

Bail Slip

The Appellant/Accused namely Rajendran, S/O Murgaiya Pillai, was directed to be released on bail as per the order of this Court dated 24.10.2013 in M.P.No.1 of 2013 in CrI.A.674 of 2013 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2016

CORAM:

THE HON'BLE MR.JUSTICE M.JAICHANDREN
and
THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Criminal Appeal No.674 of 2013

Rajendran

Vs.

... Appellant

State rep. by the
Inspector of Police
Nannilam Police Station
Nannilam.

... Respondent

Prayer:- Criminal Appeal filed under Section 374 (2) of the Code of Criminal Procedure against the judgment of conviction and sentence made in S.C.No.60 of 2011 by the learned Sessions Judge, Tiruvarur, dated 23.01.2013.

For Appellant : Mr.P.Thiagarajan

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

JUDGMENT

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

The appellant is the sole accused in S.C. No.60 of 2011 on the file of the learned Sessions Judge, Tiruvarur. He stood charged for the offences under Sections 294(b), 352 and 302 IPC. By judgment, dated 23.01.2013, the Trial Court convicted the accused under Sections 294(b) and 302 IPC alone and sentenced him to pay a fine of Rs.500/-, in default to undergo rigorous imprisonment for three months for the offence under Section 294(b) IPC and to undergo imprisonment for life

and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 302 IPC. The Trial Court acquitted the accused under Section 352 IPC. Challenging the said judgment of conviction and sentence, dated 23.01.2013, the accused is before this Court with this Criminal Appeal.

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

(i) The deceased in this case was one Thangaraj. He was residing at West Street, Melaveli Village, in Nannilam Taluk, Tiruvarur District. The accused is his neighbour. P.W.1-Saroja is the wife of the deceased. P.Ws.2 to 4, viz., Loganathan, Karthikeyan and Santha respectively, are the neighbours of the deceased. By the side of his house, the deceased had stored bricks as a heap. On 28.03.2011, around 9.00 p.m., the deceased had just returned to his house. At that time, he found the goats belonging to the accused were climbing on the heap of bricks and pushed them down. As a result, the bricks got damaged. Therefore, the deceased went near the same and drove out the goats. The accused, who was standing in front of his house, noticed the same. He questioned the authority of the deceased, as to why he was driving away the goats. The deceased told the accused, because the goats had caused damage to the bricks, he found it necessary to drive them away. This resulted in a quarrel. At that time, the deceased was drunk. In that quarrel, it is alleged that the accused took out a wooden log lying there and gave a single blow on the head of the deceased. The deceased sustained bleeding injury on the middle of his head and fell down. This was witnessed by P.Ws. 1 to 4. The accused then ran away from the scene of occurrence with the wooden log. P.W.1 and others, immediately, took him to the Government Medical College Hospital, at Tiruvarur.

(ii) P.W.20-Dr.P.Thirunavukarasu of Government Medical College Hospital, at Tiruvarur, examined the deceased, on 28.03.2011, at 11.15 p.m. He found an open lacerated wound, measuring 3 x 1/2 x 1/2 cm, on the middle of the head. He found bleeding from the injury. He admitted him as an inpatient. Ex.P.15 is the Accident Register.

(iii) Since the condition of the deceased was worsening, P.W.1 and other relatives, thought, it necessary to immediately shift him from the said hospital to a private hospital. Therefore, according to P.W.1, she took him to a private hospital, by name, Sugam Hospital, at Kumbakonam. But, the Doctor there, after examining the deceased, told that the condition of the deceased was critical and therefore, the Doctor advised P.W.1 to take the deceased immediately to a private

hospital at Thanjavur. Accordingly, P.W.1 rushed the deceased to a private hospital at Thanjavur, by name, Vinodhagan Memorial Hospital (P) Limited, Thanjavur.

