

Bail Slip

Crl.A.No.654 of 2016

The Appellant/Accused No.2 namely Panchavarnam W/o.Radhakrishnan was directed to be released on bail by the order of this Court dated 26.08.2016 made in Crl.MP.No.9062 of 2016 in Crl.A.No.654 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.01.2017

CORAM

THE HONOURABLE MR. JUSTICE S.NAGAMUTHU

and

THE HONOURABLE MR.JUSTICE N. AUTHINATHAN

CRL.A.No.654/2016

1. Radhakrishnan
2. Panchavarnam

...Appellants

Vs

State rep by
Inspector of Police,
Sembanarkoil Police Station,
Sembanarkoil-Post
Nagapattinam District
Crime No.452/2013

...Respondent

Appeal filed u/s.374 (1) and (2) Cr.P.C., against the conviction and sentence made in Sessions Case No.88 of 2014 on the file of Principal District and Sessions Judge, Nagapattinam dated 10.08.2016

For Appellants : Mr.D. Veerasekaran

For Respondent : Mr.P. Govindarajan
Addl. Public Prosecutor

JUDGMENT

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

The appellants are accused 1 and 2 in S.C.No.88 of 2014 on the file of Principal District and Sessions Judge, Nagapattinam. The first accused stood charged for the offence punishable under Secs.302 and 294(b) IPC and the second accused stood charged for the offence punishable under Sec.294(b) IPC alone. By judgment dated 10.08.2016, the trial Court convicted the first accused/A.1 for the offence punishable under Secs.302 and 294(b) IPC and sentenced him to undergo imprisonment for life and to

pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for one year for the offence punishable under Sec.302 IPC and to undergo rigorous imprisonment for three months and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for one month for the offence punishable under Sec.294(b) IPC.

2. The trial Court convicted the second accused/A.2 for the offence punishable under Sec.294(b) and sentenced to undergo rigorous imprisonment for three months and to pay a fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for one month. Challenging the conviction and sentence, both the accused have come up with this appeal.

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

(a) The deceased in this case was one Mani @ Ramachandran. A.1 is elder brother of the deceased. A.2 is the wife of A.1. P.W.1 is the wife of the deceased. They were all residing at East Street at Ganja Nagaram in Nagapattinam District. They were all poor people, doing coolie work. They were provided employment under the Mahatma Gandhi Rozgaar Yojana, floated by Central Government. P.W.1 and P.W.2 used to go for such work. It appears that P.W.1 had made some sarcastic and adverse remarks against A.2 for doing such work. This was informed by A.2 to A.1.

(b) On 21.09.2013 around 6.00 p.m, it is alleged that A.1 and A.2 had gone to the house of the deceased. P.W.1 and the deceased were in the house. On seeing these two accused coming towards their house, the deceased and P.W.1 came out of their house. A.1 shouted at the deceased as to how dare his wife was to make such sarcastic and defamatory remarks against A.2. The deceased tried to pacify A.1. This resulted in a quarrel between A.1 and the deceased. There was scuffle between them. Enraged in that, both of them came outside the house. P.W.2 and others who were present there, pacified him. At that time, it is alleged that A.1 took out a sickle, used for cutting paddy crops during harvest, and with the tip of it, punched on the left side of the neck of the deceased. The deceased fell down. Both the accused ran away from the scene of occurrence.

© P.Ws.1, 2 and few others witnessed the occurrence. Thereafter, P.W.1 and others took the deceased to hospital on 21.09.2013 at 7.15 p.m. The doctor (P.W.6), attached to Government Hospital, Mayiladuthurai found that the deceased was already dead. He noted down the injuries in the Accident Register and forwarded the body for postmortem.

(d) P.W.1 thereafter, went to Sembanarkoil Police Station

and made a complaint at 12.30 a.m on 22.09.2013. P.W.14, Inspector of Police registered a case in Cr.No.452 of 2013 under Secs.294(b) and 302 IPC against both the accused. Ex.P.1 is the complaint. Ex.P.10 is the First Information Report. He forwarded both the documents to Court, which was received by the learned Judicial Magistrate at 2.30 a.m on 22.09.2013.

(e) Taking up the case for investigation, P.W.14 Inspector of Police went to the place of occurrence, prepared observation mahazar and a rough sketch and also recovered blood stained clothes, blood stained earth and sample earth. He examined P.Ws.1 and 2. He conducted inquest on the dead body of the deceased in the hospital and forwarded the same for post mortem.

(f) P.W.11 Dr.Rathinakumar conducted autopsy on the dead body of the deceased on 22.09.2013 at 11.15 a.m and he found the following injuries:

Wounds: Punctured wound size about 7 x 4 x 2 cms over the side of the clavicle bone. It stated them clavicle bone but aspected and entered to carotid triangle and major vessels like carotid artery and jugular vein are damaged. Thorax- stern-Internal ribs in the side 1st and 2nd and lungs laceration 219 cm size side seen. Hemo thorax. Approximately 100 ml blood seen. Side of thoracic cavity. Lungs- congested. Liver-pale, stomach empty, kidney-pale. Head-cut upon 2 x 1 size one occipital are post aspect. Brain - Hemorrhage. Stomach, kidney, liver, intestine are sent to chemical analysis. Time of death :16-20 hrs prior to postmortem.

