

**BAIL SLIP**

Sabapathi S/o.Balusamy aged 28 years was released on bail vide order of this Court dated 29.09.2015 in MP(MD)No.1 of 2015 in CRL.A[MD].
No.246 of 2015

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRL.A[MD].No.246 of 2015

Sabapathi : Appellant

Vs.

The State, Rep by
The Inspector of Police,
Koodalpudur Police Station,
Madurai, Madurai District,
Crime No.4 of 2011.

: Respondent

PRAYER: Appeal is filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction dated 02.07.2015 made in S.C.No.327 of 2012, on the file of the learned Principal Sessions Judge, Madurai [FAC], Madurai District.

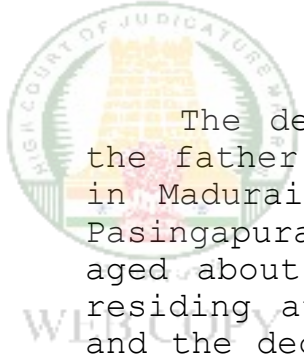
For Appellant : Mr.A.Thiruvadikumar
For Respondent : Mr.K.S.Duraipandian
Additional Public Prosecutor

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

The appellant is the sole accused in S.C.No.327 of 2012, on the file of the learned Principal Sessions Judge, [Fast Track Court], Madurai. He stood charged for the offence punishable under Section 302 of the Indian Penal Code. By Judgment dated 02.07.2015, the Trial Court has convicted the appellant under Section 302 of the Indian Penal Code 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. Challenging the said conviction and sentence, the appellant has come up with this Criminal Appeal.

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

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



The deceased, in this case, was one Mr. Saravanakumar. PW-1 is the father of the deceased. They were residing at Sikkandarchavadi in Madurai. The deceased was working in Dalmia Cement Godown at Pasingapuram. The deceased, at the time of occurrence, was hardly aged about 21 years. The accused was aged about 24 years. He was residing at Manthaiammakovil Street, Sikkandarchavadi. The accused and the deceased were already known to each other. Around 04.00 PM, On 02.01.2011, near Muniyandi Temple at Sikkandarchavadi, the accused and the deceased were playing marbles. During the course of the game, there arose some quarrel between the accused and the deceased. PW-1 and PW-2, who had just arrived at the said place, persuaded them not to fight. Then, the accused went to his house.

2.2. Again, around 05.00 PM, on the same day, PW-1 along with the deceased and PW-2 all the way went to the house of the accused. PW-1 questioned the accused as to why he quarreled with the deceased during marble game. This again resulted in a quarrel at the house of the accused. In the said quarrel, it is alleged that the accused took out a knife from his waist and stabbed on the left side of the neck of the deceased. The accused did not make any attempt to cause any more injury on the body of the deceased. Then, the accused fled away from the scene of occurrence with the weapon.

2.3. PW-1 and the others immediately took the deceased to a Private Hospital. From where, they took the deceased to Koodalpudhur Police Station. After getting a police memo, they took him to the Government Rajaji Hospital at Madurai. It was around 06.00 PM. When the deceased was undergoing treatment in the Government Rajaji Hospital, he succumbed to the injuries. Thereafter, PW-1 went to Koodalpudhur Police Station and made a complaint.

2.4. On the above complaint, a case was registered in Crime No.4 of 2011, under Section 302 of the Indian Penal Code against the accused. EX-P1 is the complaint and EX-P8 is the First Information Report.

2.5. Taking up the case for investigation, at 07.00 AM on 03.01.2011, PW-20 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. Then, he conducted inquest on the body of the deceased at 08.30 AM. EX-P20 is the inquest report. Then, he forwarded the dead body for postmortem.

2.6. PW-18 - Dr.G.Natarajan conducted autopsy on the body of the deceased, at 11.00 AM, on 03.01.2011. EX-P17 is the postmortem certificate. He found a single stab injury on the left side of the neck of the deceased, measuring 4X1 CM. He noticed the following internal injuries:-

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1. An oblique stab injury measuring 4 X 1 CM muscle deep noted on the upper part of left side of neck 1 CM



below the left angle of mandible. On dissection, the wound passes obliquely downwards and medially piercing the underlying muscles, [carotid vessels] nerves and ends as a point.

2. Abrasion 2 CM x 1 CM on left cheek".

He gave opinion that the said single stab injury could have been caused by a weapon like MO-2 - Knife. He further opined that the deceased would appear to have died of shock and hemorrhage due to the said injury.

