

BAIL SLIP

The Appellant/Accused namely M.Kannan aged 29, S/o.Marimuthu was directed to be released on bail as per the order of this court dated 13/08/2007 in MP.No.1/2017 in CrI.A.No.732/2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10..11..2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.732 of 2007

Kannan [Accused] ... Appellant/Accused

-Versus-

State Rep. by
The Inspector of Police,
Karaikal Town Police Station,
Karaikal,
Puducherry State. ... Respondent/Complainant

Appeal filed under Section 374(2) of Cr.P.C. against the judgment of conviction and sentence dated 31.07.2007 made in S.C.No.68 of 2006 by the learned Additional Sessions Judge, Puducherry at Karaikkal.

For Appellant : Mr.R.Sankarasubbu

For Respondent : Mr.M.R.Thangavelu,
Public Prosecutor [Puducherry]

सत्यमेव जयते

JUDGEMENT

The sole Accused in S.C.No.68 of 2006 on the file of the learned Additional Sessions Judge, Puducherry at Karaikal, is the appellant herein. He stood charged for offence under Section 341, 302, 324 and 506(ii) of IPC. The accused denied the charges and opted for trial. Therefore, he was put on trial on the charges. After full-fledged trial, the learned Judge found him guilty of offences under Section 324 of IPC and under Section 304(ii) of IPC instead of Section 302 of IPC. The accused was accordingly convicted and sentenced to undergo imprisonment for three years with a fine of Rs.1,000/- in default to suffer rigorous imprisonment for six months for offence under Section

324 of IPC and to undergo rigorous imprisonment for seven years with a fine of Rs.1,000/- in default to suffer rigorous imprisonment for six months for offence under Section 304(ii) of IPC, but, he was acquitted of the other charges. Challenging the conviction and sentence, the accused is before this court with the present criminal appeal.

2. The case of the prosecution in brief is as follows:- P.W.1 is a friend of the deceased - Subramaniam and a painter by profession. The deceased was running a business in the name and style of 'Nellai Radios'. The accused is an auto driver by profession. P.W.1 and the accused were known to each other. A week prior to the date of occurrence, the dog of P.W.1 had bitten a hen belonging to the accused and there was a wordy altercation between the mother of the accused the P.W.1 in which P.W.1 is stated to have scolded the mother of the accused verbally. On hearing that his mother was being verbally scolded, the accused had developed grudge against P.W.1.

3. It is the further case of the prosecution that on 15.07.2003 at about 08.00 a.m. the deceased was proceeding in his TVS moped bearing Regn. No. PYK 8454 along with P.W.1 to open his shop through Chinna kannu Chetty Street. While they were passing through P.S.R. Theatre, the accused who was already sitting there on the compound wall at the backyard of the theatre, on seeing P.W.1 coming on his moped, due to previous enmity, suddenly emerged before him and restrained him. The accused thereafter, questioning P.W.1 as to how he could scold his mother, suddenly wielded a knife which was kept on his back and aimed a blow at him with a knife. The deceased who was accompanying P.W.1 as a pillion when attempted to prevent the attack, the blow given by the accused with a knife landed on the left front his head. He was bleeding profusely. The accused thereafter again attacked P.W.1 with the same knife and when P.W.1 attempted to prevent the attack, he had cut injury on his shoulder. He was bleeding. P.W.6, Ramesh and another who were present at the place of occurrence, snatched the knife from the accused in which the accused sustained injury in his little finger. The accused further threatened the deceased with a dire consequence and fled away from the scene of occurrence. P.W.2, P.W.5, P.W.6 and P.W.12 have witnessed the entire occurrence. P.W.6 along with few others immediately took P.W.1 and the deceased to the police station wherein the deceased made a complaint in oral which was reduced into writing by P.W.10, the then Head Constable. Ex.P.14 is the complaint. He registered the case in Crime No.203 of 2003 under Section 341, 324, 506(ii) of IPC. He prepared the FIR (Ex.15) and forwarded the same to the jurisdictional court and a copy to his higher official. He recovered the blood stained shirt from the person of the deceased in the presence of witnesses. Immediately, thereafter, P.W.1 and the deceased were forwarded to hospital along with a

police memo by P.W.6. Then, P.W.10 rushed to the place of occurrence, examined P.W.2 and recorded his statement. He also recovered the knife allegedly used by the accused from the place of occurrence at 09.30 a.m. in the presence of witnesses under a mahazar. He took photographs of the scene of occurrence with the help of a photographer. He prepared an observation mahazar and a rough sketch. He also recovered the motor cycle. Then, he rushed to the Karaikal Government Hospital where he examined the deceased and P.W.1 and recorded their statements. Thereafter, at 10.45 a.m. he arrested the accused at Pillai Thottam in Karaikal. P.W.10 forwarded the accused to the hospital with a police memo as there was an injury found on him. Thereafter, he handed over the case diary to the Inspector of Police for further investigation.

