

Bail Slip

The Appellants/Accused Nos. 1 to 4 viz., 1 Suresh, 2 Venkatesan 3 Chithra and 4 Gundukanni @ Saraja are directed to be released on bail as per order of this Court, dt.08.06.2016 and made in Crl.MP.No.4875 of 2016 in Crl.A.No.308 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.01.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU
and
THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

CRL.A.No.308/2016

1. Suresh
2. Venkatesan
3. Chithra
4. Gundukanni @ Saroja Appellants/Accused 1 to 4

Vs

The State rep by
The Inspector of Police,
Jayamkondam Police Station,
Jayamkondam, Ariyalur District
Cr.No.604 of 2012 Respondent/Complainant

Appeal filed u/s.374 (2) Cr.P.C against the judgment in S.C.No.68 of 2013 dated 30.03.2016 on the file of Principal District and Sessions Judge, Ariyalur.

For Appellant : Mr.John Sathyan for
Mr.K.K. Pazhanivel
For Respondent : Mr.P. Govindarajan
Addl. Public Prosecutor

JUDGMENT

[Judgment of the court was delivered by S.NAGAMUTHU, J.]

The appellants are the accused 1 to 4 in S.C.No.68 of 2013 on the file of learned Principal District and Sessions Judge, Ariyalur. They stood charged for the offence punishable under Sec.302 IPC. By Judgment dated 30.03.2016, the trial Court

convicted all the accused under Sec.302 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.2,500/- each, in default, to undergo simple imprisonment for three months. Challenging the said conviction, the appellants have come up with this appeal.

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

(a) The deceased in this case was one Anandakrishnan. His wife is Mrs.Rani. The accused 1 and 2 are brothers; the 3rd accused is the sister and the 4th accused is the mother of Mrs.Rani. Mrs. Rani was living with the deceased at Kallathur village. These accused also belong to the same village. It is alleged that the mother of the deceased, who was all along residing at Coimbatore, died and her dead body was brought to Kallathur village for cremation. The deceased spent huge amount for the funeral of the deceased, which was objected by his wife Mrs.Rani. This resulted in a domestic quarrel between Rani and the deceased. It is alleged that at that time, all these accused came to the house of the deceased, all armed with weapons. A.1 was armed with wooden spade handle; A.2 and A.4 were armed with wooden logs and A.3 was armed with wooden reaper.

(b) It is further alleged that A.1 attacked the deceased with spade handle on the head of the deceased. A.3 attacked the deceased with wooden reaper on his head once. The deceased fell down. Thereafter, the accused 2 and 4 attacked the deceased with wooden logs. The occurrence was witnessed by P.Ws.1 to 4. They raised alarm. All the four accused ran away from the scene of occurrence. Thereafter, P.W.1 and others took the deceased to the Government Hospital, Jayamkondam at 5.00 p.m on 02.11.2012.

(c) Dr.Ravisankar (P.W.16), a Senior Civil Surgeon of the Government Hospital, Jayamkondam, examined the deceased. At that time, the deceased was unconscious. The doctor was told that four persons had attacked the deceased with spade handle at 5.00 p.m at Kallathur Main Road and he was brought by his brother. P.W.16 Doctor noticed two injuries on the body of the deceased and has mentioned as

"(1) A lacerated injury measuring 15 cms on the occipital area of the head (2) an Abrasion measuring 4 cms on the forehead". P.W.16 admitted him in the hospital for treatment. Thereafter, it appears that the doctor, who treated the deceased, advised him to take to Government Medical college, Thanjavur. Accordingly, he was taken, but on his way, the deceased breathed his last. The body was brought back to the Government Hospital, Jayamkondam and kept in the Mortuary. P.W.1, thereafter, went to Jayamkondam Police Station and made a complaint at 9.30 p.m.

(d) P.W.18 the then Special Inspector of Police registered

a case in Cr.No.604/2012 for the offence punishable under Sec.302 IPC against all the four accused. Ex.P.1 is the complaint and Ex.P.6 is the First Information Report. He forwarded both the documents to Court, which were received by the learned Judicial Magistrate at 1.30 a.m on 03.11.2012.

