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BAIL SLIP

The Appellant/Sole Accused viz., Selvakumar @ Pantrikutti, S.o.Karuppaiah, was directed to be released on bail by order of this Court dated 21.01.2016 and made in CrI.MP(MD)No.481 of 2016 in CRL.A[MD].No.337 of 2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2016

CORAM:

**THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**

CRL.A[MD].No.337 of 2014

Selvakumar @ Pantrikutti : Appellant/Sole Accused

Vs.

State, rep by
Inspector of Police,
Sivagiri, Crime No.18 of 2011,
Tirunelveli District.

: Respondent/Complainant

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction dated 08.12.2014 made in S.C.No.399 of 2013 on the file of the Principal Sessions Court, Tirunelveli.

For Appellant : Mr.V.Kathirvel
Senior Counsel
For Mr.K.Prabhu
For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

JUDGMENT

[JUDGMENT of the Court was delivered by S.NAGAMUTHU, J]

The appellant is the sole accused in S.C.No.399 of 2013, on the file of the learned Principal Sessions Judge, Tirunelveli. He stood charged for the offences punishable under Sections 294(b), 302 and 506(ii) of the Indian Penal Code. By Judgment dated 08.12.2014, the Trial Court has convicted the appellant, as detailed below:-

Convicted Sections	under	Sentence imposed	Fine amount
294(b) IPC		To undergo rigorous imprisonment for one month.	No fine.
302 IPC		To undergo imprisonment for life.	Rs.1,000/- in default to undergo rigorous imprisonment for one year.
506(ii) IPC		To undergo rigorous imprisonment for one year.	No fine.

The sentences have been ordered to run concurrently. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

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

The deceased, in this case, was one Mr.Muniyasamy. PW-1 - Mrs.K.Modeeshwari is his wife. PW-1 has got an elder sister. The father of PW-1 had given three cents of land to her. PW-1 and her husband had put up a haystack on the said land. But, it was not fenced. The said place is situated two streets away from the street, where PW-1 and the deceased were residing. The accused was residing in a different village. He had cattle and he allowed the same to roam around. The cattle used to come to the land of the deceased and eat hay. This was objected to by the deceased.

2.2. On 28.01.2011, around 04.00 PM, PW-1, PW-2 and the deceased had gone to their land in order to put up fence around the haystack. The mother of the accused was taking his cattle through the said land. PW-1, PW-2 and the deceased objected to the same. This resulted in a quarrel. After sometime, the mother of the accused took the cattle to her house. Thereafter, the accused returned to the place of occurrence. The deceased and the others were engaged in putting up fence. The accused questioned the authority of the deceased as to how he could quarrel with his mother. This resulted again in a quarrel. It is stated that in the said quarrel, the accused took out an aruval and cut the deceased indiscriminately. PW-1, PW-2 and the others tried to rescue the deceased. But, the accused, after finishing his task, ran away from the scene of occurrence. PW-1 and PW-2 raised alarm.

2.3. Immediately, PW-1 and PW-2 took the deceased in a TATA Sumo Car to Sivagiri Government Hospital. The doctor, on examining the deceased, declared him dead. Thereafter, PW-1 went to Sivagiri Police Station and made a complaint, at 08.00 PM, on 28.01.2011.

2.4. On receipt of the complaint, PW-11, the then Sub-Inspector of Police, registered a case in Crime No.18 of 2011, under Sections 294(b), 326, 302 and 506(ii) of the Indian Penal Code. EX-P1 is the complaint and EX-P17 is the First Information

Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

2.5. Taking up the case for investigation, PW-12 proceeded to the place of occurrence, prepared an Observation Mahazer and a Rough Sketch, showing the place of occurrence in the presence of the witnesses. He recovered bloodstained earth and sample earth from the place of occurrence. On intimation from the hospital authorities, he went to the hospital and conducted inquest on the body of the deceased. EX-P21 is the inquest report. Then, he forwarded the dead body to the hospital for postmortem.

2.6. PW-6 - Dr.Chinnathai conducted autopsy on the body of the deceased. She noticed the following injuries:-

"1.Cut injury 4 x 2 cm x muscle deep left side of neck.

2.Cut injury 3 x 2 cm x muscle deep cut injury right side of upper part of chest.

3.Cut injury 15 x 3 cm x bone depth just below left elbow, underlying bone found fractured.

