

Bail Slip

The Appellant/Accused Viz., Packirisamy aged 37 years, S/O Mariyappa Pillai, be and hereby is directed to be released on bail as per direction of this Court dated 26/6/2013 made in CrI.M.P.No.1 of 2013 in CrI Appeal No.345/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2016

CORAM

THE HONOURABLE MR. JUSTICE M. JAICHANDREN

AND

THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

CRIMINAL APPEAL No. 345 of 2013

Packirisamy ...Appellant/Accused No.1

Vs.

State:

Sub Inspector of Police,
Kariyapattinam Police Station,
Nagapattinam District,
Cr.No. 48 of 2008.

..Respondent/Complainant

Prayer: Criminal Appeal as against the judgment dated 12.04.2013 passed in S.C. No. 16 of 2009 by the learned District and Sessions Judge, Nagapattinam.

For Appellant :: Mr.R. Sankarasubbu

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

J U D G M E N T

(Judgment of the Court was delivered by S. NAGAMUTHU, J.)

The appellant is the 1st accused in S.C. No. 16 of 2009 on the file of learned District and Sessions Judge, Nagapattinam. Including the appellant, there were totally five accused in the said case. The 2nd accused died before the charges were framed. The Trial Court, however, did not choose to rearrange the order of the rank of the accused. The deceased second accused, as per the final report, was shown as the second accused in the charges and in this judgment also. As against accused Nos. 1 and 3 to 5,

the Trial Court framed the following charges:

Charges	Section of offence	Accused
Charge No.1	Under Section 148 I.P.C.	A1 & A3 to A5
Charge No.2	Under Section 309 r/w 149 I.P.C.	A1 & A3 to A5
Alternative Charge	Under Section 307 r/w 34 I.P.C.	A1 & A3 to A5
Charge No.3	Under Section 302 I.P.C.	A1
Charge No.4	Under Section 302 r/w 149 I.P.C.	A3 to A5
Alternative Charge	Under Section 302 r/w 34 I.P.C.	A3 to A5

By judgment dated 12.04.2013, the Trial Court convicted the 1st accused/appellant alone under Section 302 I.P.C.(charge No.3) and acquitted him of the other charges while accused Nos. 3 to 5 were acquitted of all the charges framed against them. For the offence under Section 302 I.P.C., the Trial Court sentenced the 1st accused/appellant to undergo the punishment of imprisonment for life with fine of Rs.500/-, in default to undergo rigorous imprisonment for 2 years and the remand period undergone by the 1st accused/appellant was directed to be set off under Section 428 Cr.P.C. 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:

(i) The deceased in this case, was one Mrs.Menaka. P.W.s 1 and 2 are the sons of the deceased. They are residents of Edaiyarkadu in Chettipulam. The appellant/1st accused had returned from Malaysia, about one month prior to the date of occurrence. He is also a native of Edaiyarkadu/Siraiyankadu, in Chettipulam Village. Accused No.2 (since deceased) and accused No.4 are relatives of the 1st accused while accused Nos. 3 & 5 are friends of the 1st accused. As the brother of the 1st accused, by name, Guhan, was employed in Malaysia, his wife, P.W.4., by name Suseela, was residing in a common house property in Siraiyankadu, Chettipulam Village. There were disputes between the 1st accused and his brother over the family properties and on account of the same, it is alleged that the 1st accused had driven out P.W.4 from the common house property. Therefore, P.W.4 had left the village and was living with her parents at Thagattur. However, whenever she came to see the house property at Siraiyankadu, she used to visit the house of the deceased. This made the appellant and the other accused to believe that P.W.4, Suseela, was encouraged and helped only by the deceased

and her family members to claim right over the disputed property. This is said to be the motive for the occurrence.

