

**BAIL SLIP**

Second Appellant herein/2nd Accused viz Baskaran was directed to be released on bail as per the Order dated 14.9.2015 made in MP (MD)No.1/2015 in this CrI.A(MD)No.190/2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CrI.A.[MD].No.190 of 2015

1.Chitravelu @ Mandaikannan

2.Baskaran

.. Appellants/
Accused Nos.1 & 2

Vs.

State rep. by
the Inspector of Police,
Veerapandi Police Station,
Theni District.
(Crime No.9/2016)

.. Respondent/
Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment, dated 15.07.2015, made in S.C.No.61 of 2007, by the learned Additional District and Sessions Judge, Theni at Periyakulam.

For 1st appellant : Mr.V.Kathirvelu,
Senior Counsel
for Mr.K.Prabhu

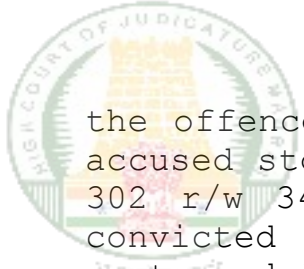
For 2nd appellant : Mr.R.Venkateswaran

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

JUDGMENT

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

The appellants are the accused Nos.1 and 2 in S.C.No.61 of 2007 on the file of the learned Additional District and Sessions Judge, Theni at Periyakulam. The first accused stood charged for



the offences under Sections 341 and 302 r/w 34 IPC and the second accused stood charged for the offences under Sections 341, 323 and 302 r/w 34 IPC. The trial Court, by judgment dated 15.07.2015, convicted the first accused under Section 302 r/w 34 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 six months for the said offence. The trial Court has convicted the second accused under Sections 323 and 302 r/w 34 IPC and sentenced him to undergo rigorous imprisonment for three months for the offence under Section 323 IPC and to undergo imprisonment for life and to pay a fine of Rs. 5,000/-, in default to undergo rigorous imprisonment for six months for the offence under Section 302 r/w 34 IPC. The trial Court acquitted the accused from the rest of the charges. Challenging the said conviction and sentence, the appellants/A1 and A2 are before this Court with this appeal.

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

(a) The first accused is the father-in-law of the second accused. They were residing at Kottur Village, Theni District. The deceased in this case was one Mr.Rajendran. He was also a resident of the same village. He had agricultural lands in the said village. Four years prior to the occurrence, cattle, belonging to the first accused, grazed the crops raised on the land of the deceased. This resulted in a quarrel between the first accused and the deceased, in respect of which, a case had been pending before the respondent Police. Later on, the brother's wife of the deceased died. The deceased instituted a complaint alleging that the first accused and his associates had murdered her. In that case, the first accused and his associates were prosecuted and finally, the trial Court acquitted them. These are all the instances which developed into a very strong enmity between the two families.

(b) On 12.01.2006, early in the morning, the deceased along with his wife (PW1) had gone to his field for collecting grass. Around 10.30 a.m., they were returning to their house in a TVS Motorcycle bearing Registration No.TN-60-C--5457. The grass bundles were on the back seat of the vehicle. Therefore, PW1 was sitting on the frame of the motorcycle between the handle bar and the rider's seat. When they were nearing the field of one Mrs.Pownthai, suddenly these two accused appeared there. They had left their cattle on the road. Therefore, the deceased could not drive the vehicle fast. These two accused surrounded the deceased. On reaching the deceased, the first accused took a crowbar in his hands and attacked the deceased on his face. The mandible of the deceased was fractured by the said blow. The second accused was also holding a crowbar. He attacked the deceased on the neck. PW1 tried to rescue her husband. The second accused attacked PW1 with hands on her mouth and caused injury. Both PW1 and the deceased fell down. The occurrence was witnessed by PWs.2, 4 and



5. They raised alarm. The accused ran away from the scene of occurrence with weapons.

(c) PW1, immediately, took the deceased to the Government Hospital at Theni in an auto. The Doctor, after examining the deceased, advised them to immediately rush to the Government Rajaji Hospital, Madurai. When the deceased was in the hospital, on receiving the intimation from the hospital, PW15, the Sub Inspector of Police, went to the hospital recorded the statement of PW1 and on returning to the police station, he registered a case in Crime No.9 of 2016 under Sections 341, 307 and 323 IPC. Ex.P1 is the complaint. Ex.P14 is the FIR. He forwarded both the documents to the Court, which was received by the learned Magistrate at 10.30 p.m. on 12.01.2016.

(d) PW19, the Inspector of Police, took up the case for investigation. He went to the place of occurrence at 2.00 a.m. on 13.01.2016 prepared an observation mahazar and a rough sketch in the presence of witnesses and he collected bloodstained earth and sample earth from the place of occurrence. Then, he examined PWs.1 to 5 and recorded their statements. Since the deceased was undergoing treatment in an unconscious state, PW19 could not examine him. He recovered bloodstained clothes from the body of the deceased, when the deceased was on treatment. On 16.01.2006 at 5.30 a.m., he succumbed to the injuries at the hospital itself. On receiving intimation about the same, PW19 altered the case into one under Sections 341, 323 and 302 IPC. Ex.P17 is the alteration report. Then, he conducted inquest on the body of the deceased on the same day at 1.30 p.m. and forwarded the body to the Doctor for postmortem.