(iv) P.W.14-Dr.Jayaprakash of Vinodhagan Memorial Hospital (P) Limited, Thanjavur, examined the deceased, on 29.03.2011, at 2.40 a.m. At that time, the deceased was unconscious. The C.T. scan taken revealed that there was injury to brain and there was also extensive haemorrhage both sub-dural and sub-arachnoid. He admitted him as an inpatient and gave treatment. He also gave an intimation to the police.

(v) On receiving the intimation from the hospital, P.W.9-Kannan, Head Constable, attached to Nannilam Police Station, rushed to the Vinodhagan Memorial Hospital (P) Limited, Thanjavur, at 2.00 p.m., on 29.03.2011. Since, the deceased was unconscious, he recorded the statement of P.W.1, who is the wife of the deceased, and returned to the Police Station. Ex.P.1 is the said statement of P.W.1. He handed over the same to the Inspector of Police, Nannilam Police Station.

(vi) P.W.18-Sundaramurthy, the then Inspector of Police, Nannilam Police Station, on receipt of the complaint (Ex.P.1), registered a case, in Crime No.106 of 2011 under Sections 294 (b), 354, 324 and 307 IPC, against the accused. Ex.P.13 is the First Information Report. He forwarded Exs. P.1 and P.13 to the Court and handed over the Case Diary to his successor, viz., P.W.21, for investigation.

(vii) P.W.21-L.Rajendran, the then Inspector of Police of Nannilam Police Station, took up the case for investigation. On 23.09.2011, at 4.00 p.m., he examined P.Ws. 1 to 4 and few more witnesses. At the place of occurrence, on the same day, he prepared an Observation Mahazar (Ex.P.2) and a Rough Sketch (Ex.P.16) in the presence of P.W.5-Murugavel and another witness, by name, Dharmarajan. Then, on going over to Vinodhagan Memorial Hospital (P) Limited, Thanjavur, since, he found the deceased unconscious, he was not able to record any statement. Then, he recovered the blood-stained dhoti of the deceased (M.O.1), in the presence of P.W.6-Sakthivel and another witness, by name, Mahadevan, under a Mahazar-Ex.P.3.

(viii) On 30.03.2011, at 11.50 a.m., the deceased died in the Vinodhagan Memorial Hospital (P) Limited. Due intimation was sent to P.W.21, the then Inspector of Police, Nannilam Police Station, through P.W.10-Peramaiyan, the then Special Sub-Inspector of Police, Thanjavur, and P.W.11-Chandrasekaran, the then Special Sub-Inspector of Police, Nannilam Police Station. On receiving the said intimation, P.W.21 altered the case into one under Section 302 IPC. Ex.P.17 is the Alteration Report,

which he immediately forwarded to the Court, through P.W.12-Haj Najubudeen, the then Grade-I Police of Nannilam Police Station. At the said hospital, on the same day, between 3.30 and 6.30 p.m., P.W.21 conducted inquest on the body of the deceased and forwarded the body for post-mortem.

(ix) P.W.19-Dr.Raj Kumar, an Assistant Surgeon, attached to the Department of Forensic Medicine, Thanjavur Medical College Hospital, conducted autopsy on the body of the deceased, on 31.03.2011, at 10.30 am. He found the following injuries on the body of the deceased.

"EXTERNAL INJURIES :-

1.Sutured wound of 'U' shaped about 26 cm in right temporo parietal region.

2.Sutured wound of length 3 cm over left temporo parietal region.

INTERNAL INJURIES :-

3.On reflecting the scalp, subscalpal contusion seen in both temporal and parietal regions.

4.On opening the skull: Extra dural haemorrhage present over right temporo parietal lobe.

5.Sub dural haemorrhage seen in right temporo parietal lobe.

6.Laceration of brain 3 x 2 x 1 cm in right temporal lobe.

7.Intra cerebral haemorrhage present in right parietal lobe.

8.Fracture line seen over floor of middle and posterior cranial fossa.

