

Bail Slip

The appellant/accused namely Azhi @ Muthuraj was directed to be released on bail as per order of this Court dated 29/10/2015 and made in MP(MD)No.1 of 2015 in Cr1.A(MD)No.180 of 2015 on the file of this Court.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.A.[MD].No.180 of 2015

Azhi @ Muthuraj : Appellant/Sole accused

Vs.

State rep. by
the Inspector of Police,
Thilagar Thidal Police Station,
Madurai District.
(Crime No.1883/2011)

: Respondent/Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment, dated 18.12.2012, made in S.C.No.64 of 2012, by the learned Principal Sessions Judge, Madurai.

For appellant : Mr.R.Alagumani

For respondent : Mr.C.Ramesh,
Additional Public Prosecutor

JUDGMENT

(Judgment of the Court was made by **S.NAGAMUTHU, J.**)

The appellant is the sole accused in S.C.No.64 of 2012 on the file of the learned Principal Sessions Judge, Madurai. He stood charged for the offence under Section 302 IPC. By judgment dated 18.12.2012, the trial Court convicted the appellant/accused under Section 302 IPC and sentenced him to undergo imprisonment for life and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for three months. Challenging the said conviction and sentence, the appellant/accused is before this Court with this appeal.

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

(a) The deceased in this case was one Mr.Manikandan @ Muthumanikandan. PW1 is the father and PW2 is the mother of the deceased. They were residing at Kamatchi Akragaram, Simmakal, Madurai Town. The accused also hails from the same locality. He



was a friend of the deceased. Though they were closely moving with each other, in due course of time, the deceased started teasing the accused. The accused was provoked by the same. He informed the same to PWs.1 and 2. PWs.1 and 2 pacified him and told that they would advise the deceased not to tease and not to talk ill of the accused. Despite the same, the deceased continued to tease and to talk ill of the accused. The accused got enraged over the same. This is stated to be the motive for the occurrence.

(b) It is alleged that on 26.06.2011 in the evening, when PWs.1 and 2 were in their house, the accused came to the house and shouted at them that despite his warning, the deceased did not stop teasing him and talking ill of him. He further challenged that he would attack the deceased and teach a lesson. Since the deceased was not at home and the accused was menacingly going with wooden log, PWs.1 and 2 followed him. The accused straightaway went to Kolapodi Kaalavasal, where the deceased was working. But, the deceased was sleeping just in front of the said shop. On reaching him, in the presence of PWs.1 and 2, the accused started mounting attack on the deceased with wooden log. PWs.1 and 2 cried for help. The accused ran away from the scene of occurrence with the wooden log.

(c) PWs.1 and 2 immediately took the deceased in an auto to the Government Rajaji Hospital. But, the Doctor, on examining him, declared him dead. Immediately, thereafter, PW1 went to Thilagar Thidal Police Station, Madurai and gave a complaint to PW11. PW11 registered a case in Crime No.1883 of 2011 under Section 302 IPC against the accused. Ex.P1 is the complaint. Ex.P11 is the FIR. PW12 took up the case for investigation. He proceeded to the place of occurrence and in the presence of PW5 and another witness, he prepared an observation mahazar and a rough sketch. He recovered bloodstained earth and sample earth from the place of occurrence. After conducting inquest on the body of the deceased, he forwarded the same for postmortem.

(d) PW10, Dr.Natarajan, conducted autopsy on the body of the deceased on 27.06.2011 at 11.00 a.m. He found the following injuries on the body of the deceased;

1.Laceration measuring 5 cm x 1 cm x bone deep noted on right temporal region.

2.Laceration measuring 6 cm x 3 cm x bone deep noted on right side forehead.

3.Laceration measuring 10 cma x 1 cm x muscle deep noted on right side of head just below the right ear.

4.Laceration measuring 2 cm x 1 cm x bone deep noted on left parietal region.



5. Deformity noted on lower end of right upper arm.

On dissection : the underlying bone found fractured with surrounding bruising noted.

6. Contusion measuring 25 cm x 5 cm noted on outer aspect of upper 2/3rd of right side chest."

Ex.P9 is the postmortem certificate. He gave opinion that the death of the deceased was due to shock and haemorrhage due to the head injury. He further opined that the said injury could have been caused by a weapon like wooden log.

