

BAIL SLIP

THE APPELLANTS/ACCUSED NOS.1 AND 2 NAMELY 1. SIVA SUBRAMANIAN, S/o.KASINATHAN, AGED 37 YEARS AND 2. MUTU @ MUTHUKUMAR, S/o.JEGANATHAN AGED 32 YEARS WERE DIRECTED TO BE RELEASED ON BAIL AS PER THE ORDER OF THIS COURT DATED 02/09/14 MADE IN MP.1/14 IN CRL.APEAL NO.771/2013.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 06.06.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.A.No.771 of 2013

1.Sivasubramanian
2.Muthu @ Muthukumar ...Appellants/Accused 1 & 2

vs.

The State,by
The Inspector of Police,
Peelamedu Police Station,
Coimbatore City,
Coimbatore.
(Crime No.1567 of 2010) ...Respondent/Complainant

Criminal appeal preferred under Section 374(2) Cr.P.C.,
against the judgement dated 13.11.2013 passed by the learned I
Additional District and Sessions Judge, Coimbatore, in
S.C.No.21 of 2012.

For Appellant : Mr.C.M.Gunasekaran for
Mr.S.Sugendran

For Respondent : Mr.M.Maharaja,Addl.P.P.

JUDGMENT

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

The appellants in this appeal are accused 1 and 2 in Sessions Case No.21 of 2012, on the file of the learned I Additional District and Sessions Judge, Coimbatore. The first appellant/first accused stood charged for the offence under Section 302 of IPC and the second appellant/second accused stood charged for the offence under Section 302 r/w Section 34 of IPC. The Trial Court, after trial, by judgement dated

13.11.2013, convicted the first appellant/first accused for the offence under Section 302 IPC., and sentenced him to undergo life imprisonment and also to pay a fine of Rs.5000/-, in default, to undergo simple imprisonment for six months, and convicted the second accused/second appellant for the offence under Section 302 r/w Section 34 of IPC., and sentenced him to undergo life imprisonment and also imposed a fine of Rs.5000/-, in default, to undergo simple imprisonment for six months. Challenging the above said conviction and sentence, the appellants/accused are before this Court with this appeal.

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

(i) The deceased in this case one Rajamanickam was running a textile spare parts shop in the name and style of "Gem Textiles Machinery Spares" in Bharathiyar Road, Pappanayakanpalayam, Coimbatore. The appellants/accused were running a mobile fast food shop in a push cart, in the front of the shop of the deceased and causing nuisance to the deceased, by throwing food waste in front of his shop. The deceased warned the accused to shift their shop to some other place and also threatened them stating that he would give complaint to the police. On 09.12.2010 at about 7.30 p.m., P.W.1, the brother son of the deceased, went to the shop of the deceased. At that time, both the accused were roaming around there. Thereafter, the deceased closed the shop and proceeding to his house in his motor cycle. P.W.1 proceeded to his grandmother's house and after seeing her, within two minutes, he was also going in his bike behind the deceased. At that time, both the accused came in a moped and waylaid the deceased. A-2 caught hold the deceased and A-1 attacked the deceased with a knife on his chest. The deceased fell down. On seeing the occurrence, P.W.1 rushed to the place of occurrence, but the accused escaped from the scene of occurrence. Immediately, P.W.1 and P.W.4, one of his relative, and two other persons took the deceased to PSG Hospital, Coimbatore and on the way to hospital, he died. Thereafter, P.W.1 give complaint (Ex.P1), before the respondent police at about 10.00 p.m.,

(ii) P.W.22, Sub Inspector of Police, working in Peelamedu Police Station, on receipt of Ex.P1 complaint, registered a case in Crime No.1567 of 2010 for the offence under Section 302 of IPC and prepared FIR (Ex.P21) and sent the same to the higher officials and to the Judicial Magistrate Court. P.W.23, the Inspector of Police, working in the Peelamedu Police Station, on receipt of the FIR, proceeded to the scene of occurrence at about 10.30 p.m., and prepared an Observation Mahazar (Ex.P2), drew a Rough Sketch (Ex.P22) in the presence of P.W.13, and other witnesses and also recovered a Motor Cycle (M.O.3), Helmet (M.O.2) belonged to the deceased and blood stained thar road piece (M.O.6), sample thar road piece (M.O.7) under Ex.P3 seizure mahazar. At about 11.45 p.m., he went to PSG Hospital, and sent the dead body to

the Government Hospital, Coimbatore, for postmortem. He once again visited the scene of occurrence at about 12.00 p.m., and recorded statements of witnesses. On 10.12.2010 at about 6.00 a.m., he went to the Government Hospital and conducted inquest over the dead body in the presence of Panchayatdars and prepared Inquest Report Ex.23.