(e) P.W.19, the then Inspector of police, took up the case for investigation and proceeded to the place of occurrence, prepared an observation Mahazar and a Rough Sketch in the presence of witnesses. He examined many witnesses including P.Ws.1 to 4. On going over to the hospital, he conducted inquest on the dead body of the deceased and forwarded the same for Post Mortem.

(f) P.W.15, Dr.Ravichandran, Assistant Surgeon, Government Hospital, Jayamkondam, conducted autopsy on the dead body of the deceased on 03.11.2012 at 12.30 p.m and he found the following injuries:

External Injuries:

- 1, Sutured lacerated wound of 3 CM in linear length present over forehead - @ Midline.
2. A lacerated wound over (left) parietal region 8 cm x 4 cm x bone depth.
3. A lacerated wound 3 x 3 cm over Right shoulder region.
4. Contusion over Right temporal region - ? approx 8 x 4 cm
5. Abrasion over left knee ant aspect 4x3 cm.

Internal Examination:

of Neck: Hyoid bone intact.

Thorax: No Fracture ribs on both sides:

Lungs - both sides lungs - were congested; Heart - all chambers empty.

Abdomen: Stomach 200 grams partially digested food material with no specific odour liver spleen, kidneys all are congested; Bladder empty. Skull -

Fracture - Communicated by be present at Right temporal bone squamous part.

Brain: Blood clots massive size of 10x6 cm over right. Temporal lobe of brain

Post Mortem concluded @ 1.30 PM on 03/11/12.

Death would appear to have occurred 12 to 24 Hrs prior to autopsy.

Opinion as to cause of death.

(a) Reserved pending report of

(b) The deceased would appear to have died of hemorrhage and shock due to Head injury - injury to Brain.

Ex.P.4 is the Post Mortem Certificate. The doctor opined that the death of the deceased was due to shock and hemorrhage due to head injuries.

(g) P.W.19, during the course of investigation, recovered blood stained clothes from the body of the deceased and forwarded the same to the Court. During the course of investigation, at 5.00 p.m, on 03.11.2012 at Nallathur Main Road, he arrested all the four accused in the presence of the witnesses. On such arrest, A.1 gave voluntary confession, in which, he disclosed the place, where he had hidden the wooden reaper, wooden logs and spade handle. In pursuance of the same, he took the police and the other witnesses to the place of hide out and produced the material objects M.Os.1 to 3. P.W.19 recovered the same under a Mahazar. On returning to the Police Station, he forwarded the accused to Court for judicial remand and handed over the material objects to Court. At his request, the material objects were sent for chemical examination. The report revealed that there were human blood stains on all the material objects. P.W.19, on completing the investigation, laid charge sheet against the accused.

3. Based on the above materials, the Trial Court framed lone charge against all the accused for the offence punishable under Sec.302 IPC. (There was no charge against any of the accused, invoking Sec.34 IPC) The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 19 witnesses were examined and 11 documents and 3 material objects were also marked.

4. Out of the said witnesses, P.Ws 1 to 4 are eyewitness to the occurrence and they have stated that the deceased was attacked by these four accused. P.W.1 has stated that A.2 only held the deceased and he did not attack him at all. P.W.5 to P.W.10, P.W.12 and P.W.13 have stated that they came to the place of occurrence after the occurrence was over and found the deceased with injuries. P.W.11 has spoken about the preparation of observation mahazar and rough sketch. P.W.14 has spoken about the arrest of the accused and the confession made by A.1 and the consequential recoveries of M.Os.1 to 3. P.W.15 the Assistant Doctor, working at Government Hospital, Jayamkondam has spoken about the postmortem conducted and his final opinion regarding the cause of death. P.W.16 the Doctor has spoken about the admission of the deceased at Government Hospital at Jayamkondam. P.W.17, a Head Constable has spoken about the handing over of first information report to the learned Judicial

Magistrate at 1.30 a.m on 03.11.2012. P.W.18 Special Sub Inspector has spoken about the registration of the case on the complaint of P.W.1. P.W.19 has spoken about the investigation done and final report filed.