Extremities : NAD.
Level of diaphragm : Intact.
Peritoneal cavity : Free from fluid or a haemorrhage.
Pericardium : Intact.
Heart : Normal in size. All the four chambers contained blood.
Valves : Intact.
Coronary Vessels : Patent.
Great Vessels : Intact.
Lungs : C/s. pale.
Larynx, Hyoid Bone : Intact.

Stomch	: Partially digested food particles present.
Liver	: C/s. pale.
Spleen	: C/s. pale.
Kidneys	: C/s. both pale.
Small Intestine	: Empty. Mucosa normal.
Large Intestine	: Normal.
Bladder	: Empty.
Pelvis	: Intact.
Head & Membranes	: As noted above.
Brain	: As noted above.
Spinal column	: Intact."

Ex.P.14 is the Post-Mortem Certificate. The Doctor gave an opinion that the external injury and the corresponding internal injury found on the deceased could have been caused by attack with M.O.2-Wooden Log. The Doctor further opined that the deceased would appear to have died due to shock and haemorrhage, due to the head injury.

(x) P.W.21, the then Inspector of Police of Nannilam Police Station arrested the accused, on 31.03.2011, at 5.00 p.m., near Achuthamangalam Kadaitheru, in the presence of P.W.7-Rajendran and another witness, by name, Velmurugan. On such arrest, he gave a voluntary confession, in which, he disclosed the place, where he had hidden the wooden log. In pursuance of the same, he took P.W.21 and the witnesses to the said place and produced the wooden log. P.W.21 recovered the wooden log (M.O.2) under a Mahazar (Ex.P.5) in the presence of the same witnesses. On returning to the Police Station, he forwarded the accused to the Court and also handed over all the Material Objects to the Court. At his request, the Material Objects were sent for chemical examination. The Chemical Analysis Report revealed that there were human blood-stains found on all the Material Objects including the wooden log. On completing the investigation, he laid the charge sheet against the accused.

(xi) Based on the above materials, the Trial Court framed the charges as detailed in paragraph No.1 of this judgment. The accused denied the same. During the trial, in order to prove the case of the prosecution, on the side of the prosecution as many as 21 witnesses were examined and 18 documents and 2 material objects were exhibited. Out of the said witnesses, P.Ws.1 to 4 are the eye witnesses to the occurrence. They have vividly spoken about the entire occurrence, more particularly, the fact that it was this accused, who attacked the deceased with wooden log on the head of the deceased. P.W.5-Murugavel has spoken about the preparation of Observation Mahazar (Ex.P.2) and Rough Sketch (Ex.P.16) and also recovery of Material Objects from the place of occurrence. P.W.6-Sakthivel has spoken

about the recovery of M.O.1-Dhoti at the Vinodhagan Memorial Hospital (P) Limited, Thanjavur. P.W.7-Rajendran has spoken about the arrest of the accused, the disclosure statement made by him, and the consequential recovery of M.O.2-Wooden Log. P.W.8-Raja has spoken about the intimation received from the hospital regarding the admission of the deceased at Government Medical College Hospital, at Tiruvarur. P.W.9-Kannan, Head Constable of Nannilam Police Station, has spoken about the recording of the statement of P.W.1 by him at the Vinodhagan Memorial Hospital, at Thanjavur. P.Ws. 10 and 11, the then Special Sub-Inspectors of Police, have spoken about the death intimation received from the Vinodhagan Memorial Hospital. P.W.12, the then Grade-I Police of Nannilam Police Station has spoken about the fact that he handed over the Alteration Report to the Magistrate, on time. P.W.13-Mathiyazhagan, the then Special Sub-Inspector of Police, Nannilam Police Station, has spoken that he took the dead body from Vinodhagan Memorial Hospital and handed over the same to the Doctor (P.W.19-Dr.Raj Kumar) at the Tiruvarur Government Medical College Hospital, for post-mortem. P.W.14-Dr.Jayaprakash of Vinodhagan Memorial Hospital, Thanjavur, has spoken about the treatment given to the deceased at Vinodhagan Memorial Hospital, at Thanjavur. P.W.15-Mrs.Avina, Scientific Assistant, Forensic Science Laboratory, Thanjavur, has spoken about the chemical analysis conducted by her on the Material Objects recovered. She has further stated that the report revealed that there were human blood-stains on all the material objects including the wooden log. P.W.16-Palanisamy is a neighbour, who has stated that after hearing about the occurrence, he came to the place of occurrence and he saw the accused with the wooden log, fleeing away from the place of occurrence. He has also spoken about the recovery of M.O.1-Dhoti from the body of the deceased. P.W.8-Raja has spoken about the registration of the case based on the complaint (Ex.P.1) of P.W.1. P.W.19-Dr.Raj Kumar, the Assistant Surgeon of Thanjavur Medical College Hospital has spoken about the post-mortem conducted by him and his final opinion regarding the cause of death. P.W.20-Dr.Thirunavukarasu, has spoken about the treatment given to the deceased at Tiruvarur Medical College Hospital. P.W.21-L.Rajendran, the then Inspector of Police, has spoken about the investigation done by him and the filing of the final report.

