

Bail Slip:- The Appellant/Accused No.1, viz., Mani was directed to be released on bail by an order dated 7.7.2014 in M.P.No.1/2013 in CrI.A.No.326 of 2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.06.2016

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

CRL.A.No.326/2013

Mani

... Appellant/A1

Vs

State by

The Inspector of Police,
Kadathur Police Station,
Dharmapuri District.

(Pennagaram Police Station)

... Respondent/ Complainant

Appeal filed u/s.374 Cr.P.C., against the Judgment of conviction and sentence passed by the learned Additional District and Sessions Judge, Dharmapuri, made in S.C.No.73 of 2012 dated 22.03.2013.

For Appellant : Mr.M.G.Udhayashankar
for M/s.S.Shanthakumar

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

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellant is the 1st accused in S.C.No.73 of 2012 on the file of the learned Additional District and Sessions Judge, Dharmapuri, made in S.C.No.73 of 2012 dated 22.03.2013. The 2nd accused was one Mr.Govindasamy. The 1st accused stood charged for offences under Sections 302 and 307 of IPC and the 2nd accused stood charged for offences under Sections 302 read with

109 of IPC and 307 of IPC. By judgment dated 22.03.2013, the trial court acquitted the 2nd accused from both the charges, however, convicted the 1st accused/appellant herein under Sections 302 and 307 of IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 6 months for the offence under Section 302 of IPC and to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 6 months for the offence under Section 307 of IPC. Challenging the said conviction and sentence, the appellant/A1 is before this Court with this Criminal Appeal.

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

(a) The deceased in this case was one Mr.Arumugam. P.W.1 Chinnaval is his wife. The 1st accused Mani and the deceased are friends. The 2nd accused is the brother-in-law of the 1st accused. The father of the 1st accused and the deceased had partitioned the ancestral properties among the deceased and the 1st accused and in the said partition, a Well was kept as a common property giving right to both of them to take water to irrigate to their respective shares of lands. The electricity service connection was in the name of the 1st accused. In due course of time, there arose a dispute between them in respect of the common Well. The deceased told the 1st accused that he should not take water from the common well to irrigate the lands which he has subsequently purchased in his name. Enraged over the same, some time before the occurrence, when the deceased and P.W.1 were in their house, the 1st accused and his mother-in-law came to the house, developed quarrel. In continuation of the same, both these two accused again came to the house of the deceased. At that time, the 1st accused was armed with ''Koduval''. There arose a quarrel. In the said quarrel, it is alleged that the 1st accused cut the deceased on his right hand, neck and other parts of the body. P.W.1, who was by the side of the deceased, intercepted. The 1st accused cut her also on her shoulder and the back side of the head. The 2nd accused instigated the 1st accused. The deceased fell down in a pool of blood. P.W.1 also fell down and swooned. The accused ran away from the scene of occurrence. The occurrence was witnessed by P.Ws.2 and 3 also. P.W.1 raised alarm. On hearing the same, P.W.4 also came to the place of occurrence. Within a short while, the deceased laid on the spot succumbing to the injuries.

(b) The relatives took P.W.1 to Dharmapuri Government Medical College Hospital. P.W.7 Dr.Soganraj examined her on 30.05.2010 at 08.20 a.m. She was conscious. She told the Doctor that at 06.00 a.m. on the same day, she was attacked by a known person with Aruval. He found the following injuries on P.W.1:

1. A lacerated injury on the left cheek measuring 5 x 2 x 1/2 c.ms.;

2. A lacerated injury on the right side of the neck measuring 5 x 3 x 2 c.ms.; and

3. A lacerated injury on the middle of the head measuring 4 x 2 x 1 cms.

P.W.7 admitted her as inpatient. Ex.P.6 is the Accident Register. She underwent treatment in the hospital till 07.06.2010 on which date, she was referred to Stanley Medical College Hospital, Chennai for undergoing plastic surgery.

(c) On receiving intimation from the hospital, P.W.9, the then Sub-Inspector of Police of Kadathur Police Station went to the hospital and recorded the statement of P.W.1. On returning to the Police Station at 10.00 a.m., he registered a case in Crime No.131 of 2010 under Sections 302 and 307 of IPC against both the accused. Ex.P.11 is the First Information Report. He forwarded Ex.P.1 and Ex.P.11 to court which were received by the learned Magistrate at 02.00 p.m. on the same day.

(d) The case was taken up for investigation by P.W.10 the then Inspector of Police. At 11.00 a.m., he went to the police station and in the presence of P.W.4 and another witness, he prepared an Observation Mahazar and a Rough Sketch. Then, he conducted inquest on the body of the deceased between 12.00 noon to 2.00 p.m. and forwarded the body to the Government Medical College Hospital, Dharmapuri for postmortem.

