

**BAIL SLIP**

Lenin, M/27 years, Son of Bose and Bose, M/52 years, Son of Kaluva Thevar residing at Rajivgandhi Nagar, Gudalur, Uthampalayam Taluk, Theni District, Who are appellants 1 & 2/ Accused 1 and 2, were released on bail, as per order dated 18.01.2016, in M.P(MD) No.2/15 in Crl A(MD) No.173/2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2016

CORAM:

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

Criminal Appeal(MD)No.173 of 2015

1.Lenin

2.Bose ... Appellants/Accused No.1 & 2

Vs.

State

rep. By the Inspector of Police,
Gudalur North Police Station,
Theni District.
(Crime No.253 of 2012)

.. Respondent/Complainant

PRAYER: This Criminal Appeal is filed under Section 374(2) of Cr.P.C to set aside the Judgment and Conviction dated 31.07.2015 by the learned Additional District and Sessions Judge, Theni at Periyakulam in S.C.No.116 of 2013 and acquit the Appellants.

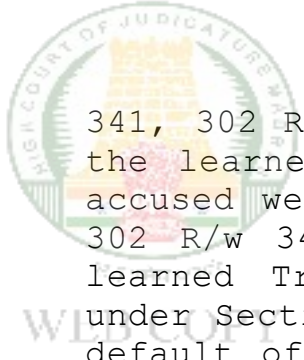
For Appellants : Mr.M.Karunanithi

For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was delivered by M.V.MURALIDARAN, J.)

This appeal is preferred by the Appellants two in numbers, who were tried for the offence under sections 341, 302, 506(ii) and

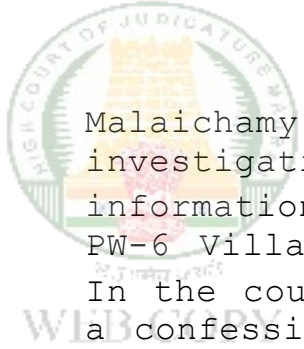


341, 302 R/w 34 and 506(ii) of IPC respectively. After full trial the learned Trial Court by its Judgment dated 31.07.2015, the 2 accused were found guilty for the offence under Sections 302 and 302 R/w 34 of IPC. As the accused/appellants found guilty, the learned Trial court imposed life imprisonment for the offence under Section 302 of IPC., and also imposed fine of Rs 5,000/-. In default of payment of fine, 6 months of rigorous imprisonment is imposed upon the 1st Appellant. As for as the 2nd appellant is concerned, he was also imposed similar punishment as imposed upon the 1st Appellant/Accused-1.

2. Feeling aggrieved over the Judgment of conviction, both the accused filed the Appeal before this court. For the disposal of this Appeal, this court put its anxious consideration in the following factual, circumstantial and legal aspects.

3. The short facts involved in this case are that on 10.10.2012 at about 10.45 P.M., the son of PW-1 namely Jegan was caught hold by the 2nd accused who is the father of the 1st accused and the 1st accused stabbed on the left flank of the deceased and also inflicted stab injuries on the right and left hands at Koodalur bus stand. On hearing the occurrence, PW-1 rushed to the occurrence place found his son was in pool of blood. PW-1 enquired with one Malaichamy, S/o. Ponnumuthu Thevar, Ananthan, Suresh, S/o. Muthumani Thevar, Ranjith, Vellaipandi, Tea shop S.V. Murugan, Grocery shop owner Subramani, Karuppiah, S/o. Gurusamy. They informed that on 10.10.2012 at about 10.45 P.M. nearby the toilet inside the Koodalur bus stand, both the accused waylaid the deceased as to why he did not put up serial lamps on his shop in the eve of the village function and at the end of the scuffle the deceased was stabbed by the 1st accused as stated above. Thereafter, PW-1 along with PW-2, took the deceased to the Cumbum Government Hospital by an auto belongs to P.W-9 Mahesh and admitted him. On examination, the doctor declared that Jegan was dead. Thereafter, PW-1 and PW-2 came to the police station and lodged a written complaint Exh-P1, in this regard, on 11.10.2012 at 00.30 hrs. By receiving the complaint, PW-17 Karupphasamy, Sub-Inspector of police registered the printed First Information Report-Exh-P14 in Crime No.253/2012 for the offence Under sections 341, 302 and 506(ii) of IPC.