(iii) P.W.21, Doctor, working in the Government Hospital, Coimbatore, conducted postmortem on the body of the deceased and found the following injuries:-

"The following ante mortem injuries noted on the body.

Transversely oblique stab wound 5 x 1 cm x cavity deep noted over right chest, just below clavicle at the level of 1st inter costal space. The inner lower sharp end is 1 cm right to mid line. The outer upper serrated blunt end is 1 cm below midpoint of clavicle. The wound piercing the underlying 2nd inter costal space muscle measuring 5 x 1 cm and entering into right pleural cavity and piercing anterior aspect of upper lobe of right side lung measuring 4.5 x 1 cm and entering the middle lobe through and through and then entering into the superior surface of lower lobe of right lung upto 5 cm is length. The pointed end is inside the lower lobe. The total length of the wound tract is 14 cm in length. Right pleural cavity contains 1000 ml of fluid blood with clot.

Other findings:

Left Pleural and peritoneal cavity ; empty. Larynx and Trachea cut section pale. Hyoid bone intact. Heart: Right side chambers contain a few cc of fluid blood, left side chambers empty. Coronaries patent. Stomach contains about 20 ml of dark brown colour fluid, no specific smell, mucosa pale. Small intestine contains about 20 ml of bile stained fluid, no specific smell, mucosa pale. Liver, Spleen, Kidneys and Lungs: Cut section pale. Urinary bladder: empty.

He opined that the deceased would appear to have died of shock and haemorrhage due to stab injury on the right side chest with its corresponding internal injuries. He issued Postmortem Certificate Ex.P18

(iv) P.W.23, Investigation Officer, recorded the statement of postmortem Doctor and other witnesses. On 13.12.2010 at about 9.00 a.m. he arrested both the accused near Singanallur Bus Stop, in the presence of witnesses and on

such arrest, they voluntarily gave confession statements, based on the disclosure statements Exs.P4 and P5, P.W.23 recovered blood stained knife (M.O.1), TVS.50 motor cycle used by the accused (M.O.2), blood stained shirts 2 Nos, M.Os.8 and 9, Lungi (M.O.11) under Mahazar. He examined the witnesses and recorded their statements and sent the material objects for chemical examination. After completing the investigation, P.W.23 laid charge sheet before the jurisdictional Judicial Magistrate Court.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 23 witnesses, exhibited 23 documents, besides marking 23 material objects.

4. Out of the witnesses examined, P.Ws.1 and 6 are eye witnesses to the occurrence. P.W.1 is the brother's son of the deceased. According to him, on the date of occurrence, he went to the shop of the deceased and at about 7.45 p.m., the deceased closed the shop and left for his home in his motor cycle. P.W.1, after visiting his grandmother, followed the deceased in his bike. At that time, both the accused came in a TVS moped, waylaid the deceased, the second accused caught hold the hands of the deceased and A1 attacked him with a knife on his chest. He has further stated that immediately, he along with P.W.4 took the deceased to PSG Hospital and on the way to Hospital he died and gave a complaint before the respondent police. P.W.2 is the wife of the deceased. According to her, she knew the accused and she has spoken about the previous motive between the accused and the deceased. Her further evidence is that both the accused were running a mobile fast food shop in front of the shop of the deceased and when the deceased asked them to remove the fast food shop, the accused threatened him that they would murder him. After hearing the news, she reached PSG Hospital and saw the dead body of her husband. P.W.3 is the brother of the deceased. He has spoken about the motive between the deceased and the accused. P.W.4 is a distant relative of P.W.1. According to him, on 09.12.2010 at about 8.00 p.m., P.W.1 called him over phone and informed him about the occurrence, and asked him to bring his tempo and immediately he reached the scene of occurrence in his tempo and they have taken the deceased in the said tempo and on the way to hospital he died. P.W.5 was running a travel agency and he was residing at Neelikonampalayam, Coimbatore. According to him, on 09.12.2010 at about 7.00 p.m., he went to the Regional Transport Office to meet a broker and on his way, he saw the accused attacking the deceased and he also saw P.W.1 trying to catch the accused, but he could not do and at the time, P.W.1 informed him that the deceased is his uncle and the accused attacked the deceased. P.W.6 was running a petty shop at Ramanathapuram, Coimbatore. According to him, when he has returning back to her shop after supplying goods to his