(ii) On 20.02.2008, P.W.4, Mrs. Suseela had come to the house of the deceased. At about 9.30p.m., she left the house of the deceased and went to see the disputed property. It is stated that all the five accused were standing in the house property and on seeing her, they gave a chase to attack her. P.W.4 ran towards the house of the deceased and entered the house of the deceased. All the accused, who came, chasing Suseela, armed with wooden logs, tried to enter into the house of the deceased. At that time, the husband of the deceased, by name, Thirunavukkarasu, who was standing near the entrance of his house, intercepted and attempted to prevent the accused from trespassing into the house and attacking the said Suseela. As a consequence, the 1st accused/appellant attacked him on his head with the wooden log. He fell down and the other accused started beating him. The deceased, Menaka, who was inside the house, on seeing her husband being attacked, rushed to his rescue. The 1st accused/appellant attacked her with the wooden log on her head once. On seeing this, P.W.s 1, 2 and the daughter of the deceased, by name, Sudha (who is no more), intervened and the said Sudha was attacked by the 2nd accused(since deceased) on her head. Thereafter, all the five accused fled away from the scene of occurrence. The occurrence was witnessed by P.W.s 1 and 2, who are the children of the deceased. After the accused had left the place of occurrence, the deceased and the other two injured (the husband and daughter of the deceased) were taken to the Government Hospital at Thiruthuraipoondi, by P.W.4 and others.

(iii) P.W.11, Dr. Girija, attached to Government Hospital at Thiruthuraipoondi, examined the deceased at 11.30p.m. on 20.02.2008. P.W.11 had been told that the deceased was attacked by a known person at her house at 8p.m. She was only semi-conscious. The Doctor noted the following injuries:

"L/E - Laceration 5 x 1.5c.m. Right parietal region.
Depressed # + Right parietal region."

Ex-P10 is the Accident Register issued in respect of the deceased. On the same day, P.W.11 examined Sudha, the daughter of the deceased and she noted the following injury:

" L/E - Laceration + 5 x1 cm Right Temporo - occipital region"

Then, she examined Mr.Thirunavukkarasu, the husband of the deceased, on whom, she found the following injuries:

- "L/E - (i) Laceration 2 x 3 x 1 cm right eye brow.
(ii) Laceration 4 cm x 1 cm below eye on right side.
(iii) Laceration 1 cm left cheek.
(iv) Loss of Central Incisor.
(v) Tenderness + Right arm.
(vi) Tenderness + Right Hypochondrium."

Exs-P11 and P12 are respectively the Accident Registers pertaining to them. The deceased was admitted in the said hospital as an in-patient for providing treatment while the daughter and husband of the deceased, after providing first aid, were referred to the Government Medical College Hospital, Thanjavur, for further treatment.

(iv) While in hospital, despite treatment given, the deceased succumbed to the injuries. On receiving intimation from the hospital, ie., Ex-P14, regarding the death of Menaka, one Mr. Vadivelu, Head Constable attached to Kariyapattinam Police Station, rushed to the hospital and recorded the statement of P.W.1 under Ex-P1. On returning to the Police Station, he registered a case in Crime No. 48 of 2008 under Sections 147, 148, 323, 324 & 302 I.P.C. at 9a.m. on 21.02.2008. Ex-P6 is the printed First Information Report. He forwarded Exs-P1 and P6 to the Court and handed over the case diary to the Inspector of Police for further investigation.

(v) One Sundaramoorthy, the then Inspector of Police, Kariyapattinam Police Station, was the Investigating Officer. However, the said Sundaramoorthy could not be examined as a witness in Court as, after his retirement, his eyesight got impaired and the investigation done by him has been spoken to by P.W.12. As per the evidence of P.W.12, the said Sundaramoorthy, on receipt of the case diary, on 21.02.2008, proceeded to the place of occurrence and prepared an Observation Mahazar (Ex-P2) and a rough sketch (Ex-P15) in the presence of P.W.s 5 and 6. He recovered bloodstained earth and sample earth from the place of occurrence. He also recovered wooden logs, two in number (M.O.1 series) under a mahazar, Ex-P16, in the presence of the same witnesses. On 22.02.2008, he examined P.Ws. 4, 7 and others and recorded their statements. On the same day, at about 10a.m., in the presence of Panchayatdhars and witnesses, he conducted inquest on the body of the deceased at Government Hospital, Thiruthuraipoondi and Ex-P13 is the inquest report. The blood stained clothes from the dead body (M.O.s 2 & 3) were recovered and handed over to Sundaramoorthy, Inspector of Police, by P.W.9, Head Constable, Kariyapattinam Police Station and thereafter, the dead body was sent for postmortem through P.W.9.

(vi) P.W.10, Dr. T. Sivakumar, Assistant Surgeon, Government Hospital, Thiruthuraipoondi, conducted autopsy on the body of the deceased on 21.02.2008 at 1.15.p.m. He noted the following injuries:

"External Injuries:

1. Lacerated injury over right parieto occipital region 6 cm x 2cm x 2cm Bone exposed.
2. Abrasion over right wrist 1 cm x 1 cm.
3. Abrasion over right elbow 1 cm x 1 cm.
4. Abrasion left thumb 1cm x 1 cm.