Ex.P.7 is the Post Mortem Certificate. He opined that the deceased had died due to shock and hemorrhage due to the injuries found on the body. He further opined that the injuries on the neck and the corresponding internal injury would have been caused by the tip of a sickle (M.O.1).

(g) During the course of investigation, P.W.14 the recovered blood stained clothes and forwarded the same to Court. At his request, the material objects were sent for chemical analysis. The report revealed that there were blood stains on the same. On 22.9.2013, P.W.14 arrested A.1. While in the custody, A.1 made a voluntary confession, in which he disclosed the place where he had hidden the aruval. In pursuance of the

confession made by the accused, the accused took the police and the witnesses to the place of hide out and produced M.O.1 Aruval. P.W.14 recovered the same and forwarded the same to Court and the Court, in turn, forwarded the same to Forensic Lab for chemical examination. According to the report of the Forensic Lab, there were blood stains on all material objects including aruval, recovered from the accused. On completing the investigation, P.W.14 laid charge sheet against the accused.

4. Based on the above materials, the Trial Court framed charges as detailed in the first paragraph of the Judgment. The accused denied the same. In order to prove the case, on the side of the prosecution, as many as 14 witnesses were examined and 14 documents and 7 material objects were also marked.

5. Out of the said witnesses, P.W.1 and P.W.2 are the eyewitnesses to the occurrence, who have spoken about the entire occurrence. P.W.3 has stated that he heard commotion from the place of occurrence and went there. Then he assisted P.W.1 to take the deceased to hospital in 108 Ambulance. P.W.4 has stated the same facts. P.W.5 has stated that he went to the hospital on hearing about the occurrence. He came to know that the deceased was no more. Then a complaint was dictated by P.W.1, which was drafted by P.W.5, in which, he has also signed as witness. The said complaint is Ex.P.1.

6. P.W.6 Doctor has stated that he examined the deceased at 7.15 p.m on 21.09.2013 at Government Hospital at Mayiladuthurai and declared him dead. P.W.7 has spoken about the preparation of observation mahazar and the rough sketch at the place of occurrence. P.W.8, the Village Administrative Office has spoken about the arrest of A.1, confession made by him and the consequential recovery of Aruval in pursuance of the disclosure statement. He has also spoken about the arrest of A.2. P.W.9, a Head constable has stated that Ex.P.1 and Ex.P.10 were handed over to him by P.W.14 at 1.30 a.m on 22.09.2013 and he handed over the same to the learned Magistrate at 2.30 a.m on 22.09.2013 at Nagapattinam. P.W.10, a Constable has stated that he handed over the dead body of the deceased to the doctor for postmortem. P.W.11 has spoken about the postmortem and final opinion regarding the cause of death. P.W.12 a Scientific Expert from Forensic Lab has stated that he examined the internal organs of the deceased which revealed that there was no alcohol or poison.

7. P.W.13 yet another Scientific Expert from Forensic Lab has stated that he examined the material objects and found human blood stains on all the material objects including aruval (M.O.1). P.W.14 has spoken about the investigation done and the

final report filed.

8. 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 marked any document on their side. Having considered all the above, the Trial Court convicted the accused. Aggrieved over the same, the appellants, have come up with this appeal.

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

10. In this case, as we have narrated already, the prosecution mainly relies on the eyewitness account of P.Ws.1 and 2. The learned counsel for the appellants submitted that the evidence of P.W.1 and P.W.2 should be rejected. P.W.1 and P.W.2 are the wife and brother of the deceased and they are interested witnesses. He would further submit that at the earliest point of time it was informed to the Doctor that the deceased was attacked by knife, whereas, the present case is that the deceased was attacked with the tip of aruval (M.O.1). The learned counsel for the appellants also submitted that there is delay in the first information report also. Thus, according to the learned counsel, the conviction and sentence imposed by the trial Court are not sustainable.

11. The learned Additional Public Prosecutor vehemently opposed this appeal. According to him, the evidences of P.W.1 and P.W.2 are so cogent and convincing and there is no reason to reject the same. He further submitted that their presence at the place of occurrence was quite natural.

12. We have considered the above submissions.

13. The occurrence had taken place just in front of the house of the deceased. P.W.1 is after all the wife of the deceased. Therefore, the presence of P.W.1 cannot be doubted. Similarly, P.W.2's presence also cannot be doubted. We cannot reject his evidence because he is none other than the brother of the deceased. P.W.2 has got no grudge against the accused. He, in our considered view, is an independent witness. This witness would categorically state that there was noisy quarrel, which resulted in a scuffle and in that, the accused took out an aruval, which is used for agricultural purpose and caused injury with the tip of the aruval. The medical evidence also duly corroborates the same.

