

**Bail Slip**

The Appellant /Accused namely Velmurugan S/O Nagarajan aged about 28 years was directed to be released on bail as per order of this Court dated 06.01.2016, made in MP(MD)NO.1 of 2015 in Cr1.A (MD) No.247 of 2015.

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

Cr1.A.[MD].No.247 of 2015

Velmurugan

: Appellant/
Sole accused

Vs.

State rep. by
the Inspector of Police,
Dindigul Taluk Police Station,
Dindigul.
(Crime No.818/2009)

: Respondent/
Complainant

PRAYER: Criminal Appeal filed under Section 374(2) of Cr.P.C. against the judgment, dated 04.02.2015, made in S.C.No.194 of 2010, by the learned Principal Sessions Judge, Dindigul.

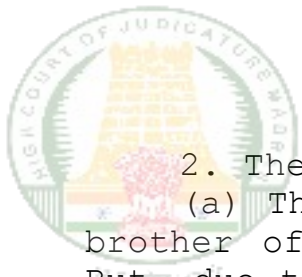
For appellant : Mr.D.Selvaraj

For respondent : Mr.K.S.Duraipandian,
Additional Public Prosecutor

JUDGMENT

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

The appellant is the sole accused in S.C.No.194 of 2010 on the file of the learned Principal Sessions Judge, Dindigul. He stood charged for the offence under Section 302 IPC. By judgment dated 04.02.2015, the trial Court convicted the appellant/accused under the Section 302 IPC 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 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. Murugan. PW1 is the brother of the deceased. The deceased had a wife by name Rani. But, due to some matrimonial dispute, they were living separately. Later on, the deceased had developed illicit intimacy with one Kavitha, who was also separated from her husband. Mrs. Kavitha is related to the accused. The accused objected to the said illicit intimacy between the deceased and Mrs. Kavitha. On one occasion even he warned the deceased for life, if he continued to have illicit intimacy with Kavitha. This is stated to be one of the occurrences for the motive.

(b) It is further alleged that on 25.09.2009 around 5.00 p.m. there arose a wordy quarrel between the mother of the accused and the deceased. The accused came to know of the said quarrel around 7.30 p.m. At that time, the deceased was standing near a tea stall at Uzhavarsanthai. The accused questioned the deceased as to why he quarrelled with his mother. This resulted in a quarrel between the accused and the deceased. The accused took the deceased to the village under the guise of calling him to settle the issue. On reaching the village, near the house of one Dr. Vijayalakshmi, the accused again quarrelled with the deceased and suddenly, took out a knife from his waist and stabbed the deceased. The deceased fell down in a pool of blood. The accused ran away from the scene of occurrence. According to the prosecution, the occurrence was witnessed by PWs. 1, 3 to 10.

(c) PW1, the brother of the deceased, took the deceased to the Government Hospital at Dindigul, where he was admitted as inpatient. But, around 09.22 p.m., on the same day, while on treatment, the deceased succumbed to the injuries. Thereafter, PW1 went to Dindigul Taluk Police Station and made a complaint at 10.00 p.m. on 25.09.2009. PW17, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No. 818 of 2009 under Section 302 IPC. Ex.P1 is the complaint. Ex.P13 is the FIR. He forwarded both the documents to the Court, which was received by the learned Magistrate at 5.00 a.m. on 26.09.2009.

(d) PW18, the Inspector of Police, took up the case for investigation. He went to the place of occurrence, prepared an observation mahazar and a rough sketch in the presence of witnesses. He recovered bloodstained earth and sample earth from the place of occurrence. Around 11.30 p.m. on 25.09.2009, he examined many witnesses, including PWs. 1 to 10 and recorded their statements. On 26.09.2009 between 9.00 a.m. to 11.00 a.m., he conducted inquest on the body of the deceased and forwarded the

(e) PW12, Dr. Suresh Babu conducted autopsy on the body of the



deceased on 26.09.2009 at 12.30 p.m. He found the following injuries:

"External injuries:

An elliptical stab wound of 4 x 1 cm over the left lower chest mid clavicular line (8th, 9th ribs). On exploration at stab wound of 2 x 2 cm present over anterior wall of stomach.