5. Intravenous cannula over left hand and right foot.

Internal Examination:

1. Skull:

a) Fracture of occipital bone and left parietal bone.

b) About 100ml of blood clot over occipital and left temporal bone.

2. Neck: Bones are intact.

3. Thorax:

a) Lungs: Pleura Normal. Lungs congested.

b) Heart: Empty. No evidence of injury.

4. Abdomen:

a) Liver: Congested. No injury.

b) Kidney: Congested. No injury.

c) Stomach: About 50ml of viscous fluid present.

d) Pancreas: No injury. No blood conversion on peritoneal cavity.

e) Small Intestine: Empty with gas.

f) Large Intestine: Empty with gas.

g) Uterus: Empty

h) Ovaries: Normal. No injury.

External Genitals: No injury.

No injury to long bones and vertebrae."

Ex-P8 is the postmortem certificate. The Doctor opined that the injuries found on the dead body would have been caused by a weapon like wooden log. He further opined that death was due to shock and haemorrhage due to injury to vital organ - brain.

(viii) During the course of investigation, Sundaramoorthy, the Investigating Officer, arrested the 1st accused and the 5th accused at about 10a.m. on 22.02.2008, in the presence of P.W.7 and another. He examined P.W.s 6 and 7 and others and recorded their statements. From 25.02.2008, Sundaramoorthy, the Inspector of Police, went on leave and further investigation was handed over to his successor, P.W.12. P.W.12 examined P.W.s 8, 9, 10, 11 and another and recorded their statements. He came to know that the 2nd accused (since deceased), 3rd accused and the 4th accused had surrendered before the Judicial Magistrate, Thiruthuraipoondi. He collected the medical records, got the final opinion of the Doctor regarding the cause of death and finally, on completing the investigation, he laid charge sheet against the accused on 26.04.2008.

(ix) Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of the judgment and the accused denied the same.

(x) In order to prove the case, on the side of the prosecution, as many as 12 witnesses were examined, 16 documents and 3 material objects were marked. Out of the said witnesses,

P.W.s 1 and 2 are eye-witnesses to the occurrence. They have clearly and cogently spoken about the entire occurrence. P.W.s 3, 4 5 and 6, who were examined as eye-witnesses, turned hostile and they did not support the case of the prosecution, in any manner. P.W.7 has spoken about the arrest of accused Nos. 1 and 5 on 22.02.2008 at 10a.m. P.W.8 has spoken about the fact that he carried the FIR and the complaint to the Court and handed over the same to the learned Judicial Magistrate, Thiruthuraipoondi. P.W.9 has spoken about the fact that he carried the dead body and handed over the same to the Doctor for postmortem. P.W.10 has spoken about the autopsy conducted and his final opinion regarding the cause of death. P.W.11 has spoken about the treatment given to the deceased and the other two injured persons, namely, the daughter and husband of the deceased. P.W.12 has spoken about the investigation done and the filing of final report.

(xi) When the above incriminating materials were put to the accused, they denied the same as false. On their side, the marriage invitation of the 1st accused was marked as Ex-D1. No defence witnesses were examined on their side. Having considered all the above, the Trial Court convicted the 1st accused/appellant alone under Section 302 I.P.C. That is how, the 1st accused/appellant is before this Court with this appeal.

3. We have heard the learned counsel appearing for the appellant and the learned Additional Public Prosecutor appearing for the State. We have also carefully gone through the evidence available on record.

4. At the outset, the learned counsel for the appellant would submit that P.W.s 1 and 2 would not have been present at the time of occurrence at all. According to him, P.W.s 1 and 2 were staying in a hostel during the relevant point of time and therefore, on the crucial date, they would not have been present. This argument of the learned counsel for the appellant does not persuade us at all because P.W.s 1 and 2 have categorically explained in their evidence as to how they happened to be present in their house. They have also stated about the manner, in which the occurrence had taken place.