(e) P.W.8 Doctor S.Sugumar conducted autopsy on the body of the deceased on 30.05.2010 at 02.40 p.m. He found the following injuries.

'External injuries:-

1)Cut injury present measuring 23x7cms over the right side of neck extending from nape of the neck to the middle of the chin cutting the mandible transversely exposing the oral cavity and the muscles of neck.

2)cut injury present over the right shoulder extending from midscapular region to anterior shoulder region 16x10cms, exposing the fractured shoulder joint, condyle of the humerus separated.

3)cut injury (+), 8*2*6cms on the left supra scapular region

(A) cut injury (+) right scapular region 12x2x1cms

5)cut injury left elbow joint 783cms bone deep.

Internal Examination :

Neck. Hyoid intact. Thorax:sternum intact Ribs intact. Heart chambers empty.

Lungs pale on eset appearance and on cut section

Abdomen:Liver-pale, stomach empty, kidneys & spleen pale. bladder empty. ext-genitals north

Head:skull vault and base - (N) meninges intact brain - pale.''

Ex.P.10 is the Postmortem Certificate. He gave opinion that the death of the deceased was due to shock and hemorrhage due to the cut injuries.

(f) As soon as inquest was over, P.W.10 recovered certain material objects from the place of occurrence. On 31.05.2010 at 07.00 a.m., at Puttiredhypatti Railway Station, he arrested the accused 1 and 2 in the presence of P.W.6 and another witness. On such arrest, the 1st accused gave a voluntary confession in which he disclosed the place where he had hidden a ''Koduval'', a blood stain shirt and a gunny bag. In pursuance of the said confession, he took the police and the witnesses to the said place of hide out and produced M.Os.1, 4 and 5 from him.

(g) The investigation was followed by P.W.14. He recovered the blood stained clothes found on the body of the deceased as well as of P.W.2. He forwarded all the material objects to court and made a requisition to court to forward the same for chemical examination. The report of the Analyst revealed that there were blood stains found on all the material objects including the knife and the dress materials recovered from the accused. On completing the investigation, he laid charge sheet against both the accused.

3. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined and 16 documents and 9 material objects were also marked.

4. Out of the said witnesses, P.Ws.1 to 3 are the eye-witnesses to the occurrence. P.W.1 is an injured eye-witness. All these 3 witnesses have vividly spoken about the entire occurrence. P.W.4 has stated that on hearing the alarm raised, he rushed to the place of occurrence and found P.W.1 with injuries and P.W.2 had died. P.W.5 has spoken about the preparation of the Observation Mahazar and the Rough Sketch and also the recovery of certain material objects from the place of occurrence. P.W.6 has spoken about the arrest of the accused and the consequential recovery of M.Os.1, 4 and 5 on the confession of the 1st accused. P.W.7 Doctor has stated that on 30.05.2010 at 08.20 a.m., he examined P.W.1 and at that time, P.W.1 told that she was attacked by a known person. P.W.8 has spoken about the postmortem conducted on the dead body of the deceased and his final opinion regarding the cause of death. P.W.9 has spoken about the registration of the case on the complaint of P.W.1. P.Ws.10 and 14 have vividly spoken about the investigation done and final report filed. P.W.13 has

spoken about the treatment given to P.W.1. P.W.13 has also spoken about the injuries sustained by P.W.1 and he has opined that the injuries sustained by P.W.1 was grave in nature. P.W.11 has spoken about the handing over of the F.I.R. to the learned Judicial Magistrate at 02.00 p.m. on 30.05.2010. P.W.12 has spoken that he took the dead body of the deceased to the hospital and handed over the same to the doctor for postmortem.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not choose to examine any witness nor to mark any document on their side. Having considered all the above, the Trial Court convicted the 1st accused alone as detailed in the first paragraph of the judgment. Challenging the said conviction and sentence, the appellant/1st accused is before this Court.

6. We have heard the learned Counsel for the appellant and 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.W.3 would not have been witnessed the occurrence. He would further submit that the evidence of P.W.1 cannot be believed in toto as her evidence has been disbelieved by the prosecution. There is enormous delay in preferring the complaint as well as forwarding the F.I.R. to court. The learned Counsel for the appellant would also submit that the medical evidence also does not corroborate the eye-witness account. He would further submit that at any rate, the act of the accused would not fall within the ambit of Section 302 of IPC as well as Section 307 of IPC.

8. The learned Additional Public Prosecutor vehemently opposing this appeal would submit that there is no reason to reject the eye witness account of P.W.1 who sustained a number of cut injuries on her body which are grievous in nature. P.Ws.2 and 3 have witnessed the occurrence and there is no reason to reject their evidence. He would further submit that though there is some delay in forwarding the F.I.R. to court, on that score, the evidence of the injured eye-witness coupled with the evidence of eye-witnesses P.Ws.2 and 3 cannot be disbelieved. He would also submit that the medical evidence duly corroborates the eye-witness account. For these reasons, he would pray for dismissal of the appeal.

