

Bail Slip

The Appellant/Accused No.1 Viz., K. Chandramoorthy, Son of Kangachalam was directed to be released on bail as per order of this court in MP.No.1/2013 in CrI.A.NO.396/2013, dated 27.06.2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2016

CORAM:

THE HON'BLE MR.JUSTICE M.JAICHANDREN

and

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.396 of 2013

K.Chandramoorthy ...Appellant/Accused No.1

Vs.

State rep. by
The Inspector of Police
Bhuvanagiri Police Station
Cuddalore District
(Crime No.419 of 2009) ..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.69 of 2010 by the learned II Additional Sessions Judge, Chidambaram, Cuddalore District, dated 25.04.2013.

For Appellant : Mr.M.Palanivel

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

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

The appellant is the 1st accused in S.C. No.69 of 2010 on the file of the learned II Additional Sessions Judge, Chidambaram, Cuddalore District. The 2nd accused was one Sitaraman. The accused Nos.1 and 2 are the brothers. The 1st accused stood charged for the offences under Sections 294(B) and 302 IPC. The 2nd accused stood charged for the offences under Sections 302 and 323 IPC. By judgment, dated 25.04.2013, the Trial Court acquitted the 2nd accused, but, convicted the 1st accused under Sections 294(B) and 302 IPC and sentenced him to undergo rigorous imprisonment for six months for the offence under Section 294(B) IPC and to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for two years for the offence

under Section 302 IPC. The sentences were directed to run concurrently. Challenging the said judgment of conviction and sentence, dated 25.04.2013, the 1st accused is before this Court with this Criminal Appeal.

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

(i) P.W.4-Rajakumari is a resident of Adhivaraganallur Village. P.W.6-Sankar is her son. The deceased in this case was one Velmurugan. P.Ws. 1 and 2-Selvanayaki and Venkatesan are the mother and father respectively of the deceased. P.Ws.1 and 2 and the deceased were residing in the house situated opposite to the house of P.Ws.4 and 6. P.W.3-Siva is a neighbour. There was some enmity between P.W.6 and the accused Nos.1 and 2.

(ii) It is alleged that on 09.08.2009, at about 10.30 p.m., P.W.6 was taking dinner in his house and P.W.4 was serving. At that time, these two accused, trespassed into the house of P.W.4, through the back entrance. On trespassing into the house of P.Ws.4 and 6, they started attacking P.W.6. P.W.4 intercepted them. The accused Nos.1 and 2 attacked P.W.4 also. P.W.4 ran out of the house and went to the house of the deceased. In his house, the deceased was taking dinner and P.W.1 was serving. P.W.2 was sitting in the house. P.W.3 was standing outside the house. On going over to the house of the deceased, P.W.4 requested the deceased to come and rescue P.W.6 from being attacked by the accused Nos.1 and 2. Initially, the deceased was hesitant. Since, P.W.4 made a fervent request, the deceased went to the house of P.Ws.4 and 6. P.Ws.1 to 3 also followed them. Inside the house, the accused Nos.1 and 2 were manhandling P.W.6. The deceased intercepted and requested the accused Nos.1 and 2 not to make any more attack and tried to persuade them. The deceased addressed the accused Nos.1 and 2 as "Uncle" and requested them to stop the fight. The accused Nos.1 and 2 immediately turned towards the deceased. They abused the deceased and attacked him with a wooden log. The 1st accused attacked him first on the head, as a result of which, the deceased fell down. The 2nd accused attacked the deceased on the back of chest. Then, both the accused ran away from the scene of occurrence. P.W.1 and others immediately took the deceased to the Raja Muthiah Annamalai Hospital. The Doctor, on examination, declared him dead.

(iii) Thereafter, P.W.1 went to Bhuvanagiri Police Station and made a complaint at 2.00 a.m. on 10.08.2009. P.W.10-Gnanasekaran, the then Special Sub-Inspector of Police, on receipt of the said complaint under Ex.P.1 registered a case in Crime No.419 of 2009 for the offences under Sections 294(B), 323 and 302 IPC against both the accused. Ex.P.7 is the First Information Report. He forwarded Ex.P.1 and Ex.P.7 to the Court.

(iv) The investigation was taken up by P.W.11-Pugalenth, the then Inspector of Police. He proceeded to the place of occurrence and prepared an Observation Mahazar (Ex.P.4) and Rough Sketch (Ex.P.8) in the presence of one Kannan and Baskaran. He conducted inquest on the body of the deceased in the mortuary between 8.00 and 10.00 a.m. on 10.08.2009. Then, he forwarded the dead body for post-mortem.