(xii) When the accused was questioned under Section 313 Cr.P.C. as to the incriminating circumstances found in the evidence of prosecution witnesses, he denied them as false. But, he has not chosen to examine any witness nor to mark any document. His defence was a total denial. Having considered all the above, the Trial Court convicted the appellant/accused for the offences under Sections 294(b) and 302 IPC. That is how, the appellant/accused is now before this Court with this appeal.

3. We have heard Mr.P.Thiagarajan, learned counsel appearing for the appellant and 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 an enormous delay in preferring the complaint, which would create a doubt in the case of the prosecution. He would further submit that the presence of P.Ws.1 to 4 at the place of occurrence cannot be believed. He would further submit that the arrest of the accused and the consequential recovery of the M.O.2-wooden log cannot also be believed. The learned counsel would submit that the conviction of the appellant under Sections 294(b) and 302 IPC is not sustainable.

5. Mr.M.Maharaja, the learned Additional Public Prosecutor would, however, oppose this appeal. There is no reason to reject the eye witness account of P.Ws. 1 to 4, whose presence is quite natural. He would further submit that the recovery of wooden log (M.O.2) and the disclosure statement would further strengthen the case of the prosecution. He would further submit that the very fact that the accused had used the wooden log to cause injury in the vital part of the deceased, viz., on head, would go to show that the intention of the accused is only to cause the death of the deceased and according to him, the accused is liable to be punished under Section 302 IPC.

6. We have considered the above submissions and we have also perused the materials available on record.

7. P.W.1-Saroja is the wife of the deceased. The occurrence had taken place just in front of her house. Her presence, therefore, cannot be doubted. Similarly, P.Ws. 2 to 4 are neighbours. All these witnesses have stated that the street lights were glowing and there was enough light for them to see the occurrence. The occurrence was preceded by a quarrel. According to the eye witnesses, when the deceased was driving away the goats belonging to the accused, the accused questioned the same. This resulted in a quarrel. This quarrel was also witnessed by all the eye witnesses. Only at the end of the quarrel, taking a wooden log, which was lying there, the accused had given a single blow on the head of the deceased. This has been vividly spoken to by all the four eye witnesses. We do not find any reason to reject either their presence or veracity. Their evidence is duly corroborated by the medical evidence also. Immediately after the occurrence, the deceased was taken to the Government Medical College Hospital, at Tiruvarur, where P.W.20, the Doctor had examined the deceased and found that there was one single injury on the middle of the head. He

admitted there was fresh bleeding. He admitted him as in patient. Since the health condition of the deceased was worsening, he was taken to a private hospital, by name, Sugam Hospital, at Kumbakonam. From where, he was taken to another private hospital at Thanjavur, viz., Vinodhagan Memorial Hospital, Thanjavur. P.W.14-Dr.Jaya Prakash has stated that the C.T.scan taken revealed there was a lacerated wound on the middle of the head and the scan taken revealed that there was contusion in the brain and there was also huge amount of haemorrhage both sub-dural and sub-arachnoid haemorrhage. The Doctor, who conducted autopsy has stated that the external injury and the corresponding internal injury could have been caused by a wooden log (M.O.2). Thus, the medical evidence clearly corroborates the eye witness account.

