



Bail Slip

Murugan @ Ventrivel Murugan - Petitioner/Appellant/
Sole Accused

(aged about 36 years) S/o.Arumugam, enlarged on bail vide order of this Court in CrI.MP(MD)No.35/2016 in CrI.A(MD)No.252 of 2015, order dated 08.01/2016.

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

CrI.A.[MD].No.252 of 2015

Murugan @ Vetrivel Murugan : Appellant/Sole accused

Vs.

State rep. by
the Inspector of Police,
Surandai Police Station,
Tirunelveli District.
(Crime No.70/2012)

: Respondent/Complainant

PRAYER: Criminal Appeal has been filed under Section 374(2) of Cr.P.C. against the judgment, dated 25.06.2015, made in S.C.No.322 of 2012, by the learned 3rd Additional District and Sessions Judge, Tirunelveli.

For appellant : Mr.N.Anandhapadmanaban

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.322 of 2012 on the file of the learned 3rd Additional District and Sessions Judge, Tirunelveli. He stood charged for the offences under Sections 341, 302 and 506(ii) IPC. By judgment dated 25.06.2015, the trial Court convicted the accused under Section 302 IPC alone 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. The trial Court acquitted the accused from the other



charges. Challenging the said conviction and sentence, the appellant is before this Court with this appeal.

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

(a) The appellant/accused is a resident of Kulayaneri Village in Tirunelveli District. The deceased in this case was one Ramar Nadar. The deceased was the father-in-law of the accused. Mrs. Mahalakshmi (PW5), the daughter of Ramar Nadar, is the wife of the accused. PW1 is the son of the deceased and thus, the brother-in-law of the accused. PW1 and the deceased were also residing in the same village. Out of the wedlock between the accused and PW5, there were three children born. But, after eight years of the marriage, there arose matrimonial dispute between the accused and his wife. For about 6 months before the occurrence unable to bear the harassment, PW5 came down to her parental home and was staying with PW1 and the deceased at their house in the same village. On a complaint made by PW5, a criminal case was registered against the accused, in which, on completing the investigation, a charge sheet was laid before the learned Judicial Magistrate at Shenkottai. The said case was pending trial. Thus, there was enmity between the two families. The accused had grudge against the deceased, PW1 and his wife on account of the above criminal case.

(b) It is alleged that on 08.04.2012 in the morning around 9.15 a.m. PW1 and the deceased were in their house. PW1 wanted his father to go to a nearby shop to purchase shampoo sachet for taking bath. Therefore, the deceased went towards the shop. When he was passing through near the temple street, the accused intercepted him. He questioned the deceased as to how who instigated her daughter to make a complaint against him to the Police Station which resulted in the final report. He wanted the deceased to withdraw the criminal case. This resulted in a wordy quarrel between them. Somebody, who witnessed the said quarrel, passed a message to PW1 and other family members. Therefore, they rushed to the place of occurrence. When they were nearing the place of occurrence, they found the wordy quarrel between the accused and the deceased still underway. In the said quarrel, it is alleged that the accused slapped the deceased on his left cheek. The deceased fell down. Then, the accused stamped him on the stomach with his legs. The deceased fainted. PW1 and others by the time reached the place of occurrence and on seeing them, the accused ran away from the scene of occurrence.

(c) PW1 informed his uncle about the occurrence. He also rushed to the place of occurrence. Then, they took the deceased to the hospital. The Doctor declared him dead. Then, they brought the dead body to their house. Thereafter, PW1 went to Surandai Police Station and made a complaint. PW13, the then Sub Inspector of Police, on receipt of the said complaint, registered a case in Crime No.70 of 2012 under Sections 341, 302 and 506(ii) IPC. Ex.P1

is the complaint. Ex.P5 is the FIR. She forwarded both the documents to the Court which was received by the learned Magistrate at 8.00 p.m. on 08.04.2012.

(d) PW16, the then Inspector of Police, took up the case for investigation. He proceeded to the place of occurrence and at once, prepared an observation mahazar and a rough sketch in the presence of witnesses. He conducted inquest on the body of the deceased between 01.30 p.m. and 3.30 p.m. on the same day and forwarded the body for postmortem.

(e) PW14 - Dr.Suba Ganesh conducted autopsy on the body of the deceased on 08.04.2012 at 12.30 p.m. He conducted autopsy on the body of the deceased:

"External injuries:

(a) Contusion right temporo parietal region of size 8 x 6 x 4 cm.

(b) Contusion left scrotum 4 x 3 x 3 cm.

(c) Contusion right chest lower part lateral aspect 5 x 4 x 3 cm.