5. When the above incriminating materials were put to the accused u/s.313 Cr.P.C., they denied the same as false. Their defence was a total denial. However, they did not choose to examine any witness nor mark any document on their side. Having considered all the above, the Trial Court convicted the accused. Challenging the said conviction, the appellants have come up with this appeal.

6. We have heard the learned Counsel for the appellants and the learned Additional Public Prosecutor appearing for the State. We have also perused the records carefully.

7. Before going into the rival submissions made before us, let us say a few words about the charges framed against the accused by the trial Court. According to the opinion of the doctor, as found in the postmortem certificate, the death of the deceased was caused by the head injuries. According to the further case of the prosecution, all the accused attacked the deceased with weapons on his head. But it is not known as to who caused the fatal injury. From the final report, it is clear that all the four accused participated in the occurrence. When that be so, it is not known as to why the trial court had not chosen to charge the accused for the offence punishable under Sec.302 read with 34 IPC against all the accused. In our considered view, though in the absence of a charge under Sec.34 IPC, the accused could be convicted by invoking Sec.34 IPC provided there is no likelihood of prejudice to the accused, in this case, the trial court had not even chosen to invoke Sec.34 IPC, instead the Court has convicted all the accused under Sec.302 IPC, though there is no specific evidence as to who caused the death of the deceased.

8. Now, let us go into the rival submissions. The alleged occurrence in this case had happened at 5.00 p.m on 02.11.2012. The deceased was taken immediately to Government Hospital, Jayamkondam. P.W.16 had examined him at 5.00 p.m itself. Therefore, it is inferable that the occurrence would have taken some time before 5.00 p.m. The learned counsel for the appellant also pointed out that certain interpolations have been made in Ex.P.5 the Accident Register. The deceased was brought by his brother to the hospital. The deceased was unconscious at that time. Therefore, the brother of the deceased, who brought the deceased had made statement to the doctor, which was entered in Ex.P.5. The doctor had originally mentioned as though the deceased was attacked by seven persons, it was then corrected as

4. In respect of this correction found in Ex.P.5, the accused wanted to elicit few more facts. Therefore, at his request, P.W.16 was recalled before this Court and he was cross examined by the defence counsel. During such cross examination, P.W.16 admitted that there were corrections in Ex.P.5 in respect of number of assailants. But he has explained to Court that the correction was made by him immediately. He has explained that when he was informed about the number of assailants, since there was noise, he was not able to hear properly. Therefore, he wrote it as "7" and after he was informed that the assailants were only "4", he immediately corrected.

9. We have carefully looked into Ex.P.5. It is not as though only one correction has been made. It appears that originally it was mentioned as "7", but then it was corrected as "2" and then as "4". At any rate, the explanation offered by the Doctor P.W.16 is difficult to be believed. As it is doubted by the learned counsel, we do have doubt that the correction has been made by P.W.1 conceding to the request of the police. This creates initial doubt in the case of the prosecution in respect of the number of assailants.

10. After the deceased was declared dead by the doctor, P.W.1 had gone to the police station and made a complaint at 9.30 p.m. The distance between the police station and the Court must be a very short one because the police station and the court are only in Jayamkodem, which is very small town. But absolutely there is no explanation as to why the first information report had reached the hands of the learned Magistrate with the delay of four hours. This creates further doubt in the case of the prosecution.

11. Now, turning to the evidences of P.Ws.1 to 4, we find that there are lot of contradictions. There is, of course, consistency that A.1 attacked the deceased with spade handle. But, in respect of others, we find that there are lot of contradictions. P.W.1 has stated that A.2 only held the deceased and he did not attack the deceased. Others have also stated that A.1 attacked the deceased. It is stated by P.W.1 that A.4 attacked the deceased with wooden log, whereas, it is the evidence of other witnesses that the deceased was attacked with reaper. The evidence of these witnesses would indicate as though each one of the accused had caused single injury one after the other. In our considered view, the occurrence would not have happened in such a fashion. The artificiality of the case is exposed by the narration of the facts by the witnesses as discussed above. Thus, the inconsistency between P.Ws 1 to 4 also creates doubt in the case of the prosecution.

