

BAIL SLIP

The Appellant/Accused Viz; Thennarasu S/o.Periyathambi was directed to be released on bail as per the order of the Court dated 25/11/2013 in MP.1/2013 in CrI.A.No.650/13.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.03.2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.650 of 2013

Thennarasu

... Appellant/Single Accused

-Versus-

State Rep. by
Inspector of Police,
Thiruppathur Town Police Station,
Vellore District.

... Respondent/Complainant

Appeal filed under Section 374(2) of the Code of Criminal Procedure against the conviction and sentence passed by the learned III Additional Sessions Judge, Vellore @ Thiruppathur, Vellore District, in S.C.No.83 of 2012 dated 02.08.2013.

For Appellant : Mr.V.Parthibanfor
Mr.E.Kannadasan

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

JUDGEMENT

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

The appellant is the sole accused in S.C.No.83 of 2012 on the file of the learned III Additional Sessions Judge, Vellore @ Tirupathur, Vellore District. He stood charged for offence under Section 302 of IPC. By judgement dated 02.08.2013, the trial court convicted him under Section 302 and sentenced him to undergo imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for three months.

Challenging the same, the sole accused is now before this court with this criminal appeal.

2. The case of the prosecution in brief is as follows:- The deceased in the case was one Mrs.Indira. She was already married to someone else. She had two children, who are P.W.2 and P.W.4 and they were then minors. Four years before the occurrence, the accused had developed illicit intimacy with the deceased and started living with her. There were frequent quarrels between them since the accused often used to demand money from the deceased and also to pressurize her to transfer a landed property belonging to her in his name. This is stated to be the motive for the occurrence. Therefore, on 05.10.2011, the deceased taking her two children went to the house of P.W.5 Mrs.Valarmathi, which is situated at a small distance from her house. When P.W.5 enquired the deceased as to why she had come at that time with her children, she told that since the accused was quarreling with her, she had come there to take rest for some time with her children. This was at 06.30 a.m. Within a short while, the accused came there and demanded a sum of Rs.10,000/- from the deceased. The deceased told that she had no money to pay to him. This resulted in a quarrel. In the said quarrel, in the presence of P.W.2, P.W.4 and P.W.5, he pulled the hair of the deceased and kicked her on her abdomen repeatedly. P.W.2 rushed to the house of P.W.1 and informed her about the same. P.W.1 is none else than the elder sister of the deceased. Immediately, P.W.1 also rushed to the house of P.W.5. She also noticed the accused kicking the deceased on her abdomen. The accused then fled away from the scene of occurrence.

3. P.W.1, meanwhile, took the deceased in an auto rickshaw to Thirupathur Government Hospital. It took half an hour for the auto to arrive. When they were proceeding to the hospital, the deceased breathed her last. Thereafter, P.W.1 went to Thirupathur Town Police Station and made a complaint at 08.30 a.m. on 05.10.2011 under Ex.P.1. P.W.13, the then Sub Inspector of Police, received the said complaint and registered a case in Crime No.1111 of 2011 under Section 302 of IPC. Ex.P.7 is the FIR. He forwarded both the complaint (Ex.P1) and the FIR (Ex.P.7) to the jurisdictional court, which were received by the learned Judicial Magistrate No.1, Thirupathur, at 11.00 a.m. on 5.6.2011. Thereafter, P.W.13 handed over the case diary to the Inspector of Police for investigation.

4. P.W.14, the then Inspector of Police, took up the case for investigation. He visited the place of occurrence at 09.00 a.m. on 05.10.2011 and prepared an observation mahazar (Ex.P8) and a rough sketch (Ex.P.9). He also invited a photographer to take photographs at the place of occurrence. Then, he conducted inquest in the presence of panchayatars and prepared an inquest

report (Ex.P10). Thereafter, he forwarded the dead body to the Government Hospital at Thirupattur through a police constable along with a request for postmortem.

5. P.W.3-Dr.Chitra, conducted autopsy on the body of the deceased at 03.35 p.m. on 05.10.2011. She found the following internal injuries on the body of the deceased:-

"No external injuries. Swelling of left abdomen.

On dissection:

Skull :Normal. Brain - Normal.

Neck : Hyoid bone - Normal.

Abdomen : Collection of blood present in abdominal cavity.

Spleen:laceration present 7 cm x 1 x 1 cm.

Kidney - Pale, Liver - pale, stomach - partially digested fluid 150 ml. No smell.

Small intestine - normal.

Uterus - empty.

Thoracic cavity : Left Ribs fracture 8, 9 10.

Lungs - Normal. Heart - empty."

Ex.P.2 is the postmortem certificate. P.W.3-Doctor opined that the death was due to shock and hemorrhage due to splenic injury.

6. P.W.14 in the course of investigation arrested the accused at 06.30 p.m. on 05.10.2011 in the presence of P.W.10 and another witnesses. On such arrest, the accused gave a voluntary confession in the presence of the same witnesses. Then, P.W.14, on returning to the police station, forwarded the accused to the court for judicial remand. On completing the investigation, on 10.02.2012, he laid the final report against the accused before the court.

7. Based on the above materials, the trial court framed a lone charge under Section 302 of IPC. The accused denied the same. In order to prove the same, on the side of the prosecution, as many as 14 witnesses were examined and 12 documents were marked. No material object was marked.