Absolutely, there is no delay in the first information report, as projected by the learned counsel for the appellants. After the deceased was stabbed, he was taken in an 108 Ambulance to the hospital. After he was declared dead, P.W.1 had gone to the Police Station. Thus, there was no delay in making the complaint or forwarding the complaint to the Court. The doctor found that there was a punctured wound on the neck which had pierced the jugular vein and the carotid artery. The Doctor had found fracture of ribs which had punctured the lungs also. This fracture could have occurred in the scuffle. Thus medical evidence duly corroborates the eyewitness account of P.W.1 and P.W.2. From the eyewitness statements which is duly corroborated by the medical evidence and also from the recovery of M.O.1 aruval, we hold that A.1 caused injury on the deceased on his neck, which resulted in his death.

14. Thus, having come to the said conclusion, now we have to examine as to what was the offence that was committed by the accused by causing the death of the deceased.

15. Absolutely, there is no enmity between the accused and the deceased. The quarrel was an unexpected one. When the accused were gone to the house of the deceased to question as to why he was making defamatory remarks against A.2, this quarrel resulted in fight between A.1 and the deceased. At that time, A.1 was not armed with any weapon. Only during the quarrel, the accused took out the sickle, which is used for agricultural purpose and made a punch on the neck of the deceased. The jugular vein and carotid artery were damaged and due to profuse bleeding, the deceased died. From these facts, it is crystal clear that the act of the accused would not fall under limb I or II of Section 300 IPC. Similarly, in our considered view, the act of the accused would not fall under limb III of Section 300 IPC also. As we have already pointed out, the death was due to punching of carotid artery and jugular vein. In order to satisfy the requirement of limb III of Section 300 IPC, the prosecution should prove that the accused caused bodily injury and with an intention of causing bodily injury and also intended injury must be found to be sufficiently ordinary course of nature to cause death. In this case, the accused would not have intended to cause a particular injury to the jugular vein and carotid artery because being a poor villager and illiterate man, he cannot be attributed with the knowledge of location of these two blood vessels. Punching of these two blood vessels was purely accidental and was not intentional. Though the intention of the accused was to cause bodily injury, but, he would not have intended to cause that particular injury to artery or vein. Thus, the act of the accused would not fall limb III of Section 300 IPC. But, the accused can be attributed to the knowledge

that any injury to the neck may eminently cause the death of the deceased. Thus the act of the deceased would squarely fall within the IV limb of Section 300 IPC.

16. At the same time, as we have already pointed out that there was no enmity; there was no premeditation and there was no previous quarrel. Thus the act of the accused would squarely fall within the fourth limb of Section 300 IPC and the first accused/A.1 is liable to be punished for the offence punishable under Sec.304 Part II IPC.

17. So far as the offence under Sec.294(b) IPC is concerned, there is no clear evidence as against both the accused. There was some quarrel and in that quarrel, in a village situation, normally they used certain words, to which parties are accustomed to. Therefore, both the accused are entitled for acquittal from the charge under Sec.294(b) IPC.

18. Now turning to the quantum of punishment for A.1, at the time of occurrence, he was aged 47 years. He is a poor coolie and depends upon 100 days work under Mahatma Gandhi Rozgaar Yojana. He has got two female children. Having regard to the fact that the occurrence was not premeditated one and A.1 was not already armed with weapons, we are of the view that sentencing him to undergo rigorous imprisonment for four years and to pay a fine of Rs.1000/-, in default, to undergo rigorous imprisonment for four weeks would meet the ends of justice.

19. In the result,
The appeal is partly allowed.

(i) The conviction and sentence imposed on A.2 is set aside and she is acquitted from the charges. Fine amount, paid by her, shall be refunded to her.

(ii) The conviction and sentence imposed on A.1 for the offence under Sec.302 IPC is set aside and instead, A.1 is convicted for the offence under Sec.304 Part II and he is sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for four weeks. The find amount paid shall be adjusted and the balance fine amount should be refunded to A.1.

(iii) The period of sentence already undergone by the accused/A.1 shall be set off under Section 428 Cr.P.C.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr

To

1. The Inspector of Police,
Sembanarkoil Police Station,
Sembanarkoil-Post
Nagapattinam District
2. The Principal District and Sessions Judge,
Nagapattinam
3. The District Sessions Judge.
Nagapattinam.
4. Judicial Magistrate,
No.2, Mayiladuthurai.
5. The Chief Judicial Magistrate,
Nagapattinam.
6. The Superintendent,
Special Prison for Women, Trichy.
7. The Superintendent of Police,
Trichy.
8. The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.Veerasekaran, Advocate, S.R.No.198

Cr1.A.No.654/2016

NR(CO)
RS(22/02/2017)