

Bail Slip

The accused namely Viz., Azhagu, was directed to release on bail, made in CrI.MP.11168/03, dt. 01.12.2003 for reference in CrI.A.No.1697/03 of this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.1697 of 2003

Azhagu Appellant/Accused

vs.

State, represented by
The Inspector of Police,
Nandampakkam Police Station, Respondent/Complainant
(Crime No.124 of 1998)

Criminal Appeal filed under Section 374 of Cr.P.C., against the judgment dated 13.10.2003, passed by the Additional Sessions Court, (Fast Track Court-3), Poonamallee Chengleput District in S.C.No.588 of 2002.

For appellant : Mr.R.Rajarithnam

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

The conviction and sentence, dated 13.10.2003, passed in Sessions Case No.588 of 2002, by the Additional District and Sessions Court (Fast Track Court-3), Poonamallee, are being challenged in the present criminal appeal.

2. The case of the prosecution is that the accused has received a sum of Rs.600/- from the deceased, Mani, by way of debt and on 5.5.1998, he demanded the same from the accused and due to that, a tussle has arisen between them. The accused attacked him by using his hands and on the same day, at about 6.00 p.m., the deceased has passed away. After occurrence, the daughter of the deceased, by name, Karpagam, has given a complaint and the same has been registered in Crime No.124 of 1998.

3. On receipt of the complaint, alleged to have been given by the said Karpagam, the investigating officer, viz., P.W.9, has taken up investigation, examined connected witnesses and also made arrangements for conducting autopsy on the body of the deceased and accordingly, Dr.Elangovan, viz., P.W.7, has conducted autopsy and he found the following external and internal injuries:

"A obese male body lying on its back. Bleeding mild through mouth. Abrasion 1 cms X 1 1/2 cm over Rt.side chest below the nipple. A contusion 2 cm X 2cm over the left zygoma of face.

On dissection: Head: Skull bone intact. Brain congested. No free blood in the cavity of skull. Thorax: hyoid bone intact. Rib cage intact, lungs congested, Heart enlarged covered with lot of fat, coronary vessels thickened. Abdomen: Stomach contains 50 ml liquid. Intestine, liver, kidney, spleen are congested. Bladder empty. genitalia normal."

The postmortem certificate has been marked as Ex.P3 and after completing investigation, the successor in office of P.W.9, who has been examined as P.W.10, filed a final report on the file of the Judicial Magistrate Court, No.2, Poonamallee and the same has been taken on file in PRC No.27/1998.

4. The Judicial Magistrate, Poonamallee, after considering the facts that the offence alleged to have been committed by the accused is triable by Sessions Court, has committed the case to the Court of Sessions, Chengalput Division and the same has been taken on file in Sessions Case No.588 of 2002 and subsequently made over to the trial Court.

5. The trial Court, after hearing arguments of both sides and upon perusing the relevant documents, has framed a charge against the accused under Section 302 of the Indian Penal Code and the same has been read over and explained to him. The accused has denied the charge and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 10 have been examined and Exhibits P.1 to P.9 and M.Os.1 and 2 have been marked.

7. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, 1973 as respects the incriminating materials available in evidence against him, he denied his complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, has found the accused guilty under Section 325 of the Indian Penal Code and sentenced him to undergo five years rigorous imprisonment and also imposed a fine of Rs.20,000/-. Against the conviction and sentence passed by the trial Court, the present criminal appeal has been preferred, at the instance of the accused, as appellant.

9. The learned counsel appearing for the appellant/accused has contended that the occurrence has taken place on 5.5.1998 and for the purpose of proving the occurrence, no independent witnesses have been examined and further, the specific evidence given by P.W.7, Doctor, who conducted autopsy, is that the deceased would have died due to his heart problem and since no nexus in between the attack alleged to have been made by the accused and death of the deceased, the accused cannot be mulcted with liability even under Section 325 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court are liable to be set aside.

10. The learned Additional Public Prosecutor has contended that even though the accused has been charged under Section 302 of the Indian Penal Code, on the basis of the gravity of offence alleged to have been committed by the accused, the trial Court has found him guilty under Section 325 of the Indian Penal Code and therefore, the conviction and sentence passed by the trial Court against the appellant/accused do not warrant interference.

11. It is true that most of the eyewitnesses are related to the deceased. But apart from their evidence, an independent witness by name Nagaiyah has been examined as P.W.4 and his specific evidence is that in the place of occurrence, the accused has attacked the deceased by using his hands. Further, P.Ws.1 to 3, though related to the deceased, have clearly spoken to the effect that in the place of occurrence, the accused has attacked the deceased. Since P.Ws.1 to 4 have given trustworthy evidence to the effect that in the place of occurrence, the accused has attacked the deceased, the Court can very well come to a conclusion that the occurrence has taken place as spoken on the side of the prosecution. Apart from the evidence given by P.Ws.1 to 4, the specific evidence given by P.W.7, Doctor, who conducted autopsy is that he has found two simple injuries on the body of the deceased. Therefore, the prosecution has adduced evidence to the effect that in the place of occurrence, the accused has attacked the deceased and thereby caused two simple injuries on the person of the deceased.

12. The trial Court has found the appellant/accused guilty under Section 325 of the Indian Penal Code instead of Section 302 of the said Code.

13. It has already been pointed out that the prosecution has adduced replete evidence for the purpose of establishing the fact that the occurrence has taken place as spoken on the side of the prosecution.

14. The learned counsel appearing for the appellant/accused has also contended to the effect that at the time of occurrence, the accused has attained 47 years of age and he has caused only two simple injuries on the person of the deceased and further, those injuries are not having nexus with the cause of death and therefore, some leniency may be shown in awarding sentence.

15. Considering the nature of injuries alleged to have been caused by the accused on the person of the deceased and also considering the fact that those injuries are not at all responsible for the death of the deceased, some leniency can be shown, as stated infra and to that extent, this criminal appeal is liable to be allowed in part.

In fine, this criminal appeal is allowed in part. The conviction passed in Sessions Case No.588 of 2002 by the trial Court is confirmed. However, the quantum of sentence imposed by the trial Court against the appellant/accused is modified as follows:

The appellant/accused is sentenced to undergo one year rigorous imprisonment instead of five years. There is no modification with regard to fine amount.

If the appellant/accused is not in custody, the trial court is directed to take appropriate steps so as to immure him in prison to serve out the remaining period of sentence.

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Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

msk

To :

- 1.The Additional Sessions Court,
(Fast Track Court-3), Chengleput District
Poonamallee.
- 2.The Inspector of Police,
Nandampakkam Police Station.
- 3.The Public Prosecutor,
High Court, Madras.
4. The Judicial Magistrate II, Poonamallee.
- 5.The Chief Judicial magistrate, Chengalpattu.
6. The Principal Sessions Judge, Chengalpattu.
7. The Superintendent Central Prison, Vellore.

Crl.A.No.1697 of 2003

SCD(CO)
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