2.7. PW-20 recovered bloodstained cloth from the dead body of the deceased and examined few more witnesses and recorded their statements. On the same day, at 04.30 PM, he arrested the accused in the presence of the witnesses. On such arrest, he gave a voluntary confession, in which he disclosed the place, where he had hidden the knife. In pursuance of the same, the accused took the police and the witnesses to the hide out and produced the knife. PW-20 recovered the same under a mahazer. Then, on returning to the Police Station, he forwarded the accused to the Court and handed over the material objects also to the Court. At his request, the material objects were sent for chemical examination. Since PW-20 was transferred, on 12.02.2011, the investigation was continued by his successor.

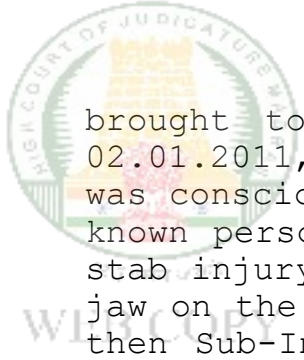
2.8. PW-21, the then Inspector of Police collected the medical records, examined few more witnesses, recorded their statements and on completing the investigation, he laid charge sheet against the accused, on 05.02.2012.

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, 21 witnesses were examined, 20 documents and five material objects were marked.

2.10. Out of the said 21 witnesses, PW-1 and PW-2 claim to have witnessed the entire occurrence. They have spoken about the occurrence, which took place at 04.00 PM, during the marble game and also the occurrence, which took place at 05.00 PM, at the house of the accused, in which the accused stabbed the deceased on the left side of his neck. PW-3 has spoken about the occurrence, which took place at 04.00 PM, during the marble game. PW-4 has spoken about the preparation of Observation Mahazer and the Rough Sketch and the recovery of material objects from the place of occurrence. PW-5 has spoken about the arrest of the accused, the confession made by him and the consequential recovery of MO-2, knife and the bloodstained cloth. PW-6 has also spoken about the occurrence, which took place at 04.00 PM, during the marble game. PW-7 to PW-13 have turned hostile and they have not supported the case of the prosecution in any manner.

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2.11. PW-14, Dr.M.Thangavelu, has stated that the deceased was



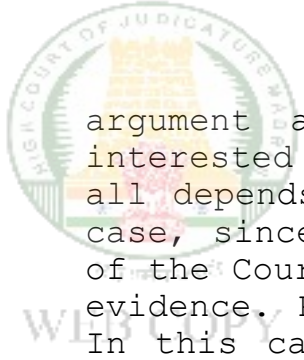
brought to the Government Hospital at Madurai, at 06.10 PM, on 02.01.2011, for treatment. He told that at that time, the deceased was conscious. The deceased told the doctor that he was stabbed by a known person, near Muniyandikovil at Sikkantharchavadi. She found a stab injury measuring 4 X 1 X 1 CM, near the left side of the lower jaw on the neck. He found an abrasion on the left cheek. PW-15, the then Sub-Inspector of Police, has spoken about the registration of the case, on the complaint made by PW-1. PW-16, an Expert from the Forensic Lab, has spoken about the chemical examination conducted on the material objects. According to him, there were human bloodstains on all the material objects, including the knife, recovered from the accused. The Serological Report revealed that the blood was of 'A' group. PW-17 has spoken about the chemical examination conducted on the internal organs of the deceased. According to her, there was neither poison nor alcohol found in the internal organs. PW-18 has spoken about the autopsy conducted by him and his final opinion regarding the cause of death. PW-19, a Head Constable, has stated that he handed over the complaint and the First Information Report to the learned Judicial Magistrate, No.IV, at 01.00 AM, on 03.01.2011, as directed by the Investigating Officer. He has also stated that he handed over the dead body to the hospital for postmortem, as directed by PW-21. PW-20 and PW-21 have spoken about the investigation conducted by them and the filing of final report.

2.12. 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. On his side, two documents were marked, namely, medical memo dated 02.01.2011 and a copy of Visual Dictionary as EX-D1 and EX-D2 respectively. 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 this Court with this Criminal Appeal.

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 eye-witness account of PW-1 and PW-2. PW-1, the father of the deceased, has stated that he witnessed the occurrence, which took place at 04.00 PM, during the marble game. He has further stated that he along with PW-2 had gone to the house of the accused to question as to why he quarreled with the deceased. This resulted in a quarrel, in which the accused stabbed the deceased with a knife. PW-2 has also spoken about the same facts.

