

Bail Slip

The Appellants/Accused Viz.Sudhan @ Indirakumar and Saravanan @ Perambalam were released on bail as per order of this Hon'ble Court, in MP No.1 of 2012 in Crl.A.No.689 of 2012 and MP 1 of 2012 in Crl.A.No.101/2012, dated 31.10.2012 & 20.07.2012, respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 08.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

AND

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Crl.A.Nos.689 & 101 of 2012

Sudhan @ Indirakumar ... Appellant in
2012 Crl.A.No.689 of

Saravanan @ Perambalam ... Appellant in
2012 Crl.A.No.101 of

vs.

State,rep.by
The Inspector of Police,
Karimangalam Police Station,
Dharmapuri District ... Respondent in
both the appeals

Criminal appeals preferred under Section 374 Cr.P.C.,
against the judgement dated 18.04.2011 passed by the Principal
District and Sessions Judge, Dharmapuri, in S.C.No.91 of 2010.

For Appellants : Mr.P.Pugalenthir

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

COMMON JUDGMENT

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

The appellant in Crl.A.No.689 of 2012 is the first
accused and the appellant in Crl.A.No.101 of 2012 is the

second accused in Sessions Case No.91 of 2010, on the file of the Principal District and Sessions Judge, Dharmapuri. The first accused stood charged for the offence under Section 302 of the Indian Penal Code and the second accused stood charged for the offence under Section 302 r/w. Section 109 of the Indian Penal Code. By judgement dated 18.4.2011, the trial Court convicted both the accused and sentenced the first accused to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo Rigorous Imprisonment for three years for offence under Section 302 of the Indian Penal Code and sentenced the second accused to undergo imprisonment for life and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for three years for the offence under Section 302 r/w. Section 109 of the Indian Penal Code. Challenging the said conviction and sentence, the appellants are before this Court with these two appeals.

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

(a) The deceased in this case was one Vijay @ Basthiyan. The deceased and accused are all Srilankan refugees. They were all staying in the refugee camp for Srilankans in Thumbalahalli Dam. The second accused had lost vision of his one eye. While in the camp, the deceased used to tease the second accused by calling him as one eyed man and blind. On 5.2.2010, on account of the same, there was a wordy quarrel between the accused 1 and 2 on one side and the deceased on the other side. In the said occurrence, it is alleged that the second accused attacked the deceased with hands. The deceased in turn attacked the second accused. Suddenly, the first accused went to his house, returned with a knife and stabbed him on his chest and left palm. The occurrence was witnessed by P.Ws.2 and 3. P.W.4 is also an inmate of the refugee camp. P.W.5 is the mother of the deceased and P.W.6 is yet another refugee in the camp. P.W.1 was the Special Revenue Inspector, in-charge of the camp. On getting information about the said occurrence, he rushed to the camp and heard that the deceased had been taken to the hospital. Then he went to the police station at about 3.00 a.m. and made a complaint under Ex.P1.

(b) P.Ws.4 and 5 immediately took the deceased to the Government Hospital, Dharmapuri. On examining the deceased, the Doctor declared him as dead. Then, he forwarded the body to the mortuary.

(c) On receiving the complaint from P.W.1, P.W.11-the Sub-Inspector of Police, registered a case in Crime No.165 of 2010 under Section 302 I.P.C. at 3.00 a.m. against both the accused. Ex.P1 is the complaint and Ex.P9 is the First Information Report and he forwarded both the accused to the Court and forwarded the case diary to the Inspector of Police

(P.W.13)

(d) P.W.13 took up the case for investigation. He proceeded to the place of occurrence, prepared an observation mahazar and the rough sketch, in the presence of P.W.7 and another witness. He also recovered blood stained earth and sample earth from the place of occurrence. In the hospital, he conducted inquest on the body of the deceased and forwarded the same for post-mortem.

(e) P.W.12-Dr.Prem Jeeva Vani, conducted autopsy on the body of the deceased on 6.2.2010 at 11.30 a.m. He found the following injuries:

"(1) A stab wound found 6 cm below (L) Collar Bone is the First Intercostal space of size 5 cm X 3 cm entering pleural cavity.

