

**BAIL SLIP**

Rasukannu @ Rengasamy, S/o. Karuppiyah (A1) and Karthik, S/O. Rasukannu @ Rangasamy (A3), are released on bail vide the order of this Court dated 17.10.2016 made in CRL.MP(MD).No.7245/2016 in CRL.A(MD).No.298 of 2016.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED : 15.11.2017

PRONOUNCED : 06.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBBIAH**

AND

THE HONOURABLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

CRL.A[MD].No.298 of 2016

1.Rasukannu @ Rengasamy

2.Karthik

: Appellants/Accused 1 & 3

Vs.

State through the Inspector of Police,

Alangudi Police Station,

Pudukkottai District.

Crime No.94 of 2010.

: Respondent/Complainant

PRAYER: Appeal is filed under Section 374 of the Code of Criminal Procedure against the Judgment and conviction dated 05.07.2016 made in S.C.No.39 of 2011, on the file of the learned Additional District and Sessions Judge, Pudukkottai.

For Appellants

: Mr.N.Ananthapadmanabhan

For Respondent

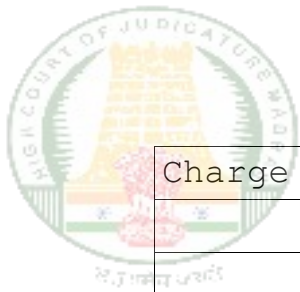
: Mr.C.Mayil Vahana Rajendran

Additional Public Prosecutor

JUDGMENT

R.SUBBIAH, J.

The appellants are the accused Nos.1 and 3 in S.C.No.39 of 2011, on the file of the learned Additional District and Sessions Judge, Pudukkottai. There was yet another accused, by name, Karuppiyah @ Marimuthu, who died during trial. The Trial Court framed as many as three charges, as detailed below.



Charge	Accused	Penal Provisions
1	1 to 3	120(b) IPC
2	1 to 3	302 r/w 34 IPC
3	1	294(b) IPC

2. By Judgment dated 05.07.2016, the Trial Court has convicted the accused Nos.1 and 3 and sentenced them, as detailed below:-

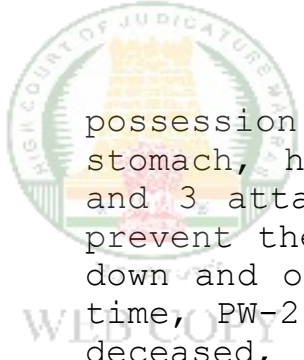
Accused	Section of Law	Sentence of imprisonment	Fine amount
1 and 3	302 r/w 34 IPC	To undergo imprisonment for life.	Rs.1,000/- each in default to undergo rigorous imprisonment for two months.

3. Since the second accused died during trial, the charges framed against him stood abated. Challenging the said conviction and sentence, the appellants/accused Nos.1 and 3 have come up with this Criminal Appeal.

4. The case of the prosecution, as put forth by its witnesses, is consciously narrated below:-

The deceased, in this case, was one Mr.Murugan. PW-1 is the wife of the deceased. PW-1 is a resident of Melakkottai Village, Alangudi Taluk, Pudukkottai District. The deceased, PW-2 and the accused Nos.1 and 2 are brothers. The third accused is the son of the first accused. The deceased was owning agricultural land. Their ancestral property was partitioned between the deceased and his brothers. Since one acre of excess land was allotted to the deceased, on account of the same, there was a long standing enmity between the deceased and the accused. While so, the common borewell had developed repair, which was rectified by the deceased and PW-2 by spending considerable amount. The accused Nos.1 and 2 did not give any money for the above said repair work.