(v) P.W.5-Dr.Ramesh of Government Kamaraj Hospital, Chidambaram, conducted autopsy on the dead body of the deceased on 10.08.2009, at 12.30 p.m. He found the following injuries on the body of the deceased :-

"A moderately built male body lying on post-mortem table with hands by side and hands are free. Eyes and mouth-closed. Ear-No discharge. Nose-bleeding present. Tongue-inside. Teeth-intact. Thorax-symmetrical. Ribs-intact. Heart-empty. All organs congested. Hyoid bone-intact. Stomach-partially digested food particles of about 500 gram present. Intestine-Distended with gas. Bladder-empty. Extravasate of blood-beneath the scalp (parietal and both temporal region). Pelvis-intact. Skull-fracture of parietal and both temporal bone present. Membranes-intact. Brain-Hematoma present over parietal and both temporal region. About 100 ml of blood collected on skull cavity."

Ex.P.2 is the Post-Mortem Certificate. The Doctor gave opinion that the death was due to shock and haemorrhage due to the head injury.

(vi) During the course of investigation, P.W.11, the then Inspector of Police, examined many more witnesses. On 21.08.2009, the accused Nos.1 and 2 had surrendered before the Court. On 21.08.2009, at 2.30 p.m., P.W.11 took police custody of both the accused on the orders of the learned Magistrate. While in custody, the 1st accused came forward with a voluntary confession, in which, he disclosed the place where he had hidden the wooden log. Following him, the 2nd accused also gave a voluntary confession, in which, he disclosed the place where he had hidden the wooden log. In pursuance of the said disclosure statement made by the 1st accused, in the presence of P.W.8-Thangamani, the Village Administrative Officer and another witness, the 1st accused took P.W.11 and the witnesses to the said place and produced the wooden logs (M.Os.1 and 2). On returning to the Police Station, P.W.11 forwarded the accused Nos.1 and 2 to the Court and handed over to the Material Objects also to the Court. Thereafter, the investigation was taken up by P.W.12-Kannan, the then Inspector of Police. On completing the investigation, he laid the chargesheet against the accused Nos.1 and 2.

(vii) Based on the above materials, the Trial Court framed the charges as detailed in paragraph No.1 of this judgment. 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 12 witnesses were examined and 8 documents and 4 material objects were exhibited. Out of the said witnesses, P.Ws.1 to 4 and P.W.6 are the eye witnesses to the occurrence. They have vividly spoken about the entire occurrence. P.W.5-Dr.Ramesh has spoken about the post-mortem conducted on the dead body of the deceased and his final opinion regarding the cause of death. P.W.7-Saravanan has spoken about the preparation of Observation Mahazar (Ex.P.4) and Rough Sketch (Ex.P.8) and also recovery of Material Objects from the place of occurrence. P.W.8-Thangamani, the Village Administrative Officer, has spoken about the arrest of the accused Nos.1 and 2 and the confession made by the 1st accused, and the consequential recovery of M.Os.1 and 2 on his disclosure statement. P.W.9-Ramalingam, the then Head Constable, has spoken about the fact that he took the dead body to hospital for post-mortem as directed by P.W.11. P.W.10, the then Special Sub-Inspector of Police, has spoken about the registration of the case on the complaint of P.W.1. P.W.11, the then Inspector of Police, has spoken about the investigation done by him. P.W.12, the then Inspector of Police, has spoken about the investigation done by him and the filing of the final report.

(viii) 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 acquitted the 2nd accused, but, convicted the 1st accused alone for the offences under Sections 294(B) and 302 IPC. That is how, the appellant/1st accused is now before this Court with this appeal.

3. We have heard Mr.M.Palanivel, learned counsel appearing for the appellant; Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State; and we have also perused the records carefully.

4. The learned counsel for the appellant would submit that there is no motive for the appellant/1st accused to cause the death of the deceased. It is true that there was no enmity between the 1st accused and the deceased. The very fact that the deceased had gone to the house of P.W.4, on her fervent request, and on going over there, he addressed both the accused as "Uncle" and tried to persuade them would go to show that he was in talking terms with the accused party and there was no enmity between them. Had there been any enmity between the deceased and the accused party, the deceased would not

have gone there at all at the request of P.W.4 to persuade the accused party. Thus, even according to the positive case of the prosecution, there was no enmity between both the accused and the deceased.

