

Bail Slip

Mr.Manivannan S/o.Perumal First accused in SC.No.9/2006 on the file of Principal Sessions Judge, Tiruvallur was enlarged on bail in MP.No.1/2008 in Crl.A.No.274/08 by the Honble High Court Madras

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.274 of 2008

Manivannan ... Appellant

Vs.

State rep. by
Inspector of Police,
G-3, Puzhal Police Station,
Chennai. ... Respondent

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code to set aside the order of conviction and sentence passed in S.C.No.9 of 2006 dated 20.03.2008 by the Principal Sessions Court, Thiruvallur.

For Appellant : Mr.V.Sambamurthy

For Respondent : Mr.M.F.Shabana
Government Advocate (Criminal side)

JUDGMENT

The Criminal Appeal is filed under Section 374 (2) of Criminal Procedure Code praying to set aside the order of conviction and sentence dated 20.03.2008 passed by the Principal Sessions Judge, Thiruvallur in SC.No.9 of 2006.

2. A1, in S.C.No.9 of 2006 on the file of the Principal Sessions Judge, Thiruvallur, is the appellant herein. He stood charged for the offence under section 148, 324, 302 r/w 149 IPC and and 302 IPC. The Trial Court found the appellant guilty of offence under section 304(ii) IPC and sentenced him to undergo R.I. for seven years and acquitted him from all other charges and also acquitted other accused from all the charges. Aggrieved against the above said conviction and sentence, the appellant is before this Court with the present appeal.

3. The brief facts of the case is as follows:

The deceased in this case is one Barnabas is the father-in-law of PW1. PW1 married to one Edwin, who is the son of the deceased. Edwin had a illicit intimacy, with A2 and settled down in A2's house, and not visiting the deceased house. On the date of occurrence, there was a quarrel between A2 and Edwin, in the house of A2, on hearing the news, the deceased, PW1 and PW3 to 5, went to the scene of occurrence. At that time, A2 gave a knife to A1, who is the brother of A2, and asked him to stab PW1, when the deceased tried to intervene, A1 attacked the deceased with knife in the chest and other accused attacked other witnesses namely PW2 to 5. Then the deceased and other injured witnesses were taken to Stanley Medical College and Hospital, Chennai. PW15, Doctor working in the Stanley Medical College and Hospital had received the body of the deceased and declared him dead, and he also examined PW2 and PW3 and found injuries on them and issued Accident Register to that effect. Then PW1 went to the respondent-Police and lodged a complaint at 5.30 a.m. PW16-Inspector of Police/respondent on receipt of the complaint registered a case in Crime No.71 of 2002, for the offences under Section 147,148,323,324 and 302 IPC and prepared First Information Report. Thereafter, Inspector of Police went to the scene of occurrence at about 6.30 a.m. and prepared observation Mahazar and a rough sketch. He went to the Stanley Medical College, conducted inquest on the dead body in presence of Panchayatars and recorded the statement of other witnesses, and prepared inquest report, also recovered blood stained clothes of the deceased, then sent the body for postmortem. On 22.04.2002, at about 4.30 p.m. PW16 arrested A1, A2 and A3. On such arrest, the A1 voluntarily gave a confession and based on the same, he recovered material objects and the same was sent it to the Forensic Department for examination, then PW16 handed over the investigation to PW17. In the meantime, PW9, a doctor working in the Stanley Medical College and Hospital conducted the post-mortem autopsy on the dead body and found the following injuries:

Blood strains and clots clinching to the injury and on wiping it, An elliptical spindle shaped Gaping stab wound seen on front of Right lower chest close to xiphi sternal area, lateral to midline 0.5 cms and 6 cms inner to right mid clavicular line measuring 3 x

1cm x organ deep. Both Angles and margins are clean cut. On further dissection, it has entered Right diaphragm and Right lobe of Liver 3.5 cms.depth and is directed forwards, backwards and inwards. Abdominal cavity contained 1000 ml of fluid blood. Hyoid bone - Intact. Heart - Few Ml of fluid blood present in all chambers coronaris patent. Lungs - C/s.pale. Stomach - 250 gms. partly digested cooked rice particles present. Mucosa - Pale. Liver, Spleen, Kidneys - c/s.pale. Bladder - 50ml of urine present. Brain - c/s pale. Opinion: The deceased would appear to have died of stab injury to the liver, (visera preserved for chemical analysis).