(e) PW12, during the course of investigation, recovered the bloodstained clothes from the body of the deceased. On 26.06.2011 at 11.30 p.m. he arrested the accused near the LIC bridge in the presence of PW6 and another witness. At 1.00 a.m. while in custody, the accused gave a voluntary confession, in which he disclosed the place where he had hidden the wooden log. In pursuance of the same, he took the Police and the witnesses to the place where he had hidden the wooden log and produced the same. PW12 recovered the same under a mahazar. On returning to the Police Station, he forwarded the accused to the Court. PW12 forwarded the bloodstained clothes which he had recovered from the body of the deceased also to the Court. The investigation was, thereafter, taken over by his successor - PW13. PW13 examined few more witnesses. Thereafter, the investigation was continued by his successor PW14. At the request of the investigating officer, the material objects were sent for chemical examination. The report revealed that there was human blood of "A" group on the material objects including wooden log. On completing the investigation, he laid charge sheet against the accused.

(f) Based on the above materials, the trial Court framed a charge under Section 302 IPC. He denied the same. In order to prove the charge, on the side of the prosecution, as many as 14 witnesses were examined, 17 documents and 6 material objects were marked.

(g) Out of the said witnesses, PWs.1 to 3 viz., the father, mother and brother-in-law of the deceased have been examined as eyewitnesses to the occurrence. They have vividly spoken about the entire occurrence. PWs.1 and 2 have also spoken about the motive. PW1 has further spoken about the complaint made by him to the Police. PW4 has spoken about the preparation of observation mahazar and rough sketch. PW4 has also stated that he came to the place of occurrence after the occurrence was over and the body of the deceased was taken to the hospital. PW5 has spoken about the recovery of bloodstained earth and sample earth from the place of occurrence. PW6 has spoken about the arrest of the accused,



confession made by him and the consequential recovery of MO.1 on the disclosure statement made by him. PW7, the scientific expert, has spoken about the chemical examination conducted on the material objects. According to him, human blood was found on all the material objects, including wooden log. PW8, the Head Constable, has stated that he handed over the FIR to the learned Magistrate at 12.30 a.m. on 27.06.2011. PW9 has stated that he took the body from the place of occurrence and handed over the same to the Doctor for postmortem, as directed by PW12. PW10 has spoken about the postmortem conducted by him and his final opinion regarding the cause of death. PW11 has spoken about the registration of the case and the complaint made by PW1. PWs.12 to 14 have spoken about the investigation done and the final report filed.

(h) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., he denied the same as false. However, he did not choose to examine any witness nor to mark any document on his side. The defence of the accused was total denial. Having considered all the above, the trial Court convicted him, as detailed in the first paragraph of this judgment. That is how he is before this Court with this appeal.

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

4.The learned counsel for the appellant would submit that there was inordinate delay in making the complaint and also in despatching the FIR to the Court and it creates enormous doubt in the case of the prosecution. According to the prosecution, the alleged occurrence was at 4.30 p.m. on 26.06.2011 and the case was registered at 6.30 p.m. The distance between the place of occurrence and the Police Station is hardly 200 meters. According to the learned counsel, considering the distance between the place of occurrence and the Police Station, the delay of about 2 hours in making the complaint creates doubt in the case of the prosecution. In our considered view, it is not so. After the occurrence, the deceased was taken to the hospital and only after the deceased was declared dead by the Doctor, PW1 had gone to the Police Station. Due to such turbulent situation, PW1 would not have thought of immediately rushing to the Police Station, because his effort was to save the deceased. This process would have certainly consumed two hours time. Thus, in our considered view, there was no delay at all in making the complaint.

<https://hcservices.ecourts.gov.in/hcservices> The learned counsel would further point out that it is alleged that the FIR was registered at 6.30 p.m., but it has reached the hands of the learned Magistrate at 12.30 a.m. on



27.06.2011. This delay has not been explained away. It is true that there is such delay and the said delay has not been explained away by the prosecution. But, on that score, we find it difficult to discard the evidence of PWs.1 and 2, whose evidences inspire the confidence of the Court. Therefore, this argument is rejected.

6.The learned counsel for the appellant would submit that it is in evidence that the police arrived at the scene of occurrence as soon as the occurrence was over. He would point out that the earliest information which made the police to come to the place of occurrence has been suppressed. This argument also does not persuade us, because the estimation of time, without reference to a clock or a wrist watch, depends upon the perception of the individual. In this case, it is not as though these witnesses have been mentioning about the time of various events with reference to a clock or a wrist watch. It was only the personal estimation, which cannot be exact. Therefore, the contention that the Police arrived at the spot even before the complaint was made is only to be rejected.

