

BAIL SLIP

1. The 1st Appellant/Accused No.1 viz; Obiliappa S/o.Pichappa @ Muniappa, Aged 35 Years, was directed to be Released on Bail, as per the Order of this Court Dated 30/04/13 in MP.NO.1/13 in CRL.A.NO.327/13.

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2. The 2nd Appellant/Accused No.2 viz; Munisamy, S/o.Pichappa @ Muniappa, Aged 32 Years, was directed to be Released on Bail, as per the Order of this Court Dated 25/11/13 in MP.NO.3/13 in CRL.A.NO.327/13.

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2016

CORAM:

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.327 of 2013

1.Obiliappa

2.Munisamy

..Appellants/Accused A1 & A2

Vs.

State represented by
Inspector of Police
Berigai Police Station
Berigai Krishnagiri District.
(Crime No.21 of 2008)

..Respondent/Complainant

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.60 of 2011 by the learned Additional District and Sessions Judge, Krishnagiri District, at Krishnagiri, dated 19.04.2013.

For Appellants : Mr.K.Selvarangan
for 1st appellant
Mr.J.Franklin
for 2nd appellant

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

* * *

JUDGMENT

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

The appellants are the accused Nos.1 and 2 in S.C. No. 60 of 2011 on the file of the learned Additional District & Sessions Judge, Krishnagiri District, at Krishnagiri. They stood charged for the offence under Section 302 IPC. By judgment, dated 19.04.2013, the Trial Court convicted the 1st accused under Section 302 r/w. 34 IPC and the 2nd accused under Section 302 IPC and sentenced each of them to undergo imprisonment for life for their respective offence and to pay a fine of Rs.1000/- each, in default to undergo simple imprisonment for six months each. Challenging the said judgment of conviction and sentence, dated 19.04.2013, the appellants are before this Court with this Criminal Appeal.

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

(i) The accused Nos.1 and 2 are the brothers. Their father was one Mr.Pichappa @ Muniappa. The deceased Venkatesan was the brother of Mr.Pichappa @ Muniappa. On account of a dispute relating to sharing of a landed property, there had been enmity between the two families for quite some time. This is stated to be the motive for the occurrence.

(ii) It is alleged that, on 04.02.2008, at about 5.00 p.m., the deceased Venkatesan was talking to P.W.1-Ashwini, just standing in front of his house. P.W.2-Muniraj and P.W.3-Oppamma, were also present. At that time, the 1st accused came to the place of occurrence. He asked the deceased as to, whether he could settle the property dispute and allot his share to him or not. This quarrel went on for some time. At the end of the quarrel, it is alleged that the 1st accused pushed the deceased down, kicked him with legs and fisted him with hands. Suddenly, the 2nd accused rushed to the place of occurrence from his house, armed with a knife. He stabbed the deceased repeatedly, on various parts of his body. The deceased fell down in a pool of blood. Both the accused ran away from the scene of occurrence. While running away, the 2nd accused had thrown the knife at the place of occurrence itself. The deceased died instantaneously.

(iii) Immediately, P.W.1-Ashwini went to the Berigai Police Station and made a complaint under Ex.P.1. Mr.Jayachandran, the then Sub-Inspector of Police, on receipt of the said complaint from P.W.1, registered a case in Crime No.21 of 2008 under Section 302 IPC. Ex.P.17 is the First Information Report. He forwarded Ex.P.1 and Ex.P.17 to the Court, which were received by the learned Magistrate, on 04.02.2008, at 11.30 p.m.

(iv) P.W.9-Mr.K.Sankar, the then Inspector of Police, took up the case for investigation. He proceeded to the place of occurrence, on 04.02.2008, at 11.00 p.m. Since, it was dark, he was unable to prepare an Observation Mahazar and Rough Sketch. Therefore, on 05.02.2008, at 6.30 a.m., he visited the place of occurrence and in the presence of P.W.4-Sridharan, the Village Administrative Officer, and his

assistant, by name, Thimmarayappa, he prepared an Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.18). He also recovered the bloodstained earth (M.O.2) and sample earth (M.O.3), under a Mahazar-Ex.P.3, from the place of occurrence. Then, he conducted inquest on the body of the deceased and forwarded the same for postmortem.