8. Out of the said witnesses, P.W.1, P.W.2, P.W.3, P.W.4 and P.W.7 are the eye witnesses to the occurrence. They have vividly spoken about the entire occurrence, more particularly, about the kicking of the deceased by the accused on her abdomen. P.W.1 has further spoken about the complaint prepared by her under Ex.P.1. P.W.3-Doctor has spoken about the postmortem conducted by her and her final opinion regarding the cause of

death. PW.8 has stated that he only took the deceased in the auto rickshaw and on their way to the hospital the deceased died. P.W.9 has spoken about the preparation of observation mahazar and the rough sketch prepared at the place of occurrence. P.W.10 has spoken about the arrest of the accused. P.W.11 has spoken about the photographs taken by him at the place of occurrence. P.W.12 has spoken about the examination of internal organs of the deceased and the report of the analyst revealed that there was no poison detected on any of the internal organs. P.W.13 has spoken about the registration of the FIR and handing over of the case diary to the Inspector of Police. P.W.14 has spoken about the entire investigation done by him and the filing of the final report against the accused.

9. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, he denied the same. On his side, he examined two witnesses namely Mr.Hari and Mr.Karthick as D.W.1 and D.W.2 respectively. However, no document was marked. D.W.1 has stated that on the crucial day of occurrence, he found the deceased walking on the road and she fainted and fell on a culvert. D.W.2 has also stated so. Thus, according to the accused, the deceased had gone out of her house, fainted and fell on a stone and sustained injury. Thus, he pleaded innocence.

10. Having considered all the above, the trial court convicted the accused under section 302 of IPC and accordingly punished him thereunder as detailed in the first paragraph of this judgement. That is how, the sole accused is now before this court with this criminal appeal.

11. We have heard the learned counsel for the appellant and the learned Additional Public Prosecutor appearing for the respondent and also perused the records carefully.

12. P.W.2 and P.W.4 are the daughters of the deceased, who are child witnesses. They have categorically and clinchingly stated about the entire occurrence. P.W.2 rushed to the house of P.W.1 and informed her about the occurrence and P.W.1, the sister of the deceased, in turn, came to the place occurrence. She also witnessed the occurrence. She has also stated that it was this accused who kicked the deceased on her abdomen. The occurrence had taken place just in front of the house of P.W.5. P.W.5 is an independent witness. She has also stated that she witnessed the entire occurrence. She has stated that it was this accused who quarreled with the deceased and kicked the deceased on her abdomen. P.W.7 is the neighbour of P.W.5. She has also stated about the entire occurrence. Though these witnesses have been cross examined at length, nothing has been elicited to doubt the credibility of these witnesses. Thus, we do not find any reason to reject the evidence of these

witnesses. From the above evidence, the prosecution, in our considered view, has proved its case that the accused kicked the deceased which resulted in the cause of death as spoken to by P.W.3-Doctor.

13. Now, the question is by the said act of the accused what was the offence that he had committed. As per the evidence of P.W.3-Doctor, the death was due to shock and hemorrhage caused due to rupture of spleen. The rupture of spleen was due to forceful kicking on the abdomen repeatedly. Thus, the prosecution has proved that the death of the deceased was caused only by the accused. But, whether the same would amount to culpable homicide or not, is the next question. Certainly, the accused would not have intended to cause the death of the deceased. Therefore, his act would not fall within the ambit of first limb of Section 299 of IPC. Similarly, mere kicking a person would not result in the injury which is likely to cause the death. Thus, the act of the accused would not fall within the second limb of Section 299 of IPC also. So far as the third limb of Section 299 of IPC is concerned, it is corresponding to the fourth limb of section 300 of IPC and, certainly, the accused can be attributed with the knowledge that by all probabilities kicking by force on the abdomen would result in the death of the deceased. Thus, the act of the accused would squarely fall within the fourth limb of Section 300 of IPC. But, at the same time, it is in evidence that the accused came to the house of P.W.5 in search of the deceased and not for quarreling or to beat her. He came there only to demand a sum of rupees ten thousand from the deceased. When the deceased refused to part away with money, there arose quarrel. The above said quarrel went on for a quite some time and only in culmination of the said quarrel without taking any undue advantage, the accused had kicked the deceased on her stomach repeatedly. This act of the accused would squarely fall within the fourth exception to section 300 of IPC. Thus, the accused is liable for punishment only for offence under Section 304(ii) of IPC.

14. Now turning to the quantum of punishment, at the time of occurrence, the appellant/accused was hardly aged 32 years. He had no bad antecedents and he has got lot of chances for reformation. The occurrence was not a premeditated one and no weapon was used. Having regard to all these mitigating as well as aggravating circumstances, we are of the view that sentencing the appellant/accused to undergo six years of rigorous imprisonment and to pay a fine of Rs.10,000/- would meet the ends of justice.

15. In the result, the appeal is partly allowed. The conviction and sentence imposed on the appellant/accused for the offence under Section 302 of IPC is set aside and instead, he is

convicted under Section 304(ii) of IPC and sentenced to undergo rigorous imprisonment for six years and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for further four weeks. If the appellant/accused had already paid the fine amount, the same shall be adjusted towards the fine amount now imposed. It is reported that the accused is on bail and, therefore, the learned III Additional Sessions Judge, Vellore @ Thirupathur, Vellore District, shall take steps to secure the appellant/accused and commit him to prison to serve the remaining portion of sentence, if any. It is further directed that the period of detention already undergone shall be set off under Section 428 of Cr.P.C.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

kmk

To

- 1.The III Additional Sessions Judge, Vellore @ Thiruppathur, Vellore District
- 2.The Inspector of Police, Thiruppathur Town Police Station, Vellore District.
- 3.The Public Prosecutor, High Court, Madras.
- 4.The Judicial Magistrate No.I Tiruppathur
- 5.The Chief Judicial Magistrate Vellore (for information)

+1 cc to Mr.S.Kannadasan Advocate sr.13464

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