5. The next argument of the learned counsel for the appellant is that that the neighbours, who accompanied the injured to the hospital, had told the Doctor that the occurrence was at 8p.m whereas according to P.W.s 1 and 2, the occurrence was at 9.30p.m. and therefore, according to the learned counsel, P.Ws. 1 and 2 would not have been present at the scene of occurrence at the crucial moment. Even this argument of the learned counsel for the appellant does not appeal to us at all for the simple reason that one cannot expect these rustic village

people to be so meticulous and precise in noting down the time of occurrence and to mention the same. The time of occurrence, as it was stated by the neighbours to the Doctor and as stated by P.W.s 1 and 2 can only be taken as approximate time of occurrence and therefore, this argument of the learned counsel for the appellant is also rejected.

6. The learned counsel for the appellant would further submit that P.W.s 1 and 2 did not accompany the deceased and the injured to the hospital, which would go to show that they were not present at the scene, at the time of occurrence. This argument of the learned counsel for the appellant also does not persuade us at all because, soon after the occurrence, the neighbours, who arrived at the scene, had hired a taxi, and all of them took the deceased and the other two injured to the hospital and even at the time, when the complaint was obtained by the Police, P.W.s 1 and 2 were very much present in the hospital. Therefore, this argument of the learned counsel for the appellant is also rejected.

7. The learned counsel for the appellant next contended that there was inordinate delay in preferring complaint. But, in our considered view, the delay has been properly explained by the prosecution. There were three people, who were injured in the occurrence and they were taken to the hospital. Out of them, one died and two of them were referred to Government Medical College Hospital, Thanjavur, for further treatment. When that was the condition of the injured, certainly, P.W.s 1 and 2 would not have been in a mood to go to the Police Station immediately to give a complaint. Thus, in our considered opinion, there was nothing unnatural on the part of P.W.s 1 and 2 in concentrating on the health of the deceased, who is their mother and the other two injured, who are none else than their father and sister, without going to the Police Station to lodge a complaint. Thus, we are of the considered view that though there was some delay in preferring the complaint as well as in the FIR reaching the Court, that would not, in any manner, destroy the evidence of P.W.s 1 and 2, which inspire the fullest confidence of this Court.

8. The learned counsel for the appellant would further submit that Ex-D1, the marriage invitation card of the 1st accused/appellant, would go to show that the appellant got married only on 18.02.2008 and therefore, on 21.02.2008, he would not have been present at the time of occurrence. This argument of the learned counsel for the appellant also deserves to be rejected as the evidence of P.W.s 1 and 2 clearly establish the presence of the 1st accused/appellant at the scene of crime, at the time of occurrence and we hold that it was the 1st accused/appellant, who caused the injury on the deceased, resulting in her death.

9. Having come to the said conclusion, now, we have to examine as to what was the offence, which the 1st accused/appellant had committed, by his above act. It is in evidence that there was no enmity between the appellant and the deceased at all. Except the fact that the appellant had a feeling that the deceased and her family were supporting P.W.4, Suseela, in respect of her claim over the disputed family property, there were no other issues between them. On the date of occurrence, at about 9p.m., P.W.4, Mrs. Suseela, who is the sister-in-law of the 1st accused/appellant had gone to the disputed property. The arrival of Suseela and her visiting the disputed property would not have been expected by the appellant and the other accused. Thus, the appellant had found Suseela, at the place of occurrence, only by chance. On seeing her, it is stated that the 1st accused along with other accused chased her to attack her and she rushed towards the house of the deceased and entered into the house. The 1st accused along with other accused, also attempted to trespass into the house of the deceased to attack the said Suseela. At that time, the husband of the deceased tried to intervene and prevent the accused from entering the house. It is alleged that the 1st accused/appellant attacked him first. Only at that time, the deceased intervened and the 1st accused/appellant gave one single blow with the wooden log on her head. Certainly, there was no enmity between the 1st accused and the deceased and only in the melee, that occurred, in his attempt to attack P.W.4, Suseela, the 1st accused had given a single blow on the head of the deceased, when she intervened and he did not repeat the attack on the deceased also. There was no pre-meditation on the part of the 1st accused/appellant to attack the deceased so as to cause her death. However, the act of the 1st accused, in causing injury to the deceased, which resulted in her death, would squarely fall within the third limb of Section 300 I.P.C. and at the same time, his act would also fall under exception 1 to Section 300 I.P.C. It is in evidence that though the 1st accused had gone to the house of the deceased, his aim was only to attack P.W.4, Suseela. But, when the husband of the deceased had intervened, there would have arisen some quarrel, and he would have questioned the authority of the 1st accused to enter his house and there would have been a scuffle and only in that scuffle, the 1st accused would have given a single blow on the head of the deceased, when she came to the rescue of her husband. Though there is no positive evidence in this regard, we presume so, going by the natural human conduct, as provided under Section 114 of the Evidence Act. Thus, we hold that the act of the 1st accused/appellant squarely falls within exception 1 to Section 300 I.P.C. and therefore, the appellant is liable to be punished only for the offence under Section 304(i) I.P.C.