4. P.W.8, the Doctor, examined the deceased who was brought on police memo on 15.07.2003 at 08.45 a.m. According to P.W.8, at that time, the deceased was conscious and he was profusely bleeding. According to P.W.8, the deceased told him that he was assaulted with an aruval. P.W.8 found a deep cut injury measuring 6 x 2 x 2 cm on the left side of face lateral to the left canthus. He admitted the deceased in the casualty. Ex.P.7 is the wound certificate issued by P.W.8. On the same day, he examined P.W.1 at about 09.10 p.m. P.W.7 found a long superficial clean cut injury on the right shoulder region measuring 6 x 0.5 x 0.5 c.m. and he was bleeding. P.W.8 treated P.W.1 for the injury. P.W.8 issued Ex.P.8 wound certificate. According to P.W.8, the injury found on P.W.1 was a simple injury. On the same day, P.W.8 also treated the accused who was brought before him by the police at 11.20 a.m. On examining the accused, P.W.8 found a lacerated injury over the palmar aspect of the left side of the little finger and he was bleeding. P.W.8 treated the accused also. He issued Ex.P.9 wound certificate. According to P.W.8, the injury sustained by the accused was of simple in nature. On hearing about the occurrence, P.W.4 the wife of the deceased rushed to the hospital directly. On the same day, P.W.7, the Doctor, who examined the deceased at 02.00 p.m. referred him to Thanjavur Medical College Hospital for further treatment.

5. P.W.13, the Doctor in the Thanjavur Medical College Hospital, admitted the deceased in the hospital at 05.40 p.m. for further treatment where the deceased was treated by the doctor in consultation with a neuro surgeon. But, according to P.W.13, despite treatment, the deceased died on 16.07.2003 at 02.00 a.m. He intimated about the death of the deceased to the police under Ex.P.23.

6. On getting information about the death of the deceased, P.W.16, the then Inspector of Police, altered the case from Sections 341, 324 and 506(ii) of IPC to one under Sections 341,

302 and 506(ii) of IPC and forwarded the express report to the jurisdictional court. Then, he rushed to the hospital where he conducted inquest on the body of the deceased at 09.30 a.m. on 16.07.2003 and prepared an inquest report (Ex.P.31). Then, he forwarded the body to the mortuary for postmortem.

7. P.W.15, the then Professor, Department of Forensic Science Medicine, Thanjavur Medical College Hospital, on 16.07.2003 at about 01.30 p.m. conducted autopsy on the body of the deceased. He found the following features on the body of the deceased:-

"External Injuries:

(1) Ecchymosis around left eye with sub conjunctival hemorrhage in left eye noted.

(2) A vertically oblique sutured wound with intact silk sutures measuring 4.5 c.m. x 1.5 c.m. x bone deep noted over the lateral aspect of left eye found extending on to the left side fronto temporal region of scalp with surrounding contusion over an area of 10 x 8 c.m.

(3) A transversely placed incised wound noted over the front lower third of of right forearm measuring 1.5 c.m. x 0.5 c.m. and 0.25 c.m.

(4) Multiple minute scratch abrasion noted over the front of lower half of right forearm.

Internal injuries:

On reflecting the scalp skin - sub scalp contusion noted over the whole of left side frontal temporal and parietal regions. A depressed comminuted fracture noted over the anterior part of left side temporal bone over an area of 3 x 3 c.m. with a linear radiating fissured fracture over the left side parietal bone for a length of 6 c.m. On opening the vault of skull - Thick extra dural haematoma noted over the left side fronto - temporal regions of about 400 gm. Thick sub dural and sub arachnoid hemorrhages noted over both sides of cerebral hemispheres bilateral sub dural basal blood clots present. Laceration of whole of left side frontal and temporal lobes of brain with surrounding softening and blood clots. Intra cerebral hemorrhages in both sides. Hemorrhages in the regions of midbrains, pons and ventricles. Multiple comminuted fractures of left side anterior and middle cranial fossa including the lesser wing of sphenoid bone. Contusion of whole of left

side roof of orbit, cribriform plate and ethmoid bone."

