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BAIL SLIP

Basker, s/o Ramraj, aged about 32 years enlarged him on bail made in M.P.no.1/2015 in Crl.A.no.324 of 2015 dated 16.11.2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2016

CORAM:

THE HONOURABLE Mr.JUSTICE S.NAGAMUTHU

and

THE HONOURABLE Mr.JUSTICE M.V.MURALIDHARAN

CRL.A.(MD)No324 of 2015

Baskar, S/o.Ramraj ... Appellant/Sole Accused
Vs.

State, rep.by
The Inspector of Police,
Uppliyapuram Police Station,
Thuraiyur Taluk, Trichy District.
(Crime No.29/2014) ... Respondent/Complainant

PRAYER: Appeal filed under Section 374 of the Code of Criminal Procedure against the Judgment of conviction and sentence, dated 22.09.2015, made in S.C.No.171 of 2014 on the file of the learned Principal Sessions Judge, Tiruchirappalli Division, Tiruchirappalli.

For Appellant	: Mr.S.Palanivelayutham
For Respondent	: Mr.K.S.Duraipandian, Additional Public Prosecutor.

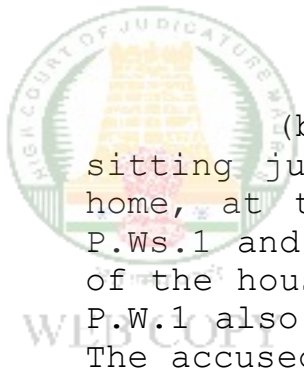
JUDGMENT

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

The appellant in this appeal is the sole accused in S.C.No.171 of 2014 on the file of the learned Principal Sessions Judge, Tiruchirappalli Division, Tiruchirappalli. He stood charged for the offences under sections 294(b) 323 and 302 IPC. After trial, by judgment dated 22.09.2015, the trial court convicted him under all the three charges and sentenced him to undergo rigorous imprisonment for three months for the offence under Section 294(b) IPC, to undergo rigorous imprisonment for one year for the offence under Section 323 IPC and to undergo imprisonment for life and to pay a fine of Rs.2000/- in default to undergo rigorous imprisonment for six months for the offence under Section 302 IPC. 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 deceased in this case was one Mr.Alagiri. P.W.1 is his son and P.W.2 is his daughter. At the time of occurrence, P.W.2 was hardly aged 17 years and she was a bachelor. All the three were residing at Big Street, B-Mettur, Thuraiyur Taluk, Trichy District. The accused also hails from the same village. He was residing in the next street.



(b) On 04.02.2014, around 8.30 p.m., P.W.1 and P.W.2 were sitting just in front of their house. The deceased was not at home, at that time. The accused, to the shock and surprise of P.Ws.1 and 2, scaled down the wall of the house and came in front of the house of the deceased. P.W.2, on seeing him, raised alarm. P.W.1 also raised alarm, objecting to the presence of the accused. The accused went away from the house of the deceased.

(c) Half-an-hour thereafter, the deceased returned home. P.Ws.1 and 2 informed him about the same. The deceased decided to question the authority of the accused in entering into his premises, when he was not there and also when a young girl was in the house. Thereafter, he went in search of the accused.

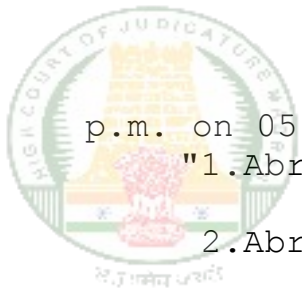
(d) It is further alleged that the deceased found the accused near the village Panchayat Board Office, on the main road. On seeing the accused, the deceased questioned him as to why did he come to his house, especially when his young daughter was there. The accused, instead of apologizing to the deceased, scolded him in filthy language. This resulted in a quarrel between them. At the end of the quarrel, the accused fisted the deceased on his chest. The deceased fell down. Immediately, the accused took a small stone lying there and hit the deceased on his chest by the said stone. P.Ws.1 and 2 cried for help. P.Ws.3 to 7, who were somewhere near the place of occurrence, also witnessed the occurrence and they rushed towards the deceased to rescue him. On seeing them, the accused fled away from the scene of occurrence. Within a short while, the deceased succumbed to injuries. In the same transaction, when P.W.1 intervened, the accused attacked her also with hands on her face.