4. In pursuance of the registration of case, the Express First Information Report was sent to the Judicial Magistrate, Uthamapalayam and the same was received by him on 11.10.2012 at about 03.00hrs. Having received Exh-P14, PW-20 took up the investigation and prepared the observation Mahazar Exh-P4. Further, through Exh-P5, the bloodstained soil (M.O-2) unblood stained soil (M.O-3) at the place of occurrence were recovered along with 1 pair chappel (M.O-4) in the presence of one



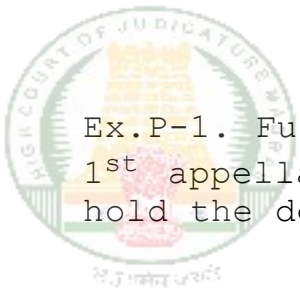
Malaichamy and Ramar (PW-5). Thereafter he proceeded with the investigation and on 11.10.2012 at about 12.00 noon, on information; the PW-20 arrested the 1st accused in the presence of PW-6 Village Administrative Officer and his Assistant Surulivel. In the course of investigation, the 1st accused namely Lenin gave a confession statement Exh.P-6 and the admissible portion of the confession statement under section 27 of Evidence Act, the M.O-1, (knife) M.O-8 (Bloodstained Dothi) through Exh.P-7.

5. Thereafter, the 1st accused was remanded into judicial custody. As for as the 2nd accused is concerned, he was taken to custody by PW-20 and the 2nd accused gave a confession statement Exh.P-8, the M.O-7 (white colour full hand shirt) and M.O-9 (Hondo Shine motor cycle) were recovered. Thereafter, the charge sheet was filed by the PW-20 before the Judicial Magistrate, Uthamapalayam in P.R.C No.26/2013 and then the said case was committed to the trial court and numbered as S.C.No.116/2013.

6. Before the learned trial court, PW-1 to PW-20 were examined as prosecution witnesses and Exs-P1 to P19 and M.O-1 to M.O-17 were marked by the prosecution. By appreciating the entire materials available, the learned trial court has found guilty of both the appellants and imposed life imprisonment and also imposed fine of Rs 5,000/-. In default of payment of fine, 6 months of rigorous imprisonment. Feeling aggrieved over the judgment of conviction, both the appellants have prepared the instant appeal.

7. We have heard Mr.M.Karunanithi, learned counsel for the appellants and Mr.K.S.Duraipandian, learned Additional Public Prosecutor for the respondent and we have also perused the records carefully.

8. This court after careful perusal of entire materials, available on record found that for the death of his son, PW-1 lodged Ex-P1 on 11.10.2012 at 00.30hrs, based on that the criminal law in connection with the death of the son PW-1 was set into motion. When Ex-P1 is perused, it is found that it is written complaint lodged by Pw-1 with his signature. However, when the chief examination of PW-1 is analyzed, it is also found that the complaint was written by PW-3. However, through this Exh-P1 and the evidence of PW-1, it is found that on 10.10.2012 at about 10.30PM, the son of PW-1 was stabbed into death followed by a quarrel. Further, PW-1 is not an eyewitness, but PW-2 is the eyewitness and who accompanied Pw-1 to take the deceased to hospital in a critical condition. As the doctor declared the son of Pw-1 was dead, he accompanied Pw-1 to police station and lodged

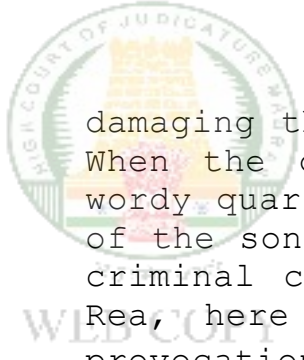


Ex.P-1. Further, whose evidence in categorical version is that the 1st appellant stabbed the deceased when the 2nd appellant caught hold the deceased.