7. The learned counsel appearing for the appellant/accused would next contend, had it been true that the assailant was known, there would have been no need to bring the sniffer dog to the place of occurrence and press into service the said dog. This argument also does not persuade us, because sniffer dog to the place of occurrence need not be brought only for the purpose of identifying the assailants. It may also be pressed into service to identify the hide of the accused, the hide of the weapon or for any other clues. Therefore, it cannot be safely concluded that because the sniffer dog was brought to the place of occurrence and pressed into service, the assailant was not known.

8.The learned counsel for the appellant/accused would next contend that the presence of PWs.1 to 3 at the place of occurrence is highly doubtful. He would further add that PWs.1 to 3, who are the family members of the deceased, are highly interested witnesses and therefore, their evidence cannot be believed. In our considered view, the said argument does not find any basis at all. Though PWs.1 to 3 happen to belong to the family of the deceased, on that score, their evidences cannot be rejected outright. Prudence requires that their evidences should be closely scrutinized. We have gone through the evidence of these three witnesses. We find that nothing has been elicited during cross-examination of these witnesses to create even a slightest doubt about their veracity. Apart from that, the presence of PWs.1 to 3 at the place of occurrence cannot be doubted because they have explained that they went to the place of occurrence following the accused, because the accused was



menacingly proceeding towards Kolapodi Kalavasal with wooden log. Thus, the presence of PWs.1 to 3 also cannot be doubted. From these evidences, we are of the view that the prosecution has clearly proved that it was this accused, who attacked the deceased with wooden log and caused his death.

9. Having come to the said conclusion, now we have to analyse as to what was the offence that was committed by the accused by the said act. It is seen from the evidence that the accused and the deceased were friends and they were closely moving with each other. There was no motive for the accused at all to kill the deceased. Since the deceased started teasing the accused and also talking ill of him, the accused was provoked by the same. That was the reason why, initially he had asked PWs.1 and 2 to warn the deceased. Despite the same, the deceased was continuing the teasing and talking ill of him. From this fact and various other circumstances brought on record, we infer that the accused would not have had the intention to cause the death of the deceased at all. He had gone to the place of occurrence only to warn the deceased to stop talking ill of him and teasing him. Of-course, he was having a wooden log in his hand. PWs.1 and 2 did not know as to whether there was any quarrel preceding the occurrence. Thus, absolutely, there is no evidence as to what preceded before the actual occurrence. From various circumstances available, it is inferable that the accused would have warned the deceased to stop talking ill of him and to tease him and that would have turned into a quarrel. It was in that quarrel, out of provocation caused by the deceased by his words and deeds, having lost his self control, the accused had attacked him with wooden log on his head. In our considered view, though the act of the accused would squarely fall within the third limb of Section 300 IPC, it would also fall within the first exception to Section 300 IPC. Therefore, the appellant is liable to be punished only for the offence under Section 304(i) IPC.

10. Now turning the quantum of punishment, the accused is a young man hardly aged 21 years at the time of occurrence. There are lot of chances for reformation. He had no bad antecedents. The occurrence was also not a premeditated one. The weapon used was only a slim wooden log and not a dangerous weapon. Having considered all these mitigating as well as aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for eight years and to pay a fine of Rs.1,000/- for the offence under Section 304(i) IPC would meet the ends of justice.

11. In the result, this Criminal Appeal is partly allowed in

<https://hcses.courts.gov.in/services>

(a) The conviction and sentence imposed on the appellant for the offence under Section 302 IPC are set aside and instead, he



is convicted under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for eight years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks.

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(b) It is directed that the sentence already undergone by him shall be given set off under Section 428 Cr.P.C.

Sd/

Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Principal Sessions Judge, Madurai.
- 2.The Judicial Magistrate No.II, Madurai.
- 3.The Inspector of Police,
Thilagar Thidal Police Station,
Madurai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 5.The Superintendent,
Central Prison,
Madurai.

Copy to

The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.R.Alagumani, Advocate in SR.No.56832

Judgement made in
Cr1.A.[MD].No.180 of 2015
Dated: 27.09.2016

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PA/GSV-PM/SAR I/18.10.2016/7P/8C