12. Above all, the medical evidence also does not support

the case of the prosecution. P.W.16 noted down only two injuries on the body of the deceased, whereas, the doctor (P.W.15), who conducted autopsy on the body of the deceased, has mentioned about few more injuries. P.W.15 has further stated that he found sutured wound, but there is no evidence as to who sutured the wounds and what are all the medical records available. There is no corresponding injury in respect of the alleged assault made by A.2 to A.4. However, the fact remains that as against A.1, there is consistency in the evidence of P.Ws.1 to 4, which is duly corroborated by medical evidence.

13. From the foregoing discussions, it is crystal clear that the participation of A.3 and A.4 in the occurrence is highly doubtful. As we have already pointed out that A.4 is the mother-in-law and A.3 is the sister-in-law and A.1 and A.2 are the brother-in-laws of the deceased. The wife of the accused, who was allegedly quarreling, has not been examined either as witness or cited as an accused. The motive, which is projected by the prosecution, has not been proved at all. According to the case, the deceased had brought his mother's body for cremation at the Kallathur village. It was only the wife of the deceased, who had some grievance over the same, which resulted in a quarrel. It is not explained as to why these four accused should go to the house of the deceased. Going by natural human conduct, from the various circumstances available on record, we are able to infer that there would have been quarrel going on between the deceased and his wife and A.1 alone would have gone there to question the same.

14. P.W.19 has admitted during further cross examination before this Court, on being recalled, that during the course of investigation, the accused told him that the deceased attempted to attack A.1 with "Aruvamanai" and only to protect himself, he attacked the deceased. Though this was informed to P.W.19, P.W.19 did not make any investigation to find out the truth of this statement. P.W.19 has submitted that he did not investigate this statement at all. From this statement made by the accused at the earliest opportunity, we are of the view that in the quarrel between the deceased and his wife, A.1 had intervened and at that time, there would have been quarrel and in that quarrel, the deceased had made an attempt to attack A.1 with "Aruvamanai" and in retaliation, A.1 attacked the deceased. Thus, it is clear that it was A.1, who caused the death of the deceased and A.2 to A.4 would not have attacked the deceased at all. We are not prepared to believe the evidence of P.W.1 to P.W.4 as against A.2 to A.4.

15. Thus, having come to the said conclusion, now we have to examine as to what was the offence committed by the accused

by causing the death of the deceased.

16. As we have already pointed out, there was no motive for the first accused. After all, the deceased was his sister's husband and the deceased and Rani were living together. Since there was a quarrel between the deceased and his wife, as the brother-in-law of the deceased, A.1 had questioned the deceased, which resulted in a quarrel and in that quarrel, the deceased had attempted to attack the deceased with " Aruvamanai ". In retaliation, A.1 had therefore, taken a spade and attacked the deceased, which resulted in his death. Thus, though the act of the deceased would fall within the third limb of Section 300 of IPC, the same would fall within the Exception IV to Section 300 IPC. A.1 is therefore liable to be punished for the offence punishable under Sec.304 Part II IPC.

17. Now turning to the quantum of punishment, the accused, at the time of occurrence, was aged about 32 years. He is a Post Graduate, having M.Sc, B.Ed., degrees to his credit and has no criminal antecedents. The occurrence is not a premeditated one. He is working as Teacher in a School. Having regard to the aggravating circumstances, we are of the view that sentencing him to undergo rigorous imprisonment for five years and directing him to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for one month would meet ends of justice.

18. In the result,

(i) The appeal is partly allowed.

(ii) The conviction and sentence imposed by the learned Principal District and Sessions Judge, Ariyalur in S.C.No.68 of 2013 on A.2 to A.4 are set aside and they are acquitted from all the charges. The fine amount, if any, paid by them, shall be refunded.

