

**Bail Slip**

Kannan S/o.Arumugam aged about 36 years, Accused No.3 was released on Bail vide order dated 15/09/2016 in Crl.MP(MD).8241 of 2016 in Crl A(MD).No.329 of 2016.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED : 17.11.2017

PRONOUNCED : 21.12.2017

CORAM:

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

AND

THE HONOURABLE MR.JUSTICE **A.D.JAGADISH CHANDIRA****CRL.A[MD].Nos.329 and 348 of 2016****and****CRL.MP(MD).No.10029 of 2017**

Kannan : Appellant
in Crl.A.(MD).No.329 of 2016/Accused No.3

Magudeeshwaran : Appellant
in Crl.A.(MD).No.348 of 2016/Accused No.2

Vs.

The State,
Rep by the Inspector of Police,
Keeranur Police Station,
Dindigul District,
Crime No.140 of 2012. : Respondent

PRAYER: Appeals are filed under Section 374(2) of the Code of Criminal Procedure against the Judgment and conviction dated 31.08.2016 made in S.C.No.25 of 2013, on the file of the learned Additional District and Sessions Judge, Dindigul.

For Appellants : Mr.P.Andiraj
For Mr.D.Selvaraj

For Respondent : Mr.C.Ramesh
Additional Public Prosecutor

**JUDGMENT**

R.SUBBIAH, J.

The appellants are the accused Nos.2 and 3 in S.C.No.25 of 2013, on the file of the learned Additional District and Sessions Judge, Dindigul. There were as many as ten accused in this case. The Trial Court framed as many as seven charges, as detailed below.

Charge	Accused	Penal Provisions
1	1 to 10	148 IPC
2	2	302 IPC
3	1 and 4	342 IPC
4	1 and 3 to 10	302 r/w 149 IPC
5	1 to 10	341 IPC
6	3	307 IPC
7	1, 2 and 4 to 10	307 r/w 149 IPC

2. By Judgment dated 31.08.2016, the Trial Court convicted the accused Nos.1 to 4 and sentenced them, as detailed below:-

Accused	Section of Law	Sentence of imprisonment	Fine amount
1 and 4	341 IPC	To undergo simple imprisonment for one month.	No fine.
2	302 IPC	To undergo imprisonment for life.	Rs.10,000/-.
3	324 IPC	To undergo rigorous imprisonment for one year.	No fine.

The Trial Court has acquitted some of the accused, as detailed below:-

Accused	Penal Provisions
5 to 10	148, 341, 302 r/w Section 149 and 307 r/w Section 149 IPC
1 to 4	148 IPC
1,3 & 4	302 r/w 149 IPC IPC
1,2 & 4	307 r/w 149 IPC
3	341 IPC

Challenging the said conviction and sentence, the accused Nos.2 and 3 have come up with these Criminal Appeals.

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

The deceased, in this case, is one Mr.Rajasekaran. PW-1 is a resident of South Street, Manur Village, Palani Taluk, Dindigul District. PW-1 was working in a Petrol Bulk at Palani. The daughter of the first accused, namely, one Ms.Vasukidevi, fell in love with one Mr.Sangilithurai, who is the brother of PW-5 and they got married. On account of their marriage, there was a long standing enmity between these two family members. On 01.06.2012, at about 04.45 PM, when PW-1 came out of the house, he found the accused Nos.1 to 4 indulging in quarrel with the brother of PW-5 in front of Pattalamman Temple. At that time, the deceased came there and pacified them. Enraged over the same, the second accused took out a knife, which was in his possession and stabbed the deceased on his left side chest and left side shoulder. The accused Nos.1 and 4 caught hold of the deceased. PW-1 tried to intervene. The third accused stabbed PW-1 on his left hand and left thigh. Immediately, PW-2 to PW-4 took the deceased and PW-1 to the Government Hospital, Palani for treatment. However, the deceased succumbed to the injuries on the way to hospital.

3.2. On intimation from the hospital authorities, at 06.30 PM, on 01.06.2012, PW-15, the then Sub-Inspector of Police, attached to Keeranur Police Station, proceeded to the Government Hospital at Palani, examined PW-1, recorded his statement, went to the Police Station and registered a case in Crime No.140 of 2012, for the offences under Sections 341, 307 and 302 of the Indian Penal Code. EX-P1 is the complaint and EX-P11 is the First Information Report. Then, he forwarded both the documents to the Court and handed over the investigation to the Inspector of Police.