(2) A stab wound found over the 6 m Intercostal space 4 X 3 cm over the (L) Ant.Axillary Line entering the pleural cavity and stabbing the ant.wall of Left ventricle vacity 2 x 1 cm entering the (L) ventricular cavity.

(3) A stab injury 2.5 cm below Post superior iliac spine 6 x4x7 cm puncturing the glubeal muscles.

(4) A cut injury 3 x 1 cm x skin deep, exposing thenar muscles between (L) Thumb and (L) Forefinger (Index Finder).

Int Examination:

Thorax: Thoracic cavity contain 1000 of Fluid blood with clots. There are two stab wounds 3 x 2 cm corresponding to would No.1, 2.

Heart: Stab wounds over the Anti Wall of Lt.Ventricle as described in the wound No.2. All Chambers empty.

Lung: Both lung pale. Punctured would over the (L) upper bone 3 x 2 x 2 cm. Corresponding to wound NO.(1).

(R) lung pale, normal.

Head: Skull intact, Dura intact; Brain pale; hyoid bone intact. Stomach contains 150 g of rice particle. Liver:Normal, Pale, Spleen: Normal, Pale."

Ex.P10 is the post-mortem certificate. He gave opinion that the injuries on the deceased could have been caused by a weapon like knife and the death was due to shock and haemorrhage due to the injuries.

(f) P.W.13 continued the investigation, collected the post-mortem certificate, examined the Doctor on 6.2.2010 at 12.00 p.m. He arrested both the accused. On such arrest, both the accused made voluntary confessions one after the other. The first accused made a disclosure statement, in which he declared the place where he had hidden the knife. In pursuance of the same, he took the police and produced M.O.1-knife. P.W.13 recovered the same under a mahazar and on returning to the police station, he forwarded the accused to the Court. On a request made by him, the learned Magistrate forwarded the material objects for chemical examination. The report reveals that there was blood stains on all the items except the sample earth. According to him, the knife also contained human blood. On completing the investigation, he laid charge-sheet against the accused.

3. Based on the above materials, the trial Court framed the charges as detailed in first paragraph of this judgement. The accused denied the same as false. In order to prove the case, on the side of the prosecution, as many as 13 witnesses were examined, 13 documents and 3 material objects were marked. On the side of the accused, two documents, namely, the general diaries of Kolattur Police Station were marked. Out of the witnesses,

P.Ws.2 and 3 are eyewitnesses to the occurrence, who have vividly spoken about the entire occurrence. P.W.1 has spoken about the complaint made to the police. P.Ws.4 and 5 have spoken about the fact that they took the deceased to the hospital. P.W.6 is only an ear say witness, who heard about the occurrence subsequently. P.W.7 has spoken about the observation mahazar and the rough sketch prepared and the recovery of material objects, blood stained earth and sample earth. P.W.8 has spoken about the chemical examination conducted by him and the result thereon. P.Ws.9 and 10 are the police constables, who handed over the dead body to the Doctor (P.W.12) for post-mortem and received the First Information Report, respectively. P.W.11 has spoken about the registration of the case. P.W.12 has spoken about the autopsy conducted on the body of the deceased and his final opinion regarding the cause of the death. P.W.13 has spoken about the investigation done and the laying of the final report.

4. When the above incriminating materials were put to the accused, they denied the same as false. Their defence was a total denial.

5. Having considered all the above, the trial Court convicted the accused as detailed in first paragraph of this judgement that is how the accused are before this Court with

these appeals.

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

7. Admittedly the occurrence has taken place inside the refugee camp. There is no controversy before this Court that these two accused and the deceased as well as P.Ws.2 to 6 were all inmates of the refugee camp. P.Ws.2 and 3 have no grudge against the accused. Their evidence cannot be doubted at all. They have very vividly spoken about the entire occurrence. We do not find any reason to reject the eyewitness account of P.Ws.2 and 3. Their evidence are duly corroborated by the medical evidence as well. There is no delay in preferring the First Information Report so as to create any doubt in the case of the prosecution.

8. The learned counsel for the appellants is not able to point out any other flaw in the case of the prosecution. From these two evidences, we have got no reason to dis-agree with the findings of the trial Court that the first accused caused the fatal blows on the deceased and the second accused attacked him with hand before that.