(v) P.W.5-Dr.T.Gnana Meenakshi of Government Hospital, at Hosur, conducted autopsy on the dead body of the deceased, on 05.02.2008, at 1.30 p.m. She found the following injuries on the body of the deceased :-

"External injuries:- (i) An elliptical, vertical, incised wound seen in the left forehead, 1 ½ cm above the middle of left eye brow measuring 3 cm x ½ cm x ¼ cm.

(ii) Incised wound of 4 cm x ½ cm x ½ cm in the centre of forehead, vertical, 7 cm above the nasivion.

(iii) An elliptical, incised wound, oblique left shoulder 4 cm x 2 cm x 3 cm.

(iv) An oblique incised wound in left lateral chest, elliptical, 3 cm lateral to left nipple, 17 cm below clavicle in the anterior auxillary line, measuring 6 cm x 2 cm. On dissection, and opening the chest wall, clotted blood was seen over the muscle. The depth of the above said incised, punctured wound was 10 cm, piercing the lung underlying; the direction of the wound was front lateral to medial and from below upwards.

(v) A vertical, incised wound, left back at the level of spine of scapula, 6 cm lateral to midline, measuring 4 cm x 2 cm. On dissection, the depth of this wound was 11 cm, oblique from below upwards lacerating the upper pole of leftlung.

(vi) A vertical, incised wound 6 cm x 3 cm x 3 cm right back, 4 cm lateral to midline below shoulder.

(vii) An incised wound of 8 cm x 2 ½ cm x 3 cm in the right back in the infrascapular region, 9 cm lateral to midline.

Internal Examination:- (i) Hyoid Bone - Intact. (ii) Ribs - Intact. 200 ml of blood in left thoracic cavity. Heart - Empty 240 grams. (iv) Lungs left lacerated wt. 180 grams. Right 210 grams. C/s. pale. (v) Liver -weight 1070 grams.

C/s.Pale. (vi) Stomach partially digested ragi 250 grams. (vii) Kidneys left 90 grams right 95 grams. C/s. pale. (Viii) Spleen - 140 grams. C/o.pale. (ix) Bladder -Empty. (x) Skull-No fracture. (xi) Membrane-viscera preserved in NaCl2. (a) one kidney (b) A portion of liver (c) stomach and the contents (d) loop of small intestine and contents (e) Preservative used. (j) Blood sample in Sodium Citrate."

Ex.P.5 is the postmortem certificate. The Doctor gave final opinion that the deceased would appear to have died of shock and haemorrhage, due to the injuries. She further gave opinion that the said injuries would have been caused by a weapon like M.O.1-knife.

(vi) During the course of investigation, P.W.9-K.Sankar, the then Inspector of Police, recovered the bloodstained clothe materials (M.Os. 5 to 7), under a Mahazar-Ex.P.16, from the body of the deceased. On 06.02.2008, P.W.9 arrested the 1st accused, at Muthukurikhi Bus Stand, in the presence of P.W.4-Sridharamurthy, the Village Administrative Officer, and his assistant, by name, Thimmarayappa. On such arrest, the 1st accused made a voluntary confession, in which, he disclosed the place where he had hidden the shirt. In pursuance of the said disclosure statement, he took the police and the witnesses to the said place and produced the shirt (M.O.8), which was recovered under a Mahazar-Ex.P.21. On returning to the Police Station, P.W.9 forwarded the 1st accused to the Court for judicial remand.

(vii) On 17.03.2008, at 7.30 a.m., P.W.9 arrested the 2nd accused in the presence of P.W.7-Venkataramulu, the Village Administrative Officer, and another witness, by name, Muniappa. On such arrest, he made a voluntary confession, in which, he disclosed the place, where he had hidden the knife. In pursuance of the same, he took the police and the witnesses to the said place and produced the knife (M.O.1), which was recovered under a Mahazar-Ex.P.15. On returning to the police station, he forwarded the 2nd accused to the Court for judicial remand and also handed over all the Material Objects to the Court.

(viii) Since, P.W.9 was transferred, the investigation was taken up by P.W.10-Mr.P.Boopal, the then Inspector of Police. P.W.10 examined the Doctor, collected the medical records, and made a request to the Court to forward the Material Objects for chemical examination. Accordingly, the Material Objects were sent for chemical examination. The report revealed that there were human bloodstains on all the Material Objects, except the knife. On completing the investigation, he laid the chargesheet against the accused.