He issued Ex.P.24 postmortem certificate. According to P.W.15, all the above mentioned injuries were of antemortem in nature. He opined that the deceased would appear to have died due to head injuries involving the vital organ, namely, the brain.

8. In the mean time, P.W.16 got transferred. P.W.14, the then Inspector of Police who took up further investigation, examined P.W.1 and few other witnesses and recorded their statement. On 21.07.2003 he took the accused to police custody and during such custody, he made arrangements to draw the blood sample of the accused and drew blood samples of the deceased with the help of a doctor. Then, he forwarded the accused to the court for judicial custody. On 30.10.2003 he got retired from service. Thereafter, P.W.17 the then Inspector of Police, who took up the further investigation, on completing the investigation laid charge sheet against the accused under Section 341, 324, 506(ii) and 302 of IPC.

9. Based on the above materials, the trial court framed as many as four charges as detailed in the first paragraph of this judgment. The accused denied the charges and wanted trial. Therefore, the accused was put on trial. During trial, the prosecution in order to prove the charges against the accused, examined as many as 17 witnesses and marked 34 documents and 4 material objects.

10. Out of the above witnesses, P.W.1 is the injured witnesses. He has spoken about the quarrel that had occurred a week prior to 15.07.2003 between himself and the mother of the accused. He has further spoken about the initial blow made by the accused on 15.07.2003 in which the blow aimed at P.W.1 accidentally fell on the deceased and second blow which fell on the right shoulder of P.W.1. He has also spoken about complaint made by him to the police. P.W.2 has spoken about the observation mahazar and rough sketch prepared by the police at the place of occurrence and also the recovery of material objects including crime weapon. P.W.3 is a hearsay witness. P.W.4 is also a hearsay witness. P.W.5 and P.W.6 have spoken about the attack made by the accused on the deceased as well as on P.W.1 and taking P.W.1 and the deceased to the police station. They have further spoken about lodging complaint by the deceased and forwarding the deceased and P.W.1 to the hospital by the police. P.W.7, the doctor at Karaikal Government General Hospital, has spoken about examining the deceased who was admitted for treatment for the injuries sustained on his face and forwarding him to Thanjavur Government Hospital at 03.00 p.m. for further treatment. P.W.8 has stated that on 15.07.2005 when he was on duty at Karaikal Government General Hospital, the

deceased was brought before him for treatment on a police memo. On examining the deceased, he found a cut injury on the left side of the forehead of the deceased. The deceased was bleeding through the injuries. According to him the deceased was admitted in ICU. He has further spoken about the treatment given to P.W.1. P.W.9 has spoken about the photographs taken at the place of occurrence. P.W.10, the then Head Constable, has spoken about the registration of the case and forwarding the deceased and P.W.1 to the hospital for treatment on police memo and also the statements recorded from the deceased as well as from P.W.1 at the hospital. He has further spoken about forwarding the accused to the hospital for treatment for the injuries sustained by him on his little finger. P.W.11 has spoken about handing over the material object to the court with a request for onward transmission of the same to the Forensic Science Lab and taking the same to the Forensic Science Lab on the orders of the learned Magistrate. P.W.12 has spoken about the attack made by the accused on the deceased as well as on P.W.1. P.W.13, the Doctor at Thanjavur Government Medical College Hospital, has spoken about the death of the deceased on 16.07.2003 at 02.30 p.m. P.W.14 the then Inspector of Police has spoken about the initial investigation done by him and altering the penal provisions consequent upon the information about the death of the deceased. P.W.15 has spoken about the postmortem conducted by him on the body of the deceased and his final opinion regarding the cause of death. P.W.16 and P.W.17 have spoken about the further investigation done by them and P.W.17 has further spoken about the filing of charge sheet against the accused.

11. Even though the appeal has been filed challenging the conviction and the sentence of the appellant both on legal and factual aspects, the learned counsel for the appellant was not able to point out any illegality in the factual findings recorded by the learned Additional Sessions Judge, holding the accused guilty of causing injuries leading to the deceased and P.W.1 due to transferred malice.

12. Though the learned counsel for the appellant submitted that the crime weapon allegedly used by the appellant was not recovered at the instance of the accused and that the weapon which recovered from the SOC had not been forwarded to the Forensic Science Lab for report. This court does not find much force in the said argument for the reason that even if any such report has been obtained, the same cannot be treated as a substantive piece of evidence and it has only a corroborative value.