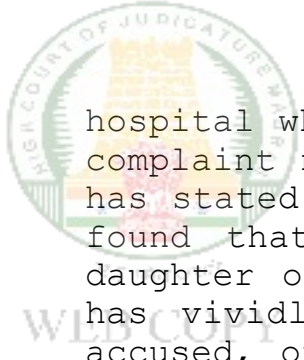
Internal Examination:

Stomach contain partially digested food particles 100 ml small and large bowel distended with gas. Liver rupture present in right lobe postero lateral aspect 5 x 4 x 4 cm. Spleen rupture present 6 cm extending over superior border and lateral aspect. Lung right side contusion 5 x 4 x 3 over middle and lower lobe left side lung contusion seen 8 x 7 x 3 cm lateral aspect. Right 3, 4, 5, 6 rib fracture over lateral aspect of 9, 10, 11 rib posterior aspect. Left side 7, 8, 9, 10, 11 rib fracture seen. On opening skull subdural haematoma seen. Temporo parietal region 8 x 5 x 3 cm. Jaws clenched. Hyoid intact."

He gave opinion that the deceased appeared to have died due to shock and haemorrhage due to the multiple injuries. PW16 arrested the accused at 5.00 p.m. on the same day and forwarded him to the Court for judicial Court. On completing the investigation, he laid charge sheet against the accused.

(f) 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 16 witnesses were examined and 11 documents and 3 material objects were marked.

(g) Out of the said witnesses, PWs.1, 2 and 3 are the son, <https://hcservices.reports.gov.in/hcservices/> respectively of the deceased. They have spoken about the motive as well as about the occurrence in a vivid fashion. PW1 has further stated that he took the deceased to the



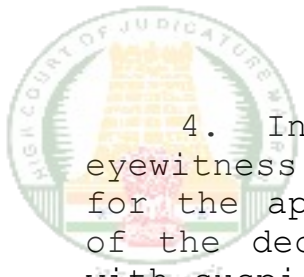
hospital where he was declared dead. He has also spoken about the complaint made by him to the Police. PW4, the Scientific Expert, has stated that she examined the viscera organ of the deceased and found that there was neither poison nor alcohol. PW5 is the daughter of the deceased. She has spoken about the motive. She has vividly spoken about the criminal case pending against the accused, on a complaint made by her to the Police, which resulted in the final report. She has further stated that after hearing about the quarrel between the deceased and the accused, she went to the place of occurrence along with PWs.1 to 3 and she also witnessed the occurrence.

(h) PW6 is the daughter-in-law of the deceased. She has also stated about the occurrence. PW7 is a relative of the deceased. He has also stated that he witnessed the occurrence. According to him, the accused slapped on the cheek of the deceased and pushed him down. He has not stated that the accused stamped the deceased. PW8 has stated that he heard about the occurrence. PW9 has spoken about the preparation of observation mahazar and rough sketch. PW10 has spoken about the registration of the case on the complaint made by PW1. PW11, a Head Constable, has stated that he handed over the FIR to the learned Magistrate at 8.00 p.m. on 08.04.2012. PW12, yet another constable, has stated that he took the dead body to the hospital and handed over the same to the doctor for postmortem as directed by the investigating officer.

(i) PW13 has spoken about the earlier case registered in Crime No.14 of 2011 against the accused under Sections 498-A, 294(b) and 506(ii) IPC. PW14 - Dr.Suba Ganesh has stated about the postmortem conducted and her final opinion regarding the cause of death. PW15 has stated that he was running a private nursing home at Surandai. According to him, when he was in the hospital, at 11.00 a.m. the deceased was brought to him for treatment. He declared him dead. He has not give any further details. PW16 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. On his side, one Dr.Bharath has been examined as DW1. He has stated that on 01.02.2012 the deceased was admitted as inpatient in Tirunelveli Medical College Hospital at 9.05 p.m.; the deceased was 54 years; and he complained of chest pain, pain on back and other parts of the body. The defence of the accused was a total denial. Having considered all the above, the trial Court convicted the appellant, as detailed in the first paragraph of this judgment. That is how he is before this Court with this appeal.

<https://hcservices.courtservice.in/hcservices>
 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.

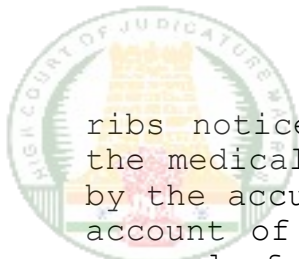


4. In this case, the prosecution mainly relies on the eyewitness account of PWs.1 to 3 and 5 to 7. The learned counsel for the appellant would submit that they were all family members of the deceased and therefore, their evidences should be viewed with suspicion. It is his further submission that the presence of these witnesses at the place of occurrence is highly doubtful. But, we find no force at all in the said argument. PW1 has categorically stated that he asked the deceased to purchase a shampoo sachet in the nearby shop and accordingly, he went out for purchasing shampoo sachet. According to him, later, he received information from somebody that there was a quarrel going on between the accused and the deceased. Therefore, the entire family members went to the place of occurrence and when they were nearing the place of occurrence, the accused gave a slap on the cheek of the deceased and pushed him down. Thus, it is crystal clear that these family members have witnessed the occurrence. We do not find any reason to reject their evidences.

5. PW2 has not actually seen the occurrence. According to him, he heard about the quarrel between the accused and the deceased; he went to the place of occurrence; he found PWs.1, 3 and other eyewitnesses standing near the deceased; and the deceased was lying unconscious. PW3, the wife of the deceased, has stated that the accused slapped the deceased and pushed him down. She has not stated that the accused stamped him with legs. PW5, the wife of the accused, has stated that the accused slapped the deceased on the cheek, fisted him on the chest and then, pushed him down. PW6 has stated that the accused attacked the deceased and pushed him down. PW7 has also stated that the accused attacked the deceased and pushed him down.