9. In addition to that the evidence of the Pw-3 is also corroborated with the evidence of Pws1 and 2 in respect of the manner of occurrence by the appellants. Pw-4 speaks about the motive that the appellants scuffled with the workmen of Pw1 as to why series lamps did not put up in his shop. At the same time the veracity of Ex.P-1 is doubtful. Though Pw-1 has stated in P-1 itself that P-1 was written by Pw-3 and he put his signature. But in the cross examination he deposed that he put his signature in the compliant written by Pw-20 at the hospital. So, it could easily be presumed that there must be two complaints and first one should have been suppressed and the same shaken the credibility of the prosecution case. Moreover, there is no cogency in evidence in respect of the place of occurrence whether it is near Koodalur bus-stand or nearby a tea shop. At the same time, the careful scrutiny of all the eye witnesses including Pw-18, the presence of the 2nd appellant is doubtful and the prosecution has not proved by adducing cogent evidence about the participation of the 2nd appellant. Mere pointing of one person about his role is not enough to make him found guilty in the criminal jurisprudence. It is relevant to point out here that the overall appraisal of the evidence would show that there is discrepancy among the witnesses as to the manner of the role played by the 2nd appellant.

10. Apart from that as far recovery of M.O-1 is concerned, it is made in the presence of PW-6. But when the evidence of PW-3 is perused, the knife was shown to him during inquest. So, the overall circumstances would reveal the recovery of M.O.1 is not made as alleged by the prosecution. At the same time the witnesses pointed out the manner of the occurrence committed by the 1st appellant. It is the categorical evidence of all the witness that the 1st appellant stabbed the deceased by using knife. The evidence of the doctor Pw-13 has been corroborated with the evidence of the ocular witnesses. So, the prosecution has proved the guilt of the 1st appellant as he alone is the cause for the injuries sustained by deceased.

11. Now, it is for this Court to come to a definite conclusion as to the deceased was stabbed by the 1st appellant followed by previous enmity or on sudden provocation. It is not the prosecution case that there long standing enmity between the deceased and the appellants. But the case is that in putting-up serial lamps in their shop, the appellants quarreled with the workmen of the deceased and Pw-1. They went to the extent of



damaging the serial lamps belongs to the deceased and his father. When the deceased went to enquire with the appellants suddenly wordy quarrel had arisen among them which resulted into the death of the son of Pw-1, that too within short span of time. As for as criminal cases are concerned, the most important factor is Mens-Rea, here is a case, the occurrence is taken place on sudden provocation. So, the offence committed by the 1st appellant would fall in the ambit of section 304(I) of Indian Penal code.

12. In the result this appeal is partly allowed by acquitting the 2nd appellant from the charge of section 302 of Indian Penal code. Accordingly, the Judgment of the learned Trial court with regard to the 2nd appellant is hereby set-aside and he is acquitted from all the charges. On the other hand, the 1st appellant is found guilty. As he is found guilty for the offence under section 304(I) of Indian Penal code, he is imposed a sentence of 7 years Rigorous imprisonment and also imposed a fine of Rs.1,000/-. In default of payment of fine, he has to undergo a simple imprisonment of 6 months.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge,
Theni at Periyakulam.
(For Security the custody of 1st appellant, who was released on bail, as per order dated 18.01.2016)
2. The Superintendent,
central prison
Madurai.
3. The Inspector of Police,
Gudalur North Police Station,
Theni District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Judicial Magistrate, Uthampalyam,
Theni District.
6. -do- through The Chief Judicial Magistrate,
Theni District.



7. The District Collector, Theni District.

8. The District General of Police, Chennai - 4

+1cc to Mr.M.Karunanithi, Advocate Sr.No.57397

VSA

VB/MR/SAR2/19.04.2017/6P/10C

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28.09.2016