8. As regards the contention of the learned counsel for the appellant that there was an enormous delay in preferring the First Information Report, I find no force. The reason being, since the health condition of the deceased was worsening, P.W.1 and other relatives would have worried much about only his health condition and therefore, they would have concentrated only in taking him from one hospital to another to save him. We cannot expect to abandon the deceased and to go to the Police Station to make a complaint immediately giving preference to lodge a complaint, instead of giving preference to the life of the deceased. Thus, in this case, the conduct of P.W.1 in taking the deceased to the Government Medical College Hospital at Tiruvarur and then, to a private hospital at Kumbakonam and then to the Vinodhagan Memorial Hospital, Thanjavur, and remaining by his side, since, he was unconscious, is quite natural. Therefore, in our considered view, though, there is delay in preferring the complaint, the same remains, however, explained to the satisfaction of the Court.

9. From these evidences, the prosecution has established its case beyond reasonable doubt that it was this accused, who attacked the deceased with wooden log on his head, and has caused the death of the deceased.

10. Having come to the said conclusion, now, we have to examine, what was the offence the accused had committed by causing the death of the deceased. The deceased was fully drunk at the time of occurrence, which is evident from the evidence of P.W.20-Dr.Thirunavukarasu, who examined the deceased at the Government Medical College Hospital at Tiruvarur. Further, the fact remains that there was no enmity between the deceased and the accused. Since the goats have climbed upon the heap of the bricks stored by the deceased, the deceased was driving away the goats. This was questioned by the accused. This had resulted in a quarrel. Thus, there was absolutely no pre-meditation,

on the part of the accused to commit the murder of the deceased. At that time, the accused was not armed with weapon. It was only in the quarrel, the accused took the wooden log lying there and he took the stick and gave one blow on the head of the deceased, without having taken any undue advantage. In the heat of passion, on account of the above quarrel and fight, the accused had taken the wooden log and caused a single blow. The narration of the facts would go to prove that the act of the accused would squarely fall under Exception 4 to Section 300 IPC. As we have already pointed out, the accused would not have intended to cause the death of the deceased and therefore, the act of the accused would not squarely fall under the first limb of Section 300 IPC. Similarly, the accused would not have intended to cause any bodily injury on the deceased, which is sufficient in the ordinary course of nature to cause death, so as to bring his act under the third limb of 300 IPC. Thus, we firmly hold that by the said act, the accused can be attributed with the knowledge that it was so imminently dangerous and it is likely to cause the death of the deceased. Thus, the act of the deceased would squarely fall within the fourth limb of Section 300 IPC. Since, we have already concluded that the act of the accused would squarely fall under Exception 4 to Section 300 IPC, the accused is liable to be punished for the offence under Section 304 (ii) IPC.

11. Turning to the quantum of punishment, there was no pre-meditation on the part of the accused as stated above. The occurrence itself was out of sudden quarrel. The wooden log was an ordinary stick. The accused has got a big family to take care of. He belongs to a poor family. He had got no bad antecedents both before as well as after the occurrence. The deceased was fully drunk and that was also a cause for the quarrel. It was out of a sudden quarrel, in a heat of passion, the occurrence had taken place. The accused was not armed with any weapon. The accused has not shown any deviance from law after this occurrence. Having regard to the mitigating as well as aggravating circumstances, we are of the view that sentencing the appellant/accused to undergo rigorous imprisonment for six years for the offence under Section 304 (ii) IPC and to pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for four weeks, would meet the ends of justice. The conviction for the offence under Section 294(b) IPC and sentencing the petitioner to pay a fine of Rs.500/-, deserves to be confirmed. The default sentence is modified to undergo rigorous imprisonment for three weeks, instead of rigorous imprisonment for three months as imposed by the Trial Court.