Postmortem Examination:

Thorax - fracture 8th and 9th ribs left side. Peritoneal cavity 1000 ml of blood and heart chambers. Right full left empty lungs, liver spleen and kidneys. Pale, hyoid bone - intact. Stomach - 500 ml of blood and with stomach. Skull and membrane intact. Brain - Pale."

Ex.P3 is the Postmortem Certificate. He opined that the injury found on the deceased could have been caused by a weapon like knife. The death of the deceased was due to shock and haemorrhage due to the said stab injury.

(f) PW18, during the course of investigation, recovered the bloodstained clothes from the body of the deceased. On 27.09.2009 at 8.15 a.m. he arrested the accused. On such arrest, he gave a voluntary confession in which he disclosed the place where he had hidden a knife, a bloodstained shirt and a bloodstained lungi. In pursuance of the said disclosure statement, he took the Police and witnesses to the place of hide out and produced MO.1 - knife, MO.2 - Bloodstained Shirt and MO.3 - Bloodstained Lungi. PW18 recovered the same under a mahazar. On returning to the Police Station, he forwarded the 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. The report revealed that there were human bloodstain of "A" group on all the material objects, including the knife recovered from the accused.

(g) Based on the above materials, the trial Court framed charges as detailed in the first paragraph of this judgement. He denied the same. In order to prove the charges, on the side of the prosecution, as many as 18 witnesses were examined, 17 documents and 9 material objects were marked.

(h) Out of the said witnesses, PW1 has spoken about the entire occurrence as an eyewitness. He has also spoken about the complaint made by him to the Police, after the death of the deceased in the hospital. PW2 is the sister of the deceased. She has spoken only about the occurrence that took place at 5.00 p.m., in a room in the house. There was a quarrel between the deceased and the mother of the accused. PWs.3 to 10 have turned hostile and they have not supported the case of the prosecution in any manner. PW11 has



stated that he took the deceased to the hospital along with PW1 for treatment in the hospital. He has further stated that he also witnessed the occurrence.

(i) PW12 has spoken about the postmortem conducted and his final opinion regarding the cause of the death. PW13 has spoken about the preparation of the observation mahazar and rough sketch, and the confession made by the accused and the consequential recovery of the material objects. PWs.14 and 15 have turned hostile and they have not supported the case of the prosecution in any manner. PW16, a Scientific Expert, has stated that he found human bloodstain of A group on all the material objects including the knife. PW17 has spoken about the registration of the case. PW18 has spoken about the investigation done and the final report filed.

(j) 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 a 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. In this case, as we have already pointed out, PWs.3 to 10, who were examined to speak about the occurrence and other facts, have turned hostile and they have not supported the case of the prosecution in any manner. PW2 is not an eyewitness and she has spoken only about the earlier occurrence that is the quarrel between the mother of the accused and the deceased. Thus, the prosecution made reliance only on the eye witness account of PWs.1 and 11.

5. The learned counsel for the appellant would submit that PWs.1 and 11 are chance witnesses and also interested witnesses and therefore, their evidences should be rejected. But, we are not persuaded by the said argument. It is not the law that because a witness happens to be an interested witness and also a chance witness, his evidence should be outright rejected. According to the settled law, prudence requires only a close scrutiny of the said evidence. It depends upon the quality of evidence and not quantity. In the instant case, PWs.1 and 11 have given cogent evidence and though they have been cross-examined at length, nothing could be elicited to doubt their credibility. The evidence of these two witnesses cannot be doubted for any reason. They explained to the satisfaction of the Court as to why they made presence at the place of occurrence. From the evidence of these two witnesses, in



our considered view, the prosecution has clearly established that it was this accused who stabbed the deceased with knife.

6. The learned counsel for the appellant would next submit that there was inordinate delay in making the complaint to the police and also in forwarding the same to the Court. In our considered view, it is not so. It is the case of the prosecution that as soon as the occurrence was over, PW1 took the deceased to the Government Hospital at Dindigul and admitted there. Therefore, he would not have thought to go to the Police Station first, instead taking the deceased to the hospital immediately to make him survive. It was only, after the death of the deceased, PW1 had gone to the Police Station. Thus, there was no delay in making the complaint to the Police and in forwarding the same to the Court by the Police. In such view of the matter, this argument of the learned counsel appearing for the appellant is rejected.