customer, he saw the first accused stabbing the deceased and also saw P.W.1 coming behind the deceased in his motor cycle and tried to catch the deceased, but they ran away. P.W.7 was doing painting work. According to him, he saw the accused proceeding in a moped at a high speed and also saw A-1 carrying a knife and the presence of P.W.1 in the scene of occurrence. P.W.8 is the father-in-law of the deceased. He has deposed that he knew the accused and he also spoken about the motive. P.W.9 was running a vulcanizing shop near the shop of the deceased. He has deposed that he also knew the deceased as well as the accused. He has also spoken about the motive. P.W.10 was working as a security guard in the transport company near the scene of occurrence. He has deposed that he saw the accused and P.W.1. P.W.11 is running a welding shop near the shop of the deceased and he has also spoken about the motive and the act of the deceased giving complaint against the accused. P.W.12 is running a studio at Savuripalayam, Coimbatore. He has spoken about the presence of lights in the scene of occurrence. P.W.13, auto driver is witness to the Observation Mahazar and Rough Sketch and also recovery of Motor cycle, Helmet and spectacle of the deceased. P.W.14 is a witness to the arrest of the accused and also recovery of M.O.1 knife and blood stained dresses of the accused M.Os.9,10 and 14. P.W.15 is the Junior Scientific Officer in the Regional Forensic Lab. According to him, he examined the material objects and issued reports Exs.P1 to P3 to the effect that the blood group found in the material objects, is "B" group. P.W.16, Assistant Engineer, Tamil Nadu Electricity Board, in the Peelamedu area, has spoken about the presence and burning of street lights in the scene of occurrence, and his further evidence was that from 6.00 p.m. on 09.12.2010 to next day morning 6.00 a.m., there was no power cut, and he has issued a certificate to that effect in Ex.P14. P.W.17, photographer has spoken about taking of photographs of the scene of occurrence and dead body. P.W.18, Head Constable, working in the Peelamedu Police Station has deposed that he submitted the First Information Report to the Judicial Magistrate Court. P.W.19, Head Constable, working in the Peelamedu Police Station has deposed that he identified the dead body for postmortem and recovered the dresses found on the dead body after postmortem. P.W.20, Doctor, working in the PSG Hospital, has stated that he gave death intimation (Ex.P16) to the Police Station. P.W.21, Doctor has stated that he conducted postmortem autopsy on the dead body of the deceased and issued postmortem certificate Ex.P.18. P.W.22, Sub Inspector of Police has deposed that he received the complaint and registered the case in Crime No.1567 of 2010 for the offence under Section 302 of IPC and sent the FIR to the higher officials and to the Judicial Magistrate Court. P.W.23 is the Inspector of Police. His evidence is that he conducted investigation, examined the witnesses, arrested the accused and after completion of investigation, filed the charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. Their defence was a total denial. The accused did not examine any witness and no document was marked on their side.

6. Having considered all the above, the Trial Court convicted and sentenced the accused for the offences as stated in first paragraph of this judgment. Challenging the above conviction and sentence, the accused are before this Court.

7. We have heard Mr.C.M.Ganasekaran, learned counsel appearing for the appellants and Mr.M.Maharaja, learned Additional Public Prosecutor appearing for the State and we have also perused the records carefully.

8. P.Ws.1, 5 and 6 are eye witnesses to the occurrence. P.W.1 is the brother's son of the deceased. According to him, he knew the accused very well and on the date of occurrence at about 7.30 p.m., he went to the shop of the deceased and at about 7.45 p.m., the deceased closed his shop and left for his home. It is his further evidence is that after seeing his grandmother, he followed the deceased in his motor cycle and at that time, the accused waylaid the deceased, the second accused caught hold of the deceased and the first accused attacked him with knife on his chest and though he tried to catch the accused, they ran away. P.Ws.5 and 6 have incidentally come there in two wheelers and saw the first accused attacking the deceased with knife. According to P.Ws.5 and 6, at the time of occurrence, P.W.1 tried to catch the accused and they ran away, and both of them saw the occurrence. They have also spoken about the presence of P.W.1 in the scene of occurrence. P.Ws.5 and 6 are independent witnesses. They have also identified the accused in the Court. The medical evidence let in also corroborates the case of the prosecution. Even though, P.W.1 at the time of admitting the deceased in PSG Hospital has stated that the deceased was attacked by some unknown persons, the above said statement was not contradicted. Thus, the prosecution has clearly proved that the first accused has caused death of the deceased by stabbing him on his chest.

9. From the above evidence, it could be seen that there was a quarrel between the accused and deceased and during the quarrel, due to sudden provocation, the first accused lost his mental faculty and attacked the deceased and caused a single stab injury over the chest of the deceased and there is no overtact attributed to A-2. Though, he did not have any intention to cause death of the deceased, still he had an intention to cause injury, which is sufficient in the ordinary course of nature, to cause the death of the deceased. Hence, the act of the first appellant/first accused squarely falls within the 3rd limb of Section 300 IPC., and thus the act of the first appellant/first accused would squarely fall within

the first exception to Section 300 of IPC. Therefore, the first accused/first appellant is liable to be punished under Section 304(i) IPC and as no overtact was attributed to the second accused/second appellant, he is entitled for acquittal.