4.2. On 04.04.2010, in the evening, the deceased demanded the accused Nos.1 and 2 to give money for the repair work done by him and PW-2. He further told them that after paying the amount only, they could draw water from the common borewell. This resulted in quarrel between them. Thereafter, on the same day, at 09.00 PM, when the deceased, PW-1 and PW-3, who is the brother of PW-1, were sitting in the front entrance of the house, the accused Nos.1 to 3 came there and abused the deceased in filthy language. By so abusing, the first accused took out a knife, which was in his



possession and stabbed the deceased on his shoulder, chest, stomach, hand, leg and cheek indiscriminately. The accused Nos.2 and 3 attacked the deceased with sticks. PW-1 and PW-3 tried to prevent the accused from stabbing further. The accused pushed them down and on account of the same, PW-1 and PW-3 fell down. At that time, PW-2, who is the brother of the accused Nos.1 and 2 and the deceased, rushed to the place of occurrence and prevented the accused from attacking further. The accused Nos.2 and 3 attacked PW-2 with stick. On hearing the alarm raised by PW-1 to PW-3, the villagers gathered there. The accused Nos.1 to 3 fled away from the scene of occurrence with weapon and sticks. Then, the deceased was taken to the Government Hospital at Pudukkottai. The doctor declared him as brought dead at 11.30 PM, on 04.04.2010.

4.3. On intimation from the hospital authorities, at 12.30 AM, on 05.04.2010, PW-12, the then Sub-Inspector of Police, attached to Alangudi Police Station, proceeded to the Government Hospital, Pudukkottai and received a complaint from PW-1. On returning to the Police Station, he registered a case in Crime No.94 of 2010, for the offences under Sections 294(b), 323 and 302 of the Indian Penal Code. EX-P1 is the complaint and EX-P16 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

4.4. Taking up the case for investigation, at 04.30 AM, on 05.04.2010, PW-13 proceeded to the place of occurrence, prepared an Observation Mahazer [EX-P2] and a Rough Sketch, [EXP17] showing the place of occurrence in the presence of PW-5 and another witness. He recovered bloodstained earth and sample earth from the place of occurrence. Then, he conducted inquest on the body of the deceased in the presence of the panchayat members between 07.00 AM and 09.00 AM, on 05.04.2010. EX-P18 is the inquest report. Then, he forwarded the dead body for postmortem.

4.5. PW-7 - Dr.E.Arunagiri conducted autopsy on the body of the deceased. EX-P11 is the postmortem certificate. He noticed the following injuries:-

"External Injuries:

1) 3 x 0.5 (torn) penetrating injury over right lateral border of manubrium (torn)

2) 2 x 0.5 x bone depth injury with clear edges over right lateral border of manubrium sternum.

3) 4 x 0.5 x 10 cm injury clear edges over right lateral border of symphysis sternum.

4) 3 x 0.5 bone depth injury with clear edges over (torn) below axilla.

5) 3 x 0.5 x bone depth injury with clear edges over ulnar border of dorsum of right forearm 3 cm above wrist.



6) 2 x 0.5 x 4 cm injury with clear edges over 3 cm above clavicle of right side.

7) 0.5 x 0.5 laceration over body of right of mandible.

8) 5 x 5 cm contusion over angle of right side of mandible with 0.5 x 0.5 cm abrasion on centre of mandible.

9) 3 x 0.5 x bone depth injury with clear edges over lateral aspect of left middle of thigh.

10) 2 x 0.5 cm injury with clear edges over left knee. Scalp - normal, eye lids - closed, nose - normal, mouth & lips - normal, tongue - normal, teeth - 8/8 / 8/8 Abdomen - normal, Genital organ - (torn) Scrotum - normal, Extremities - normal.

Internal Examination:

Abdomen - normal. Peritoneal Cavity - normal. Ribs & Sternum

1) 3 x 0.5 x 5 cm injury over 3rd intercostal area 0.5 cm lateral to sternum with fracture of 4th costoc (torn) (N.C.)

2) Fracture of middle of manubrium sternum.

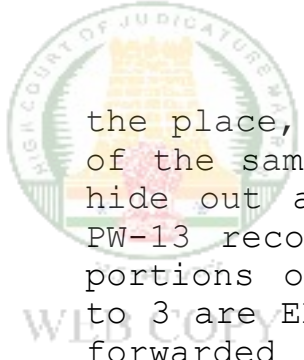
3) 2 x 0.5 x 3 cm injury over 7th intercostal area at midline of clavicle.

