

Bail Slip

The Appellant/Accused viz., Thiruvenkadam male aged 33 years S/o. Mani was directed to be released on bail by the under of this Court dt.28/10/2014 and made in CrI.MP.1/14 in CrI.A.588/13.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.558 of 2013

Thiruvenkadam

...Appellant/Accused

Vs

State rep. By
Inspector of Police,
Arakkonam Taluk Police Station,
Vellore District,
Cr.No.580 of 2010

...Respondent/Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the learned II Additional District and Sessions Judge, Ranipet, Vellore District, by judgment dated 31.10.2012, passed in S.C.No.170 of 2011.

For Appellant : Mr.I.Paul Noble Devakumar

For Respondent : Mr.E.Raja,
Additional Public Prosecutor

JUDGEMENT

(Judgment of the Court was delivered by V.Bharathidasan.J)

The sole accused in S.C.No.170 of 2011 on the file of

II Additional District and Sessions Court, Ranipet, is the appellant herein. He stood charged for an offence under Section 302 IPC. After trial, by judgment dated 31.10.2012, the trial court convicted the appellant for the offence under section 302 IPC and sentenced him to undergo imprisonment for life. Challenging the above said conviction and sentence, the appellant is before this Court with this appeal.

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

The deceased, in this case, one Marimuthu, borrowed a sum of Rs.2000/- from the accused. The accused demanded the said Marimuthu to repay the amount. But, the deceased disputed the quantum and he said that he was liable to repay a sum of Rs.250/- only. On 12.10.2010, at about 6.00 p.m., there was a quarrel between the accused and the deceased. At that time, the accused warned the deceased that he would finish him off. On the next day, in the early morning, at about 1.30 a.m., while the deceased was sleeping in the verandah of his house, the accused dropped a stone on his head and caused the death of the deceased. P.W.1, mother of the deceased, who was also sleeping in the house, saw the accused dropping the stone on the head of the deceased. P.W.3, wife of the deceased, who was also sleeping in the house witness the occurrence. P.W.5, who is a neighbour, at about 1.30 p.m., heard the noise from the house of the deceased. When he came out of the house, he saw the accused running. When he tried to stop him, he pushed him aside and ran away. Then, P.W.1 lodged a complaint before Arakkonam Police Station at about 7.00 a.m.

3. P.W.12, Sub-Inspector of Police, attached to the respondent police, registered a case in Crime No.580 of 2010 for an offence under Section 302 IPC. Then, he sent the First Information Report, Ex.P.10, to the jurisdictional Magistrate Court and copies of the same to higher police officials.

4. P.W.13, Inspector of Police, on receipt of First Information Report, proceeded to the scene of occurrence and prepared an Observation Mahazar, Ex.P.2 and drew a Rough Sketch, Ex.P.11, and seized a stone (M.O.1) from the scene of occurrence, in the presence of witnesses. Then, he conducted inquest on the dead body of the deceased in the presence of panchayathars and prepared an Inquest Report, Ex.P.12. Thereafter, he sent the body for postmortem to Government Hospital, Arakkonam through a Head Constable.

5. P.W.11, Assistant Civil Surgeon, working in the Government Hospital, Arokonam, conducted postmortem on the dead

body of the deceased and found the following injuries:-

" Right side face totally crushed. Dimple fracture evident in the right parietal region. Lacerated wound in the right temple region measuring 5 x 3 x 2 cm. Scalp elevated, skull opened. Depressed fracture segment of the parietal right. Right frontal and right temporal bone with burried into the brain matter. Dura breached. Blood clots both extra dural, sub dural and also intra cerebral hemorrhage. Liquefracture necrosis of brain present. Right mariday, right machdibular bone fracture. No other external injury. "

Ex.P.9 is the postmortem certificate and he was of the opinion that the deceased died due to acute intracerebral hemorrhage.

6. P.W.13 arrested the accused, on 13.10.2010, at about 3.00 p.m., near Keelanthur bus-stop, Arakkonam and sent him to judicial custody. He recorded the statements of the doctor, who conducted autopsy on the dead body of the deceased and also some other witnesses. After completing investigation, P.W.13 laid charge sheet against the accused.

7. Based on the above materials, the trial Court framed a lone charge as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 13 witnesses were examined and 12 documents were exhibited, besides 8 Material Objects.