12. In the result,

- i. this Appeal is partly allowed and the conviction and sentence of the appellant/accused for the offence

under Section 302 IPC is set aside, instead, he is convicted for the offence under Section 304(ii) IPC, and he is sentenced to undergo rigorous imprisonment for six years and to pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for four weeks.

ii. The conviction for the offence under Section 294(b) IPC and sentencing the petitioner to pay a fine of Rs.500/-, stands confirmed. The default sentence is modified to undergo rigorous imprisonment for three weeks, instead of rigorous imprisonment for three months as imposed by the Trial Court.

ii. Since, the appellant/accused is on bail, the Sessions Court is directed to take steps to secure his custody to undergo the remaining period of sentence.

iii. The period of imprisonment already undergone by the appellant/accused shall be given set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Inspector of Police,
Nannilam Police Station,
Nannilam.
2. The Sessions Judge,
Tiruvarur.
3. The Public Prosecutor,
High Court, Chennai.
4. The Judicial Magistrate I,
Tirunelveli.
5. The Judicial Magistrate,
Tiruvarur.
6. The Chief Judicial Magistrate,
Tiruvarur. (for information).

7.The Superintendent,
Central Prison,
Trichy.

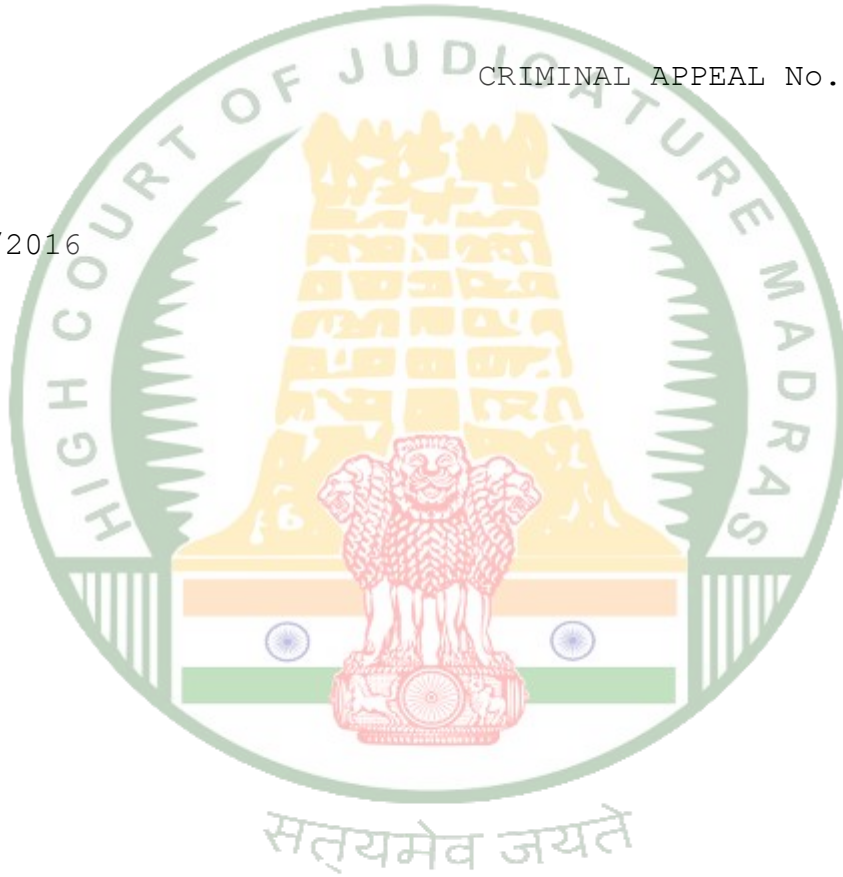
8.The District Collector,
Trichy.

9.The Director General of Police,
Mylapore, Chennai.

+1cc to Mr.P.Thiagarajan, Advocate sr.26911

CRIMINAL APPEAL No.674 of 2013

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srg 20/06/2016



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