4) Fracture of sternum at the level of 4th vertebra. Heart - 0.5 cm linear injury over right surface of right ventricle crossing midline with 0.5 cm linear injury over interventricular septum and entered left ventricle lung - 2 x 0.5 cm through and through injury over right lung 0.5 cm lateral to (N.C.) border: Liver - 0.5 x 0.5 x 0.5 cm injury over right lobe, anterior surface of liver, spleen, kidney, intestine bladder - normal, Head - normal, skull, brain, membrane - normal, Spinal Cord - normal".

He gave opinion that the deceased would appear to have died of injury to Vital Organs and Hypovolemic shock.

4.6. PW-8, Dr. Rukmani, treated PW-2 and issued Accident Register [EX-P12]. She noticed contusions on both the shoulders and the hands of PW-2.

4.7. Then, PW-13 examined PW-1 to PW-5 and recorded their statements. At 01.30 PM, on 05.04.2010, PW-13 arrested the third accused at Mukkam Bus Stop. On such arrest, he gave a voluntary confession, in which he disclosed the place, where he had hidden the stick. In pursuance of the same, the accused took the police and the witnesses to the hide out and produced the stick. PW-13 recovered the same under a mahazer. Then, at 02.45 PM, on 05.04.2010, PW-13 arrested the accused Nos. 1 and 2, near a Teacher Training Institute, situated at Kovilur Four Way Road. On such arrest, they gave voluntary confessions, in which they disclosed

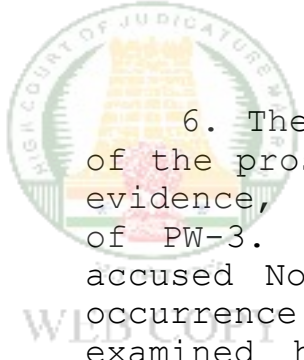


the place, where they had hidden the knife and stick. In pursuance of the same, the accused took the police and the witnesses to the hide out and produced the knife [MO-1] and stick [MO-4 series]. PW-13 recovered the same under separate mahazars. The admissible portions of the confession statements given by the accused Nos.1 to 3 are EX-P5 to EX-P8. On returning to the Police Station, PW-13 forwarded the accused to the Court for judicial remand. He also handed over the material objects to the Court for chemical examination. Then, he examined PW-8, Dr. Rukmani, who treated PW-2 at the Primary Health Centre, Vanakkankadu, recorded her statement and received EX-P12, Accident Register. Then, he examined PW-7, who conducted autopsy on the body of the deceased and recorded his statement. On completing the investigation, he laid charge sheet against the accused, on 25.08.2010.

4.8. Based on the above materials, the Trial Court framed appropriate charges, as detailed in the first paragraph of this Judgment. When the accused were questioned in respect of the charges, they pleaded innocence. In order to prove the charges, on the side of the prosecution, 13 witnesses were examined, 18 documents and six material objects were marked.

4.9. When the Trial Court examined the accused under Section 313 of the Code of Criminal Procedure in respect of the incriminating evidences available against them, they denied the same as false. On their side, one witness was examined as DW-1 and four documents were exhibited as [EX-D1 to EX-D4]. Their defence was a total denial. Having considered all the above materials, the Trial Court convicted the appellants/accused Nos.1 and 3, as detailed in the first paragraph of this Judgment and punished them accordingly. That is how, the appellants/accused Nos.1 and 3 are now before this Court with this Criminal Appeal. As we have already stated, the second accused died during trial and thus, the charges framed as against him stood abated.

5. The learned counsel appearing for the appellants would submit that as per the case of the prosecution, when the deceased, PW-1 and PW-3 were sitting in the front side entrance of the house, the accused Nos.1 to 3 came there and indulged in quarrel by abusing them in filthy language. In the said quarrel, the first accused stabbed the deceased with knife on his shoulder, chest, stomach, hand, leg and cheek. The accused Nos.2 and 3 attacked the deceased with sticks. On seeing the occurrence, PW-1 and PW-3 tried to prevent the first accused from stabbing further. The accused pushed them down and on account of the same, PW-1 and PW-3 fell down. At that time, PW-2 rushed to the place of occurrence and prevented the accused from attacking further. The accused Nos.2 and 3 attacked PW-2 with stick. On hearing the hue and cry, the relatives and neighbours gathered there. The accused Nos.1 to 3 fled away from the scene of occurrence.