8. Out of the witnesses examined, P.W.1 is the mother of the deceased and she is an eye-witness to the occurrence. According to her, on 12.10.2010, at about 6.00 p.m., there was a quarrel between the accused and the deceased, when the accused demanded a sum of Rs.2000/- from the deceased, which was borrowed by the deceased, but the accused disputed the same and told the accused that he was liable to pay only a sum of Rs.250/- and the deceased also repaid Rs.250/- to the accused, however, the accused threatened the deceased that he would finish him off. She has further stated that then, at about 1.30 a.m., while the deceased was sleeping in the verandha of his house, the accused came to the house with a stone and dropped it on the head of the deceased and on hearing the screaming of P.W.1, others came and they chased the accused, but he ran away. Then she lodged a complaint before the respondent police.

9. P.W.2 is the father of the deceased. He was sleeping in a nearby temple. Even though in his chief examination he has stated that he saw the occurrence, in his cross examination, he has stated after hearing the noise from the house of P.W.3, his daughter-in-law, he came to the house and saw his son dead. P.W.3 is the wife of the deceased. She was also sleeping in the house and she saw the occurrence. According to both P.Ws.1 and 3, when they were sleeping in the verandha of the house, at about 1.30 p.m., the accused came to the house, with a stone and dropped the stone on the head of the deceased and caused his death and then, they raised alarm. But, in her cross examination, P.W.3 has stated that at about 1.00 a.m., there was a quarrel between the accused and the deceased and during the quarrel, the accused dropped the stone on the head of the deceased. P.W.4 is the photographer, who took photograph of the deceased, at the scene of occurrence.

10. P.W.5 is a neighbour. He has spoken about the previous quarrel on 12.10.2010, at about 6.00 p.m., and also stated that at about 1.30 a.m., he heard some noise and when he came out of the house, he saw the accused running and he tried to stop him, but, the accused pushed him aside and ran away. P.W.6 is a witness to the Observation Mahazar and also recovery of M.Os.6 & 7. P.W.7 is a witness to the arrest and the voluntary confession given by the accused and also for recovery of bloodstained T-shirt and lungi.(M.Os3 &4). P.W.8 is the Scientific Officer, working in the Regional Forensic Lab, Vellore. He has stated that he examined the bloodstained material objects and issued a report, Ex.P.6. Ex.P.9, scientific officer, Forensic Lab, Chennai, has stated that he examined the blood group contained in the bloodstained material objects and gave a report, Ex.P.7. P.W.10 is the Head Constable, attached to the respondent police, who submitted the First Information Report, to the Judicial Magistrate Court. P.W.11, Assistant Civil Surgeon, Government Hospital, Arakkonam, has deposed that he conducted autopsy on the dead body of the deceased and gave postmortem Certificate, Ex.P.9. He has also given opinion with regard to the cause of death of the deceased. P.W.12 is the Sub-Inspector of Police, who registered the complaint. P.W.13, Inspector of police, has stated that he conducted investigation, arrested the accused and recorded the statements of the witnesses and after completion of investigation, laid charge sheet against the accused.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. However, he did not choose to examine any witness. The school certificate of the accused was marked as Ex.D.1.

12. The Certificate issued by the Head Master of the Panchayath Union School, Valarpuram colony, Arakkonam, was produced to show that date of birth of the accused is 21.05.1990. Even though, he marked the Certificate issued by the Head Master, he did not examine any witness to prove the same.

13. Having considered all the above, the trial Court found the accused guilty under the charge of murder and accordingly, sentenced him as detailed in the first paragraph of this judgment. Aggrieved over the same, the accused/appellant is before this Court with this appeal.

14. We have heard Mr. I. Paul Noble Devakumar, learned counsel appearing for the appellant and Mr. E. Raja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

15. The learned counsel appearing for the appellant would submit that P.Ws. 1 and 3, being mother and wife of the deceased, are interested witnesses and hence, their testimony cannot be relied upon in the absence of corroboration from any other independent witnesses. Apart from that, it is his submission that there is a delay in filing the First Information Report and according to him, the occurrence is said to have taken place in the early morning, at about 1.30 a.m. and the complaint has been given in the morning, at 7.00 a.m. and this delay has not explained by the prosecution. Further the learned counsel for the appellant would submit that at any rate, the accused did not have any intention to cause the death of the deceased and only during the quarrel, out of provocation, he dropped the stone on the head of the deceased and caused single injury and therefore, he sought for lesser sentence.