(e) P.W.1 immediately, along with her relatives, went to Uppiliyapuram Police Station and made a complaint at 11.45 p.m. on 04.02.2014. On the said complaint, a case was registered by P.W.16, the then Sub-Inspector of Police, in Crime No.29 of 2014 under Sections 294, 323 and 302 IPC against the accused. He forwarded Ex.P-1 complaint and Ex.P-9 FIR to the Court and copies thereof to higher police officials, through P.W.14, Police Constable. Since P.W.1 was having injuries, P.W.16 sent her for treatment to Government Hospital, Thuraiyur, along with a police memo.

(f) P.W.12, Dr.Kavitha, then working as Assistant Civil Surgeon, examined P.W.1 at 8.45 p.m. on 04.02.2014, as an outpatient and issued Ex.P-6, Accident Register.

(g) P.W.17, the then Inspector of Police, Uppiliyapuram Police Station, took up the case for investigation. He proceeded to the place of occurrence at 1.15 a.m. On 05.02.2014, made an observation, prepared an observation mahazar (Ex.P-2) and a rough sketch (Ex.P-10) in the presence of P.W.8 and another. He conducted inquest on the body of the deceased, in the presence of panchayatdars and witnesses and prepared an inquest report, Ex.P-11. Through P.W.15, he sent the body for postmortem, through P.W.15 Police Constable. Then, he examined P.W.1, P.W.2 and some other witnesses and recorded their statements.

(h) P.W.10, Dr.Umamaheswari, Government Hospital, Thuraiyur, conducted autopsy on the body of the deceased at 1.30



p.m. on 05.02.2014 and found the following injuries:

"1. Abrasion measuring 2 x 2 cm in right knee.

2. Abrasion measuring 1 x 1 cm in left knee.

3. Abrasion measuring 1 x 1 cm in left wrist joint region;

4. Contusion of 10 cm x 8 cm x 2 cm in left side mid back of chest below left scapular region.

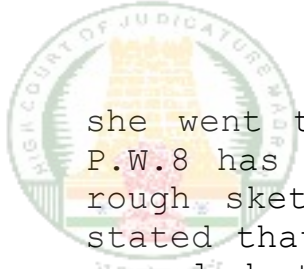
5. Vertical abrasion of 5cm x 3cm in left side lower back (near vertebrae in lumbosacral region) 2 cm lateral to mid spine; and there was no fracture found externally in all the 4 limbs."

P.W.10 preserved the internal organs and sample blood for chemical examination. P.W.9, Mr. Arunagiri, Scientific Officer at Regional Forensic Science Laboratory, examined the internal organs and issued Ex.P-3, viscera report. After perusing Ex.P-3, Viscera Report, P.W.10 issued Ex.P-4, Postmortem certificate. She has further opined that the death of the deceased was due to shock and haemorrhage due to rupture to aorta. She further opined that the said injuries found on the body of the deceased could have been caused by hitting with a stone like M.O.1.

(i) P.W.17, during the course of investigation, arrested the accused at 10.00 a.m. on 05.02.2014 at Kottampatti bus-stop, in the presence of P.W.13 and another. On such arrest, the accused made a voluntary confession, in which he disclosed the place where he had hidden the weapon of crime, in pursuance of the same, the accused took the police party and the witnesses to the said place and produced a stone (M.O.1) and P.W.17 recovered the same under Ex.P-7, Mahazar, in the presence of same witnesses. Thereafter, P.W.17 forwarded the accused to the Court for judicial remand. He also forwarded the material object to the court. At that juncture, since P.W.17 was transferred, further investigation was done by his successor-P.W.18. P.W.18, examined the doctors and collected medical records. On completing the investigation, P.W.18 laid charge sheet against the accused under Sections 294 (b), 323 and 302 IPC.