6. The learned counsel for the appellants, narrating the case of the prosecution, would try to make out a case that PW-1, in her evidence, has not mentioned about the presence and participation of PW-3. PW-1, during cross-examination, has admitted that the accused Nos.2 and 3 had also sustained injury in the very same occurrence and in respect of the same, the Investigating Officer examined her. Thus, according to the learned counsel for the appellants, though a counter case in Crime No.95 of 2010 was registered and final report was filed, no such document has been produced. Thus, the prosecution has not come forward with clean hands and true version of the occurrence. The learned counsel would also point out that it has been clearly established that the deceased party were the aggressors. The Trial Court has not considered these facts properly and the prosecution has failed to explain the injuries sustained by the accused Nos. 2 and 3. Thus, according to the learned counsel, the prosecution has suppressed an important part of the occurrence. Further, the learned counsel appearing for the appellants would submit that PW-3, in his evidence, has stated that in order to take the deceased to the hospital, he called 108 Ambulance. In the said Ambulance, the accused party went to the hospital, which would, undoubtedly, show that the accused party also sustained injuries in the very same occurrence, which was not investigated properly.

7. Further, the learned counsel appearing for the appellants, by inviting the attention of this Court to EX-P12, the Accident Register, which pertains to PW-2, would submit that in EX-P12, it has been mentioned that PW-2 was alleged to have been assaulted by eight known and unknown persons at 11.00 PM, on 04.04.2010 with sticks and rod, whereas, according to PW-1 and PW-2, the occurrence took place at 09.00 PM. Therefore, the entry made in EX-P12 would show that two occurrences would have taken place on the same day, one at 09.00 PM and another at 11.00 PM in two different places. However, this was not properly investigated by the Investigating Officer. In this regard, the learned counsel appearing for the appellants makes reliance on the Judgment of the Hon'ble Supreme Court in Ganpat Vs. State of Haryana and others, reported in 2010 STPL 23023 SC : 2010 (12) SC 59 : 2011 (1) SCC (Cri) 309, wherein it has been held that "when two groups of people clashed inter se with weapons causing injuries to each other, we hold that the complainant party was the aggressor and in the absence of definite material and explanation from the prosecution side, the High Court was right in acquitting all the accused".

8. The learned counsel for the appellants would also submit that PW-1, during cross-examination, has stated that the signature found in EX-P1 does not belong to her and the attestation signature made by PW-3 also does not belong to PW-3. Therefore, she was treated as hostile. The above contradictions, according to the learned counsel for the appellants, would go to the very root of the case of the prosecution.



9. The learned counsel for the appellants would also submit that from EX-P17, it could be seen that the houses of all the accused party and the deceased party are situated very adjacent to each other. However, the house of PW-2 was not found mentioned in EX-P17. Therefore, the evidence of PW-2 that on hearing the alarm, he came out of the house and rushed to the place of occurrence is highly doubtful. Thus, the presence of PW-2, at the time of occurrence and that he had sustained injury in the very same transaction is highly doubtful and the occurrence would not have taken place, as it is projected by the prosecution.

10. The learned counsel for the appellants would also submit that during cross-examination conducted, on 25.04.2016, PW-1 has stated that since there was no light facility, she could not identify the persons as to who had attacked the deceased, which is fatal to the case of the prosecution. Pointing out the above contradictions and suppression of material fact, the learned counsel for the appellants would submit that the accused 1 and 2 are entitled for acquittal.

11. While concluding his arguments, in the alternative, the learned counsel for the appellants would submit that the occurrence took place in a sudden quarrel. There was no premeditation for the accused to commit the crime. It was purely sudden. Thus, according to the learned counsel for the appellants, if at all this Court believes the evidences of the prosecution, even then, the act of the first accused would not fall under the purview of Section 302 of the Indian Penal Code and at the most, his act would fall within the ambit of First Exception to Section 300 of the Indian Penal Code and therefore, the accused is liable to be punished under Section 304(ii) of the Indian Penal Code.

12. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal stoutly. According to him, it is true that the case in Crime No.95 of 2010 is a counter case and that the accused Nos.2 and 3 sustained injuries in the very same occurrence. He would point out that the prosecution has explained that the injuries sustained by the accused Nos.2 and 3 were very minor in nature at the hands of the other accused, when the first accused cut the deceased and the accused Nos.2 and 3 attacked the injured eye-witnesses with sticks. Thus, according to him, the injuries sustained by the accused Nos.2 and 3 have been duly explained by the prosecution. Insofar as the case in Crime No.95 of 2010 is concerned, according to the learned Additional Public Prosecutor, the investigation was done thoroughly and a final report was also filed and the same was referred to as "mistake of fact". Thus, according to him, the prosecution has not at all suppressed any fact.

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accused, they examined the Inspector of Police, Alangudi Police Station, DW-1, who has stated that the complaint lodged by the accused party was also investigated. However, subsequently, it was found that the accused party had not sustained any injury and therefore, the case was closed as "mistake of fact".

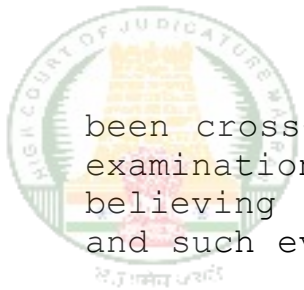
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17. Now, coming to the submission of the learned counsel for the appellants that the house of PW-2 has not been mentioned in EX-P17, in our considered view and as rightly pointed out by the learned Additional Public Prosecutor, a mere omission on the part of the Investigating Officer to note down the house of PW-2 in EX-P17 is not fatal to the case of the prosecution and it is a flaw committed by the Investigating Officer. PW-2 is an injured eye-witness and thus, his presence at the time of occurrence is natural and cannot be doubted. Furthermore, the deceased, PW-2 and the accused party were all brothers and they were residing in the adjacent houses.

18. The next submission of the learned counsel appearing for the appellants is that as per EX-P12, the Accident Register, PW-2 had sustained injury at 11.00 PM, on 04.04.2010 with sticks and rod, whereas, according to PW-1 and PW-2, the occurrence took place at 09.00 PM. Therefore, the entry made in EX-P12 would go to show that two occurrences should have taken place on the same day, one at 09.00 PM and another at 11.00 PM in two different places. The above contradiction, according to the learned counsel, creates doubt in the case of the prosecution.

19. The said submission made by the learned counsel appearing for the appellants has no substance. In our considered view, the estimation of time by an individual depends upon his perception time and it may differ from person to person depending upon individual perception and this is not at all a contradiction in legal and common parlance. Moreover, no suggestion was made to PW-2 by showing EX-P12. Thus, no significance could be attached to the above submission made by the learned counsel for the appellants.

20. Though it is submitted by the learned counsel for the appellants that during cross-examination conducted, PW-1 has stated that since there was no light facility, she could not identify the persons as to who had attacked the deceased, which would go to create doubt in the case of the prosecution, in our considered view, the said submission cannot be accepted. First of all, the chief-examination was conducted on 14.03.2012 and thereafter, after a lapse of four years, viz., on 25.04.2016, PW-1 was cross-examined and thus, PW-1 would have been won over by the other side. In this regard, it would be worthwhile to refer to a Division Bench of this Court in *Dharmaraj Vs. The Inspector of Police*, reported in 2015 (2) LW (Cr1) 458, wherein it has been held that in a criminal proceedings, if a witness has



been cross-examined after a long interval from the date of chief-examination, circumstances are available for the purpose of believing that he or she might have been won over by other side and such evidence can be disregarded/eschewed.

21. Applying the said dictum laid down by the Division Bench to the facts of the present case, if we analyze the facts of the present case, in our considered view, the evidence of PW-1, given during cross-examination, after a lapse of four years, is liable to be disregarded/eschewed and accordingly, it is discharged/eschewed. Thus, from the narration of the above, we hold that it was this first accused, who stabbed the deceased indiscriminately, which resulted in his death.