4.Cut injury 8 x 4 cm x bone deep upper part of left arm exposing the bone. Underlying bone found fractured.

5. Defence wound 6 x 3 cm x bone deep right wrist.

6. Cut injury 10 cm x 4 cm x bone deep upper part of back of right forearm.

7.Cut injury 20 x 3 cm x bone deep middle part of right arm extending to the elbow joint. Underlying bone found fractured.

8.Cut injury 6 x 2 cm muscle deep middle part of back.

9.Cut injury 6 x 2 cm x muscle deep just above injury. (CI)

EX-P6 is the postmortem certificate. She gave opinion that the deceased would appear to have died of shock and hemorrhage due to multiple injuries. She gave further opinion that the death of the deceased would have been caused by a weapon, like Aruval [MO-1].

2.7. PW-12 recovered bloodstained clothes from the dead body of the deceased. He recovered bloodstained clothes from the witnesses also. On 29.01.2011, at 10.45 AM, he arrested the accused in the presence of the witnesses. On such arrest, the accused gave a voluntary confession, in which he disclosed the place, where he had hidden the aruval. In pursuance of the same,



the accused took the police and the witnesses to the place of hide out and produced the aruval [MO-1]. PW-12 recovered the same under a mahazer. On returning to the Police Station, he forwarded the accused to the Court and handed over the material objects to the Court. The investigation was continued by his successor.

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2.8. PW-13 examined few more witnesses and collected the postmortem certificate. At his request, the material objects were sent for chemical examination, which revealed that there was human blood on all the material objects, including the billhook recovered from the accused. On completing the investigation, he laid charge sheet against the accused.

2.9. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused was questioned in respect of the charges, he pleaded innocence. In order to prove the charges, on the side of the prosecution, 14 witnesses were examined, 22 documents and five material objects were marked. Out of the said 14 witnesses, PW-1 to PW-3 have been examined as eye-witnesses. PW-3 has turned hostile and he has not supported the case of the prosecution in any manner. PW-1 and PW-2 have spoken about the entire occurrence vividly. They have also spoken about the motive. PW-4 and PW-5 have turned hostile and they have not supported the case of the prosecution in any manner. PW-6 has spoken about the autopsy conducted by her and her final opinion regarding the cause of death. PW-7 has spoken about the forwarding of the material objects for chemical examination, as directed by the learned Judicial Magistrate. PW-8, the Village Administrative Officer, has spoken about the arrest of the accused and the voluntary confession made by him and the consequential recovery of MO-1 from his possession. PW-9, a Head Constable, has spoken about the fact that he handed over the First Information Report to the learned Judicial Magistrate, at 06.00 AM, on 29.01.2011. PW-10 has stated that he took the dead body of the deceased and handed over the same to the hospital for postmortem. PW-11 has spoken about the registration of the case on the complaint of PW-1. PW-12 to PW-14 have spoken about the investigation conducted by them and the filing of final report.

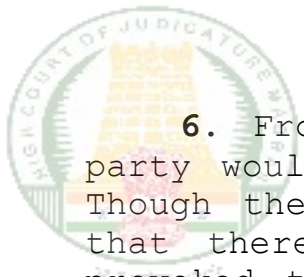
2.10. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against him, he denied the same as false. However, he did not choose to examine any witness nor to exhibit any document. His defence was a total denial. Having considered all the above materials, the Trial Court convicted the appellant, as detailed in the first paragraph of this Judgment and punished him accordingly. That is how, the appellant is now before



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

4. In this case, the prosecution mainly relies on the evidences of PW-1 and PW-2. Though PW-3 was examined as eye-witness to speak about the occurrence, he turned hostile and he has not supported the case of the prosecution in any manner. Thus, the prosecution is left with the evidences of PW-1 and PW-2. PW-1 is the wife of the deceased and PW-2 is the brother of the deceased. They have vividly spoken about the entire occurrence. Their presence, at the place of occurrence, cannot be doubted. They have stated that they went along with the deceased to their land for the purpose of fencing the haystack. At that time, the mother of the accused was taking the cattle through the said land, which was objected to by PW-1, PW-2 and the deceased. This resulted in a quarrel. Then, the mother of the accused took the cattle to her house. Thereafter, the accused returned to the place of occurrence. The deceased and the others were engaged in putting up fence. The accused questioned the authority of the deceased as to how he could quarrel with his mother. This resulted again in a quarrel. In the said quarrel, the accused took out an aruval and cut the deceased indiscriminately. Though these witnesses have been cross-examined at length, nothing could be elicited so as to discard them. Immediately, PW-1 and PW-2 took the deceased in a TATA Sumo Car to Sivagiri Government Hospital. After the death was declared by the doctor, PW-1 went to Sivagiri Police Station and made a complaint, at 08.00 PM, on 28.01.2011. Thus, there is no delay in preferring the complaint. Thereafter, the complaint and the First Information Report had reached the hands of the learned Judicial Magistrate, at 02.15 PM, on 17.01.2012. Thus, absolutely, there is no delay in forwarding both the documents to the Court. Thus, from the evidences of PW-1 and PW-2, it is crystal clear that it was this accused, who alone cut the deceased with aruval indiscriminately, which resulted in his death.