5. The learned counsel for the appellant would submit that the evidence of P.Ws. 1 to 4 and P.W.6 cannot be believed as they are interested witnesses. This argument deserves summary rejection, because, the presence of these witnesses cannot be disbelieved at all for any reason. The occurrence is said to have taken place in the house of the P.W.4. The deceased had gone to the house of the P.W.4 only on the fervent request made by P.W.4. At that time, P.W.1 was serving food to the deceased and therefore, she also followed the deceased. P.Ws.2 and 3, who were present there also followed the deceased and therefore, the presence of these eye witnesses cannot be disbelieved at all. Similarly, they have in a vivid fashion stated that the 1st accused attacked the deceased on his head. Though, these witnesses have stated that the 2nd accused attacked on the back of the chest of the deceased, the Trial Court disbelieved their evidence to that extent and acquitted the 2nd accused. The State has not made any Appeal in respect of the acquittal of 2nd accused. Though, these eye witnesses have been disbelieved by the Trial Court as against the 2nd accused, on that score, their evidence cannot be rejected in toto. The principle *Falsus in uno, falsus in omnibus*, is not applicable *stricto sensu* to the Indian Criminal Jurisprudence. The well settled law of the country is that if in the evidence of the eye witnesses the facts and falsity are mixed with each other and in the event, the Court is able to separate the grains from the chaff, it is well within the power of the Court to act upon the truth, thereby rejecting the falsity and convict the accused. To put it otherwise, where the grains and the chaff cannot be separated, the Court is left with no option except to disbelieve the evidence of the eye witnesses in toto and to give the benefit of doubt in favour of the accused. Here in this case, the evidence of the eye witnesses that the 1st accused attacked the deceased with wooden log on the head, which resulted in a fracture has been corroborated duly by the medical evidence also. Thus, we find that absolutely, there is no reason to reject the evidence of the eye witnesses in respect of the attack made by this accused on the deceased. From these evidences, we hold that the prosecution has clearly proved that it was this appellant/1st accused, who attacked the deceased on his head and caused his death.

6. The next question is as to, "what was the offence that was committed by the 1st accused by his act ?".

7. We have carefully gone through the evidence of the eye witnesses. As we have already concluded there was no motive for this accused against the deceased. The deceased had gone to the house of the P.W.4 only to rescue P.W.6 from being

attacked by the accused Nos.1 and 2. When the deceased intervened, it is stated that both the accused suddenly turned towards the deceased and attacked him. It is also in the evidence that P.W.6 was not attacked by this accused with any weapon. It is the evidence of P.W.6 that he was only manhandled by this accused with hands. This would give an inference that this accused was not already armed with any weapon and it was only in the quarrel, this accused took the wooden log, which was lying there and gave one single blow on the head of the deceased and ran away from the place of occurrence. This act of the 1st accused would squarely fall within Exception 4 to Section 300 IPC. Though, the act of the 1st accused in causing the death of the deceased would squarely fall within the third limb of Section 300 IPC, since, we have already concluded that the act of the 1st accused would squarely fall under the Exception 4 to Section 300 IPC, the 1st accused is liable to be punished only for the offence under Section 304 (i) IPC.

8. Now, turning to the quantum of punishment, the learned counsel for the appellant/1st accused would submit that at the time of occurrence, the 1st accused was 55 years old and he has daughters in the marriageable age. He has got a big family to take care off. The occurrence was not pre-meditated one and it was only out of a sudden quarrel, the occurrence has taken place. The 1st accused was not already armed with wooden log. Having regard to these mitigating circumstances as well as the aggravating circumstances, we are of the view that convicting the 1st accused for the offence under Section 304 (i) IPC, instead of Section 302 IPC, and sentencing him to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks, would meet the ends of justice. In our considered view, the conviction of the 1st accused for the offence under Section 294(B) IPC and sentence to undergo rigorous imprisonment for six months imposed by the Trial Court are liable to be confirmed.

9. In the result,

- i. this Appeal is partly allowed and the conviction of the appellant/1st accused for the offence under Section 302 IPC is set aside, instead, he is convicted for the offence under Section 304(i) IPC, and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks.
- ii. The conviction of the 1st accused for the offence under Section 294(B) IPC and sentence to undergo rigorous imprisonment for six months, imposed by the Trial Court are confirmed.
- iii. The sentences are directed to run concurrently.
- iv. Since, the appellant/1st 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.
v.The period of imprisonment already undergone by the
appellant/1st accused shall be given set off under
Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

paa

To

- 1.The Inspector of Police
Bhuvanagiri Police Station
Cuddalore District.
- 2.The II Additional Sessions Judge
Chidambaram
Cuddalore District.
3. The Principal Sessions Judge, Cuddalore.
4. The Judicial Magistrate, Parangipettai.
5. The Superintendent of Central Prison, Cuddalore.
6. The Superintendent of Police, Cuddalore
7. The District Collector, Cuddalore.
8. The Director General of Police, Mylapore, Chennai.
- 9.The Public Prosecutor, High Court, Chennai.
- + 1 cc to Mr. M. Palanivel, Advocate SR.19513

CRIMINAL APPEAL No.396 of 2013

BVR(CO)
Eu 18.04.16