16. Per contra, the learned Additional Public Prosecutor vehemently contended that the occurrence has taken place in the house of the deceased and at that time, P.Ws. 1 and 3, being the mother and wife, were also sleeping in the house and hence, their presence in the scene of occurrence cannot be doubted. Apart from that, he submitted that the delay in lodging the complaint has been properly explained by the prosecution and there are evidence to show that it is a premeditated murder and hence he sought for dismissal of the appeal.

17. We have considered the rival submissions and perused the records.

18. The occurrence had taken place in the house of the

deceased. P.Ws.1 and 3 are the eye-witnesses to the occurrence. P.W.1 and P.W.3 are mother and wife of the deceased, respectively. Both of them have spoken about the motive for the occurrence. It is their cogent evidence that on the date of occurrence, at about 6.00 p.m, there was a quarrel between the accused and the deceased regarding repayment of loan amount borrowed by the deceased from the accused and at that time, the accused threatened the deceased that he would finish him off before the dawn. According to P.W.1, she, along with the deceased and P.W.3, was sleeping in the verandah of their house and at about 1.30 a.m., the accused came there with a stone and dropped it on the head of the deceased and though they tried to chase the accused, they could not catch him. P.W.3, in her cross examination, has stated that at about 1.00 a.m., there was a quarrel between the accused and the deceased and during the quarrel, the accused dropped the stone on the head of the deceased and ran away.

19. The occurrence was in the house of the deceased, in the mid night, and P.Ws.1 and 3, the mother and the wife of the deceased, were sleeping in the house at the time of occurrence. Hence, the presence of P.Ws.1 and 3 in the scene of occurrence cannot be disputed. P.W.5 is a neighbour, who is an independent witness. It is his evidence that after hearing the noise from the house of the deceased, at about 1.30 a.m., he came out of the house and at that time, he saw the accused running and when he tried to stop him, the accused pushed him aside and ran away. The presence of P.Ws.1 and 3 at the scene of occurrence is natural and their evidence cannot be simply brushed aside because they are interested witnesses. The testimony of P.Ws.1 and 3 is also corroborated by the medical evidence and also by the evidence of P.W.5, an independent witness. In the said circumstance, we are of the considered view that the prosecution has clearly established that only this accused had dropped the stone on the head of the deceased and caused his death.

20. So far as the delay in lodging the complaint is concerned, the occurrence was in the mid night at about 1.30 a.m, in a remote village. P.W.1 is an illiterate lady. Police station is 14 kms away from the occurrence village. There is no material available to show that transport facility is available in the village, in the midnight, to reach the police station, immediately. However, the complaint has been given at 7.00 a.m, in the morning and the accused alone was named in the First Information Report. In the above circumstances, we are of the view that the prosecution has clearly explained the delay in lodging the complaint to the satisfaction of the court and the delay does not create any doubt in the mind of the Court to

doubt the prosecution case.

21. Now, the next question is what was the offence that was committed by the accused by the said act. According to P.W.3, the wife of the deceased, at about 1.00 a.m, there was a quarrel between the accused and the deceased and during the quarrel, the accused dropped the stone on the head of the deceased and caused severe injuries resulted in his death. From her evidence, it is clear that before the occurrence, there was a quarrel between the accused and the deceased. During the quarrel, being provoked by the words of the deceased, the accused had dropped the stone on the head of the deceased and caused single injury, which proved to be fatal. Even though the accused has no intention to cause death of the deceased, from his act, it is clear that he had knowledge that his act is eminently dangerous and it would, in all probability, would cause such injury which would cause death in the ordinary course of nature. Hence, the act of the accused will fall within the fourth limb of Section 300 IPC and first exception to Section 300 IPC. Hence, the accused is liable to be punished under Section 304(ii) IPC.