22. Having come to the said conclusion, now, the next immediate question is as to what was the offence, that the accused had committed by their act. From the facts narrated above, it is inferable that the deceased party would have provoked the accused by their words and deeds. Though there is no positive evidence available, it is inferable that there is every possibility that the deceased would have provoked the accused. Thus, on account of the said provocation, the first accused would have stabbed the deceased. In our considered view, but, for the loss of self-control on account of grave and sudden provocation caused by the deceased and his party, the first accused would not have stabbed the deceased. Thus, in our considered view, though the act of the accused would squarely fall within the ambit of Third limb of Section 300 of the Indian Penal Code, it would squarely fall within the ambit of First Exception to Section 300 of the Indian Penal Code. Therefore, the first accused is liable to be punished under Section 304(ii) of the Indian Penal Code. Going by the gravity of the crime committed, the circumstances under which it was committed, the family circumstances of the accused and the deceased, who are all close relatives to each other and the other aggravating and the mitigating circumstances, we hold that imposing rigorous imprisonment on the first accused for ten years with fine will meet the ends of justice.

23. At this juncture, we have to state that the Judgment of the Trial Court does not reflect judging of the quantum of punishment. Repeatedly, the Hon'ble Supreme Court has been impressing upon the Courts that assessing proper quantum of punishment itself is a part of judging by Judges and the same is a judicial function. The Hon'ble Supreme Court has also issued guidelines as to how to arrive at an appropriate quantum of punishment. In order to do justice, it is required of that the Court should strike a balance between the crime and the criminal and arrive at an appropriate quantum of punishment. In other words, the civil and the criminal are to be taken into account and the balance is to be struck between these two.



24. Having the above broad principles in mind, we have to analyze the offence committed by the third accused. Insofar as the third accused is concerned, as we have already pointed out, assessing proper quantum of punishment itself is a part of judging and the same is a judicial function. In this case, the third accused, even as per the case of the prosecution, attacked the deceased and PW-2 with stick and he did not cause any injury on the vital part of PW-2 and there were contusions alone on the hands and shoulders of PW-2. Thus, in our considered view, the third accused is entitled for acquittal.

25. In the result, the Criminal Appeal is partly allowed in the following terms:-

- The conviction and sentence imposed by the Trial Court on the first accused under Section 302 of the Indian Penal Code is set aside and instead, the first accused is convicted under Section 304(ii) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- [Rupees One Thousand only], in default to undergo rigorous imprisonment for eight weeks.
- The Trial Court shall take steps to secure the first accused to commit him in prison to serve out the remaining period of sentence.
- Bail bond executed by the first accused and the sureties shall stand cancelled.
- The period of sentence already undergone by the first accused shall be set off under Section 428 of the Code of Criminal Procedure.
- Fine amount, if any paid by the first accused, shall be adjusted towards the fine amount now imposed.
- The conviction and sentence imposed by the Trial Court on the third accused under Section 302 of the Indian Penal Code is set aside and he is acquitted of the charge framed against him.
- Fine amount, if any, paid by the third accused shall be refunded to him. Bail bond executed by him and the sureties shall stand terminated.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

<https://hcservice.hcdmvt.com/> The Additional District and Sessions Judge,
Pudukkottai.



2.The Principal Sessions Judge, Pudukkottai.

3.The Judicial Magistrate,
Alangudi, Pudukkottai District.

4.The Chief Judicial Magistrate,
Pudukkottai.

5.The Inspector of Police,
Alangudi Police Station, Pudukkottai District.

6.The Superintendent,
Central Prison, Trichy.

7.The District Collector,
Pudukkottai.

8.The Director General of Police,
Mylapore, Chennai-4.

9.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

10.The Record Keeper,
Vernacular Section, Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.N.Ananthapadmanabhan, Advocate SR.No. 91355

JUDGMENT MADE IN
CRL.A[MD].No.298 of 2016
06.12.2017

NB
JM/JC/SAR 1/14.12.2017/12P/12C