(iii) The conviction and sentence imposed on A.1 for the offence punishable under Sec.302 IPC are set aside and instead, A.1 is convicted for the offence punishable under Sec.304 Part II IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- (Rupees one thousand only), in default, to undergo rigorous imprisonment for one month.

(iv) The period of sentence already undergone by the accused shall be set off under Section 428 Cr.P.C.

(v) The fine amount paid shall be adjusted and the balance of fine amount, if any, shall be refunded to A.1.

Note to the Registry: It is directed that the further evidence of P.Ws.16 and 19, recorded by this Court, shall form part of the record and the same shall also be sent back to the trial court by retaining copies of the same.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr
To

1. The Inspector of Police,
Jayamkondam Police Station,
Jayamkondam,
Ariyalur District
2. The Principal District and Sessions Judge, Ariyalur
3. The Public Prosecutor, High Court, Chennai.
- 4 The Judicial Magistrate,
Jeyamkondam
- 5 do thro the Chief Judicial Magistrate
Ariyalur
- 6 The Superintendent
Central Prison, Trichy
- 7 The Superintendent
Central Prison, for Women,
Trichy

Copy to: The Section Officer
Criminal Section,
High Court, Madras

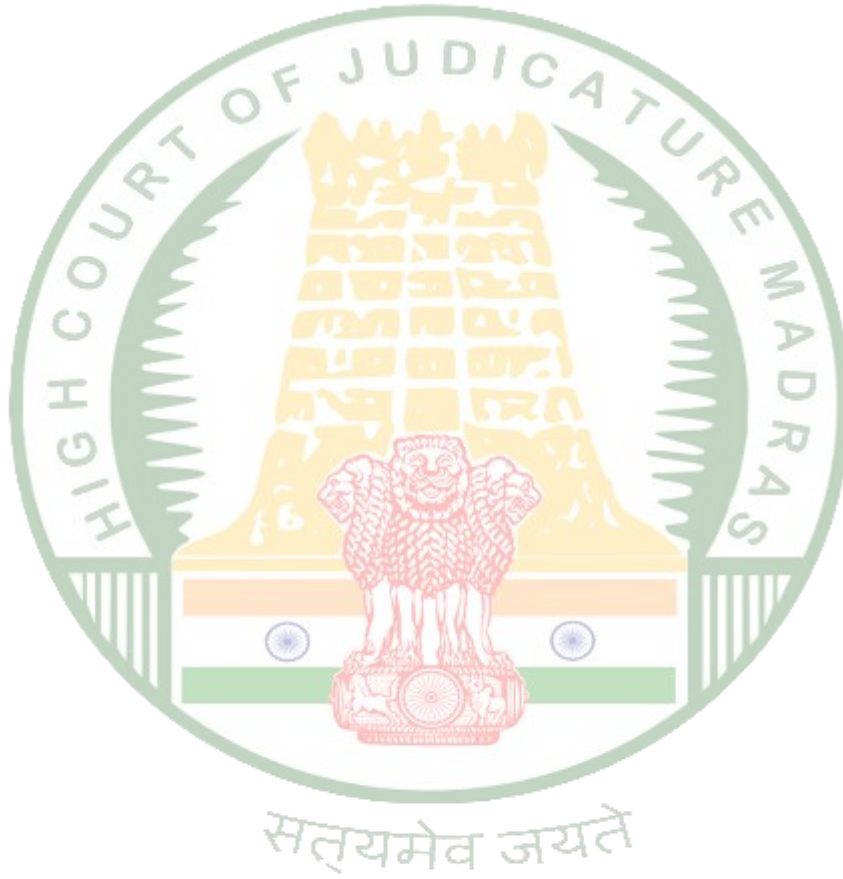
8 The District Collector Ariyalur

9 The Director General of Police, Mylapore, Madras 4

+lcc to Mr.C.Prabakaran, Advocate, S.R.No.1087

pa (CO)
md(02/02/2017)

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