13. The learned counsel for the appellant would, however, submit that the appellant was not having any intention or knowledge to cause any such bodily injury to P.W.1 so as to

bring his act within the ambit of Section 300 of IPC due to transferred malice. The learned trial Judge has found that there was no intention on the part of the accused to cause the death. There was a previous quarrel between P.W.1 and the mother of the appellant in which, P.W.1 had scolded the mother of the deceased in a filthy language and being provoked by the same on the date of occurrence, the appellant questioned P.W.1. At that time, there was a quarrel and in the midst of quarrel the accused aimed at P.W.1 to attack him with aruval. When the deceased who was then by the side of P.W.1 intervened, the aruval landed on the left side of head of the deceased. According to the findings of the learned Judge, the occurrence was due to sudden provocation. It was not the specific case of the prosecution that the accused aimed to attack P.W.1 on any of his vital parts which accidentally landed on the head of the deceased. That apart, though the deceased was immediately taken to Government Hospital at about 08.45 a.m. no proper treatment was given to him and only at about 03.00 p.m. he was referred to the medical college hospital at Thanjavur where he was admitted as in patient only at about 05.45 p.m. and between 08.30 a.m. and 05.45 p.m., absolutely there was no treatment given to the deceased to save his life. Had he been given proper treatment, he would have probably recovered from the injury. The death of the deceased was not direct result of the head injury, but it was on account of lack of medical attention. Thus, no knowledge could be attributed to the appellant to convict him for offence under Section 304(ii) of IPC.

14. The learned counsel for the appellant would further submit that at any rate, the case of the appellant would not fall either under Section 304 of IPC or under Section 326 of IPC as the deceased sustained only a simple injury and, therefore, at the best, he could be convicted only for offence under Section 324 of IPC.

15. Per contra, the learned Additional Public Prosecutor submitted that there were five witnesses to the occurrence and of them, P.W.1 is the injured witness. In fact, there was a previous enmity between the appellant and P.W.1 and on the date of occurrence when both P.W.1 and the deceased were proceeding in a motor cycle, the accused who happened to see them, way laid and attempted to attack P.W.1. Though the deliberate blow aimed at the P.W.1 accidentally fell on the deceased when the deceased intervened, still the accused is liable for offence punishable under Section 304(ii) of IPC. The learned Additional Sessions was thus right in convicting the accused for culpable homicide not amounting to murder which does not require any interference at all at the hands of this court.

16. I have considered the above rival submissions and also perused the records carefully.

17. P.W.1 and the accused are known to each other. Apart from P.W.1, the injured witness there are 4 other eye witnesses to the occurrence. They have vividly spoken that the blow having been meant originally for P.W.1 accidentally fell on the deceased. The medical evidence corroborates the eye witness account. It is not in dispute that a week prior to the occurrence, there was a wordy quarrel between P.W.1 and the mother of the accused.

18. From a perusal of the testimonies of P.W.1, P.W.2, P.W.8 and P.W.15, it is evident that on the date of occurrence, the accused who happened to see P.W.1 coming in a motor cycle, restrained him and questioned P.W.1 as to how he could scold his mother in a trivial issue and in the midst of quarrel, the deliberate blow aimed at P.W.1 by the accused with M.O.1 Aruval accidentally fell on the deceased and the deceased died of head injuries received due to transferred malice.

19. In this case, simply because injury was caused by using a dangerous weapon and was on the head i.e. vital part of the body, the said fact by itself is not sufficient to show that the accused had any intention to murder P.W.1 and the blow accidentally fell on the deceased. It is the settled position that Section 304(ii) of IPC will come into play when the death is caused by doing an act with knowledge that it is likely to cause death but there is no intention on the part of the accused either to cause death or to cause such bodily injury as is likely to cause death. The learned Additional Sessions held that the accused had no intention to cause death but, however, held that it was by sudden provocation. The learned counsel for the appellant strenuously contended on the fact that had the deceased not intervened, he would not have sustained any injury and that in the facts and circumstances of the case, no knowledge could be attributed to the accused that death would result from such an act. This court finds force in the said argument. As rightly pointed out by the learned counsel for the appellant, the appellant intended to inflict any injury which was likely to result in death or which he must have known to be likely to result in death. The blow received by the deceased was accidental when he intervened in an attempt to prevent the attack which was being made on P.W.1. Further, it is seen that after the occurrence, the deceased was not taken to the hospital directly from the place of occurrence, whereas, he was taken to the police where he made a complaint orally which was reduced into writing. Thereafter, he was taken to Karaikal Government Hospital at 08.45 a.m. with police memo where he was admitted as in patient. Initially P.W.8, the doctor, examined him and treated him. By 02.00 p.m. P.W.7, the other duty doctor, referred the deceased for higher treatment and the deceased was