3.3. Taking up the case for investigation, at 11.15 PM, on 01.06.2012, PW-16 proceeded to the place of occurrence, prepared an Observation Mahazer [EX-P2] and a Rough Sketch [EX-P12], showing the place of occurrence in the presence of PW-2 and another witness. He recovered bloodstained earth [MO-2] and sample earth [MO-3] from the place of occurrence. Then, he examined PW-2 to PW-9 and recorded their statements. Then, he conducted inquest on the body of the deceased. EX-P13 is the inquest report. Then, he forwarded the dead body for postmortem.

3.4. PW-12 - Dr.Yogalakshmi conducted autopsy on the body of the deceased. EX-P5 is the postmortem certificate. She noticed the following injuries:-

"1. Lacerated penetrating injury of about 7 X 5 enters the thoracic cavity over the left side of chest, over the infra mammary region, causing fracture of 3, 4, 5 ribs over the left side and penetrating into thoracic cavity and into anterior wall of left ventricle and penetrates through the posterior wall by



piercing into ventricular cavity. Thoracic cavity contains about 700 ml of clotted blood present.

2. Lacerated injury present in left arm about 5 X 2 X penetrates the skin and muscles (3CM).

3. Abrasion right knee joint 2 X 2 CM

4. Abrasion left side of upper chest below clavicle about 3 X 2 CM.

5. Abrasion left side of lower chest about 2 X 2 CM".

He gave an opinion that the deceased would appear to have died of shock and hemorrhage due to injuries.

3.5. PW-11, Dr.D.Satheesh Babu, who treated PW-1, issued EX-P4, Accident Register and noticed the following injuries:-

"1). Laceration 3 X 1 CM left forearm.

2). Laceration 4 X 4 CM left buttock

3). 2 X 1 CM left thigh".

3.6. At 05.00 AM, on 02.06.2012, PW-16 arrested the accused Nos.1 to 4 in front of Neikkarampatti Bus Stop. On such arrest, the accused Nos.1 and 2 gave voluntary confessions, in which they disclosed the place, where they had hidden the knives. In pursuance of the same, the accused Nos.1 and 2 took the police and the witnesses to the hide out and produced the knives [MO-1] and [MO-2]. PW-16 recovered the same under separate mahazars. On returning to the Police Station, PW-16 forwarded the accused to the Court for judicial remand. He also handed over the material objects to the Court. On 03.06.2012, PW-16 arrested the accused Nos.5 to 10 and forwarded them also to the Court for judicial remand. On 04.06.2012, PW-16 altered the case into one under Sections 147, 148, 149, 341, 307 and 302 of the Indian Penal Code. On completing the investigation, he laid charge sheet against the accused, on 06.07.2012.

3.7. 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, 16 witnesses were examined, 19 documents and eight material objects were marked.

3.8. 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. However, they did not choose to examine any witness nor to exhibit any document. Their defence was a total denial. Having considered all the above materials, the Trial Court convicted the accused Nos.1 to 4, as detailed in the first paragraph of this Judgment and punished them accordingly. The Trial Court has acquitted rest of the accused from the charges



levelled against them. That is how, the appellants/accused Nos.2 and 3 are now before this Court with these Criminal Appeals.

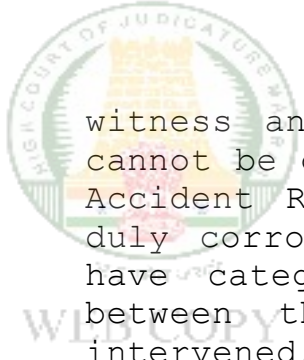
4. The learned counsel appearing for the appellants would submit that as per the case of the prosecution, at about 04.45 PM, on 01.06.2012, when PW-1 came out of the house, he heard the noise of the accused Nos.1 to 4 indulging in quarrel with the brother of PW-5 in front of Pattalamman Temple. At that time, the deceased came there and pacified them. Enraged over the same, the second accused took out a knife, which was in his possession and stabbed the deceased on his left side chest and left side shoulder. The accused Nos.1 and 4 caught hold of the deceased. PW-1 tried to intervene. The third accused stabbed PW-1 on his left hand and left thigh.

5. The learned counsel appearing for the appellants would further submit that there was no motive for the second accused to kill the deceased and he had also no intention to cause the death of the deceased. Since the deceased intervened and pacified them, enraged over the same and on account of grave and sudden provocation, the occurrence took place and thus, his act would fall within the ambit of First Exception to Section 300 of the Indian Penal Code. Thus, the offence committed by the second accused is not a murder and it is only a culpable homicide, falling within the ambit of Section 304(i) of the Indian Penal Code. Insofar as the third accused is concerned, the learned counsel for the appellants would submit that according to the case of the prosecution, the third accused stabbed PW-1 on his left hand and left thigh and he had not committed any further injury on PW-1 and thus, he sought for modification of the conviction and sentenced imposed on both the accused.