(e) PW13 - Dr.Jeyasingh conducted autopsy on the body of the deceased on 16.01.2016 at 2.15 p.m. He wound the following injuries:

"1) Bluish black contusion over the left side cheek 2 cm below the left angle of mouth measuring 4 x 2 cms. A lacerated wound noted on the inner aspect of the left lower cheek measuring 4 x 1 cm x muscle deep with surrounding bluish black contusion.

On dissection : underlying tissue bruised and bluish black in colour. Underlying body of the mandible found fractured with surrounding bruises 3 cm lateral to the midline of chin. Another fracture is noted on the opposite to the fractured side of the mandible (right side) 3 cm lateral to the midline of chin with surrounding area is bruised and bluish black in colour.

2) An oblique bluish black contusion noted on the left side of the neck measuring 6 x 2 cm. The anterior end is 6 cm below to the middle of the



chin, the posterior end is 3 cm below to angle of the mandible.

On dissection: Underlying tissue found to be bruised including the left lobe of the thyroid gland.

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On dissection - Scalp, skull and dura:

Diffused sub dural haemorrhage and sub arachnoid haemorrhage note over both cerebral hemispheres. Cerebro spinal fluid blood stain and increased in volume. Laceration of the brain noted on the left parieto occipital lobe 4 x 3 x 0.5 cm. intra cerebral haematoma noted on the left temporo parietal lobe of the brain 5 x 3 x 1 cm."

Ex.P13 is the postmortem certificate. He gave opinion that the injuries found on the body of the deceased would have been caused by a weapon like crowbar.

(f) PW19 examined the Doctor and collected the medical records. On 18.01.2006 the first accused surrendered before the learned Judicial Magistrate, at Virudhunagar. PW19 took the Police custody of the first accused on 25.01.2006. While in custody, on 25.01.2006, at 9.00 p.m. in the presence of witnesses, the first accused gave a voluntary confession in which he disclosed the place where he had hidden the crowbar. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the crowbar (MO.2). On returning to the Police Station, he forwarded the accused to the Court for remand and handed over the material object also to the Court. The second accused surrendered before the Court on 15.02.2006. PW19 took the police custody of the accused on 24.02.2006. On 25.02.2006 at 5.00 p.m. while in custody, the second accused gave a voluntary confession, in which he disclosed the place where he had hidden the crowbar. In pursuance of the same, he took the Police and witnesses to the place of hide out and produced the crowbar (MO.1). PW19 recovered the same under mahazar. Then, he forwarded the accused to the Court for remand and also forwarded the material object to the Court. On completing the investigation, he laid a charge sheet against the accused on 27.03.2006.

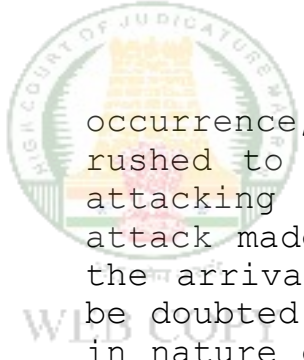
(g)Based on the above materials, the trial Court framed charges against the accused as detailed in the first paragraph of this Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 19 witnesses were examined and 20 documents and 6 material objects were marked.

(h) Out of the said witnesses, PWs.1, 2, 4 and 5 have been examined as eyewitnesses to the occurrence. They have vividly spoken about the entire occurrence. They have also spoken about the individual overtacts of the accused. PWs.1 and 2 have stated that they took the deceased to the hospital for treatment. PW1 has

place of

(j) When the above incriminating materials were put to the accused under Section 313 of Cr.P.C., they denied the same as false. However, they did not choose to examine any witness nor to mark any document on their side. Having considered all the above, the trial Court convicted both the accused, as detailed in the first paragraph of this judgment. That is how they are before this Court with this appeal.

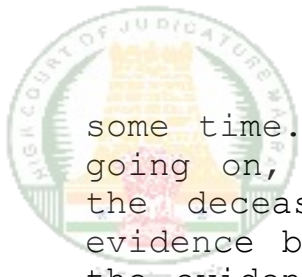
4. This is a case based on eyewitness account. More particularly, PW1 is an injured eyewitness. She has vividly spoken about the occurrence. Her presence at the place of occurrence cannot be doubted. PWs. 2, 4 and 5, who are the sons of the deceased, also claimed to have witnessed the occurrence. These witnesses have stated that they heard commotion in the place of



occurrence, when they were working in their field and when they rushed to the place of occurrence, they found the first accused attacking the deceased. They did not say anything about the attack made by the second accused to PW1. In our considered view, the arrival of these witnesses at the place of occurrence cannot be doubted. At any rate, the evidence of PW1 which is substantive in nature cannot be doubted. The very fact that she had sustained injury in the very same occurrence would go to prove beyond reasonable doubt that she was present at the time of occurrence. She has also vividly spoken about the overt acts of the accused. Both PW1 and the deceased were taken to the hospital immediately by the others.

