

Bail Slip

The Appellant/Accused namely Sathiyamurthy S/o.Rajagopal be and hereby was directed to be released on bail vide order dt.26/7/2007 in MP.No.1/2007 in CrI.A.640/2007.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE:03.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrI.A.No.640 of 2007

Sathiyamurthy

... Appellant

Vs.

State rep. By
The Inspector of Police,
Parangipetti Police Station,
Cuddalore District.
(Crime No.53 of 2006)

... Respondent

Prayer: Criminal appeal preferred under Section 374(2) Cr.P.C., against the judgment and conviction passed in S.C.No.410 of 2006 by order dated 29.01.2007 on the file of the Learned Sessions Judge, Cuddalore Division, Cuddalore and to set aside the same.

For Appellant : Mr.N.Arun Kumar

For Respondent : Mr.R.Sekar
Government Advocate

JUDGMENT

The first accused, in Sessions Case No.410 of 2006, on the file of the learned Sessions Judge, Cuddalore Division, Cuddalore, is the appellant herein. Totally there are two accused, A1 stood charged for the offence under Section 302 IPC and A2 stood charged for the offence under section 302 IPC read with 114 I.P.C. and convicted the first accused under Section 304(Part-I) IPC and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs. 50,000/- in default, to undergo, rigorous imprisonment for one year and acquitted the second accused from the charges levelled against him. Out of the fine amount of Rs.50,000/-, Rs.45,000/- is directed to be paid as compensation to P.W.2 Sumathra under Section 357 of Cr.P.C. Challenging the above said conviction and sentence, the appellant/1st accused is before this Court with this Criminal Appeal.

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

(i) The deceased in this case one Sridhar is the son of P.W.1. P.W.2 is his wife and P.W.3 is the son of the deceased. A-2, in this case, is the mother of the accused and both the A1 and deceased were involved in many theft cases and there was a quarrel between themselves in sharing the looted booty and they were not in talking terms. In the above circumstances, the deceased asked P.W.2, his wife not to have any contact with the accused family, despite the same, P.W.2 was in talking terms with the A-2.

(ii) On 11.03.2006, the deceased found that his wife has not at home, and hence he went to the house of the second accused and enquired about his wife. At that time, there was a wordy quarrel between them, and the deceased beaten the second accused with wooden log. On seeing the same, the first accused attacked the deceased with Aruval several times on his chest and all over the body and the deceased died on the spot. Then P.W.1, the father of the deceased has given a compliant before the respondent Police Station.

(ii) P.W.23, the Inspector of Police, working in the respondent police station, on receipt of the complaint from P.W.1, registered a case in Crime No.53 of 2006, for the offence under Section 302 IPC, prepared a First Information Report [EX.P27] and sent the same to the Judicial Magistrate Court and copies of the same to the higher officials. He commenced investigation, proceeded to the scene of occurrence, prepared an Observation Mahazar[Ex.P2], rough sketch [Ex.P29]. Thereafter, he conducted inquest over the dead body in the presence of panchayators and prepared Inquest Report[Ex.P31], and then sent the dead body to the Government Hospital for postmortem autopsy. He examined other witnesses and recorded their statements.

(iv) P.W.4, working as Senior Civil Assistant Surgeon in the Government Hospital, Portonovo, conducted post mortem autopsy on the dead body of the deceased and found the following injuries:-

External injury:

1. 3 inches X 2cm X 8 cm lacerated wound over the 4th left inter coastal space entering deep into thorax and upper peritoneal cavity and rupturing of heart and left lobe of liver.
2. 3 inch X 1 inch lacerated wound over the left elbow exposing muscles and bones.
3. 1 cm X 1 cm lacerated wound over the right little finger.
4. 1 cm X 1 cm lacerated wound over the left palm.

Internal Examination:

1. Organs pale, peritoneal cavity blood

stained, 4th left rib fractured, heart 250 grms rupture, 4cm X 2cm, lungs pale, hyoid bone-intact, stomach partially digested food 100 gms, liver 1.50kg left lob of liver puncher 3 X 1cm, spleen pale, kidney pale, intestine distended with gas, bladder empty, pelvis no fracture, no scalp injuries and fracture, membrane intact, brain 1250 gms, spinal column intact. Post Mortem completed at 3.00 hrs.

He is of the opinion that the deceased would appear to have died of shock due to injuries sustained during the assault. He issued postmortem certificate (Ex.P4).

(v) P.W.23, continued the investigation, on 12.03.2006 at about 11.00 a.m., he arrested the second accused and on such arrest, she voluntarily given confession and based on her disclosure statement[Ex.P32], P.W.23 seized M.O.4 blood stained vitcharuval and M.O.3 blood stained blue gray colour lungi of A1, M.O.7 blood stained brief. Then, he sent the second accused for Judicial custody. In the meantime, A1 has surrendered before the Judicial Magistrate Court, and P.W.23, took Police custody, and A1 has voluntarily given a confessions. Then, he examined the Doctor, who conducted postmortem autopsy and recorded his statement. Thereafter, he examined other witnesses, recorded their statements, and after completion of investigation, he laid charge sheet.