9. From the medical evidence it is clear that the death was due to shock and haemorrhage due to the injuries caused by the first accused. Thus, it has been established that the first accused has caused the death of the deceased by causing injuries on him. So far as the second accused is concerned, he did not have any weapon. The first accused also did not have any weapon initially. It is in evidence that the first accused rushed to his house, came back with the knife and then he stabbed the deceased. The second accused would not have anticipated that the first accused would go to his house, come back with a knife and stab the deceased. Therefore, it cannot be concluded safely that they had any common intention to commit the murder of the deceased. First of all, there is no evidence either direct or circumstantial to prove that there was pre-meeting of mind between the accused, so as to conclude that there was common intention to commit the murder of the deceased. Similarly, absolutely there is no evidence to prove that the second accused either induced or aided the first accused to cause the death of the deceased. Thus, there is no scope to convict the second accused by invoking either Section 109 of the Indian Penal Code or Section 34 of the Indian Penal Code. Therefore, in our considered view, for the said act committed by the first accused, the second accused is not liable for punishment. However, there is enough evidence through P.Ws.2 and 3 that before the actual occurrence in which the first accused attacked the deceased, the second accused attacked the

deceased with hands. Therefore, so far as the second accused is concerned, for his individual overt act, he is liable for punishment under Section 323 of the Indian Penal Code.

10. So far as the first accused is concerned, it was he who caused the fatal blow. It is in evidence that the deceased teased the second accused, which resulted in a quarrel and only it was in that quarrel, the first accused lost his mental balance and out of provocation, which was sudden and grave, he went into the house, came back with a knife and caused the injuries. Thus, there is enough evidence to prove that the first accused was provoked by the words as well as deeds of the deceased.

11. Though, the injuries caused on the deceased were on the chest, there was no injury caused to the heart. Out of the injuries, only one injury was serious, which is an injury caused to the right side lung. In our considered view the act of the first accused would fall within the 3rd limb of Section 300 of the Indian Penal Code. Since, in turn it falls within the first exception to Section 300 of the Indian Penal Code, the first accused is liable to be punished only under Section 304 (1) of the Indian Penal Code.

12. Now turning to the quantum of punishment, these two accused are poor Srilankans, who have been toiling by staying in the refugee camp near Thumbalahalli. In Srilanka, they have lost their kith and kin and also their properties in the recent internal disturbance. There was no motive. The occurrence itself was out of a sudden quarrel due to the fact that the deceased teased the second accused by calling him as a blind or a man with single eye. They have got no bad antecedents. After the occurrence also they have not involved in any other crime. Having considered all the above, we are of the view that convicting the first accused under Section 304(1) of the Indian Penal Code and sentencing him to undergo Rigorous Imprisonment for five years, and to pay a fine of Rs.1000/-, in default, to undergo Rigorous Imprisonment for four weeks and convicting the second accused under Section 323 of the Indian Penal Code and sentencing him to undergo Rigorous Imprisonment for six months and to pay a fine of Rs.500/-, in default, to undergo rigorous imprisonment for two weeks, would meet the ends of justice.

13. In the result, the appeals are partly allowed in the following terms:

(i) The conviction and sentence imposed on the first 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 five years and to pay a fine of Rs.1000/-, in

default, to undergo Rigorous Imprisonment for four weeks.

(ii) The conviction and sentence imposed on the second accused for the offence under Section 302 r/w. Section 109 of the Indian Penal Code is set aside and instead he is convicted under Section 323 of the Indian Penal Code and sentenced to undergo Rigorous Imprisonment for six months and to pay a fine of Rs.500/-, in default, to undergo Rigorous Imprisonment for two weeks.

(iii) It is directed that the period of sentence already undergone by the accused shall be given set off under Section 428 of the Cr.P.C.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

msk

To

1. The Inspector of Police,
Karimangalam Police Station,
Dharmapuri District

2. The Principal District and Sessions Judge,
Dharmapuri

3. The District Collector, Chennai.

4. The Public Prosecutor,
High Court, Madras

5. The Superintendent, Central Prison, Vellore.

6. The Director General of Police, Mylapore, Chennai.

7. The Judicial Magistrate,
Palacode, Dharmapuri Dt.

8. The District Collector, Vellore.

+1 cc to M/s.P.Pugalenth, Advocate, sr.8414

CrI.A.Nos.689 and 101 of
2012

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kra 22.02.2016