



Bail Slip

The Appellants/Accused was directed to be released on Bail made in CrI MP(MD)Nos.1 and 2/2015 in CrI.A(MD)No.132/2015 on the file of the Madurai Bench of Madras High Court, Madurai, dated 25/08/2015 and 7/10/2015

WEB COPY

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.132 of 2015**

1.Murugaiah

2.Rathinavel

: Appellants

Vs.

State rep. by its
The Inspector of Police,
Annavasal Police Station,
Pudukottai District.

: Respondent

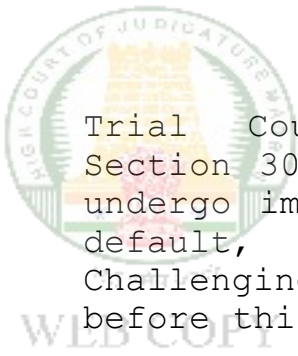
PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment dated 09.04.2015, made in S.C.No.169 of 2010, on the file of the learned Additional District and Sessions Judge, Mahila Court, Pudukottai.

For Appellants : Mr.N.Anandakumar
For Respondent : Mr.K.S.Duraipandian,
Additional Public Prosecutor

JUDGMENT

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

The appellants are the accused Nos.1 and 2 in S.C.No.169 of 2010 on the file of the learned Additional District and Sessions Judge, Pudukkottai. The first accused stood charged for the offences punishable under Sections 302 and 302 r/w 34 of the Indian Penal Code and the second accused stood charged for the offence punishable under Section 302 r/w 34 of the Indian Penal Code. By judgment dated 09.04.2015, the Trial Court convicted the first accused under Sections 302 and 302 r/w 34 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default, to undergo rigorous imprisonment for one year for the offence punishable under Section 302 of the Indian Penal Code and further, sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for one year for the offence punishable under Section 302 r/w 34 of the Indian Penal Code. The



Trial Court convicted the second accused for the offence under Section 302 r/w 34 of the Indian Penal Code and sentenced him to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default, to undergo rigorous imprisonment for one year. Challenging the said conviction and sentence, the appellants are before this Court with this Criminal Appeal.

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

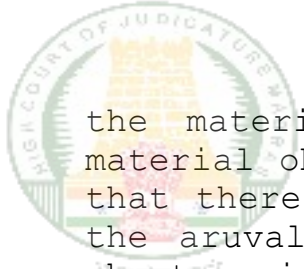
2.1. The deceased, in this case, was one Mr.Muthaiah. The accused and the deceased were close relatives. The joint family properties were already divided between the deceased and the accused. Still, there was some dispute in respect of the said lands. It is alleged that on 26.07.2009, at 05.30 p.m., the deceased was in the land known as 'Santhima Pottal' along with P.Ws.1 and 2. It is stated that these two accused came in a motorcycle. The first accused was armed with an aruval. They rushed towards the deceased. The second accused caught hold him and the first accused cut him with aruval. P.Ws.1 and 2 raised alarm. The accused Nos.1 and 2, then, ran away from the place of occurrence. The deceased fell with injuries in a pool of blood and died instantaneously.

2.2. P.W.1, thereafter, went to the Annavasal Police Station and made a complaint at 09.30 p.m., on 26.07.2009. P.W.12, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No.116 of 2009, under Section 302 of the Indian Penal Code against both the accused. Ex.P.1 is the complaint and Ex.P.9 is the First Information Report.

2.3. P.W.13 took up the case for investigation. He went to the place of occurrence at 11.45 p.m., and at 12.15 a.m., he prepared an observation mahazar and a rough sketch at the place of occurrence in the presence of P.W.4 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence under a Mahazar. Then, he conducted inquest on the body of the deceased and forwarded the dead body for post-mortem.

2.4. P.W.9, Dr.Nallaperumal conducted autopsy on the body of the deceased on 27.07.2009 at 11.00 a.m. He found a lacerated injury measuring 6 x 3 x 1.5 c.m., on the left side of the head and he found another cut injury on the neck. Ex.P.4 is the Post-mortem Certificate.