3) Based on the above materials, the trial court framed as many as three charges, as detailed in the first paragraph of this judgment, against the accused. The accused denied the same. In order to prove the charges, on the side of the prosecution, as many as 18 witnesses were examined, 12 documents were exhibited and one material object was marked.

4) Out of the witnesses examined on the side of the prosecution, P.Ws.1 to 7 have claimed that they witnessed the occurrence. They have vividly spoken about the entire occurrence. They have stated that in the quarrel, the accused fisted the deceased on his chest and after the deceased had fallen down, he picked-up M.O.1 stone, which was lying there and hit him on his chest and when P.W.1 intercepted, she was attacked by the accused with hands, on her face, and thereafter he fled away from the scene of occurrence. P.W.1 has further stated that immediately



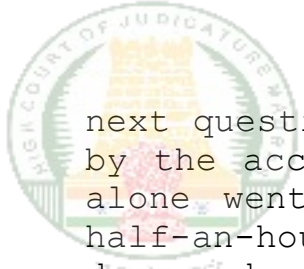
she went to the respondent police station and made a complaint. P.W.8 has spoken about the preparation of observation mahazar and rough sketch, in his presence. P.W.9, Scientific Officer, has stated that he examined the internal organs of the deceased, which revealed that there was neither poison or alcohol. P.W.10, Dr.Umamaheshwari, has spoken about the postmortem conducted on the body of the deceased and the final opinion recorded by her as to the death of the deceased. P.W.11 is an Officer from the Tamil Nadu Electricity Board and he has stated that during the relevant time, at the place of occurrence, street lights were burning and there was enough light and there was no failure of electricity. P.W.12 has spoken about the treatment given to P.W.1. According to her, she found a contusion, measuring 2 x 1 cm on her right cheek and there was no other external or internal injury and she issued Ex.P-6, Accident Register. P.W.13, Village Administrative Officer, has spoken about the arrest of the accused, disclosure statement made by the accused and the consequential recovery of M.O.1, stone, produced by the accused. P.W.14, Police Constable, has stated that he handed over Ex.P-1, Complaint and Ex.P-9, F.I.R., to the learned Judicial Magistrate. P.W.15 is yet another Police Constable and he has stated that he took the dead body to the Hospital and handed over the same for conducting postmortem. P.W.16, Sub-Inspector of Police, has spoken about the registration of the case on receipt of complaint from P.W.1 and sending P.W.1 to the hospital for treatment. P.Ws.17 and 18 are Inspectors of Police and they have spoken about the investigation done by them and the final report filed against the accused.

5. When the above incriminating materials were put to the accused under Section 313 of the Code of Criminal Procedure, he denied the same as false. On his side, the accused examined two witnesses, as D.W.1 and D.W.2 and marked the requisition of the Investigation Officer to the Hospital Authorities, as Ex.D-1. D.W.1 Dr.Abirami has stated that on 05.02.2014 at about 3.15 a.m., when she was on duty as an Assistant Civil Surgeon at the Government Hospital, Thuraiyur, the dead body of the deceased was brought to the said hospital for being kept in the mortuary. But, she was not able to speak about the same, because of destruction of records relating to the same. D.W.2, a resident of Big Street, B-Mettur, has stated that on 04.02.2014 around 8.00 p.m., when she was standing near the tea shop of one Chandrasekar, the deceased and his wife came to the house of the accused, which is situated just opposite to the said tea shop, the deceased and P.W.1 questioned the accused as to how he could come to their street, that too in front of their house, this resulted in a quarrel and in that quarrel, the deceased attempted to attack the accused and when he and others rushed to the place of occurrence, the deceased, on his own fainted, fell down and died. In effect, his

<https://www.mca.gov.in/hcsc/chiefs>

the accused did not attack the deceased at all.