4. The doctor was of the opinion that the deceased appeared to have died due to stab injury in the liver and issued postmortem certificate. PW17-Inspector of Police recorded the statement of the Doctor and other witnesses and after completion of the investigation, he filed a charge sheet.

5. Based on the above incriminating materials, the Trial Court framed charges as mentioned earlier, the accused denied the same. In order to prove this case, prosecution examined 17 witnesses, marked 25 exhibits and 4 material objects.

6. Out of the 17 witnesses examined, PW1, is the eye witness to the occurrence, she is the Daughter-in-law of the deceased. According to her, on 19.04.2002 at 8.30 p.m., she heard the news that there was a quarrel between A2 and her husband. Hence, PW1, deceased and PWs 2 to 5 went to the house of A2. At that time A2 instigated A1 to attack PW1. When the deceased interfered, A1 attacked the deceased and other accused attacked the other witnesses. Immediately, they took the deceased and other injured persons to the hospital. PW2 is the wife of the deceased. According to her, at the time of occurrence, there was a quarrel between her son and A2. Hence all the witnesses went there along with the deceased, where A1 asked A2 to attack the PW1. When the deceased tried to prevent her, A1 attacked the deceased with the knife in the chest and other accused attacked the PW2 to 5 and all of them were taken to the hospital. PW3 is the niece of the deceased. She along with other eye witnesses went to the scene of occurrence. According to her, there was a quarrel at that time, all the

accused attacked her and A2 instigated A1 to attack PW1 and at that time when the deceased interfered, A1 attacked the deceased with a knife. PW4 is the Daughter of the deceased. She also went to the scene of occurrence. According to her, all the accused attacked her with wooden log in the right leg, left leg and A1 attacked the deceased with the knife and then they took the deceased to the hospital. PW5 is another daughter of the deceased. She is also an injured witness. According to her, when they went to the scene of occurrence after hearing the news of quarrel, all the accused attacked PW7 and A1 attacked the deceased with knife in the chest. PW6 is the Son-in-law of the deceased. After hearing the news of quarrel, he went to the scene of occurrence and took the deceased in auto to the Stanley Medical College and Hospital alongwith all other injured witnesses. PW7 is the witness to the observation mahazar. PW8 turned hostile. PW9 is the scientific Assistant working for Forensic Laboratory, who examined blood stained material objects and gave a report. PW10 is the Doctor, who conducted the post-mortem on the dead body and gave the postmortem report. PW11 is a hearsay witness. According to her, there was a quarrel between PW1 and A2. PW12 also a hearsay witness. PW13 turned hostile. PW14 is the Head Constable, who identified the body for post-mortem and handed over the body to the family of the deceased. PW15 is a Doctor in the Stanley Medical College and Hospital attending the casualty, who received the deceased and declared him dead and also examined the other injured witnesses and treated them for injuries. PW16 is the Inspector of Police, who registered the complaint, conducted investigations and arrested the accused, recorded the statement of witnesses and handed over the investigations to PW17. PW17 is the Inspector of Police, completed the investigations and filed a charge sheet.

7. When the above incriminating materials were put forth before the accused U/s.313 Cr.P.C., they denied the same and they did not examine any witnesses or marked any documents.

8. Considering all the above incriminating materials, the Trial Court convicted the appellant/A1 under Section 304(ii) IPC and acquitted other accused from all other charges. Challenging the above said conviction and sentence, the appellant is before this Court with this Criminal Appeal.

9. Heard the Mr.V.Sambamurthy, learned counsel appearing on behalf of the petitioner and Mrs.M.F.Shabana, Government Advocate (Criminal side) appearing on behalf of the respondents.