5. The learned counsel appearing for the appellant would submit that PW-1 and PW-2 are interested witnesses and therefore, their evidences should be rejected. We are not persuaded by the said



argument at all. It is not the law that the evidence of an interested witness should be rejected under all circumstances. It all depends upon the facts and circumstances of each case. In this case, since the evidences of these witnesses inspire the confidence of the Court, there cannot any legal impediment to act upon the said evidence. Prudence requires only close scrutiny of their evidences. In this case, a close analysis of the evidences of PW-1 and PW-2 would go to show that there is nothing on record to create doubt in respect of the credibility of PW-1 and PW-2. Their evidences are duly corroborated by the medical evidence as well. At the earliest point of time, when the deceased was taken to the Government Hospital, he told PW-14 that he was stabbed by a known person with a knife. This statement of the deceased amounts to dying declaration. This also duly corroborates the evidence of the eye witnesses. From the above, the prosecution has clearly established that it was this accused, who stabbed the deceased on the left side of his neck, which resulted in his death.

6. PW-18, Dr.G.Natarajan, who conducted autopsy on the body of the deceased, has stated that the death of the deceased was due to shock and hemorrhage due to the single stab injury found on the neck of the deceased. We do not find any reason to reject the said opinion given by the doctor. Thus, from the above evidences, it has been clearly established by the prosecution that it was this accused, who stabbed the deceased on his left side of the neck, which resulted in his death.

7. 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. As we have already narrated, the accused and the deceased were of same age group and they were very friendly. That is how, at 04.00 PM, they were playing marbles. Unexpectedly, during the course of the game, there arose a quarrel. Of course, according to PW-2, they were separated by him. Thereafter, the deceased had no business to go to the house of the accused. But, it is stated that along with PW-2, the deceased and PW-1 had gone to the house of the accused to question as to why he quarreled with the deceased. This again resulted in a quarrel between the accused and the deceased. There were exchange of words, which were mostly abusive. In the quarrel, it is stated that the accused took out a knife and stabbed the deceased on his left side neck. Unfortunatley, the deceased succumbed to the said injury. In our considered view, though the act of the accused would squarely fall within the Third Limb of Section 300 of the Indian Penal Code, the same would fall within the First Exception to Section 300 of the Indian Penal Code. From the narration of the facts, it is inferable that the accused would have been provoked by the deceased by his words and deeds, that too, having come all the way to his house in an aggressive mood and on account of loss of self-control, the accused would have stabbed the deceased. He did not make any attempt to cause any more injury on the body of the deceased. Thus, the act of the accused would fall within the ambit of First Exception to Section 300 of the



Indian Penal Code and thus, the accused is liable to be punished under Section 304(i) of the Indian Penal Code.

8. Now, turning to the quantum of punishment, the learned counsel for the appellant would submit that the accused, at the time of occurrence, was a student, doing B.Sc., Agriculture Course. He was hardly aged 24 years. The occurrence was not a pre-meditated one. After all the accused and the deceased were friends. The deceased had come to the house of the accused, which would not have been even anticipated by the accused. The quarrel was sudden. The accused did not make any attempt to cause any more injury. The learned counsel for the appellant would submit that the accused is prepared to pay a sum of Rs.50,000/- as compensation to the parents of the deceased.

9. Having regard to all the mitigating as well as the aggravating circumstances, we are of the considered view that sentencing the accused to undergo rigorous imprisonment for seven years and further directing the accused to pay a sum of Rs.50,000/- as compensation to the parents of the deceased would meet the ends of justice.

10. 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 compensation of Rs.50,000/- [Rupees Fifty Thousand only], in default to undergo rigorous imprisonment for eight weeks.
- On realization of the fine amount from the accused, the Trial Court shall pay the entire amount to the parents of the deceased as compensation.
- 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. The period of sentence already undergone by the appellant 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 fine amount now imposed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar



To

1. The Judicial Magistrate No.IV, Madurai.
2. The Chief Judicial Magistrate, Madurai.
3. The Principal Sessions Judge, Madurai [FAC],
Madurai District.
4. The District Collector, Madurai.
5. The Director General of Police,
Mylapore, Chennai-4.
6. The Superintendent,
Central Prison, Madurai.
7. The Inspector General of Prisons,
Chennai - 8.
8. The Secretary to Government,
Home Department, Secretariat,
Chennai-9.
9. The Superintendent of Police,
Madurai.
10. The Commissioner of Police,
Madurai.
11. The Inspector of Police,
Koodalpudur Police Station,
Madurai, Madurai District.
12. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy To :-

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

+ 1 CC TO Mr.A.THIRUVADIKUMAR, ADVOCATE IN SR No. 65078

NB

TE/SK : 15/12/2016 : 7P/15C