2.5. P.W.13 took up the case for further investigation and arrested the accused on 28.07.2009 at 11.15 a.m. On such arrest, the first accused made a voluntary confession, in which, he disclosed the place where he had hidden the aruval. In pursuance of the same, he took the police and the witnesses to the place of occurrence. The police produced M.O.1-aruval. P.W.13 recovered the same under a Mahazar. On returning to the Police Station, he forwarded the first accused to the Court for judicial remand and handed over



the material objects also to the Court. At his request, the material objects were sent for chemical examination, which reveals that there were bloodstains on all the material objects including the aruval. On completing the investigation, he laid the charge sheet against the accused on 18.08.2009.

2.6. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused were questioned in respect of the charges, they denied the same and pleaded innocence. In order to prove the charges, on the side of the prosecution, as many as 13 witnesses were examined, 13 documents and 6 material objects were marked.

2.7. Out of the said 13 witnesses, P.Ws.1 and 2 are the eye witnesses to the occurrence. P.W.1 is the daughter-in-law of the deceased. She has stated about the motive for the occurrence. According to her, in respect of the land dispute, the deceased issued a lawyer's notice to the accused. That was the provocation for the accused to attack the deceased. It is her further evidence that around 05.30 p.m., the deceased was in his field doing some agricultural operation. At that time, these two accused came in a scooter. The first accused was armed with an aruval. The second accused caught hold the deceased and the first accused cut him. Then, they ran away from the scene of occurrence. P.W.2 is the wife of the deceased. She has stated that she was very much present at the place of occurrence along with the deceased engaged in the agricultural work. She has also vividly spoken about the entire occurrence.

2.8. P.W.3 is the son of the deceased. He has spoken about the motive. He has further stated that he heard about the occurrence. P.W.4 has spoken about the preparation of observation mahazar and the rough sketch and the recovery of material objects in the place of occurrence. P.W.5 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.6 is an important witness for the prosecution. He has stated that he was present in the neighbouring land. He heard the alarm raised by P.Ws.1 and 2. When he rushed to the place of occurrence, he found these two accused fleeing away from the scene of occurrence. At that time, the first accused was holding an aruval in his hand. P.W.7 has stated that he was also present somehow near the place of occurrence. On hearing the alarm raised by P.Ws.1 and 2, he rushed to the place of occurrence and found that these two accused running away from the scene of occurrence. P.W.8 has turned hostile and he has not supported the case of the prosecution in any manner. P.W.9 has spoken about the post-mortem conducted and his final opinion regarding the cause of death. P.W.10 has spoken about the confession made and the consequential recovery of M.O.1-aruval from his possession. P.W.11, a Constable, has stated that she took the dead body to the



hospital and handed over the same to the doctor for post-mortem, as directed by P.W.13. P.W.12 has spoken about the registration of the case on the complaint of P.W.1. P.W.13 has spoken about the investigation done by him and the final report filed.

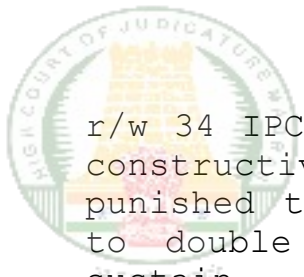
2.9. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied the same as false. However, they did not choose to examine any witness nor to exhibit any document. Their defence was a total denial. Having considered all the above materials, the Trial Court has convicted and sentenced the accused as detailed in the first paragraph of the judgment. That is how, they are before this Court with this Criminal Appeal.

3. We have heard the learned counsel appearing for the appellants and the learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully.

4. Before commencing to analyze the evidences available on record, let us go into the legality of the conviction and sentence imposed on the first accused. Admittedly, there was death of only one person. The Trial Court had curiously and in a very callous manner, framed charges against the first accused under Section 302 of the Indian Penal Code and also under Section 302 r/w 34 of the Indian Penal Code for the one single act of the first accused. Not stopping with that, the Trial Court convicted the first accused under both charges and sentenced him to undergo imprisonment for life and also with a fine for the offence under Section 302 of the Indian Penal Code and again sentenced him under Section 302 r/w Section 34 of the Indian Penal Code to undergo imprisonment for life with fine. This conviction and sentence on the first accused recorded by the Trial Court is really shocking. It shows that the learned Trial Judge was ignorant of the concept of constructive liability, as provided under Section 34 of the Indian Penal Code and also the concept of double jeopardy.