7. The learned counsel appearing for the appellant would further submit that in view of the fact that the independent witnesses have turned hostile, it would not be safe to sustain the conviction based on the uncorroborated testimonies of PWs.1 and 11. This argument also does not persuade us. As we have already pointed out, it is only quality that matters and not quantity. Here, in this case, PWs.1 and 11 have witnessed the occurrence and they have cogently and in a convincing manner stated that it was this accused who stabbed the deceased. We do not find any reason to reject the evidences of PWs.1 and 11.

8. Now turning to the medical evidence, the doctor who conducted autopsy has categorically opined that the single stab injury found on the body of the deceased could have been caused by a weapon like MO.1 - knife. The Doctor has further opined that the death of the deceased was due to the shock and haemorrhage due to the said stab injury. We find no reason to reject the said opinion of the doctor. Thus, from the medical evidence, the prosecution has clearly established that the death of the deceased was due to the injury caused by the accused.

9. The learned counsel for the appellant would next submit that the accident register copy obtained from the Government Hospital, Dindigul where the deceased was admitted and the doctor, who treated him, have not been brought on evidence. It is true that it is a lapse on the side of the prosecution. But, on that score, we cannot reject the evidences of PWs.1 and 11.

10. The learned counsel for the appellant would next contend that the motive has not been proved by the prosecution. PWs.1 and 2 have spoken about the motive. Though the motive is flimsy, it cannot be disregarded that there was no motive at all established. In a case of this nature, where there is eyewitness account to prove the occurrence, the motive plays a least role. Therefore, this



argument deserves to be rejected.

11. Having come to the said conclusion that it was this accused who caused the death of the deceased, now we have to examine as to what was the offence committed by the accused by the said act. As we have already pointed out, the motive established by the prosecution is very flimsy. The meeting of the accused and the deceased in the bazaar was only by chance. The accused had taken the deceased to the village only to settle the issue. If he had intention to do away with the deceased, he would have stabbed him in the bazaar itself. The very fact that he took the deceased with him to the village to settle the issue, would go to show that he had no intention to kill the deceased at all. From the narration of the facts, it is crystal clear that when they reached near the house of the accused, there had arisen a quarrel. It was in the said quarrel provoked by the words and deeds of the deceased, the accused had been provoked and having lost his mental balance, he had caused a single stab and ran away. Thus, the act of the accused would clearly fall within the third limb of Section 300 IPC. The same would also fall under the first exception to Section 300 IPC. Therefore, the accused is liable to be punished only under Section 304(i) IPC.

12. Now turning to the quantum of punishment, the accused is aged hardly 21 years. He is a young man. He has no bad antecedent. The occurrence also was not a premeditated one. After the occurrence also, the accused has not shown any bad conduct. Having regard to these mitigating and aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- would meet the ends of justice.

13. In the result, this Criminal Appeal is partly allowed and the conviction and sentence imposed on the appellant/accused under Section 302 IPC is set aside and instead, he is convicted under Section 304(i) IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks. The sentences already undergone by the appellant/accused shall be given set off under Section 428 Cr.P.C. Fine amount, if any, paid by the appellant/accused shall be adjusted. The Bail bond, if any, executed by the appellant/accused shall stand cancelled.

14. The trial Court is directed to take appropriate steps to incarcerate the appellant/accused in prison so as to serve out the remaining period of sentence.

Sd/-

Assistant Registrar (CSII)



Sub Assistant Registrar

To

1.The Principal Sessions Judge,
Dindigul.

2.The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul.

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

4.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

5.The Judicial Magistrate No.II,
Dindigul.

6.To Through The Chief Judicial Magistrate
Dindigul.

7.The Superintendent
Central Prison,
Madurai.

+1cc to M/s.D.Selvaraj, Advocate, in SR No.65077

Gcg

AAM:SKN-MM:7p/9c/19.01.2017

Dated: 01.11.2016