3. Based on the above materials, the Trial Court framed charges as mentioned above, and the accused denied the same as false. In order to prove its case, the prosecution examined as many as 23 witnesses, exhibited 36 documents and 7 material objects were marked.

4. Out of the said witnesses examined, P.W.1 is the father of the deceased. According to him, after the occurrence, he was informed that somebody attacked the deceased with aruval, and he died, thereafter P.W.1 given a complaint before the respondent police. P.W.2 is the wife of the deceased, she spoke about the involvement of A1 and the deceased in various theft cases and the quarrel between them. According to her, on the date of occurrence at about 7.30 p.m., there was a wordy quarrel between the accused and the deceased, the deceased beaten the second accused, and on seeing the same, the first accused attacked the deceased with Aruval and caused injury. P.W.3 is the minor son of the deceased. According to him, on the date of occurrence at about 7.30 p.m., there was a quarrel between the accused and deceased, and the deceased beaten A2, then A1 attacked the deceased with Aruval, immediately, the deceased was taken to the hospital where he died. P.W.4, the Sr. Civil Asst. Surgeon, Govt. Hospital, Portonovo, who conducted postmortem autopsy on the dead body of the deceased on 12.03.2006, and issued Postmortem Certificate and he was of the opinion that

the deceased died due to injuries sustained during the assault. P.W.5, Dr.Kesavan, Civil Asst, Surgeon, Govt. Hospital, Cuddalore, who examined A2 and found tenderness over her right arm, chest wall neck and he issued Ex.P5, Accident Register. P.W.6 to P.W.10 turned hostile. P.W.11 is the mother in law of the deceased. She spoke about the earlier quarrel between the accused and deceased regarding the sharing of stolen money. P.W.12 to P.W.16 turned hostile. P.W.17 is the photographer, who took photographs of the dead body and scene took place. P.W.18 is the Head Clerk working in the Judicial Magistrate Court, Portonovao. He sent the material objects to the Forensic Lab for chemical examination. P.W.19 is the Head Constable working in the respondent police station. He submitted the first information report to the Judicial Magistrate Court. P.W.20 a Head Constable working in the respondent police station. He identified the dead body for postmortem autopsy and after postmortem, he recovered the material objects from the dead body and then handed over the dead body to the relatives of the deceased. P.W.21 is the learned Judicial Magistrate, Chidambaram. He recorded the statement from the witnesses under Section 164 Cr.P.C. P.W.22 is the Doctor, who is working in the Government Hospital, Villupuram. He examined P.W.2 and admitted in the hospital as she consumed poison and given treatment. He also examined the second accused found some injuries on her and he has given report that all the injuries are simple injuries. P.W.23, the Inspector of Police working in the respondent police station. According to him, on receipt of the first complaint from P.W.1, registered the case, prepared first information report, commenced the investigation, proceeded to the scene of occurrence, prepared observation mahazar, rough sketch, examined the witnesses and recorded their statements, arrested the accused and remanded him to judicial custody, recovered the material objects, and examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., he denied the same as false. His defence was a total denial. The accused did not examine any witness and no document was marked on their side.

6. Having considered all the above, the Trial Court convicted and sentenced the accused for the offences as stated in the first paragraph of this judgment. Challenging the above conviction and sentence, the accused is before this Court with this appeal.

7. I have heard Mr.N.Arun Kumar, learned counsel appearing for the appellant and Mr.R.Sekar, learned Government Advocate appearing for the State and I have also perused the records carefully.

8. The learned counsel for the appellant contended that as many as eight eyewitnesses to occurrence have been turned

hostile, and except the interested and related witnesses, viz. P.W.2 Sumathra and P.W.3 Suvendhar, wife and son of the deceased, no other witnesses have spoken about the occurrence. Even in the evidence of interested witnesses, namely, P.W.2, the wife of the deceased and P.W.3 the son of the deceased, there are lot of contradictions and hence the presence of P.W.2 and 3 in the place of occurrence is doubtful. Considering the fact that P.W.2 has consumed poison at the time of occurrence and admitted in the hospital, the presence of P.W.2 at the time of occurrence is doubtful. The remaining witness is also a child witness, P.W.3, son of the deceased, considering his evidence, his presence is also doubtful. Disbelieving their evidence the trial Court acquitted the second accused but convicted the first accused, which is not maintainable in law. Hence, he prays for allowing this appeal.