10. The learned counsel for the appellant would submit that there is a long delay in filing the FIR. Even though the occurrence took place at 8.30 p.m, complaint was lodged at 5.30 a.m in the morning. Apart from that all the eye witnesses are

only related to the deceased and in absence of any independent witness, the Court below ought not to have convicted the petitioner. The learned counsel also contended that the accident register in respect of deceased was not marked by the prosecution, the recovery witnesses had turned hostile, hence, the recovery cannot be believed.

11. Per contra, the learned counsel for the respondent would submit that there are five eye witnesses to the occurrence. Out of which two of them are injured witnesses and they are also taken along with the deceased to the hospital. Hence, there is no reason to disbelieve the eye witnesses. The delay in filing FIR has been properly explained by the prosecution. Only based on the confession of the accused, the material object has been recovered, and there is no reason to disbelieve the recovery also.

12. I have carefully considered the rival submissions made by the learned counsel for the petitioner as well as the respondents and perused the materials placed before the court.

13. There are five eye witnesses for the occurrence. PW1 is the daughter-in-law of the deceased. PW2 is the wife of the deceased. PW3 is the niece of the deceased. PW4 and 5 are daughters of the deceased. It is the consistent evidence of all the eye witnesses that, on the date of occurrence, there was a quarrel between A2 and Edwin, son of the deceased, who is said to have a illicit intimacy with A2. After hearing the news, all the eye witnesses along with the deceased went to the house of A2, and there was a quarrel, during that quarrel, A1 tried to attack PW1, when the deceased interfered, he attacked the deceased in the chest and caused injuries. It is the evidence of the other eye witnesses that other accused also attacked PW2 and PW4. Thereafter, PW6, Son-in-law came into the scene and took the deceased to the Stanley Medical College and Hospital alongwith other injured eye witnesses, where the deceased was declared brought dead. The evidence of the Doctor-PW15, also corroborate the evidence of eye witness and Accident Register of the injured witness marked as P16, 17 and 18 would also show the other eye witnesses were also injured. Hence the presence of eye witnesses on the scene of occurrence cannot be doubted. It is the consistent evidence of all the eye witnesses that when A1 tried to attack PW1, the deceased interfered and A1 has stabbed the deceased in the chest with a knife caused injury, which is ultimately proved fatal.

14. In the above circumstances, there is no reason to disbelieve the eye witnesses, and it cannot be rejected on the ground that they are related to the deceased. The Trial Court after considering the evidence had come to a conclusion that A1 attacked the deceased with knife with knowledge that inflicting

such injury on the liver is likely to cause death, but he acted without any premeditation or intention to cause the death or to cause such bodily injury as that was likely to cause death and convicted A1 under Section 304(ii) IPC to undergo seven years rigorous imprisonment. I find no illegality or perversity in the finding of the Trial Court, and there is no reason to interfere in this appeal.

15. So far as sentence is concerned, it is not a premeditated murder, and the appellant does not have any intention to cause death of the deceased. The appellant is a poor person and has no bad antecedents and he has a change to reform. Taking into consideration of the facts and circumstances, the appellant is sentenced to undergo three years rigorous imprisonment.

16. In the result, the Criminal Appeal is partly allowed. The conviction of Appellant under Section 304(ii) IPC is confirmed, and the sentence is modified to three years. The Trial Court is directed to set off the period of sentence already undergone. The Trial Court is also directed to take steps to remand the appellant, who has to undergo the remaining sentence, if any.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Sessions Judge,
Thiruvallur.
2. The Chief Judicial Magistrate Tiruvallur
- 3.The Sessions Judge, Chengalpattu
- 4.The District Munsif Cum Judicial Magistrate
Thiruvottiyur
- 5.The Superintendent Central Prison Puzhal

6.The Metropolitan Magistrate, No.VIII
George Town Chennai

7.The Chief Metropolitan Magistrate
Egmore Chennai (for Information)

8.The District Collector Tiruvallur

9.The Director General of Police Tamil Nadu
Chennai

10. The Inspector of Police
G-3 Puzhal Police Station Chennai

11. The Public Prosecutor,
High Court of Madras.

Criminal Appeal No.274 of 2008

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