accordingly shifted to Thanjavaur Medical College where he was admitted at 05.40 p.m. According to P.W.13, the Doctor, despite treatment, the deceased died due to the injuries on 16.07.2003 at 02.00 a.m. As rightly pointed out by the learned counsel for the appellant, no CT scan was taken on the deceased for the head injuries. Even though P.W.15 denied the suggestion that had proper treatment been given to the deceased, he would have survived, it is seen from his evidence, if CT scan had been taken at the initial stage when the deceased was admitted in the hospital, haematoma could have been diagnosed and he could have been referred for higher treatment. In between 08.45 a.m. on 15.07.2003 and at 02.00 a.m. on 16.07.2003 the deceased was not properly attended by the doctors when he was admitted with head injuries and he was profusely bleeding. P.W.15 has only stated that sub dural haematoma or hemorrhage could not have been removed immediately. According to P.W.15, the sub dural and sub arachnoid haemorrhages noted over the brain could not have been removed. Thus, as rightly pointed out by the learned counsel for the appellant, this would only lead to an inference that the deceased was not provided proper medical attention.

20. The next question is as to, "what was the offence that was committed by the accused by his act?".

21. As already concluded, the appellant intended to cause injury on P.W.1, but the blow aimed at him, accidentally fell on the head of the deceased when intervened. The occurrence was when the accused happened to see P.W.1 coming along with deceased. The trial court held the appellant guilty of offence under Section 304(ii) and not under Section 302 of IPC as no intention on the part of the appellant to murder the deceased and the attack was due to transferred malice. From the available evidence, this court is of the view that nothing was brought on record to infer that the accused had intended to cause death or injury which is likely to cause death to P.W.1. If at the most, the Court comes to the conclusion that the accused committed any offence, the offence committed by the accused appellant would be under Section 326 of IPC and not under Section 307 of IPC as in causing injuries to the deceased no intention on the part of the appellant could be gathered. The appellant did never intend to cause the death of the deceased.

22. In view of the foregoing discussions, this court is of the considered view that the appellant is not guilty of offence punishable under Section 304(ii) of IPC and at the most, he could be convicted under Section 326 of IPC. Thus, the conviction of the appellant is liable to be altered accordingly.

23. Insofar as charge under Section 324 of IPC is concerned, the prosecution has established that after the attack, which the accused aimed at P.W.1, was being landed accidentally on the

deceased, the accused attacked the deceased on his shoulder with aruval which resulted in superficial injury measuring 6 x 0.5 x 0.5 cm. The medical evidence proved that it was of a simple nature. Thus, the appellant is also liable for conviction under Section 324 of IPC for having caused simple injury to P.W.1.

24. In the result, this criminal appeal is partly allowed; the conviction and sentence of the appellant for offence under Section 304(ii) of IPC is set aside and instead he is convicted under Section 326 of IPC and sentenced to undergo rigorous imprisonment for six months and to pay a sum of Rs.5,000/- in default to suffer rigorous imprisonment for a further period of eight weeks; the conviction of the appellant for offence under Section 324 of IPC is hereby confirmed, but, however, the sentence imposed thereunder by the trial court is modified and the accused is sentenced to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.5,000/- in default to suffer rigorous imprisonment for a further period of two weeks. It is further directed that both the sentences are to run concurrently. The period of detention already undergone by the appellant/accused shall be given set off as required under Section 428 of Cr.P.C. The fine amount already paid, if any, by the appellant, shall be taken into account and adjusted towards the fine now imposed by this court and the appellant shall by the balance of fine.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kmk

To

1.The Judicial Magistrate II Karaikal

2.The Chief Judicial Magistrate Puducherry
(for Information)

3.The Additional Sessions Judge, Puducherry at Karaikkal,
Union Territory of Puducherry.

4.The Inspector of Police, Karaikal Town Police Station,
Karaikal, Union Territory of Puducherry State.

5.The Collector Puducherry

6.The Superintendent of Police
Karaikal

7.The Public Prosecutor (Puducherry),
High Court of Madras, Chennai.

8.The Superintendent Central Prison,
Karaikal

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The Section Officer
Criminal Section,
High Court, Madras

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Criminal Appeal No.732 of 2007

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