occurrence, prepared an observation mahazar and a rough sketch, in the presence of P.W.8 and another witness. He recovered blood stained earth and sample earth, at the place of occurrence, under a mahazar. On going over to Thanjavur Medical College and Hospital, he conducted inquest on the body of the deceased and prepared Ex.P19, report. He forwarded the dead body of post-mortem. P.W.13, Dr.M.Rajkumar, conducted autopsy on the body of the deceased on 30.12.2010 at 3.00 p.m., He found the following injuries:

"EXTERNAL INJURIES:

15 stiches of 22 cm - midline sutured wound from xiphi sternum to umbilicus level. 3 stiches - 3 cm sutured wound on left abdomen. 2 cm (stiches) sutured wound on right abdomen. After opening abdominal cavity. Contusion in the abdomen wall. Sutured wounds in mesenteric roots, colour DJ flexure and near the 4th part of duodenum on mesentery. There was diffuse retroperitoneal hematoma. Tear was found in the posterior part of III part of duodenum, which is the oozing site.

Peritival cavity: Around 750 ml of blood
in peritoneal cavity

Heart : Normal. C/s.Normal
Valves : Intact
Coronary Vessels: Normal
Great vessels : Normal
Lungs : Both lungs pale. Edematous.
C/s.edematous.
Hyoid bone : Intact
Stomach : 500 ml of clotted blood.
Posterior wall contusion present
Liver : Pale C/s.Normal
Spleen : Pale. C/s.Normal

Omentum and

mesentery : Sutured wounds in mesentery
near the 4th part of duodenum
suture in DJ flexure suture
in mesenteric roots.

Kidneys : Both kidneys pale C/s.normal

The intestine : Tear in the part aspect of III
part of duodenum close to II
Part. Sutured wound.

Brain : Brain - Pale C/s.Normal. Smell
Petechial Hemorrhage."

Ex.P15 is the post mortem certificate. The doctor opined that the death was due to the shock and haemorrhage, due to the stab injuries, found on the body of the deceased. On 3.1.2011, the accused surrendered before the Judicial Magistrate, Thanjavur. P.W.15 took custody of the accused, on the orders of the Judicial Magistrate, Thanjavur. While in custody, on 10.1.2011, at 9.00 a.m., the accused made voluntary confession, in which, he disclosed the place where he had hidden the knife (M.O.1). Accordingly, the accused took the police and the witnesses to the said place and produced M.O.1 and also produced the blood stained 'dothi' and a 'shirt' (M.Os.7 and 8). He has also produced the 'aruval' (M.O.2). All the material objects were recovered under a mahazar. On completing the investigation, he laid charge-sheet against the accused.

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 15 witnesses were examined, 20 documents were exhibited, besides 8 materials objects. Out of the said witnesses, P.Ws.2 and 4 are the eyewitnesses to the occurrence. P.Ws.1 and 3 have stated that they heard the cry of the deceased, rushed to the place of occurrence and on their way, they found the accused fleeing away from the place of occurrence. On reaching the place of occurrence, they found the deceased lying with injuries. P.W.1 has further stated about the fact that he took the deceased to the hospital and he has spoken about the complaint made by him to the police. P.W.5 is the son of the deceased. He has also stated that on hearing the cry of the deceased, he went to the place of occurrence and found the deceased lying with injuries. P.W.6 has turned hostile. He has not supported the case of the prosecution in any manner. P.Ws.7 and 8 have also turned hostile and they have not supported the case of the prosecution in any manner. P.W.8 has spoken about the observation mahazar and the rough sketch prepared, at the place of occurrence and the recovery of blood stained earth and sample earth from the place of occurrence. P.W.9 has spoken about the medical examination conducted on