5. The learned counsel for the appellants would submit that when PW1 was examined by the Doctor, she told that she was attacked by three known persons, whereas there are only two persons arrayed as accused in the present case. Of-course, it is a contradiction. But, in our considered view, on this score alone, we are not prepared to reject the evidence of PW1, because PW1 was not contradicted with reference to above contradictory statement. Without affording an opportunity to the maker of a statement by bringing to the notice of her about the former contradictory statement, we cannot give any importance for the said contradiction at all, as it does not satisfy the legal requirements of Section 145 of the Indian Evidence Act. Apart from that, though these witnesses have been cross examined at length nothing has been elicited even to create a slightest doubt about their credibility. According to the medical evidence, the death of the deceased was due to shock and haemorrhage due to the injuries found on him. We find no reason to reject the said opinion of the doctor. From these evidences, it is clearly established by the prosecution that the death of the deceased was caused by the first accused and the injury on PW1 was caused by the second accused in the same transaction.

6. Now, having come to the said conclusion, we have to examine as to what was the offence that was committed by the accused. It is true that there was a long standing ill-feeling between the two families and when the deceased and PW1 were returning to their house after collecting grass in their field, the occurrence was stated to have been happened. Definitely, their arrival would not have been anticipated by these accused. Further there is no evidence either direct or circumstances to infer that these accused had gone to the place of occurrence with the intention to cause the death of the deceased. PWs.2, 4 and 5, the sons of the deceased, have stated that when they were working in their field, they heard the commotion from the place of occurrence and attracted by the same, they rushed to the place of occurrence and only, they found the first accused attacking the deceased. After hearing the commotion, for these witnesses to reach the place of occurrence, definitely, it would have taken



some time. During the said interregnum period, the commotion was going on, that means there were quarrel between the accused and the deceased. In our considered view, there is no positive evidence by PW1 as to what preceded the actual occurrence. From the evidences of PWs.2, 4 and 5, it is inferable that before the actual occurrence of assault, there would have been wordy quarrel and in that quarrel, provoked by the words and deeds of the deceased, the first accused had attacked the deceased with a crowbar. Thus, the act of the first accused would squarely fall within the ambit of 3rd limb of Section 300 IPC and at the same time, it would fall under 1st exception to Section 300 IPC.

7. So far as the second accused is concerned, he had no premeditation. But, he shared the intention with the first accused to cause the injury on the deceased which was in the nature of injury sufficient to cause the death in the ordinary course of nature. Therefore, the second accused is also liable to be punished by invoking Section 34 IPC. Thus, the accused 1 and 2 are liable to be punished for the offence under Section 304(i) r/w 34 IPC. For the injury caused on PW1, the second accused is liable to be punished for the offence under Section 323 IPC also. Since there was no charge against the first accused by invoking Section 34 IPC, in respect of the injury caused on PW1, we are unable to convict him for the said offence.

8. Now, turning the quantum of the punishment, the accused are poor agriculturists. They had got no bad antecedents. The occurrence was not premeditated one. It was due to sudden quarrel out of provocation. After this occurrence also, the accused have not shown any deviance from law. Having regard to these mitigating as well as aggravating circumstances, we are of the view that sentencing both the accused to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- for the offence under Section 304(i) r/w 34 IPC would meet the ends of justice. The conviction and sentence imposed on the second accused for the offence under Section 323 IPC deserves to be confirmed.

9. In the result, this Criminal Appeal is partly allowed in the following terms;

(a) The conviction and sentence imposed on the appellants/A1 and A2 under Section 302 r/w 34 IPC is set aside and instead, they are convicted under Section 304(i) r/w 34 IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks.

(b) The conviction and sentence imposed on the 2nd appellant/A2 under Section 323 IPC is confirmed.

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

(c) It is directed that the sentence imposed on the second accused shall run concurrently. The bail bond if any executed by



them shall stand cancelled. Fine amount, if any, paid by the appellants/A1 and A2 shall be adjusted and the excess fine amount, if any, shall be refunded. The period of sentence already undergone by the appellants/A1 and A2 shall be given set off under Section 428 Cr.P.C.

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(d) The trial Court is directed to take steps to incarcerate the 2nd appellant/A2 in prison so as to serve out the remaining period of sentence.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub-Assistant Registrar

To

1.The Additional District and Sessions Judge,
Theni, at Periyakulam.

2.The Inspector of Police,
Veerapandi Police Station,
Theni District.

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

+One cc to Mr.R.Venkateshwaran, Advocate, SR.No.60193

+One cc to Mr.K.Prabhu, Advocate, SR.No.59423

Copy to:-

- 1.The Superintendent, Central Prisons, Madurai
- 2.The Judicial Magistrate, Theni

Copy to:-

- 1.The Chief Judicial Magistrate, Theni
- 2.The District Collector, Theni
- 3.The D.I.G. of Police, Mylapore, Chennai-4
- 4.The Inspector General of Police, Chennai-8
- 5.The Secretary to Government (Home) Department
Chennai-600 009
- 6.The Principal District Judge, Theni

gcg

RL/14C/8P/KM/30.11.2016

Judgement made in
Crl.A.[MD].No.190 of 2015
Dated: 05.10.2016