5. Having come to the said conclusion, now, the next immediate question is as to what was the offence, that the accused had committed by his act. From the evidences available on record, it is clear that there was no motive between the accused and the deceased. PW-1, PW-2 and the deceased had gone to the place of occurrence only for the purpose of fencing the haystack. At that time, the mother of the accused was taking the cattle through said land, which was objected to by the deceased party. This resulted in a quarrel between them. Then, the mother of the accused went to her house along with the cattle and after sometime, the accused came to the place of occurrence and questioned the authority of the deceased party as to why they quarreled with her mother. It was in this said quarrel, the accused took out an aruval and caused injuries, which resulted in the death of the deceased.



6. From the above facts, it is inferable that the deceased party would have provoked the accused by their words and deeds. Though there is no positive evidence available, it is inferable that there is every possibility that the deceased would have provoked the accused. Thus, on account of the said provocation, the accused would have attacked the deceased. In our considered view, but, for the loss of self-control on account of grave and sudden provocation caused by the deceased and his party, the accused would not have cut the deceased. Thus, though the act of the would fall within the ambit of Third Exception to Section 300 of the Indian Penal Code, the same would fall under the First Exception to Section 300 of the Indian Penal Code. For having abused the prosecution party and criminally intimidating the witnesses, the accused is liable to be punished under Sections 294(b) and 506(ii) of the Indian Penal Code.

7. Now, turning to the quantum of punishment, it is stated that at the time occurrence, the accused was hardly aged about 28 years. He has got parents to be taken care of. He was not involved in any of the crimes, either before the occurrence or after the occurrence. Having regard to all the mitigating and aggravating circumstances, we are of the considered view that sentencing the accused to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks would meet the ends of justice. Insofar as the conviction and sentence imposed on the accused for the offences under Sections 294(b) and 506(ii) of the Indian Penal Code is concerned, they are liable to be confirmed.

8. In the result, the Criminal Appeal is partly allowed in the following terms:-

- The conviction and sentence imposed by the Trial Court on the accused/appellant under Section 302 of the Indian Penal Code is set aside and instead, the accused/appellant is convicted under Section 304(i) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- [Rupees One Thousand only], in default to undergo rigorous imprisonment for four weeks.
- The conviction and sentence imposed on the appellant/accused under Sections 294(b) and 506(ii) of the Indian Penal Code is confirmed.
- It is directed that all these sentences shall run concurrently.
- It is further directed that the period of sentence already undergone by the appellant/accused shall be set off under Section 428 of the Code of Criminal Procedure. Fine amount, if any paid by the appellant/accused, shall be adjusted towards the amount now imposed.
- It is further directed that the Trial Court shall take steps



to secure the accused/appellant to commit him in prison to serve out the remaining period of sentence. Bail bond executed by the appellant and the sureties shall stand cancelled.

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Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To1. The Principal Sessions Judge, Tirunelveli.

2. The Judicial magistrate,
Sivagiri, Tirunelveli District.

3. -do-thr- The Chief Judicial Magistrate,
Tirunelveli District.

4. The Superintendent,
Central Prison, Palayamkottai,
Tirunelveli District.

5. The Director General of Police,
Vepary, Chennai-7.

6. The Commissioner of Police,
Tirunelveli.

7. The District Collector,
Tirunelveli.

8. The Inspector of Police,
Sivagiri, Tirunelveli District.

9. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy To:-

The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.K.PRABHU, ADVOCATE IN SR No. 55962

NB

TE/SK-SKN/SAR-III : 04/10/2016 : 7P/12C