22. Turning to the quantum of sentence, the accused is a young man and poor. He has no bad antecedent. It is not a premeditated murder. During the quarrel, being provoked by the words of the deceased, which was sudden and grave, the accused had dropped the stone, which was available in the scene of occurrence, on the head of the deceased and caused his death. Considering, both the mitigating as well as aggravating circumstances, sentencing him to undergo Rigorous Imprisonment for 6 years and to pay a fine of Rs.1000/-, in default, to undergo Rigorous imprisonment for 4 weeks, would meet the ends of justice.

23. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant for offence under Section 302 I.P.C., is set aside and instead, he is convicted under Section 304(ii) I.P.C., and sentenced to undergo Rigorous Imprisonment for 6 years and to pay a fine of Rs.1000/- in default to undergo Rigorous Imprisonment for four weeks. The period of sentence already undergone by the appellant/accused shall be given set off under Section 428 Cr.P.C. Consequently, connected miscellaneous petition is closed. Bail bond executed by him shall stand

cancelled and the trial court shall take steps to secure his presence and commit him to jail to undergo the remaining period, if any.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp

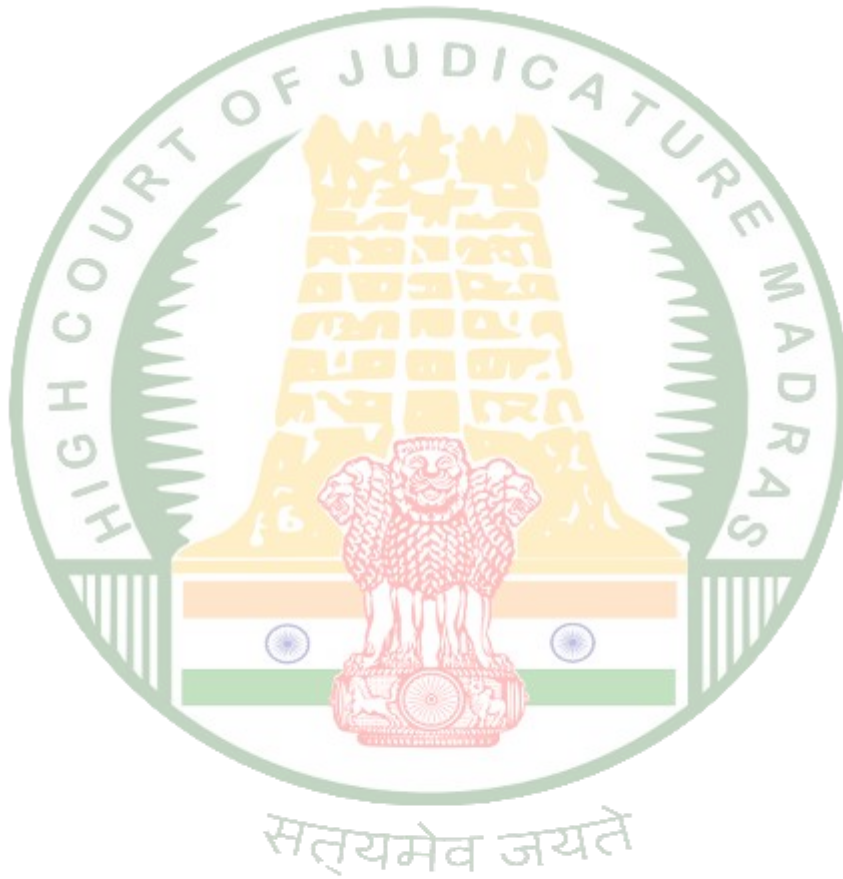
To

1. The II Additional District and Sessions Judge,
II Additional District and Sessions Court,
Ranipet, Vellore District.
2. -do- Thro The Principal District judge,
Vellore.
3. The Judicial Magistrate,
Arakkonam.
4. -do- Thro Chief Judicial Magistrate,
Vellore.
5. The Judicial Magistrate No.I,
Tirucheirappalli.
6. The Inspector of police,
Arakkonam Taluk Police Station (Taluk)
Vellore District.
7. The Superintendent,
Central Prison, Vellore.
8. The Public Prosecutor,
High Court, Madras.
9. The Collector,
Vellore District.
10. The Director General of Police,
Mylapore, Chennai.

11.The Section Officer,
Criminal section,
High Court, Madras.

ALA(CO)
RS(27/02/2017)

Crl.A.No.558 of 2013



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