5. According to the Trial Court, the first accused had the intention to cause the death of the deceased. Similarly, the second accused also had the intention to cause the death of the deceased. If there was no sharing of the said intention by A-1 and A-2 by means of pre-meeting of mind, there was no common intention among them. The intention of two individuals shall become a common intention when they share the same. Otherwise, they remain to be only similar intention. When two or more accused commit an act in furtherance of the said common intention, irrespective of the nature of the act (overt act) committed by the individuals, they are held liable for the offence that stands committed in the said

<https://hcds.court.gov.in/cservices/> the instant case, having come to the conclusion that A-1 and A-2 shared the common intention and participated in the occurrence, both should have been punished under Section 302

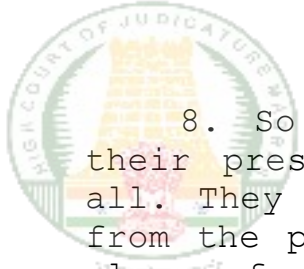


r/w 34 IPC. But trial Court, without understanding the concept of constructive liability, as provided under Section 34 IPC, has punished the first accused with two life sentences. This amounts to double jeopardy. Therefore, the same cannot be allowed to sustain.

WEB COPY

6. Now, turning to the facts of the case, the learned counsel for the appellants would submit that the First Information Report, in this case, is a concocted document. According to him, P.W.1 has admitted during her cross-examination that the police arrived at the scene of occurrence at 07.00 p.m., itself, whereas, it is the case of the prosecution that the complaint itself was registered only at 09.30 p.m. The learned counsel would point out that there would have been some other information, which made the Inspector of Police, to visit the place of occurrence at 07.00 p.m. That information has been suppressed, it is contended. Though attractive, we find no force at all in the said argument, as after all P.Ws.1 and 2 are illiterates. The estimation of time depends upon the perception of an individual. The said estimation of time by mere perception by illiterate people, like P.Ws.1 and 2 cannot be given much weightage. Though P.W.1 has admitted during cross-examination that the Inspector of Police arrived at the scene of occurrence around 07.00 p.m., it cannot be conclusively held that the Inspector of Police visited the scene of occurrence at 07.00 p.m., There is no much of difference between 09.30 p.m., and 07.00 p.m. Therefore, we find no force in the argument of the learned counsel that there should have been some other information before Ex.P.1. This argument, therefore, deserves to be rejected.

7. The learned counsel would next contend that one Palaniammal, who was admittedly present at the place of occurrence, has not been examined, which creates doubt. This argument also does not persuade us. It is now well settled that it is not the quantity, but the quality that matters. Here, in the instant case, if we are able to find that the evidences of P.Ws.1 and 2 are in the nature of fully inspiring the confidence of this Court, then, the non-examination of the said Palaniammal would not in any manner cause any dent in the case of the prosecution. The learned counsel would next contend that the medical evidence also does not corroborate the eye witness account of P.Ws.1 and 2. He would submit that though P.Ws.1 and 2 have stated in a parrot-like manner that the first accused gave a single cut, there were two injuries one on the head and the other on the neck of the deceased. This argument also does not persuade us, because in such a situation, when a sudden brutal attack was made on the deceased, P.Ws.1 and 2, the poor illiterate women, could have not been in a position to scrupulously and meticulously notice the number of cuts made by the accused. Therefore, this argument also deserves



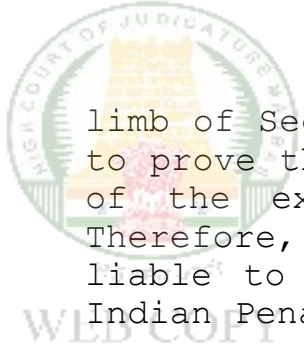
8. So far as the evidences of P.Ws.1 and 2 are concerned, their presence at the place of occurrence cannot be doubted at all. They are natural witnesses. Their conduct in raising alarms from the place of occurrence which attracted P.Ws.6 and 7 to the place of occurrence also is in conformity with their presence. P.Ws.6 and 7 have stated that on hearing the alarm raised by P.Ws.1 and 2, when they reached the place of occurrence, they found the two accused fleeing away from the scene of occurrence and at that time, according to them, the first accused was holding an aruval. From these evidences, in our considered view, so far as the first accused is concerned, the prosecution has proved the case.