9. We have considered the said submissions.

10. Admittedly, P.W.1 is an injured eye-witness. She has sustained cut injuries on her body and she underwent treatment for many weeks and she was at last, taken to Stanley Medical

College Hospital at Chennai for Plastic Surgery. According to P.W.13, on 24.06.2010, after treatment, she was discharged from the hospital. Thus, between 30.05.2010 and 24.06.2010, she was in the hospital undergoing treatment in which period she had undergone a plastic surgery. Thus, there is no denial of the fact that P.W.1 sustained injuries in the same occurrence. Her presence at the place of occurrence, thus, cannot be disbelieved. P.W.1 has stated that it was the appellant, who cut the deceased as well as herself. We find no reason to reject the said evidence of P.W.1. Her evidence is duly corroborated by the eye witnesses, P.Ws.2 and 3. Though all these three witnesses have been extensively cross-examined by the accused, nothing has been brought on record to disbelieve them. In our considered opinion, the evidences of P.Ws.1 and 2 are cogent and convincing. Therefore, we are prepared to act upon the same.

11. When P.W.1 was taken to the hospital, quite naturally, her condition would have been somewhat serious. On getting information from the hospital, P.W.9 had gone to the hospital, recorded her statement and on returning to the police station at 10.00 a.m. on 30.05.2010, P.W.9 had registered the case. Absolutely, there is no delay in lodging the F.I.R. The F.I.R. had reached the court on 2.00 p.m. in which also we find that there is no unreasonable delay. Thus, the argument advanced by the learned Counsel for the appellant that the case of the prosecution has become doubtful on account of the delay in lodging the F.I.R. and in forwarding the same to court deserves only to be rejected.

12. The medical evidence, in our considered view, duly corroborates the eye witness account. The recovery of M.O.1 on the disclosure statement made by the 1st accused in the presence of P.W.6 also duly supports the case of the prosecution. Thus, from these evidences, we hold that it was this accused who cut the deceased and also P.W.1.

13. According to the medical evidence, the death of the deceased was shock and hemorrhage due to cut injuries on the body of the deceased. The death was instantaneous. Thus, the act of the accused in causing the death of the deceased would squarely fall within the first limb of Section 300 of IPC.

14. Having come to the above conclusion, now, we have to see whether the act of the accused would fall under anyone of the exceptions to Section 300 of IPC in causing the death of the deceased. It is in evidence that there was some dispute in respect of taking water from the common Well. At the time of occurrence also, there was a wordy quarrel. The quarrel went on for some time. At the end of the quarrel, the 1st accused attacked the deceased with Aruval. In our considered view, on

analysing the eye-witness account and in the light of the motive and other circumstances, we are able to presume that the accused had acted out of sudden provocation and it was only out of the same, he has caused the death of the deceased as well as attacked P.W.1. Thus, the act of the accused in causing the death of the deceased would squarely fall within the first exception to Section 300 of IPC and therefore, he is liable to be punished for offence under Section 304-I of IPC for having caused the death of the deceased. Similarly, for having attempted to commit culpable homicide of P.W.1, he is liable to be punished under Section 308 of IPC.

15. Now coming to the quantum of punishment, the accused is aged about 45 years. He is an illiterate person. He has no bad antecedents. He has got a family to take care of. Having regard to these mitigating as well as aggravating circumstances, in our considered view, sentencing him to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 4 weeks for the offence under Section 304-I of IPC and sentencing him to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for 4 weeks for the offence under Section 308 of IPC would meet the ends of justice.

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

1. The conviction and sentence imposed on the appellant by the trial court for offences under Sections 302 and 307 of IPC are hereby set aside and instead, he is convicted under Section 304-I of IPC and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for 4 weeks and also convicted under Section 308 of IPC and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for 4 weeks; and

2. It is directed that these sentences shall run concurrently and the period of sentence already undergone by the accused shall be set off under Section 428 of Cr.P.C. The trial court to secure the accused to undergo the remaining period of sentence.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1. The Inspector of Police,
Kadathur Police Station,
Dharmapuri District.
2. The Additional District and Sessions Judge,
Dharmapuri.
3. The Public Prosecutor,
High Court, Chennai.
4. The District Munsif cum
Judicial Magistrate
Pappireddipatti
Harur, Dharmapuri District
5. The Judicial Magistrate No.1,
Tiruchirappalli
6. The Chief Judicial Magistrate
Dharmapuri District (For information)
7. The Superintendent
Central Prison, Vellore
8. The Section Officer
Criminala Section,
High Court, Madras
9. The Principal District and sessions Judge
Dharmapuri
10. The Collector
Dharmapuri District
11. The Director General of Police
Mylapore, Chennai

1 cc to Mrs. S. Shanthakumari, advocate, Sr. 32037

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