9. Per contra, the learned Government Advocate appearing for the respondent contended that P.W.2 and P.W.3 are eye witnesses to the occurrence and the occurrence took place in front of the their house and hence their presence in the scene of occurrence cannot be doubted. Both of them consistently stated that there was a quarrel between the deceased and accused, the first accused attacked the deceased with Aruval and caused death. P.W.1, the father of the deceased gave complaint, and the evidence of PW2, P.W.3, has clearly establish that the accused only attacked the deceased with Aruval and caused his death. Considering all the above materials, the trial Court has rightly convicted the first accused for the offence under Section 304 (Part-I) of I.P.C. and hence there is no reason to interfere with the judgment of the trial Court.

10. I have considered the rival submissions.

11. The deceased is the step brother of A1, born through the 2nd wife of PW1. According to prosecution, both of them were involved in various theft cases and there was a quarrel between them in respect of sharing the looted booty. P.W.2 and P.W.1 also admitted the same in their evidence. Further, the evidence of P.W.2 and P.W.3, is could be seen that there was a previous enmity between the deceased and accused. The deceased asked P.W.2 not to visit accused and on the date of occurrence, P.W.2 was found missing and the deceased went to the house of the second accused in search of her and there was a quarrel between them. As per the evidence of P.W.2, during the quarrel, the first accused attacked the deceased with Aruval which was available on the scene of occurrence. Even though the other independent witnesses, namely, P.W.5 to P.W.10 turned hostile, of P.W.2 and P.W.3 consistently stated that the occurrence took place in front of their house and hence their presence in the scene of occurrence is natural as they are the wife and son of the deceased and their presence cannot be doubted. Apart from that

the evidence of P.W.2 and P.W.3, it is only the deceased went to the house of the accused and there was a quarrel with the second accused and during the quarrel, the deceased attacked the second accused and the first accused being the son of the second accused and on seeing the deceased attacking his mother, lost his mental balance and attacked the deceased with Aruval, which was found near the scene of occurrence, caused death of the deceased.

12. Now, the question is "what was the offence that was committed by the accused by the said act. It is the consistent evidence of P.W.2 and P.W.3 that there was a quarrel between the deceased and the second accused and during the quarrel, the deceased attacked the second accused and on seeing the same, the first accused attacked the deceased with aruval and caused injuries later the deceased succumbed to injuries. From the above evidence, it could be seen that during the quarrel, being provoked by the words of the deceased, the accused attacked the deceased with aruval which was found near there. It is not a premeditated murder. Though, the accused did not have any intention to cause death of the deceased, still he had an intention to cause injury, which is sufficient in the ordinary course of nature, to cause the death of the deceased. Hence, the act of the appellant/accused squarely falls within the 3rd limb of Section 300 IPC., and thus the act of the appellant/accused would squarely fall within the first exception to Section 300 of IPC. Therefore, the accused/appellant is liable to be punished for the offence under Section 304(i) IPC. The Trial Court also rightly convicted him.

13. Turning to the quantum of punishment, the accused is a poor man and it was not a premeditated murder. The accused and the deceased were step brothers. At the time of quarrel, due to sudden provocation, the accused lost his mental faculty and had attacked the deceased, which resulted in the death of the deceased. Considering the mitigating and aggravating circumstances, I am of the considered view that sentencing the accused/appellant to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.10,000/- in default, to undergo rigorous imprisonment for eight weeks would meet the ends of justice.

14. In the result, the Criminal Appeal is partly allowed and the conviction of the appellant/accused in S.C.No.410 of 2006 dated 29.01.2007 on the file of the learned Principal Sessions Judge, Cuddalore Division, Cuddalore is confirmed and the sentence is modified and the Appellant is sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.10,000/-, in default, to undergo eight weeks rigorous imprisonment. It is directed that the period of sentence already undergone by the appellant/accused shall be given set off as required under Section 428 IPC. If the appellant/accused is not in custody, the trial Court is

directed to take appropriate steps to secure him and commit him to prison to undergo remaining period of sentence. The fine amount shall be paid as compensation to P.W.2/Sumathra under Section 357 of Cr.P.C.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kas/ggi

To

- 1.The District Munsif cum Judicial Magistrate,
Parangipetti
- 2.The Chief Judicial Magistrate, Cuddalore
3. The Principal Sessions Judge,
Cuddalore Division,
Cuddalore.
- 4.The Inspector of Police
Parangipetti Police Station,
Cuddalore District.
- 5.The Superintendent, Central Prison, Cuddalore
- 6.The District Collector, Cuddalore
- 7.The Director General of Police, Mylapore, Chennai
- 8.The Public Prosecutor,
High Court, Madras.
- 9.The Section Officer, Criminal Section,
High Court, Madras,

KJI (CO)
sm:27.3.2018

Cr1.A.No.640 of 2007