10. Though there is evidence that the appellant had caused injury on the husband of the deceased, since the appellant had been acquitted by the Trial Court from these charges and since there is no appeal against the same, we cannot re-open the same.

11. Now, turning to the quantum of punishment, the 1st accused was a newly married man at the time of occurrence and now, he has got children. He has a large family to take care of and the occurrence was not a pre-meditated one and it was only out of a sudden quarrel, in a heat of passion, that the occurrence had taken place and there are lot of chances for reformation. Having regard to these mitigating and aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1000/- would meet the ends of justice.

12. In the result, the appeal is partly allowed. The conviction and sentence imposed on the appellant for the offence under Section 302 I.P.C. is set aside and instead, he is convicted under Section 304(i) I.P.C. and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1000/- in default, to undergo rigorous imprisonment for four weeks. It is further directed that the period of detention already undergone would be set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

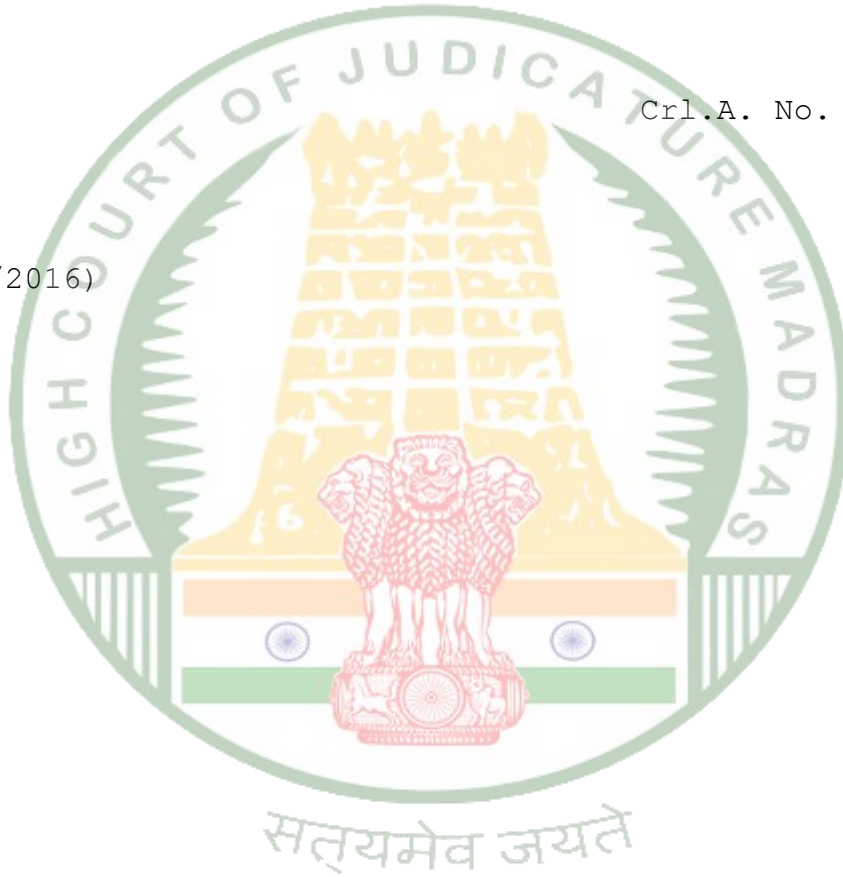
To

1. The District & Sessions Court,
Nagapattinam.
2. The Judicial Magistrate No.II,
Nagapattinam.
3. -Do- Thro the Chief Judicial Magistrate,
Nagapattinam.
(for Information)
4. The Superintendent,
Central Prison,
Cuddalore.

5. The Sub-Inspector of Police,
Kariapattinam Police Station,
Nagapattinam District.
6. The Public Prosecutor,
High Court,
Madras.
7. The Section Officer,
Criminal Section,
High Court, Madras.

Crl.A. No. 345 of 2013

vgi (CO)
srg (27/04/2016)



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