6. A perusal of these evidences would go to show that there are two type of witnesses. One set of witnesses have stated that the accused has slapped the deceased on the cheek and pushed him down and stamped him on the chest with his legs, whereas the other set of evidence is to the effect stated that the accused simply slapped the deceased and pushed him down. Thus, there is no clear evidence as to whether the accused stamped the deceased on his chest when he was lying. At any rate, there is a clear and cogent evidence to the effect that it was this accused, who slapped the deceased and pushed him down.

7. The deceased was taken to the hospital, where the doctor declared him dead. Regarding the cause of death, we have to analyse the evidence of PW14. He has stated that there were no external injuries at all found on the body of the deceased, except contusions on the right temporo parietal region, left scrotum and right chest. These contusions could have been caused by the attack with hands. On opening the dead body, he found that there were fractures of 3rd, 4th and 5th ribs on the right side of the chest and 7 to 11 on the left side of the chest. Though it is the defence of the accused that the deceased had died due to natural cause at his house, the fracture of

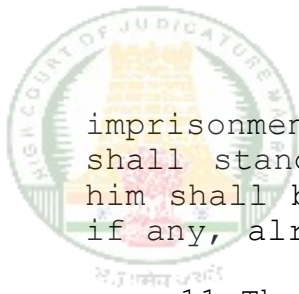


ribs noticed by the doctor would falsify the said contention. From the medical evidence it is crystal clear that due to the attack made by the accused with hands, the deceased had sustained fractures and on account of the same, he died. Though it is contended by the learned counsel for the appellant that as per the evidence of DW1, the deceased was also suffering from chest pain, in our considered view, that has got nothing to do with the fracture of the ribs of the deceased. Further, the gap between the time of treatment given to the deceased by DW1 and the time of the occurrence was 2 months. Therefore, it is highly impossible that these fractures would have been suffered by the deceased 2 months before the occurrence. Thus, in our considered view, the prosecution has clearly established that it was this accused, who slapped the deceased on his cheek and pushed him down which resulted in his death.

8. Having come to the said conclusion, now we have to examine as to what was the offence that was committed by the accused. From the facts narrated hereinabove, it is crystal clear that the accused would not have had the intention at all to cause the death of the deceased. The occurrence was out of a quarrel. He has no premeditation. The accused also had not armed with any weapon. In the quarrel, the accused had slapped the deceased on his cheek and then pushed him down. It cannot be ruled out that the fracture suffered by the deceased and the death were not due to the said fall. There is no contrary medical evidence. The accused, while pushing the deceased down, would not have intended even to cause such bodily injury which would sufficiently cause the death in the ordinary course of nature. Similarly, the knowledge as embodied in 3rd limb of Section 299 IPC or 4th limb of Section 300 IPC also cannot be attributed to the accused. Thus, the act of the accused would not fall within the definition of culpable homicide under Section 299 IPC and therefore, there is no question of his act falling under any of the limbs of Section 300 IPC. At the same time, for having voluntarily caused the injuries on the deceased, the accused is liable to be punished accordingly. Since the hurt caused was grievous in nature, in the normal course, he would be liable for punishment for the offence under Section 325 IPC. But, in the instant case, as there is cogent evidence to prove that the accused had caused the grievous hurt on the deceased due to sudden provocation caused by the deceased, he is liable to be punished for the offence under Section 335 IPC.

9. Now turning to the quantum of punishment, at the time of occurrence, the accused was hardly 36 years. He has got no bad antecedents. He has got big family to take care of. Having regard to all these mitigating as well as aggravating circumstances, we are of the view that sentencing the appellant/accused to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for four weeks, would meet the ends of justice.

10. In the result, this Criminal Appeal is partly allowed. The conviction and sentence imposed on the appellant/accused under Section 302 IPC is set aside and instead, he is convicted under Section 335 IPC and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default to undergo rigorous



imprisonment for four weeks. The bail bond, if any, executed by him shall stand cancelled. The period of sentence already undergone by him shall be given set off under Section 428 Cr.P.C. The fine amount, if any, already paid shall be adjusted.

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

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

gcg

To

1. The 3rd Additional District and Sessions Judge,
Tirunelveli.

2 Do Through, The Principal Sessions Judge, Tirunelveli.

3 The Judicial Magistrate, Sengottai.

4 Do through, The chief Judicial Magistrate,
Tirunelveli District

5. The Inspector of Police, Surandai Police Station,
Tirunelveli District.

6 The Superintendent Central Prison, Palayamkottai.

7 The District Collector, Tirunelveli.

8 The Director General of Police, Chennai.

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

10. The Record Keeper, Criminal Section,
Madurai Bench of Madras High Court, Madurai.

GJM/SS3/SAR-I-9.1.17-7p-11C

Judgement in
Crl.A.[MD].No.252 of 2015
Dated: 01.11.2016