(ix) Based on the above materials, the Trial Court framed a lone charge under Section 302 IPC as against the accused Nos. 1 and 2. The accused Nos.1 and 2 denied the same. During the trial, in order to prove the case of the prosecution, on the side of the prosecution as many as 10 witnesses were examined and 21 documents and 8 Material Objects were exhibited.

(x) Out of the said witnesses, P.Ws. 1 to 3 were examined as eye witnesses to the occurrence. P.W.2-Muniraj had turned hostile and he has not supported the case of the prosecution in any manner. P.Ws.1 and 3 have vividly spoken about the entire occurrence. P.W.1 has further spoken about the complaint made by her to the police. P.W.4-Sridharamurthy, the Village Administrative Officer, has spoken about the preparation of Observation Mahazar and Rough Sketch. He has further spoken about the recovery of bloodstained earth and sample earth from the place of occurrence. He has also spoken about the arrest of the 1st accused, the disclosure statement made by the 1st accused and the consequential recovery of bloodstained shirt (M.O.8). P.W.5-Dr.Gnana Meenakshi of Government Hospital, at Hosur, has spoken about the postmortem conducted by her on the body of the deceased and her final opinion regarding the cause of death. P.W.6-Mr.Selvamani, the Head Clerk, has stated that he forwarded the Material Objects for chemical examination, as ordered by the learned Magistrate, on the request of the Investigating Officer. P.W.7-Venkatarajulu, the then Village Administrative Officer, has spoken about the arrest of the 2nd accused, the disclosure statement made by him and the consequential recovery of the knife (M.O.1) from his possession. P.W.8-Muthu, the then Head Constable, has stated that he carried the requisition letter and the dead body of the deceased to the Government Hospital, at Hosur, and handed over the dead body to the Doctor for the purpose of postmortem. P.Ws.9 and 10, the then Inspectors of Police, have spoken about the registration of the case and the investigation done by them and the filing of the final report.

(xi) When the accused Nos.1 and 2 were questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, they denied them as false. But, they have not chosen to examine any witness nor to mark any document. Their defence was a total denial. Having considered all the above, the Trial Court convicted the appellants/accused Nos.1 and 2, as detailed in paragraph No.1 of this judgment. That is how, the appellants/accused Nos.1 and 2 are now before this Court with this appeal.

3. We have heard Mr.K.Selvarajangan, the learned counsel appearing for the 1st appellant; Mr.Franklin, the learned counsel appearing for the 2nd appellant; Mr.M.Maharaja, the

learned Additional Public Prosecutor appearing for the State; and we have also perused the records carefully.

4. As we have already pointed out, the prosecution mainly relies on the eye witness account of P.Ws.1 and 3. The learned counsel for the appellants would submit that P.Ws.1 and 3 are closely related, and therefore, their evidence cannot be accepted. But, we find no force in the said argument of the learned counsel for the appellants. It is true that P.Ws. 1 and 3 are closely related to each other, but, on that score, their evidence cannot be simply rejected. If we closely analyse the evidence of P.Ws. 1 and 3, we find that there is no infirmity in the evidence of these witnesses, so as to reject it. Their presence is quite natural. The occurrence had taken place just in front of the house of the deceased. P.Ws. 1 and 3 have further stated that the occurrence taken place, when they were talking to the deceased. Immediately after the occurrence, P.W.1 had gone to the police station and made the complaint (Ex.P.1). Thus, there was no delay in lodging the complaint. Similarly, in forwarding the First Information Report (Ex.P.17) to the Court also, there was no delay. The medical evidence duly corroborates the evidence of the eye witnesses, viz., P.Ws. 1 and 3. Thus, from the evidence of the eye witnesses, it has been duly established that the death of the deceased was caused only by the 2nd accused.