6. Having considered all the above, the trial Court found the accused guilty, convicted and sentenced him as detailed in the first paragraph of this Judgment. Aggrieved by the same, the appellant is before this Court with this appeal.

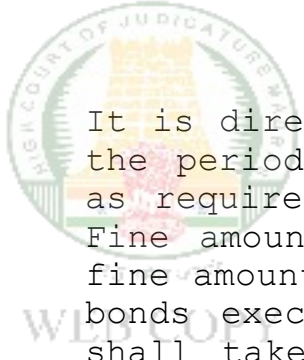


next question that follows is as to what was the offence committed by the accused, by his act? It is in evidence that the deceased alone went in search of the accused to question him as to why half-an-hour or an hour before he had come to the house of the deceased. On finding the accused near the Village Panchayat Board Office, it was only the deceased who went near him, questioned him and quarrelled with him. Going by the natural human conduct, we are able to infer that there would have occurred quarrel between the accused and the deceased and the accused retaliated, by abusive words. In that fight, it is unfortunate that the accused had fisted the deceased and as a result, the deceased fell down. As spoken by P.Ws.1 to 7, the accused had taken a small stone (pebble) found in the place of occurrence with which he had hit the deceased on his chest. Though the accused would not have intended to cause the death of the deceased and though he would not have intended to cause such bodily injury which is sufficient in the ordinary course of nature to cause the death, certainly, we could conclude that the accused had the knowledge that his act of hitting the deceased on his chest with a stone is imminently dangerous and that by all probabilities it will result in the death of the deceased. Thus, the act of the accused would fall squarely within the 4th limb of Section 300 IPC. At the same time, as we have already narrated, the act of the accused would fall within the 4th exception to Section 300 IPC. Therefore, the accused is liable to be punished only for offence under Section 304(ii) IPC.

11. Now turning to the quantum of punishment, at the time of occurrence, the accused was hardly aged about 32 years. He has a family to take care of. He has no bad antecedents. The occurrence was not a premeditated one. The accused was also not armed with any weapon and out of a sudden quarrel, at the instance of the deceased, the accused had attacked the deceased. Having regard to all these mitigating and aggravating circumstances, we are of the view that sentencing the appellant/accused to undergo rigorous imprisonment for five years and imposing a fine of Rs.20,000/- for the offence under Section 304(ii) IPC would meet the ends of justice. We are also of the view that on realisation of the fine amount, the same should be paid to P.W.1, as compensation.

12. Insofar as the conviction and sentence imposed under Sections 294(b) and 323 IPC are concerned, we are of the view that they need to be confirmed.

13. In the result, the appeal is partly allowed, the conviction and sentence imposed on the appellant/accused under Section 302 IPC are set aside and instead, he is convicted under Section 304(ii) IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.20,000/- (Rupees twenty thousand only), in default to undergo rigorous imprisonment for six weeks. The conviction and sentence imposed on the appellant/accused under Sections 294(b) and 323 IPC are confirmed.



It is directed that all the sentences are to run concurrently and the period of sentence already undergone shall be given set-off, as required under Section 428 of the Code of Criminal Procedure. Fine amount, if any, already paid shall be adjusted towards the fine amount now imposed. If the appellant/accused is on bail, bail bonds executed by him shall stand cancelled and the trial court shall take steps to secure his presence and commit him to jail undergo the remaining period of sentence.

Sd/-

Assistant Registrar[Writs]

/True copy/

Sub Assistant Registrar/

To

- 1.The Principal District and Sessions Judge,
Tiruchirappalli Division, Tiruchirappalli.
- 2.The Judicial Magistrate, Thuraiyur.
- 3.Do-Through the chief Judicial Magistrate,Trichy
- 4.The Superintendent, Central prison,Trichy
- 5.The Inspector of Police,
Uppilipalayam Police Station,
Thuraiyur, Trichy District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Palanivelayutham,Advocate,Sr.No.69547

GB

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JUDGMENT IN
CRL.A. (MD) No.324/2015
Dated:15.11.2016