the material objects. According to him, blood was found on the 'dhoti' and the 'shirt', recovered from the accused. P.W.10 has stated that he took the dead body and handed over the same for post-mortem. P.W.11 has stated that he handed over the material objects to the Forensic lab, from the Court, as ordered. P.W.12, has stated that on 30.12.2010, when he was in the Thanjavur Medical College and Hospital, the deceased was brought there for treatment, at 12.30 p.m. He has further stated that despite treatment, he died at 7.30 a.m., on the same day. P.W.13 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.15 has stated about the registration of the case and 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. When the appeal came up for hearing, on 22.03.2016, the learned counsel Mr.O.S.Thilak Pasumbudiar, who was on record for the appellant, filed a memo withdrawing his appearance in this matter. Therefore, this Court appointed Mr.V.Rajamohan, as a Legal Aid counsel, to argue the case. He informed the accused and he made his submissions. We have heard 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 and 4 would not have been present at the scene of occurrence at all and their evidences cannot be believed. The learned counsel would state that they are neither closely related nor interested in the affairs of the deceased and therefore, their evidence should be rejected. We are not persuaded by the said argument. P.Ws.2 and 4 have explained, to the satisfaction of the Court, as to how they came to be present at the place of occurrence, at the crucial time. Similarly P.Ws.1 and 3 have stated that on hearing the cry of the deceased, they rushed to the place of occurrence and on the way they found the accused fleeing away from the place of occurrence. There is no reason to reject the evidences of these four witnesses. It was only P.W.1, who took the deceased to the hospital at Muthupettai, then at Pattukottai and finally at Thanjavur. Though the learned counsel for the appellant took pains to assail the evidences of P.Ws.1 to 4, by pointing out certain minor contradictions, on that score, we are not convinced, so as to reject the evidences of P.Ws.1

to 4. In our considered view, the evidences of P.Ws.1 to 4 are so convincing, cogent, thereby inspiring the confidence of this Court. Apart from the same, the recovery of M.O.1, the Knife, on the confession statement made by the accused, also lends further support to the case of the prosecution. From these evidences, it is has been clearly established that the injuries found on the deceased were caused only by the accused. P.W.13, the Doctor, who conducted autopsy has given the opinion that the death was due to shock and haemorrhage, due to the stab injuries found on the deceased. From these evidences, the prosecution has clearly established that it was this accused, who caused the stab injuries, which resulted in the death of the deceased.

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?. The learned counsel for the appellant would submit that there was no motive for the occurrence. We find force in the said argument. The incident, which is stated to be the motive, had allegedly taken place two years prior to the occurrence. P.W.1 has stated that after some time, the deceased and the accused had forgotten the past and they had become friends again. That is why, on the invitation extended by the accused, the deceased went along with him. Thus, we find that there was no motive for the accused at all to do away with the deceased. The accused and the deceased had gone together for an outing. There would have been some reason for the accused to suddenly to stab him. Going by the natural human conduct, it is inferable that there would have been some quarrel between the accused and the deceased. The evidence of P.W.2 would indicate that there was some quarrel between him and the accused. It was only in the said quarrel, the occurrence had taken place. It is also stated by P.W.2 that the accused had initially attacked him and it appears that in that quarrel, the deceased had interfered, in which he got the stab injuries. Thus, we are of the view that the 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, it is stated that the occurrence was not pre-meditated. The accused was aged 42 years, at the time of occurrence. He is a poor man and he has got a family to take care of. He has got no bad antecedents and after the occurrence also, he has not done any deviation from law. Having regard to all the above

aggravating as well as mitigating 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 detention already undergone by the accused shall be given set off under Section 428 of the Cr.P.C.

11. We appreciate the services rendered by Mr.V.Rajamohan, Legal Aid counsel. We request the Tamil Nadu State Legal Services Authority to pay his remuneration.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msk

To

1.The Inspector of Police
Muthupettai Police Station,
Tiruvarur.

2.The District Judge,
Tiruvarur.

3.The Sessions Judge,
Thiruvarur.

4.The Judicial Magistrate,
Thiruthurai Poondi.

5.-Do- Through The Chief Judicial Magistrate,
Thiruvarur.

6.The Superintendent,
Central Prison,
Trichy.

7.The Secretary,
Tamilnadu State Legal Services Authority,
High Court, Madras.

8.The Public Prosecutor,
High Court, Madras

+1cc to Mr.V.Raja Mohan, Advocate, S.R.No.21153

Crl.A.No.289 of 2013

ND(CO)
CA(06/05/2016)



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