6. The learned Additional Public Prosecutor would, however, oppose this Criminal Appeal. According to him, the eye-witnesses account of PW-1, PW-2, PW-4 and PW-6 are cogent and convincing, which would go a long way to show that it was this second accused, who alone caused the death of the deceased. Insofar as the third accused is concerned, the learned Additional Public Prosecutor would submit that he had stabbed PW-1 on his left hand and left thigh, which has also been clearly established by the prosecution by way of injured eye-witness account of PW-1. Thus, the learned Additional Public Prosecutor prayed for dismissal of the Criminal Appeal.

7. We have given our anxious consideration to the submissions made by the learned counsel appearing for the appellants as well as the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

8. In this case, it is no doubt true that PW-1 is an injured



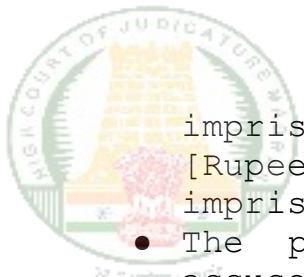
witness and therefore, his presence, at the time of occurrence, cannot be doubted at all. His evidence is duly corroborated by the Accident Register [EX-P4] issued by PW-11. His evidence is also duly corroborated by the evidences of PW-2, PW-4 and PW-6. They have categorically stated that when the quarrel was going on between the accused and the brother of PW-5, the deceased intervened, out of good intention to separate them. At that time, it is stated that the second accused stabbed the deceased with knife. Though PW-1, PW-2, PW-4 and PW-6 have been subjected to lengthy cross-examination, nothing has been brought on record so as to disbelieve their version. Thus, the prosecution has clearly established that it was this second accused, who stabbed the deceased, which resulted in his death.

9. Having come to the said conclusion, now, the next immediate question is as to what was the offence, that the second accused had committed by his act. From the case of the prosecution, it is inferable that there is every possibility that the deceased would have provoked the second accused. Thus, on account of the loss of self-control and due to sudden provocation, the second accused would have stabbed the deceased. As we have already narrated, the occurrence was not a premeditated one. The quarrel was between the accused and PW-5. The arrival of the deceased at the place of occurrence was by chance. Thus, in our considered view, though the act of the second 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 second accused is liable to be punished under Section 304(i) of the Indian Penal Code.

10. Now, turning to the quantum of punishment, the second accused, at the time of occurrence, was hardly aged about 41 years. Either prior to the occurrence or subsequent to the occurrence, he was not involved in any crime. The occurrence was not a premeditated one. Having regard to all the mitigating and aggravating circumstances, we are of the considered view that sentencing the second accused to undergo rigorous imprisonment for seven 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. Insofar as the third accused is concerned, the conviction imposed on him is liable to be confirmed, however, the sentence is liable to be reduced to six months rigorous imprisonment.

11. In the result, the Criminal Appeals are partly allowed in the following terms:-

- The conviction and sentence imposed by the Trial Court on the second accused [appellant in CrI.A.(MD).No.348 of 2016], under Section 302 of the Indian Penal Code is set aside and instead, the second accused/appellant is convicted under Section 304(i) of the Indian Penal Code and sentenced to undergo rigorous



imprisonment for seven years and to pay a fine of Rs.10,000/- [Rupees Ten Thousand only], in default to undergo rigorous imprisonment for eight weeks.

- The period of sentence already undergone by the second accused/appellant shall be set off under Section 428 of the Code of Criminal Procedure.
- The conviction imposed on the third accused [appellant in Crl.A.(MD).No.329 of 2016] under Section 324 of the Indian Penal Code is confirmed, however, the sentence is reduced and the third accused is sentenced to undergo rigorous imprisonment for six months.
- The Trial Court shall take steps to secure the third accused to commit him in prison to serve out the remaining period of sentence. Bail bond executed by the third accused and the sureties shall stand cancelled. The period of sentence already undergone by him shall be set off under Section 428 of the Code of Criminal Procedure.

Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge, Dindigul.
2. The Judicial Magistrate, Palani, Dindigul.
3. Do Thro'The chief Judicial Magistrate, Dindigul.
4. The Inspector of Police,
Keeranur Police Station, Dindigul District.
5. The District Collector, Dindigul District.
6. The Superintendent of Police, Dindigul District.
7. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 8.The Superintendent, Central Prison,
Madurai.(In duplicate for communication to the Accused)

+ 1 cc TO Mr.D.Selvaraj , Advocate in SR No. 94677

NB

AE/JC/SAR1/20.06.2018/7P/11C