5. Now turning to the 1st accused, we find that the evidence is wanting to convict him. It is the evidence of P.Ws. 1 and 3 that the 1st accused alone came to the place of occurrence and he demanded the deceased for settlement of the property dispute. This demand was made to the deceased just standing in front of the house of the deceased. This has resulted in a quarrel between them. When the quarrel was going on, it is alleged that the 1st accused pushed him down. At that time, the 2nd accused was no where at the place of occurrence. Probably, on hearing the commotion, the 2nd accused was driven to the place of occurrence. At any rate, the 2nd accused rushed to the place of occurrence with a knife and caused injuries on the deceased, repeatedly. The narration of these events would go to show that there was no chance for premeeting of mind, so as to hold that both the accused had any common intention as required under Section 34 of the IPC. Therefore, for having caused the death of the deceased by the 2nd accused, the 1st accused cannot be held in any manner responsible.

6. According to the charge and according to the positive case of the prosecution, the overt act of the 1st accused is that he pushed the deceased down, but the evidence of P.Ws. 1 and 3 would be that the 1st accused held the deceased. This in our considered view is a major contradiction. Thus, so far as the 1st accused is concerned, there is no cogent evidence to convict him under any penal provision. Since, we have already

held that there was no common intention between the accused Nos. 1 and 2, the 1st accused is entitled for acquittal.

7. Now turning to the 2nd accused, there is cogent and convincing evidence of P.Ws. 1 and 3 to the effect that it was he who caused injuries on the body of the deceased. The Doctor, who conducted postmortem, opined that the deceased would appear to have died of shock and haemorrhage due to the injuries. The medical evidence reveals that there were six injuries caused by the 2nd accused. Some of the injuries were on the vital parts of the body of the deceased. Thus, the 2nd accused had an intention to cause the death of the deceased. He ensured that the deceased died on the spot. Thus, the act of the 2nd accused would squarely fall within the first limb of Section 300 IPC. The learned counsel for the appellants would submit that there was a simple quarrel and therefore, the act of the 2nd accused would fall either under Exception 1 to Section 300 IPC (or) Exception 4 to Section 300 IPC.

8. We are not persuaded with the argument of the learned counsel for the appellants for more than one reason. First of all, it is in evidence that the quarrel was between the deceased and the 1st accused. The 2nd accused was nowhere at the scene of occurrence. He had nothing to do with the quarrel. He came running to the place of occurrence, armed with a weapon. There was nothing to indicate that he was in any manner provoked to act so, so as to bring his act under Exception 1 to Section 300 IPC. Similarly, there was no quarrel between the deceased and the 2nd accused, and the quarrel was already over between the deceased and the 1st accused, and therefore, the act of the 2nd accused would not fall within the Exception 4 to Section 300 IPC also. Thus, the 2nd accused is liable for punishment only under Section 302 IPC.

9. Now, turning to the quantum of punishment, the Trial Court has imposed only minimum punishment, which does not require any interference at the hands of this Court.

10. In the result,

- i. this appeal is partly allowed and the conviction and sentence imposed on the 1st appellant/1st accused by the Trial Court in S.C.No.60 of 2011, dated 19.04.2013, are set aside and the 1st accused is acquitted of the charge levelled against him;
- ii. The fine amount, if any paid by the 1st appellant/1st accused, shall be refunded to him.
- iii. The bail bond, if any executed by the 1st appellant/1st accused, shall stand discharged.
- iv. The conviction and sentence imposed on the 2nd appellant/2nd accused by the Trial Court, in S.C.No.60 of 2011, dated 19.04.2013, stands confirmed.

v. Since the 2nd appellant/ 2nd accused is on bail, the

Sessions Court is directed to take steps to secure his custody to commit him to prison to undergo the remaining period of sentence.

vi. The period of detention already undergone by the 2nd appellant/2nd accused shall be given set off under Section 428 Cr.P.C.

vii.

paa

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Judicial Magistrate, No.I, Hosur.
 2. The Chief Judicial Magistrate, Krishnagiri.
 3. The Additional District and Sessions Judge, Krishnagiri District.
 4. The Superintendent, Central Prison, Vellore.
 5. The Inspector of Police
Berigai Police Station
Berigai Krishnagiri District.
 6. The Additional Public Prosecutor,
High Court, Chennai.
 7. The Judicial Magistrate, No.I, Tiruchirapalli.
 8. -do- thro' The Chief Judicial Magistrate, Tiruchirapalli.
 9. The District Collector, Vellore.
 10. The Director General of Police, Chennai-4.
- + 1 cc to Mr.J.Franklin, Advocate Sr 22523

KR/28/4/16

CRIMINAL APPEAL No.327 of 2013