10. In respect of the quantum of punishment, the occurrence took place is of the year, 2010 and it was not a premeditated one and at the time of quarrel, due to sudden provocation, the first accused has lost his mental faculty and had attacked the deceased, which resulted in the death of the deceased. He is a poor man and had no bad antecedents. Having regard to the totality of all these circumstances, we are of the considered view that sentencing the first accused/first appellant to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,000/- in default, to undergo rigorous imprisonment for two months would meet the ends of justice.

11. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed on the second accused/second appellant in S.C.No.21 of 2012 dated 13.11.2013 on the file of the learned I Additional District and Sessions Judge, Coimbatore, is set aside and he is acquitted of all charges framed against him. However, the conviction and sentence imposed on the first appellant/first accused for the offence under Section 302 of IPC is set aside and instead, he is convicted for an offence under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1000/-, in default, to undergo two months rigorous imprisonment. It is directed that the period of sentence already undergone by the first accused/first appellant shall be given off as required under Section 428 IPC. If the first appellants/first accused is not in custody, the trial Court is directed to take appropriate steps to secure him and commit him to prison to undergo remaining period of sentence. The fine amount if any paid by the second appellant/2nd accused shall be refunded.

rrg

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The I Additional District and Sessions Judge,
Coimbatore.

2.The Inspector of Police,
Peelamedu Police Station,
Coimbatore City,
Coimbatore.

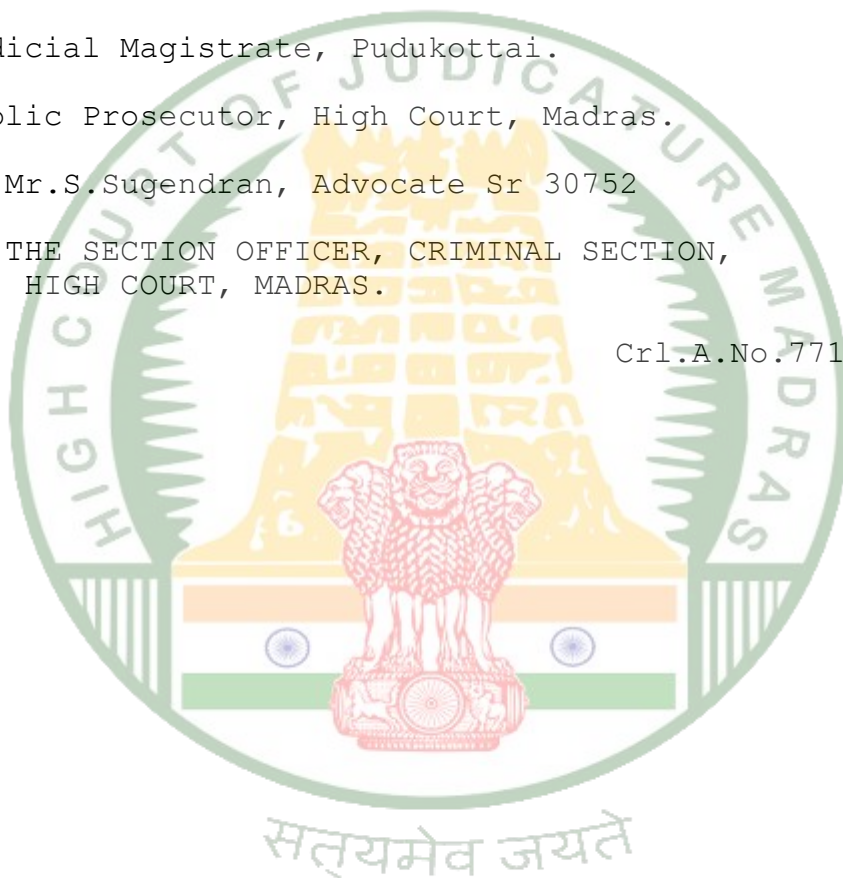
3. The Judicial Magistrate No.VI, Coimbatore.
4. -do- thro The Chief Judicial Magistrate,
Coimbatore.
5. The Superintendent, Central Prison, Coimbatore.
6. The Director General of Police, Mylapore, Chennai-4.
7. The District Collector, Coimbatore.
8. The Judicial Magistrate, Pudukottai.
9. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.S.Sugendran, Advocate Sr 30752

COPY TO:- THE SECTION OFFICER, CRIMINAL SECTION,
HIGH COURT, MADRAS.

KR/6/9/16

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