9. So far as the second accused is concerned, we have got some doubt about the evidences of these witnesses. As we have already pointed out, there were two injuries, one on the head and the other on the neck of the deceased. It is the prosecution case that when the second accused caught hold the deceased, the first accused gave the cut. Had it been true that the second accused was catching hold the deceased, these two injuries would not have been caused by the first accused, because, it is impossible to cause such injuries on head and neck, when the other person was catching hold the deceased. Thus, we doubt the veracity of the case of the prosecution, so far as the involvement of the second accused is concerned. In our considered view, out of motive, the second accused has been falsely implicated in this case.

10. At this juncture, the learned counsel submitted that once it is held that the second accused has been falsely implicated, then, the evidences of P.Ws.1, 2, 6 and 7 should be rejected in toto. This argument also does not persuade us, because, the principle *falsus in uno, falsus in omnibus* has not been recognized by the Indian Courts. In the Indian Scenario, in the evidence of a witness, if it is found that grain and chaff are mixed and in the event, the Court is able to separate the grain from the chaff, there is no legal impediment to act upon the separated grain. In other words, if the truth is mixed with falsehood, the Court can cull out the truth and act upon the same.

11. In the instant case, though we do not believe the evidences of P.Ws.1, 2, 6 and 7, as against the second accused, we are prepared to believe these witnesses as against the first accused. From all these evidences, we hold that it was the first accused who cut the deceased and caused the death.

12. Going by the motive, the fact that the first accused had gone on all the way to the field in search of the deceased, armed with aruval and the number of injuries caused on the vital parts of the body would all give inference that the first accused had the definite intention to cause the death of the deceased. Thus, the act of the first accused would squarely fall within the first



limb of Section 300 of the Indian Penal Code. There is no evidence to prove that the act of the first accused would fall under anyone of the exceptions to Section 300 of the Indian Penal Code. Therefore, in our considered view, the first accused alone is liable to be punished for the offence under Section 302 of the Indian Penal Code.

13. Now, turning to the quantum of punishment, the Trial Court has imposed imprisonment for life and to pay a fine of Rs.1,000/- as punishment for the offence under Section 302 of the Indian Penal Code. This is only a minimum punishment, which does not require any interference at the hands of this Court.

14. In the result, the appeal is partly allowed;

(i) The conviction and sentence imposed on the second accused by Judgment dated 09.04.2015, made in S.C.No.169 of 2010, on the file of the learned Additional District and Sessions Judge, Mahila Court, Pudukottai, is set aside and the second appellant/second accused is acquitted. Fine amount, if any, paid by him shall be refunded to him. Bail bond executed by him and the sureties shall stand terminated.

(ii) The conviction and sentence imposed on the first accused for the offence under Section 302 r/w 34 of the Indian Penal Code is set aside and he is acquitted from the said charge.

(iii) The conviction and sentence imposed on the first accused for the offence under Section 302 of the Indian Penal Code is, hereby, confirmed.

(iv) The Trial Court shall take steps to secure the first accused to commit him in prison to serve out the remaining period of sentence. Bail bond executed by him and the sureties shall stand cancelled. The period of sentence already undergone by the first accused shall be set off under Section 428 of the Code of Criminal Procedure.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

SML

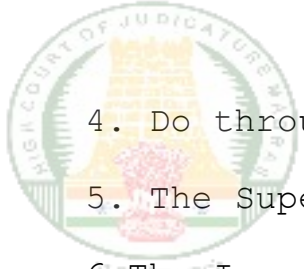
To

1. The Principal District and Sessions Judge, Pudukkottai.

2. The Additional District and Sessions Judge,
Mahila Court, Pudukottai.

<https://hcservices.ecourts.gov.in/hcservices/>

3. The Judicial Magistrate, Keeranur, Pudukkottai District.



4. Do through The Chief Judicial Magistrate, Pudukkottai.

5. The Superintendent, Central Prison, Trichirappalli

6. The Inspector of Police,
Annavasal Police Station,
Pudukkottai District.

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

+1CC to Mr.N.Anandakumar, Advocate Sr.No.55557

GJM/DB/SAR-II-18.10.16-8p-9C

Judgment made in
CRL.A[MD].No.132 of 2015
Dated: 23.09.2016